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Via E-Filing

Supreme Court of California
Honorable Chief Justice Tani Cantil-Sakauye
Associate Justices of the Supreme Court
350 McAllister Street
San Francisco, CA 94102-4797

Re: Amicus Curiae Letter in Support of Petition for Review
Supreme Court Case No. S271869
Chevron U.S.A., Inc. v. County of Monterey (2021) 70 Cal.App.5th 153
(Court of Appeal Case No. H045791)

Dear Honorable Chief Justice Cantil-Sakauye and Associate Justices:

Amici curiae League of California Cities and California State Association of Counties submit this letter, pursuant to California Rules of Court, Rule 8.500, subd. (g), to support the petition for review in this case.

I. Statement of interest

The League of California Cities (“Cal Cities”) is an association of 479 California cities dedicated to protecting and restoring local control to provide for the public health, safety, and welfare of their residents, and to enhance the quality of life for all Californians. Cal Cities is advised by its Legal Advocacopportunity Committee, comprised of 24 city attorneys from all regions of the State. The Committee monitors litigation of concern to municipalities and identifies those cases that have statewide or nationwide significance. The Committee has identified this case as having such significance.

The California State Association of Counties (“CSAC”) is a non-profit corporation. The membership consists of the 58 California counties. CSAC sponsors a Litigation Coordination Program, which is administered by the County Counsels’ Association of California and is overseen by the Association’s Litigation Overview Committee, comprised of county counsels throughout the state. The Litigation Overview Committee monitors litigation of concern to counties statewide and has determined that this case is a matter affecting all counties.

The Court’s decision in this matter will significantly impact amici’s interests, and the interests of cities and counties generally, because the novel reasoning and conclusions of the

Court of Appeal have the potential to limit inappropriately the enactment of ordinances, general plan amendments, and voter initiatives authorized under local government police powers.

As amici represent hundreds of cities and counties throughout the state, amici are uniquely situated to offer context for the Court and provide insight into the practical ramifications of the Opinion. And in this proceeding, amici find it especially important to articulate support for the petition, given the Respondents' suggestion that local governments do not have a strong interest in this case. Respondents argue that

Intervenors' premise that local governments will be subject to "profound" uncertainty and litigation risk from the Opinion (Pet. at 32) is belied by the fact that Monterey County, the defendant in this litigation, elected to abandon its appeal and is not a part of these proceedings. The County apparently did not consider the impacts that Intervenors allege will befall cities and counties significant enough to pursue an appeal of the superior court's order.

(Joint Answer to Petition for Review ("Answering Brief"), at p. 26.)

Whatever the original defendant's reasons for not pursuing this appeal, Cal Cities and CSAC—on behalf of a wide range of cities and counties—beg to differ with the conclusion Respondents urge the Court to draw from that decision.

The issues in this case implicate core decision-making powers critical to local governments throughout California. Amici urge this court to grant review of the Sixth District Court of Appeal's Opinion ("Opinion"), which adopts a novel analysis that could unduly limit the core police power authority of cities and counties to protect public health and safety through well-established land use controls. The Opinion calls into question local governments' longstanding authority to regulate where oil and gas drilling can take place within their jurisdictions, and would invite other intrusions into core police powers of cities and counties. While the Opinion, and the Answering Brief, present the Opinion as a straightforward application of legal principles, it instead will cast questions on a long-settled balance of authority between local and state governments—a balance that has resulted in a diverse set of local approaches to fossil fuel exploration and extraction.

California cities and counties possess broad authority to regulate and govern land uses for the general welfare under their police power. Here, the people of Monterey County enacted an initiative, Measure Z, that changed the Monterey County General Plan to limit or forbid certain land uses supporting oil and gas drilling. This action falls squarely within the inherent power of local governments, and the initiative's approach squares with the reach of local government authority recognized in the California and federal Constitutions, in case law over the past century, and implicit in the state's statutory provisions governing oil and gas drilling.

