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Supreme Court of California
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IN THE SUPREME COURT 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

Appeal from a Judgment Entered in Favor of Plaintiffs
Monterey County Superior Court
Case No. 16-CV-3978 and consolidated cases
Honorable Thomas W. Wills, Judge

INTERVENORS' CONSOLIDATED ANSWER TO AMICUS CURIAE BRIEFS

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Pursuant to Rule 8.520(f)(7) of the California Rules of Court, Intervenors and Appellants Protect Monterey County and Dr. Laura Solorio respectfully submit this consolidated answer to the *amicus curiae* briefs filed in this Court on October 19, 2022.

INTRODUCTION

The amicus curiae briefs filed by Western States Petroleum Association ("WSPA") and California Independent Petroleum Association ("CIPA"; together, the "Oil Associations") and the Chamber of Commerce of the United States of America, et al. ("Chamber") (collectively "Industry Amici") largely repeat the same arguments—and the same mistakes—Plaintiffs made in their merits briefing, albeit in a more cursory fashion. As a result, Industry Amici add almost nothing to the briefing on the merits, and the little they do add is wrong.

Like Plaintiffs, Industry Amici misinterpret both Public Resources Code section 3106 and Monterey County's Measure Z.[1] They also fundamentally misunderstand the constitutional framework for preemption in California. The inherent land use and police powers of Monterey County and other local governments are reserved in the Constitution, not delegated by statute. The Legislature may preempt those reserved powers, but it must express its intentions very clearly in doing so—

[1] All further undesignated statutory references are to the Public Resources Code.

particularly when it limits local authority to regulate land use and protect public health and safety.

Section 3106 expresses no such clear preemptive intent, explicitly or implicitly. On the contrary, every time the Legislature has expressly addressed local government authority over oil and gas—in a series of statutory enactments spanning more than a century—it has preserved and recognized, not constrained, local power. Industry Amici's halfhearted attempts to explain away these enactments founder on the plain statutory text.

Industry Amici's other scattershot arguments similarly lack merit. The Oil Associations rely on statutes governing geothermal resources, which explicitly *exclude* oil and gas and have no relevance here. They also misunderstand the role of executive action in crafting state climate policy—policy the Legislature has specifically directed the state oil and gas supervisor (the "Supervisor") to advance. For its part, the Chamber devotes much of its brief to generalized policy complaints about local regulation of housing, renewable energy facilities, and other land uses. But the Chamber's examples are telling. While the Legislature has repeatedly demonstrated its ability and willingness to constrain local authority over housing and renewables, it has uniformly *preserved* local authority in the oil and gas context. Moreover, the Chamber's purported concern for renewable energy rings hollow in light of the Chamber's and other Industry Amici's long history of opposition to climate

action. In any event, the Chamber's policy arguments are better directed to the Legislature than to this Court.

The amicus curiae briefs filed by the League of California Cities and California State Association of Counties ("Cities and Counties"), the County of Santa Clara ("Santa Clara"), former Senator Fran Pavley ("Pavley"), and Communities for a Better Environment, et al. ("Environmental Justice Amici") better serve the Court. They frame the issues at stake in this case with substantial analysis and ample authority. The Cities and Counties, along with Santa Clara, demonstrate that a decision in favor of Plaintiffs here not only would be contrary to this Court's longstanding precedent and the overall statutory scheme, but also could be deeply destabilizing to local governments. The Pavley brief provides essential background on the development of California climate policy from one of its chief architects, highlighting cooperation between the executive and legislative branches. And the Environmental Justice Amici's brief underscores both the considerable evidence of harm to underserved communities caused by oil and gas drilling and the critical role local governments play in protecting the health, safety and welfare of their residents.

Finally, the Court should take note that Industry Amici are not truly independent from several corporate Plaintiffs who are parties to this case. Indeed, lead Plaintiff Chevron is a major dues-paying member of each and every Industry Amici group, and most of the other corporate Plaintiffs are members of at least

one of the organizations holding themselves out as friends of the court.

In sum, the briefs of Industry Amici are wrong on the law and lacking in both informative analysis and independent interest. The Court should give them no weight.

ARGUMENT

I. Industry Amici, like Plaintiffs, misconstrue both Measure Z and Section 3106.

Industry Amici repeat Plaintiffs' errors in mischaracterizing Measure Z as a regulation of "subsurface" operations. (See Chamber Br. at pp. 14-16.) Not so. Measure Z is a traditional land use measure. It amends Monterey County's general plan and other fundamental land use planning documents to prohibit certain oil and gas-related land uses—wastewater disposal and the drilling of new wells—in the unincorporated County.[2] It regulates only *whether* and *where* such land uses occur, not *how* "subsurface" operations are carried out. Like Plaintiffs' similar arguments, Industry Amici's arguments to the contrary fail. (See, e.g., Intervenors' Opening Brief at pp. 46-50; Intervenors' Reply Br. at pp. 23-31.)

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[2] Industry Amici, like Plaintiffs, also ignore Measure Z's plain definition of "wastewater injection" as "the injection of oil and gas wastewater into a well *for underground storage or disposal*." (Intervenors' Reply Brief at pp. 28-29 (emphasis added).) Measure Z thus does not ban all injection of wastewater in the County.

Industry Amici also make the same mistakes as Plaintiffs in misinterpreting section 3106. (See Oil Associations Br. at pp. 10-11; Chamber Br. at p. 12.) Contrary to their claims, section 3106 does not mandate approval of any particular method or technology of extraction. Nor does section 3106 grant the Supervisor exclusive authority over oil and gas. Section 3106 does not dictate "who" makes decisions about whether and where oil and gas activities may occur. Nor do references in subdivision (d) of section 3106 to "best meeting" the state's oil and gas needs through "wise development" of petroleum resources mandate unfettered extraction at all costs. Intervenors addressed Plaintiffs' similar arguments in their merits briefs and will not repeat those responses here. (See, e.g., Intervenors' Opening Brief at pp. 13-22; Intervenors' Reply Brief at pp. 17-23.) Simply put, section 3106 does not deprive local governments of their inherent power to determine whether and where oil and gas development occurs within their jurisdictions.

