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Paper or Plastic? The Importance of Effective Environmental Review of Ordinances Regulating the Use of High Consumption Consumer Products

*Save the Plastic Bag Coalition v. City of Manhattan Beach*¹

I. INTRODUCTION

In June of 2011, the California Supreme Court ruled on an ordinance proposed by the city of Manhattan Beach, California (“City”) that banned point of sale plastic bags in major distribution centers.² The ban was instituted as a regulatory program to protect the environment, and was largely based on numerous “life cycle”³ studies of paper and plastic bags and their relative effects on the environment.⁴ The bag ordinance was reviewed under the California Environmental Quality Act (“CEQA”), which was enacted to “protect and maintain a quality environment for the people of California, both now and into the future.”⁵ After an initial study,

¹ 254 P.3d 1005 (Cal. 2011) (“Save”).

² *Id.* at 1008.

³ *Id.* at 1009. Life cycle studies take into account the environmental impact of a product based on the data for its manufacture, transportation and disposal. *Id.*

⁴ *Id.* at 1008.

⁵ Cal. Pub. Res. Code § 21000(a) (West 2007). The CEQA requires California government agencies to prepare an initial study of the environmental impacts of any project or ordinance, unless the project falls under an exemption, and if an initial study determines there may be significant environmental effects, a full Environmental Impact

the City determined the proposed ban would not have a significant impact on the environment, and therefore issued a negative declaration.⁶ The City reached this decision despite the inclusivity of “life cycle” studies, clear evidence that increased paper bag use would result from the ban, and resulting negative effects from the increased paper bag use.

The California Supreme Court affirmed the agency’s decision not to prepare an Environmental Impact Report (“EIR”), and set a precedent: the cumulative environmental effects are not important in CEQA review, and agencies will be permitted to create their environmentally related ordinances despite evidence of a negative cumulative effect. Moreover, such an affirmation by the California Supreme Court did not promote the spirit of the CEQA, as it did not progressively move California towards more environmentally conscious and informed legislative decisions.

II. FACTS AND HOLDING

On June 3, 2008, the City issued a report recommending the banning of plastic carry out bags from distribution at “point of sale” locations.⁷ An association of plastic bag manufacturers and distributors

Report (“EIR”) must be prepared by the agency. California Environmental Quality Act, West’s Ann. Pub. Res. Code § 21000, *available at* <http://ceres.ca.gov/ceqa/summary.html>.

⁶ *Save*, 254 P.3d at 1009. A negative declaration is an official statement that a city believes there will be no significant effect on the environment from proposed ordinance, and no EIR will be provided. *Id.*

⁷ *Save the Plastic Bag Coal. v. City of Manhattan Beach*, 254 P.3d 1005, 1008 (Cal. 2011). “Point of sale” bag distribution refers to large retailers’ practice of supplying

known as the Save the Plastic Bag Coalition (“SPBC”) filed petition for a writ of mandate challenging the City’s staff report recommending the adoption of the ordinance.⁸ SPBC described itself as a “newly formed group of companies that will be affected by an ordinance to ban or impose fees on plastic bags” and objected to the City’s proposed ban because it was both “affected and prejudiced” by the ordinance.⁹ The City claimed the CEQA did not require an EIR for the proposed ordinance because the ban would not have a significant effect on the environment,¹⁰ and the ordinance was a regulatory program meant to protect the environment from the effects of plastic bag disposal.¹¹

SPBC stated the proposed ordinance banning plastic bags was “based on misinformation” and would increase paper bags use, harming the environment.¹² SPBC announced its intent to sue the City if the ordinance was adopted without first conducting a full CEQA review, including an EIR, to evaluate the environmental impact relating to the increased paper bag use.¹³

disposal plastic or paper bags for their customers when they purchase items at the retailers’ store. *Id.*

⁸ *Save*, at 1005.

⁹ *Id.* at 1008 n.2. Prejudiced because some of its members were major suppliers of plastic bags to businesses in the City. *Id.* at 1008.

¹⁰ *Id.* at 1008; CAL.CODE REGS., tit. 14, § 15061(b)(3) (2011). CAL.CODE REGS., tit. 14, § 15061(b)(3) (2011).

¹¹ *Save*, 254 P.3d at 1008; CAL.CODE REGS., tit. 14, § 15038 (2011).

¹² *Save*, 254 P.3d at 1008.

¹³ *Save the Plastic Bag Coal. v. City of Manhattan Beach*, 254 P.3d 1005, 1008 (Cal. 2011).