The Opinion holds that Measure Z's routine deployment of local government police powers is unlawful. In doing so, it represents a significant departure from the traditional understanding of local government power in this area, potentially undermining the authority that cities and counties have always possessed to use land use ordinances, general plan provisions, and voter initiatives to protect the general welfare of California residents, and more specifically to determine where and under what conditions oil and gas drilling can or cannot take place.

Moreover, the Opinion's treatment of preemption may create more general confusion about the application of preemption doctrine to a broad range of local laws.

Amici represent cities and counties in California whose decision-making authority will be called into question if the Opinion stands. The Court should grant review to secure uniformity of decision and to settle the important questions of law raised by the Opinion. The Opinion not only ignores the broad authority of cities and counties to govern land use and misapplies the test for preemption of local authority, but also ignores the potential impact of its reasoning for local governments concerned about attacks on their legal authority to regulate under their police power. For these reasons, amici urge the Court to grant review.

II. Review is necessary to settle important questions of law and to ensure uniformity of decision regarding the scope of preemption of local land use authority

The Opinion has the potential to unsettle an important, settled question of law, and misapplies preemption doctrine significantly enough to require intervention to ensure uniformity of decision.

First, the Opinion has the potential to unsettle an important question of law relating to local land-use regulation of oil drilling and wastewater injection, through its conclusion that "drilling" and "wastewater injection" are methods or practices that must be permitted only by state law. The Opinion held that Pub Res. Code section 3106 encourages "all methods and practices" to extract oil and assigns authority for permitting methods and practices to the state agency CalGEM (formerly DOGGR), while also concluding that "drilling" and injection are methods or practices. The Opinion concluded that this state authority over drilling preempts the general plan amendments approved in Measure Z. This conclusion and reasoning are at odds with long-settled doctrine that empowers local governments to use zoning and related tools to limit or condition oil drilling. The Court of Appeal disclaims that its Opinion will have such sweeping impacts, without analyzing the question. But the Opinion's reasoning opens the door for litigation, and litigation threats, that may chill local government land use regulation by providing a potential basis for challenges to local government authority on issues that have long been settled law.

Second, the Opinion threatens uniformity of decision on a basic principle of preemption law. The Opinion suggests the Sixth District has adopted an expanded test for preemption never endorsed by the Supreme Court—a test that appears to be at odds with long-held doctrine about local regulatory authority. As the Petition says, "Any local prohibition in an area where the state has some permitting or approval role could be construed as prohibiting the state from allowing an activity, even if regulated entities reasonably could comply with both state and local law by refraining from the activity." This misapplication of settled precedent opens the door for threats of litigation that might chill local government action, possibly in a wide range of contexts involving local government action throughout the state. Consequently, the Supreme Court should grant review to ensure uniformity of decision.

A. The Opinion calls into question local governments’ core police power over land use, as applied to oil drilling and related activities

The Opinion misconstrues decades of court decisions allowing broad local land-use regulation of oil extraction—precedent that local governments throughout the state continue to rely on. The Opinion held that Pub Res. Code section 3106 encourages “all methods and practices” to extract oil and that CalGEM exercises authority to permit those “methods and practices.” At the same time, the Opinion concluded, without qualification, that “drilling of wells” and “injection of wastewater” are “methods and practices” to extract oil, and that Measure Z is preempted because it regulates those methods or practices. (E.g., Opinion at p. 18: “Here, section 3106 specifically addresses the drilling of wells and the injection of wastewater, encourages both practices, and, critically, explicitly places the authority to permit these methods and practices in the hands of the State”.) But for over a century, everyone—including businesses engaged in oil extraction, local governments, the state, and every court to address the issue—has understood regulation of where, whether, and under what conditions oil drilling and wastewater injection are allowable in all or part of a local jurisdiction to be a land-use question within local authority. While the Court of Appeal disclaims that its Opinion will have such sweeping impacts (See Opinion, p. 19 [n. 16]), the Opinion’s reasoning opens the door for litigation, and litigation threats, that may chill local government land use regulation by unsettling established law in an area where local governments have relied for decades on a large body of caselaw.

