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Supreme Court of California
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Supreme Court Case No. S271869

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

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.

After a Decision by the Court of Appeal
Sixth Appellate District, Case No. H045791
Monterey County Superior Court Case No. 16-CV-3978
(and consolidated cases) — The Honorable Thomas Wills

APPLICATION FOR LEAVE TO FILE AMICI CURIAE BRIEF AND AMICI CURIAE BRIEF OF CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, CALIFORNIA CHAMBER OF COMMERCE, CENTRAL VALLEY BUSINESS FEDERATION, AND LOS ANGELES COUNTY BUSINESS FEDERATION IN SUPPORT OF RESPONDENTS

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Under California Rules of Court, rule 8.520(f), the Chamber of Commerce of the United States of America, California Chamber of Commerce, Central Valley Business Federation, and Los Angeles County Business Federation respectfully request permission to file the attached amici curiae brief in support of Respondents Chevron USA, Inc., et al.[1]

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[1] No party or counsel for a party in the pending appeal authored this proposed brief in whole or in part, and no person or entity other than amici curiae, their members, or their counsel made any monetary contribution intended to fund the preparation or submission of this proposed brief. (See Cal. Rules of Court, rule 8.520(f)(4).)

The Chamber of Commerce of the United States of America (Chamber) is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than 3,000,000 companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files amicus curiae briefs in cases, like this one, that raise issues of concern to the nation's business community.

The California Chamber of Commerce (CalChamber) is a non-profit business association with over 13,000 members, both individual and corporate, representing virtually every economic interest in the State of California. While CalChamber represents several of the largest corporations in California, 75 percent of its members have 100 or fewer employees. CalChamber acts on behalf of the business community to improve the State's economic and jobs climate by representing business on a broad range of legislative, regulatory and legal issues.

The Central Valley Business Federation (BizFed) is a grassroots alliance of over 70 diverse businesses and organizations that represent 30,000 diverse employers with over 400,000 employees in the Central Valley. The Los Angeles County Business Federation (BizFed) is a grassroots alliance of over 220 diverse business groups that represent 410,000 employers with over 5,000,000 employees in the Los Angeles

region. As a united federation, BizFed federations advocate for policies and projects that strengthen their regional economies.

Many businesses fulfill critical needs and affect significant interests across the state in which they operate, and across the nation, and yet may be subject to resistance at the local level. This case highlights the importance of respecting a state legislature's decision to allocate direct regulatory authority over those businesses to the state itself. Abiding by that allocation of responsibility allows businesses to provide necessary statewide services, while being regulated by an authority that is best positioned to take into account the diverse and far-reaching interests affected by their operations. Accordingly, amici respectfully request that this Court accept and file the attached amici brief, which discusses why direct regulation of subsurface oil and gas production is reserved to the State of California, and thus why the locality here had no authority to enact Measure Z. This brief seeks to provide the Court with useful information and argument to inform its analysis, while minimizing repetition of arguments already made by the parties.

Respectfully submitted.

DATED: October 14, 2022 MUNGER, TOLLES & OLSON LLP

By: /s/ *Benjamin J. Horwich*
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Supreme Court Case No. S271869

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INTRODUCTION AND SUMMARY OF ARGUMENT

Amicus Chamber of Commerce of the United States of America is the world's largest business federation and regularly files amicus curiae briefs in cases involving issues that affect businesses across the country, including in California. Amicus California Chamber of Commerce is a non-profit business association with over 13,000 members, both individual and corporate, representing virtually every economic interest in the State of California. The Central Valley Business Federation (BizFed) is a grassroots alliance of over 70 diverse businesses and organizations that represent 30,000 diverse employers with over

400,000 employees in the Central Valley. The Los Angeles County Business Federation (BizFed) is a grassroots alliance of over 220 diverse business groups that represent 410,000 employers with over 5,000,000 employees in the Los Angeles region. As a united federation, BizFed federations advocate for policies and projects that strengthen their regional economies.

