

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT, DIVISION SEVEN

APARTMENT ASSOCIATION OF  
LOS ANGELES COUNTY, INC. dba  
APARTMENT ASSOCIATION OF  
GREATER LOS ANGELES,

Plaintiff and Appellant,

vs.

CITY OF LOS ANGELES;  
COUNCIL OF THE CITY OF LOS  
ANGELES,

Defendants and Respondents.

Case No. B336071

Los Angeles County  
Superior Court  
No. 23STCP00720

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**AMICUS CURIAE CITY AND  
COUNTY OF SAN FRANCISCO'S  
APPLICATION FOR LEAVE TO FILE  
AMICUS CURIAE BRIEF**

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The Honorable Mitchell L. Beckloff

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**APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF  
AND STATEMENT OF INTEREST OF AMICUS CURIAE**

Pursuant to California Rules of Court, rule 8.200(c), the City and County of San Francisco (“San Francisco”) respectfully submits this application to file an amicus curiae brief in support of Defendants-Respondents City Of Los Angeles and the Council Of The City Of Los Angeles (“Los Angeles”).

San Francisco enacts laws to regulate the landlord-tenant relationship and to define the substantive reasons when tenants may be evicted. San Francisco has an interest in ensuring the proper development of the law concerning its ability to continue to adopt and enforce such laws.

While San Francisco agrees with Los Angeles that state law does not preempt either of the Los Angeles tenant protection laws at issue here, we write separately to address new arguments Petitioners make for the first time in their reply brief, regarding Los Angeles Ordinance No. 187763 (the “Eviction Threshold Ordinance”) and the effect of *San Francisco Apartment Assn. v. City and County of San Francisco* (2024) 104 Cal.App.5th 1218 (“*SFAA 2024*”). Petitioners assert under *SFAA 2024* that local governments may not adopt laws that impact the timing of evictions or that have a “procedural purpose,” because such laws conflict with the state unlawful detainer statutes (Code Civ. Proc. § 1159 *et seq.*); and because other state statutes have impliedly occupied the field of the timing of landlord-tenant transactions. (Reply at 10-16.)

The *SFAA 2024* opinion is flawed, not legally binding on this Court, and in any event not applicable to this dispute. We urge this Court to find that *SFAA 2024* does not control and to uphold the Eviction Threshold Ordinance.

Dated: November 26, 2024

Respectfully Submitted,

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By: /s/Manu Pradhan  
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FRANCISCO

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**[PROPOSED] BRIEF OF AMICUS  
CURIAE CITY AND COUNTY OF  
SAN FRANCISCO IN SUPPORT OF  
RESPONDENTS**

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The Honorable Mitchell L. Beckloff

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## ARGUMENT

San Francisco writes to urge this Court not to extend the *SFAA 2024* decision to this case. The reasoning in the opinion is flawed and may create uncertainty and confusion, especially if this Court extends it to the facts of this case as Petitioner urge. This Court should hold that the decision does not control here, for three main reasons.

First, the *SFAA 2024* opinion concerned a warning notice requirement that is unlike the Eviction Threshold Ordinance at issue here. Second, the opinion erred because state law does not preempt local laws regulating evictions merely because those laws may impact the timing of evictions – as set forth in *San Francisco Apartment Assn. v. City & County of San Francisco* (2018) 20 Cal.App.5th 510 (“*Educators*”) and *Rental Housing Assn. of Northern Alameda County v. City of Oakland* (2009) 171 Cal.App.4th 741 (“*Rental Housing*”). Third, Petitioner’s arguments based on *SFAA 2024* misunderstand the role of “purpose” in a preemption analysis, as they focus not on the preemptive intent of the state Legislature but instead on the purpose of the local legislation as described by individual local legislators. *SFAA 2024* struck down a San Francisco law because the court found it had a “procedural purpose,” based on particular statements by an individual legislator that appeared to evidence such a purpose. *SFAA 2024* is limited to its unique facts and is therefore distinguishable.