The City conducted an initial study, which determined that banning plastic bags would not harm the environment significantly.¹⁴ The study stated that, as a coastal city, there would be modest improvement in the City's water quality and a reduction of a potential biohazard in the surrounding ocean from the ban.¹⁵ However, the study also found and there would be only a small decrease in the amount of plastic refuse migrating into the adjoining ocean.¹⁶ The study did acknowledge there would be some negative effects from the switchover to paper bags including increased energy use and wastewater production from the making of substitute paper bags.¹⁷

In light of this, the City determined the environmental impact of the ban would be "less than significant" because per capita plastic bag usage for the city did not provide an accurate measurement of the likely increase in paper bag usage.¹⁸ The ordinance did not restrict use of plastic bags by residents, but instead only by businesses at the "point of sale" locations.¹⁹ This included 217 retail establishments, of which only five are high volume distributors of plastic bags that would be heavily affected by the ban.²⁰ Many smaller businesses in the City already used paper bags and distributed far fewer than the high volume distributors.²¹

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Save the Plastic Bag Coal. v. City of Manhattan Beach*, 254 P.3d 1005, 1009 (Cal. 2011).

¹⁹ *Id.*

²⁰ *Id.*

The ordinance would require paper bags to be made of 40 percent recycled content, providing a reduction in landfill use and offsetting the higher cost of producing paper bags.²² Additionally, the City planned a publicity campaign that would advocate for at least a portion of the plastic bags being replaced by reusable bags provided by consumers, in an attempt to mitigate the likely increase in paper bag use resulting from the ban.²³

The study concluded such a ban would decrease the amount of plastic bag litter in the city and the ocean, and would not significantly affect landfill capacity.²⁴ In weighing these factors, the City determined that the ordinance would not cause a significant negative environmental impact.²⁵

On July 1, 2008, the City issued another staff report addressing SPBC's referenced studies and several other contrasting studies, including a South African "life cycle report on plastic bags."²⁶ The staff report

²¹ *Id.* Also, the report stated that plastic bags would not be replaced by paper bags in a one to one ratio, because paper bags can hold up to four times the volume of plastic bags and can be made from a larger proportion of recycled materials than plastic bags.²¹ One study cited in the initial report indicated that 100 paper bags could replace 1500 plastic bags. *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Save the Plastic Bag Coal. v. City of Manhattan Beach*, 254 P.3d 1005, 1009 (Cal. 2011).

²⁵ *Id.*

²⁶ *Id.* The city additionally compared Washington Post report, a 1990 study by Franklin Associates, Ltd, an analysis conduct by the Fund for Research into Industrial Development, Growth and Equity and a 2007 report by Boustead Consulting and Associates, Ltd. *Id.*

stated the “differing results” from the studies could be “selectively used” to support opposing arguments, and were sensitive to a number of variables that could be chosen to lend support to differing claims.²⁷ The City staff recommended going forward with the proposed ordinance, and planned extensive community education. The City also devised an “aggressive outreach program” that would inform the community and “promote the use of reusable bags” to mitigate any effects of increased paper bag use.²⁸

The City adopted the ordinance on July 15, 2008, citing the following reasons: protecting the marine environment from plastic bag intrusion, the environmental impact of both types of bags and the comparative lack of biodegradability of plastic bags, the accumulation of easily windblown plastic bags in the Pacific Ocean’s “Great Pacific Garbage Patch”²⁹ where they remain indefinitely, and the hazard to marine life from choking on plastic bags.³⁰ Based on the comparative advantages of paper bags regarding these concerns, the City claimed interests in public health and safety in implementing the plastic bag ban.³¹

The ordinance provided that “[n]o Affected Retail Establishment, Restaurant, Vendor or Non-Profit Vendor shall provide Plastic Carry-Out

²⁷ *Id.* at 1009-1010. The variables included scope, objectivity, geography, climate and energy resources. *Id.*

²⁸ *Id.* at 1010.

²⁹ The Pacific Ocean contains a huge accumulation of debris known as the “Great Pacific Garbage Patch which is primarily composed of plastic debris. *Id.*

³⁰ *Save the Plastic Bag Coal. v. City of Manhattan Beach*, 254 P.3d 1005, 1010 (Cal. 2011).

³¹ *Id.*

Bags to customers at point of sale.”³² The ordinance made it clear that recycled or reusable bags were allowed, and vendors should encourage their use through education or incentives.³³

SPBC petitioned for a writ of mandate on August 12, 2008 to bar enforcement of the ordinance until the city prepared an EIR, claiming “public rights were at stake.”³⁴ SPBC claimed the action was based on “an interested citizen seeking to procure enforcement of... public duties.”³⁵

The trial court stated that SPBC had standing because it was not a “for profit corporation that [was] seeking a commercial advantage over a specific competitor, and... raised a ‘genuine environmental issue.’”³⁶ SPBC raised the issue of whether the banning of plastic bags, and the subsequent increase in use of paper bags, would actually cause a greater harm to the environment.³⁷ The trial court stated the evidence supplied by SPBC supported the argument that the ban would have a negative environmental effect, and a full EIR was required.³⁸

³² *Id.* (citing City of Manhattan Beach Ord. No. 2115, § 2(b)(A)).