This case involves an attempt by a locality to ban methods of oil and gas production, despite the fact that the Legislature has entrusted such regulatory authority to expert state-level actors, guided by the prudent engineering practices developed in the industry. The case thus raises key concerns about respecting a state's allocation of regulatory authority when it comes to an industry that affects statewide interests. That issue is of great importance, particularly to industries and businesses that have statewide or national importance and yet may encounter local resistance or opposition for any number of reasons. Amici thus submit this brief to highlight the importance of respecting the Legislature's choice as to the relevant decision-maker.

Monterey County's voters passed Measure Z to, as relevant here, directly ban two methods of oil and gas production: subsurface re-injection of wastewater, and the drilling of new oil and gas wells. As Respondents explain, Measure Z would drastically decrease oil production in Monterey County, with effects far beyond. And yet, state law—specifically Public Resources Code section 3106—expressly provides for the regulation of subsurface oil and gas production.[2]

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[2] All section references herein are to the Public Resources Code.

At bottom, this case asks whom the State has chosen to make decisions about subsurface oil and gas operations, as such. Section 3106 shows that the State retained for itself this authority, through the Supervisor of the former Division of Oil, Gas and Geothermal Resources (DOGGR).[3] That Supervisor acts against a default rule that oil and gas operations are governed by a prudent operator standard, which reflects the accumulated technical expertise of the industry. Certainly, those operations exist in a world full of laws that incidentally affect how they are carried out. But direct and open regulations like Measure Z are of a different order. Under Section 3106, state-level technical expertise and judgment, informed by industry practice, govern subsurface oil and gas operations. Those sources, not local governments or individual local land-use officials across California, are given the authority to regulate subsurface oil and gas production.

Moreover, the statute's allocation of authority to state-level actors serves at least two abiding state-level imperatives. The first is that oil and gas production meets a critical statewide need that would be unserved if left subject to direct local regulation. The prospect of such a local veto threatens numerous activities—consider important functions as diverse as renewable energy

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[3] As Respondent Chevron U.S.A. Inc. explains, DOGGR was recently renamed the California Geologic Energy Management Division. Like Respondent, amici will refer to the agency as "DOGGR" and its head as the "Supervisor" for consistency with the Court of Appeal's decision. (See Chevron Answering Br. 14, fn. 20.)

generation, affordable housing, facilities serving people experiencing homelessness, telecommunications facilities, and transportation infrastructure of all kinds. The second imperative is that—like many vital activities susceptible to potential local opposition—oil and gas production requires a web of commercial activities, meaning that laws like Measure Z threaten significant downstream and upstream commercial impacts that would be felt throughout the State, far beyond any particular municipality.

To meet both imperatives, Section 3106 wisely places authority for regulating subsurface oil and gas production in the decision-maker best positioned to balance those wide-ranging interests and to ensure that the State's energy needs are met. That decision-maker is not a city or county, and Measure Z is thus contrary to state law and its allocation of authority. This Court should affirm the Court of Appeal's decision.

ARGUMENT

I. The State is the decision-maker vested with authority to directly regulate subsurface oil and gas operations

This case is fundamentally about *who* has been granted the authority to make direct decisions about how oil and gas producers will drill and operate in California. Public Resources Code section 3106 provides a straightforward answer: That power resides with the State, not individual localities. Specifically, the DOGGR Supervisor is charged with balancing various considerations—including meeting the State's energy needs—in regulating subsurface oil and gas operations. State law thus allocates authority for such regulation to the State, and

"local legislation" (like Measure Z) "that conflicts with state law is void." (*City of Riverside v. Inland Empire Patients Health & Wellness Center, Inc.* (2013) 56 Cal.4th 729, 743; see *Great Western Shows, Inc. v. County of Los Angeles* (2002) 27 Cal.4th 853, 860 (*Great Western Shows, Inc.*) [""'If otherwise valid local legislation conflicts with state law, it is preempted by such law and is void." [Citations.]'"].)