The Oil Associations' assertion that section 3106 grants the Supervisor "exclusive" authority to regulate oil and gas production (Oil Associations Br. at pp. 11-12) appears disingenuous for another reason. Both WSPA and CIPA have actively supported—and even are listed as the official *applicants* for—revisions to a Kern County ordinance that directly regulate a wide range of oil and gas methods and practices. (See *King and Gardiner Farms, LLC v. County of Kern* (2020) 45 Cal.App.5th 814, 834 [describing WSPA and CIPA as "project proponents" for

the county's ordinance].)[3] Among other things, the revisions sought by the Oil Associations added "updated procedures, implementation standards, and conditions for future oil and gas exploration, development, and production activities in unincorporated Kern County," including "conditions and mitigation measures to address environmental impacts of pre-drilling exploration, *well drilling*, and the *operation* of wells and other oil and gas production-related equipment and facilities, including exploration, production, completion, stimulation, reworking, *injection*, monitoring, and plugging and abandonment."[4] The ordinance also specifically allows Kern County to "issue, or deny, conditional use permits for operators to lawfully drill" both "well[s] for underground injection techniques" and wells for the exploration and production of oil and gas. (Cities and Counties Br. at p. 20 [citing Kern County Zoning Ordinance §§ 19.50.130 and 19.98.050].)

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[3] See also Kern County Planning and Natural Resources Department, *Notice of Determination (California Environmental Quality Act of 1970)* (March 9, 2021) (describing "Applicant" for revisions to Kern County ordinance "focused on Local Permitting of Oil and Gas Activities" as including "Western State [*sic*] Petroleum Association (WSPA); California Independent Petroleum Association (CIPA)"), available at https://psbweb.co.kern.ca.us/planning/pdfs/eirs/oil_gas_sreir/oil_gas_sreir_nod_2021.pdf (accessed Nov. 15, 2021).

[4] Kern County Planning and Natural Resources Department, *Kern County Oil and Gas Permitting Program Annual Progress Report* (Dec. 2021) at p. 3 (italics added), available at https://psbweb.co.kern.ca.us/planning/pdfs/oil_gas/kern_oil_gas_annual_progress_report_2021.pdf (accessed Nov. 15, 2022).

Measure Z, in stark contrast, does not directly regulate the conduct of oil and gas operations. Rather, it merely states whether and where certain oil and gas-related land uses can occur. The Oil Associations should not be heard to complain here about Measure Z intruding on purportedly exclusive state authority while they are actively promoting far more extensive local regulation of oil and gas methods and practices in Kern County.

Section 3106 forecloses neither Kern County's comprehensive regulatory scheme nor Measure Z's far more limited traditional land use controls. Rather, section 3106 and the rest of the statutory scheme preserve local governments' basic authority to tailor oil and gas development to local needs and conditions. That authority is critical to both the functioning of California's local governments and the protection of its residents. (See, e.g., Cities and Counties Br. at pp. 14-22, 27-29; Santa Clara Br. at pp. 19-28; Environmental Justice Amici Br. at pp. 29-46.)

II. Industry Amici misunderstand the constitutional principles governing preemption in California.

Industry Amici appear to believe that Monterey County has the power to control oil and gas-related land uses only to the extent that power is expressly "granted" by the Legislature. (See Oil Associations Br. at pp. 12-14; Chamber Br. at p. 12.) They are mistaken.

The California Constitution reserves to local governments their inherent authority to regulate land use and to protect public health and safety. (Cal. Const., art. XI, § 7.) Preemption thus does not depend on whether a statute grants or delegates local authority; rather, preemption depends on whether a statute deprives local governments of the constitutional authority they already possess. (See, e.g., *T-Mobile West LLC v. City and County of San Francisco* (2019) 6 Cal.5th 1107, 1118 ("*T-Mobile*"); *City of Riverside v. Inland Empire Patients Health & Wellness Center, Inc.* (2013) 56 Cal.4th 729, 742-43 ("*City of Riverside*").)

The Legislature may limit local authority, but it must speak clearly when doing so. Where, as here, a local government exercises its traditional land use or police power authority to address local concerns, a strong presumption against preemption applies. (See, e.g., *City of Riverside*, *supra*, 56 Cal.4th at pp. 755-56; *Big Creek Lumber Co. v. County of Santa Cruz* (2006) 38 Cal.4th 1139, 1149 ("*Big Creek*"); see also Intervenors' Opening Br. at pp. 29-30; Intervenors' Reply Br. at p. 16; Cities and Counties Br. at pp. 27-29.) Accordingly, preemption may be found only where "there is a clear indication of preemptive intent." (*T-Mobile*, *supra*, 6 Cal.5th at p. 1116.)

The presumption against preemption has even greater force where local regulation addresses significant local interests that vary from one locality to another. (*Big Creek*, *supra*, 38 Cal.4th at p. 1149.) The briefs of the Cities and Counties, Santa Clara, and Environmental Justice Amici each amply demonstrate that oil

and gas operations implicate a wide variety of local interests and impacts. Reflecting this range of interests, existing local approaches to oil and gas regulation range from complete bans (Santa Cruz County), to bans on particular operations like hydraulic fracturing (San Benito County), permitting requirements that facilitate careful project-by-project review (Santa Clara County), and schemes intended to streamline and promote oil and gas production (Kern County). (See Cities and Counties Br. at pp. 19-20; Santa Clara Br. at pp. 22-28.) In some communities, oil and gas production occurs in densely populated neighborhoods, often to the detriment of residents' health and safety; in these locations, local regulatory authority is essential to protecting community members' well-being. (See Environmental Justice Amici Br. at pp. 29-46.) In Measure Z, the voters of Monterey County similarly advanced local concerns by prohibiting and phasing out certain oil and gas-related land uses. (Intervenors' Opening Br. at pp. 22-25 [discussing Measure Z's findings and purposes].)

