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IN THE SUPREME COURT 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

Appeal from a Judgment Entered in Favor of Plaintiffs

State of California, County of Monterey

Case No. 16-CV-3978 (and consolidated cases)

The Honorable Thomas Wills

BRIEF OF RESPONDENTS NARO-CA ET. AL., IN OPPOSITION TO BRIEFS OF AMICI CURIAE THE LEAGUE OF CALIFORNIA CITIES ET. AL.; COUNTY OF SANTA CLARA; FORMER SENATOR FRAN PAVLEY; AND COMMUNITIES FOR A BETTER ENVIRONMENT ET. AL.

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I. INTRODUCTION

Petitioner/Plaintiff NARO-CA et al. hereby respond to four Amici Curiae briefs. The first was filed by the League of California Cities, California State Association of Counties, and County of Los Angeles. The second was filed by County of Santa Clara. The third was filed by former California State Senator Fran Pavley. The fourth was filed by Communities for a Better Environment, Natural Resources Defense Council, San Francisco Baykeeper and Center on Race, Poverty & the Environment

The first two AC briefs—those filed by the League of California Cities, et al., and the County of Santa Clara—rely primarily on or at least spend most of their time setting forth, an argument that Measure Z is entitled to a strong presumption against preemption. They say that for preemption to occur, the legislature must have clearly stated its intent to preempt (for example, see League of California Cities brief at page 27 and County of Santa Clara brief at page 11).

The third brief, Senator Pavley's AC brief, devotes itself almost entirely to the argument that in order to combat climate change, the intent of the legislature, as well as Governor Newsome's administration is to phase out all oil and gas production in California as soon as possible. The Senator apparently sees no societal value whatsoever in oil and gas, and therefore Measure Z is a step in the right direction.

Finally, the fourth AC brief of Communities For a Better Environment, et al limits itself almost entirely to an argument that oil and gas production in California presents serious health risks to local

communities, which Measure Z, and other measures like it, will ameliorate. Like Senator Pavley's brief, it apparently sees no societal value in oil and gas production.

The position of NARO-CA and the approximately eighty royalty owners joining with them—most of whom are farmers in South County Monterey where the oil and gas production is located— see great societal value in oil and gas production and see preemption expressly stated in the plain language of Article XI, Section 7 of the California Constitution and the first sentence of Public Resources Code sections 3106(b). That section empowers the Oil and Gas Supervisor to permit "methods and practices" which maximize ultimate oil and gas production. As the courts of California have held, state law preempts local law when local law prohibits not only what a state statute demands but also what the state statute permits or authorizes. See the concurring opinion in *City of Riverside v. Inland Empire Patients Health & Wellness. Inc*., (2013) 56 Cal. 4th, 729. See also *Cohen v Board of Supervisors* (1985) 40 Cal. 3rd 277; and *N. Cal. Psychiatric Soc'y v City of Berkeley* (1986) 178 Cal. App. 3rd 90.

II. ARGUMENT

A. ARTICLE XI, SECTION 7 OF THE CALIFORNIA CONSTITUTION AND THE FIRST SENTENCE OF PRC SECTION 3106(b) EXPRESSLY PREEMPT PROVISIONS LU-1.22 AND LU-1.23 OF MONTEREY COUNTY'S INITIATIVE "MEASURE Z."

Article XI, Section 7 says:

> "A county or a city may make and enforce within its limits all *local*, police, sanitary, and other ordinances and regulations *not in conflict with general laws"* (emphasis supplied).

Thus a county may only make and enforce local ordinances and regulations. Evan then, local ordinances and regulations may not conflict with general laws. The term general laws used in Article XI, Section 7 includes the first sentence of Public Resources Code Section 3106(b), which says:

> "The supervisor shall also supervise the drilling, operation, maintenance, and abandonment, of wells *so as to 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 and which, in the opinion of the supervisor, are suitable for this purpose in each proposed case* "(emphasis supplied).