Section 3106's statutory framework consistently reflects a focus on state-level authority. That authority is exercised by DOGGR or, absent action by DOGGR, by reference to the accumulated technical expertise reflected in the industry's standard practices. Throughout, Section 3106 indicates that a statewide governmental actor, and policies that transcend local preferences, will control the content of subsurface oil and gas drilling regulation.

Notably, Section 3106 repeatedly *mandates* that the Supervisor regulate oil and gas well operations. It provides, for example, that the "supervisor *shall*" "supervise the drilling, operation, maintenance, and abandonment of wells" towards certain ends. (See Pub. Resources Code, § 3106, subds. (a), (b), italics added; see also *id.*, § 3106, subd. (d) ["the supervisor *shall* . . . ," emphasis added].) And Section 3106 requires the Supervisor to take into account a host of factors in doing so. Subdivision (a) requires that the Supervisor attempt to prevent, for example, "loss of oil, gas, or reservoir energy," as well as "damage to life, health, property, and natural resources." (*Id.*, § 3106, subd. (a).) Under subdivision (d), the Supervisor must

"administer this division so as to encourage the wise development of oil and gas resources." (*Id.*, § 3106, subd. (d).) Those provisions bespeak policies that transcend local concerns, and they underscore that the authority to directly regulate subsurface oil and gas operations rests firmly in the hands of the Supervisor.

The framework laid out in subdivision (b) reinforces that state policy of state-level, rather than local, regulation. Under that subdivision, the default rule for oil and gas operations is set by industry-wide standards, which reflect best practices and technical engineering expertise at an industry level. The DOGGR provides guidelines, oversight, and limitations (if needed) based on the Supervisor's expert judgment. Specifically, subdivision (b) lays out a default rule that, "as a policy of this state," oil and gas producers are allowed "to do what a prudent operator using reasonable diligence would do, having in mind the best interests of the lessor, lessee, and the state." (Pub. Resources Code, § 3106, subd. (b); *ibid.* [limiting that default rule to the use of processes "approved by the supervisor"].) It also requires that the Supervisor act to permit well operators "to utilize all methods and practices known to the oil industry for the purpose of increasing the ultimate recovery of underground hydrocarbons" that the Supervisor finds suitable in an exercise of expert judgment. (*Ibid.*)

The regulation of subsurface oil and gas operations in California thus reflects technical expertise drawn from a perspective much broader than that of a single locality. That regulation can be by the State directly through the expertise and

judgment of the Supervisor. It can be the default rule that references the collective technical expertise of the industry under the prudent operator standard. Or it can be statewide legislative enactments—vividly illustrated by California's recent adoption of a statewide law governing the location and operations of oil and gas wells. (See Sen. Bill No. 1137, approved by Governor, Sept. 16, 2022 (2021-2022 Reg. Sess.).) But that allocation of authority leaves considerably less room for local decisions: Although state law does not extinguish the application of general local laws with incidental effects on oil and gas production (as a truly field-preemptive state law would), state law assuredly gives local law no role in the direct and sweeping regulation (indeed, prohibition) embodied in Measure Z. (Cf. *Great Western Shows, Inc.*, *supra*, 27 Cal.4th at p. 868 ["[W]hen a statute or statutory scheme seeks to promote a certain activity . . . local regulation cannot be used to completely ban the activity."].) Notably, local regulation cannot prohibit an activity that state law promotes even when state law "permits more stringent local regulation." (*Ibid.*) Here, Section 3106 does not even allow local decision-makers to engage in more stringent direct regulation of subsurface oil and gas operations.

In short, regardless of how one might view the stark conflict in the ultimate substantive policies of Measure Z as compared to the substantive policies reflected in the Public Resources Code, Measure Z's existence as a local enactment fundamentally conflicts with California's policy about *who* should make those substantive policies. That conclusion does not

undermine the importance of local government—municipal governments are important and key actors across a variety of issues. But here, Section 3106 makes clear that the State is the relevant decision-maker when it comes to regulating "the drilling, operation, [and] maintenance" of wells to allow "operators of the wells to utilize all methods and practices known to the oil industry for the purpose of increasing the ultimate recovery of underground hydrocarbons." (Pub. Resources Code, § 3106, subd. (b).) Measure Z, by entirely banning (as relevant here) two methods of oil and gas production, conflicts with Section 3106's allocation of authority, and this Court can resolve this case on that ground alone.

