Supreme Court of California
Jorge E. Navarrete, Clerk and Executive Officer of the Court
Electronically RECEIVED on 4/9/2025 10:20:25 AM

Supreme Court of California
Jorge E. Navarrete, Clerk and Executive Officer of the Court
Electronically FILED on 4/9/2025 by Karissa Castro, Deputy Clerk

S289952

No. ______________

In the Supreme Court of the State of California

TESORO REFINING & MARKETING COMPANY LLC and TESORO LOGISTICS OPERATIONS LLC,

Plaintiffs and Appellants,

v.

CITY OF CARSON and DOES 1-200,

Defendants and Respondents,

PETITION FOR REVIEW

Of the Decision of the Second Appellate District, Division 4
Appeal No. B335686
On Appeal from the Superior Court of Los Angeles County
The Honorable Holly J. Fujie, Presiding
Superior Court Case No. 23STCV14351

NIELSEN MERKSAMER LLP
* Christopher E. Skinnell, SBN 227093
Email: cskinnell@nmgovlaw.com
David J. Lazarus, SBN 304352
Telephone: (415) 389-6800
2350 Kerner Boulevard, Suite 250
San Rafael, California 94901

CAPITOL LAW & POLICY INC
Eric J. Miethke, SBN 133224
1215 K Street, Suite 1510
Sacramento, California 95814
Telephone: (916) 823-6224

Attorneys for Plaintiffs and Appellants
TESORO REFINING & MARKETING COMPANY LLC,
and TESORO LOGISTICS OPERATIONS LLC

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

☐ There are no interested entities or persons to list in this Certificate per California Rules of Court, Rule 8.208.

☒ Interested entities or persons are listed below:

	Name of Interested Entity or Person	**Nature of Interest**
1	Western Refining Southwest LLC	Financial
2	MPLX GP LLC	Financial
3	Marathon Petroleum Company LP	Financial
4	MPC Investment LLC	Financial
5	Giant Industries, Inc.	Financial
6	Andeavor LLC	Financial
7	Marathon Petroleum Corporation	Financial
8	Andeavor Logistics LLC	Financial
9	MPLX LP	Financial
10	MPLX Logistics Holdings LLC	Financial

April 9, 2025 NIELSEN MERKSAMER LLP

By:

Printed Name: Christopher E. Skinnell

Address: 2350 Kerner Boulevard, Suite 250
San Rafael, California 94901

State Bar#: 227093

Party Represented: *Plaintiffs and Appellants* TESORO REFINING & MARKETING COMPANY LLC AND TESORO LOGISTICS OPERATIONS LLC

TABLE OF CONTENTS

Page

QUESTION PRESENTED 11

WHY REVIEW SHOULD BE GRANTED 12

STATEMENT OF THE CASE 17

A. Assessment and Payment of the Illegal Tax and Tesoro's Claim for Refund Under the Government Claims Act 17

B. Summary of the Government Claims Act and the Pertinent Provisions of the Carson Municipal Code ("CMC") 20

C. Superior Court Proceedings 22

D. Decision of the Court of Appeal 24

LEGAL DISCUSSION 26

A. Principles Governing Preemption 26

B. The GCA "Occupies the Field" with Respect to the Process for Seeking a Refund of Local Taxes, to the Exclusion of Any Local Regulation 28

1. The Appeals Court's holding that the Act does not occupy the field conflicts with the Act's text, structure, and purposes 29

2. The Appeals Court's holding that the Act does not occupy the field is inconsistent with "history of regulation in the area" of government claims 33

3. The Appeals Court's holding that the Act does not occupy the field conflicts with this Court's decisions in *McWilliams* and *Volkswagen Pacific*, and the Second District's prior decision in *Sipple v. City of Hayward*........36

a. By its own terms, the *McWilliams* decision granted review to address three questions, of which the statutory interpretation question was only one; another was whether charter cities could adopt their own claim procedures 36

b. *McWilliams* approvingly cited the very footnote in *Volkswagen Pacific* that holds the GCA occupies the field..............................40

c. The Appeals Court's unduly narrow reading of *McWilliams* misled it into rejecting *Sipple*..........41

C. The Carson Municipal Code Also Contradicts the GCA in Various Respects 44

CONCLUSION...48

WORD COUNT CERTIFICATION.......................................50

DECLARATION OF CHRISTOPHER E. SKINNELL AUTHENTICATING ATTACHED EXHIBITS....................51

PROOF OF SERVICE..52

EXHIBIT A: Opinion of the Court of Appeal

EXHIBIT B: Order Denying Rehearing, Modifying the Opinion, and Denying Publication

TABLE OF AUTHORITIES

Page(s)

Cases

Am. Fin. Servs. Ass'n v. City of Oakland,
34 Cal. 4th 1239 (2005)..24, 29

Ardon v. City of L.A.,
52 Cal. 4th 241 (2011)................................... 12, 15, 29, 30

Bainbridge v. County of Riverside,
167 Cal. App. 2d 418 (1959).......................................19, 46

Batt v. City & Cty. of S.F.,
155 Cal. App. 4th 65 (2007) 40

Birkenfeld v. Berkeley,
17 Cal. 3d 129 (1976) 32

Bishop v. San Jose,
1 Cal. 3d 56 (1969) 38

Cal. Fed. Sav. & Loan Ass'n v. City of L.A.,
54 Cal. 3d 1 (1991) 38

Canova v. Trs. of Imperial Irrigation Dist. Emp. Pension Plan,
150 Cal. App. 4th 1487 (2007) 45

Chand v. Bolanos,
241 Cal. App. 4th 204 (2015) 32

City of L.A. v. Cty. of Kern,
No. 06-5094 GAF, 2006 U.S. Dist. LEXIS 81417 (C.D. Cal. Oct. 24, 2006) 47

City of Los Angeles v. Shell Oil Co.,
4 Cal. 3d 108 (1971) 18

City of Riverside v. Inland Empire Patients Health & Wellness Ctr., Inc.,
56 Cal. 4th 729 (2013) 46

City of Watsonville v. State Dep't of Health Servs.,
133 Cal. App. 4th 875 (2005) 38

Comm. of Seven Thousand v. Superior Court,
45 Cal. 3d 491 (1988) 32

County of L.A. v. Superior Court (Oronoz),
159 Cal. App. 4th 353 (2008) 40

Cty. of Amador v. El Dorado Cty. Water Agency,
76 Cal. App. 4th 931 (1999) 47

DiCampli-Mintz v. Co. of Santa Clara,
55 Cal. 4th 983 (2012) 13

Eastlick v. City of Los Angeles,
29 Cal. 2d 661 (1947) 27, 33, 34, 35, 40

Espinoza v. Super. Ct.,
83 Cal. App. 5th 761 (2022) 47

Ferrini v. City of San Luis Obispo,
150 Cal. App. 3d 239 (1983) 32

Fiscal v. City & Cty. of San Francisco,
158 Cal. App. 4th 895 (2008) 31

General Motors Corp. v. City of Los Angeles,
35 Cal. App. 4th 1736 (1995) 18

Helbach v. City of Long Beach,
50 Cal. App. 2d 242 (1942) 35

L.I.F.E. Comm. v. City of Lodi,
213 Cal. App. 3d 1139 (1989) 43

In re Lane,
58 Cal. 2d 99 (1962) 32

McWilliams v. City of Long Beach,
56 Cal. 4th 613 (2013) (*McWilliams*)........................ *passim*

Nast v. State Bd. of Equalization,
46 Cal. App. 4th 343 (1996) 45

O'Connell v. City of Stockton,
41 Cal. 4th 1061 (2007)...................................26, 27, 28, 33

People ex rel. Omlansky v. Save Mart Supermarkets,
39 Cal. App. 5th 523 (2019) 23

Peck v. Modesto,
181 Cal. App. 2d 465 (1960).. 35

Rental Hous. Ass'n of N. Alameda Cty. v. City of Oakland,
171 Cal. App. 4th 741 (2009) 47

Save Lafayette Trees v. E. Bay Reg'l Park Dist.,
66 Cal. App. 5th 21 (2021) 32

Scheiding v. GMC,
22 Cal. 4th 471 (2000).. 43

Schifando v. City of Los Angeles,
31 Cal. 4th 1074 (2003).. 21

Sherwin-Williams Co. v. City of Los Angeles,
4 Cal. 4th 893 (1993).. 26, 33

Sipple v. City of Hayward,
225 Cal. App. 4th 349 (2014), *rev. denied*, 2014 Cal. LEXIS 5113 (Cal., July 23, 2014) (*Sipple*)........ *passim*

Sterling v. Santa Monica Rent Control Bd.,
168 Cal. App. 3d 176 (1985).. 32

T-Mobile W. LLC v. City & Cty. of S.F.,
6 Cal. 5th 1107 (2019).. 32

Taylor v. Los Angeles,
180 Cal. App. 2d 255 (1960) 34

Tenneco W. v. Franchise Tax Bd.,
234 Cal. App. 3d 1510 (1991) 45

Tesoro Refining & Mktg. Co. LLC v. Super. Court,
No. B331256 (Cal. Ct. App. 2d Dist., Div. 4,
filed Aug. 25, 2023) 23

Thompson v. Marietta Educ. Ass'n,
No. 2:18-cv-628, 2019 U.S. Dist. LEXIS 206804
(S.D. Ohio Nov. 26, 2019) 43

Tivens v. Assessment Appeals Bd.,
31 Cal. App. 3d 945 (1973) 45

Tolman v. Underhill,
39 Cal. 2d 708 (1952) 27

Ventura v. City of San Jose,
151 Cal. App. 3d 1076 (1984) 32

Viles v. State,
66 Cal. 2d 24 (1967) 48

Volkswagen Pacific, Inc. v. City of Los Angeles,
7 Cal. 3d 48 (1972) (*Volkswagen Pacific*) .... *passim*

Ward v. Village of Monroeville,
409 U.S. 57 (1972) 16

Wilkes v. San Francisco,
44 Cal. App. 2d 393 (1941) 34, 44

Willis v. City of Carlsbad,
48 Cal. App. 5th 1104 (2020) 46

Wilson v. Beville,
47 Cal. 2d 852 (1957) 33, 38

Statutes

Bus. & Prof. Code § 16000(a) 18

Code Civ. Proc. § 313 .... 30, 40

Code Civ. Proc. § 1094.5 .... *passim*

Code Civ. Proc. § 1094.6 21

Fair Employment and Housing Act 19

Government Claims Act, Govt. Code § 810 *et seq*. .... *passim*

Chapter 1 31

§ 900 31

§ 905 .... *passim*

§ 905(a) 25, 37

Chapter 2 31

§ 910 .... 20, 31

§ 911.2 .... 20, 44, 46

§ 911.2(a) 20

§ 912.4(a) 20

§ 912.4(c) 21

§ 915(a)(1) 20

§ 915(a)(2) 20

§ 915.2 20

§ 935(a) 31

§ 945.6(a)(1) 20, 22

Govt. Code § 37101(b) 18

Public Liability Act of 1923 34

Constitutional Authorities

CAL. CONST., art. XI, § 7 26

CAL. CONST., art. XI, § 12 13

Other Authorities

Cal. Law Revision Comm'n, "Recommendation and Study relating to The Presentation of Claims Against Public Entities" (Jan. 1959) 29, 30

Cal. R. Court, Rule 8.500(b)(1) 16

Cal. R. Court, Rule 8.504(b)(4) 11

Carson Municipal Code §§ 63501-63526 .... *passim*

§ 63505 18

§ 63515 .... 21, 22

§ 63516(A) 21

§ 63523 22

§ 63523(A) 21

§ 63523(C) 21, 22, 44

Legis. Com. com., 32 West's Ann. Govt. Code (1995 ed.) foll. § 815 .... 30, 38

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

Plaintiffs and Appellants TESORO REFINING & MARKETING COMPANY LLC and TESORO LOGISTICS OPERATIONS LLC (collectively "Tesoro" or "Petitioners") respectfully petition for review of the unpublished decision of the Court of Appeal, Second Appellate District, Division 4, filed in this case on February 28, 2025, as modified on March 21, 2025. Pursuant to Rule of Court 8.504, subd. (b)(4), a copy of the opinion is attached as Exhibit A and a copy of the Order denying rehearing, modifying the opinion, and denying publication is attached hereto as Exhibit B.