The Chamber argues that a purported need for uniform state regulation precludes any local prohibition. (Chamber Br. at pp. 14-15.) Yet the Attorney General's Opinion discussed at length in the merits briefs (59 Ops.Cal.Atty.Gen. 461 (1976) ("AG Opinion"))—which neither Industry Amici brief discusses—directly refutes this argument. Although the AG Opinion noted that some technical aspects of oil and gas production may be amenable to consistent statewide regulation, it nonetheless concluded that local governments may prohibit operations

entirely, or prohibit certain types of operations, without running afoul of preemption concerns. (See Intervenors' Opening Br. at pp. 50-52; Intervenors' Reply Br. at pp. 40-42; Cities and Counties Br. at pp. 20-21, 25-27.)

Even in the context of the federal "obstacle" preemption theory favored by Plaintiffs and Industry Amici, the threshold for finding preemption is "demanding." (*County of Butte v. Department of Water Resources* (2022) 13 Cal.5th 612, 628-29.) Plaintiffs asserting obstacle preemption must demonstrate an "irreconcilable conflict" between federal and state statutes, and must identify "unmistakably clear language" showing preemptive intent. (*Id.* at pp. 629-30.) The Oil Associations note that *County of Butte* addressed whether federal law preempted state law as applied to a state-operated project. (Oil Associations Br. at p. 17.) But the federal constitutional solicitude for state sovereignty acknowledged in *County of Butte* applies with equal force to local governments under California's Constitution, which similarly reserves inherent police and land use powers to local governments. (See Intervenors' Reply Br. at pp. 49-50.) Plaintiffs' nebulous proposed obstacle preemption tests are incompatible with *County of Butte* and this Court's other precedents. (See Intervenors' Reply Br. at pp. 50-53; Cities and Counties Br. at pp. 40-44.)

Industry Amici's briefing otherwise adds nothing of substance to Plaintiffs' obstacle preemption arguments (see Oil Associations Brief at pp. 15-18), and Intervenors have already

shown that Plaintiffs have not met this Court's demanding threshold for showing obstacle preemption (Intervenors' Reply Br. at pp. 53-67; Cities and Counties Br. at pp. 44-48).

III. The Legislature has repeatedly acknowledged and preserved—and has never explicitly diminished—local governments' inherent authority over oil and gas.

Despite nearly a century of case law affirming local governments' power to prohibit oil and gas operations, the Legislature has *never once* expressly indicated an intent to eliminate or constrain that power. (Intervenors' Opening Br. at pp. 18-19; Intervenors' Reply Br. at pp. 31-32.) Rather, each time the Legislature has spoken over the last several decades, it has recognized and preserved local authority. (Intervenors' Opening Br. at pp. 19-22, 45; Intervenors' Reply Br. at pp. 32-35.) Indeed, the Legislature's repeated, *explicit* acknowledgment of local government authority forecloses any conclusion that the Legislature has *implicitly* taken that same authority away. (See *Big Creek*, *supra*, 38 Cal.4th at p. 1157; *People ex rel. Deukmejian v. County of Mendocino* (1984) 36 Cal.3d 476, 485; Intervenors' Reply Br. at pp. 32-35.)

The Oil Associations strain to dismiss the numerous statutes acknowledging and preserving local authority. (Oil Associations Brief at pp. 11-13.) But each of their arguments is infected by their mischaracterization of Measure Z as a direct regulation of "production" methods or "subsurface" operations. (*Id.*, at p. 12; see also Chamber Br. at pp. 14-15.) Measure Z

regulates land uses, not production methods. (See Intervenors' Opening Br. at pp. 46-50; Intervenors' Reply Br. at pp. 23-28.) Measure Z is a general plan amendment. The general plan is akin to the "constitution" for land use in Monterey County. (*Lesher Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531, 540.) All zoning ordinances must be consistent with the general plan. (*Id.*, at p. 541; Gov. Code § 65860.) If state law acknowledges and preserves local zoning authority, as the Oil Associations admit (Oil Associations Br. at p. 12), state law also necessarily must acknowledge the County's underlying general plan authority, which governs and controls its zoning ordinances.

The Oil Associations' arguments also run afoul of plain statutory text. For example, section 3203.5 requires operators to provide "a copy of the local land use authorization that supports the installation of a well at the time an operator submits the notice of intention" for the well under section 3203. (§ 3203.5, subd. (a).) It also requires state regulators to track the "expiration dates for the required local land use authorizations described in subdivision (a)." (*Id.*, subd. (b).) This does not "merely acknowledge[] local zoning," as the Oil Associations claim. (Oil Associations Br. at p. 12.) Rather, section 3203.5 broadly acknowledges that local governments have the power to authorize the "installation" of new wells as a land use matter. That power certainly includes zoning authority, but nothing in the statute so limits it; indeed, the reference to "expiration dates" in subdivision (b) acknowledges local power to approve, condition, and deny local permits to drill. The Legislature's express

acknowledgment in section 3203.5 of concurrent local authority over new oil wells is fatal to Industry Amici's (and Plaintiffs') claims that section 3106 confers exclusive authority on the Supervisor.