II. The Legislature's choice to keep decision-making authority at the state level is an appropriate response to the broad scope of the interests at issue

A. *Political realities underscore the importance of respecting the Legislature's choice of state-level regulation*

The Legislature's decision to place the authority for regulating subsurface oil and gas production at the state level is a wise response to the political reality of the tension between the broad interests of the State as a whole and the interests of particular localities (or particular local political actors). Political theorists have long recognized that even where there is broad agreement on the importance of having certain critical services, individuals in some localities can be resistant to shouldering their share of the burden to make those available. (See, e.g., Marble and Nall, *Where Self-Interest Trumps Ideology: Liberal Homeowners and Local Opposition to Housing Development* (Oct.

2021) Journal of Politics Vol. 83 No. 4, at p. 1747 [demonstrating that homeowners who "embrace liberal housing goals and redistributive housing policies" nevertheless oppose "dense housing in their own community"].) Constituents of municipalities or neighborhoods recognize that facilities for certain critical services need to be built *somewhere*, but do not want them in *their* neighborhood. (*Id.* at p. 1753.) In California and elsewhere, such a phenomenon affects a wide range of sectors to the detriment of the common good.

For example, facilities related to the production of energy often provoke negative reactions at the local level. That is evident not only in the case of oil and gas resources—as here—but also with respect to renewable energy sources such as solar and wind energy. Both in California and throughout the nation, there are well-documented examples of local residents, even those who recognize the importance of renewable energy, opposing the installation of solar energy facilities and wind turbines in their area.

The Sierra Club, for example, has described local opposition in Vermont to solar panels and wind turbines, noting that the state—which had previously "been called the nation's greenest"—now has no industrial wind or solar projects in development. (Motavalli, *The NIMBY Threat to Renewable Energy* (Sept. 20, 2021) Sierra <https://www.sierraclub.org/sierra/2021-4-fall/feature/nimby-threat-renewable-energy> [as of Oct. 5, 2022].) The reasons for the opposition ranged from complaints about noisy wind turbines to concerns about interrupted scenic views.

(*Ibid.*; see also *ibid.* [describing similar local opposition to wind farms and solar installations in Massachusetts, New York, Virginia, and Washington].) Renewable development of that sort needs to be sited not based simply on local preference but with larger goals and engineering considerations in mind—where the sun shines, where the wind blows, and where connections to large-scale electrical distribution are available.

Localized hostility to renewable energy production is also significant in California. For example, San Bernardino—the largest county in the State, with regions especially suited to solar and wind energy production—banned the construction of large solar and wind farms on over a million acres of land in 2018. It did so based in part on complaints that those installations would "ruin the pristine desert landscapes" of the area. (Roth, *California's San Bernardino County Slams the Brakes on Big Solar Projects* (Feb. 28, 2019) L.A. Times <https://www.latimes.com/business/la-fi-san-bernardino-solar-renewable-energy-20190228-story.html> [as of Oct. 5, 2022].) That ban came despite the fact that the Legislature had, just the prior year, required utilities to increase the share of energy obtained from renewable sources. (*Ibid.*) But as the *L.A. Times* explained, "big solar and wind farms, like many infrastructure projects, are often unpopular at the local level." (*Ibid.*)

Similar issues arise in very different fields. Consider housing policy: Opposition to the siting of affordable housing has been both visible and heavily criticized in California. For decades, California's municipalities have imposed some of the

nation's most stringent restrictions on new housing development. (Tully, *California Rolls Out a Daring New Housing Policy to Combat High Home Prices and Increase Supply* (Aug. 26, 2022) Fortune <https://fortune.com/2022/08/26/california-housing-market-supply-scarcity> [as of Oct. 5, 2022].) Residents have often invoked local bureaucratic procedures and complaints to prevent the construction of denser housing units and non-single family homes in their neighborhoods. (See Lowrey, *Four Years Among the NIMBYs* (May 12, 2022) The Atlantic <https://www.theatlantic.com/ideas/archive/2022/05/san-francisco-bureaucracy-housing-crisis/629719> [as of Oct. 5, 2022] [discussing such efforts in San Francisco].) In reaction, the State has attempted to step in to override certain local zoning restrictions. For example, the Legislature enacted SB 9, the California HOME Act, which gives homeowners across the State the right to create duplexes or subdivide existing lots. (Sen. Bill No. 9 (2021-2022 Reg. Sess.).)

