Supreme Court of California
Jorge E. Navarrete, Clerk and Executive Officer of the Court
Electronically RECEIVED on 11/18/2022 5:46:18 PM

Supreme Court of California
Jorge E. Navarrete, Clerk and Executive Officer of the Court
Electronically FILED on 11/18/2022 by Ines Calanoc, Deputy Clerk

No. S271869

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

CHEVRON U.S.A., INC., et al.

Plaintiffs and Respondents,

v.

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

RESPONDENT CHEVRON U.S.A. INC.'S CONSOLIDATED ANSWERING BRIEF TO AMICI CURIAE

THEODORE J. BOUTROUS, JR.,
Bar No. 132099
WILLIAM E. THOMSON,
Bar No. 187912
DIONE GARLICK, Bar No. 293012
GIBSON, DUNN & CRUTCHER, LLP
333 South Grand Avenue, 54th Floor
Los Angeles, California 90071
Tel: (213) 229-7000;
Fax: (213) 229-7520
tboutrous@gibsondunn.com

Attorneys for Respondent
CHEVRON U.S.A. INC. et al.

JEFFREY D. DINTZER,
Bar No. 139056
MATTHEW WICKERSHAM,
Bar No. 241733
ALSTON & BIRD LLP
333 South Hope St., 16th Floor
Los Angeles, California 90071
Tel: (213) 576-1000;
Fax: (213) 576-1100
jeffrey.dintzer@alston.com

TABLE OF CONTENTS

Page

I. INTRODUCTION 5

II. ARGUMENT 11

A. Measure Z Is Not Permitted as a Land Use Regulation, but Valid Land Use Regulations Remain Enforceable 11

1. Measure Z is not a bona fide land use regulation. 11

2. The test for preemption is simple: does the local law prohibit an activity permitted and promoted by the State? 14

3. The court of appeal's opinion preserves any valid exercise of a local government's traditional land use authority. 17

4. A local government cannot ban activities encouraged and promoted by state law and that are within the State's authority to permit. 22

B. Measure Z Frustrates the Purpose of State Law Notwithstanding Legislation Aimed at Regulating Emissions, Which Do Not Modify the Statutory Scheme Governing Oil and Gas Production 26

III. CONCLUSION 31

CERTIFICATE OF WORD COUNT 32

PROOF OF SERVICE 33

TABLE OF AUTHORITIES

Page(s)

Cases

Beverly Oil Co. v. City of Los Angeles (1953)
40 Cal.2d 552 23

Blue Circle Cement, Inc. v. Board of County. Coms. (10th Cir. 1994)
27 F.3d 1499 25

Cal. Grocers Assn. v. City of Los Angeles (2011)
52 Cal.4th 177 18

County of Butte v. Department of Water Resources (2022)
13 Cal.5th 612 ..... 16, 17

Fiscal v. City and County of San Francisco (2008)
158 Cal.App.4th 895 27

Great Western Shows, Inc. v. County of Los Angeles (2002)
27 Cal.4th 853 ..... 16, 25

Hermosa Beach Stop Oil Coal. v. City of Hermosa Beach (2001)
86 Cal.App.4th 534 23

Higgins v. City of Santa Monica (1964)
62 Cal.2d 24 23

People v. Alvarez (2002)
27 Cal.4th 1161 24

People v. Nguyen (2014)
222 Cal.App.4th 1168 22

Statutes

Health & Saf. Code, § 38501, et seq. 31

Health & Saf. Code, § 38566 et seq. 31

Pub. Resources Code, § 3011, subd. (a) 32

Pub. Resources Code, § 3012 26

Pub. Resources Code, § 3106, subd. (b) 9, 11, 23, 29, 30

TABLE OF AUTHORITIES

Page(s)

Pub. Resources Code, § 3106, subd. (d) 8, 10, 11, 28, 29, 32

Pub. Resources Code, § 3280 et seq. 8, 21

Other Authorities

California Field Production of Crude Oil, U.S. Energy Information Administration, available at https://www.eia.gov/dnav/pet/hist/LeafHandler.ashx?n=pet&s=mcrfpca2&f=a 31

I. INTRODUCTION

In addition to the two amicus curiae that submitted briefs in this action supporting Plaintiffs and Respondents,[1] four nonparties filed amicus briefs supporting Intervenors.[2] Three of these four nonparties—Communities for Environment, Santa Clara, and League of Cities—raise disparate though overlapping arguments about local governments' authority to make land use regulations within their borders and, specifically, attempting to regulate oil and gas operations at a local level. The last nonparty brief supporting Intervenors—that by former state Senator Fran Pavley—relies on other portions of the Public Resources Code without directly addressing the governing statutory language at issue here. None of these arguments detracts from the court of appeal's correct determination: That local measures seeking to

---

[1] Western States Petroleum Association and California Independent Petroleum Association ("WSPA"), and Chamber of Commerce of the United States of America, California Chamber of Commerce, Central Valley Business Federation, and Los Angeles County Business Federation ("Chamber of Commerce" or "Chamber") filed briefs in support of Plaintiffs and Respondents.

[2] Communities for a Better Environment, Natural Resources Defense Council, San Francisco Baykeeper, and Center on Race, Poverty & the Environment ("CBE"); the County of Santa Clara ("Santa Clara"); League of California Cities, California State Association of Counties & County of Los Angeles ("League of Cities" or "League"); Former State Senator Fran Pavley ("Pavley").

regulate or ban certain subsurface ("downhole") oil and gas production activities are preempted by California statutes that vest authority for such decisions with the expert state agency charged with balancing technical criteria and statutory objectives.