1. Local government police power authority over land use is broad and has been used for a century to limit oil extraction activities

The County’s authority to regulate activities, including oil drilling, through land use controls stems from Article XI, section 7 of the California Constitution: “[a] county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.” (Cal. Const., art. XI, § 7.) The police power of a county or city within its territorial jurisdiction is “as broad as the police power exercisable by the Legislature itself.” (*Candid Enters., Inc. v. Grossmont Union High Sch. Dist.* (1985) 39 Cal. 3d 878, 885.) The “general power of governing” reserved in the police power is broad, allowing states and local governments to “perform many of the vital functions of modern government.” (See *Nat’l Fed’n of Indep. Bus. v. Sebelius* (2012) 567 U.S. 519, 535-36.) This is particularly true in the land use context, where cities and counties have authority to regulate extensively for the public welfare. (*Cal. Building Indus. Ass’n v. City of San Jose* (2015) 61 Cal. 4th 435, 455.)

A fundamental application of the police power is the authority of states and localities to implement zoning and other land use controls. (See, e.g., *Fonseca v. City of Gilroy* (2007) 148 Cal. App. 4th 1174, 1181; see also *Berman v. Parker* (1954) 348 U.S. 26, 32-33.) The exercise of police power in the land use context is owed substantial deference and is presumed constitutional, “with every intendment in [its] favor.” (*Cal. Building Indus. Ass’n, supra*, 61 Cal. 4th at p. 455 [quoting *Associated Home Builders etc., Inc. v. City of Livermore* (1976) 18 Cal. 3d 582, 604-05].)

The police power authorizes cities and counties not only to limit land uses, but also to condition and regulate them. For example, in *T-Mobile West LLC v. City and County of San Francisco* (2019) 6 Cal. 5th 1107, this Court considered the validity of a San Francisco City and County ordinance that utilized local government police power to regulate construction of telephone lines, based on local aesthetic concerns. (*Id.* at p. 1114-15.) The board of supervisors enacted that ordinance to further the general welfare of the City and County, and specifically to maintain the aesthetic beauty of San Francisco. (*Id.* at p. 1114.) The Court reaffirmed that the local police power includes the authority to establish conditions for land uses, including land uses such as telephone lines that service infrastructure outside the land use framework, even where state laws regulate in the same subject area. (*Id.* at p. 1116.)

California has a long history not only of local government police power-based land use controls, but also, specifically, of local regulation specifically governing oil well development. This type of regulation, which designates where, whether, and under what conditions oil wells can be developed and associated infrastructure can be sited, is based both on land use regulatory authority, and on general authority to protect the public safety and welfare. For example, in 1953, in *Beverly Oil Co. v. City of Los Angeles*, this Court—citing a line of even earlier cases—concluded that it was deemed to be well settled, before 1953, that the “enactment of an ordinance which limits the owner’s property interest in oil bearing lands located within the city is not of itself an unreasonable means of accomplishing a legitimate objective within the police power of the city.” (*Beverly Oil Co. v. City of Los Angeles* (1953) 40 Cal. 2d 552, 558.) In *Beverly Oil*, this Court affirmed the legal reach of the city’s power—exercised via an ordinance that “expressly provide[d] that no new well for the production of hydrocarbon substances ... shall be drilled nor shall existing wells be deepened” (*Id.* at p. 555)—as encompassing the ability to regulate oil and gas development activities. (*Id.* at p. 558-59; see also *Marblehead Land Co. v. City of Los Angeles* (9th Cir. 1931) 47 F.2d 528, 531-34 [upholding a zoning ordinance prohibiting oil drilling on plaintiff’s property as a valid exercise of police power].)