QUESTION PRESENTED

This case presents the following question: Can local governments establish "administrative review" procedures—timelines, hearing requirements, etc.—that claimants for money or damages under the Government Claims Act, Govt. Code § 810 *et seq*. (the "GCA" or "Act"),[1] must exhaust as a precondition to pursuing their remedies under the Act, even where none of the exceptions in § 905 apply, or are such additional procedures preempted by the Act, which

[1] Statutory citations herein are to the Government Code unless otherwise specified.

"established a standardized procedure for bringing claims against local governmental entities"? *McWilliams v. City of Long Beach*, 56 Cal. 4th 613, 618-19 (2013) (*McWilliams*) (quoting *Ardon v. City of L.A.*, 52 Cal. 4th 241, 246 (2011)).

WHY REVIEW SHOULD BE GRANTED

This case raises an important question with broad, statewide implications that had seemingly already been settled by this Court's unanimous decision in *McWilliams* and a subsequent Court of Appeal decision in *Sipple v. City of Hayward*, 225 Cal. App. 4th 349 (2014), *rev. denied*, 2014 Cal. LEXIS 5113 (Cal., July 23, 2014) (*Sipple*): Whether the Government Claims Act prescribes the exclusive procedures for local taxpayers to seek refunds of taxes paid, or whether local governments may prescribe their own additional procedures that must be exhausted first.

In *McWilliams*, this Court was presented with the question of "which level of government—the state or the local public entity—should define the procedures governing an action for refund of a local tax." 56 Cal. 4th at 628-29. In response, this Court held "that except as to '[c]laims under the Revenue and Taxation Code or other statute prescribing procedures for the refund … of any tax,' the Legislature has determined that the Government Claims Act applies." *Id.* (quoting § 905). The Court further held that the phrase "other

statute" in section 905 does not include local enactments, *id.* at 619-26, and it rejected the argument that charter cities could adopt their own procedures under their constitutional home rule power in light of Article XI, section 12, which provides, "The Legislature may prescribe procedure for presentation, consideration, and enforcement of claims against counties, cities, their officers, agents, or employees." 56 Cal. 4th at 626-27.

The following year, applying the decision in *McWilliams*, Division 2 of the Second District held that "[t]o the extent that [local tax] ordinances establish a precondition to filing a claim, they are preempted by the [GCA]." *Sipple*, 225 Cal. App. 4th at 357-58.

That holding, besides being consistent with *McWilliams*, is also consistent with the text, structure, and history of the Act. It is consistent with the Act's purpose, which was to replace the "Byzantine claims system" that predated the GCA, consisting of "numerous state statutes and local ordinances" that created traps for unwary taxpayers, *DiCampli-Mintz v. Co. of Santa Clara*, 55 Cal. 4th 983, 997 (2012), with a uniform procedure. And it is consistent with this Court's holding in *Volkswagen Pacific, Inc. v. City of Los Angeles*, 7 Cal. 3d 48, 62 n.7 (1972) (*Volkswagen Pacific*), cited with approval in *McWilliams*, that "the filing of claims for money or damages against California government units is an area of statewide

concern in which the Legislature has *occupied the entire field*." (Emphasis added.)

The decision below, however, upends the law that was settled by *McWilliams*, *Volkswagen Pacific*, and *Sipple,* and it threatens to re-establish the traps for the unwary the Legislature sought to remove. When *it* was faced with the question of "which level of government—the state or the local public entity—should define the procedures governing an action for refund of a local tax," the Court of Appeal sided with the local government. Reading *McWilliams* as deciding a far narrower issue than this Court said it was deciding; dismissing *Volkswagen Pacific* as *dicta*; and rejecting *Sipple* altogether, it held that local governments *can* establish "preconditions" to local taxpayers' pursuit of remedies the Legislature has prescribed for seeking local tax refunds, by establishing extensive, time-consuming "administrative review procedures" that purportedly must be exhausted first.

Much turns on whether or not that decision is correct. In this case, the question controls millions of dollars, but it also affects potentially hundreds of millions more in other local tax cases and untold additional sums in non-tax cases.

As to taxes, as the City of Carson observed in its request for publication of the opinion, "the City has multiple business entities that are 'engaged in the City in the business of operating an oil refinery or facility that stores petroleum

products' that are subject to its Oil Industry Business License Tax," and Tesoro itself has additional refunds claims pending in the tens of millions of dollars.

Additionally, as the City further noted, the opinion below "address[es] a broader issue for all of California's 483 cities and 58 counties." If allowed to stand, that decision would allow every city, every county, and thousands of special districts to adopt their own procedures as preconditions to seeking tax refunds, they could adopt a different procedure for *every distinct tax*—one "administrative remedy" for business license taxes, another for utility users' taxes, etc. It would reauthorize the "Byzantine claims system" the GCA was meant to supplant.

It is also notable that the GCA "does not specifically apply to tax refunds, but to all claims against governmental entities." *Ardon*, 52 Cal. 4th at 247. There is nothing in the City's argument—or the decision below—that would limit this issue only to taxpayer claims, and the potential implications are sweeping. For example, under the Act, taxpayers seeking a refund are uniformly afforded a trial *de novo* in the courts. Carson, however, seeks to force taxpayers into administrative proceedings where the relevant "factfinders" are the City's Finance Director and City Manager, whose determinations would be subject to potentially-deferential review under Code of Civil Procedure § 1094.5. It thereby seeks to rob taxpayers

of the right to the fresh judicial adjudication of a case that they were previously awarded by the Legislature.[2]

If that's permissible, there would seem to be nothing to prevent local governments facing a police brutality claim, for example, from establishing an "administrative review" process as a precondition to seeking tort damages and making the relevant "factfinder" the police chief. Or that prevents cities from forcing contract claims into administrative tribunals in which department heads decide whether their department breached a contract. That is no different from what Carson is trying to do here.

An authoritative decision of this Court is necessary to avoid needless uncertainty for taxpayers and local governments, and to vindicate the Legislature's purpose in adopting the Act. Review by this Court is authorized by California Rules of Court, Rule 8.500(b)(1), to secure uniform

---

[2] Tesoro does not concede that such deference, rather than independent judgment, would be the proper standard under CCP § 1094.5, but that is clearly the result the City seeks. As Tesoro noted below, however, giving the Finance Director and City Manager near-conclusive ability to determine facts that would bind the trial court raises due process concerns. *See Ward v. Village of Monroeville*, 409 U.S. 57 (1972) (due process violated by allowing mayor to act as judge in cases of ordinance violations and traffic offenses, where fines from such cases were a substantial part of the Village's revenue and the mayor "had responsibilities for revenue production").

application of the GCA and to settle the important legal question set forth above.

As the League of California Cities, California State Association of Counties, and Rural County Representatives of California noted in their request for publication, "[c]larity on these issues is of critical importance to potential litigants and to local government. … These questions are of interest to the public and likely to return to the courts."

It is true, of course, that the opinion is unpublished and not a citable precedent, but that fact should not preclude review. (*McWilliams* reviewed an unpublished decision, after all.) Other local agencies will learn of the Court of Appeal's decision—their attorneys surely talk—and similar administrative review procedures are bound to proliferate.

The Court should grant review to resolve the issue presented in this case, given its broad public importance.

STATEMENT OF THE CASE

A. Assessment and Payment of the Illegal Tax and Tesoro's Claim for Refund Under the Government Claims Act.

In November 2017, Carson's voters approved Measure C, adopting sections 63501-63526 of the Carson Municipal Code, also known as the "Oil Industry Business License Tax." The measure became effective December 1, 2017. (AA003.)

Section 63505 of the OIBLT imposes a business license tax on businesses "operating an oil refinery or facility that stores petroleum products." Tesoro operates an "oil refinery" in Carson and is subject to the OIBLT. (AA002, AA074-080.)

Upon the OIBLT becoming effective, Tesoro immediately began to submit timely returns. (AA009.) However, the OIBLT did not prescribe an apportionment methodology to "fairly reflect that proportion of the taxed activity actually carried on within the taxing jurisdiction" as required by the U.S. and California Constitutions, extensive case law, and state statutes.[3]

Nor did the City adopt any regulations providing for apportionment of gross receipts. (AA009.) Tesoro therefore calculated its tax due based on the gross receipts for transactions taking place within Carson, consistent with the language of the tax ordinance and apportionment methodologies it had used in the City of Los Angeles, which were approved by Los Angeles on audit. (*Id.*) During the period at issue in the Complaint, Tesoro timely paid the sums it calculated to be due according to the foregoing apportionment methodology. (*Id.*)

---

[3] *See, e.g.*, *City of Los Angeles v. Shell Oil Co.*, 4 Cal. 3d 108, 124 (1971); *General Motors Corp. v. City of Los Angeles*, 35 Cal. App. 4th 1736, 1752 (1995); Govt. Code § 37101(b); Bus. & Prof. Code § 16000(a).

Some years later, the City began an audit of Tesoro's returns, and on April 27, 2022, the City issued a Notice of Deficiency against Tesoro, assessing additional amounts deemed by the City to be due. (AA009, AA074-088.) Tesoro contends that the additional amounts were assessed illegally, for a number of reasons set forth in the Complaint. (AA011-016.)

Nevertheless, Tesoro timely paid the amount assessed on May 25, 2022 (AA011), upon which a cause of action for refund of taxes illegally paid accrued. *See, e.g., Bainbridge v. County of Riverside*, 167 Cal. App. 2d 418, 422 (1959). Shortly thereafter, Tesoro's counsel e-mailed Carson's City Attorney, asking him to confirm that a taxpayer could either proceed under the GCA or the City's review procedures; the City Attorney replied that "both options are available to your client under the sections of the municipal code you have made reference to." (AA149, 161.)[4]

Relying on *McWilliams*, *Sipple*, and the City Attorney's confirmation that "both options" were available to it, Tesoro filed a refund claim under the GCA on March 13, 2023, by depositing that claim via U.S. mail, addressed to the City

---

[4] *See Schifando v. City of Los Angeles*, 31 Cal. 4th 1074, 1086-88 & n.3 (2003) (though city could not force employees to pursue local administrative remedies as a precondition to filing a claim under the Fair Employment and Housing Act, it could adopt administrative remedies that city employees could voluntarily choose to proceed under).

Clerk as required by § 911.2. (AA090-126.) That claim was denied by the City's insurance adjuster on April 27, 2023. (AA031.)

B. Summary of the Government Claims Act and the Pertinent Provisions of the Carson Municipal Code ("CMC").

The GCA, which *McWilliams* held to apply to claims seeking local tax refunds, requires that a person seeking a refund file the claim with the local government within a year of paying the tax. § 911.2(a). The Act prescribes the required content of the claim, § 910, and provides that it is to be submitted by either "[d]elivering it to the clerk, secretary, or auditor thereof," § 915(a)(1), or "[m]ailing it to the clerk, secretary, auditor, or to the governing body at its principal office," § 915(a)(2). In the latter case, it is deemed to have been presented upon deposit with the U.S. Postal Service, § 915.2. Notably, neither of these provisions lists a local "finance director" among the officials designated to receive claims.

