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VOTER INITIATIVE - CALIFORNIA

Debbane v. City and County of San Francisco

Court of Appeal, First District, California - September 11, 2026 - Cal.Rptr.3d - 2026 WL 2675819 - 2026 Daily Journal D.A.R. 8186

Residential property owners and property owner associations brought action against city and its officers, including its treasurer, challenging voter-approved ballot measure imposing a tax on owners of residential units in buildings with more than two units that were kept vacant for more than 182 days, asserting the measure was preempted by the Ellis Act and violated the takings, due process, equal protection, and privacy provisions of the federal and state constitutions.

The parties filed cross-motions for summary judgment. The Superior Court, San Francisco County granted the property owners' motion, denied the city's motion, and entered judgment prohibiting the city from administering or enforcing the measure. The city appealed.

The Court of Appeal held that:

- Initiative ordinance and Ellis Act were in actual conflict, and
- Initiative ordinance was preempted by the Ellis Act.

Voter initiative ordinance, enacted pursuant to city's home rule powers, meant to tax residential units in buildings with more than two units if left vacant for more than 182 days, was in actual conflict with the Ellis Act, as required for preemption; Ellis Act protected right not to enter or reenter the residential rental market as well as right to exit the residential rental market, and the measure imposed "prohibitive price" or a significant financial burden on owners for keeping units vacant, thereby operating as a penalty for not offering property for rent or lease.

Voter initiative ordinance, enacted pursuant to city's home rule powers, meant to tax residential units in buildings with more than two units if left vacant for more than 182 days a year was preempted by the Ellis Act; Ellis Act addressed matter of statewide concern, namely, preventing owners from being compelled to rent their residential property by actions of public entities, and it was reasonably related to resolution of that concern, and it was narrowly tailored to avoid unnecessary interference in local governance by containing explicit boundaries, leaving areas for local control in a fashion consistent with its terms.

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