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CLERK SUPREME COURT

September 28, 2009

The Honorable Chief Justice Ronald M. George
The Honorable Associate Justices
Supreme Court of California
350 McAllister Street
San Francisco, CA 94102-4797

Re: Petition for Review in *Palmer/Sixth Street Properties, L.P.*, v. *City of Los Angeles*, Supreme Ct. No. S175955, Ct. of Appeal No. B206102

Dear Chief Justice George and Hon. Justices of the California Supreme Court:

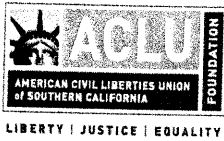
Pursuant to Rule 8.500(g) of the California Rules of Court, *amici curiae* Southern California Association for Nonprofit Housing, the California Coalition for Rural Housing, the Inner City Law Center, the Tenderloin Housing Clinic, the Association for Community Reform Now, and Tenants Together respectfully request that this Court grant the City of Los Angeles's petition for review of the Court of Appeal's opinion in this case (the "Opinion"). This case merits review to settle important questions of law and to secure uniformity of decision. C.R.C. 8.500(b)(1).

In a ruling that will impact housing programs across California, a Court of Appeal held for the first time that the "vacancy decontrol"¹ provisions of the Costa-Hawkins Rental Housing Act, Civil Code Section 1954.53(a) ("Costa-Hawkins" or the "Act") preempt a city's inclusionary zoning law as applied to rental housing.

While the Opinion invalidates only the inclusionary housing provisions of the Los Angeles Central City West Specific Plan (the "Plan"), the potential impact of this decision extends far beyond Los Angeles. More than 170 cities and counties, or approximately one-third of the local jurisdictions in the state, have enacted such "inclusionary zoning" ordinances,² which require either

¹ Costa-Hawkins establishes "vacancy decontrol" — a moderate form of rent control that allows a landlord to set initial rents for a new tenant after a vacancy — as the rule in California by providing that, except in specific circumstances, "an owner of residential real property may establish the initial rental rate for a dwelling or unit . . ." Civ. Code § 1954.53(a). "Vacancy decontrol" stands in contrast to "vacancy control," a strict rent control in which local governments can limit the rent increases even between tenancies, and which is barred under Costa-Hawkins.

² Non-Profit Housing Association of Northern California, *Affordable By Choice: Trends in California Inclusionary Housing Programs*, at 5 (2007) ("*Affordable by Choice*"), available at http://nonprofithousing.org/pdf_attachments/IHIREport.pdf.



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that new residential developments include a certain percentage of units priced affordably and reserved for persons of lower or moderate incomes, or that the developer elect some other means of facilitating the development of the requisite affordable units. Between 1999 and 2007 alone, these ordinances created nearly 30,000 affordable units in California that housed more than 80,000 people.³

While inclusionary zoning programs vary in certain respects, they share common features. Like the Plan, all impose requirements on new development to further affordable housing development that include, as one avenue of compliance, the construction of affordable units, which encompasses limiting the rents and income eligibility for housing offered for rent. *See* Plan §§ 11(C)(2)(a) (offering “set-aside” option of making 15% of the units produced affordable, or producing a similar number of affordable units off-site). Also like the Plan, the overwhelming majority allow developers to choose a fee option as an alternative to constructing units. *See* Plan § 11(C)(2)(d) (offering developers the option of complying with inclusionary requirements by paying a fee that reflects the cost of subsidizing the affordability of 15% of the units and that will be used by the City to develop affordable housing). The Court of Appeal’s misinterpretation of these aspects of the Plan therefore has statewide ramifications.