Attempts to subvert such state laws have continued. In a widely criticized episode, the town of Woodside attempted to have its entire territory designated as a habitat for mountain lions in order to avoid complying with SB 9. (Dougherty and Karlamangia, *California Fights Its NIMBYs* (Sept. 1, 2022) New York Times <https://www.nytimes.com/2022/09/01/business/economy/california-nimbys-housing.html> [as of Oct. 5, 2022] (hereafter Dougherty & Karlamangia).) Similarly, local opposition to housing and service centers for people experiencing homelessness has been so pronounced that

the state Legislature in 2019 enacted a law to prevent local residents from appealing decisions to build such service centers. (See Reyes, *California Law Sidesteps NIMBY Advocates to Build More Homeless Resource Centers* (Sept. 10, 2019) Firsttuesday Journal <https://journal.firsttuesday.us/new-law-streamlines-homeless-navigation-centers-across-california/69170> [as of Oct. 5, 2022].)

Notably, while Californians continue to rank housing and homelessness as "top concerns," many localities resist approving the development of affordable housing units. (See Bollag, *'NIMBYism Is Destroying the State.': Gavin Newsom Ups Pressure on Cities to Build More Housing* (May 22, 2022) San Francisco Chronicle <https://www.sfchronicle.com/politics/article/newsom-housing-17188515.php> [as of Oct. 5, 2022].) As Governor Newsom put it, such local opposition "is destroying the state" when it comes to housing and homelessness, (*ibid.*; see also Dougherty & Karlamangia, *supra* [describing actions by both the California Legislature and the executive branch to ensure more housing availability despite opposition by various municipalities]). The fact that Californians desire affordable housing and solutions to homelessness, and yet localities act to undermine those aims, well illustrates the fundamental problem caused by giving veto power over such decisions to local actors.

These are just a few examples of a recurring dynamic that state-level (or federal-level) action and decision-making is well-suited to address. The list goes on: People like to be near—but not too near—passenger transportation. Nearly everyone

depends on goods brought from afar, but localities often do not embrace freight transportation facilities, be they ports, railyards, or trucking centers. Smartphones depend on cellular communications infrastructure, but cell towers are decried as eyesores. And, as for this case, today's economy depends on oil and gas extraction—and as California recognized decades ago when it adopted the provisions of the Public Resources Code relevant here, sound decision-making at the state level about that activity serves a vital larger purpose.

The contrary approach of leaving localities wide latitude to directly regulate such matters predictably results in bans on key facilities in specific areas that are critical statewide. Resolving such collective action problems—where broad agreement exists on the need for the service, but no one wants *their* county, city, or neighborhood to host it—is a key benefit of a hierarchical system of government. Broader, politically accountable units of government can appropriately balance and allocate the facilities necessary to provide a resource that benefits everyone, without being unduly influenced by local interests.

Indeed, this Court should generally be skeptical of claims that the State has legislated extensively and established a state-level regulator in an area affecting all Californians, and yet left individual localities with the power to directly and specifically regulate the same matters at others' expense. That skepticism is well-warranted here: Section 3106 grants authority to state-level actors, not localities. (See *supra* Part I.) That allocation of authority secures the provision of critical services—here, oil and

natural gas to meet the energy needs of all Californians—and also helps California realize the full potential of its resources and capabilities in the national and world economy.

