Olson | Remcho

February 17, 2026

Via TrueFiling

The Honorable Patricia Guerrero, Chief Justice
and Associate Justices
Supreme Court of California
350 McAllister Street
San Francisco, CA 94102-4797

Re: *California Apartment Association, et al. v. City of Pasadena, et al.*
Supreme Court No. S295001 (Petition for Review Pending)
Court of Appeal, Second Appellate District, Case No. B329883
Request for Depublication

To Chief Justice Guerrero and Associate Justices:

Pursuant to rule 8.1125, subdivision (a) of the California Rules of Court, Defendants and Respondents City of Pasadena and Pasadena City Council (the "City") respectfully request that the Court order depublication of parts C(1) and C(2) of the Court of Appeal's opinion in the above-referenced case. These parts of the opinion strike down as facially preempted a tenant relocation assistance requirement in a rent stabilization and just cause for eviction initiative measure added to the Pasadena City Charter by the voters. The City is interested in depublication because the portion of the opinion addressing preemption could otherwise serve as precedent in future cases seeking to further curtail the City's efforts to address the housing affordability crisis.

The City has filed a timely petition for review of the same issue in the Court of Appeal's opinion, but seeks depublication in the alternative because the opinion:

> (1) adopts the federal "obstacle" preemption doctrine in the context of state preemption, without any analysis or even acknowledgement that doing so could dramatically limit the power of local governments to address local concerns; and
>
> (2) is riddled with errors that, if left to stand, will threaten the ability of other local governments to address a housing affordability crisis that, despite state and local efforts to create more housing, continues to worsen and inflict suffering on millions of Californians struggling to remain in their homes and communities.

BACKGROUND

A. Pasadena Voters Seek To Address the Affordable Housing Crisis

This case arises out of the City's efforts to shield its residents from some of the worst consequences of the State's affordable housing crisis. In November 2022, Pasadena voters used the initiative process to adopt a charter amendment known as "The Pasadena Fair and Equitable Housing Charter Amendment" or Measure H. Measure H introduced rent stabilization, bolstered eviction protections, and established a quasi-independent Rental Housing Board to set rent increases for covered units and appoint hearing officers to resolve petitions from landlords or tenants regarding rent increases.

The state Costa-Hawkins Rental Housing Act exempts certain rental units, including those built after 1995 and those separately alienable from the title to any other dwelling unit, from local regulation of rent increases. (Civ. Code, § 1954.52, subd. (a).) Measure H therefore excludes such rental units from its rent control provisions, but such units are not exempt from the eviction protections in section 1806 of Measure H, which include relocation assistance. (Pasadena City Charter, art. XVIII, § 1804, subd. (b)(1).)[1] Measure H's relocation assistance requirement applies only to a narrow set of circumstances: when the rent increase is steep – more than 5 percent plus the increased rental amount allowed for units covered by rent control – and when the tenant is unable to pay the rent increase and so is displaced from her rental unit. The measure does not set the amount for such assistance, leaving it to the Rental Housing Board to determine the amount necessary to help mitigate the impacts of displacement on a tenant, including securing new housing and paying a security deposit. (§ 1806, subd. (b)(C).)

The need for relocation assistance for renters priced out of their units is increasing because Pasadena's affordable housing crisis has worsened. For example, the Measure H findings note that U.S. Census Bureau estimates indicate a 32 percent increase in the median gross rent in Pasadena from 2012 to 2018, increasing from $1,287 to $1,669 per month.[2] Six years later, the median gross rent in Pasadena has skyrocketed to $2,191 per month.[3] And the number of households that are rent-burdened – meaning that the renter pays at least (but possibly more) than 30 percent of their income towards housing – has also increased in Pasadena.[4] Measure H alone could not resolve the affordability crisis in

[1] All further section references are to article XVIII of the Pasadena City Charter.

[2] § 1802, subd. (c).

[3] U.S. Census Bureau, American Community Survey 2024 1-Year Estimates, DP04: Selected Housing Characteristics (2024), https://data.census.gov/table/ACSDP1Y2024.DP04?q=Pasadena+city,+California+Rent.