The Court of Appeal’s decision urgently requires review for three major reasons: *First*, the Opinion inaccurately interprets the Plan’s inclusionary zoning provisions as forcing developers to construct affordable rental units even where constructing units is only one of several options for compliance. This construction both misinterprets a common feature of widely-enacted municipal law and conflicts with the reading given a substantially similar ordinance in *Home Builders Association of Northern California v. City of Napa* (2001) 90 Cal. App. 4th 188. *Second*, the Opinion establishes a broad interpretation of Costa-Hawkins that is inconsistent with both the statutory language and legislative history of the Act and that brings that statute into conflict with other state statutes that establish or endorse inclusionary zoning. *Third*, the Opinion’s holding that Costa-Hawkins preempts the Plan’s fee option, despite the absence of any mention of fees in the Act, departs from basic principles of statutory interpretation. *Fourth*, the Court of Appeal’s erroneous interpretations both of Costa-Hawkins and of the basic aspects of an inclusionary zoning ordinance threaten to invalidate the more than 170 inclusionary zoning ordinances that have been adopted throughout California to provide fair and affordable housing.

I. Interests of Amici

Amici are non-profit housing developers, legal services organizations dedicated to serving low-income tenants housing needs, and organizations of low-income tenants that inclusionary programs are designed to benefit. Both the Southern California Association for Nonprofit Housing (SCANPH) and the California Coalition for Rural Housing (CCRH) are membership

³ *Id.* at 11. These figures likely represent a significantly undercount, as many jurisdictions do not track the number of units developed using “in-lieu” fees paid by developers who chose not to construct units on-site.

organizations dedicated to the development, preservation, and management of affordable housing for low and moderate income Californians, whose membership includes the majority of nonprofit developers in California.⁴ Inner City Law Center, the only full-time provider of legal services headquartered on Skid Row in downtown Los Angeles, has as its major emphasis safe and affordable housing. The Tenderloin Housing Clinic, Inc. provides legal assistance, housing referral and rental housing for tenants in San Francisco's lowest-income neighborhoods, and is one of the larger providers of rental housing services for homeless and formerly homeless single adults in San Francisco. Tenants Together, California's only statewide renter's rights organization, and the Association for Community Reform Now (ACORN), a membership organization comprised of more than 35,000 low and moderate income Californians (about 75% of whom would be eligible for the type of housing created by the challenged requirement in this case), both represent members who endure hardship as a direct result of the severe shortage of affordable housing throughout California. Inclusionary zoning ordinances effectively advance *amici's* organizational goals of promoting the development of low-income housing and directly benefit their members and clients, both the developers who receive funding for affordable housing construction from revenues generated by the fees imposed by inclusionary housing ordinances and the tenants who benefit from the affordable housing created pursuant to such ordinances.⁵

II. The Court of Appeal's Finding of Conflict Preemption Rests on Deeply Flawed Interpretations of Both Costa-Hawkins and the Plan's Inclusionary Provisions

The Opinion holds that the affordable housing provisions of the Plan are "hostile or inimical to," and, therefore, preempted by, Costa-Hawkins' requirement that "an owner of residential real property may establish the initial rental rate for a dwelling or unit" Op. at 16; 175 Cal. App. 4th at 1410; Civ. Code § 1954.53(a). In reaching this result, the Court of Appeal adopted an inaccurate interpretation of the Plan's inclusionary zoning provisions that conflicts with another Court of Appeal's interpretation of a similar inclusionary ordinance. The Court of Appeal also interpreted Costa-Hawkins in a manner that contradicts the legislative intent behind the Act and gave such sweeping scope to the Act's provisions as to not only threaten local inclusionary ordinances across the state, but also to bring the Act into conflict with state laws establishing or condoning inclusionary zoning.

There is a presumption in favor of the validity of a local ordinance that has not been expressly preempted by state law. This is based on the understanding that "[w]hen the

⁴ SCANPH's membership includes over half of the non-profit community development organizations in California that actively build affordable housing, and nearly all of the nonprofit affordable housing developers in Southern California. CCRH is a state rural low income housing coalition formed in 1976 to improve rural housing and strengthen the capacity of the nonprofit and public sectors to provide affordable housing and related facilities.

⁵ SCANPH and ACORN sought to intervene in the trial court and filed an amicus brief in the Court of Appeals.

