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February 6, 2026

The Honorable Chief Justice Patricia Guerrero
and the Associate Justices
California Supreme Court
350 McAllister Street
San Francisco, CA 94102

Re: *California Apartment Association et al. v. City of Pasadena et al.*
California Supreme Court Case No. S295001
Letter in Support of City of Pasadena's and Intervenors Petition for Review

To the Honorable Chief Justice and Associate Justices of the California Supreme Court,

Amici curiae cities of Los Angeles, Santa Monica and San Francisco, and the Santa Monica Rent Control Board submit this letter in support of the Petitions for Review filed by the City of Pasadena and intervenors Affordable Pasadena et al. in *California Apartment Association et al. v. City of Pasadena et al.* (Case No. S295001, the "Opinion" or "*CAA v. Pasadena*"). This Court should grant review to decide what standards apply to "purpose preemption," and to resolve the conflict between the Costa Hawkins Rental Housing Act (Civil Code, §§ 1954.50 et al.) and the Tenant Protection Act of 2019 (Civ. Code, § 1947.12) created by *CAA v. Pasadena*. Amici submit this letter pursuant to California Rules of Court 8.500(g).

I. Interests of Amici

Amici are municipal entities with an interest in addressing the state's housing crisis, and in defending local ordinances from claims of state law preemption. The City of Los Angeles is also currently a respondent in a similar appellate case where a property owner association challenged a relocation fee ordinance as preempted by the Costa-Hawkins Act. (See *Apartment Assc. of Greater Los Angeles v. City of Los Angeles*, App. Case No. B336071.) No party, attorney for a party, or judicial member has played any part in the preparation of this letter.

II. Why Review Should Be Granted

a. This Court Should Provide Guidance on Appellate Courts' Various Applications of Purpose Preemption.

At the center of this case is a Pasadena charter amendment known as The Pasadena Fair and Equitable Housing Charter Amendment or "Measure H." (Pasadena City Charter, art. XVIII, §§ 1801 et seq.) As is relevant here, Measure H provides for relocation assistance to renters who are unable to afford an excessive rent increase, as defined within that law. (*Id.*, § 1806(b)(C).) Petitioner California Apartment Association ("Petitioner") argued the Costa-Hawkins Act preempts Measure H, pointing to the Costa-Hawkins Act's provision allowing real property owners to "establish the initial and all subsequent rental rates" for units with certificates of occupancy issued after February 1, 1995. (Civ. Code, § 1954.52, subd. (a).) The Costa-Hawkins Act also established vacancy decontrol for residential properties still covered by local rent control laws, generally permitting landlords "to set the rent on a vacant unit at whatever price they choose." (*NCR Properties, LLC v. City of Berkeley* (2023) 89 Cal.App.5th 39, 47; Civ. Code, § 1954.53.)

The California Court of Appeal held that the Costa-Hawkins Act preempts Measure H's relocation assistance requirement for tenants displaced by a large rent increase. (Opn., p. 62.) Paying a relocation fee, the Court of Appeal reasoned, "financially penalizes landlords for exercising their rights under the Costa-Hawkins Act" to set the rent. (*Ibid*.) There was no "direct conflict," the Court of Appeal acknowledged: "the relocation assistance requirement does not directly conflict with the right to raise rents, because nothing in [Measure H] constrains landlords from setting the rent on exempt units whenever they want and at whatever rate they choose."[1] (*Id.*, p. 60.) However, Measure H's "indirect effects" on landlords' rights under the Costa-Hawkins Act were sufficient to support a finding of preemption: because "the money a landlord must pay in relocation assistance reduces the amount of income the landlord receives from the rental property," Measure H "***frustrate[s] the purpose*** of the Costa-Hawkins Act" which is "to rein in rent control by allowing landlords to raise the rents on exempt units to their fair market value."[2] (*Id.* at pp. 61–62 [emphasis added].) Under this theory of purpose preemption, the Court of Appeal held the Costa-Hawkins Act preempted Measure H. (*Ibid.*)

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[1] The Court of Appeal defined "exempt units" as "rental units that the Costa-Hawkins Act exempts from local rent control laws." (Opn. at p. 55.)

[2] The Court of Appeal appears to mean "profit" when it says "income" here. A landlord receives the same amount of income from a tenant whether it pays relocation assistance or not, as the landlord is free to set the rent notwithstanding any obligation to pay a relocation fee. However, the cost of paying relocation assistance reduces a landlord's overall profit (income - expenses).