The Oil Associations also ignore the text of the express non-preemption clause in section 3690. They argue that section 3690 "merely preserves ... standard zoning" and that only the state can "regulate oil and gas drilling." (Oil Associations Br. at p. 12.) Section 3690 plainly says otherwise. It expressly preserves the "existing right of cities and counties to enact and enforce laws and regulations *regulating the conduct and location* of *oil production activities*, including, *but not limited to*, zoning, fire prevention, public safety, nuisance, appearance, noise, fencing, hours of operation, abandonment, and inspection" (italics added). Section 3690 *itself* thus provides that it is "not limited to ... zoning." Section 3690 also expressly preserves "existing" local authority to regulate the "conduct" of "oil production activities." The Oil Associations claim such authority never existed in the first place. But if local governments had "no authority to regulate oil and gas drilling" prior to enactment of section 3690 (Oil Associations Brief at p. 12), the section's express references to "existing" authority and "regulating the conduct and location of oil production activities" would be surplusage. The Court should reject the Oil Associations' reading of section 3690 because it effectively renders the statute a nullity. (See, e.g., *Tuolumne Jobs & Small Business Alliance v. Superior Court* (2014) 59 Cal.4th 1029, 1038-39.)

The Oil Associations' attempt to dismiss section 3012 fares no better. Section 3012 states that the provisions of division 3 of the Public Resources Code "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." Section 3012 thus expressly recognizes that local governments may prohibit "the drilling of oil wells" entirely. This recognition not only dates back to 1915 (AA[27]6451[5] (Stats.1915, ch. 718, p. 1419, § 53)), but also is entirely consistent with both the AG Opinion and nearly a century of case law confirming local authority to prohibit drilling. (See Intervenors' Opening Br. at pp. 18-19, 50-53; Intervenors' Reply Br. at pp. 32-33, 40-42, 58.)

The Oil Associations' objection that nothing in section 3012 "grants power to a city to prohibit well drilling" is doubly mistaken. First, section 3012 plainly acknowledges that cities may prohibit "the drilling of oil wells." Second, the relevant question is not whether section 3012 or any other provision "grants" power to local governments, but rather whether the Legislature has expressed a clear intent to take away the inherent power local governments already have. (See, e.g., *T-Mobile*, *supra*, 6 Cal.5th at p. 1118.) For more than a century, section 3012 has recognized the power reserved to cities by the

[5] Citations to the Appellant's Appendix are in the form "AA[Volume Number]page number."

California Constitution. The Constitution reserves exactly the same power to California's counties. (Cal. Const., art. XI, § 7.)

Finally, the Oil Associations are wrong about section 3289. This section—adopted in 2022 as part of S.B. 1137 (Stats. 2022, ch. 365), which established buffer zones around new oil and gas development and other health protection measures—similarly preserves local regulatory authority against any argument that the state's increased role in protecting public health comes at the expense of local governments' inherent authority to do the same. The Oil Associations claim that section 3289 "does not purport to expand local government regulatory authority" (Oil Associations Brief at p. 13), but they again ask and answer the wrong question. Local governments already have that authority. Section 3289 merely confirms, once again, that the Legislature did not intend to take it away.

In light of these express enactments, Plaintiffs' and Industry Amici's reliance on the 1961 amendments to section 3106 must fail. Nothing in section 3106 or the legislative history of the 1961 amendments shows that it was intended as anything other than a modest clarification of the Supervisor's authority to allow certain production practices that the Supervisor already had been allowing. (Intervenors' Opening Br. at pp. 14-18; Intervenors' Reply Br. at pp. 18-20, 40, 54.) Moreover, all of the

provisions recognizing and preserving local authority were adopted or reaffirmed *after* 1961.[6]

Unlike sections 3012, 3203.5, 3289, and 3690, section 3106 says nothing about local authority. The Oil Associations admit as much (Oil Associations Br. at pp. 11-12), but they fail to grasp what this means. Again, Monterey County retains its constitutional power to prohibit oil and gas operations unless and until the Legislature expresses a clear intent to take that power away. Legislative silence therefore generally *preserves*—not negates—local authority. For example, this Court recently upheld a San Francisco ordinance regulating the appearance of telecommunication facilities against a preemption challenge, reasoning that the statute's silence as to aesthetics did not divest the city of its inherent power to regulate in that area. (See *T-Mobile*, *supra*, 6 Cal.5th at pp. 1118, 1122; Intervenors' Reply Br. at pp. 37-38.) The Legislature's silence on local authority in section 3106—coupled with its express recognition and preservation of local authority elsewhere—is fatal to Plaintiffs' and Industry Amici's arguments.

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[6] Section 3289 was enacted in 2022 and will take effect on January 1, 2023. (Stats. 2022, ch. 365, § 2.) Section 3203.5 was enacted in 2021 and took effect on January 1, 2022. (Stats. 2021, ch. 727, § 5.) Section 3690 was enacted in 1971. (Stats. 1971, ch. 1673.) The Legislature's last amendment to section 3012, in 1972, preserved that section's acknowledgment that cities may prohibit drilling. (Stats. 1972, ch. 898, § 1.)

IV. The Oil Associations' additional arguments lack merit.

A. Statutes governing geothermal resources have no applicability here.

The Oil Associations incorrectly rely on several Public Resources Code provisions addressing regulation of "geothermal resources." (See Oil Associations Br. at pp. 11, 14 [citing §§ 3700, 3714, 3715].) Statutes addressing "geothermal resources" have no application to oil and gas development. Section 3701 defines "geothermal resources" by cross-reference to section 6903. Section 6903, in turn, defines "geothermal resources" as including various types of subsurface heat, energy, and minerals, but "*excluding* oil, hydrocarbon gas or other hydrocarbon substances" (italics added). Measure Z does not address land uses related to "geothermal resources." Sections 3700, 3714, and 3715 thus have no relevance to the questions before this Court. It is impossible to know whether the Oil Associations rely on these inapplicable statutes deliberately or mistakenly—but one might expect the state's most prominent oil and gas trade associations to know which statutes apply to oil and gas development and which do not.

Indeed, although the Public Resources Code provisions addressing oil and gas and geothermal resources share superficial similarities, their differences are instructive. The Oil Associations place special reliance on section 3700, which "encourage[s] maximum economic recovery" of geothermal resources. (Oil Associations Br. at p. 14.) That phrase—

"encourage maximum economic recovery"—is notably *absent* from section 3106.