**I. THE UNLAWFUL DETAINER STATUTES DO NOT PREEMPT REGULATIONS CONCERNING THE SUBSTANTIVE GROUNDS FOR EVICTION**

Los Angeles correctly summarizes the law concerning preemption in this context. (Respondent’s Brief at 23-31.). Cities have authority to regulate the substantive bases for eviction, but they may not interfere with the procedures set forth in the unlawful detainer statutes. (*Birkenfeld v. City of Berkeley* (1976) 17 Cal.3d 129.) The caselaw can be divided into two broad categories. As to procedure, cities may not require landlords to secure additional legal approvals as a precondition of filing eviction lawsuits (*ibid.*), nor may they alter the procedural rules that apply in those lawsuits (*Bohbot v. Santa Monica Rent Control Bd.* (2005) 133 Cal.App.4th 456 [voluntary dismissals]; *Fisher v. City of Berkeley* (1984) 37 Cal.3d 644 [burdens of proof]). But while cities cannot alter procedures in the unlawful detainer statutes, cities retain the power to define what is a “just cause” for eviction. (*Birkenfeld*, 17 Cal.3d at 129; *see also Rental Housing*, 171 Cal.App.4th 741, and *Educators*, 20 Cal.App.5th 510, discussed further below.) The Eviction Threshold Ordinance sets a substantive trigger for when a landlord has just cause to evict, a materiality standard for how much unpaid rent justifies removing a tenant from their home, and is not preempted.

## II. THE *SFAA 2024* DECISION IS NOT CONTROLLING OR PERSUASIVE AS APPLIED TO THIS CASE.

*SFAA 2024* analyzed an amendment to San Francisco’s Rent Ordinance that required landlords to provide warning notices. San Francisco’s Rent Ordinance recognizes sixteen situations where a landlord may have “just cause” to evict a tenant. (S.F. Admin. Code § 37.9(a)(1)-(16).) The amendment (hereafter, “the Ordinance”) provided that six of those situations would rise to the level of just cause only if the tenant’s violation persisted despite a warning notice. Under the Ordinance, these situations would justify eviction only if “the violation is not cured within ten days after the landlord has provided the tenant a written warning that describes the alleged violation and informs the tenant that a failure to correct such violation within ten days may result in the initiation of eviction proceedings,” except that a written warning would not be required in situations involving an imminent health or safety issue or the nonpayment of COVID-19 rental debt.

*SFAA 2024* held that the Ordinance was preempted based on a conflict with the unlawful detainer statutes, because the Ordinance defined just cause in terms of how long a tenant had remained at fault despite the landlord having informed them in writing that they were in violation. In particular, the opinion found a conflict between the ten-day cure period that defined just cause under the Ordinance, and the three-day notice to quit that landlords who have just cause must serve to initiate the unlawful detainer process under Code of Civil Procedure Section 1161.

The opinion reached this holding after reviewing numerous statements by the Ordinance’s sponsor about why the unlawful detainer statutes created a need for the Ordinance. Based on these statements, the court found that the Ordinance had a procedural purpose, and was preempted. (*SFAA 2024*, 104 Cal.App.5th at 1232-34.) Also, the opinion held that the state Legislature has impliedly occupied the field of “landlord-tenant notification timelines.” (*Id.* at p. 1238).

**A. The *SFAA 2024* Decision’s Discussion Of The Unlawful Detainer Statutes Concerned Types Of Local Laws And Facts Not At Issue Here.**

Citing *SFAA 2024*, Petitioners claim state law preempts local laws that impact or otherwise take into account the timing of evictions. (Reply at 10-16.) The argument turns on whether Plaintiffs can meaningfully distinguish *San Francisco Apartment Assn. v. City & County of San Francisco* (2018) 20 Cal.App.5th 510 (“*Educators*”) and *Rental Housing Assn. of Northern Alameda County v. City of Oakland* (2009) 171 Cal.App.4th 741 (“*Rental Housing*”). Those cases recognize that whether an eviction is “just” can turn on the timing of when it would occur. Indeed, all just cause laws may affect timing in some sense: a landlord who has just cause may evict, whereas a landlord who does not have just cause yet must wait until they do.