[4] Compare, § 1802, subd. (e) with U.S. Census Bureau, American Community Survey 2024 1-Year Estimates, DP04: Selected Housing Characteristics (2024), https://data.census.gov/table/ACSDP1Y2024.DP04?q=Pasadena+city,+California+Rent.

Pasadena – nor was it meant to do so; rather, it operates as one arm of a many-pronged approach to addressing affordability housing and homelessness within the City. As mentioned, Measure H's reach extends only so far.

B. The California Apartment Association Sues to Invalidate Measure H

Measure H took effect on December 22, 2022, becoming article XVIII of the City's Charter, and on December 16, 2022, the California Apartment Association and a group of landlords ("CAA") challenged the measure in Los Angeles Superior Court. The City defended the measure, joined by proponents and supporters of Measure H, who were allowed to intervene.

CAA based its challenge on three major arguments. First, CAA argued that Measure H was an impermissible charter revision that could not be enacted by popular initiative. Second, CAA challenged the composition of the Rental Housing Board, which consists of seven tenants, one from each City Council district, and four at-large members who can be any resident of the City. CAA argued that the eligibility requirements violate the property qualification prohibition in article I, section 22 of the California Constitution and the equal protection provisions of the state and federal Constitutions. Third, CAA argued that four provisions of Measure H were facially invalid because they were preempted by state law, including Costa-Hawkins and the Ellis Acts.

In the trial court, Judge Mary Strobel held that Measure H was not an impermissible charter revision, that the composition of the Rental Housing Board did not violate the state or federal Constitutions, and that two of the four provisions that CAA challenged were not preempted either by Costa-Hawkins or the notice provisions of the unlawful detainer law. Judge Strobel held that the other two provisions at issue were preempted because they provided longer notice periods for (1) termination of a month-to-month tenancy than provided by Civil Code section 1946.1 and (2) withdrawal of a unit from the rental market under a provision of the Ellis Act, Government Code section 7060.4. (Op. 7.)[5]

CAA appealed the trial court's rulings on its arguments based on revision and composition of the Board, as well as the two preemption arguments on which the trial court denied relief. Neither the City nor Interveners appealed Judge Strobel's rulings on the notice provisions regarding month-to-month tenancies or the Ellis Act.

On December 18, 2025, the Court of Appeal issued a published opinion holding that Measure H is not an impermissible charter revision, that the composition of the

[5] Citations to the Court of Appeal's decision reflect the pagination of the slip opinion issued on December 18, 2025. The decision is currently published at *California Apartment Association v. City of Pasadena* (2025) 117 Cal.App.5th 187.

Rental Housing Board does not violate state or federal law, but that the relocation assistance and eviction notice requirements for nonpayment of rent are preempted by Costa-Hawkins and the unlawful detainer statutes respectively. (Op. 54-79.)

On January 2, 2026, Interveners filed a petition for rehearing on the relocation assistance issue, which the Court of Appeal denied on January 8, 2026.

On January 27, 2026, the City and Interveners each separately petitioned for review of the relocation assistance provision, but did not seek review of the decision addressing preemption of the notice requirements. CAA did not seek review of the revision or board composition issues.

ARGUMENT

I. THE COURT ERRED IN CONCLUDING THAT THIS ISSUE COULD BE ADDRESSED THROUGH A FACIAL CHALLENGE

CAA brought its facial challenge with a crucial piece of information missing: how much money landlords would have to pay to tenants in relocation assistance. As noted above, Measure H left that decision to the Rental Housing Board, and the record did not include the amounts the Board eventually adopted. Given that missing information, the trial court refused to consider CAA's facial challenge because it could not determine whether the relocation assistance would eliminate or substantially reduce any rent increase. As a consequence, the trial court acknowledged that it was not possible to determine if the provision "inevitably pose[s] a present total and fatal conflict with applicable constitutional prohibitions." (*Tobe v. City of Santa Ana* (1995) 9 Cal.4th 1069, 1084, citation omitted.) Nor could it determine under the alternative standard for facial challenges whether the provision would be preempted "in the *generality* or *great majority* of cases." (*San Remo Hotel v. City & County of San Francisco* (2022) 27 Cal.4th 643, 673, emphasis in original, partially abrogated on other grounds as recognized in *Benedetti v. Cty. of Marin* (2025) 113 Cal.App.5th 1185, 1197.)