1. As the court of appeal correctly held, Measure Z is not a true land use regulation in the relevant sense because it does not identify any location-based regulations nor consider any issues related to density or inconsistent uses near the operations. The State has adopted a statutory regime of technical requirements and statewide balancing of policy interests. In doing so, the Legislature permitted these activities and instructed the Division of Oil, Gas, and Geothermal Resources ("DOGGR") to promote the wise development of oil and gas resources. (Pub. Resources Code, § 3106, subd. (d).)[3] But Measure Z imposes a blanket prohibition on the drilling of any new oil wells and specific production techniques that rely on wastewater injection or impoundment while allowing existing oil and gas facilities to remain operational. Amici identify no locality-specific land use justifications.

Nor do amici identify any meaningful risks to local interests arising from the court of appeal's ruling. For example, CBE argues extensively about the alleged health impacts of oil and gas

[3] All subsequent undesignated statutory references are to the Public Resources Code.

development to neighboring communities. But that argument fails to account for the State's existing statutory framework and the specifics of Measure Z's express attempt to regulate particular subsurface, downhole production activities already subjected to comprehensive state regulation. The argument is internally inconsistent. If CBE and other amici were correct, local governments are and always have been authorized to regulate oil and gas production—but have failed to do so in the manner amici suggest is self-evidently necessary. And the Legislature mooted whatever *policy* justifications may support amici's arguments here by adopting SB 1137, which establishes a mandatory 3,200-foot setback zone to all oil and gas operations from certain sensitive receptors, including housing, schools, and healthcare facilities. (§§ 3280 et seq.)

Indeed, the arguments raised by Intervenors and their supporting amici prove the point underscored by amicus curiae, the Chamber of Commerce: That, contrary to state statute and competent regulatory decision-making, oil production in California is at risk of an effective statewide ban enacted on a locality-by-locality basis. This result would contradict the State's express decision to permit and promote such activities. CBE argues that the court of appeal's decision has stopped other local governments from banning oil and gas operations within their borders (CBE Br. at pp. 38–42), but this is exactly why the enacted policy of the

Legislature to meet the energy needs of the entire State should be respected. Absent a ruling from this Court protecting the State's express purpose for DOGGR to administer the Code "so as to encourage the wise development of oil and gas resources," among others, oil and gas operations in the State could be prohibited statewide through local government action. (§ 3106, subd. (d).) The same could occur with respect to specific production techniques, such as wastewater injection. Each locality in the State could prohibit the very techniques that the Legislature has already determined "as a policy of this state" that oil and gas operators are permitted to do, including the subsurface injection of wastewater, "for the purpose of increasing the ultimate recovery of underground hydrocarbons." (§ 3106, subd. (b).) Such local actions supplanting DOGGR's expert, statutorily created and statutorily guided balancing are inconsistent with the Legislature's policy of "encourag[ing] the wise development of oil and gas resources." (§ 3106, subd. (d).)

The threats to the oil and gas industry and other essential industries in the State that face local resistance—including renewable energy—will become realized absent a protection of the State's stated policies. (Chamber Br. at pp. 16–22.) Importantly, this is not an oil-and-gas-specific risk. These industries that provide common goods to the public require state-level policy determinations to ensure that the needs of the State are met. The

County of Monterey is not in a position to balance the dual mandate given to DOGGR of environmental protection and the energy needs of the State, as required under the Code. Only the State can do that, and the State's authority to enforce its decisions must be protected.

On the other hand, there is no evidence that the court of appeal's decision threatens localities' exercise of bona fide land use authority. Indeed, the County of Monterey—the very locality whose authority is at issue in this litigation—elected not to appeal the decision of the trial court finding Measure Z preempted. A local government's valid exercise of land use—to govern not *how* oil and gas operations are to be done, but only *where* they may take place—would still be within a local government's authority. And there is nothing about the statutory preemption at issue here that precludes or hampers any allegedly impacted individuals or local groups—including local governments themselves—from pressing any policy concerns that they may have to the proper state regulatory agency, be it DOGGR, the California Air Resources Board (CARB), or the competent State or Regional Water Board. But it does mean that localities cannot strip those agencies of the exclusive purview conveyed by state statute.

2. Amicus Pavley argues, based on a summary of selected state legislation passed to address climate change, that the true policy of the State is to "reduc[e] . . . production of oil in this state."

(Pavley Br. at p. 8.) But the laws that the former Senator highlights do not contradict or amend the mandates set forth in section 3106. The referenced statutes created new regulations with respect to emissions, but none of those changes modifies the State's express intent to "increase[e] the ultimate recovery of underground hydrocarbons," to "encourage the wise development of oil and gas resources," or to permit accepted operational techniques, including wastewater injection and impoundment. (§ 3106, subds. (b), (d).) Indeed, the Environmental Impact Report conducted in conjunction with SB 4 states as much. (12:AA 2889 [SB 4 EIR at ES-3] ["Objectives of Oil and Gas Well Stimulation Treatments" include "[t]o increase the recovery of oil and gas resources;" "[t]o allow continued development of the State's hydrocarbon resources;" and "[t]o reduce the State's and the nation's reliance on foreign oil and gas resources"].)

In any event, the stated policy of section 3106 is a *dual* mandate, to balance statutorily-delineated environmental protection with the overarching statewide need for energy production in the State. Consistent with the dual mandate, these laws enhance certain aspects of environmental protection without modifying the State's oil and gas regulations and statutory scheme governing oil and gas production within the State.

II. ARGUMENT

A. Measure Z Is Not Permitted as a Land Use Regulation, but Valid Land Use Regulations Remain Enforceable

Several of Intervenors' amici argue that the court of appeal's opinion impermissibly restricts local governments' land use authority. This is incorrect. Not only is Measure Z not a land use regulation, but the court of appeal's decision does not restrict the valid exercise of land use authority. On the contrary, the court of appeal's opinion expressly preserves the ability of localities to make traditional land use restrictions, while reserving oil and gas production regulation for the State.