The *Educators* case illustrates this principle. That case concerned a San Francisco law that restricted landlords from

evicting students and teachers during the school year. The law certainly impacted the timing of when landlords could resort to the unlawful detainer process, but it was not preempted, because the impact on timing arose out of a substantive determination as to when there was just cause. (20 Cal.App.5th at 518; *see also Birkenfeld*, 17 Cal.3d at 173 [striking down a local procedure for being “inexcusably cumbersome,” while recognizing that delays that are “inherent” or “essential” or “reasonably related” to the regulation of excessive rents would not be preempted].)

*SFAA 2024* tried to distinguish *Educators* on the basis that the law in *Educators* merely protected a specific group, whereas the Ordinance supposedly created “a blanket timing barrier across six grounds for eviction where the tenant is at fault.” (*SFAA 2024*, 104 Cal.App.5th at 1235.) But whether a law should protect a specific group of tenants versus all tenants, and how to define that group, is itself a substantive determination. And those questions are all distinct from whether a law interferes with the procedures set forth in the unlawful detainer statutes. In any case, there is an even simpler response to Petitioners on this point: the Eviction Threshold Ordinance *does* regulate on the basis of a specific protected group. It treats those tenants whose unpaid rent falls below the threshold as a separate group that is protected from eviction, whereas tenants whose unpaid rent exceeds the threshold fall outside the protected group.

The *Rental Housing* case also illustrates the principle that procedural impacts that flow from substantive just cause rules do not conflict with state law. There, Oakland voters adopted an

initiative measure that prohibited immediate for-fault tenant evictions, and instead allowed evictions only if the tenant had not corrected the fault even after a written notice. (171 Cal.App.4th at 762.) Thus, a tenant’s violation would amount to just cause only if the specified conduct continued after the landlord provided written notice to cease, but would not amount to just cause if the tenant ceased the offending conduct once notified by the landlord. (*Id.* at p. 763.) The court held the warning notice requirement did not conflict with the unlawful detainer statutes. And the fact that this case has stood for over 15 years, without the Legislature abrogating it, is strong support for the principle that a just cause regulation does not conflict with state law merely because it has an impact on the timing of when a landlord may evict.

This court should follow *Rental Housing*, which remains good law, and reject Petitioners’ attempt to distinguish it under *SFAA 2024*. Petitioners claim *Rental Housing* is unpersuasive because that court considered certain arguments for the first time on appeal, and supposedly had “no occasion” to factor timing into its analysis. (Reply at 15.) But that is incorrect. The argument first raised on appeal in *Rental Housing* was vagueness, not preemption. (*Rental Housing*, 171 Cal.App.4th at 763-64.) And in any case, the court took notice that Oakland had adopted a seven-day cure period, held that this corrected any arguable vagueness in the law, and that the cure period differed from the “elaborate prerequisites” struck down in *Birkenfeld*, and found no preemption. (*Ibid.*)

Petitioners also suggest *Rental Housing* is distinguishable because Oakland had adopted its warning notice requirement as part of a “first time” implementation of a just cause requirement. (Reply at 15.) The *SFAA 2024* opinion compared Oakland in that regard to San Francisco, which first adopted its Rent Ordinance over 40 years ago. (*SFAA 2024*, 104 Cal.App.5th at 1237.) But the date that a local government first adopted a just cause rule is not relevant to the preemptive scope of State law: if that were the case, the same law could be preempted in one city but be valid in another. We would urge this court to follow the legal principle in *Rental Housing* – that the unlawful detainer statutes do not preempt local eviction laws just because those laws may impact the specific timing of when landlords may resort to the unlawful detainer process – and to reject the idea that cities with older tenant protection laws are held to a different preemption standard.