The agency has 45 days to act, § 912.4(a). If the claim is rejected, the claimant has six months to file suit in the superior court. § 945.6(a)(1). As the Court of Appeal noted (slip op. at 7), there is no dispute that Tesoro complied with these procedures.

Instead, the City argues—and the lower courts agreed—that the City's administrative procedures are not an "option[]

… available to" Tesoro; they must be pursued before filing a refund claim with the City under the GCA. The City currently interprets the process[5] to work as follows:

- City's Director of Finance issues a Notice of Deficiency (CMC § 63516(A)).
- Taxpayer pays deficiency + penalties and interest within 30 days (*id*.).
- Taxpayer makes a "request" for refund to the Director within 1 year (CMC § 63515).
- The Director acts on the request (though the time for the Director to do so is unspecified, and there is no provision for "deemed" denial as there is under the GCA after 45 days of nonaction, *see* § 912.4(c)).
- If the request is denied, the taxpayer appeals to the City Manager within 15 days of denial (§ 63523(A)).
- The City Manager sets a hearing within 60 days (§ 63523(C)); there is no deadline for issuance of decision.
- The taxpayer must challenge the City Manager's decision under Code of Civil Procedure § 1094.5 (which has 90-day deadline, per Code Civ. Proc. § 1094.6) (CMC § 63523(C)).
- Then, after the 1094.5 lawsuit is resolved, the Taxpayer may pursue GCA remedies (*see* AA153 (City's demurrer reply) (GCA "comes into play only after the [CMC process] has been exhausted")).

[5] The City's interpretation has been a shifting target, and its current interpretation appears to be inconsistent with the text of the CMC itself.

C. Superior Court Proceedings.

Tesoro filed this action in the superior court within six months of the denial of its claim by the City's insurance adjuster, as required by § 945.6(a)(1). (AA001.)

The City demurred to the Complaint based on Tesoro's supposed failure to comply with various provisions of the Carson Municipal Code. (AA032.) Specifically, the City contended that (1) Tesoro filed its claim for refund with the wrong City official, because CMC § 63515 purports to require a request for refund to be filed with the Director of Finance instead of the City Clerk; (2) Tesoro failed to avail itself of the right to appeal the Director's determination to the City Manager, as provided by CMC § 63523; and (3) the proper means of challenging the tax is a writ proceeding under Code of Civil Procedure § 1094.5, per CMC § 63523(C). (AA039-049.)

Tesoro filed an opposition on August 9, arguing primarily that Carson's administrative procedures are preempted by the GCA. (AA129.) The City replied on August 15 (AA152), and a hearing was held on August 22. Later that day the superior court issued a minute order sustaining the City's demurrer based on the failure to allege exhaustion of the administrative procedures in the CMC, but granting leave to amend. (AA170-173.)

The next day, Tesoro petitioned the Second District for writ of mandate and a stay,[6] because it faced a Hobson's choice: either (1) amend to allege substantial compliance with the City's procedures or a recognized exception to exhaustion, in which case Tesoro would forfeit its right to later challenge the trial court's ruling on preemption,[7] or (2) preserve its right to make the preemption argument on appeal but forego arguments regarding substantial compliance and excuse. The Court granted a temporary stay, but following briefing it denied the petition "for failure to establish entitlement to extraordinary relief." (AA202.) The stay was vacated. (*Id.*)

On remand, judgment was entered in favor of the City. (AA206-210.) Tesoro appealed less than two weeks later. (AA211.)

---

[6] *See Tesoro Refining & Mktg. Co. LLC v. Super. Court*, No. B331256 (Cal. Ct. App. 2d Dist., Div. 4, filed Aug. 25, 2023).

[7] *See, e.g.*, *People ex rel. Omlansky v. Save Mart Supermarkets*, 39 Cal. App. 5th 523, 525-26 (2019) (amending a cause of action following the sustaining of a demurrer waives a subsequent challenge to the ruling).

D. Decision of the Court of Appeal.

The Court of Appeal affirmed.

Beginning with Tesoro's argument that the GCA "occupies the field" of claiming procedures, to the exclusion of local action, the Court laid out the applicable standards for field preemption, noting that courts asked to determine whether the Legislature has implicitly occupied a given field of regulation "'consider factors including the language and scope of the adopted measure, the history behind the [statute], and the history of regulation in the area…'" (Slip op. at 11, quoting *Am. Fin. Servs. Ass'n v. City of Oakland*, 34 Cal. 4th 1239, 1261 (2005).)

The Court declined to address these factors, however. It "acknowledge[d] that, in its opening brief, Tesoro touches upon a few of the factors relating to whether the Legislature intended to fully occupy the field of prescribing the procedures a taxpayer must follow prior to filing suit for refund of local tax"—specifically, the language of the GCA, "comments on the constitutional authority pursuant to which the Legislature enacted the GCA," and "a few cases discussing the GCA's purpose[.]" (Slip op. at 15-16.) But it criticized Tesoro for purportedly failing to sufficiently connect the dots in showing that these factors support field preemption. (*Id*. at 11, 15-16.)

Next, the Court turned to the main case law authorities relied upon by Tesoro—*McWilliams*, *Volkswagen Pacific*, and *Sipple*.

It distinguished *McWilliams* as a case exclusively about statutory construction of the word "statute" in § 905(a), essentially ignoring the entire second half of the opinion, which considered whether charter cities could nevertheless adopt their own procedures under their home rule power. (Slip op. at 14-15.) The Court acknowledged that "the *McWilliams* court used broad language to frame the issue being decided" (*id*. at 15), but it chose not to take this Court at its word regarding the issues it resolved.

The Court dismissed the pertinent discussion from *Volkswagen Pacific,* which was cited approvingly in *McWilliams* (*see* 56 Cal. 4th at 627), as mere "dicta" (slip op. at 13-14), and it simply "decline[d] to follow" *Sipple*, implicitly acknowledging that it supports Tesoro's position. Just as it had criticized Tesoro's briefing, the Court criticized *Sipple* for relying on *McWilliams*, rather than sufficiently connecting the dots to show that the text, structure, purpose, and history of the GCA demonstrate field preemption. (Slip op. at 15.)

Finally, the Court held that Tesoro's argument that many of Carson's municipal code provisions directly contradict the GCA was "waived" because Tesoro failed to make it with sufficient specificity in the superior court,

though it was fully briefed in the Court of Appeal by both parties, and, in fact, the City really addressed *only* the contradiction form of preemption, rather than field preemption. (Slip op. at 17-18.)

Tesoro sought rehearing on March 17, 2025. The Court of Appeal filed an order on March 21, 2025, denying rehearing, modifying the opinion, and denying requests for publication filed by the City and by the League of California Cities, the California State Association of Counties, and the Rural County Representatives of California. (*See* Exhibit B.)

LEGAL DISCUSSION

A. Principles Governing Preemption.

The principles applicable to state law preemption of local ordinances are well-established. "Our state Constitution allows cities and counties to enact and enforce local ordinances so long as they are 'not in conflict' with the state's 'general laws.' (Cal. Const., art. XI, § 7.) Any conflicting ordinance is preempted by state law and thus void." *O'Connell v. City of Stockton*, 41 Cal. 4th 1061, 1065 (2007). "'A conflict exists if the local legislation "'duplicates, contradicts, or enters an area fully occupied by general law, either expressly or by legislative implication."' [Citations.]" *Sherwin-Williams Co. v. City of Los Angeles*, 4 Cal. 4th 893, 897 (1993) (footnotes omitted).

The latter two types of preemption—contradiction and field preemption—are both implicated here.

"A local ordinance *contradicts* state law when it is inimical to or cannot be reconciled with state law," and "[a] local ordinance *enters a field fully occupied* by state law in either of two situations—when the Legislature 'expressly manifest[s]' its intent to occupy the legal area or when the Legislature 'impliedly' occupies the field." *O'Connell*, 41 Cal. 4th at 1068 (italics in original).

With respect to "field" preemption, "it is well settled that local regulation is invalid if it attempts to *impose additional requirements* in a field which is fully occupied by statute." *Tolman v. Underhill*, 39 Cal. 2d 708, 712 (1952) (emphasis added) (citing *Eastlick v. City of Los Angeles*, 29 Cal. 2d 661, 666 (1947)); *see also* *O'Connell*, 41 Cal. 4th at 1068 ("[W]here the Legislature has manifested an intention, expressly or by implication, wholly to occupy the field … municipal power [to regulate in that area] is lost." (quoting 8 Witkin, SUMMARY OF CAL. LAW (10th ed. 2005) *Constitutional Law*, § 986, p. 551)). Imposing "additional requirements" above and beyond those imposed by the GCA itself is *exactly* what Carson is trying to do here.

B. The GCA "Occupies the Field" with Respect to the Process for Seeking a Refund of Local Taxes, to the Exclusion of Any Local Regulation.

Implied field occupation "occurs in three situations: when '(1) the subject matter has been so fully and completely covered by general law as to clearly indicate that it has become exclusively a matter of state concern; (2) the subject matter has been partially covered by general law couched in such terms as to indicate clearly that a paramount state concern will not tolerate further or additional local action; or (3) the subject matter has been partially covered by general law, and the subject is of such a nature that the adverse effect of a local ordinance on the transient citizens of the state outweighs the possible benefit to the' locality." *O'Connell*, 41 Cal. 4th at 1068 (quoting *Sherwin-Williams*, 4 Cal. 4th at 898). All three of these situations apply here. Indeed, in *Volkswagen Pacific*, this Court explicitly held that "the filing of claims for money or damages against California government units is an area of statewide concern in which the Legislature has *occupied the entire field*" through the GCA. 7 Cal. 3d at 62 n.7 (emphasis added).

The traditional factors the courts consider "including the language and scope of the adopted measure, the history behind the [statute], and the history of regulation in the area,"

all of which Tesoro addressed at length below, point to that conclusion, too. *Am. Fin. Servs. Ass'n*, 34 Cal. 4th at 1261.

1. The Appeals Court's holding that the Act does not occupy the field conflicts with the Act's text, structure, and purposes.

The Legislature adopted the GCA in 1959. Prior to that, "claims against the state, local, and municipal governments were governed by myriad state statutes and local ordinances," *Ardon*, 52 Cal. 4th at 246-47, which created traps for the unwary. As discussed in the 1959 Law Revision Commission report that gave rise to the Act, the number of cases involving "the interpretation, application or effect of a claims provision" increased four-fold during the period from 1923 to 1959, when compared to the period from statehood to 1923—a period more than twice the length. The Report continued:

> This nearly four-fold increase in reported cases over the past three decades suggests that there are serious deficiencies in the present claims statutes. Such provisions, being fundamentally procedural in nature, should conform to the desiderata of simplicity and effectiveness which society has a right to expect of the means by which legally recognized rights are enforceable. Unfortunately, the existing pattern of claims provisions fails to meet these standards and in consequence ***claims procedures have been termed by the Supreme Court as "traps for the unwary" and by a legal writer on the subject as "a bramble patch of***

> ***legislation which, in many cases, completely chokes off . . . substantive rights."***

Law Revision Comm'n, "Recommendation and Study relating to The Presentation of Claims Against Public Entities" A21 (Jan. 1959) (footnotes omitted) (emphasis added).