³³ *Save*, 254 P.3d at 1010-1011 (citing City of Manhattan Beach Ord. No. 2115, § 2(a)).

³⁴ *Save*, 254 P.3d at 1011.

³⁵ *Id.*

³⁶ *Save the Plastic Bag Coal. v. City of Manhattan Beach*, 254 P.3d 1005, 1011 (Cal. 2011).

³⁷ *Id.*

³⁸ *Id.*

The court of appeals affirmed the trial court's ruling in a split opinion.³⁹ The majority held SPBC had standing because it was qualified to bring a claim "under the public right/public duty exception to the requirement that a mandamus petition be brought by a beneficially interested party."⁴⁰ The majority rejected the claim that SPBC was asserting a purely commercial or competitive interest, finding that SPBC had standing to "seek enforcement of the city's public duty to prepare an EIR on the effects of the ordinance."⁴¹ The majority concluded that SPBC made a fair argument about the "significant environmental impacts" of the ordinance.⁴² The dissent did not address the standing issue.⁴³ Instead, it argued the CEQA requirements would extend passed their intended means if a small, limited-resource defendant like the City was required to prepare a full EIR on the effects of increased paper bag use that could result from the ban on the distribution of plastic bags.⁴⁴ The dissent argued the life cycle studies referring to the global effects of paper production were not convincing enough to "provide substantial evidence of any environmental harm cause by [the City's] ordinance."⁴⁵

The California Supreme Court considered whether SPBC was considered a corporate entity for the purposes of standing, and whether the

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Save the Plastic Bag Coal. v. City of Manhattan Beach*, 254 P.3d 1005, 1011 (Cal. 2011).

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

City was required to prepare an EIR on the effects of the ordinance banning plastic bags.⁴⁶ The court held an entity like SPBC is not subject to higher scrutiny for standing when it files a citizen suit, and, as a conglomerate of businesses, SPBC had standing to challenge the City's analysis of the environmental impacts of a plastic bag ban.⁴⁷ Additionally, the court held that because evidence and common sense support the City's determination that its ordinance would have no significant environmental effect, a negative declaration was sufficient to comply with the requirements of the CEQA.⁴⁸ The City did not have to produce an EIR to implement the plastic bag ban.⁴⁹

III. LEGAL BACKGROUND

The CEQA was established by the California legislature to help maintain a quality environment for all people in the state of California.⁵⁰ The CEQA ensures every California government agency considers the environmental impact of its projects, avoiding or mitigating those effects where feasible.⁵¹ The act requires the government inform the public when

⁴⁶ *Id.* at 1008.

⁴⁷ *Id.* at 1011.

⁴⁸ *Save the Plastic Bag Coal. v. City of Manhattan Beach*, 254 P.3d 1005, 1011 (Cal. 2011).

⁴⁹ *Id.* at 1008.

⁵⁰ CAL. PUB. RES. CODE § 21000.

⁵¹ California Environmental Quality Act, CAL. PUB. RES. CODE § 21000, *available at* <http://ceres.ca.gov/ceqa/summary.html>.

a proposed project will have significant adverse effects on the environment.⁵² If the CEQA governs the project, and there is a creditable argument that there will be significant environmental harm, then the agency must prepare an EIR.⁵³

When a court hears a case brought under the CEQA, it must first determine if such a claimant has standing to bring the suit.⁵⁴ If the claimant is a corporation, the corporation must show that it has the “same attributes as a citizen litigant.”⁵⁵ For a negative declaration, the court looks at whether there is evidence of significant environmental effects that would mandate an EIR under the CEQA.⁵⁶ If such evidence is found, the court will require an EIR on the effects of its proposed project.⁵⁷

A. *Standing for Corporate Entities*

To determine if a petitioner in California has standing, California statutory law and case law requires courts to determine whether the

⁵² Sean Stuart Varner, *The California Environmental Quality Act (CEQA) After Two Decades; Relevant Problems and Ideas for Necessary Reform*, 19 PEPP. L. REV., 1450-1451 (1992).

⁵³ *Id.* at 1451.

⁵⁴ *See Save the Plastic Bag Coal. v. City of Manhattan Beach*, 254 P.3d 1005, 1012 (Cal. 2011).

⁵⁵ *Id.* at 1012.

⁵⁶ *Id.* at 1008.