Legislature wishes expressly to preempt all regulation of an activity, it knows how to do so.” *Big Creek Lumber Co.*, 38 Cal. 4th at 1155. The presumption is also based on a deference to local government’s regulatory power and respect for regional needs: “[I]f there is a significant local interest to be served which may differ from one locality to another then the presumption favors the validity of the local ordinance against an attack of state preemption.” *Id.* “[W]hen local government regulates in an area over which it traditionally has exercised control, such as the location of particular land uses, California courts will presume, absent a clear indication of preemptive intent from the Legislature, that such regulation is *not* preempted by state statute.” *Big Creek Lumber Co.*, 38 Cal. 4th at 1149. *Id.*

A. The Court of Appeal’s Analysis Distorts Costa-Hawkins and Misreads the Plan’s Inclusionary Zoning Provisions

The Opinion wrongly finds conflict preemption where there is no direct contradiction between the language of statute and ordinance. The Opinion does so by adopting a distorted and overly broad reading of Costa-Hawkins’ restrictions on local governments, as well as by misreading aspects of the Plan that are similar to many inclusionary ordinances throughout the state, in conflict with prior case law.

The Opinion concludes that “[f]orcing Palmer to provide affordable housing units at regulated rents in order to obtain project approval is clearly hostile to the right afforded under the Costa-Hawkins Act to establish the initial rental rate,” Op. at 16-17; 175 Cal. App. 4th at 1411, despite the fact that Palmer or any other developer “may establish the initial and all subsequent rental rates” under Costa-Hawkins because he or she may choose to comply with the Plan’s affordability requirements by paying a fee, or indeed may avoid the requirements altogether by building below the threshold at which the affordable housing requirement is activated (of 10 or fewer units per lot). In so holding the Court of Appeal stretches Costa-Hawkins to where it forbids localities from even giving developers option of constructing affordable units as one means of compliance with affordable housing requirements — an interpretation that cannot be supported by the text of the Act.

The Court of Appeal’s holding also rests on an interpretation of the Plan’s inclusionary provisions that is both inaccurate and in conflict with the interpretation given a similar inclusionary ordinance in *Home Builders Association of Northern California v. City of Napa* (2001) 90 Cal. App. 4th 188. There, in addressing a due process challenge, the Court of Appeal rejected the argument that the ordinance required property owners to sell or rent their units to low income individuals. The court reasoned:

Under the ordinance, any person who does not want to see or rent a portion of his or her housing units to low income individuals may choose one of the alternatives, such as donating vacant land or paying an in-lieu fee. Thus [plaintiff’s] argument is based on an incorrect premise.

90 Cal. App. 4th at 198-99. Zoning ordinances commonly give developers a menu of options to comply with affordable housing requirements, and the conflict between the analysis in the *Napa* case and the Opinion's unsound reasoning — equating the Plan's offer of an option to provide affordable housing to eligible households with a mandate for fixed rents — will create (and already has created) significant confusion for local governments.

Because the Plan's provisions can be reconciled with *Costa-Hawkins*, the Court of Appeal's finding of conflict preemption goes against this Court's well-established rule that an ordinance does not conflict with state law if it “does not prohibit what the statute commands or command what it prohibits.” *Sherwin-Williams Co. v. City of Los Angeles* (1993) 4 Cal. 4th 893, 902. Review by this Court is necessary to restore the proper scope of *Costa-Hawkins* and to correct the misinterpretation of the Plan's terms that will cause confusion for jurisdictions throughout the state with similarly structured provisions.