It follows from this plain language that if the supervisor can say yes, and issue permits for the underground disposal of wastewater and the drilling of new wells (which the trial court found to be methods and practices enhancing oil production), neither the board of supervisors nor the voters of Monterey County can say no. To do so would conflict with general law and therefore violate the clear, unambiguous language of Article XI, Section 7 of the California Constitution and the first sentence of PRC Section 3106(b). This overcomes any presumption of validity.

B. EVEN IF THE FIRST SENTENCE OF PUBLIC RESOURCES CODE SECTION 3106(b) WERE DEEMED NOT TO EXPRESSLY PREEMPT PROVISIONS LU-1.22 AND LU-1.23, IT WOULD MAKE NO DIFFERENCE. PUBLIC RESOURCES CODE SECTION 3106, TAKEN TOGETHER WITH OTHER RELEVANT SECTIONS OF THE PUBLIC RESOURCES CODE WOULD IMPLIEDLY PREEMPT LU-1.22 AND LU-1.23

At pages six through seventeen of our Answering Brief of Respondents NARO-CA et al, we discuss three reasons why, even if one were to disagree with our characterization of preemption under the first sentence of PRC Section 3106(b) as being express, there would nevertheless be implied preemption. Those three reasons are (1) the state has completely preempted the field of permitting methods and practices that enhance ultimate recovery of oil and gas, (2) the Legislature has tasked the Oil and Gas Supervisor with balancing the environmental and greenhouse gas emission reduction needs of the state against the oil and gas energy needs of the state, and (3) the Legislature has tasked the Oil and Gas Supervisor with regulating all down-hole activities so as to safely meet the oil and gas energy needs of the state.

Rather than restating that which we there covered in approximately eleven pages, we will simply direct the Court's attention to that portion of our earlier brief as well as briefly discussing one of those reasons. Namely, the precise wording of two statutes which demonstrate that the Legislature has tasked the Oil and Gas Supervisor with balancing the environmental and greenhouse gas emission reduction needs of the state against the oil and gas energy needs of the state. This demonstrates that the regulation of

"methods and practices" known in the industry to maximize the ultimate recovery of oil and gas cannot be considered a local matter but a matter of statewide concern which therefore has been impliedly preempted by the language of two code sections.

The two code sections are PRC Sections 3106 and 3011(a). PRC Section 3106 provides that even though the policy of the State of California is to eliminate waste by "increasing the recovery of underground hydrocarbons" and that "to best meet oil and gas needs in this state, the supervisor shall administer this division so as to encourage the wise development of oil and gas resources," he or she is also required to "prevent as far as possible, damage to life, health, property, and natural resources." Moreover, PRC Section 3011(a), which became effective January 1, 2020, provides:

> "The purposes of this division include protecting public health and safety and environmental quality, including *reduction and mitigation of greenhouse gas emissions* associated with the development hydrocarbon and geothermal resources *in a manner that meets the energy needs of the state."* (Emphasis supplied)

Thus, the Legislature gave the Oil and Gas Supervisor the job of not only reducing greenhouse gas emissions associated with oil and gas development but also doing so in a manner that meets the *"energy needs of the state."* This charge is necessarily state-wide in scope. How, given such a charge, can the supervisor share regulation of permitting methods and practices with boards of supervisors or, indeed, the local electorate when it

comes to initiative measures? In short, it simply cannot be done. The conclusion that those two statutes demonstrate the intent of the state to preempt local regulation of methods and practices of oil and gas production is inescapable! Moreover Article XI, Section 7 of the California Constitution only gives counties the power to legislate and regulate on local matters. This overcomes any presumption that Measure Z is valid.

We now turn to some specific arguments made by the four Amici Curiae briefs.

C. IN ADDITION TO ARGUING THAT MEASURE Z IS ENTITLED TO A STRONG PRESUMPTION OF VALIDITY WHICH WE HAVE ALREADY ANSWERED, THE AC BRIEF OF THE LEAGUE OF CALIFORNIA CITIES ET. AL., MAKES THREE ADDITIONAL INVALID ARGUMENTS.

