

February 23, 2026

Honorable Chief Justice Patricia Guerrero
& Associate Justices of the California Supreme Court
350 McAllister Street
San Francisco, California 94102

**Re: Appellants' Opposition to the Requests of Respondents,
Intervenors and *Amici Curiae* for Partial
Depublication of Opinion (Cal. R. Ct. 8.1125(b))
*California Apartment Association, et al., v. City of
Pasadena, et al.*, 117 Cal. App. 5th 187 (2025)
Supreme Court No. S295001
Second Appellate District No. B329883 (filed and published
on December 18, 2025; rehearing denied January 8, 2026)**

To the Honorable Chief Justice and Associate Justices:

Appellants hereby submit this letter to oppose the requests for depublication of sections C-1 and C-2 of the Court of Appeal's decision in this case, [Cal. Apartment Ass'n v. City of Pasadena, 117 Cal. App. 5th 187, 228-41 \(2025\)](#) ("CAA"), filed by (1) Intervenors, joined by *amici curiae* City of Los Angeles and Santa Monica Rent Board (collectively "Intervenors" hereafter), on February 13, 2026, and (2) Respondents City of Pasadena, *et al.*, filed February 17, 2026. For the same reasons that review by this Court is not warranted, neither is depublication. Intervenors (joined by Respondents) are chiefly asking this Court to weigh in on matters that are simply not presented by this case, and Respondents' other arguments for depublication are the same flawed arguments they have raised in their petition for review.

INTERESTS OF PARTIES OPPOSING DEPUBLICATION

This letter is submitted on behalf of the Petitioner/ Plaintiffs and Appellants in this case. The six individual Plaintiffs are property-owners in Pasadena whose properties are subject to Measure H. Appellant California Apartment Association is the largest statewide rental housing trade association in the country, representing more than 50,000 rental

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property-owners and operators who are responsible for nearly two million rental housing units throughout California. It has many members in Pasadena who are also subject to Measure H.

REASONS WHY DEPUBLICATION IS UNWARRANTED

A. The Arguments Made Jointly by Intervenors and Respondents Attack Straw Men.

Intervenors contend that depublication is necessary for two reasons: (1) because the Court of Appeal purportedly applied federal “obstacle” preemption standards that this Court has never approved as a matter of state law, and (2) because the Court’s application of those preemption standards supposedly recognizes a broader “purpose” for the Costa-Hawkins Rental Housing Act, [Civ. Code §§ 1954.50 et seq.](#), than has previously been recognized. Respondents echo these claims in their Request.

Appellants have addressed these unjustified contentions at length in their Combined Answer to the Petitions for Review, filed February 17, 2026, and they do not intend to follow Intervenors’ and Respondents’ example by reiterating their arguments *ad nauseum* here. Simply put, Intervenors and Respondents are attacking straw men.¹

¹ Nowhere is Intervenor’s reliance on straw men more apparent than in their attempt to make hay of out of the fact that CAA has observed that the decision below is “influencing how courts evaluate similar ordinances.” (Request at 2, quoting Cal. Apartment Ass’n, *CAA court ruling puts L.A. Relocation mandate at risk* (Jan. 15, 2026), *online at* <https://caanet.org/caa-court-ruling-puts-l-a-relocation-mandate-at-risk/> (as of February 12, 2026)), as purported evidence in support their contention that “untold numbers of local laws” will be “thrown into question as a result of the preemption discussion” in the Opinion (Request at 2). In reality, the CAA post does little more than report the fact that the Opinion is likely to be relevant to the outcome of a case challenging a near-identical relocation assistance mandate in the City of Los Angeles, which is now before the Court of Appeal in same Division—a fact that is acknowledged by Intervenors (Intervenors’ Request at 6 n.6). That’s

Publication below was appropriate because the decision “[a]pplies an existing rule of law to a set of facts significantly different from those stated in published opinions.” [Cal. R. Ct., rule 8.1105\(c\)\(2\)](#).

The Court of Appeal did not purport to apply federal “obstacle” preemption, and it cited no federal cases in that part of the opinion. See [117 Cal. App. 4th at 227-41](#). Indeed, even Intervenor characterize the Court’s purported adoption of these federal standards as having been done “*sub silentio*” (see Intervenor’s Request at 5)—meaning they can point to nothing in the opinion itself to support that conclusion; they are merely inferring it. Moreover, when Intervenor petitioned the Court of Appeal for rehearing of this issue below, on the ground that federal obstacle preemption was a basis for the decision that the parties had not briefed, the Court summarily denied the request, implicitly rejecting Intervenor’s characterization. (Had it been otherwise, the Court would have been compelled by [Government Code § 68081](#) to grant rehearing, as Intervenor’s petition for rehearing argued.)