"Finding th[e preexisting] system too complex, the Legislature … established a *standardized* procedure for bringing claims against local governmental entities." *Ardon*, 52 Cal. 4th at 246 (emphasis added). The Legislative Committee comments that accompanied the adoption of the GCA stated expressly, "the terms and conditions of liability of public entities are matters of statewide concern and should be subject to uniform rules established by the action of the Legislature." Legis. Comm. com. foll. § 815.

Consistent with that purpose, the Legislature adopted Code of Civil Procedure § 313, which provides,

> The general procedure for the presentation of claims as a prerequisite to commencement of actions for money or damages against the State of California, counties, cities, cities and counties, districts, local authorities, and other political subdivisions of the State, and against the officers, employees, and servants thereof, is prescribed by [the GCA].

The GCA, in turn, sets out the baseline rule in § 905, which provides that "*all* claims for money or damages against local public entities" are to be presented "in accordance with

Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910)," except as provided in section 905 itself. (Emphasis added.) As to those categories of claims excepted by section 905—and only those categories of claims—§ 935(a) authorizes local governments to prescribe the claims procedure by "charter, ordinance, or regulation." By necessary implication, local governments may *not* adopt their own procedures as to claims *not* exempted. *McWilliams* clarified that local tax refunds are not among the claims excepted by section 905. 56 Cal. 4th at 619-26.

The Court of Appeal's decision, if allowed to stand, would be inconsistent with the language of the Act and inimical to the Legislature's purpose in enacting the GCA. As the First Appellate District held in a similar context, "If every city and county were able to opt out of the statutory regime simply by passing a local ordinance, the statewide goal of uniform regulation of [government claims] would surely be frustrated. Clearly, the creation of a *uniform* regulatory scheme is a matter of statewide concern, which should not be disrupted by permitting this type of contradictory local action." *Fiscal v. City & Cty. of San Francisco*, 158 Cal. App. 4th 895, 919 (2008) (italics in original). But that is precisely what the decision below allows.

The decision below did not hold that the text, structure, and purpose fail to support field preemption. Instead, the

Court declined to address them because Tesoro purportedly had not given them sufficient treatment. (Slip op. at 11, 15-16.) But *all* of the foregoing discussion—and much more—was contained in Tesoro's briefing; it's not new here.

The Court nevertheless holds that Tesoro's discussion of these factors is inadequate due to the failure to quote specific language regarding the circumstances in which implied occupation of the field is found (slip op. at 11), but on numerous occasions the courts have found implicit preemption by reviewing the language, structure, history, etc., without setting forth that precise language. *See, e.g.,* *Comm. of Seven Thousand v. Superior Court*, 45 Cal. 3d 491 (1988); *Birkenfeld v. Berkeley*, 17 Cal. 3d 129, 150-53 (1976); *In re Lane*, 58 Cal. 2d 99, 102-03 (1962); *Save Lafayette Trees v. E. Bay Reg'l Park Dist.*, 66 Cal. App. 5th 21 (2021); *Ventura v. City of San Jose*, 151 Cal. App. 3d 1076 (1984); *Ferrini v. City of San Luis Obispo*, 150 Cal. App. 3d 239 (1983). Other decisions have ultimately found preemption not to exist, but again only after reviewing the language, structure and history without setting forth the precise standard the opinion quotes. *See, e.g.,* *T-Mobile W. LLC v. City & Cty. of S.F.*, 6 Cal. 5th 1107 (2019); *Chand v. Bolanos*, 241 Cal. App. 4th 204, 210-11 (2015); *Sterling v. Santa Monica Rent Control Bd.*, 168 Cal. App. 3d 176, 185 (1985).

Indeed, the very case the decision quotes for the "three-part framework" that the Court faults Tesoro for not addressing, *O'Connell v. Superior Court* (*see* slip op. at 11 and 16 n.5), itself does not specify which of the categories of implied preemption applied. After listing them, it simply conducted an analysis of the text, history, purpose, and relevant case law. 4 Cal. 4th at 1069-76. In similar vein Tesoro extensively discussed the text, history, purpose and scope of the GCA, which meets the test for field preemption under any of the three circumstances identified by the Court of Appeal.

2. The Appeals Court's holding that the Act does not occupy the field is inconsistent with "history of regulation in the area" of government claims.

Even before the Legislature enacted the GCA, "[i]t ha[d] been held repeatedly that where liability is imposed by statute the method or regulation of the enforcement of the liability such as claim filing and limitation of actions is not a municipal affair controllable by" local law. *Wilson v. Beville*, 47 Cal. 2d 852, 857 (1957). Thus, for example, in *Beville*, this Court held that a charter city could not impose a claim filing requirement with respect to eminent domain proceedings where state law contained no such requirement.

Likewise, in *Eastlick v. Los Angeles*, 29 Cal. 2d at 661—cited by *Volkswagen Pacific* in support of its holding that the

GCA "occupies the field," *see* 7 Cal. 3d at 62 n.7, this Court construed a statutory predecessor of the GCA—the Public Liability Act of 1923—and held that, with respect to the categories of claims it covered, the PLA likewise "occupie[d] the entire field and it impliedly preclude[d] control to that extent by municipal or local regulation." 29 Cal. 2d at 666 (citing cases). It therefore barred the City of Los Angeles from enforcing an ordinance that purported to require claimants to itemize damages, instead of specifying the extent of the injuries or damages in general terms, and it held—in language equally applicable here—that the City could not "impose more onerous conditions affecting … any matter covered by the statute … [because it would] necessarily [be] inconsistent with the general form of claim presentation adopted by the Legislature for operation throughout the state." *Id.* at 666-67.

Other examples abound:

Taylor v. Los Angeles, 180 Cal. App. 2d 255 (1960), held unenforceable Los Angeles' charter provision requiring either formal rejection of a claim or a delay of 90 days without action before suit could be filed, where the relevant state claims statute did not so provide.

Wilkes v. San Francisco, 44 Cal. App. 2d 393 (1941), held that a charter city could not direct the filing of a claim to the

city's controller when state law specified filing with the city clerk.

Helbach v. City of Long Beach, 50 Cal. App. 2d 242 (1942), held that failure to comply with a 90-day period to file a claim prescribed by state law was fatal, despite a city charter provision allowing for filing within six months.

And *Peck v. Modesto*, 181 Cal. App. 2d 465 (1960), held that failure to verify a claim for damages as then required by state law was fatal, though Modesto's charter permitted unverified claims.

Tesoro cited all of this law below, but the Court basically ignored it. The only case it cited—primarily in a footnote—was *Eastlick*, which it dismissed as "offer[ing] Tesoro little assistance because it was decided before the GCA's enactment in 1959." (Slip op. at 13 n.4.) But that's precisely the point. As the Court itself acknowledged (*id.* at 11), the "history of regulation in the area" is relevant to the question of whether a statute occupies the field, and each of these cases—including *Eastlick*—supports the conclusion that when the Legislature enacts statutes prescribing the procedure for filing claims against the government, those statutes "occupy the field" to the extent of their reach. The GCA just expanded that reach to cover "*all* claims for money or damages against local public entities" with specified exceptions. § 905 (emphasis added).

3. The Appeals Court's holding that the Act does not occupy the field conflicts with this Court's decisions in *McWilliams* and *Volkswagen Pacific*, and the Second District's prior decision in *Sipple v. City of Hayward*.

The decision below also conflicts with this Court's unanimous ruling in *McWilliams,* its earlier ruling in *Volkswagen Pacific,* and the Second District's decision in *Sipple.*

a. By its own terms, the *McWilliams* decision granted review to address three questions, of which the statutory interpretation question was only one; another was whether charter cities could adopt their own claim procedures.

In *McWilliams*, this Court unanimously held that, "'in the absence of a specific tax refund procedure set forth in an applicable governing claims statute," the provisions of the GCA govern claims "by taxpayers against a local government entity for the refund of an unlawful tax." *McWilliams*, 56 Cal. 4th at 616. The Court further construed the word "statute" to exclude local enactments. *Id.* at 617. There is no dispute that Tesoro complied with the requirements of the GCA in this case, and there is no contention that a different "statute" applies.

The opinion below, however, rejects the applicability of *McWilliams* to this case, holding that it "is not a preemption case, as Tesoro contends. Instead, it is a statutory interpretation case, in which the Supreme Court clarified the scope of the GCA's application by discerning the meaning of a particular word used in section 905, subdivision (a)." (Slip op. at 14.) It quoted *McWilliams* to the effect that "It is axiomatic that cases are not authority for propositions not considered." (Slip op. at 15, quoting *McWilliams* at 626 [internal quotation marks omitted].)

But that is an unduly narrow reading of the *McWilliams* opinion. As *McWilliams* itself notes, this Court "granted the City[of Long Beach]'s petition to decide" *three* propositions, of which statutory construction issue was only one:

> (1) whether the exception to the Government Claims Act for "[c]laims under ... [a] statute prescribing procedures for the refund ... of any tax" in section 905, subdivision (a), excludes local charter provisions and ordinances prescribing procedures for a tax refund; **(2) if so, whether the application of the Government Claims Act to local tax refund claims violates the home rule taxing power of charter cities;** and (3) whether article XIII, section 32 of the California Constitution requires that a tax refund proceeding be expressly authorized by the legislative body of the local government entity.

56 Cal. 4th at 618 (emphasis added).

It is the second proposition that is most relevant here, for if the GCA was not understood to preempt local action with respect to claims against local governments, there would be no need to decide whether charter cities' home rule powers would prevail. "[A] court asked to resolve a putative conflict between a state statute and a charter city measure initially must satisfy itself that the case presents an actual conflict between the two." *Cal. Fed. Sav. & Loan Ass'n v. City of L.A.*, 54 Cal. 3d 1, 16 (1991). Such a conflict exists where the Legislature has occupied the field. *See City of Watsonville v. State Dep't of Health Servs.*, 133 Cal. App. 4th 875, 883-84 (2005) ("There is an actual conflict in this case because state law fully occupies the area of fluoridation of public water systems having more than 10,000 hookups"). *See also Wilson*, 47 Cal. 2d at 859 (reciting the "rule that charter provisions cannot control in matters of statewide concern where the state has occupied the field"); *Bishop v. San Jose*, 1 Cal. 3d 56, 61-62 (1969) ("As to matters which are of statewide concern, however, home rule charter cities remain subject to and controlled by applicable general state laws regardless of the provisions of their charters, if it is the intent and purpose of such general laws to occupy the field to the exclusion of municipal regulation (the preemption doctrine)"); Legis. Comm. com. foll. § 815 ("the terms and conditions of liability of public entities are matters of statewide concern and should

be subject to uniform rules established by the action of the Legislature.'").

And, in fact, the ultimate proposition that *McWilliams* decided, as set forth by the opinion itself, was

> not whether class actions for tax refunds should be permitted, but which level of government—the state or the local public entity—should define the procedures governing an action for refund of a local tax. We hold that except as to "[c]laims under the Revenue and Taxation Code or other statute prescribing procedures for the refund … of any tax," the Legislature has determined that the Government Claims Act applies. (§ 905.)

56 Cal. 4th at 628-29.

Finally, *McWilliams* affirmed a Court of Appeal decision holding, "'[t]he City is not authorized under the Government Claims Act to establish its own claims procedure for [transaction and use tax] refunds[.]'" *Id.* at 618 (quoting COA decision).

In short, a fair reading of the entire *McWilliams* opinion is inconsistent with the Court of Appeal's cramped interpretation of it in the decision below. *McWilliams* stands squarely for the proposition advanced by Tesoro—that the Legislature, and not local governments, get to decide what procedures claimants must follow in seeking local tax refunds.

b. *McWilliams* approvingly cited the very footnote in *Volkswagen Pacific* that holds the GCA occupies the field.