1. The League of California Cities et al., make their first erroneous argument at page 18 of their AC brief where they cite *Beverly Oil Co. v. City of Los Angeles* (1953) 40 Cal. 2d 552 as supporting Measure Z because under the statutory scheme as it existed in 1953, the California Supreme Court approved a local ordinance that prohibited *Beverly Oil Co*. from drilling new wells or deepening any existing wells. There are two things wrong with the argument. First, preemption was not at issue in the *Beverley Oil Co.* case. Second, even if it had been, the first sentence of PRC Section 3601(b) which preempts, was not added until 1961. Therefore, if it ever was good law on the subject of preempting methods and practices of oil and gas production in 1953, it ceased to be in 1961 when the first sentence of PRC Section 3106(b) was adopted.

2. The League of California Cities et al make another erroneous argument at page 30 of their AC brief where they argue that a local ordinance is not impliedly preempted by conflict with state law unless it mandates what state law expressly forbids or forbids what state law expressly mandates. They insist that Measure Z does neither. This is nonsense. Very clearly Measure Z forbids what state law expressly mandates. Measure Z purports to prohibit any wastewater disposal by injection and any new wells. PRC Section 3601 mandates that the supervisor of oil and gas be allowed to permit both of those activities. We also discuss this particular argument in further detail at pages 17 through 19 of our Answering Brief of Respondents NARO-CA et al.

There, we point out that the courts of California have held state law preempts local law when local law prohibits not only what a state statute demands but also what the state statute permits or authorizes. See the concurring opinion in *City of Riverside v. Inland Empire Patients Health & Wellness. Inc*., (2013) 56 Cal. 4th, 729. See also *Cohen v Board of Supervisors* (1985) 40 Cal. 3rd 277; and *N. Cal. Psychiatric Soc'y v City of Berkeley* (1986) 178 Cal. App. 3rd 90. We also briefly discuss this issue above at page one of this brief.

3. Another erroneous argument appears at page 36 of the League's AC brief. There the League claims that Public Resources Code section "expressly recognizes local governments preexisting constitutional authority to regulate both the" conduct and location of oil production activities." It does not do so. Here is what Section 3690 actually says:

> "This chapter shall not be deemed a preemption by the state of any 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"

Note that none of the examples involve methods or practices which maximize ultimate recovery of oil and gas. Under the well-known rule of construction, *ejusdem generis,* which provides that where specific words follow general words, the general words are held to embrace only things similar in nature to those enumerated by the specific words. In short, Section 3690 does not include methods and practices which maximize ultimate production of oil and gas and is irrelevant to the present inquiry. We discuss this in more detail in our Answering Brief of Respondents NARO-CA et al at pages 13 and 14

D. THE COUNTY OF SANTA CLARA, LIKE THE LEAGUE OF CALIFORNIA CITIES ET. AL., IN ADDITION TO ARGUING THAT MEASURE Z IS ENTITLED TO A STRONG PRESUMPTION OF VALIDITY WHICH WE HAVE ALREADY ANSWERED, MAKES TWO ADDITIONAL INVALID ARGUMENTS.

1. The County of Santa Clara's first erroneous argument is to suggest at pages 34 and 35 that the decision striking down Measure Z would make it impossible or at least difficult for the County to continue using its system of conditional use permits as an alternative to more traditional zoning, We see no such problem. The County of Santa Clara could continue to deny a conditional use permit if the oil and gas permit

were sought for a geographical area that the County concluded was not suitable for oil and gas operations. Moreover the County of Santa Clara could still impose conditions to mitigate such things as sound, fire risk, fencing etc. Probably the only situation where the County would run into problems would be if it tried to impose conditions on preempted activities such as methods and practices used by the industry to maximize oil and gas production.