**B. The *SFAA 2024* Decision’s Discussion Of Implied Preemption Is Unhelpful For Similar Reasons, As Well As Legally Unsupported.**

As an alternative to claiming a direct conflict with the unlawful detainer statutes, Petitioners also cite *SFAA 2024* to argue that state law impliedly occupies the field of “landlord-tenant transactions.” (Reply at 13.) As an initial matter, we would note that *SFAA 2024* endorsed implied preemption in a narrower context – it concerned warning notices and held that

state law regulates the field of “notification timelines” (104 Cal.App.5th at 1238), not all types of landlord-tenant transactions. Also, *SFAA 2024* is easily distinguishable because the Eviction Threshold Ordinance does not impose a warning notice requirement.

A further reason to discount *SFAA 2024*’s implied preemption theory is that neither of the cases cited in *SFAA 2024* for that point are persuasive. The first case, *Tri County Apartment Assn. v. City of Mountain View* (1987) 196 Cal.App.3d 1283, concerned Civil Code Section 827, which requires landlords to give tenants 30 days’ notice before changing certain lease terms. Section 827 concerns when a changed lease term becomes legally effective, rather than whether a tenant’s breach of a particular lease term is material enough to justify the remedy of eviction. *See also Foster v. Britton* (2015) 242 Cal.App.4th 920, 932 [“We do not agree . . . that section 827 was intended to limit the substantive grounds for eviction.”].) The second case, *Channing Properties v. City of Berkeley* (1992) 11 Cal.App.4th 88, struck down an attempt to regulate evictions under the Ellis Act, which occupies the field only as to landlords who are seeking to withdraw their accommodations from the rental market in order to go out of business. The notice procedures under the Ellis Act do not preempt local laws concerning evictions unrelated to the Ellis Act, such as the Eviction Threshold Ordinance.

Finally, even beyond those two cases, implied preemption also is not a viable theory in the face of the subsequent holdings in *Educators* and *Rental Housing* that cities may adopt eviction

regulations that have some procedural impacts to account for the timing of the eviction.

**C. The *SFAA 2024* Decision Is Not Persuasive Because It Misapplied The General Test For Preemption, And Found Preemption Because Of A Local “Procedural Purpose.”**

Petitioners cite *SFAA 2024* in arguing that the Eviction Threshold Ordinance is preempted due to a “procedural purpose” and due to the “explicitly procedural motivations” Los Angeles supposedly had in adopting it. Los Angeles has explained why that mischaracterizes the Eviction Threshold Ordinance. (*See* Respondent’s Brief at pp. 27-29.) We write to underscore a more fundamental point, which is that *SFAA 2024*’s treatment of procedural purpose misapplies the law and in any case is inapplicable here.

*SFAA 2024* framed the preemption analysis in terms of whether San Francisco’s Ordinance itself had a procedural or substantive purpose. (104 Cal.App.5th at pp. 1232-33.) Unable to answer that question based on the face of the Ordinance, the court *sua sponte* dove into transcripts of hearings before San Francisco’s Board of Supervisors. The court devoted multiple pages to quoting from speeches by the Board member who sponsored the Ordinance, and determining from those quotes that Ordinance had a procedural purpose. (*Id.* at pp. 1232-33.)

This Court should decline Petitioners’ invitation to follow the *SFAA 2024* approach. What matters in preemption analysis is the *state Legislature’s* intent. (See, e.g., *Candid Enterprises, Inc. v. Grossmont Union High School Dist.* (1985) 39 Cal.3d 878, 886 [no preemption because “[t]he Legislature has not voiced such an intent”] [emphasis added]; *Educators*, 20 Cal.App.5th at p. 515 [“California courts will presume, absent a clear indication of preemptive intent *from the Legislature*, that such regulation is not preempted by state statute.”] [same].) And here, the state Legislature has not evidenced an intent to preclude ordinances like the Eviction Threshold Ordinance.