B. *The State is best positioned to weigh the interests of the many actors who are directly affected by and participate in the oil and gas industry*

Placing decision-making authority at the state level also reflects the Legislature's judgment that the State—here, via the Supervisor—is best positioned to take into account and balance the far-reaching interests connected to subsurface oil and gas operations. Quite apart from the *consumers* of oil and gas products, those connected to oil and gas *producers* form a complex web of commerce. Measure Z would thus impact a wide variety of downstream and upstream actors that exist at least partly (and often wholly) outside Monterey County—such as those involved in servicing the wells, refining the extracted petroleum, and transporting the extracted petroleum and the refined products to distributors and end users. Those actors in turn employ individuals, many of whom reside and work beyond the immediate vicinity of the extraction operations. The reverberations of Measure Z through that web of commerce are especially problematic and disruptive.

But oil and gas production is hardly unique in that regard. Many of the sectors described above that are often subject to local opposition also have tight commercial connections that extend far beyond their local areas. For example, solar and wind generation facilities involve suppliers of the technology based far from the particular sites that are optimal for such installations. And the

key downstream distribution system to which those generation facilities connect—the power grid—extends far beyond where generation occurs. Likewise, building and maintaining freight transportation facilities such as ports or railyards requires construction materials from suppliers around the world. The people employed to operate and serve those trains and ships are likely to live all over. And the goods transported via those facilities can end up anywhere in the State, or indeed anywhere in North America.

As in all these other examples, allowing individual localities to directly regulate or ban subsurface oil and gas production would allow regulation by decision-makers who are not accountable to the broader set of interests connected to and immediately affected by the regulated industry. Section 3106 reflects the understanding that the State is better positioned than individual municipalities to take account of those wider sets of interests. This Court should recognize the allocation of authority in that statute.

CONCLUSION

The Court of Appeal's decision should be affirmed.

Respectfully submitted.

DATED: October 14, 2022 MUNGER, TOLLES & OLSON LLP

By: /s/ *Benjamin J. Horwich*
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CERTIFICATE OF COMPLIANCE

Pursuant to California Rules of Court, rule 8.204(c)(1), I hereby certify that, according to the word count feature of the software used, this Brief contains 3411 words, exclusive of materials not required to be counted under California Rules of Court, rule 8.520(c)(3).

DATED: October 14, 2022 MUNGER, TOLLES & OLSON LLP

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PROOF OF SERVICE

Court of Appeal Case No.: H045791
California Supreme Court Case No.: S271869

STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of San Francisco, State of California. My business address is 560 Mission Street, 27th Floor, San Francisco, CA 94105.

On October 14, 2022, I hereby certify that I electronically served the foregoing Application for leave to file amici curiae brief and amici brief of Chamber of Commerce of the United States of America, et al. through the Court's electronic filing system, TrueFiling. I certify that all participants in the case who are registered TrueFiling users and appear on its electronic service list will be served pursuant to California Rules of Court, rule 8.70. Electronic service is complete at the time of transmission:

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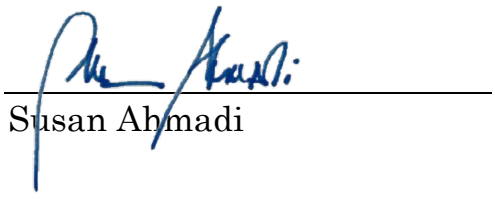
I further certify that participants in this case who are not registered TrueFiling users are served by **mailing** the foregoing document by First-Class Mail, postage prepaid.

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

Executed on October 14, 2022, at Novato, California.



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Supreme Court of California
Jorge E. Navarrete, Clerk and Executive Officer of the Court
Electronically FILED on 10/19/2022 by Tayuan Ma, Deputy Clerk

STATE OF CALIFORNIA
Supreme Court of California

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STATE OF CALIFORNIA
Supreme Court of California

Case Name: **CHEVRON U.S.A. v. COUNTY OF MONTEREY (PROTECT MONTEREY COUNTY)**
Case Number: **S271869**
Lower Court Case Number: **H045791**

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10/14/2022

Date

/s/Benjamin Horwich

Signature

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