The Court of Appeal's exclusive focus on the statutory interpretation portion of *McWilliams* further led it to give *Volkswagen Pacific* unduly short shrift.

There is no disputing that *Volkswagen Pacific* states, "the filing of claims for money or damages against California government units is an area of statewide concern in which the Legislature has occupied the entire field." *Volkswagen*, 7 Cal. 3d at 62 n.7 (citing *Eastlick* and Code Civ. Proc. § 313). The opinion below, however, dismisses this statement as insufficiently-considered *dicta*.

This is not the first decision to dismiss the discussion of which that footnote was a part as *dicta*, *see Batt v. City & Cty. of S.F.*, 155 Cal. App. 4th 65, 83 & n.10 (2007), but *McWilliams* expressly overruled *Batt* on this point, 54 Cal. 4th at 626, and endorsed *County of L.A. v. Superior Court (Oronoz)*, 159 Cal. App. 4th 353, 361 (2008), which applied the supposed "dicta" of *Volkswagen Pacific*. *See* 56 Cal. 4th at 626.

Even more importantly, however, *McWilliams* cited the very footnote in question—*Volkswagen Pacific*'s footnote 7—in its rejection the City of Long Beach's "home rule" argument, which sought to convince this Court that that city's local

charter provisions could be enforced despite the terms of the GCA:

> According to the City, charter cities have constitutional authority to "make and enforce all ordinances and regulations in respect to municipal affairs" (Cal. Const., art. XI, § 5, subd. (a)), even against inconsistent state laws. The power to levy local taxes in support of local expenditures, of course, is a "'municipal affair.'" [Citation.] Yet, as the City acknowledges, the California Constitution also provides that "[t]he Legislature may prescribe procedure for presentation, consideration, and enforcement of claims against counties, cities, their officers, agents, or employees." (Cal. Const., art. XI, § 12.) Section 910 is one such provision, but the Legislature has set forth other procedures to govern even those local tax refund actions excepted from section 910, including claims relating to the refund of property taxes (Rev. & Tax. Code, §§ 5097, 5140), sales taxes (Rev. & Tax Code, §§ 6932, 6933), and other assessments (e.g., Bus. & Prof. Code, § 5499.14). **(See *Volkswagen Pacific, Inc. v. City of Los Angeles*, *supra*, 7 Cal.3d at p. 62 & fn. 7.)**

McWilliams, 56 Cal. 4th at 626-27 (boldface added).

c. The Appeals Court's unduly narrow reading of *McWilliams* misled it into rejecting *Sipple*.

A year after it was decided, the Second District applied *McWilliams* to strike down another local government's attempt to adopt claims procedures not imposed by the GCA.

In *Sipple*, the primary issue was whether an internet service provider who had "erroneously charged its customers taxes on Internet access over a span of several years and remitted those taxes to the defendant cities and counties" had standing to seek a refund of the amounts paid, or whether the individual customers had to do so—an issue the Court of Appeal resolved in the service provider's favor. 225 Cal. App. 4th at 353 & 358-63. But several of the governments also argued—and the trial court held—that the provider's claim was barred by local ordinances (1) prohibiting class claims and (2) requiring that before any such "representative" claim could go forward, the provider had to refund the disputed amounts to the customers first. *Id.* at 356.

On appeal, the local governments conceded that *McWilliams*, decided after the trial court's ruling, disposed of their argument as to class claims; they continued to argue, however, that the provider had to make refunds to its customers first. *Id.* at 357. The Court of Appeal rejected this claim, holding, "To the extent that these 'refund first' ordinances establish a precondition to filing a claim, they are preempted by the Government Claims Act," and that "[l]ocal ordinances may not subvert the authority granted by" that Act to bring claims in accordance with its procedures. *Id.* at 357-58.

The Carson Municipal Code, of course, purports to establish multiple administrative "preconditions" to bringing a claim for tax refund under the GCA. (*See* App. 218 [City's reply in support of demurrer] [GCA "comes into play ***only after*** the [CMC process] has been exhausted"].)

The Court below did not deny that *Sipple* supports Tesoro's contention that Carson's administrative review processes are preempted by the GCA. It declined, however, to follow that decision because *Sipple* applied *McWilliams* to reach its conclusion, rather than "showing its work" by summarizing the standards set forth at pages 10-11 of the opinion below. (Slip op. at 15.) However, courts—including this Court—often decide preemption issues without setting forth the standards in great detail, and that is especially the case where prior case law persuasively demonstrates the preemptive effect. *See, e.g., Scheiding v. GMC*, 22 Cal. 4th 471, 481 (2000); *L.I.F.E. Comm. v. City of Lodi*, 213 Cal. App. 3d 1139, 1143 (1989) (citing prior case law for the premise that the Legislature intended to occupy the field).[8]

---

[8] *See also Thompson v. Marietta Educ. Ass'n*, No. 2:18-cv-628, 2019 U.S. Dist. LEXIS 206804, at *8 (S.D. Ohio Nov. 26, 2019) (the court "conclusively finds that Plaintiff's claims are precluded by Supreme Court precedent. There is no utility in repeating the Court's entire analysis here and, instead, the Court adopts that analysis herein.").

C. The Carson Municipal Code Also Contradicts the GCA in Various Respects.

The CMC conflicts with the GCA in several respects.

For example, the GCA says that a claim for refund may be submitted by mailing it to the city clerk, *see* § 911.2; the CMC says it must be submitted to the Director of Finance instead. In *Wilkes v. San Francisco*, a motorist sought to sue San Francisco for an accident caused by allegedly negligent construction and maintenance of a highway. The PLA required claimants to file a verified claim with the clerk or secretary of the legislative body within 90 days of the accident, but San Francisco's charter specified that such claims should be filed with the city controller instead. 44 Cal. App. 2d at 394-95. The plaintiff complied with the charter but not the PLA. *Id*. The trial court dismissed the case for failure to comply with state law, and the Court of Appeal affirmed, holding that the claims process was a matter of statewide concern and was thus controlled exclusively state law. *Id*. at 397.

As another example, the CMC says that following the (purportedly) required appeal to the City Manager, the "Manager's decision shall be final as to the City, but subject to judicial review pursuant to Code of Civil Procedure Section 1094.5." CMC § 63523(C). Section 1094.5 is the provision governing petitions for writ of administrative mandate. "The sweep of section 1094.5 is limited, however, by the proposition

that a writ of mandate, pursuant to its provisions, is available only where the petitioner has no plain, speedy, and adequate remedy at law." *Tivens v. Assessment Appeals Bd.*, 31 Cal. App. 3d 945, 947 (1973). Ample case law holds that where a statute authorizes a suit for refund of taxes paid—as the GCA does—the ability to sue for refund is an adequate legal remedy at law that bars relief in mandamus. *See, e.g.*, *Canova v. Trs. of Imperial Irrigation Dist. Emp. Pension Plan*, 150 Cal. App. 4th 1487, 1493-95 (2007) (where claim for money or damages is available under the GCA, writ relief inappropriate). In other words, the CMC purports to create a remedy that state law precludes.

An additional note on this point: outside the property tax context, a taxpayer seeking a refund of taxes paid is entitled to a *de novo* trial on its claims. *See, e.g.*, *Nast v. State Bd. of Equalization*, 46 Cal. App. 4th 343, 348 (1996) (in "a refund action … the taxpayer's contention is heard de novo in superior court."). By purporting to make Code of Civil Procedure § 1094.5 applicable to Tesoro's refund claim, however, the Carson is improperly attempting to shift the burden of proof by subjecting taxpayers' claims to the more deferential standards that typically apply under that statute—substantial evidence review on a limited record—rather than the de novo review applicable under state law. *See* *Tenneco W. v. Franchise Tax Bd.*, 234 Cal. App. 3d 1510, 1520

(1991) ("The trial court should have determined de novo whether Tenneco met its burden to prove by a preponderance of the evidence that the Tenneco Excluded Subsidiaries were engaged in a unitary business with Tenneco."). Here, too, there is a direct conflict between state law and the CMC.

Finally, regarding timing: a claim for refund of taxes illegally paid accrues upon payment. *See, e.g.*, *Bainbridge*, 167 Cal. App. 2d at 422. Section 911.2 requires that a claim for damages be filed with the public agency within one year after accrual. However, the City has set up a series of administrative hurdles that, it contends, must be completed first but which will inevitably take more than a year to complete. And while the GCA's six-month deadline for filing a *lawsuit* after a claim is rejected can be equitably tolled, the prerequisite claims presentation deadline in § 911.2, is *not* subject to equitable tolling. *See, e.g.*, *Willis v. City of Carlsbad*, 48 Cal. App. 5th 1104, 1121 (2020). That creates a direct conflict between the GCA and CMC, in which it is not "reasonably possible to comply with both the state and local laws." *City of Riverside v. Inland Empire Patients Health & Wellness Ctr., Inc.*, 56 Cal. 4th 729, 743 (2013).

The Court below held these arguments were "waived" by failure to raise them in the superior court. But they were raised in the superior court, if not as clearly as they could have been in retrospect (*see, e.g.,* AA146, 148, 137), and besides

they are subsumed within, and intertwined with, Tesoro's arguments regarding field preemption.

Moreover, there is case law holding that "that preemption implicates subject matter jurisdiction and cannot be waived." *Cty. of Amador v. El Dorado Cty. Water Agency*, 76 Cal. App. 4th 931, 956 (1999). And while the Court distinguished this case law in the order modifying the opinion on the basis that it addressed federal preemption of state law, rather than state preemption of local law, it provided no reason for concluding that the analysis should be any different. *See, e.g.*, *City of L.A. v. Cty. of Kern*, No. 06-5094 GAF (VBKx), 2006 U.S. Dist. LEXIS 81417, at *36 (C.D. Cal. Oct. 24, 2006) ("Californinia's [*sic*] state preemption doctrine is analogous to federal preemption jurisprudence.").

In any event, preemption is a pure issue of law to which the City had every opportunity to respond, and it did so. And where the opposing party has the opportunity to brief the issue and that issue is one of public importance, courts routinely decide preemption issues that arise for the first time on appeal. *See, e.g.*, *Rental Hous. Ass'n of N. Alameda Cty. v. City of Oakland*, 171 Cal. App. 4th 741, 755 (2009) (deciding preemption issue raised for first time on appeal); *Espinoza v. Super. Ct.*, 83 Cal. App. 5th 761, 778 n.7 (2022) (same).

CONCLUSION

As this Court cautioned in *Viles v. State*, 66 Cal. 2d 24 (1967), the Government Claims Act "is remedial and should be liberally construed. Both the courts and Legislature have recognized that the labyrinth of claims statutes previously scattered throughout our statutes were traps for the unwary. [Citations.] An attempt has been made by the Legislature to remove such snares. Courts should not rebuild them by a too narrow interpretation of the new enactments." *Id.* at 31 (internal quotation marks omitted).

The decision below ignores this admonition. If allowed to stand, even though unpublished, it would once again give local governments the green light to create new, labyrinthine claims systems in the name of "administrative remedies." A thousand flowers would bloom, on a statewide basis. It thereby threatens to completely undermine the Legislature's attempt to impose uniformity. Review should be granted to clarify that the Act means what it says, and that it is the Legislature, and not local governments, who has the power to prescribe procedures for pursuing claims for money or damages against the government, just as *McWilliams* held.