2. Measure Z is a conventional use of local police power over activities both long-recognized to be under local authority, and currently regulated in diverse ways by cities and counties throughout the state

In this context, the voters of Monterey County enacted Measure Z with the purpose to “protect Monterey County’s water, agricultural lands, air quality, scenic vistas, and quality of life.” (Administrative Record (“AR”)[1]121.) Voters were concerned that oil and gas extraction’s impacts have been unduly harming those values and resources in the County. (AR[1]121-123.) The voters unquestionably intended Measure Z to protect public health and welfare, through General Plan amendments that prohibit or limit particular land uses found to be inconsistent with the voters’ vision of public welfare within the County. Measure Z’s approach to this issue is by no means the only approach that local governments have taken to regulate oil and gas, but it is well within the range of approaches taken in California.

While *Beverly Oil* addressed a ban on oil drilling and well-deepening in an area smaller than an entire city or county, Measure Z is not the first general plan provision to broadly prohibit a range of oil drilling-related land uses throughout the entirety of a local government’s land use

jurisdiction. For example, the City of Hermosa Beach enacted a ban on oil drilling operations decades ago. (See *Hermosa Beach Stop Oil Coal. v. City of Hermosa Beach* (2001) 86 Cal. App. 4th 534, 540 [noting that in 1932 the City of Hermosa Beach “enacted a ban on all oil and gas operations within the City, declaring such activity to be both unlawful and a public nuisance”] [citing Hermosa Beach Mun. Code § 21-10].) Similarly, the Board of Supervisors of Santa Cruz County enacted, in 2014, general plan amendments prohibiting “development, construction, installation, or use of any facility necessary for or intended to support oil or gas exploration or development from any surface location within the unincorporated area of the County of Santa Cruz, whether the subsurface portion(s) of such facility is within or outside the unincorporated area of the County of Santa Cruz,” including “facilities directly involved in oil and gas exploration, production, and refinement such as wells, pipelines and pumps.” (1994 General Plan and Local Coastal Program for the County of Santa Cruz, California, section 5.18.4 [as amended by Res. No. 142-2014]; see also, e.g., San Benito Measure J (2014) [amending the general plan to “prohibit[] the use of any land within the County’s unincorporated area for fracking, acid fracking, acid matrix stimulation, steam injection and other types of oil and gas development with advanced well stimulation technologies” and further “prohibit[] the new use of land for any Petroleum Operations in unincorporated areas designated for residential use”].)

Other local jurisdictions have taken a different approach, developing detailed local standards and procedures for local permitting of oil and gas production. In some jurisdictions, these permitting systems have facilitated a significant amount of oil and gas development. These procedures nonetheless rely on local government police power to limit the use of land within the jurisdiction to support oil production activities. For example, Kern County, in its Zoning Ordinance, “provides development standards for all future oil and gas exploration, extraction, operations, and production activities in the unincorporated Kern County” that require a conditional use permit for some activities. (See Kern Cty. Planning & Nat. Res. Dep’t, Kern County Oil and Gas Permitting <<https://kernplanning.com/oil-gas-landing-main/>> [visited December 15, 2021].) This type of permit is required in some parts of Kern County in order to lawfully drill a well for underground injection as part of oil drilling operations, or to install oil drilling-related infrastructure at all. (See Kern County Zoning Ordinance, chapter 19.98, section 050 [requiring that “no well for use as an injection well and no well for the exploration for or development or production of oil, gas, or other hydrocarbon substances may be drilled, and no related accessory equipment, structure, facility or use may be installed” without an approved conditional use permit, in various parts of the county].)

Many other cities and counties regulate oil extraction operations through permitting or other similar processes regulating the drilling of wells and related structural installations, and many confine those operations to certain zones or districts. For example, the City of Los Angeles has not only developed a process for permitting of wells that limits the number and location of wells (L.A. Mun. Code § 13.01), but also has long-established zoning requirements that limit the possible locations of new wells to certain areas of the city. (See *Beverly Oil*, *supra*, 40 Cal. 2d at p. 554-55.) And, as evidenced by *Marblehead Land*, the police power underpinning of local regulation of oil operations has not even historically been limited to land use authority; this power has been relied upon to regulate other aspects of oil operations as well. (See *Marblehead Land*, *supra*, 47 F.2d at 532-33.)