If section 3700 has any relevance at all here, it is only to demonstrate that the Legislature in enacting section 3106 chose *not* to "encourage maximum economic recovery" of oil and gas. Instead, the Legislature encouraged "wise development." (§ 3106, subd. (d).) As Intervenors have already shown in their merits briefs, "wise development"—read in context with the statutory scheme as a whole—reflects legislative intent to protect the environment, not to maximize extraction at all costs. (See Intervenors' Opening Br. at pp. 14, 17-18, 55-59, 62; Intervenors' Reply Br. at pp. 42-43, 55-56.)

B. Section 3011 directs the Supervisor to further California climate policy as articulated by both the legislative and executive branches.

The Oil Associations, relying on *Professional Engineers in California Government v. Schwarzenegger* (2010) 50 Cal.4th 989, argue that "gubernatorial proclamations" cannot alter or amend statutes enacted by the Legislature. (Oil Associations Br. at pp. 14-15.) Although the Oil Associations do not say so directly, they appear to be objecting to this Court's consideration of a series of executive orders that—in conjunction with legislative action—have established California climate policy. (See Intervenors' Opening Br. at pp. 57-59; Intervenors' Reply Br. at pp. 56-58.) The Oil Associations' objections are misplaced.

As a threshold matter, *Professional Engineers* is inapposite here. The portion of this Court's decision that the Oil Associations cite addressed whether "the Legislature, rather than the Governor," possesses "the ultimate authority to establish or revise the terms and conditions of state employment." (50 Cal.4th at p. 1015; see *id.*, at p. 1016 [discussing Court's prior holding that the power to set salaries of public officials is a legislative function].) Accordingly, the Court's lengthy decision in *Professional Engineers* turned on numerous constitutional and statutory provisions governing the state budget and public employment in California. (See *id.*, at pp. 1016-43.) The instant case, of course, has nothing to do with the terms and conditions of state employment.

Statutes governing California climate policy, however, are relevant here—and they demonstrate a different balance between legislative and executive authority. In her amicus brief, former Senator Fran Pavley recounts the history of California climate policy and its firm recognition that the state must wean itself quickly from dependence on fossil fuels. (See Pavley Br. at pp. 11-20.) As Senator Pavley demonstrates, legislative and executive actions have informed one another for the past 20 years, during which time the Legislature has been well aware of ongoing executive action on climate policy. (See *ibid.*) Legislative awareness of executive policy, in the absence of contrary action, raises an inference of acquiescence. In *Board of Trustees of California State University v. Public Employment Relations Board* (2007) 155 Cal.App.4th 866, 877-78, for example, the court

of appeal held that the Legislature's "failure to mention" academic grievance procedures established by Executive Order in a subsequently enacted statute, despite its awareness of those procedures, "suggest[ed] implied approval" of the procedures as "consistent with legislative intent."

The Oil Associations overlook two other critical aspects of *Professional Engineers*. First, the Legislature may subsequently ratify executive orders. In *Professional Engineers*, for example, the Legislature implicitly ratified an executive order furloughing public employees during a fiscal crisis through a budget bill that referenced "existing administration authority" and reduced appropriations for employee compensation in amounts consistent with the executive order's provisions. (50 Cal.4th at pp. 1044-48.) Here, the Legislature has not merely acquiesced in, but repeatedly embraced, climate policy originating in the executive branch. AB 32, California's landmark climate legislation, built on and codified climate goals first established by executive order. (Pavley Br. at pp. 12-13.) Several years later, the Legislature adopted more stringent climate goals that also originated in an executive order. (Pavley Br. at pp. 16-17 and fn. 17.) And during the 2022 legislative session, the Legislature adopted and codified additional executive directives on climate. (See Intervenors' Reply Br. at pp. 57-58 [citing Stats. 2022, ch. 341 (A.B. 1757, referencing executive order policy of reducing petroleum use in transportation); Stats. 2022, ch. 337 (A.B. 1279, codifying executive order goal of achieving carbon neutrality by 2045)].)

Second, the executive branch may set substantive policy pursuant to legislative delegation. (*Professional Engineers*, *supra*, 50 Cal.4th at p. 1015.) Here, the Legislature has expressly directed executive branch officials to develop and implement policy consistent with the state's climate goals. In section 3011, the Legislature declared that the purposes of the state's oil and gas statutes include "reduction and mitigation of greenhouse gas emissions associated with the development of hydrocarbon and geothermal resources." (§ 3011, subd. (a).) To advance these purposes, the Legislature directed the Supervisor to "coordinate with other state agencies ... in furtherance of the goals of the California Global Warming Solutions Act ... and to help support the state's clean energy goals." (§ 3011, subd. (b).) The Global Warming Solutions Act, in turn, directs the California Air Resources Board—an executive branch agency—to prepare and regularly update a "scoping plan" outlining how the state will achieve "the maximum technologically feasible and cost-effective reductions of greenhouse gas emissions." (Health & Saf. Code § 38561.) The draft 2022 scoping plan calls for both "ending dependence on petroleum" and dramatically reducing greenhouse gas emissions from oil and gas extraction by "phas[ing] down petroleum demand." (Pavley Br. at pp. 19-20.) By enacting section 3011, the Legislature declared that the Supervisor must align state oil and gas regulations with these goals.

The Legislature and the executive branch have worked in tandem to ensure that protection of public health and the climate in state oil and gas regulation is now paramount. As shown in

Intervenors' merits briefs and in the amicus briefs supporting Intervenors, Measure Z advances—not obstructs—the purposes of the statutory scheme as a whole.