B. The Court of Appeal Relies on a Construction of *Costa-Hawkins* that Is Clearly Inconsistent with the Legislative History

The legislative history of *Costa-Hawkins* clearly indicates the measure was intended for the narrow, specific purpose of ending strict forms of rent control, and was not understood at the time it was enacted to invalidate the rental housing component of the many inclusionary housing programs already in effect throughout the state. But the Court of Appeal erroneously failed even to consider this legislative history. This is significant for two reasons. First, under preemption analysis, local laws are not preempted by state statutes that serve a different purpose.⁶ *Birkenfeld v. City of Berkeley* (1976) 17 Cal.3d 129, 148-49. Moreover, under principles of statutory interpretation, the legislative history should be examined because the Act's language is at best ambiguous in its effect on inclusionary zoning, and because interpreting the statute to bar both inclusionary zoning provisions and fee alternatives is an absurd consequence the Legislature manifestly did not intend. *Coalition of Concerned Communities, Inc. v. City of Los Angeles* (2004) 34 Cal.4th 733, 737.

The legislative history clearly confirms the *Costa-Hawkins* was in no way intended to affect inclusionary zoning. Both staff analyses and sponsor statements repeatedly describe the Act as affecting “rent control,” but never mention any impact on inclusionary zoning. Rent control differs fundamentally from inclusionary zoning: while rent control regulates pricing

⁶ See also *Rental Housing Ass'n of No. Alameda Co. v. City of Oakland* (2009) 171 Cal. App. 4th 741 (local ordinance's prohibition of owner-occupancy eviction of tenants over 60 not preempted by FEHA because statute's purpose is to generally prohibit age discrimination in housing while the ordinance promotes rent and vacancy control objectives); *Citizens for Uniform Laws v. County of Contra Costa* (1991) 233 Cal.App.3d 1468, 1473-75 (in holding county ordinance that barred discrimination against persons with symptoms of AIDS not preempted by FEHA because purpose of ordinance to protect public health by encouraging people to consent to testing was different from FEHA's purpose to protect civil rights, noting, “The mere fact that the two sets of legislation employ similar regulatory tools (i.e., proscriptions against certain types of discrimination) does not mean they occupy the same field.”).

throughout the rental housing market by limiting rent increases for all landlords in a jurisdiction, regardless of the income of the occupant or rental price, inclusionary zoning uses City's land-use powers to ensure that minimum levels of affordable housing are constructed and actually occupied by low and moderate income households in a manner that prevents segregation on the basis of race, familial status, and socio-economic characteristics.⁷ The Assembly Floor Analysis of Costa-Hawkins described the bill's effect as "establish[ing] a comprehensive scheme to regulate local residential rent control."⁸ In summarizing the arguments in favor of Costa-Hawkins, both the Assembly and Senate Floor Analyses emphasized the effect of the bill in ending "strict vacancy control" ordinances and reaching compromise on "rent control ordinances."⁹ The analyses discuss the total effect of rent control ordinances across the state, noting that fourteen jurisdictions had adopted some form of rent control, enumerating the differences between "moderate" and "strict" rent control and that only "[f]ive vacancy control cities would be affected: Berkeley, Cotati, East Palo Alto, Santa Monica and West Hollywood," and estimating the number of rent-controlled units in those five jurisdictions that would be impacted by the Act.¹⁰ Indeed, Assemblymember Hawkins in his sponsor statement specifically pointed to Los Angeles as a "moderate" rent control jurisdiction that would be unaffected by the bill, despite the fact that the inclusionary provisions of the Plan, as well as inclusionary programs in the coastal zone and redevelopment areas, were all in effect at the time.¹¹

Although rent control is discussed throughout the legislative history, inclusionary zoning is not mentioned a single time in any of the bill analyses or sponsor statements,¹² despite the fact that at the time of the Costa-Hawkins Act's passage, at least 64 local jurisdictions in California had implemented inclusionary housing programs, 35 of them between 1990 and 1995.¹³ The

⁷ See *Birkenfeld*, 17 Cal.3d at 136 (upholding city's limitation on private rents as valid exercise of police power); *So. Burlington County N.A.A.C.P. v. Township of Mt. Laurel* (N.J. 1983) 456 A.2d 390, 446 n.30 (distinguishing inclusionary zoning from rent control).