The Court below exclusively applied state preemption case law, including: [Palmer/Sixth Street Properties, L.P. v. City of Los Angeles, 175 Cal. App. 4th 1396 \(2009\)](#), *rev. denied*, [2009 Cal. LEXIS 11307 \(Oct. 22, 2009\)](#); [Coyne v. City & Cty. of San Francisco, 9 Cal. App. 5th 1215 \(2017\)](#), *rev. den.*, [2017 Cal. LEXIS 4979 \(June 28, 2017\)](#); this Court’s decision in [Chevron U.S.A. Inc. v. Cty. of Monterey, 15 Cal. 5th 135 \(2023\)](#) (which disclaimed any reliance on federal preemption standards, *id.* at [150 n.9](#)); and the Court of Appeal’s decision in that case, [Chevron U.S.A., Inc. v. Cty. of Monterey, 70 Cal. App. 5th 153 \(2021\)](#), which this Court affirmed,² and which likewise disclaimed reliance on federal preemption,

hardly the same as widespread invalidation of landlord-tenant laws more generally. Indeed, the post makes no reference to *any* laws or policies other than relocation assistance mandates tied to lawful rent increases—the exact issue decided in this case—as being potentially implicated.

² Intervenor asserts that “this Court’s opinion in *County of Monterey* hemmed in the lower court’s holding, which had found conflict preemption based on what it determined to be ‘frustration’ of the ‘purpose’ of the state law.” (Intervenor’s Request at 4.) Here again, Intervenor are reading

see *id.* at 172. Those cases stand for the proposition, applied by the Court of Appeal below, that—as a matter of *state* law—“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.* (quoting [Great Western Shows v. Cty. of L.A.](#), 27 Cal. 4th 853, 868 (2002)).

A number of the cases in question—particularly [Palmer](#) and [Coyne](#)—were discussed at considerable length by the parties in the briefing below, contrary to Intervenors’ suggestion that the Court of Appeal decided the issue based on principles not discussed by the parties.

As for the argument that the Court below recognized a broader “purpose” for Costa-Hawkins that has been previously been recognized—that the decision “supposes a legislative embrace of the free market that is not grounded in any legislative history or any prior caselaw interpreting the Costa-Hawkins Act” (Intervenors’ Request at 6), that, too, is not the case. In fact, California’s courts have long recognized that the Legislature’s purpose in enacting Costa-Hawkins was “to relieve landlords from some of the burdens of ‘strict’ and ‘extreme’ rent control, *which the proponents of Costa-Hawkins contended unduly and unfairly interfered with the free market.*” [Apartment Ass’n of Los Angeles Cty., Inc. v. City of Los Angeles](#), 173 Cal. App. 4th 13, 30 (2009) (emphasis added). And this legislative purpose—mitigating local rent control ordinances’ interference with the “free market”—is well-attested to by the legislative history of the Act. See, e.g., [Assem. Floor Analysis, Assem. Bill No. 1164 \(1995–1996 Reg. Sess.\) July 24, 1995](#) (“Floor Analysis”), pp. 1, 6; [Assem. Comm. on Appropriations, Analysis of Sen. Bill No. 1257 \(1995-1996 Reg. Sess.\) July 12, 1995](#), p. 1.

something into a court opinion “*sub silentio*” that is not actually there. Nothing in this Court’s [Chevron](#) opinion criticizes, disavows, rejects or narrows the court of appeal’s opinion, which this Court unanimously affirmed.

In particular, Intervenors’ argument that the purpose of Costa-Hawkins was to “offer tenants some protection from a fully free-market approach to landlord-tenant transactions,” rather than to protect landlords, contradicts the case law and legislative history cited above.

It also misstates the case law it cites in support of this proposition. [*Action Apartment Ass’n, Inc. v. City of Santa Monica*, 41 Cal. 4th 1232 \(2007\)](#) (“*Action Apartment Association*”); [*San Francisco Apartment Assoc. v. City & County of San Francisco*, 74 Cal. App. 5th 288 \(2022\)](#), and [*Mak v. City of Berkeley Rent Stabilization Bd.*, 240 Cal. App. 4th 60 \(2015\)](#), all held that local interference with Costa-Hawkins was only authorized in cases of bad faith or malice by the landlord, which—as the Court noted below—Measure H does not require.