3. The Opinion concluded that Measure Z is preempted based on manifestly faulty analysis, and disclaimed without analysis some potentially far-reaching implications of that conclusion

Against the long historical background of local regulation of oil drilling through land use controls and other regulatory tools, ranging from permitting requirements to prohibitions, the Opinion found that Public Resources Code section 3106 preempts Measure Z because it bans “methods and practices” permitted statewide under Section 3106—even though similar local requirements have been upheld consistently by courts for decades. (See, e.g., *Beverly Oil Co. v. City of Los Angeles*, *supra*; *Hermosa Beach Stop Oil Coal. v. City of Hermosa Beach*, *supra*; *Marblehead Land Co. v. City of Los Angeles*, *supra*; *Higgins v. City of Santa Monica* (1964) 62 Cal. 2d 24.) The Opinion holds that local governments do not possess land-use permitting authority over “the drilling of wells and the injection of wastewater” because both drilling and injection, broadly, are “methods and practices” permitted by Section 3106. The Opinion states that “Measure Z would flatly ban throughout Monterey County what section 3106 declares is a policy of the state to permit. . . . Specifically, Measure Z would ban two ‘methods and practices’ that increase the recovery of oil and gas: the drilling of new wells and wastewater injection.” (Opinion, at p. 19.; see also Opinion, at p. 16 “[o]perations could proceed only if they involved no new wells and no wastewater injection, which are operational methods and practices”.) The Opinion’s sweeping assertion that requiring land-use permits for well-drilling and wastewater injection is preempted because those broad classes of activities are “methods or practices”—an assertion necessary to the logic of its argument—potentially implicates a wide range of local government controls and regulations concerning oil and gas drilling.

Local governments expect that litigants may argue this reasoning applies to the range of local government land use policies described above, including policies that require discretionary approval of a conditional use permit as a condition of drilling a new well. If “underground injection and drilling new wells” are methods and practices, and state law preempts local regulation limiting local land use authority to limit these methods or practices, the legal authority of local governments even to condition drilling of underground injection wells and other new wells on discretionary local permit decisions, or to use zoning to limit the locations of such activities, will be called into question. The Opinion’s language raises the possibility local governments will have to defend against arguments that a variety of local zoning laws, general plan policies, and other regulations addressing oil operations may be preempted.

Recognizing the potentially far-reaching impact of the Opinion, the Sixth District disclaimed, without analysis, the possibility that its reasoning will have such sweeping effect, stating in a footnote that “[n]othing in this opinion should be construed to cast any doubt on the validity of local regulations requiring permits for oil drilling operations or restricting oil drilling operations to particular zoning districts” because “[t]his case involves no such regulations” [*id.* at p. 19, fn. 16].). The Opinion’s characterization of both well-drilling and wastewater injection as “methods and practices” is, however, fundamentally inconsistent with this disclaimer. While local governments would argue strenuously for a narrow application of the Opinion if this Court does not grant review, and would urge other Court of Appeal Districts to analyze the law differently, the Opinion sets the stage for litigation over precisely how a court would distinguish

“local regulations requiring permits for oil drilling operations or restricting oil drilling operations to particular zoning districts” from what the Opinion characterizes as the status of “the drilling of wells” as a “method or practice” that local governments may not regulate.

The Opinion’s statement that “Measure Z does ‘not regulate ‘*where* and *whether*’ oil drilling would occur . . . but rather *what* and *how* any oil drilling operations could proceed” (*Id.* at pp. 15–16, original italics) provides not an iota of insight into the distinction the Court of Appeal is attempting to make; the Opinion does not provide a straightforward basis to distinguish Measure Z from the local government action expressly authorized under *Beverly Oil, Higgins v. City of Santa Monica, supra*, 62 Cal. 2d at 28 (holding that an ordinance prohibiting all oil drilling on granted submerged lands “amounts to a determination that the city does not desire to subject the public to the inconvenience, noisome effects, and potential dangers that may accompany and follow the exploration for, and production of, oil” and finding it both a valid exercise of the police power, and not preempted, in the face of a legal challenge based on the terms of the grant and the laws generally governing state-granted tidelands), or other longstanding precedents—or from various current local government regulatory actions.

