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S271869

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

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Pursuant to Rule 8.520(d) of the California Rules of Court, Intervenors and Appellants Protect Monterey County and Dr. Laura Solorio ("Intervenors") respectfully submit this supplemental brief on new legislative developments and authorities that were not available in time to be included in Intervenors' merits briefs. This supplemental brief is timely filed 10 days before oral argument in this matter, which is currently calendared for May 25, 2023, at 1:30 p.m.

I. S.B. 1137 Referendum

On September 16, 2022—the same day Intervenors filed their reply brief on the merits—Governor Newsom signed S.B. 1137 (Stats. 2022, ch. 365). (See Notice of Errata Re Intervenors' Reply Brief [filed Oct. 3, 2022].) Among other things, S.B. 1137 established "health protection zones" around homes, schools, and other sensitive land uses within which new oil and gas development would be prohibited and existing operations more strictly regulated. (See Pub. Resources Code §§ 3280-3286.) S.B. 1137 also added section 3289, subdivision (b) to the Public Resources Code, which provided that enactment of the legislation "does not prohibit a city, county, or city and county from imposing more stringent regulations, limits, or prohibitions on oil and gas development."

Opponents of S.B. 1137 collected signatures on a referendum petition against the legislation, and on February 3, 2023, the Secretary of State certified that sufficient valid signatures had been collected to qualify the referendum for the November 2024 ballot.[1] "[T]he filing of a valid referendum challenging a statute normally stays the implementation of that statute until after the vote of the electorate. The statute takes effect only if approved by

[1] See Cal. Secretary of State, Referendum Qualification (Feb. 3, 2023), available at https://elections.cdn.sos.ca.gov/ccrov/2023/february/23018jh.pdf.

the voters." (See *Assembly of State of Cal. v. Deukmejian* (1982) 30 Cal.3d 638, 656-57.) Accordingly, S.B. 1137 is not currently in effect.

Although S.B. 1137 is not currently in effect, this Court may consider the Legislature's intent in enacting the express non-preemption clause in subdivision (b) of Public Resources Code section 3289. In *County of Nevada v. Macmillen* (1974) 11 Cal.3d 662, 670, 675, for example, the Court considered a statement of legislative intent in a statute that had been chaptered, but had not yet taken effect, in construing the scope of a prior version of the statutory scheme. Accordingly, S.B. 1137 remains probative as to both the Legislature's understanding of existing local regulatory authority and its intent to preserve that authority by adopting a broad, express non-preemption clause.

II. *Kirk v. City of Morgan Hill*

In *Kirk v. City of Morgan Hill* (2022) 83 Cal.App.5th 976, filed on September 30, 2022, the Sixth District Court of Appeal applied this Court's well-established preemption precedents in upholding a local ordinance. The challenged ordinance required gun owners to report a lost or stolen firearm to local law enforcement within 48 hours of discovering that the firearm was missing. (*Id.*, at p. 980.) Plaintiffs argued that a state statute requiring gun owners to make a similar report within five days preempted the ordinance. (*Id.*, at p. 981.)

The Court of Appeal disagreed, holding that the local ordinance did not contradict state law. (*Id.*, at p. 982.) Because a gun owner complying with the local ordinance would not violate the state reporting requirement, the ordinance "did not command anything the state law prohibits." (*Ibid.*, citing *Sherwin-Williams Co. v. City of Los Angeles* (1993) 4 Cal.4th 893, 898.) The court further held that the ordinance did not "otherwise obstruct the purpose

of the state law, which is to ensure prompt reporting of missing firearms. Requiring a report within 48 hours is entirely consistent with and furthers that purpose." (*Kirk*, 83 Cal.App.5th at p. 982.)

The court next held that the state law did not impliedly occupy the field to the exclusion of local authority. The court noted that implied field preemption will not be found in an area where local governments have regulated according to significant and varying local interests. (*Id.*, at pp. 982-83, citing *T-Mobile West LLC v. City and County of San Francisco* (2019) 6 Cal.5th 1107, 1122, and *Great Western Shows, Inc. v. County of Los Angeles* (2002) 27 Cal.4th 853, 867.) "[W]hile the Legislature has preempted certain areas of gun regulation . . . it has generally left the field of gun control open to local legislation." (*Kirk*, 83 Cal.App.5th at p. 983.) The court also found no evidence in the statute that the Legislature intended to occupy completely the "discrete area" of establishing a "timeframe for notifying law enforcement about a missing gun." (*Ibid.*)

Kirk thus underscores that under this Court's long-standing precedents, Measure Z—which does not prohibit anything state law requires, and which regulates in an area long subject to local regulation given significant and varying local interests—is not impliedly preempted.

Respectfully submitted,

DATED: May 15, 2023

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In accordance with California Rules of Court Rule 8.520(d)(2), I certify that, exclusive of this certification and the other exclusions referenced in Rule of Court 8.204(c)(3), this INTERVENORS' REPLY BRIEF contains 792 words, including footnotes, as determined by the word count of the computer used to prepare this brief.

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Supreme Court of California

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