⁸ Assembly Floor Analysis, A.B. 1164 (Costa-Hawkins) (July 25, 1995) at 3 (hereinafter "Assembly Floor Analysis"). Legislative history documents cited herein are attached to *Amici's* Request for Judicial Notice filed in the Court of Appeal.

⁹ See Assembly Floor Analysis, at 3; Sen. Floor Analysis, A.B. 1164 (July 20, 1995) (hereinafter "Senate Floor Analysis").

¹⁰ See Assembly Floor Analysis at 1, 4-5; S.B. 1257 Sen. Judiciary Comm. Analysis (for Apr. 4, 1995 hearing), at 5-6.

¹¹ See El Mallakh, *supra*, note 5, at 1870; Central City West Specific Plan, § 11(C) (L.A. Ord. No. 167,944) (1992), available at http://clkrep.lacity.org/onlinedocs/1987/87-0168-S4_ORD_167944_06-29-1992.pdf.

¹² See Nadia I. El-Mallakh, *Does the Costa-Hawkins Act Prohibit Local Inclusionary Zoning Programs?*, 89 Cal. L. Rev. 1847, 1871 (2001) (describing absence of any mention of inclusionary zoning in any of the sponsor statements).

¹³ California Coalition for Rural Housing and Non-Profit Housing Association of Northern California, *Inclusionary Housing in California: 30 Years of Innovation*, at 4, 13-15 (2003), available at

preemption of inclusionary zoning ordinances would have had a far broader effect than the end of strict rent control in five jurisdictions. In addressing whether Costa-Hawkins preempts inclusionary zoning ordinances, courts may presume that “the Legislature would not have made such a sweeping change in the scope of counties’ obligations . . . without a clear expression of an intention to do so.” *Hunt v. Superior Court* (1999) 21 Cal.4th 984, 1006; *accord Gardner v. County of Los Angeles* (1995) 34 Cal. App. 4th 200, 223 (a “specific, plain and emphatic expression of legislative intent would be necessary to justify the sweeping and drastic consequences . . . of so construing the statute”). The omission of any discussion of inclusionary zoning ordinances, despite their wide use, indicates that the Legislature did not intend the Act to have any effect on those programs, and certainly not the effect prescribed by the Opinion. *See Gardner*, 34 Cal. App. 4th at 223 n.21 (“[T]he absence of a clear expression of intent to change longstanding practices is a matter which [a court] can, and should, consider in construing the statute.” (emphasis in original)).

The Court of Appeal erred in finding direct conflict between statutes with different purposes in giving Costa-Hawkins a construction so at odds with legislative intent. Review by this Court is necessary to restore an interpretation of Costa-Hawkins consonant with the Legislature’s intent.

C. The Court of Appeal’s Construction of Costa-Hawkins Brings The Act Into Conflict With Other Provisions Of State Law

The Court of Appeal erred by giving Costa-Hawkins a broad construction that brings the Act into conflict with other provisions of state law that implement inclusionary zoning or endorse its use by local government. *Merrill v. Navegar, Inc.* (2001) 26 Cal.4th 465, 487 (strong presumption against repealing prior statute absent express indication of intent to do so); *Dyna-Med*, 43 Cal. 3d at 1386 (“[S]tatutes or statutory sections relating to the same subject must be harmonized, both internally and with each other, to the extent possible.”).

The Mello Act, Gov’t Code § 65590, has since 1981 effectively created an inclusionary scheme by limiting the conversion or demolition of low and moderate income residential units “unless provision has been made for the replacement of those dwelling units with units for persons and families of low or moderate income,” either through the construction of new units or through an in-lieu fee. *Id.* § 65590(b), (b)(4); *accord Venice Town Council, Inc. v. City of Los Angeles* (1996) 47 Cal. App. 4th 1547, 1561. California Redevelopment Law maintains an inclusionary housing requirement in redevelopment project areas, requiring 15% of all new units in each project area to be affordable to, and occupied by, persons and families of low or moderate income, to which end it authorizes redevelopment agencies to “cause by regulation . . . the purchase or other acquisition of, long-term affordability covenants on multifamily units that