1. Measure Z is not a bona fide land use regulation.

As a threshold matter, the question of whether Measure Z is a "land use" regulation is not, by itself, outcome determinative without also evaluating whether that "land use" regulation conflicts with state law. If there is no conflict there may be no problem, but an otherwise valid exercise of land use authority that conflicts with state law would nevertheless be preempted. The court of appeal's opinion reflects this distinction. (Opn. at p. 14 ["The mere fact that *some* local regulation of oil and gas drilling is within a local entity's police power does not resolve the question of whether a particular local regulation is *preempted* by state law."], italics in original.)

Measure Z, however, does not reflect consideration of specific local land uses, contrary to arguments made by amicus League of Cities. (See League Br. at pp. 17–18.) Measure Z prohibits new wells and wastewater injection equally to the campgrounds of Big Sur, a center for tourism, as it does to the San Ardo oil field, where the closest landmark is the sparsely populated town of San Ardo, home to about 500 people. (9:AA 2274 [Declaration of Catherine Reimer ("Reimer Decl."), ¶ 4]; 32:AA 7690 [Trial Court Final Ruling].) Although equal in application, the impacts of Measure Z will be felt acutely in San Ardo, but likely not at all in Big Sur. As reflected by the involvement of the coplaintiffs in this litigation, Measure Z would impact local businesses in San Ardo, would drastically reduce income for royalty owners, and would force the closing of San Ardo Union Elementary School. (9:AA 2202 [Declaration of John Orradre, ¶ 6]; 9:AA 2277 [Reimer Decl., ¶ 11].) The court of appeal was correct in concluding that no traditional, bona fide land use justification would apply such restrictions universally to such disparate uses.

The League of Cities also argues, as do Intervenors, that Measure Z is a proper land use regulation because it supposedly regulates only "where and whether oil extraction activities can take place" in the County. (League Br. at pp. 17–18.) According to the League of Cities, and Intervenors, Measure Z regulates

where and whether certain production activities may occur, specifically the drilling of new wells and wastewater injunction and impoundment. But this argument proves too much. By the same logic, any restriction on a specific subsurface production technique could be viewed as a determination of "where and whether" that production technique may take place. For example, a city could ban steam injection wells heating above a certain temperature (where and whether? nowhere and not). A city could prohibit certain abandonment techniques used to shut-in inoperable wells (where and whether? nowhere and not). A local regulation cannot be converted to a land use regulation by framing the prohibition as covering the entire locality.

The court of appeal correctly rejected this argument, finding, "Measure Z did not identify *any* locations *where* oil drilling may or may not occur. Instead, it permitted continued operation of existing wells but barred new wells and wastewater injection even if the new wells and wastewater injection would be on the same land as the existing operation." (Opn. at p. 15, original italics.) Indeed, the court of appeal noted that Measure Z regulates "*what* and *how* any drilling operations could proceed." (Opn. at pp. 15–16, original italics.) Such a restriction impermissibly conflicts with the State's mandates encouraging, promoting, and issuing permits for oil and gas production, and the statutory entrustment of DOGGR with the requirement that it—not inexpert localities—

balance the State's need for energy with technical and policy guidance within statutory limits.

2. The test for preemption is simple: does the local law prohibit an activity permitted and promoted by the State?

Amici League of Cities and Santa Clara argue that the court of appeal applied an "extreme and unprecedented test for obstacle preemption." (League Br. at pp. 40–44; Santa Clara Br. at pp. 29–32.) They argue that the test for obstacle preemption is "nebulous" or "subverts" prior case law. (League Br. at p. 41–42; Santa Clara Br. at p. 29.) But the court of appeal did not create a new legal standard divorced from prior precedent. Rather, the court of appeal based its analysis on existing case law, including the decision of this Court in *Great Western Shows, Inc. v. County of Los Angeles* (2002) 27 Cal.4th 853, which made clear that "when a statute or statutory scheme seeks to promote a certain activity and, at the same time, permits more stringent local regulation of that activity, local regulation cannot be used to completely ban the activity or otherwise frustrate the statute's purpose." (*Id.* at p. 868, see also Opn. at pp. 19–20.) The court of appeal correctly determined that Measure Z did just that.

Amicus League of Cities argues that this Court's recent decision in *County of Butte v. Department of Water Resources* warrants a different result. (League Br. at pp. 40–41, citing

County of Butte (2022) 13 Cal.5th 612, 628–629.) But this is incorrect. Rather, *County of Butte* supports the court of appeal's finding of preemption. In *County of Butte*, this Court considered, among other issues, whether the licensing scheme established by the Federal Power Act to facilitate construction of dams and hydroelectric power plants preempted a group of counties' challenge to the terms of a settlement agreement reached by the California Department of Water Resources under an alternative federal licensing process. As a threshold matter, *County of Butte* applied federal preemption principles to a question of federal preemption of state law, rather than the state law principles at play in this litigation. Nonetheless, the analysis is similar. In *County of Butte,* this Court found preemption, because "a state court order granting the injunctive relief the Counties initially sought would stand as a direct obstacle to the accomplishment of Congress's objective of vesting exclusive licensing authority in [the Federal Energy Regulatory Commission]." (*Id.* at p. 634.) Here, not only has the Legislature expressly stated that it encourages and promotes the wise development of oil and gas resources, but it has also determined that the State, through DOGGR, is the decisionmaker to issue permits pursuant to technical, statutory, and regulatory criteria with respect to those operations. (See Opn. at p. 19 ["Section 3106 . . . explicitly places the authority to permit new wells and wastewater injection in the hands of the State."].)