2. The County of Santa Clara's second erroneous argument claims at page 33 and 34 that it is illogical to say that a County can ban all oil and gas operations within its borders but cannot ban subcategories of operations, namely methods and practices used by the oil industry to maximize ultimate oil and gas production. The county is apparently arguing that the greater must necessarily include the lesser. The answer to this argument is that whether or not it is logical, Article XI, Section 7 of the California Constitution mandates that the County can only "make and enforce within its limits…local…ordinances not in conflict with general laws."

After a substantial amount of litigation over the years, it was held that counties can use their zoning powers to prohibit oil and gas operations within their borders, so long as no area is suitable for oil and gas operations and the decision to do so is not arbitrary. However, beginning in 1961, the Public Resources Code in the first sentence of Section 3601(b) mandated that the state supervisor of oil and gas may permit oil and gas operators to use all "methods and practices" that help maximize ultimate recovery of oil and gas. In short, even if it offends someone's sense of logic, Counties can

ban all oil and gas operations within their county limits if no area is suitable for oil and gas operations, but having created zones where oil and gas operations are allowed, they cannot prohibit methods and practices that the oil and gas supervisor is authorized to permit. If that is illogical, so be it. It is the law.

E. SENATOR PAVLEY'S AC BRIEF ARGUES THAT CURRENT CALIFORNIA LAW AND POLICY IS THAT IN ORDER TO COMBAT CLIMATE CHANGE, ALL OIL AND GAS PRODUCTION IN CALIFORNIA MUST BE PHASED OUT AS QUICKLY AS POSSIBLE

Senator Pavley's brief argues that things have changed since the first sentence of Public Resources Code Section 3601(b) was added in 1961. That, of course, is true and with good reason. Then the legislature was worried about energy shortages. Those of us who are old enough remember "odd and even days," standing in long lines at gasoline stations, fearing that we had reached "peak oil' and wondering if we would ever have "energy security" again. How could we survive until someday in the distant future "alternate energy" came to our rescue? Fortunately we were rescued by the oil industry. A few risk takers put new high-tech oil and gas production methods and techniques (now known as "fracking") to work and before too long we were producing "unconventional" oil and gas from "source rocks" (sometime referred to as "shale plays").

Now, Senator Pavley apparently is telling us, the legislature no longer has to worry about energy shortages. Climate change is what we need to worry about now. We can forget about energy shortages. But perhaps not. Perhaps there are members of the legislature who remember those days

when we stood in gasoline lines. Perhaps there are members of the legislature that are still concerned about energy shortages. Look at the language of Section 3011(a), which became effective on January 1, 2020. It provides:

> "The purposes of this division include 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." (Emphasis supplied)

With a sense of relief, we note that a legislature that apparently is no longer concerned about energy shortages, recently enacted a section which instructs the oil and gas supervisor to mitigate greenhouse gas emissions but to do so in a manner that meets the energy needs of the state.

Perhaps the oil and gas industry will come to our rescue once again. Recently, on November 14, 2022, Net Power LLC, who says its majority shareholder is Occidental Petroleum Corporation, announced plans to build what it described as the world's first utility-scale gas power plant with carbon capture which will generate electricity with close to zero emissions.[1]

[1] https://www.eenews.net/articles/worlds--first-zero-emission-gas-plant-announced-in-texas/

F. THE BRIEF OF COMMUNITIES FOR A BETTER ENVIRONMENT, ET AL ARGUES THAT OIL AND GAS PRODUCTION IN CALIFORNIA PRESENTS SUCH SERIOUS HEALTH RISKS TO LOCAL COMMUNITIES THAT IT SHOULD BE PHASED OUT AS SOON AS POSSIBLE.

The brief of Communities for a Better Environment, et al does not discuss the issue that this Court instructed the parties to discuss, namely whether Public Resources Code Section 3106 preempts Measure Z. Instead it lists what its authors conclude "can" go wrong at a drill site. It does not seem to list what "does" go wrong or what can be expected to go wrong. It concentrates on what can go wrong. It is common knowledge that things "can" go wrong, and we take precautions accordingly. We know that airplanes sometimes crash, but we do not prohibit airlines. We know that railroad trains occasionally collide but we don't prohibit railroads. We know that automobiles sometimes crash, but we do not ban automobiles.