The Court of Appeal's finding of preemption where a local law does *not* "direct[ly] conflict" with state law (Opn. at p. 60), is at odds with numerous statements by this Court on preemption. This Court has set forth several fundamental rules for preemption. First, state law will preempt otherwise valid local legislation only "if the local legislation 'duplicates, contradicts, or enters an area fully occupied by general law, either expressly or by legislative implication.' [Citation.]" (*Chevron U.S.A. Inc. v. County of Monterey* (2023) 15 Cal.5th 135, 142.) Second, "[t]he 'contradictory and inimical' form of preemption does not apply unless the ordinance ***directly requires*** what the state statute forbids or prohibits what the state enactment demands." (*City of Riverside v. Inland Empire Patients Health & Wellness Center, Inc.* (2013) 56 Cal.4th 729, 743 (*Riverside*) [emphasis added].) Third, "the demands/prohibits language 'should not be misunderstood to improperly limit the scope of the preemption inquiry,' … [because] 'state law may preempt local law when local law prohibits not only what a state statute "demands" but also what the statute permits or authorizes.' [Citation.]" (*Chevron U.S.A. Inc. v. County of Monterey*, at pp. 148–149.) Fourth, "absent a ***clear indication of preemptive intent*** from the Legislature," courts should presume that state law does ***not*** preempt local regulation in an area over which the local government has exercised control. (*Action Apartment Association, Inc. v. City of Santa Monica* (2007) 41 Cal.4th 1232, 1242; see also *Big Creek Lumber Co. v. County of Santa Cruz* (2006) 38 Cal.4th 1139, 1149 [" '[W]hen local government regulates in an area over which it traditionally has exercised control ... California courts will presume, absent a clear indication of preemptive intent from the Legislature, that such regulation is *not* preempted by state statute.' [Citation.]"].)

While federal preemption overlaps with the above principles in some ways, federal law includes an additional theory called "obstacle preemption" which applies when "a local law would be displaced if it hinders the accomplishment of the ***purposes*** behind a state law. (*T-Mobile West LLC v. City and County of San Francisco* (2019) 6 Cal.5th 1107, 1123 (*T-Mobile*) [emphasis added].) Some California Supreme Court cases have acknowledged this theory of "obstacle preemption" or "purpose preemption," but this Court "has never said explicitly whether state preemption principles are coextensive with the developed federal conception of obstacle preemption." (*Ibid.*) More recently in *Chevron U.S.A. Inc. v. County of Monterey* (2023) 15 Cal.5th 135, this Court once again declined to address "whether and how to apply the federal 'obstacle preemption' doctrine." (*Id.* at p. 150, fn. 9.)

In applying purpose preemption to Measure H, *CAA v. Pasadena* relied on an older California Supreme Court case: *Great Western Shows, Inc. v. County of Los Angeles* (2002) 27 Cal.4th 853 (*Great Western*). (Opn. at p. 62.) In *Great Western*, a gun show operator challenged a county ordinance prohibiting the sale of firearms on county property, alleging state gun control statutes preempted the local law. (*Id.* at pp. 859–60.) The Court found no state law preemption: there was no express preemption, and implied preemption did not apply because the ordinance was not duplicative of state statutes, no direct conflict between statute and the ordinance existed,

and the state Legislature declined to preempt the entire field of gun regulation. (*Id.* at pp. 865–66.)

Then, *Great Western* addressed the petitioner's argument that the Court should apply federal case law on obstacle preemption. (*Great Western*, *supra*, 27 Cal.4th at pp. 867–68.) Petitioner cited to four federal cases which held that when "local regulation is contemplated by statute," a "total ban on the activity regulated … is not permitted." (*Ibid*.) *Great Western* observed that these federal cases "stand broadly for the proposition 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 [emphasis added].) The Supreme Court then swiftly found those federal cases inapposite: "no evidence … indicates a stated purpose of promoting or encouraging gun shows," and the ordinance at issue "did not propose a complete ban on gun shows within the County. (*Id.* at p. 868.)