Amicus Santa Clara also argues that there is no evidence of an intent to preempt local authority because the statute contains no express statement regarding preemption. (See Santa Clara Br. at pp. 29–32.) This argument would essentially eliminate the entire doctrine of implied preemption, including the doctrine of field preemption. While an "express preemption" analysis "begin[s] with the language of the preemption clause and the Ordinance," an "implied preemption" analysis requires consideration of the "text and structure" of state and federal law to discern whether local regulation is preempted. (*Cal. Grocers Assn. v. City of Los Angeles* (2011) 52 Cal.4th 177, 189, 197.) Here, despite the amici's arguments to the contrary, the court of appeal properly found a manifest intent by the Legislature to preempt any local regulation of specific oil and gas production techniques based on the language in section 3106.

The court of appeal, in reliance on language in section 3106, found that "the text of section 3106 supports the trial court's preemption finding" on the basis that section 3106 "identifies the State's *policy* as '*encourag[ing]* the wise development of oil and gas resources.'" (Opn. at p. 9, original italics, quoting § 3106, subd. (d).) The court of appeal further found a manifest intent to preempt local regulation on the basis that "section 3106 plainly lodges the authority to permit 'all methods and practices' firmly in *the State's hands*." (*Ibid.*, original italics.) Finally, the court of

appeal noted that "section 3106 makes no mention whatsoever of any reservation to local entities of any power to limit the State's authority to permit well operators to engage in these 'methods and practices.'" (*Ibid.*) The court of appeal further found that "the legislative history of section 3106 is consistent with the statute's text," supporting the finding of Legislative intent. (*Ibid.*) The court of appeal's finding of Legislative intent to preempt local authority is aligned with the text of the statute and the legal standard for preemption. (See Chevron Br. at pp. 31–43.)

3. The court of appeal's opinion preserves any valid exercise of a local government's traditional land use authority.

Amici Curiae Santa Clara, League of Cities, and CBE all raise related arguments about the claimed implications of the court of appeal's decision on local governments' ability to exercise land use authority. In various forms, they argue that the court of appeal's opinion strips localities of their ability to regulate appropriate land use within their borders. These arguments, addressed individually below, both overstate the implications to local government authority and disregard the State's role in regulating oil and gas production on a statewide level. The court of appeal's opinion preserves the valid exercise of local authority to adopt land use regulations to govern where certain oil and gas activities may take place. (Opn. at p. 19, fn. 16 ["Nothing 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. This case involves no such regulations."].) Indeed, the County of Monterey itself, whose authority is directly at issue in this litigation, did not appeal the trial court's decision.

CBE argues at length about health and environmental impacts allegedly associated with oil and gas production facilities. (CBE Br. at pp. 18–34.) But whatever the factual merits or demerits of CBE's criticisms (none of which were proven at trial) they are irrelevant to the preemption issues regarding Measure Z, which prohibits certain subsurface activities regardless of location or proximity to any other sensitive uses or areas.

CBE also argues that "local governments are uniquely positioned to address" "community-specific concerns," such as health impacts of oil and gas production to neighboring communities. (CBE Br. at p. 35.) While local governments can of course be well-situated to address certain issues of local impacts, that general proposition does not mean that local governments are well-situated—or legally empowered—to enact all manner of regulation going to specific oil and gas production techniques, or to ban production activities that the expert state agency has found consistent with its own statutory and regulatory mandates.

Moreover, the California Legislature adopted SB 1137 in 2022 to establish uniform, statewide requirements that oil production facilities be set back 3,200-feet from specified "health protection zones," which include residences, educational facilities, and parks, among others. (§§ 3280 et seq.) The Legislature's decision to adopt SB 1137 evidences further intent to ensure uniformity on a statewide level of oil and gas operations within the State. CBE acknowledges the recent passage of SB 1137, but claims without evidence that it "does not diminish the importance of local action." (CBE Br. at p. 42.) And with respect to Measure Z, CBE fails to explain how banning wastewater injection, for example, serves any particular local interest that is not otherwise comprehensively protected by the statewide regulations, including the regulations of water quality. (See 12:AA 2911 [SB 4 EIR at C.10-24] [recognizing that DOGGR established "the most rigorous regulations in the country for oil and gas exploration, development and production."].)

In an even more generic vein, amicus County of Santa Clara argues that the court of appeal's decision "erode[s]" the presumption against preemption of state land use regulations absent clear legislative intent. (Santa Clara Br. at p. 19; see also League Br. at pp. 27–29.) Not so. The court of appeal found that, regardless of whether the presumption against preemption applies, the presumption was adequately rebutted. (Opn. at p.

16, fn. 15.) Even so, Measure Z attempts to regulate specific oil and gas production techniques (the drilling of new wells and wastewater injection and impoundment). There "is no presumption against preemption when a local ordinance regulates in an area historically dominated by state regulation." (*People v. Nguyen* (2014) 222 Cal.App.4th 1168, 1187.)