*SFAA 2024* claimed that *California Grocers Assn. v. City of Los Angeles* (2011) 52 Cal.4th 177 allowed it to focus on the motivations of an individual local legislator, but this flips *California Grocers* on its head. *California Grocers* cautioned *against* going down the rabbit-hole of analyzing preemption based on local purpose. The opinion noted that courts have “occasionally” considered evidence of an ordinance’s purpose as relevant to the preemption analysis, and acknowledged that evidence “for the sake of argument,” but instructed that any consideration of local purpose must be “nuanced” as the preemption analysis turns not on the local law’s purpose but on its “effect.” (*Id.* at p. 190.) Cases citing *California Grocers* on this point are similar. (See, e.g., *City & County of San Francisco v. Post* (2018) 22 Cal.App.5th 121, 136 [focusing on effect of ordinance rather than its purpose, and finding no preemption]; *San Francisco Apartment Assn. v. City & County of San*

*Francisco* (2016) 3 Cal.App.5th 463, 483 [finding preemption because of an ordinance’s effect, despite its purpose].)

The problems with relying on local purpose to resolve a preemption question are many. Under the *SFAA 2024* approach, the analysis turns less on the effect of the local law, but instead on the subjective motivations of individual legislators as reflected in the legislative record. Whether the legislative record will fully capture those intentions and to what degree a court may impute individual intentions to entire local legislative bodies for the purpose of preemption analysis are additional questions. (See, e.g., *San Francisco Apartment Assn. v. City & County of San Francisco* (2016) 3 Cal.App.5th 463, 476 [“[I]n performing the preemption analysis, we must keep in mind the general rule that the validity of a legislative enactment hinges on the enactment's actual operation and effect rather than the subjective motivation of the legislators....”].)

Assuming for sake of argument that it made sense to delve into statements made by individual local legislators in the *SFAA 2024* case, it was due to the unique facts and circumstances of that case, and the particular legal approach that San Francisco took in that instance. Those considerations are not present with respect to the Eviction Threshold Ordinance.

## CONCLUSION

For the foregoing reasons, the Court should affirm the Court’s trial ruling.

Dated: November 26, 2024

Respectfully Submitted,

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By: /s/ Manu Pradhan  
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**CERTIFICATE OF COMPLIANCE**

I hereby certify that this brief has been prepared using proportionately double-spaced 13 point Century Schoolbook typeface. According to the "Word Count" feature in my Microsoft Word for Windows software, this brief contains 2,630 words.

I declare under penalty of perjury that this Certificate of Compliance is true and correct and that this declaration was executed on November 26, 2024.

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By:   
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FRANCISCO

**PROOF OF SERVICE**

I, Pamela Cheeseborough, declare as follows:

I am a citizen of the United States, over the age of eighteen years and not a party to the above-entitled action. I am employed at the City Attorney's Office of San Francisco, City Hall, Room 234, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102. On November 26 2024, I served the following document(s):

**AMICUS CURIAE CITY AND COUNTY OF SAN FRANCISCO'S APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF**

**[PROPOSED] BRIEF OF AMICUS CURIAE CITY AND COUNTY OF SAN FRANCISCO IN SUPPORT OF RESPONDENTS**

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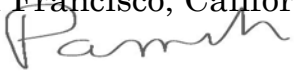
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in the manner indicated below:

- BY UNITED STATES MAIL:** Following ordinary business practices, I sealed true and correct copies of the above documents in addressed envelope(s) and placed them at my workplace for collection and mailing with the United States Postal Service.
- BY ELECTRONIC SERVICE:** Pursuant to California Rules of Court 2.253(b)(2), 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 November 26, 2024, at San Francisco, California.

  
\_\_\_\_\_  
Pamela Cheeseborough