restrict the cost of renting or purchasing” those units. Health & Safety Code § 33413(b)(2)(A)(i), (b)(2)(B). Inclusionary zoning is also contemplated by the Least Cost Zoning Law, Gov’t Code § 65913.1(a)(1), and the requirement in state Housing Element Law that localities must come up with plans to address their share of the regional need for low-to-moderate-income housing, Gov’t Code §§ 65302(c), 65583(a)(9) (expressly referencing inclusionary zoning), 65584, and 65589.8 (requiring localities adopting inclusionary zoning laws pursuant to a housing element to permit the developer to construct rental housing with restricted rents).

The Court of Appeal did not even address (much less resolve) the conflicts with other state laws that its interpretation of Costa-Hawkins creates. *Amici* respectfully request that this Court grant review and interpret Costa-Hawkins in a manner harmonized with other provisions of state law.

III. The Court Of Appeal’s Holding That Costa-Hawkins Preempts An Affordable Housing Fee Departs From Basic Principles Of Statutory Interpretation.

The Court of Appeal erred in finding that the plain language of Costa-Hawkins preempts the Plan’s fee option, despite the fact that Costa-Hawkins nowhere mentions fees. *Op.* at 17-18; 175 Cal. App. 4th at 1411. Nothing in the City’s assessment of a fee on new development to support affordable housing conflicts directly with Costa-Hawkins’ provision that owners “may establish the initial rental rate.” Civ. Code §1954.53(a) Assessment of a fee neither mandates that landlords set any initial rent, nor burdens landlords’ ability to set initial rents any more than the myriad other fees and procedural requirements that cities impose on developers. The Opinion fails to ground the finding that the fee is preempted either in the statutory language or in the legislative history, in a departure from basic principles of statutory interpretation. *See In re Corrine W.* (2009) 45 Cal.4th 522, 529 (statutory interpretation generally begins with statutory text, then moves to other indicia of legislative intent such as legislative history).

In concluding that the fee was preempted, the Court of Appeal forged a new test, finding the fee invalid because it was “inextricably intertwined with” the set-aside option, because the fee “is based solely on the number of affordable housing units that a developer must provide under the Plan.” *Op.* at 17; 175 Cal. App. 4th at 1411. This analysis simply makes no sense. Certainly, the fee amount is related to the number of units that would be constructed under the set-aside option. Indeed, this Court’s holdings require that the fee bear a “reasonable relationship” to the alternatives. *See, e.g., San Remo Hotel L.P. v. City And County of San Francisco* (2002) 27 Cal.4th 643, 671 (observing that “[a]s a matter of both statutory and constitutional law,” fees must bear a “reasonable relationship” to impact of development). However, the fee is not “intertwined” with the set-aside in the sense that the fee in any way

compels developers to set rents at rates determined by the City.¹⁴ Therefore, it cannot be preempted by Costa-Hawkins.

The “overwhelming majority” of jurisdictions with inclusionary zoning ordinances provide a fee option.¹⁵ The Court’s holding that the Plan’s fee option is also preempted by Costa-Hawkins therefore threatens inclusionary programs statewide.

IV. The Court of Appeal’s Broad Reasoning Threatens To Invalidate Similar Inclusionary Zoning Ordinances Throughout California

The Court of Appeal’s interpretation of the Costa-Hawkins Act threatens to destroy one of the most widely used and effective mechanisms for affordable housing construction at a time when the need for affordable housing in California has never been greater. A decision of such critical importance for the economically disadvantaged in California should be reviewed by this Court.