Contrary to the Opinion’s conclusions, the use of local authority here is so well-settled that in cases where other preemption arguments—arguments not applicable here—have been made in similar contexts, the core authority to ban oil drilling has not even been challenged by litigants, and indeed has been reaffirmed by courts as the starting point for analysis. (See *Hermosa Beach Stop Oil Coal., supra*, 86 Cal. App. 4th at p. 555–56 [finding a total ban on oil drilling within city limits to be “presumptively a justifiable exercise of the City’s police power” and noting that “none of the parties disputes the validity of reinstating the total ban on oil drilling within Hermosa Beach”]; *Higgins v. City of Santa Monica, supra*, 62 Cal. 2d at p. 28.) Local governments have utilized and relied on their police power authority to regulate drilling locations extensively, including banning drilling in some or all areas within their jurisdiction.

4. The Opinion ignores key features of preemption doctrine, including the presumption against preemption of local police power and the lack of doctrinal distinction between bans and more modest limitations

The Sixth District gave no weight to the local interests the Opinion might impact. A local ordinance or policy relying on the police power to control land uses, such as Measure Z, is presumed valid against a preemption claim. The “inherent local police power includes broad authority to determine . . . the appropriate uses of land within a local jurisdiction’s borders, and preemption by state law is not lightly presumed.” (*City of Riverside v. Inland Empire Patients Health & Wellness Ctr., Inc.* (2013) 56 Cal. 4th 729, 738.) Local government “traditionally has exercised control” over both land-use controls under the police power and general lawmaking and policymaking to protect public health, safety, and welfare. (*T-Mobile, supra*, 6 Cal. 5th at p. 1116 [quoting *Big Creek Lumber Co. v. County of Santa Cruz* (2006) 38 Cal. 4th 1139, 1149]; see also, e.g., *Cal. Grocers Ass’n v. City of Los Angeles* (2011) 52 Cal. 4th 177, 197-98 [noting that presumption against implied preemption is “particularly heavy” where subject matter is “traditionally regulated by . . . local governments under their police powers”].) Yet the Opinion

explicitly rejects any need to assess preemption in light of that analytical framework, instead concluding without analysis that it did not need to do so. (Opinion, at p. 16 [fn. 15].)

Finally, there is no reason a total ban on a particular land use or activity within a jurisdiction would be treated, for preemption analysis purposes, differently from a local ordinance or general plan provision that limits a land use or activity but stops short of a total ban. The cases in which California appellate courts have considered whether local governments' total bans on land uses or activities are preempted by state law short of field preemption—both in the context of oil drilling and otherwise—have analyzed the question in traditional police power terms, have not distinguished between total bans and more limited land use controls, and generally have resulted in upholding those bans against preemption challenges. (See, e.g., *City of Dublin v. County of Alameda* (1993) 14 Cal. App. 4th 264 [finding countywide initiative prohibiting operation of waste incinerators throughout entire county was a lawful exercise of the police power, and not preempted]; *City of Riverside, supra*, 56 Cal. 4th at p. 744-63 [rejecting the argument that a countywide ordinance designating marijuana dispensaries as a prohibited use and a public nuisance was preempted by a state statutory scheme enabling the possession and cultivation of marijuana for authorized medicinal purposes]; *Hermosa Beach Stop Oil Coal., supra*, 86 Cal. App. 4th at p. 555-56, [calling a total ban on oil drilling within the jurisdiction “presumptively a justifiable exercise of the City’s police power” and noting that “none of the parties disputes the validity of reinstating the total ban on oil drilling within Hermosa Beach, save only for the question whether that ban can be applied to the Macpherson project”].)