The history of local regulation of land use that the County of Santa Clara cites has no application to the attempted regulation of specific subsurface activities at issue here, which have been exclusively permitted by the State. There is no history of "public input that local control over land use promotes" with respect to the regulation of specific oil and gas production techniques, such as wastewater injection. (See Santa Clara Br. at p. 22.) On the contrary, the State has long maintained a comprehensive regulatory system governing oil and gas operations in the State. (See Chevron Br. at pp. 14–19.) And, as explained previously, state law placed those determinations solely in the hands of the State. (See § II.A.2, *supra*; Opn. at p. 9 ["section 3106 plainly lodges the authority to permit 'all methods and practices' firmly in *the State's hands*," original italics]; Opn. at p. 16 ["Measure Z . . . ban[s] activities that section 3106 not only promotes and encourages, but also explicitly places the authority to permit in the hands of the State."].) Indeed, section 3106 mandates that DOGGR "shall" "permit the owners or

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," where, pursuant to technical and statutory criteria, such activities are appropriate "in the opinion of the supervisor." (§ 3106, subd. (b); see also 12:AA 2902 [SB 4 EIR at C.2-44] [finding that the State has "exclusive legal jurisdiction" over regulation of subsurface activities.])

With respect to the legal standard, League of Cities argues that *Beverly Oil Co. v. City of Los Angeles* (1953) 40 Cal.2d 552, *Higgins v. City of Santa Monica* (1964) 62 Cal.2d 24, and *Hermosa Beach Stop Oil Coalition v. City of Hermosa Beach* (2001) 86 Cal.App.4th 534 authorize local authorities to ban oil and gas operations. (League Br. at pp. 18–19.) The court of appeal properly distinguished or rejected this line of authority. The court of appeal noted that neither *Beverly Oil* nor *Hermosa Beach* "even considered whether an otherwise valid local regulation was preempted by state law." (Opn. at pp. 14–15.) Further, the court in *Higgins* merely "rejected the argument that state laws had *preempted the field* with respect to oil drilling *on tidelands*." (Opn. at p. 14, original italics.) In any event, both *Higgins* and *Beverly Oil* were decided before the modern version of section 3106 was adopted. These authorities cannot be understood to have made a preemption finding with respect to

section 3106, at issue in this litigation. (*People v. Alvarez* (2002) 27 Cal.4th 1161, 1176 ["it is axiomatic that cases are not authority for propositions not considered."].)

4. A local government cannot ban activities encouraged and promoted by state law and that are within the State's authority to permit.

The League of Cities argues that local government authority necessarily includes the right to completely ban activities within the locality. (League Br. at pp. 24–27.) This argument is inconsistent with case law. Whether a local government has the authority to ban certain activities regulated by state law depends on the nature of the state law and whether, as here, the State encourages or promotes an activity or determines that the decision of whether to permit the activity is in the hands of the State. (See Opn. at p. 17 ["section 3106 explicitly encouraged all methods that would increase oil production, including wastewater injection, and, crucially, placed the decision-making power in the State."].) While local governments may have the authority to ban certain activities within their borders, that authority does not extend to circumstances where "a statute or statutory scheme seeks to promote a certain activity" and the local regulation attempts to "completely ban the activity or otherwise frustrate the statute's purpose." (*Great Western Shows, supra,* 27 Cal.4th at pp. 867–

870, citing *Blue Circle Cement, Inc. v. Board of County. Coms.* (10th Cir. 1994) 27 F.3d 1499 [finding federal obstacle preemption].)

In a related argument, the County of Santa Clara argues that section 3012 "explicitly recognizes" a city's authority to prohibit drilling oil wells within its borders, authorizing Monterey County to do so as well. (Santa Clara Br. at pp. 14–15.) Not so. Section 3012 states "[t]he provisions of this division apply to any land or well situated within the boundaries of an incorporated city in which the drilling of oil wells is now or may hereafter be prohibited, until all wells therein have been abandoned as provided in this chapter." The court of appeal rejected Intervenors' reliance on this provision by noting that "section 3012 predates the enactment of subdivision (b) of section 3106." (Opn. at p. 11.) Further, the court of appeal correctly found that while section 3012 recognizes that "a city may ban oil operations entirely, at the same time it mandates that *the State* continue to exercise authority over any existing oil wells." (*Ibid.*, original italics) Section 3012 reinforces the importance of uniformity of statewide regulation of oil and gas production techniques, in an effort to enforce such uniformity even where localities attempt to otherwise regulate. The chapter, which includes oil and gas regulations of wells, including regulation and

abandonment, is deemed to apply statewide, regardless of any other efforts to regulate production by local governments.

By requiring that all oil and gas operations be in compliance with Chapter 1 of Division 3 of the Public Resources Code, even "within the boundaries of an incorporated city in which the drilling of oil wells is now or may hereafter be prohibited," section 3012 does not expressly permit local governments to ban drilling, as suggested by Santa Clara. (§ 3012.) Nor does section 3012 purport to identify the circumstances under which a ban would be permissible. Even if it might be possible for some oil drilling bans to be consistent with state law under certain circumstances—such as drilling bans within a subset of a locality's jurisdiction in light of neighboring land uses inconsistent with oil and gas operations—section 3012 does not enumerate the circumstances under which a ban would be permissible. Rather, section 3012 ensures that even where drilling is banned, all oil and gas operations must be done consistent with state law.

In a related claim, the County of Santa Clara argues that the court of appeal's opinion creates a "rigid binary" for local governments, requiring that they either "ban all oil and gas uses or allow any and all types and intensities of oil and gas operations that may be permitted by the State." (Santa Clara Br. at pp. 32–36.) This is incorrect because local governments cannot

fully prohibit all oil and gas operations within their borders without running afoul of the policies set forward by the State to encourage and promote oil and gas operations. (*Fiscal v. City and County of San Francisco* (2008) 158 Cal.App.4th 895, 914–915 ["[i]f the preemption doctrine means anything, it means that a local entity may not pass an ordinance, the effect of which is to completely frustrate a broad, evolutional statutory regime enacted by the Legislature."].) And, indeed, the point of the comprehensive statutory regime is to enable the State, as the entity with the understanding of both the energy needs of the State and the importance of environmental protection, to decide—based upon technical requirements and statutory and regulatory guidelines—which production activities are appropriate to be permitted in each case. Cities and counties may still make bona fide land use determinations, but the decisions as to which production techniques should be used by operations must be made by the State. (See Opn. at p. 19 ["Section 3106 . . . explicitly places the authority to permit new wells and wastewater injection in the hands of the State."].)