Inclusionary zoning generally refers to ordinances that impose on new developments requirements aimed at ensuring that a certain percentage of newly developed units are priced affordably, and in which one means of compliance is for the developer to include some affordable units in a market-rate development. The number of jurisdictions to adopt inclusionary housing programs has steadily increased since Petaluma and Palo Alto first implemented programs in 1973, rising to 64 local jurisdictions in 1994, to 107 in 2003, to more than 170 cities and counties throughout California today — approximately one-third of the local jurisdictions in the state.¹⁶ These inclusionary zoning programs vary in particulars such as the percentage of newly developed units to be made affordable, the income levels for which the affordable housing is reserved, the alternatives developers may choose besides on-site construction, the threshold size of a development for the requirement to apply, the duration of affordability, and the incentives provided to developers (such as financial subsidies, density bonus, or permit-related incentives).¹⁷ However, these laws are similar in that they impose requirements on new development to further affordable housing development that include, as one avenue of

¹⁴ While there are various statutory and constitutional limitations on a localities ability to impose fees on developments, *see, e.g.*, the Mitigation Fee Act, Govt. Code § 66000 *et seq.*; *San Remo Hotel L.P. v. City And County of San Francisco*, 27 Cal.4th 643, 671 (2002) (holding legislatively mandated fees must “bear a reasonable relationship” to development impact), the Court of Appeal did not rely on any of these limitations, and struck down the fee solely on grounds it conflicted directly with Costa-Hawkins.

¹⁵ *Affordable by Choice*, *supra* note 2, at 17.

¹⁶ California Coalition for Rural Housing and Non-Profit Housing Association of Northern California, *Inclusionary Housing in California: 30 Years of Innovation*, at 1, 2 (2003) (hereinafter “*30 Years of Innovation*”), available at www.calruralhousing.org/publications/46-inclusionary-housing-in-ca-30-years-of-innovation; *Affordable By Choice*, *supra* note 2, at 5.

¹⁷ *Id.* at 25–30.

compliance, the construction of affordable units, which encompasses limiting the rents and income eligibility for housing offered for rent. Thus nearly all programs stand to be challenged under the Court of Appeal's reasoning because, under nearly all programs, "the only way [a] builder could avoid [the alternate means of compliance] would be to permit itself to be bound by a set-aside provision" 175 Cal. App. 4th at 1411 n.13.

The validity of inclusionary zoning programs under Costa-Hawkins is an important legal question not only because these programs are used by so many local governments, but because they are such an effective tool for creating affordable housing that is sorely needed. In 1998, an academic study tallied the number of units affordable housing built under inclusionary programs in California at 24,000.¹⁸ Between 1999 and 2007, inclusionary zoning provisions created nearly 30,000 units of affordable housing, which housed more than 80,000 people.¹⁹ Nearly three-quarters of the units produced by inclusionary zoning are affordable to households that fall into the lowest government-measured income category.²⁰

Inclusionary ordinances have been adopted so quickly in recent years because the need for affordable housing is so great. Thirty-five percent of California households and 40 percent of California renters paid more than they can afford for housing.²¹ In 2006, over twenty-five percent of the renter households in the state — 1.3 million households — spent more than half of their income on rent.²² For example, of Los Angeles renters who earn less than half of the area median income, more than 70 percent pay more than 30 percent of their income for housing.²³ In many counties, fair market rents exceeded the monthly payments families receive from benefits programs such as CalWORKS or the Supplemental Security Income/State Supplementary Payment (SSI/SSP) program — even before the cuts and freezes to these benefits imposed in

¹⁸ Nico Calavita and Kenneth Grimes, *Inclusionary Housing in California: The Experience of Two Decades*, 64:2 J. of the Am. Planning Ass'n 150, 151, 165 (June 30, 1998).

¹⁹ *Affordable by Choice*, *supra* note 2, at 5.

²⁰ *Id.*

²¹ Cal. Dept. of Housing and Comm. Dev., *California's Deepening Housing Crisis*, at 4 (September 25, 2008) (hereinafter "*Housing Crisis*"). This figure uses the standard measure of affordability that a household should pay no more than 30 percent of its income on housing.