Thus, *Great Western* merely dismissed the petitioner's attempt to apply obstacle preemption, without incorporating the principle into state law preemption. More recent Supreme Court cases confirmed that *Great Western* did not import obstacle preemption into state law when these cases expressly declined to decide whether obstacle preemption applies to state law preemption challenges. (*Chevron U.S.A., Inc. v. County of Monterey*, *supra*, 15 Cal.5th at p. 150, fn. 9; *T-Mobile*, *supra*, 6 Cal.5th at p. 1123.) Nevertheless, the Courts of Appeal have used *Great Western*'s statement that local regulation cannot "frustrate the statute's purpose" to create a new kind of "purpose preemption" at odds with general principles of state law preemption.

CAA v. Pasadena represents the most extreme example of this theory of purpose preemption. In this case, the Court of Appeal found that Measure H had an "indirect effect" on the Costa-Hawkins Act by "financially penalizing landlords for exercising their rights" under the Act. (Opn. at pp. 61–62.) Specifically, the Costa-Hawkins Act authorizes landlords to "set rents," and Measure H requires landlords to pay a relocation fee when tenants vacate after rent is set above a certain level. (*Ibid.*) *CAA v. Pasadena* concluded that the Measure H's "effect is to frustrate the purpose of the Costa-Hawkins Act," and therefore, state law preemption applies. (*Ibid.*) In support, the Court of Appeal cited to *Great Western*, *Chevron U.S.A., Inc. v. County of Monterey* (2021) 70 Cal.App.5th 153 (*Chevron*), and *AIDS Healthcare Foundation* (2024) 101 Cal.App.5th 73 (*AIDS Healthcare*). (*Ibid.*) But both cited appellate cases found purpose preemption where the local ordinance directly conflicted with state law.

In *Chevron*, the Court of Appeal addressed a complete ban on activity that state law promoted. (*Chevron*, *supra*, 70 Cal.App.5th at p. 172.) County ordinances banned land use in support of new oil and gas wells, whereas state law "encourag[ed]" the development of oil and gas resources. (*Id.* at 165.) And, in *AIDS Healthcare*, local housing law capped housing density, while state law sought to promote higher density housing projects. (*AIDS Healthcare*, *supra*, 101 Cal.App.5th at p. 88.) Both cases found a direct conflict between state and local law such that the local laws "frustrate[d] the statute's purpose." (*AIDS Healthcare*, at p. 52; *Chevron*, p. 172.)

Here, by contrast, *CAA v. Pasadena* acknowledged that "the relocation assistance requirement does not directly conflict with the right to raise rents." (Opn., p. 60.) The Court adopted Petitioner's argument that Measure H "discourage[d] landlords from exercising their right under the Act to raise the rent" because if the tenant then vacated the unit, the landlord would then have to pay relocation assistance. (*Ibid.*) This "indirect effect" "frustrated the statute's purpose." (*Id.* at pp. 61–62.)

In this way, the Court of Appeal has taken *Great Western*'s discussion of federal obstacle preemption when a local law "completely ban[s]" the activity promoted by state law "or otherwise frustrates the statute's purpose," and used it to endorse a theory of state law purpose preemption as to both direct conflicts and now indirect conflicts between local and state laws. (*Great Western*, *supra*, 27 Cal.4th at p. 868.) The Court of Appeal has, thereby, incorporated *Great Western*'s discussion of federal obstacle preemption into state law preemption principles despite repeated statements by the California Supreme Court declining to endorse this view of *Great Western* as creating a state law doctrine of purpose preemption. *CAA v. Pasadena'*s new strain of purpose preemption based on indirect impacts also contradicts fundamental principles of state law preemption limiting conflict preemption to where "the ordinance ***directly requires*** what the state statute forbids or prohibits what the state enactment demands." or "what the statute permits or authorizes." (*City of Riverside*, *supra*, 56 Cal.4th at p. 743 [emphasis added]; (*Chevron U.S.A. Inc. v. County of Monterey*, *supra*, 15 Cal.5th at pp. 148–49.).