CBE further argues that the court of appeal's opinion "threatens to stall local efforts to regulate oil and gas production" and would create a "chilling effect over local government officials." (CBE Br. at p. 43.) Yet the only local actions CBE identifies that would be chilled is the efforts by other local governments *to*

prohibit oil and gas operations. (*Id.*, at pp. 43–46.) As argued by Amicus Chamber of Commerce, absent the State's uniform regulation of oil and gas production to encourage and promote oil and gas development and production, each individual locality could ban oil and gas production and it could cease to exist in the state. (Chamber Br. at pp. 16–23.) The State, in recognition of the statewide interest in developing oil and gas resources, delegated the authority to "encourage the wise development of oil and gas resources" in order to "best meet oil and gas needs in this state." (§ 3106, subd. (d).) Without the enforcement of preemption principles, the State's repeated statutory mandates could quickly devolve into a statewide ban enacted by local governments. And, as discussed, although this specific case is about oil and gas production, the legal issues at play affect many other industries that provide public benefits across the State—including, for example, renewable energy projects.

B. Measure Z Frustrates the Purpose of State Law Notwithstanding Legislation Aimed at Regulating Emissions, Which Do Not Modify the Statutory Scheme Governing Oil and Gas Production

Measure Z frustrates the purpose of state law by banning extraction activities expressly promoted and permitted by the State and which the authority to permit such activities is expressly given to the state. Former State Senator Pavley argues that,

despite the express language in the Public Resources Code to the contrary, "California state policy does not encourage the development of oil and gas resources." (Pavley Br. at p. 8.) But the legislation and other authorities selected by Amicus Pavley does not alter or undermine the stated policies and objectives of section 3106.

Section 3106 enacts a series of express state policies that have formed the backbone of California's oil and gas regulatory regime for 50 years. Section 3106 declares that the Public Resources Code shall be administered "so as to encourage the wise development of oil and gas resources." (§ 3106, subd. (d).) Section 3106 further mandates that the State "shall . . . permit the owners and 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." (§ 3106, subd. (b).) More specifically, section 3106 declares "as a policy of this state," that oil and gas operators are "deemed" to be allowed to do "what a prudent operator using reasonable diligence would do," which expressly includes the subsurface injection of wastewater. (*Ibid.*)

Amicus Pavley cites four laws to claim that the policy of the State "does not encourage the development of oil and gas resources," despite this plain language in section 3106: (1) AB 32, the Global Warming Solutions Act of 2006; (2) AB 1493, the "Clean Car Bill"; (3) SB 32, the "Emissions Limit" bill; and (4) AB 1057.

But none of these laws attempts to regulate the production of oil and gas, except to the extent that they regulate the air emissions from production. Nowhere in any of these laws does the Legislature express a policy inconsistent with the dual mandate as enacted in the Public Resources Code, which requires DOGGR to balance the energy needs of the State with environmental protection consistent with its statutory and regulatory mandates.

First, former State Senator Pavley argues that the Legislature's adoption of AB 32, the Global Warming Solutions Act of 2006, and its related legislation SB 32, shift the policy of the State. (Pavley Br. at pp. 11–17.) But the statutory scheme adopted as part of AB 32 does nothing to modify the existing and highly-regulated oil and gas industry. In fact, while AB 32 focuses on reducing the greenhouse gas emissions from within the state, the statute does not place any restrictions on the volume or methods of oil extraction in California, which at the time AB 32 was adopted amounted to over 600,000 barrels of oil per day. (Health & Saf. Code, § 38501 et seq.; California Field Production of Crude Oil, U.S. Energy Information Administration, available at https://www.eia.gov/dnav/pet/hist/LeafHandler.ashx?n=pet&s=mcrfpca2&f=a.) SB 32 furthered the goals of AB 32 by establishing additional emissions reductions goals, again making no effort to restrict ongoing oil and gas production or the stated policies in

section 3106 with respect to the development of oil and gas within the State. (Health & Saf. Code, § 38566 et seq.) The emissions reductions goals set by AB 32 are consistent with DOGGR's dual mandate to balance the production of oil with environmental concerns. Indeed, AB 32 made the same determination by setting air quality and emissions restrictions, yet allowing the ongoing production of oil and gas, subject to emissions standards.

Former State Senator Pavley raises a similar argument with respect to AB 1493 and AB 1057, which fails for the same reasons. AB 1493 made an effort to address global warming by regulating the emissions from motor vehicles. (Pavely Br. at pp. 17–21.) Again, these new emissions restrictions do not modify the existing regulatory framework governing the production of oil and gas within the State. Indeed, the regulation of motor vehicle emissions assumes a continued reliance on oil and gas for energy within the State. AB 1057 added section 3011 to the Public Resources Code, stating the purpose includes "protecting public health and safety and environmental quality, including reduction and mitigation of greenhouse gas emissions associated with *the development of hydrocarbon and geothermal resources in a manner that meets the energy needs of the state*." (§ 3011, subd. (a), italics added.) Rather than upending the policies governing DOGGR's regulation of oil and gas operations, section 3011 supports it, reflecting the dual mandate that requires the balancing of both environmental

protection and meeting the energy needs of the State through production within the State.