²² California Budget Project, *Locked Out 2008: The Housing Boom and Beyond* (February 2008) (hereinafter "*Locked Out 2008*"), available at www.cbpp.org/pdfs/2008/080212_LockedoutReport.pdf (last visited Sept. 14, 2009).

²³ City of Los Angeles Housing Department, *Building Healthy Communities 101: A Primer on Growth and Housing Development for L.A. Neighborhoods*, available at <http://www.lacity.org/lahd/curriculum/gettingfacts/affordability/housing-income.html> (last visited Sept. 14, 2009).

recent cuts to the state budget.²⁴ The present economic crisis has only heightened the problem, with workers facing lowered earnings and increased unemployment.²⁵

For these reasons, the above organizations respectfully request that this Court grant review of the question whether the Costa-Hawkins Act preempts the inclusionary housing provisions of the City of Los Angeles's Central City West Specific Plan.

Dated: Sept. 28, 2009

Respectfully submitted,

WESTERN CENTER ON LAW & POVERTY

LEGAL AID FOUNDATION OF LOS ANGELES

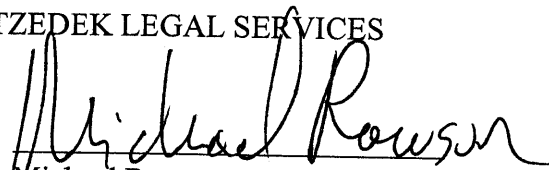
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²⁴ *Housing Crisis*, *supra* note 2, at 4; *Locked Out 2008*, *supra* note 3, at 4. In a 2008 study, the two-bedroom fair market rate exceeded the CalWORKS grant for a family of three in all but one of the 58 counties. The fair market value for a studio apartment exceeded half the value of the SSI/SSP grant for an elderly, blind, or disabled recipient in all 58 counties, and exceeds the entire grant in 12 counties. *Locked Out 2008*, *supra* note 3, at 4. In the recent budget cuts, California cut SSI/SSP benefits for those who are over 65 or suffer disabilities to \$845 per month from \$907 for individuals, and to \$1407 per month from \$1579 for couples, and cut future cost of living adjustments on the state portion of benefits. The state also cut CalWORKS benefits by 4% to an average of \$694 per month. *An Overview of Recent Cuts to California's Safety Net*, California Budget Project (August 2009), available at http://www.cbp.org/pdfs/2009/090821_Post_Webinar_Slides.pdf.

²⁵ California's unemployment rate hit a record high of 11.9 percent in July 2009, while nearly one out of five working-age adults was "underutilized" (either seeking jobs but unemployed, or working part-time but seeking full-time work). California Budget Project, *In the Midst of the Great Recession*, at 3 (September 2009), available at http://www.cbp.org/pdfs/2009/090906_labor_day.pdf (last visited Sept. 7, 2009). Since early 2008, drops in both the average hourly wages and average number of hours worked have contributed to reduced workers' earnings. *Id.*

DECLARATION OF SERVICE

I, Elizabeth Graber declare:

I am employed in the County of Alameda, State of California. I am over 18 years of age and not a party to the within action. My business address is 449 15th Street, Suite 301, Oakland, California 94612.

On September 28, 2009, I served a copy of the attached documents, described as:

LETTER TO JUSTICES OF THE SUPREME COURT OF CALIFORNIA IN SUPPORT OF THE PETITION FOR REVIEW OF PALMER/SIXTH STREET PROPERTIES, L.P. v. CITY OF LOS ANGELES, Court of Appeal Case No. B206102 (2nd Appellate Dist. 2009), Supreme Court Case No. S175955

on the parties of record and the Court of Appeal in this action by placing a true and correct copy thereof enclosed in a sealed envelope addressed as follows:

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I placed the sealed envelopes with postage thereon fully prepaid was placed for collection and mailing following ordinary business practices. Under that practice, the envelopes would be deposited with the U.S. Postal Service on that same day. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after the date of deposit for mailing set forth in this declaration.

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct. Executed on September 28, 2009, at Oakland, California.


Elizabeth Graber