B. The Opinion’s incorrect conclusion that Measure Z is “inimical” to state law creates confusion about the Sixth District’s analysis of preemption, requiring review to ensure uniformity of decision

The Opinion found that state law impliedly preempts Measure Z; the Court did not find field preemption. And in the absence of field preemption, California courts have found implied preemption only where a local ordinance or other regulation “contradicts,” or is “inimical to,” state law. Here, there is no question that Measure Z neither contradicts nor is inimical to state law governing oil and gas exploration and production. The Opinion’s holding that Measure Z is contradictory or inimical to state law (or, perhaps, that it is preempted because it frustrates the purpose of state law, given the Opinion’s lack of clarity on this point) may be used to call into question other ordinances and policies relying on police power authority in a variety of contexts. It is essential that this Court grant review to ensure that the Opinion’s muddled analysis is not used to make mischief, drawing local governments into litigation over long-settled principles of preemption law.

In *T-Mobile*, this Court set forth, in plain terms, the way California courts must analyze a claim of implied preemption:

“[L]ocal legislation that conflicts with state law is void.” (*City of Riverside, supra*, 56 Cal. 4th at p. 743, citing *Sherwin-Williams Co. v. City of Los Angeles* (1993) 4 Cal. 4th 893, 897.) A conflict exists when the local legislation “ ‘ “ ‘duplicates, contradicts, or enters an area fully occupied by general law, either

expressly or by legislative implication.’ ” ’ ” (*Sherwin-Williams*, at p. 897.) Local legislation duplicates general law if both enactments are coextensive. (*Ibid.*, citing *In re Portnoy* (1942) 21 Cal. 2d 237, 240.) Local legislation is contradictory when it is inimical to general law. (*Sherwin-Williams*, at p. 898, citing *Ex parte Daniels* (1920) 183 Cal. 636, 641-48.)

(*T-Mobile*, *supra*, 6 Cal. 5th at p. 1116.)

This Court’s opinion in *T-Mobile* followed a long line of cases reaffirming this principle, and restating it in various terms. In *Big Creek Lumber*, for example, the Court noted:

We previously have explained that a local ordinance is not impliedly preempted by conflict with state law unless it “mandate[s] what state law expressly forbids, [or] forbid[s] what state law expressly mandates.” (*Great Western Shows, Inc. v. County of Los Angeles* [2002] 27 Cal. 4th [853,] 866.) That is because, when a local ordinance “does not prohibit what the statute commands or command what it prohibits,” the ordinance is not “inimical to” the statute. (*Sherwin-Williams Co. v. City of Los Angeles* (1993) 4 Cal. 4th 893, 902.)

(*Big Creek Lumber*, *supra*, 38 Cal. 4th at p. 1161.)

The state statute at issue in *Big Creek Lumber*, unlike any California law addressing oil and gas production, expressly preempted state regulation by stating that, with limited exceptions, “individual counties shall not otherwise regulate the conduct of timber operations, as defined by this chapter, or require the issuance of any permit or license for those operations.” (Pub. Res. Code § 4516.5(d).) Moreover, that statute included a policy “to achieve the maximum sustained production of high-quality timber products.” (*Big Creek Lumber*, *supra*, 38 Cal. 4th at 1147 [citing *Sierra Club v. State Bd. of Forestry* (1994) 7 Cal. 4th 1215, 1226; Pub. Res. Code § 4513].) The local ordinances in that case included a “zone district ordinance” that amended the county’s zoning laws “to restrict timber harvesting operations to areas zoned for timber production, mineral extraction industrial, or parks, recreation and open space.” (*Big Creek Lumber*, *supra*, 38 Cal. 4th at 1146.) The Court held that

the zone district ordinance does not mandate what general forestry law forbids or forbid what general forestry law mandates. While the forestry laws generally encourage “maximum sustained production of high-quality timber products . . . while giving consideration to” competing values (§ 4513), they do not require that every harvestable tree be cut.

(*Id.* at 1161.)

In the end, the Court found no preemption because the ordinances were not inimical to state law, even in light of both the express preemption provision and the general policy in favor of maximum timber harvest.