Additionally, [*Action Apartment Association, Mosser Companies v. San Francisco Rent Stabilization & Arbitration Bd.*, 233 Cal. App. 4th 505 \(2015\)](#), and [*Cobb v. San Francisco Residential Rent Stabilization and Arbitration Bd.*, 98 Cal. App. 4th 345 \(2002\)](#), all dealt with [*Civil Code § 1954.53\(a\)*](#), which imposes vacancy decontrol but otherwise allows the application of rent control to non-exempt units. To the extent those cases contain language suggesting a balance between the free market and tenant protections, that language is not relevant to [*Civil Code § 1954.52\(a\)*](#), which allows the owners of “exempt” units to “adjust the rent on such property at will, [n]otwithstanding any other provision of law.” [*DeZerega v. Meggs*, 83 Cal. App. 4th 28, 41 \(2000\)](#).

Like Santa Monica’s ordinance authorizing civil and criminal penalties against a landlord who brought any action to recover possession of a rental unit without a reasonable factual or legal basis, found by this Court to be preempted as “contradictory” to the litigation privilege in [*Action Apartment Association*](#) because it “cut against the litigation privilege’s ‘core policy’ of protecting access to the courts,” [41 Cal. 4th at 1244](#), so, too, in this case, Pasadena’s relocation assistance provision cuts against the “core policy” of [*Civil Code § 1954.52\(a\)*](#), which is to allow the owners of “exempt” units, and not local governments, to set rental rates for these units.

To conclude otherwise would be to draw a road map for the evasion of preemptive state law. If Intervenor’s and Respondents’ position were accepted, what would stop localities from adopting a policy that landlords could impose any rent they want upon vacancy, but that they would then have to give their new tenants refunds equal to the amount of rent charged that exceeded the rent in effect before—effectively nullifying Costa-Hawkins’ vacancy decontrol provisions? Or, closer to his case, what would stop localities from saying that the owners of exempt units can raise the rent to whatever level they want but must then refund the increased amount to the tenants who choose to stay, effectively imposing rent control by other means? Perhaps, a bit less blunt: could Pasadena defeat vacancy decontrol by saying that landlords can set rents for a vacant unit as they see fit, but if they raise it more than a specified amount they are not eligible to take the annual general adjustment provided by section 1808 of Measure H (1AA052-054) for a certain number of years thereafter?

Such policies would effectively render Costa-Hawkins a dead letter, but they appear equally consistent with Respondents’ and Intervenor’s argument that “[n]othing in the Costa-Hawkins Act guarantees that rent increases will be fully profitable; it merely guarantees that they can be imposed.” (Respondents’ Request at 7.) However, state law cannot be circumvented so easily.

Finally, Intervenor’s and Respondents’ argument that this decision opens the door to invalidation of any law that interferes with landlords’ “profits” is a red herring, as discussed more fully in Appellants’ Combined Answer (*see* page 29). While the Court of Appeal did note that “the money a landlord must pay in relocation assistance reduces the amount of income the landlord receives from the rental property,” [117 Cal. App. 5th at 236](#), it did not thereby imply that all negative financial effects of any kind are forbidden. Rather, that statement summarizes the mechanism by which “the relocation assistance requirement financially penalizes landlords for exercising their rights under the Costa-Hawkins Act.” *Id.* It is that penalty—which is *directly* tied to the exercise of owners’ state law rights—that frustrates the Act’s purposes.

B. The Additional Arguments Raised by Respondents Likewise Provide No Basis for Depublication.

Even more so than the arguments discussed above, the additional arguments raised by Respondents amount to little more than a rehash of the arguments—deeply flawed arguments—set forth in their petition for review. Again, Appellants have already replied at length to these points, but in summary:

- The Court of Appeal did not err in deciding this case as a facial matter. It rightly concluded that any financial penalty imposed on the exercise of state law rights is a “categorical infringement” that is preempted regardless of the amount of the penalty. [CAA, 117 Cal. App. 5th at 234](#) (quoting [Coyne, 9 Cal. App. 5th at 1232](#)). Thus, the relocation assistance requirement is invalid “in the *generality* or *great majority* of cases” in which it applies—indeed, all such cases. [San Remo Hotel v. City & Cty. of San Francisco, 27 Cal. 4th 643, 673 \(2022\)](#) (emphasis in original), partially abrogated on other grounds as recognized in [Benedetti v. Cty. of Marin, 113 Cal. App. 5th 1185, 1197 \(2025\)](#). See also [CAA, 117 Cal. App. 5th at 234 n.17](#).³
- Respondents’ argument that Costa-Hawkins’ savings clause, [Civ. Code § 1954.52\(c\)](#), authorizes this relocation assistance is based on the false premise—rightly rejected by the Court of Appeal—that when a tenant voluntarily vacates a unit in response to a lawful rent increase that amounts to a “constructive eviction.” Constructive evictions—at least where