Respectfully submitted,

April 9, 2025

NIELSEN MERKSAMER LLP

CAPITOL LAW & POLICY INC

By:

Christopher E. Skinnell

Attorneys for Plaintiffs & Appellants
TESORO REFINING & MARKETING COMPANY LLC and TESORO LOGISTICS OPERATIONS LLC

WORD COUNT CERTIFICATION

Christopher E. Skinnell, Esq., declares:

1. I am licensed to practice law in the State of California, and I am one of the attorneys of record for Plaintiffs and Appellants TESORO REFINING & MARKETING COMPANY LLC and TESORO LOGISTICS OPERATIONS LLC in this appeal. I make this declaration to certify the word length of the Plaintiffs and Appellants' Petition for Review ("Petition").

2. I am familiar with the word count function within the Microsoft Word software program by which this Petition was prepared. Applying the word count function to the Petition, I determined and hereby certify pursuant to California Rules of Court, Rule 8.504(d), that it contains **8,387** words.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and of my own personal knowledge except for those matters stated on information and belief and, as to those matters, I believe them to be true. If called as a witness, I could competently testify thereto.

Executed on April 9, 2025, at San Rafael, California.

Christopher E. Skinnell, Declarant

DECLARATION OF CHRISTOPHER E. SKINNELL
AUTHENTICATING ATTACHED EXHIBITS

Christopher E. Skinnell, Esq., declares:

1. I am licensed to practice law in the State of California, and I am one of the attorneys of record for Plaintiffs and Appellants TESORO REFINING & MARKETING COMPANY LLC and TESORO LOGISTICS OPERATIONS LLC in this appeal.

2. Attached hereto as Exhibit A is a true and correct copy of the unpublished decision of the Court of Appeal of the State of California, Second Appellate District, Division 4, in *Tesoro Refining & Marketing Company LLC, et al. v. City of Carson, et al*, No. B335686, filed February 28, 2025.

3. Attached hereto as Exhibit B is a true and correct copy of the Order of the Court of Appeal denying Plaintiffs and Appellants' Petition for Rehearing and several request for publication of the decision, filed on March 21, 2025.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. If called as a witness, I could competently testify thereto.

Executed on April 9, 2025, at San Rafael, California.

Christopher E. Skinnell, Declarant

PROOF OF SERVICE

I, CHRISTOPHER E. SKINNELL, 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 cskinnell@nmgovlaw.com.

On April 9, 2025, I served the foregoing **"Petition for Review"** on the following persons:

ALESHIRE & WYNDER, LLP
Sunny K. Soltani, SBN 209774
ssoltani@awattorneys.com
William W. Wynder, SBN 84753
wwynder@awattorneys.com
Alison S. Flowers, SBN 271309
aflowers@awattorneys.com
Shukan A. Patel, SBN 347017
spatel@awattorneys.com
1 Park Plaza, Suite 1000
Irvine, CA 92614
Telephone: (949) 223-1170

Counsel for Defendant and Respondent City of Carson

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.

On that same day I also served a copy of the Petition for Review on the following person:

Clerk, Civil Appeals
Superior Court of California
County of Los Angeles
Stanley Mosk Courthouse
111 North Hill St., First Fl., Rm. 111A
Los Angeles, CA 90012

Trial Court Judge

X **BY U.S. MAIL:** By following ordinary business practices and placing for collection and mailing at 2350 Kerner Blvd., Suite 250, California 94901 a true and correct copy of the above-referenced document(s), enclosed in a sealed envelope; in the ordinary course of business, the above documents would have been deposited for first-class delivery with the United States Postal Service the same day they were placed for deposit, with postage thereon fully prepaid.

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

Executed April 9, 2025, at San Rafael, California.

CHRISTOPHER E. SKINNELL

EXHIBIT A

Opinion of the Court of Appeal
(Filed February 28, 2025)

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(a). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115(a).

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

COURT OF APPEAL – SECOND DIST.
FILED
Feb 28, 2025
EVA McCLINTOCK, Clerk
S. Veverka Deputy Clerk

TESORO REFINING & MARKETING COMPANY LLC et al., Plaintiffs and Appellants, v. CITY OF CARSON, Defendant and Respondent.	B335686 Los Angeles County Super. Ct. No. 23STCV14351

APPEAL from a judgment of the Superior Court of Los Angeles County, Holly J. Fujie, Judge. Affirmed.

Nielsen Merksamer Parrinello Gross & Leoni, Christopher E. Skinnell, David J. Lazarus; Capitol Law & Policy and Eric J. Miethke for Plaintiffs and Appellants.

Aleshire & Wynder, Sunny K. Soltani, William W. Wynder, Alison S. Flowers and Shukan A. Patel for Defendant and Respondent.

INTRODUCTION

After satisfying the prefiling conditions in the Government Claims Act (Gov. Code[1], § 810 et seq.) (GCA), Tesoro Refining & Marketing Company LLC and Tesoro Logistics Operations LLC (collectively, Tesoro) sued the City of Carson (the City). The suit sought refund of monies paid to satisfy Tesoro's obligations under the City's Oil Industry Business License Tax (OIBLT) for the period beginning December 2017 and ending June 2018 (the Covered Period). Among other things, the complaint alleged the City's assessment of the amounts paid violates the United States and California Constitutions, as well as various California statutes.

The City demurred to the complaint, arguing it failed to state facts sufficient to constitute a cause of action because it did not allege Tesoro exhausted the administrative remedies set forth in Carson Municipal Code[2] sections 63515 and 63523 (collectively, the Administrative Review Ordinances) before filing suit. Tesoro countered that the Administrative Review Ordinances were void, as they were preempted by the GCA. Therefore, Tesoro argued, it did not have to comply with them as a precondition to filing suit.

Agreeing with the City and rejecting Tesoro's preemption argument, the trial court sustained the demurrer with leave to amend. Subsequently, following this court's denial of its petition

---

1 All further undesignated statutory references are to the Government Code.

2 All further references to the "Municipal Code" are to the Carson Municipal Code.

for writ of mandate, Tesoro declined to amend its complaint. The trial court then entered judgment in the City's favor. We affirm.

BACKGROUND

In November 2017, the City's voters approved Measure C which adopted the OIBLT, codified in Article VI, Chapter 3.5, of the Municipal Code, sections 63501 through 63526. Measure C became effective on December 1, 2017.

Per Municipal Code section 63502: "The purpose of [the OIBLT] is to impose a business license tax on persons engaged in the business of operating any facility where petroleum or petroleum products are blended, mixed, processed, or refined and/or any facility that stores petroleum products. It is an excise tax on the privilege of doing business in the City . . . ." To accomplish this purpose, Municipal Code section 63505 generally requires "every person engaged in the City in the business of operating an oil refinery or facility that stores petroleum products [to] pay calendar quarterly business license tax of one-quarter (1/4) percent of gross receipts of any such business conducted within the City."

Municipal Code sections 63515 and 63523 describe the procedures by which a taxpayer may obtain a refund of monies paid under the OIBLT. First, Municipal Code section 63515 requires the taxpayer to seek relief from the City's Finance Director (Director), stating: "No tax, penalty or interest shall be refunded unless it is determined by the Director that it has been paid in error, computed incorrectly, overpaid, or collected illegally. No refund shall be made unless a request is received in writing by the Director within one (1) year of the payment of the tax, interest or penalty to be refunded."

If the taxpayer is dissatisfied with the Director's decision, Municipal Code section 63523, subdivision (A) provides: "Any person may appeal any decision of the Director made under this Chapter to the City Manager within fifteen (15) days of the decision." To do so, the ordinance requires the taxpayer to file a written appeal with the City Clerk containing the following information: (1) the appellant's name and address; (2) the matter being appealed; and (3) a statement of the grounds of appeal. Municipal Code section 63523, subdivision (C) then describes when and how the City Manager must act upon the appeal, stating: "Within sixty (60) days after the timely filing of an appeal pursuant to this [s]ection, the City Manager or a hearing officer appointed by the City Manager shall allow an opportunity for submission of argument and evidence in writing or orally and then determine whether and to what extent to grant or deny the appeal. A hearing officer's decision shall constitute a recommendation to the City Manager. The City Manager's decision shall be final as to the City, but subject to judicial review pursuant to Code of Civil Procedure section 1094.5."

Tesoro operates an oil refinery and a petroleum product storage facility, both of which are partially located in the City. When the OIBLT took effect in December 2017, Tesoro began submitting timely returns. During the Covered Period, Tesoro calculated its tax due based on the gross receipts for transactions taking place within the City, employing apportionment methodologies it had used in the City of Los Angeles. Tesoro then paid the sums it believed to be due based on these calculations.

Years later, the City audited Tesoro's returns reporting its OIBLT liability and, in April 2022, issued a Notice of Deficiency

assessing additional amounts. Tesoro timely paid the balance due under the Notice of Deficiency on May 25, 2022.

On March 13, 2023, Tesoro mailed a claim for damages to the Office of the City Clerk, seeking refund of the OIBLT monies it paid to the City for the Covered Period. The City rejected the claim on April 27, 2023.

On June 21, 2023, Tesoro filed a verified complaint asserting a single cause of action for refund of all monies paid in satisfaction of its OIBLT obligations for the Covered Period. Tesoro alleged that by collecting the amount assessed, the City "improperly seeks to tax business activity that Tesoro undertakes outside" City boundaries in violation of the United States and California Constitutions, as well as multiple California statutes.

The City demurred to the complaint, asserting it fails to state facts sufficient to constitute a cause of action. In so doing, the City argued that, as a precondition to filing suit for refund, taxpayers are required to exhaust the administrative remedies set forth in the Administrative Review Ordinances. Therefore, the City asserted, the complaint was barred, as Tesoro did not allege it availed itself of those remedies or sought relief by filing an action in administrative mandate under Code of Civil Procedure section 1094.5 as instructed by Municipal Code section 63523.

In opposing the demurrer, Tesoro contended, among other things, it did not have to comply with the Administrative Review Ordinances prior to filing suit because they are preempted by the GCA. On this point, it argued that the GCA fully occupies the field of prescribing the pre-suit claims presentation procedures for actions seeking refund of local tax and, consequently, "local governments, including charter cities like Carson, may not adopt

supplementary requirements not imposed by the GCA itself, much less contradictory ones."

The trial court sustained the demurrer with leave to amend. In so doing, the court first "agree[d] with [Tesoro] that [its] refund claims are subject to the GCA[.]" The trial court then rejected Tesoro's preemption argument as unsupported by the caselaw on which it was based. The trial court therefore concluded that, because it did not allege Tesoro's compliance with the Administrative Review Ordinances, or allege circumstances excusing its noncompliance, "[th]e [c]omplaint . . . fails to sufficiently allege that [Tesoro] exhausted [its] administrative remedies before filing suit."

Soon thereafter, Tesoro filed a petition for writ of mandate in this court, and we temporarily stayed the trial court's ruling while the petition was pending. A few months later, we denied the petition for failure to establish entitlement to extraordinary relief and vacated our stay order. Thereafter, Tesoro did not amend its complaint. As a result, the trial court entered judgment in the City's favor.

DISCUSSION

I. Standard of Review

"Because the function of a demurrer is to test the sufficiency of a pleading as a matter of law, we apply the de novo standard of review in an appeal following the sustaining of a demurrer without leave to amend." (*California Logistics, Inc. v. State of California* (2008) 161 Cal.App.4th 242, 247.) "'We treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. [Citation.] We also consider matters which may be judicially noticed.' [Citation.] Further, we give the complaint a reasonable

interpretation, reading it as a whole and its parts in their context. [Citation.] When a demurrer is sustained, we determine whether the complaint states facts sufficient to constitute a cause of action." (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.)