We also know that in California, there are numerous regulatory agencies that regulate so as to protect the environment, including our water quality, our air quality, our working conditions, and so on. For instance, when it comes to protecting California's water supplies, we have a legion of water quality control boards. We also have CalGEM. One of its primary duties is to see that oil and gas production does not contaminate groundwater. The same thing is true of air quality. There we have multiple APCDs and AQMDs. These are only a few of the regulatory agencies that businesses work with every day. Moreover it is common knowledge that the oil and gas industry is heavily regulated.

It is also common knowledge that at the present time, oil and gas production is essential to our way of life. Without transportation fuel for trucks, trains, and airplanes, essential goods would not be delivered, food would rot in the farmer's fields, and ambulances would not deliver patients to hospitals. The list seems endless. Quite aside from transportation fuel, according to the U.S. Department of Energy there are at least 6,000 everyday products made from petrochemicals, including, interestingly enough, wind turbine blades.[2]

Another example is more critical because it involves risk of mass starvation. Without adequate natural gas which is used to manufacture fertilizer there is a risk of mass starvation. Earlier this year, Maximo Torero, a top economist with the U.N. Food and Agriculture Organization, warned against shifting away from natural gas too quickly. He was quoted as saying:

> "If you switch the energy mix too quickly, you will increase the price of energy…. Then you will increase the price of fertilizers, you increase the price of food, more people dying of hunger. So, what do you want?"[3]

He was also quoted as saying:

> "We need to understand that actions have consequences. You cannot just go with the goal

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[2] https://www.energy.gov/sites/prod/files/2019/11/f68/Products%20Made%20From%20Oil%20and%20Natural%20Gas%20Infographic.pdf

[3] Top U.N. Economist, Moving Away From Natural Gas Too Soon Risks Mass Starvation, p. 2, (November 15, 2022), https://www.energyindepth.org/top-u-n-economist-moving-away-from-natural-gas-too-soon-risks-mass-starvation/?154

of climate without assuming that there is not an interlinkage over hunger.[4]

III. CONCLUSION

We respectfully submit that this Court should affirm the decisions below.

DATED: November 18, 2022

Respectfully submitted,

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and

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[4] *Ibid*, p. 2

III. CERTIFICATE OF WORD COUNT

I, Edward S. Renwick, declare and state as follows:

1. I am an attorney duly licensed to practice law before all courts of the State of California and am an associate with the law firm of Hanna and Morton LLP, attorneys of record herein for Respondent, NARO-CA et. al.

2. I make this declaration in support of Brief of Respondents NARO-CA et. al., in Opposition to Briefs of Amici Curiae the League of California Cities et. al.; County of Santa Clara; former Senator Fran Pavley; and Communities for a Better Environment et. al.

3. I have personal knowledge of the facts set forth in this declaration and if called as a witness, could and would testify competently to them.

4. Pursuant to California Rules of Court, Rule 8.504 (d)(1), I hereby make the following certification: The text of this brief consists of 3797 words as counted by the word-processing program used to generate this brief.

Executed on November 18, 2022, under the laws of the State of California at Los Angeles, California.

DATED: November 18, 2022

Edward S. Renwick

IV. PROOF OF SERVICE

I, Irma Aguilar, declare:

I am employed in the County of Los Angeles, State of California. My business address is Hanna and Morton LLP, 444 South Flower Street, Suite 2530, 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 BRIEF OF RESPONDENTS NARO-CA ET. AL., IN OPPOSITION TO BRIEFS OF AMICI CURIAE THE LEAGUE OF CALIFORNIA CITIES ET. AL.; COUNTY OF SANTA CLARA; FORMER SENATOR FRAN PAVLEY; AND COMMUNITIES FOR A BETTER ENVIRONMENT ET. AL on the interested parties in this action as follows:

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☒ [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/ *Irma Aguilar*

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Lower Court Case Number: **H045791**

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Date

/s/Irma Aguilar

Signature

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