The Court of Appeal disagreed, concluding that a facial challenge was appropriate because *any* financial incursion into a landlord's profit from a rent increase – whether modest or extravagant — undermines the purpose of Costa-Hawkins. (Op. 59.) This is error because it makes assumptions that are objectively unreasonable. There is no evidence in the record that any landlord has claimed that the relocation assistance has encroached on his rights under Costa-Hawkins, let alone all or a great majority of affected landlords. Indeed, there may never be such credible evidence. After all, landlords remain free under the law to set rents with the relocation assistance in mind so that they can recover the full amount of profit they want from the rent increase.

II. THE COURT PUSHED THE LAW CONCERNING COSTA-HAWKINS PREEMPTION BEYOND ALL PREVIOUSLY RECOGNIZED LIMITS

After the court applied a mistaken understanding of facial challenges, it applied an unprecedentedly broad view of Costa-Hawkins' preemptive reach.

Article XI, section 7 of the California Constitution provides that a "county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws." This Court has laid down the basic rule that 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.'" (*Chevron U.S.A. Inc. v. County of Monterey* (2023) 15 Cal.5th 135, 142 (*Chevron*), quoting *Sherwin-Williams Co. v. City of Los Angeles* (1993) 4 Cal.4th 893, 897 (*Sherwin-Williams*).)

The appellate court below appropriately rejected CAA's field preemption argument, but it found that section 1806(b)(C) is invalid because it "contradicts" Costa-Hawkins. (Op. 56.) In doing so, the court began well by reciting the proper framework:

> Local legislation is "contradictory" when it is inimical to general state law. (*City of Riverside v. Inland Empire Patients Health & Wellness Center, Inc.* (2013) 56 Cal.4th 729, 743.) "The '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." (*Ibid*.) "Thus, no inimical conflict will be found where it is reasonably possible to comply with both the state and local laws." (*Ibid*.; accord *San Francisco Apartment Assn. v. City & County of San Francisco* (2024) 104 Cal.App.5th 1218, 1227 (*SFAA IV*).) However, "'[w]hen 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 . . . frustrate the statute's purpose.'"
>
> (Op. 51-52.)

Yet the court lost its way when it sought to apply these rules. Conflict preemption, of course, requires a conflict between the local ordinance and state law. Here, there is no direct conflict between Costa-Hawkins and section 1806(b)(C), as the trial court held and the appellate court affirmed. (Op. 53, 60.) That is clearly correct. Civil Code section 1954.52 of Costa-Hawkins exempts certain residential property from local rent control laws, thereby allowing the landlord to "establish the initial and all

subsequent rental rates" for exempt units. (See Op. 54, quoting Civ. Code, § 1954.52, subd. (a).) Nothing in Measure H's relocation assistance provision prevents a landlord from doing exactly that. It just requires that when a tenant loses their unit because they cannot afford a particularly steep rent increase – 5 percent plus the increased rental amount allowed for units covered by rent control – the landlord must provide a one-time lump sum payment to help the tenant secure new housing. (§ 1806, subd. (b)(C).)

That should have been the end of the analysis, but the court went on. Specifically, the appellate court misread *Palmer/Sixth St. Properties, L.P. v. City of Los Angeles* (2009) 175 Cal.App.4th 1396 (*Palmer/Sixth*), as having struck down a local fee provision based on the fee's "indirect effects" (Op. 61) on rights conferred by Costa-Hawkins. The court below then found that section 1806(b)(C) has "similar" indirect effects because it "financially penalizes landlords for exercising their rights under the Costa-Hawkins Act," which "frustrate[s] the purpose" of Costa-Hawkins. (Op. 62.) More specifically, the court concluded that the purpose of Costa-Hawkins was "to rein in rent control by allowing landlords to raise the rents on exempt units to their fair market value," and that section 1806(b)(C) "counteracts that purpose by protecting tenants, at landlords' expense, from the free market." (Op. 62.) For this point, the court relied on a statement from a case discussing an entirely different statute – the Ellis Act – declaring that "[a] property owner's lawful decision to withdraw from the rental market may not be frustrated by burdensome monetary exactions from the owners to fund the City's policy goals." (Op. 62, quoting *Coyne v. City & County of San Francisco* (2017) 9 Cal.App.5th 1215, 1231 (*Coyne*).) In doing so, the court incorporated the purpose of one statute into that of another without examining either legislative intent or the degree of impact that section 1806(b)(C) would have in the case before it.[6]