V. The Chamber's complaints about local government authority are both irrelevant and wrong.

A. The Legislature knows how to override local concerns in furtherance of state policies, but it has not done so here.

Much of the Chamber's Brief is devoted to general complaints about local government authority. In particular, the Chamber asserts that the state, not cities or counties, should control development of affordable housing, renewable energy, and oil and gas because local communities may not want to host these facilities. (Chamber Br. at pp. 16-23.) The Chamber's arguments are misplaced.

First, the Chamber claims it is good policy for the state to force local communities to bear the burdens associated with oil and gas development because others *outside* these local communities may derive an economic benefit. (*Id.*, pp. 20-23.) As Environmental Justice Amici vividly demonstrate, however, the oil industry's burdens have fallen disproportionately on low-income communities and people of color. (Environmental Justice Amici Br. at pp. 31-35.) Proximity to oil and gas operations is associated with a panoply of adverse environmental and health impacts, including air and water pollution, noise and light pollution, seismic risks, climate damage, asthma, low birth rates, congenital heart defects in children, and cancer. (*Id.*, at pp. 18-

31.) Affected communities rely heavily on their local governments to protect health and safety. (*Id.*, at pp. 35-42.) The Chamber appears to believe that the health and welfare of these communities are less important than the money others might make from harmful oil and gas development. But that hardly makes the Chamber's view good policy.

Second, the Chamber once again simply misunderstands how the California Constitution works. If the Legislature decides to assert state control at the expense of local authority, it can do so, provided that it clearly expresses its intent. The Legislature has repeatedly done so in the housing context. For example, S.B. 35, adopted in 2017, created a streamlined, ministerial process for certain housing developments, limiting local discretion. (See Gov. Code § 65913.4.) S.B. 330, adopted in 2019, limited local governments' ability to reduce the amount or density of housing allowed under general plans and zoning ordinances. (See Gov. Code § 66300.)

The Legislature has done the same for renewable energy and alternative fuels infrastructure. For instance, the Legislature has curtailed local governments' ability to require discretionary permits for electric vehicle charging stations and—effective in 2023—hydrogen-fueling stations. (See Gov. Code § 65850.7; Stats. 2022, ch. 373, § 1 (S.B. 1291).) The Legislature also has created a process under which the California Energy Commission can exercise exclusive jurisdiction over permitting and environmental review for large renewable energy, energy storage, and non-fossil-

fuel energy generation projects that meet project labor and other standards. (See Stats. 2022, ch. 61, § 4 (A.B. 205) [adding § 25545, et seq., to the Public Resources Code].) These enactments, and others like them, illustrate that when the Legislature wishes to subordinate local concerns to statewide needs, it knows how to do so.

The Legislature has charted a very different course with oil and gas development. Rather than constrain local authority, the Legislature has repeatedly and consistently affirmed it. The Chamber may disagree with the Legislature's approach, but unless and until the Legislature clearly expresses its intent to deprive local governments of their inherent authority to control where and whether oil and gas operations occur, that authority will remain. The Chamber improperly invites this Court to resolve policy questions that the Legislature is both capable of and responsible for resolving itself. The Court should decline that invitation.

B. The Chamber's long history of advocacy against climate action belies its purported concern over renewable energy.

The Chamber's claim that a ruling for Plaintiffs would help shield renewable energy facilities from local opposition (see Chamber Br. at pp. 16-18) rings particularly hollow. According to numerous studies and articles, the Chamber and corporate Plaintiffs have not only fiercely opposed renewable energy and

other climate solutions, but also contributed to groups working in opposition to renewable energy development.[7]

The scale and scope of these efforts, dubbed the "climate change countermovement" by Professor Robert J. Brulle of Brown University, is breathtaking, encompassing over 2,000 entities connected through multiple networks and campaigns.[8] Researchers have described the Chamber as "central" to these efforts and an "active agent in efforts to deny, mislead, obstruct, and delay the need for climate action in the United States."[9] Researchers have highlighted the deception at the heart of these

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[7] See, e.g., Cole Triedman, *Chamber of Obstruction: The U.S. Chamber of Commerce's Shifting Discourses on Climate Change, 1989-2009* (Brown Univ. Climate & Dev. Lab, 2021) at 3-5; Thomas O. McGarity, *The Disruptive Politics of Climate Disruption* (2014) 38 Nova L. Rev. 393, 396; Caroll Muffett and Steven Feit, *Smoke and Fumes: The Legal and Evidentiary Basis for Holding Big Oil Accountable for the Climate Crisis* (Center for International Environmental Law 2017), available at https://www.ciel.org/reports/smoke-and-fumes/ (last visited Nov. 16, 2022).

[8] R.J. Brulle, *Networks of Opposition: a Structural Analysis of U.S. Climate Change Countermovement Coalitions 1989–2015* (2019) 91 Sociological Inquiry 1, 9, available at https://www.researchgate.net/publication/336695509_Networks_of_Opposition_A_Structural_Analysis_of_US_Climate_Change_Countermovement_Coalitions_1989-2015 (last visited Nov. 16, 2022).

[9] Triedman, *supra* note 7 at 3; InfluenceMap, *The U.S. Chamber of Commerce and Climate Policy* at p. 2 (March 2022), available at https://influencemap.org/site/data/000/020/IM_USChamberBriefing_March16_2022-1.pdf (last visited Nov. 16, 2022).

campaigns: for over half a century the oil industry and its allies understood the science of climate change, yet they misled people into believing it was uncertain and used that uncertainty to block policy solutions that would have accelerated the shift from fossil fuels to clean renewables.[10]

Academics have also shown that as the damages from climate disruption continued to mount, industry's tactics shifted from outright denial of the climate science to a more nuanced approach in which these groups pretend to support climate action while actually continuing to oppose it.[11] InfluenceMap, an independent think tank that produces data-driven analyses on how business and finance are impacting the climate crisis, noted in a 2022 briefing that there has been "no material improvement in the Chamber's climate change policy engagement over the past five years" despite a strategic shift to "more positive high-level messaging" on climate.[12]

The Chamber's claim that a ruling for Plaintiffs would actually benefit renewable energy by weakening local control (Chamber Br. at pp. 16-18) is particularly disingenuous. Researchers have shown that the fossil fuel industry itself has created opposition to renewable energy by funding front groups to

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[10] Brulle 2019, *supra* note 8 at 2-3; Triedman, *supra* note 7; *see also* Center for Climate Integrity, *The Lie-Brary*, available at https://climateintegrity.org/lie-brary (last visited Nov. 16, 2022).