II. Analysis

At the outset, we address three preliminary matters. First, for purposes of this appeal, the parties do not dispute that, before filing its complaint in the trial court, Tesoro satisfied the claims presentation procedures set forth in the GCA, but did not comply with the Administrative Review Ordinances. Accordingly, we note Tesoro has forfeited its argument – previously raised in opposition to the City's demurrer – that it complied with both the GCA and Municipal Code section 63515 by mailing its claim for damages to the City Clerk's Office. (*Doe v. California Dept. of Justice* (2009) 173 Cal.App.4th 1095, 1115 ["An appellant . . . forfeits an issue by failing to raise it in his or her opening brief"].)

Next, we clarify the question lying at the heart of this appeal. Given the sprawling arguments presented in the briefs, where both parties dedicate excessive pages to describing and criticizing the cases relied on by the other, it is easy to lose sight of the key question on which this case turns: Was Tesoro required to exhaust the local remedies enumerated in the Administrative Review Ordinances *and* comply with the GCA's claims presentation procedures before filing suit against the City? Tesoro asserts the answer is "no," as the GCA preempts the Administrative Review Ordinances insofar as they are construed as mandatory preconditions to filing suit for refund of local tax payments. The City disagrees.

Third, we identify the general preemption principles applicable in this case. Under article XI, section 7 of the

California Constitution, "[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." Thus, in general,"'[i]f otherwise valid local legislation conflicts with state law, it is preempted by such law and is void.'" (*Sherwin-Williams Co. v. City of Los Angeles* (1993) 4 Cal.4th 893, 897 (*Sherwin-Williams*).) "'A conflict exists if the local legislation "'duplicates, contradicts, or enters an area fully occupied by general law, either expressly or by legislative implication.'"'" (*Ibid.*)

The preemption analysis is more complicated if a charter city has enacted the challenged ordinance because "[u]nder article XI, section 5, subdivision (a) of the California Constitution, a charter city, like [the City], 'gain[s] exemption, *with respect to its municipal affairs*, from the "conflict with general laws" restrictions of' article XI, section 7." (*Sherwin-Williams*, *supra*, 4 Cal.4th at p. 897, fn. 1, original italics.) Article XI, section 5 grants charter cities what is known as their "'home rule' powers" (see *Johnson v. Bradley* (1992) 4 Cal.4th 389, 397), providing, in relevant part: "It shall be competent in any city charter to provide that the city governed thereunder may make and enforce all ordinance and regulations in respect to municipal affairs, subject only to restrictions and limitations provided in their several charters and in respect to other matters they shall be subject to general laws." (Cal. Const., art. XI, § 5, subd. (a).)

Consequently, our Supreme Court has adopted the following analytical framework for evaluating whether a charter city ordinance is preempted by state law: "First, a court must determine whether the city ordinance at issue regulates an activity that can be characterized as a 'municipal affair.' [Citation.] Second, the court 'must satisfy itself that the case

presents an actual conflict between [local and state law].' [Citation.] Third, the court must decide whether the state law addresses a matter of 'statewide concern.' [Citation.] Finally, the court must determine whether the law is 'reasonably related to . . . resolution' of that concern [citation] and 'narrowly tailored' to avoid unnecessary interference in local governance [citation.] 'If . . . the court is persuaded that the subject of the state statute is one of statewide concern and that the statute is reasonably related to its resolution [and not unduly broad in its sweep], then the conflicting charter city measure ceases to be a "municipal affair" pro tanto and the Legislature is not prohibited by article XI, section 5(a), from addressing the statewide dimension by its own tailored enactments.'" (*State Building & Construction Trades Council of California v. City of Vista* (2012) 54 Cal.4th 547, 556.)

We need not apply the four-part framework here, however. In this case, the statute with assertedly preemptive effect is the GCA, which was enacted by the Legislature pursuant to article XI, section 12 of the California Constitution. (*McWilliams v. City of Long Beach* (2013) 56 Cal.4th 613, 627 (*McWilliams*).) That provision authorizes the Legislature to "prescribe procedure for presentation, consideration, and enforcement of claims against counties, cities, their officers, agents, or employees." (Cal. Const. art. XI, § 12.) And our Supreme Court has held "the home rule protections in the Constitution do not limit the Legislature's authority to prescribe procedures governing claims against chartered local government entities." (*McWilliams*, at p. 627.) Therefore, in analyzing whether the GCA preempts the Administrative Review Ordinances, we need only decide whether the former conflicts with the latter. (See *Sherwin-Williams*, *supra*, 4 Cal.4th at p. 897 & fn. 1.) In conducting our analysis, we

bear in mind "[t]he party claiming that general state law preempts a local ordinance has the burden of demonstrating preemption." (*Big Creek Lumber Co. v. County of Santa Cruz* (2006) 38 Cal.4th 1139, 1149 (*Big Creek Lumber*).)

As noted above, "'[a] conflict exists if the local legislation "'duplicates, contradicts, or enters an area fully occupied by general law, either expressly or by legislative implication.'"'" (*Sherwin-Williams*, *supra*, 4 Cal.4th at p. 897.) According to Tesoro, "[t]he latter two types of preemption—contradiction and field preemption—are both implicated here." We first consider its field preemption argument.

A. Field Preemption

"[W]here the state has fully occupied the field, there is no room for additional requirements by local legislation." (*In re Lane* (1962) 58 Cal.2d 99, 105.) Accordingly, "local regulation is invalid if it attempts to impose additional requirements in a field which is fully occupied by statute." (*Tolman v. Underhill* (1952) 39 Cal.2d 708, 712 (*Tolman*).)

"A local ordinance enters a field fully occupied by state law in either of two situations—when the Legislature 'expressly manifest[s]' its intent to occupy the legal area or when the Legislature 'impliedly' occupies the field." (*O'Connell v. City of Stockton* (2007) 41 Cal.4th 1061, 1068 (*O'Connell*), italics omitted.) Tesoro does not cite – and we could not locate – any GCA provisions showing the Legislature expressly intended to occupy the field of prescribing the procedures a taxpayer must follow before suing for refund of local tax.

We therefore "look to whether it has *impliedly* done so. This occurs in three situations: when "'(1) the subject matter has been so fully and completely covered by general law as to clearly

indicate that it has become exclusively a matter of state concern; (2) the subject matter has been partially covered by general law couched in such terms as to indicate clearly that a paramount state concern will not tolerate further or additional local action; or (3) the subject matter has been partially covered by general law, and the subject is of such a nature that the adverse effect of a local ordinance on the transient citizens of the state outweighs the possible benefit to the" locality.'" (*O'Connell*, *supra*, 41 Cal.4th at p. 1068, original italics.) In deciding whether a case falls within one of these three circumstances, courts "consider factors including the language and scope of the [statute], the history behind the [statute], and the history of regulation in the area . . . ." (*American Financial Services Assn. v. City of Oakland* (2005) 34 Cal.4th 1239, 1261 (*American Financial*); *Tolman*, *supra*, 39 Cal.2d at p. 712 [Legislature's "intent with regard to occupying the field to the exclusion of all local regulation is not to be measured alone by the language used but by the whole purpose and scope of the legislative scheme"].)

Tesoro does not explain how this case falls within any of the circumstances described above based on the GCA's language, goals, history, and/or structure. (Cf. *Candid Enterprises, Inc. v. Grossmont Union High School Dist.* (1985) 39 Cal.3d 878, 885-888 [concluding respondents persuasively explained how the local legislation in question did not enter an area fully occupied by state law based on the three-part analytical framework set forth above].) Instead, it primarily relies on three cases to support its field preemption argument: (1) *Volkswagen Pacific, Inc. v. City of Los Angeles* (1972) 7 Cal.3d 48 (*Volkswagen*); (2) *McWilliams*, *supra*, 56 Cal.4th 613; and (3) *Sipple v. City of Hayward* (2014)

225 Cal.App.4th 349 (*Sipple*). We are not persuaded that these cases dictate the outcome of this appeal.

In *Volkswagen*, the appellants challenged the constitutionality of three ordinances collectively imposing a "'business tax'" on "persons engaged in 'selling any goods, wares, or merchandise at wholesale'" in the City of Los Angeles. (*Volkswagen*, *supra*, 7 Cal.3d at pp. 51, 54.) Affirming the Court of Appeal's reversal of the judgment entered for the City of Los Angeles, our Supreme Court largely adopted the portions of the Court of Appeal's opinion deeming the tax unconstitutional. (*Id.* at pp. 51-60, 63.) The Supreme Court then noted the action's timeliness may arise on retrial and clarified the applicable statute of limitations to guide the trial court, in the event it exercised its discretion to address the issue. (*Id.* at p. 60.) On this point, the Supreme Court concluded that – whether or not the GCA applied to the appellants' suit for refund for local tax – the case was governed by section 945.6. (*Id.* at pp. 61-63.)

Tesoro relies on a footnote in *Volkswagen*'s statute of limitations discussion. There, the Supreme Court noted that by way of section 935, subdivision (d) and section 912.4[3], the GCA

---

3 Section 935, subdivision (a) provides that claims exempted from the GCA's coverage, "and which are not governed by any other statutes or regulations expressly relating thereto, shall be governed by the procedure prescribed in any charter, ordinance, or regulation adopted by the local public entity." Per subdivision (d) of this statute, however, "[t]he procedure so prescribed shall not provide a longer time for the board [of the local authority] to take action upon any claim than the time provided in Section 912.4." (§ 935, subd. (d).) Section 912.4, subdivision (a), in turn, requires "[t]he board . . . [to] act on a claim . . . within 45 days after the claim has been presented."

prohibits a city charter from extending the 45-day window within which local authorities are statutorily required to respond to a claim for damages presented for their consideration. (*Volkswagen*, *supra*, 7 Cal.3d at p. 62, fn. 7.) The Supreme Court then observed the Los Angeles City Charter afforded its authorities "90 days to act after the claim has been presented." (*Ibid.*) In reconciling these provisions of law, the Supreme Court cited *Eastlick v. City of Los Angeles* (1947) 29 Cal.2d 661 (*Eastlick*)[4] and the Law Revision Commission comment to the 1965 amendment to the GCA to conclude: "The provisions of section 935, subdivision (d), must control, as the filing of claims for money or damages against California government units is an area of statewide concern in which the Legislature has occupied the entire field." (*Volkswagen*, at p. 62, fn. 7.)

Accordingly, the *Volkswagen* court did not consider whether the GCA preempts ordinances requiring taxpayers to exhaust local administrative remedies before suing for a refund of local tax. Instead, in a footnote buried in dicta, the court noted the GCA barred the City of Los Angeles from extending the deadline

---

4 *Eastlick*, *supra*, 29 Cal.2d 661, offers Tesoro little assistance because it was decided before the GCA's enactment in 1959. (See *Ardon v. City of Los Angeles* (2011) 52 Cal.4th 241, 246-247.) In *Eastlick*, our Supreme Court effectively determined the Public Liability Act preempted a provision of the City of Oakland's charter requiring the claims of personal injury victims to itemize their damages and state their total demand. (*Eastlick,* at pp. 666-667.) In so doing, the Supreme Court relied on that specific statute's legislative history to conclude it "occupie[d] the entire field [of regulating the presentation of the claims falling within its coverage] and . . . impliedly preclude[d] control to that extent by municipal or local regulation." (*Id.* at p. 666.)

by which local authorities must act upon a claim. (*Volkswagen*, *supra*, 7 Cal.3d at p. 62, fn. 7.) This determination did not rest on a thorough analysis of the legal principles dictating when a local ordinance is preempted by state law. (See *ibid.*) Thus, we decline to follow *Volkswagen*'s dicta to resolve the issue before us. (See *Smith v. County of Los Angeles* (1989) 214 Cal.App.3d 266, 297 [California Supreme Court's dictum is "not controlling" but "carries persuasive weight and should be followed where it demonstrates a thorough analysis of the issue or reflects compelling logic"].)