As outlined in more detail in the petitions for review filed by the City and Interveners, "purpose" preemption exists under federal law. (See, e.g., *Wyeth v. Levine* (2009) 555 U.S. 555, 577.) Whether it exists under California law remains an open question, as this Court has repeatedly acknowledged. (*Chevron*, *supra*, 15 Cal.5th at p. 150 & fn. 9 [declining to adopt purpose preemption]; *T-Mobile West LLC v. City & County of San Francisco* (2019) 6 Cal.5th 1107, 1123 ["[t]his [C]ourt has never said explicitly whether state preemption principles are coextensive with the developed federal conception of obstacle preemption."].) The City has urged the Court to grant review to lay to rest the notion that purpose preemption applies to charter cities, but if the Court declines to do so, depublication would be appropriate. The Court of Appeal failed to acknowledge that its ruling was creating new law or to explain why California should so dramatically expand the preemptive reach of state law. (Op. 62.) Surely such a consequential expansion of state power over local governments should not be made without thorough explanation.

[6] The City further addresses the Court's errors relating to *Palmer/Sixth* and *Coyne* below.

Furthermore, even if purpose preemption does exist under state law, the court below interpreted Costa-Hawkins' purpose too broadly. Costa-Hawkins ensures that certain properties are exempt from local rent control laws so that landlords "may establish the initial and all subsequent rental rates . . ." (Civ. Code, § 1954.52, subd. (a).) Because this allows landlords to set rents as high as the market will bear, the lower court concluded that the Legislature gave landlords the right to fully recoup any profit that the market may provide, and prohibited cities from "protecting tenants, at landlords' expense, from the free market." (Op. 62.) That goes too far. Nothing in the Costa-Hawkins Act guarantees that rent increases will be fully profitable; it merely guarantees that they can be imposed. To be sure, if tenants leave their unit because they are unable to pay a rent increase, section 1806(b)(C) may result in that rent increase temporarily becoming less lucrative. But that is true of many lawful regulations that are part of the accepted cost of doing business. In this case, a landlord could increase the rent on the unit for an incoming tenant to cover the cost of relocation assistance. In other words, the relocation assistance is like any other increased cost of business that landlords can include in the rent they charge a new tenant. It has nothing to do with a landlord's right to set rents under Costa-Hawkins.

III. THE COURT'S OPINION CONTAINS OTHER ERRORS OF LAW

Even setting aside the Court's unprecedented expansion of state preemption over local tenant protection laws, parts C(1) and (2) of the opinion below should be depublished because they are based upon multiple errors that, if left to stand as precedent, will threaten tenant protections across California.

A. The Court Misconstrued Costa-Hawkins' Savings Clause

The lower court misconstrued Costa-Hawkins' savings clause. That clause provides: "Nothing in this section shall be construed to affect the authority of a public entity that may otherwise exist to regulate or monitor the basis for eviction." (Civ. Code, § 1954.52, subd. (c).) The City explained that relocation assistance regulates the basis for evicting a tenant who is unable to pay a large rent increase because that increase can result in a constructive eviction. (City's Supp. Ltr. Br. 5.) But the court below insisted that Costa-Hawkins' savings clause applies only to express evictions, not constructive evictions (Op. 65), and only to evictions made in bad faith, not to lawful evictions made in good faith. (Op. 67-69.)