[11] Triedman, *supra* note 7; InfluenceMap, *supra* note 9.

[12] InfluenceMap, *supra* note 9 at p. 1.

oppose it.[13] For example, according to the Union of Concerned Scientists, Industry Amicus WSPA has created more than a dozen front groups "to falsely represent grassroots opposition to forward-looking policy on climate change and clean technologies."[14] One such group, Californians for Affordable and Reliable Energy ("CARE") reportedly was launched in 2013 with support from WSPA and the California Chamber of Commerce.[15] CARE fights renewable energy by posing as a grassroots group and suggesting renewables will increase energy costs.[16] More broadly, WSPA and Chevron are the two largest anti-renewable

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[13] See, e.g., Energy and Policy Inst., *Attacks on Renewable Energy Standards and Net Metering Policies by Fossil Fuel Interests & Front Groups 2013-2014* (2014) at pp. 4-5, available at https://www.energyandpolicy.org/attacks-on-renewable-energy-policy-by-fossil-fuel-interests-2013-2014/ (last visited Nov. 16, 2022).

[14] Union of Concerned Scientists, *How Fossil Fuel Lobbyists Used "Astroturf" Front Groups to Confuse the Public* (Oct. 11, 2017), available at https://www.ucsusa.org/resources/how-fossil-fuel-lobbyists-used-astroturf-front-groups-confuse-public (last visited Nov. 16, 2022); Western States Petroleum Association, *WSPA Priority Issues* at p. 9 (Nov. 11, 2014), available at https://influencemap.org/site/data/000/020/WSPA_PriorityIssuesPowerPoint_2014.pdf (last visited Nov. 16, 2022).

[15] Union of Concerned Scientists, *supra* note 14; Western States Petroleum Association, *supra* note 14, at pp. 9, 12; DeSmog Blog, *Californians for Affordable & Reliable Energy (CARE)*, available at https://www.desmog.com/californians-affordable-reliable-energy-care/ (last visited Nov. 16, 2022).

[16] DeSmog Blog, supra note 15; see Californians for Affordable & Reliable Energy, at https://www.careaboutenergy.org/ (last visited Nov. 16, 2022).

advocates in the state.[17] In fact, InfluenceMap ranks Chevron as the single most harmful climate lobbying corporation in the world, and the Chamber as the third worst on a separate list of trade associations.[18] Given this history, the Court should view the Chamber's professed concern for renewable energy here with considerable skepticism.

VI. Industry Amici are funded by, and have other close ties to, several corporate Plaintiffs.

This Court has noted that amici curiae perform a valuable role for the judiciary "precisely because they are *nonparties* who often have a *different perspective* from the principal litigants. (*Connerly v. State Personnel Board* (2006) 37 Cal.4th 1169, 1177 (italics added).) Here, in contrast, many corporate Plaintiffs and Industry Amici are tightly linked. Most of the corporate Plaintiffs are members of and/or make substantial monetary contributions to at least one of the Industry Amici organizations; corporate Plaintiffs' executives also frequently serve on their boards.

For example, Plaintiff Chevron is a member of and significant financial contributor to Industry Amici. For example,

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[17] Josh Slowiczek, *Oil and gas heavily outspends clean energy, environmental groups on California lobbying*, Energy News Network (Mar. 17, 2022), available at https://energynews.us/2022/03/17/oil-and-gas-heavily-outspends-clean-energy-environmental-groups-on-california-lobbying%EF%BF%BC/ (last visited Nov. 16, 2022).

[18] InfluenceMap, *Corporate Climate Policy Footprint*, at pp. 8-11 (Nov. 2022), available at https://influencemap.org/site/data/000/020/IM_Corporate_Climate_Policy_Footprint-2.pdf (last visited Nov. 16, 2022).

in the first half of 2022 alone, Chevron reported lobbying expenditures to the U.S. Chamber of Commerce, California Chamber of Commerce, WSPA, CIPA, and the Los Angeles County Business Federation, including over $1 million to WSPA alone.[19] In 2019, Chevron reported that it paid more than $100,000 in dues to *each* of the U.S. Chamber of Commerce, California Chamber of Commerce, WSPA and CIPA.[20] Chevron is also a founding investing member of the Central Valley Business Federation.[21] Plaintiff California Resources Corporation's 2019 Sustainability Report touted its membership in the U.S. Chamber of Commerce, California Chamber of Commerce, WSPA, and CIPA, and the Central Valley Business Federation lists California Resources Corporation as a founding investing

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[19] Chevron, *Chevron January – June 2022 Lobbying Expenditures Through Trade Associations* (2022), available at https://www.chevron.com/-/media/chevron/investors/documents/2022-trade-associations.pdf (last visited Nov. 16, 2022) (also available at https://influencemap.org/site/data/000/020/Chevron_LobbyingExpenditures_2022.pdf).

[20] Chevron, *Chevron 2020 Climate Lobbying Report* at pp. 8-9 (2020), available at https://www.chevron.com/-/media/chevron/sustainability/documents/chevron-climate-lobbying-report.pdf (last visited Nov. 16, 2022) (also available at https://influencemap.org/site/data/000/020/Chevron_ClimateLobbyingReport_2020.pdf).