CAA v. Pasadena will open the door for regulated persons to challenge local regulations based on the "purpose" of a state law as inferred by those challengers. Without citing to any legislative history or codified stated purpose, the Court of Appeal concluded the Costa-Hawkins Act's purpose was to give landlords the right "to raise the rents on exempt units to their fair market value." (Opn. at p. 62.) Based on this assumption, the Court of Appeal concluded that Measure H's "relocations assistance requirement counteracts that purpose by protecting tenants, at landlords' expense, from the free market." (*Ibid.*)

By framing the Costa-Hawkins Act's purpose so broadly, the Court of Appeal widened the possibilities for conflict with the Act. Any local regulation that has "indirect effects" on a landlord's profit margins is now within the scope of legislation preempted by the Costa-Hawkins Act, according to *CAA v. Pasadena.* (Opn. at p. 61.) But, other published decisions have explained that the Legislature's intent in enacting Costa-Hawkins was not to ensure an entirely market-based approach to landlord-tenant relations, but to allow landlords to establish initial rent levels at all units. (See *Mosser Companies v. San Francisco Rent Stabilization & Arbitration Bd*. (2015) 233 Cal.App.4th 505, 514 (*Mosser*) [The Costa-Hawkins Act's "narrow and well-defined purpose, [] is to prohibit the ***strictest type*** of rent control that sets the maximum rental rate for a unit and maintains that rate after vacancy."] (emphasis added).) Indeed, courts have found no conflict with the Costa-Hawkins Act as to other laws that provide tenants additional protections from free market rental increases. (See, e.g., *San Francisco Apartment Assoc. v. City and County of San Francisco* (2022) 74 Cal.App.5th 288 [Costa-Hawkins does not preempt relocation assistance following bad faith rent increase].) The Costa-Hawkins Act's savings clause regarding

eviction regulations further demonstrates that the Legislature's intent was not to disturb landlord-tenant policies that are not the "strictest type of rent control." (*Mosser*, at p. 514.)

CAA v. Pasadena's expansive view of purpose preemption is dangerous to the stability of local laws, which are now vulnerable to preemption challenges based on a law's "indirect effects" on a state law's purpose. (Opn., at p. 61.) And, *CAA v. Pasadena* does not indicate the scope of such indirect impacts that may undo a local legislature's law or voter initiative. For these reasons, this Court should provide guidance to the lower courts on whether to apply purpose preemption and if so, clarify that this principle does not apply to indirect effects on state law.

b. **This Court Should Resolve the Conflict Between the Costa Hawkins Rental Housing Act and the Tenant Protection Act Created by *CAA v. Pasadena.***

CAA v. Pasadena's holding that the Costa-Hawkins Act preempts Measure H's relocation fee requirement creates a conflict between the Tenant Protection Act of 2019 (Civ. Code, §§ 1946.2 & 1947.12, "TPA") and the Costa-Hawkins Act. Civil Code section 1947.12 of the TPA prohibits rent increases more than 5 percent plus inflation or 10 percent, whichever is lower, referring to this practice as "rent-gouging." (Civ. Code, § 1947.12, subds. (a) & (m).) A landlord who demands such an increase is liable to their tenant for damages for the excessive rent demanded. (*Id.*, subd. (k)(1).) While penalizing "rent-gouging," the TPA is clear that it does not interfere with the Costa-Hawkins Act's regulation of "rent control." Despite this distinction, *CAA v. Pasadena* treats rent-gouging as interchangeable with other rent increases, and holds that by "financially penaliz[ing]" landlords who rent-gouge—who raise the rent by 5 percent plus inflation—Measure H conflicts with the Costa-Hawkins Act. (Opn. at *26.) Under this reasoning, the TPA's parallel provision—similarly financially penalizing landlords for rent-gouging—also conflicts with the Costa-Hawkins Act.

Courts must strive to harmonize statutes that appear to conflict, and may read a conflict into two statutes "only when there is no rational basis for harmonizing the two potentially conflicting statutes [citation], and the statutes are " ' "irreconcilable, clearly repugnant, and so inconsistent that the two cannot have concurrent operation." ' [Citation.]" (*Garcia v. McCutchen* (1997) 16 Cal.4th 469, 477.) Here, there is a rational basis for harmonizing the TPA and Costa-Hawkins. By viewing the TPA's penalty on rent-gouging as distinct from the Costa-Hawkins Act's exemption of units from rent control, the Court can "maintain the integrity of both statutes…." (*Penziner v. West American Finance Co.* (1937) 10 Cal.2d 160, 176.) That reading conforms with the Legislature's intent. Both the TPA's legislative history and its text shows that the Legislature distinguishes between rent caps imposed by rent control and prohibitions on rent-gouging.

The Senate Rules Committee analysis for the bill that became the TPA (AB 1482) cites to criminal law that prohibits persons during the declaration of a state of emergency from raising the price "on goods or services, including housing" to "more than 10 percent above the price charged for those goods or services immediately prior to the proclamation of emergency." (Sen.