Finally, former State Senator Pavley also cites several non-legislative acts within the state government to argue the purpose of state law is not the policy stated in section 3106. Amicus Pavley references a series of actions from the Governor, including press releases from Governor Gavin Newsom regarding fracking and the phaseout of oil and gas. (Pavley Br. at p. 19.) Pronouncements by the Governor, the State's executive, cannot be used to understand the intent of the Legislature in declaring a policy of the state to "encourage the wise development of oil and gas resources." (§ 3106, subd. (d).) Similarly, Amicus Pavley references statements from the California Air Resources Board ("CARB") in a CARB scoping plan contemplated by AB 32. Again, statements made by CARB, an administrative agency charged with regulating air quality, cannot be understood to reflect the policy of the State as pronounced by the Legislature when it has spoken directly to the issue of oil and gas production to meet the needs of the State for energy.

III. CONCLUSION

The court of appeal correctly concluded that state law preempts Measure Z. Accordingly, this Court should affirm.

DATED: November 18, 2022 Respectfully submitted,

GIBSON, DUNN & CRUTCHER LLP

/s/ Theodore J. Boutrous, Jr.
Theodore J. Boutrous, Jr.
Attorney for Respondent
CHEVRON U.S.A. INC. et al.

CERTIFICATE OF WORD COUNT

Pursuant to California Rules of Court, Rule 8.204(c), undersigned counsel certifies that this Chevron U.S.A. Inc.'s Consolidated Answering Brief to Amici Curiae consists of 5,970 words, including footnotes but excluding the cover, tables, signature block, and this certificate, according to the word count generated by the program used to prepare this request.

DATED: November 18, 2022

/s/ Dione Garlick
Dione Garlick

PROOF OF SERVICE

I, Dione Garlick, declare:

I am employed in the County of Los Angeles, State of California. My business address is Gibson, Dunn & Crutcher LLP, 333 South Grand Avenue, Los Angeles, California 90071. I am over the age of eighteen years and not a party to the action in which this service is made.

On November 18, 2022, I served the document(s) described as **CHEVRON U.S.A. INC.'S CONSOLIDATED ANSWERING BRIEF TO AMICI CURIAE** on the interested parties in this action as follows:

☒ BY ELECTRONIC TRANSMISSION WITH TRUEFILING: I served the document(s) on the person(s) listed on the Service List by submitting an electronic version of the document(s) to TrueFiling, through the user interface at www.truefiling.com.

☒ VIA UNITED STATES MAIL. I am readily familiar with this business' practice for collection and processing of correspondence for mailing with the United States Postal Service. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid. I arranged for the above-referenced document(s) to be mailed to the person(s) at the addressees as set forth below, on November 18, 2022.

☒ [State] I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on November 18, 2022, at Los Angeles, California.

/s/ *Dione Garlick*

Dione Garlick

SERVICE LIST

Via Truefiling

Catherine Engberg Kevin P. Bundy Aaron M. Stanton Shute, Mihaly & Weinberger LLP 396 Hayes Street San Francisco, CA 94102 Engberg@smwlaw.com Bundy@smwlaw.com Stanton@smwlaw.com Attorneys for Intervenors PROTECT MONTEREY COUNTY and DR. LAURA SOLORIO	Leslie J. Girard County Counsel County of Monterey 168 West Alisal Street, 3rd Floor Salinas, CA 93901-2439 girardlj@co.monterey.ca.us Attorneys for Defendant COUNTY OF MONTEREY
Barton Thompson Matt Kline Heather Welles O'Melveny & Myers LLP 1999 Avenue of the Stars Los Angeles, CA 90067 MKline@omm.com HWelles@omm.com Attorneys for Plaintiff CALIFORNIA RESOURCES CORPORATION	Deborah A. Sivas Environmental Law Clinic Mills Legal Clinic at Stanford Law School 559 Nathan Abbott Way Stanford, CA 94305-8610 dsivas@stanford.edu Attorneys for Intervenors PROTECT MONTEREY COUNTY AND DR. LAURA SOLORIO
Jason Retterer JRG Attorneys At Law 318 Cayuga Street Salinas, CA 93901 Jason@jrgattorneys.com	Michael A. Geibelson Bernice Conn Robins Kaplan LLP 2049 Century Park East, Suite 3400

Attorneys for Plaintiff TRIO PETROLEUM, LLC, et al.	Los Angeles, CA 90067-3208 MGeibelson@robinskaplan.com BConn@robinskaplan.com Attorneys for Intervenors PROTECT MONTEREY COUNTY and DR. LAURA SOLORIO
Donald C. Oldaker Clifford & Brown A Professional Corporation Attorneys at Law 1430 Truxtun Avenue, Suite 900 Bakersfield, CA 93301 DOldaker@clifford-brownlaw.com Attorneys for Plaintiff EAGLE PETROLEUM, LLC	Andrew Bassak Hanson Bridgett LLP 425 Market Street, 26th Floor San Francisco, CA 94105 ABassak@hansonbridgett.com Attorneys for Plaintiff Aera Energy, LLP
Hollin H. Kretzmann Center for Biological Diversity 1212 Broadway, Ste 800 Oakland, CA 94612 HKretzmann@biologicaldiversity.org Attorneys for Intervenors PROTECT MONTEREY COUNTY and DR. LAURA SOLORIO	Jacqueline M. Zischke A Professional Corporation PO Box 1115 Salinas, CA 93902 JZischkelaw@charter.net Attorneys for Plaintiff NATIONAL ASSOCIATION OF ROYALTY OWNERS-CALIFORNIA, INC., et al.
Edward S. Renwick Hanna And Morton LLP	Gene Tanaka Best & Krieger 2001 North Main Street,