This was error. The savings clause refers to "*eviction*." It does not distinguish between different kinds of evictions, such as express and constructive or just-cause and bad faith. It instead uses a broad term that sweeps up evictions of all kinds. As a matter of statutory construction, courts "cannot insert what has been omitted" from a statute "or

rewrite the statute to conform to a presumed intention that is not expressed." (*Lewis v. Clarke* (2003) 108 Cal.App.4th 563, 567.) Yet that is exactly what the court did below.

The closer question is whether the savings clause's reference to "regulat[ing]" "the basis" for evictions extends to an obligation to provide relocation assistance. In the case of section 1806(b)(C), it does. Section 1806(b)(C) obligates a landlord to pay relocation assistance only *after* learning that the tenant has been displaced from his unit "due to inability to pay" the rent increase, *i.e.*, only after the landlord learns that the rent increase has caused a constructive eviction. The landlord is free at that point to negotiate terms that would enable the tenant to stay. But if the landlord chooses instead to knowingly permit the eviction to proceed, section 1806 governs the rules according to which that eviction must proceed. Namely, it must take place according to a rule requiring financial assistance for the tenant. That is what "regulate" means: to "'govern or direct according to rule' or 'to bring under the control of law or constituted authority.'" (*Southern California Edison Co. v. Public Utilities Com*. (2014) 227 Cal.App.4th 172, 193, citing Webster's 3d New Internat. Dict. (16th ed. 1971) p. 1913, col. 3.) Accordingly, section 1806(b)(C) regulates the basis for constructive evictions caused by steep rent increases and therefore fits within Costa-Hawkins' savings clause.

B. The Court Failed To Consider The Tenant Protection Act

In 2019, the Legislature enacted the Tenant Protection Act of 2019 (Stats. 2019, ch. 597 (Assem. Bill No. 1482)) ("TPA") to provide two statewide protections for renters: "just cause" eviction protections for certain tenants and a statewide rent cap limiting annual rent increases to no more than five percent plus the percentage change in cost of living, or 10 percent, whichever is lower. (Civ. Code, §§ 1946.2, 1947.12, subds. (a)(1) & (g)(2).) The Legislature also established relocation assistance for some "no-fault just cause" evictions. (*Id.* § 1946.2, subd. (d)(1)).

Despite requesting supplemental briefing on the TPA's effect on issues relating to Measure H's relocation assistance provision, the court dismissed TPA's relevance in a footnote. According to the court, the TPA is not relevant because it does not "provide for relocation assistance in the event a tenant is unable to pay the monthly rent following a lawful rent increase." (Op. 54-55, fn. 16.) That statement ignores the fact that the TPA expressly protects the right of local governments to pass relocation assistance requirements that are more generous to tenants. (Civ. Code, § 1946.2, subd. (i)(1).)

The TPA's relocation assistance requirement is narrow. Landlords must only provide such assistance for specified no-fault just cause evictions, including owner occupancy and withdrawal of the unit from the rental market. (Civ. Code, § 1946.2, subd. (b)(2).) In these circumstances, the landlord must provide a payment or rent forgiveness equal to one month of rent. (*Id*. § 1946.2, subd. (d)(1) & (3).)

However, under the TPA, this requirement "does not apply" to rental units subject to a local just cause eviction ordinance "that is more protective than [the TPA]." (Civ. Code, § 1946.2, subd. (i)(1)(B).) A law is "more protective" than the TPA if (1) its just cause eviction provisions are consistent with the TPA; (2) it further limits the reasons for terminating a residential tenancy, provides for higher relocation assistance amounts, or provides additional tenant protections that are not prohibited by any other provision of law; and (3) it makes a binding finding to that effect. (*Id*. § 1946.2, subd. (i)(1)(B).)

Measure H easily meets these requirements. First, its just cause eviction provisions are consistent with the TPA because both laws prohibit landlords from evicting tenants without just cause. (Compare Civ. Code, § 1946.2, subds. (a) & (b)(1) with § 1806, subd. (a).) Second, Measure H further limits the permissible reasons for an eviction by (for example) allowing a tenant to remain in the unit after certain subletting violations that authorize evictions under state law. (Compare Civ. Code, § 1946.2, subd. (b)(1)(G) with § 1806, subd. (a)(2)(A).) Third, Measure H declares that it "is more protective than the provisions of Civil Code Section 1946.2 . . ." (§ 1802, subd. (gg).)