Rules Com., Off. of Sen. Floor Analyses, 3d reading analysis of Assem. Bill No. 1482, as amended Sept. 5, 2019, p. 2 citing Pen. Code, § 396, subd. (b); *Jevne v. Sup. Ct.* (2005) 35 Cal.4th 935, 948 [senate rules committee analysis is a proper source of legislative intent].) The executive summary explains,

> The phrase "price gouging" refers to businesses taking advantage of an emergency in order to charge prices well beyond what the market would ordinarily bear. Existing California law prohibits price gouging. During officially-declared states of emergency, it is a crime to increase prices on consumer goods by more than 10 percent. California is in the midst of a housing crisis. There are reports that some landlords are taking advantage of this crisis to engage in "rent-gouging," dramatically increasing their tenants'' rent with the knowledge that, due to the present crisis, tenants are unlikely to have affordable alternatives. Dramatic rent increases like these can act as the final straw, pushing people into homelessness. This bill prohibits large landlords from engaging in rent-gouging.

(*Ibid.*) The Legislature further explained that while current state law allows landlords not subject to rent control to "raise the rent at any time and by any amount that the landlord chooses," the TPA would prohibit landlords from "rent-gouging." (*Ibid.*) This legislative history, thus, distinguished between freedom from rent control (Costa-Hawkins) and anti-rent-gouging (TPA).

The codified TPA, in turn, expressly references the Costa-Hawkins Act several times. (Civ. Code, § 1947.12, subds. (d)(3), (m)(2), (m)(3).) Subdivision (m)(2) states that "It is the intent of the Legislature that this section should apply only for the limited time needed to address the current statewide housing crisis," and, at the same time, cites to the requirement that local governments comply with the Costa-Hawkins Act. (*Id.*, subd. (m)(2).) If the Legislature understood the rent-gouging prohibition to conflict with the Costa-Hawkins Act's provision allowing landlords to freely set rent, the TPA would have expressly stated that it was repealing the relevant provisions of the Costa-Hawkins Act with respect to the practice of rent-gouging. (See *Garcia v. McCutchen*, *supra*, 16 Cal.4th at p. 477 ["Absent an express declaration of legislative intent," courts will not find a conflict between statutes].)

This legislative history and code text shows that while the Legislature intended to allow non-rent-controlled landlords to freely set the rent, thereby "reliev[ing] landlords from some of the burdens of 'strict' and 'extreme' rent control" (Costa-Hawkins), the Legislature also intended to prohibit rent-gouging during the current state housing crisis (TPA). (*Apt. Assn. of Los Angeles County, Inc. v. City of Los Angeles* (2009) 173 Cal.App.3th 13, 30.) The TPA remains in effect until 2030, providing "short-term relief for tenants" during this crisis. (Civ. Code, § 1947.12, subd. (o).)

While the TPA draws a distinction between anti-rent-gouging and rent control, *CAA v. Pasadena* conflates them. In holding that a law that "financially penalizes" landlords for large rent increase conflicts with the Costa-Hawkins Act's right to set rents, the Opinion implicitly finds that the TPA and the Costa-Hawkins Act conflict. (Opn. at *26.) However, during the

course of the state's ongoing housing crisis, raising the rent by the lesser of 5 percent plus inflation or 10 percent does not constitute rent control regulated by the Costa-Hawkins Act, but "rent-gouging" akin to Penal Code section 396's criminalization of the practice of raising the price of housing more than 10 percent after a government declaration of a state of emergency. The Legislature intended the TPA's prohibition of "rent-gouging" to exist concurrently with the Costa-Hawkins Act' rollback of "rent control." For this reason, *CAA v. Pasadena* erred in finding that Measure H's financial penalty on rent-gouging conflicts with the Costa-Hawkins Act.

This Court should grant review of *CAA v. Pasadena* to address the Opinion's unnecessary creation of a conflict between the TPA and the Costa-Hawkins Act.

III. Conclusion

The City of Pasadena's and Intervenors' Petitions for Review provide this Court with an excellent opportunity to provide guidance on the application of the "purpose preemption" theory, and resolve the conflict between the TPA and the Costa-Hawkins Act that *CAA v. Pasadena* created. These issues are of importance to all municipal entities within this state seeking to defend their legislation from preemption challenges, and to all Californians impacted by the state housing crisis. For these reasons, Amici respectfully request that this Court grant review.

Respectfully submitted,

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