³ The Court of Appeal rightly recognized that “[i]n assessing a facial challenge, [t]he proper focus of constitutional inquiry is the group for whom the law is a restriction, not the group for whom the law is irrelevant.” [CAA, 117 Cal. App. 5th at 233-34](#) (internal quotation marks omitted for clarity) (quoting [Tom v. City & Cty. of S.F., 120 Cal. App. 4th 674, 680 \(2004\)](#)). See also [Am. Acad. of Pediatrics v. Lungren, 16 Cal. 4th 307, 345 \(1997\)](#).

there is no physical interference with the tenant’s possession—require a wrongful act on the part of the landlord, of which there is none, and malice or bad faith, which Measure H does not require. *See, e.g., 7 Cal. Real Estate Law & Practice (2026), § 200.51.*

- The [Tenant Protection Act of 2019](#) has no bearing on this case, as the Court of Appeal apparently concluded after requesting supplemental briefing on the issue. *See CAA, 117 Cal. App. 5th at 231 n.16.* None of that act’s provisions authorize local governments to adopt any regulations they could not otherwise adopt, and the act expressly and explicitly disclaims any intention to dilute or undermine the protections of Costa-Hawkins. *See Civ. Code § 1947.12(d)(3), (m)(2)-(3).* As herrings go, this one is a bright crimson.
- Respondents mischaracterize the decision of the court of appeal in [Palmer](#) to strike down the “in lieu” fee as contradicting Costa-Hawkins. Contrary to Respondents’ claim, that court did not characterize the fee as “otherwise valid”—that was the City of Los Angeles’ characterization. The court referred to it as “the *invalid* in lieu fee provision.” [175 Cal. App. 4th at 1412](#) (emphasis added). Nor is it accurate to say that the *Palmer* court “struck down the fee provision under a severability analysis, not a preemption analysis.” (Respondents’ Request at 9.) In fact, the court struck down the fee on *both* grounds. It held that the “invalid fee” was not severable from the rest of the statute, but it further held that the in-lieu fee “is also preempted by the Act.” [Id. at 1411.](#)
- Respondents’ efforts to distinguish [Coyne](#) on various grounds—that it was about the Ellis Act instead of Costa-Hawkins, involved “rent subsidies,” and “does not have the same savings clause”—are superficial distinctions. The Court below is not the first to recognize that the Ellis Act and Costa-Hawkins are “analogous” and that preemption cases under the former provide useful guidance in cases under the latter. *See, e.g., Apartment Ass’n of L.A. Cty., Inc., 136 Cal. App. 4th*

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[119, 132-32 \(2006\)](#), *rev. denied*, [2006 Cal. LEXIS 5567 \(May 10, 2006\)](#).

CONCLUSION

For the foregoing reasons, the Court should—in addition to denying the petitions for review—deny Intervenors’ request for depublication of Section C-1 and C-2 of the opinion below. The Court’s decision was a straightforward application of long-standing state preemption case law in a new factual context, *see* [Cal. R. Ct., rule 8.1105\(c\)\(2\)](#), and Intervenors’ and Respondents’ arguments to the contrary are based on mischaracterizations of the pertinent case law and straw men.

Respectfully submitted,
NIELSEN MERKSAMER LLP

By:



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Counsel for Appellants

cc: see attached proof of service

PROOF OF SERVICE

I, TAYLOR FOSTER, declare as follows:

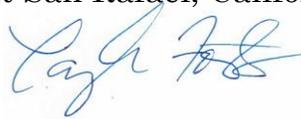
I am over eighteen years of age and a citizen of the State of California. I am not a party to this action. My business address is 2350 Kerner Boulevard, Suite 250, San Rafael, California 94901, and my electronic service address is tfoster@nmgovlaw.com.

On February 23, 2026, I served the foregoing “**Appellants’ Opposition to the Requests of Respondents, Intervenors and Amici Curiae for Partial Depublication of Opinion**” on the persons shown on the attached Service List:

X BY ELECTRONIC SERVICE: Pursuant to California Rules of Court, Rule 8.70 I caused the documents to be served electronically through TrueFiling in portable document format (“PDF”) Adobe Acrobat.

I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct.

Executed February 23, 2026, at San Rafael, California.



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