[21] Central Valley BizFed, *Member Directory*, available at https://bizfedcentralvalley.org/member-directory/ (last visited Nov. 16, 2022).

member.[22] Plaintiff Aera is or has been a member of WSPA, CIPA, the California Chamber of Commerce, and the Central Valley Business Federation.[23] While there is little publicly available information on Plaintiffs Eagle Petroleum, Key Energy Services, Gazelle Transportation, and Ensign United States

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[22] California Resources Corporation, *2019 Sustainability Report* at p. 66 (2020), available at https://s23.q4cdn.com/941458137/files/doc_financials/2019/ar/2019-CRC-Sustainability-Report_Final-V3.pdf (last visited Nov. 16, 2022) (also available at https://influencemap.org/site/data/000/020/CRS_SustainabilityReport_2019.pdf); see also California Resources Corporation, *2021 Sustainability Report* at pp. 51-52 (2022), available at https://crc.com/images/documents/sustainability//2021-CRC-Sustainability-Report.pdf (last visited Nov. 16, 2022) (discussing membership in WSPA and CIPA) (also available at https://influencemap.org/site/data/000/020/CRS_SustainabilityReport_2021.pdf); Western States Petroleum Association, *About*, available at https://www.wspa.org/about/ (last visited Nov. 16, 2022); Central Valley BizFed, *Member Directory*, available at https://bizfedcentralvalley.org/member-directory/ (last visited Nov. 16, 2022).

[23] Western States Petroleum Association, *About*, available at https://www.wspa.org/about/ (last visited Nov. 16, 2022); California Independent Petroleum Association, *People Power California: 2019 Annual Report* at p. 3 (2019), available at https://www.cipa.org/files/FINAL_CIPA_Annual_Report_2019.pdf (also available at https://influencemap.org/site/data/000/020/CIPA_AnnualReport_2019.pdf) (last visited Nov. 16, 2022); CalChamber Advocacy, *CalChamber Board of Directors*, available at https://advocacy.calchamber.com/board-of-directors/ (last visited Nov. 16, 2022); Central Valley BizFed, *Member Directory*, available at https://bizfedcentralvalley.org/member-directory/ (last visited Nov. 16, 2022).

Drilling, they were all listed as CIPA members in a 2016 CIPA court filing.[24]

Representatives from Plaintiffs' corporate leadership also serve on Industry Amici's executive boards. For example, Karen Knutson, Chevron's Vice President and General Manager for Government Affairs, serves on the U.S. Chamber of Commerce's Board of Directors.[25] Mike Vomund, Vice President for Americas Products West at Chevron, is on the California Chamber of Commerce's Board.[26] Sara O'Neill Bouton, Aera Energy's Vice President of Government and Regulatory Affairs, and Anibal Araya of California Resources Corporation are on the Executive Committee of CIPA's Board of Directors.[27] Jamie Swetella of Aera Energy helps lead the Central Valley Business Federation's

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[24] Exhibit A to First Amended Verified Cross-Complaint by California Independent Petroleum Association, *Youth for Environmental Justice et al. v. City of Los Angeles et al.*, No. 2:16-cv-07381 (C.D. Cal., filed Oct. 3, 2016), ECF No. 9-1.

[25] U.S. Chamber of Commerce, *U.S. Chamber Board of Directors*, at https://www.uschamber.com/about/governance/board-of-directors (last visited Nov. 16, 2022).

[26] CalChamber Advocacy, *CalChamber Board of Directors*, at https://advocacy.calchamber.com/board-of-directors/ (last visited Nov. 16, 2022).

[27] California Independent Petroleum Association, *CIPA Board Member Roster*, at https://www.cipa.org/i4a/pages/index.cfm?pageid=97 (last visited Nov. 16, 2022).

lobbying efforts as the Advocacy Co-Chair of the Federation's Board of Directors.[28]

Because Industry Amici are so closely tied to and aligned with Plaintiffs, they do not offer the independent perspective this Court has found valuable. (See *Connerly*, *supra*, 37 Cal.4th at p. 1177.)

CONCLUSION

The briefs of Industry Amici are remarkably thin on legal authority and repeat many of Plaintiffs' mistakes. The handful of new arguments they introduce are erroneous. And the numerous close ties between Industry Amici and the corporate Plaintiffs shatter any veneer of independence. The Court should give the Industry Amici briefs no weight.

The briefs of the Cities and Counties, Santa Clara, Environmental Justice Amici, and former Senator Pavley, in contrast, amply illustrate both the errors in the Court of Appeal's opinion below and the potentially sweeping consequences affirmance could have for both local governments and communities. These briefs warrant careful consideration.

Nothing in section 3106 expresses an intent to divest Monterey County of its inherent power to adopt a land use measure like Measure Z. Intervenors again respectfully ask that

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[28] Central Valley BizFed, *Bizfed Board Officers*, at https://bizfedcentralvalley.org/leadership/ (last visited Nov. 16, 2022).

the Court of Appeal's judgment be reversed and the matter remanded.

DATED: November 18, 2022 SHUTE, MIHALY & WEINBERGER LLP

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CERTIFICATE OF WORD COUNT

In accordance with California Rules of Court Rule 8.504(d)(1), I certify that, exclusive of this certification and the other exclusions referenced in Rule of Court 8.204(c)(3), this INTERVENORS' CONSOLIDATED ANSWER TO AMICUS CURIAE BRIEFS contains 7,161 words, including footnotes, as determined by the word count of the computer used to prepare this brief.

DATED: November 18, 2022

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PROOF OF SERVICE

Chevron U.S.A., Inc., et al. v. County of Monterey, et al.
California Supreme Court Case No. S271869

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 396 Hayes Street, San Francisco, CA 94102.

On November 18, 2022, I served true copies of the following document(s) described as:

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On November 18, 2022, I also served a true copy of the above document on the parties in this action as follows:

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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 November 18, 2022, at Union City, California.

David Weibel

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

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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.

11/18/2022

Date

/s/David Weibel

Signature

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