444 South Flower Street, Suite 2530 Los Angeles, CA 90071 ERenwick@hanmor.com Attorneys for Plaintiff NATIONAL ASSOCIATION OF ROYALTY OWNERS-CALIFORNIA, INC., et al.	Suite 390 Walnut Creek, CA 94596 gene.tanaka@bbklaw.com Attorneys for Defendant COUNTY OF MONTEREY
California Court of Appeal Sixth Appellate District 333 West Santa Clara St., #1060 San Jose, CA 95113	

Via U.S. Mail

Hon. Thomas W. Wills Courtroom 8 Monterey County Superior Court 240 Church Street Salinas, California 93901	

Supreme Court of California
Jorge E. Navarrete, Clerk and Executive Officer of the Court
Electronically FILED on 11/18/2022 by Ines Calanoc, Deputy Clerk

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

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**

1. At the time of service I was at least 18 years of age and not a party to this legal action.

2. My email address used to e-serve: **dgarlick@gibsondunn.com**

3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

Filing Type	Document Title
BRIEF	CUSA Consolidated Answering Brief to Amici

Service Recipients:

Person Served	Email Address	Type	Date / Time
Noah Garrison Attorney at Law 252154	clearbluefuture@gmail.com	e-Serve	11/18/2022 5:46:17 PM
Sean Hecht UCLA School of Law 181502	hecht@law.ucla.edu	e-Serve	11/18/2022 5:46:17 PM
Theodore Boutrous Gibson Dunn & Crutcher LLP 132099	tboutrous@gibsondunn.com	e-Serve	11/18/2022 5:46:17 PM
Irma Aguilar Hanna and Morton LLP	iaguilar@hanmor.com	e-Serve	11/18/2022 5:46:17 PM
M. Eichenberg San Francisco Baykeeper 270893	ben@baykeeper.org	e-Serve	11/18/2022 5:46:17 PM
Jeffrey Dintzer Alston & Bird LLP 139056	jeffrey.dintzer@alston.com	e-Serve	11/18/2022 5:46:17 PM
Dione Garlick Gibson Dunn & Crutcher 293012	dgarlick@gibsondunn.com	e-Serve	11/18/2022 5:46:17 PM
Gabriel Greif Frank G, Wells Environmental Law Clinic 341537	greif@law.ucla.edu	e-Serve	11/18/2022 5:46:17 PM
Michael Berger Manatt, Phelps, & Phillips, LLP 43228	mmberger@manatt.com	e-Serve	11/18/2022 5:46:17 PM
Benjamin Horwich Munger, Tolles & Olson LLP	ben.horwich@mto.com	e-Serve	11/18/2022 5:46:17 PM

249090			
Susan Ahmadi Munger, Tolles & Olson LLP	susan.ahmadi@mto.com	e-Serve	11/18/2022 5:46:17 PM
Andrew Bassak Hanson Bridgett LLP 162440	abassak@hansonbridgett.com	e-Serve	11/18/2022 5:46:17 PM
Donald Oldaker Clifford and Brown 166230	doldaker@clifford-brownlaw.com	e-Serve	11/18/2022 5:46:17 PM
Kevin Bundy Shute, Mihaly & Weinberger LLP 231686	bundy@smwlaw.com	e-Serve	11/18/2022 5:46:17 PM
Julia Forgie Natural Resources Defense Council	j.forgie@nrdc.org	e-Serve	11/18/2022 5:46:17 PM
Leslie Girard Monterey County Counsel	girardlj@co.monterey.ca.us	e-Serve	11/18/2022 5:46:17 PM
Gene Tanaka Best Best & Krieger LLP 101423	gene.tanaka@bbklaw.com	e-Serve	11/18/2022 5:46:17 PM
Todd Smith Ragghianti Freitas LLP	tsmith@rflawllp.com	e-Serve	11/18/2022 5:46:17 PM
Deborah Sivas Stanford Environmental Law Clinic 135446	dsivas@stanford.edu	e-Serve	11/18/2022 5:46:17 PM
Michael Geibelson Robins Kaplan LLP 179970	mgeibelson@robinskaplan.com	e-Serve	11/18/2022 5:46:17 PM
Hollin Kretzmann Center For Biological Diversity 290054	hkretzmann@biologicaldiversity.org	e-Serve	11/18/2022 5:46:17 PM
Jacqueline Zischke Attorney at Law 171670	jzischkelaw@charter.net	e-Serve	11/18/2022 5:46:17 PM
Jason Retterer JRG Attorneys at Law 194651	jason@jrgattorneys.com	e-Serve	11/18/2022 5:46:17 PM
Ingrid Brostrom Center on Race, Poverty & the Environment	ibrostrom@gmail.com	e-Serve	11/18/2022 5:46:17 PM
Edward Renwick Hanna and Morton LLP 29325	erenwick@hanmor.com	e-Serve	11/18/2022 5:46:17 PM
Barton H. Thompson O'Melveny & Myers LLP 72927	bthompson@omm.com	e-Serve	11/18/2022 5:46:17 PM
Alison Hahm Communities for a Better Environment 336969	ahahm@cbecal.org	e-Serve	11/18/2022 5:46:17 PM
Julia Forgie NRDC 304701	jforgie@nrdc.org	e-Serve	11/18/2022 5:46:17 PM

Elizabeth Vissers Office of the County Counsel 321365	elizabeth.vissers@cco.sccgov.org	e-Serve	11/18/2022 5:46:17 PM
Matthew Kline O'Melveny & Myers LLP 211640	mkline@omm.com	e-Serve	11/18/2022 5:46:17 PM

This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

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

11/18/2022

Date

/s/Dione Garlick

Signature

Garlick, Dione (293012)

Last Name, First Name (PNum)

Gibson, Dunn & Crutcher

Law Firm