Measure Z is a far easier case than *Big Creek Lumber* was. It is beyond serious question that Measure Z is not inimical to state law, and nothing in the Opinion suggests that it meets the preemption test actually set out by this Court. The Opinion’s confusion about this point is apparent in its summation of its analysis:

Measure Z is not a local zoning ordinance that simply regulates the location of oil drilling operations. Instead, it bans particular methods and practices. Thus, Measure Z forbids the State from permitting certain methods and practices, while section 3106 encourages those methods and practices and mandates that the State be the entity deciding whether to permit those methods and practices.

(Opinion, at p. 19.)

This analysis is plainly not the “contradictory or inimical” analysis employed by this Court. If the test for preemption were that local governments could not “forbid the State from permitting” any activity that state law “encourages” and allows the state to “decide whether to permit,” whole areas of local government regulation would be called into question. As Petitioners point out:

Any local prohibition in an area where the state has some permitting or approval role could be construed as prohibiting the state from allowing an activity, even if regulated entities reasonably could comply with both state and local law by refraining from the activity. For example, a local ordinance prohibiting construction in wetlands or streambeds could be construed as prohibiting the Department of Fish and Wildlife from approving streambed alteration agreements. (See Fish & Game Code §§ 1601 *et seq.*) Or a local ordinance prohibiting certain industrial uses could be read as infringing on an air district’s authority to adopt regulations that permit stationary sources of air pollution to use various means of emissions control. (See Health & Safety Code §40001.) Virtually any land use regulation affecting an activity that also requires a state permit could be called into question.

(Petitioners’ Brief, at pp. 36-37.)

While amici emphatically do not believe such a limited view of local authority is consistent with longstanding law, the concern Petitioners express here is a real one; the Sixth District’s Opinion provides the opportunity for regulated parties to make these types of arguments, creating confusion and the potential for unnecessary litigation over settled municipal authority.

Like the ordinances in *Big Creek Lumber*, Measure Z prohibits nothing that state law commands, and commands nothing that state law prohibits. Like the ordinances in that case, Measure Z directly limits the location, and not the conduct, of an extractive industry—even though the practical effect of limiting the location may nonetheless limit the conduct in both cases. Thus, the ordinances in *Big Creek Lumber* are indistinguishable from Measure Z for the purposes of preemption analysis.

In summary, this Court should recognize that Measure Z is not contradictory or inimical to state law, and that it does not frustrate legislative purpose in any event. The Opinion's holding to the contrary is sharply at odds with precedent.

III. Conclusion

The Opinion has the potential to unsettle an important, settled question of law, and misapplies preemption doctrine in a way that makes the Sixth District's view of preemption at odds with settled precedent. This Court should grant review.

Sincerely,

A handwritten signature in black ink that reads "Sean B Hecht". The signature is written in a cursive style with a long horizontal stroke at the end.

Sean B. Hecht
Frank G. Wells Environmental Law Clinic
UCLA School of Law

Attorney for amici curiae
LEAGUE OF CALIFORNIA CITIES and
CALIFORNIA ASSOCIATION OF COUNTIES

PROOF OF SERVICE

CHEVRON U.S.A., INC., ET AL., Plaintiffs and Respondents, vs. COUNTY OF MONTEREY, ET AL. Defendants; PROTECT MONTEREY COUNTY and DR. LAURA SOLORIO, Intervenors and Appellants.

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen and am not a party to the within action; my business address is 405 Hilgard Avenue, Los Angeles, California 90095. On August 9, 2019, I served true copies of the following document(s) described as:

**Amicus Curiae Letter in Support of Petition for Review
Supreme Court Case No. S271869
Chevron U.S.A., Inc. v. County of Monterey (2021) 70 Cal.App.5th 153**

on the parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Mailing Service List and placed the envelope in a U.S. Postal Service mailbox for collection and mailing, with postage fully prepaid.

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on December 17, 2021, at Los Angeles, California.

 /s/ Sean B. Hecht
Sean B. Hecht

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Chevron U.S.A., Inc., et al. v. County of Monterey, et al.
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