Tesoro similarly overstates the impact of the *McWilliams* decision. There, our Supreme Court primarily addressed whether claims for local tax refunds fell within section 905, subdivision (a), and, consequently, were exempt from the GCA's coverage. (*McWilliams*, 56 Cal.4th at p. 618.) Per that statute, the GCA does not apply to "[c]laims under the Revenue and Taxation Code or *other statute* prescribing procedures for the refund . . . of any tax . . . ." (§ 905, subd. (a), italics added.) Analyzing the GCA's language and legislative history, the Supreme Court determined local ordinances and city charter provisions are not "statute[s]" in section 905, subdivision (a)'s purview. (*McWilliams*, at pp. 619-626.) Therefore, it held, the GCA's permission of class actions applied to the appellants' claims for refunds of local taxes. (*Id.* at pp. 616-617, 628-629.)

Thus, *McWilliams* is not a preemption case, as Tesoro contends. Instead, it is a statutory interpretation case, in which the Supreme Court clarified the scope of the GCA's application by discerning the meaning of a particular word used in section 905, subdivision (a). (*McWilliams*, *supra*, 56 Cal.4th at pp. 616-617, 620-626.) Consequently, as in *Volkswagen*, the Supreme Court in

McWilliams did not address the issue before this court, i.e., whether the Legislature intended to fully occupy the field of prescribing the claims presentation procedures for refund of local tax, and thereby preempt local ordinances requiring exhaustion of administrative remedies. And while Tesoro correctly observes the *McWilliams* court used broad language to frame the issue being decided (*McWilliams*, at pp. 628-629), it is well-settled "[t]he holding of a decision is limited by the facts of the case being decided, notwithstanding the use of overly broad language by the court in stating the issue before it or its holding or in its reasoning." (*McGee v. Superior Court* (1985) 176 Cal.App.3d 221, 226.) Moreover, the *McWilliams* court itself acknowledged: """It is axiomatic that cases are not authority for propositions not considered.""" (*McWilliams*, at p. 626.)

For these reasons, we decline to follow the preemption analysis employed in *Sipple*, *supra*, 225 Cal.App.4th 349. There, the appellate court was tasked with deciding whether the appellant, an Internet service provider, had to comply with local ordinances requiring it to repay its customers the Internet access taxes it had erroneously charged and remitted to local authorities before filing a claim for refund of those taxes on its customers' behalf. (*Sipple*, at pp. 352, 357.) Relying on *McWilliams* – rather than applying the legal principles governing when a local ordinance is preempted by state law – the appellate court held: "To the extent that these 'refund first' ordinances establish a precondition to filing a claim, they are preempted by the [GCA]." (*Sipple*, at p. 357.)

We acknowledge that, in its opening brief, Tesoro touches upon a few of the factors relating to whether the Legislature intended to fully occupy the field of prescribing the procedures a

taxpayer must follow prior to filing suit for refund of local tax. (See *American Financial*, *supra*, 34 Cal.4th at p. 1261.) Specifically, Tesoro points out the "categorical language" used in sections 905 and 935, quotes Code of Civil Procedure section 313, comments on the constitutional authority pursuant to which the Legislature enacted the GCA, and cites a few cases discussing the GCA's purpose. In so doing, however, Tesoro does not explain how these factors apply to place this case in one of the "three situations" identified in *O'Connell*, *supra*, 41 Cal.4th at p. 1068.[5] As an appellate court, "'[i]t is not our place to construct theories or arguments to undermine the judgment and defeat the presumption of [its] correctness.'" (*L.O. v. Kilrain* (2023) 96 Cal.App.5th 616, 620.)

In sum, Tesoro bore the burden of demonstrating the Legislature sought to fully occupy the field of prescribing the procedures a taxpayer must follow before suing for refund of local tax, and thereby preempt local ordinances requiring exhaustion of administrative remedies as a precondition to filing suit. (See *Big Creek Lumber*, *supra*, 38 Cal.4th at p. 1149.) For the reasons discussed above, we are not convinced it has done so.

---

5 In its reply brief, Tesoro addresses the policies and purposes underlying the GCA's enactment further, largely in responding to the City's argument touting the "policy interests" that – in its view – are served when taxpayers must exhaust local administrative remedies before seeking relief in court. Like the opening brief, the reply brief fails to apply our Supreme Court's three-part framework governing whether the Legislature has implicitly intended to occupy an area of law. (See *O'Connell*, *supra*, 41 Cal.4th at p. 1068.)

B. Contradiction Preemption[6]

Next, Tesoro contends the Administrative Review Ordinances are preempted because they contradict the GCA in multiple respects. This argument was not raised in the trial court, where Tesoro only relied on a theory of field preemption.

""""[I]t is fundamental that a reviewing court will ordinarily not consider claims made for the first time on appeal which could have been but were not presented to the trial court.' Thus, 'we ignore arguments, authority, and facts not presented and litigated in the trial court. Generally, issues raised for the first time on appeal which were not litigated in the trial court are [forfeited]. [Citations.]'" [Citation.] "Appellate courts are loath to reverse a judgment on grounds that the opposing party did not have an opportunity to argue and the trial court did not have an opportunity to consider. [Citation.] In our adversarial system, each party has the obligation to raise any issue or infirmity that might subject the ensuing judgment to attack . . . ." [Citation.]'" (*Premier Medical Management Systems, Inc. v. California Ins. Guarantee Assn.* (2008) 163 Cal.App.4th 550, 564.) "'It would be manifestly unjust to the opposing parties, unfair to the trial court, and contrary to judicial economy to permit a change of theory on appeal.'" (*Saville v. Sierra College* (2005) 133 Cal.App.4th 857, 873.) Applying these principles, we conclude that because Tesoro did not raise the issue of preemption by contradiction below, it has forfeited this argument on appeal.

---

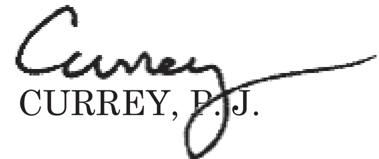
6 Because the parties originally did not address whether Tesoro forfeited its contradiction preemption argument on appeal, we solicited supplemental briefing on the issue pursuant to section 68081.

We are aware that appellate courts may "consider an issue in the first instance [when, as here,] it raises a question of law on undisputed facts . . . ." (*Wisner v. Dignity Health* (2022) 85 Cal.App.5th 35, 44.) "There is no rule, however, that an appellate court *must* consider a pure question of law raised for the first time on appeal. Instead, the decision to do so or not 'is largely a question of the appellate court's discretion.'" (*Souza v. Westlands Water Dist.* (2006) 135 Cal.App.4th 879, 898-899, original italics.) Mindful that "our Supreme Court has cautioned . . . such discretion should be exercised rarely," we decline to do so here. (*Wisner v. Dignity Health*, at p. 44.)

DISPOSITION

The judgment is affirmed. Respondent shall recover its costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS



CURREY, P.J.

We concur:

COLLINS, J.

ZUKIN, J.

EXHIBIT B

Order Denying Petition for Rehearing
& Denying Requests to Publish the Decision
(Filed March 21, 2025)

COURT OF APPEAL – SECOND DIST.
FILED
Mar 21, 2025
EVA McCLINTOCK, Clerk
DGuzman Deputy Clerk

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(a). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115(a).

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

TESORO REFINING & MARKETING COMPANY LLC et al.,

Plaintiffs and Appellants,

v.

CITY OF CARSON,

Defendant and Respondent.

B335686

Los Angeles County Super. Ct. No.

23STCV14351

ORDER MODIFYING OPINION; DENYING PETITION FOR REHEARING; DENYING REQUESTS FOR PUBLICATION

NO CHANGE IN JUDGMENT

THE COURT*

The court has received the petition for rehearing filed by appellants on March 17, 2025. The court's opinion, filed February 28, 2025, is modified to add the following text at the end of footnote 6 on p. 17: "In its supplemental brief, Tesoro contends the issue of preemption implicates subject matter

jurisdiction and, therefore, arguments based thereon cannot be forfeited by failure to raise them in the trial court. This contention is meritless because the cases on which it is based are inapplicable here. Those cases dealt with forfeiture in the context of whether a state law was preempted by a federal law. None of them addressed whether preemption in the context presented in this case (i.e., preemption of local ordinances by state law) raises questions relating to jurisdiction. (See *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 940, 956 [holding plaintiffs' CEQA challenges to government purchase of a hydroelectric project were not preempted by the Federal Power Act (16 U.S.C. § 791a et seq.)]; *De Tomaso v. Pan American World Airways, Inc.* (1987) 43 Cal.3d 517, 520 [California Supreme Court granted review to "resolve a conflict among the Courts of Appeal as to when state tort claims are preempted by the" Railway Labor Act (45 U.S.C. § 151 et seq.)]; *Haberbush v. Charles & Dorothy Cummins Family Limited Partnership* (2006) 139 Cal.App.4th 1630, 1633, fn. omitted [holding "Code of Civil Procedure section 188 is not preempted by the federal Bankruptcy Code"].)"

This modification does not change the judgment.

The petition for rehearing is denied.

In addition, the court has read and considered the requests for publication filed by respondent on March 10, 2025, and by non-parties Rural County Representatives of California, California State Association of Counties, and League of Cities on March 18, 2025. Rule 8.1105 of the California Rules of Court does not mandate publication of this court's February 28, 2025 opinion. The requests for publication are therefore denied.

Pursuant to rule 8.1120(b) of the California Rules of Court, the Clerk is directed to forward to the Clerk of the Supreme Court the requests for publication, the opinion, and this order.

*ZUKIN, Acting P.J.

COLLINS, J.

Supreme Court of California
Jorge E. Navarrete, Clerk and Executive Officer of the Court
Electronically FILED on 4/9/2025 by Karissa Castro, Deputy Clerk

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **Tesoro Refining & Marketing Company LLC, et al. v. City of Carson**
Case Number: **TEMP-83KRD3PZ**
Lower Court Case Number:

1. At the time of service I was at least 18 years of age and not a party to this legal action.

2. My email address used to e-serve: **cskinnell@nmgovlaw.com**

3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

Filing Type	Document Title
ISI_CASE_INIT_FORM_DT	Case Initiation Form
PETITION FOR REVIEW	Tesoro v Carson - Petition for Review

Service Recipients:

Person Served	Email Address	Type	Date / Time
Christopher Skinnell Nielsen Merksamer 227093	cskinnell@nmgovlaw.com	e-Serve	4/9/2025 10:20:25 AM
Paula Scott Nielsen Merksamer	pscott@nmgovlaw.com	e-Serve	4/9/2025 10:20:25 AM
David Lazarus 304352	dlazarus@nmgovlaw.com	e-Serve	4/9/2025 10:20:25 AM
Eric Miethke 133224	eric@capitollawandpolicy.com	e-Serve	4/9/2025 10:20:25 AM
Sunny Soltani	ssoltani@awattorneys.com	e-Serve	4/9/2025 10:20:25 AM
William Wynder 84753	wwynder@awattorneys.com	e-Serve	4/9/2025 10:20:25 AM
Alison Flowers 271309	aflowers@awattorneys.com	e-Serve	4/9/2025 10:20:25 AM
Shukan Patel 347017	spatel@awattorneys.com	e-Serve	4/9/2025 10:20:25 AM

This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

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

4/9/2025

Date

/s/Christopher Skinnell

Signature

Skinnell, Christopher (227093)

Last Name, First Name (PNum)

Nielsen Merksamer

Law Firm