Simply put, it was error for the court to refuse to consider whether the Legislature preserved Pasadena's right to pass stronger relocation assistance protections, particularly when it did so under the guise of the Legislature's intent to preempt such provisions.

C. The Court Misread the Cases Upon Which It Chiefly Relied

As noted, the Court of Appeal found that section 1806(b)(C) was preempted because of its "indirect effects" on landlords' rights under Costa-Hawkins, *i.e.*, because it "financially penalizes landlords for exercising their rights" under the Act. (Op. 61-62.) The court cited only two authorities in support of this conclusion, but the court badly misunderstood both cases.

According to the court below, the court in *Palmer/Sixth* held that Costa-Hawkins preempted a fee because of the fee's "indirect effects" on a housing developer. (Op. 61.) That is incorrect. The *Palmer/Sixth* court held that a local construction requirement *directly* conflicted with Costa-Hawkins because it prohibited developers from setting rents on affordable units. It then struck down the otherwise "valid" fee provision because it was "inextricably intertwined" with the preempted construction requirement and so could not be severed from the construction requirement. (*Palmer/Sixth, supra*, 175 Cal.App.4th at pp. 1411-1412.) In other words, the court in *Palmer/Sixth* struck down the fee provision under a severability analysis, not a preemption analysis.

Although the court below did not misread *Coyne* in the same manner, it overlooked the glaring differences between that case and this one. The court was correct that *Coyne* addressed financial burdens in the context of a preemption analysis, but *Coyne*

did so while considering rent subsidies under the Ellis Act, not relocation assistance under Costa-Hawkins. At issue was an ordinance requiring landlords who lawfully exit the rental market under the Ellis Act to pay their tenants a steep two-year rent subsidy, which effectively amounted to an extension of the city's rent control policy. The court considered whether the rent subsidy imposed a "prohibitive price" on the landlord's rights, meaning a price that is so high it would "compel landlords to remain in the residential rental business." (*Coyne, supra,* 9 Cal.App.5th at p. 1226.) The analysis largely turned on whether the rent subsidy was directed at the "'adverse impact' [of] displacement" on a tenant (which meant it would fit within the Ellis Act's savings clause) or was directed at the impacts of the open rental market (which meant it was outside the savings clause). (*Id.* at pp. 1228-1230.) But this case does not involve rent subsidies, and Costa-Hawkins does not have the same savings clause.

IV. DEPUBLICATION IS NOT A SUBSTITUTE FOR GRANTING REVIEW

The City urges the Court not to view depublication as the primary solution to the errors contained in the Court of Appeal's decision. As the City explains in its petition for review, it has been 20 years since this Court addressed state preemption of local rent control measures and it has never addressed preemption under the three main laws that preempt limited aspects of local rent control measures: the Costa-Hawkins Act, the Ellis Act, and the TPA. In the meantime, the appellate courts have struggled to measure increasingly complex local regulations against complicated and often unclear state laws. Such confusion puts all local governments at risk of either mistakenly passing laws that are at odds with some aspect of state law, or facing judgments that mistakenly find valid local laws to be preempted by state law, as Pasadena did here. Now is the time for this Court's guidance, as local governments and local voters struggle to reduce the suffering caused by California's deepening housing affordability crisis.

Respectfully submitted,

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MRP:ear

PROOF OF SERVICE

I, the undersigned, declare under penalty of perjury that:

I am a citizen of the United States, over the age of 18, and not a party to the within cause of action. My business address is 555 Capitol Mall, Suite 400, Sacramento, CA 95814.

On February 17, 2026, I served a true copy of the following document(s):

City of Pasadena and Pasadena City Council's Request For Depublication

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Pursuant to California Rules of Court, rule 8.1125(a)(5)

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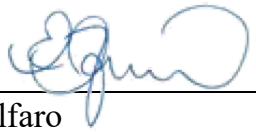
I declare, under penalty of perjury, that the foregoing is true and correct. Executed on February 17, 2026, in Sacramento, California.



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