⁵⁷ CAL. PUB. RES. CODE § 21002.1 (West 1994).

claimant has a “beneficial interest” in the outcome of the litigation against the state, and whether the interest asserted involves a “legal or special interest.”⁵⁸ Past courts have found such a requirement means one has an interest above the public at large and is in fact adversely affected by the governmental action.⁵⁹

The leading California case that determines whether a corporation or business entity has standing in a CEQA claim is *Waste Management of Alameda County, Inc. v. County of Alameda*.⁶⁰ The court in *Waste Management* held mere competitive and commercial interests are not sufficient to generate a “beneficial interest.” Some cases have used the analysis in *Waste Management*, but ignored the criteria it imposes on corporate entities bringing a claim.⁶¹ From these cases, courts can consider corporations citizens for the purposes of pursuing a “citizen

⁵⁸ *Save*, 254 P.3d at 1011 (citing *Carsten v. Psychology Examining Comm.*, 614 P.2d 276 (Cal. 1980)).

⁵⁹ *Carsten v. Psychology Examining Comm.*, 614 P.2d 276, 278 (Cal. 1980). Additionally, courts have ruled that the beneficial interest must be direct and substantial. *Parker v. Bowron*, 254 P.2d 6, 9 (Cal. 1953).

⁶⁰ *Save the Plastic Bag Coal. v. City of Manhattan Beach*, 254 P.3d 1005, 1012 (Cal. 2011). In *Waste Mgmt.*, a corporation brought a claim for economic injury after the state required an expensive CEQA analysis of the corporation and the corporation asserted injury due to the fact that a competitor was not required to undergo the same process. *Waste Mgmt. v. County of Alameda*, 94 Cal. Rptr. 2d 740, 750-51 (Cal. Ct. App. 2000).

⁶¹ *Urban Habitat Program v. City of Pleasanton*, 80 Cal. Rptr. 3d 300, 315 (Cal. Ct. App. 2008). This case involved a non-profit housing corporation that was given standing in a citizen suit. *Id.* In *Marshall v. Pasadena Unified School Dist.*, a contractor’s corporate status did not bar it from inclusion in a citizen suit. 15 Cal. Rpt. 3d 344, 353 (Cal. Ct. App. 2004).

suit”⁶² by simply ignoring the heightened standard present in *Waste Management*.⁶³

Moreover, California courts grant standing for corporations whose operations are directly affected by a government project and who wish to bring a CEQA challenge to the government’s environmental analysis of a proposed action.⁶⁴ The courts do not view these types of cases as “citizen suits,” and hold the corporations have standing in their own right to challenge the government action because they have been adversely affected.⁶⁵

B. Requirements for an Environmental Impact Report From an Agency

The CEQA must be interpreted to afford the fullest possible protection to the environment, within the reasonable scope of the statutory language.⁶⁶ The CEQA requires government agencies to prepare an EIR when proposing a project with potential environmental effects.⁶⁷ This

⁶² *Save*, 254 P.3d at 1013.

⁶³ *Id.*

⁶⁴ *See W. States Petroleum Ass’n v. Superior Court*, 888 P.2d 1268 (Cal. 1995); *Dunn-Edwards Corp. v. Bay Area Air Quality Mgmt. Dist.*, 11 Cal. Rptr. 2d 850 (Cal. Ct. App. 1992).

⁶⁵ *Carsten v. Psychology Examining Comm.*, 614 P.2d 276, 278 (Cal. 1980).

⁶⁶ *Save the Plastic Bag Coal. v. City of Manhattan Beach*, 254 P.3d 1005, 1018 (Cal. 2011) (citing *Mountain Lion Found. v. Fish & Game Comm’n*, 939 P.2d 1280 (1997)).

⁶⁷ CAL.CODE REGS., tit 14 § 15061(b)(3) (2011).

requirement is triggered if the agency determines, after an initial study, that the project might have a “significant effect on the environment.”⁶⁸ In *No Oil, Inc. v. City of Los Angeles*, the court stated a test for determining the significance of the environmental impact by determining “whether there is a reasonable possibility that the project will have a momentous or important effect of a permanent or long enduring nature.”⁶⁹ In *Communities for a Better Environment v. South Coast Air Quality Management*, the court found that an agency deciding to continue a project without preparing an EIR must have “substantial evidence.”⁷⁰ The *Communities* court determined the “substantial evidence” must support a fair argument that the project may result in adverse environmental impacts.⁷¹ If it is determined there is no “substantial evidence” that the project may have a significant effect on the environment, then the agency may issue a negative declaration, and move forward with the project.⁷²

An agency is normally not required to perform an “exhaustive analysis of all conceivable impacts” outside of its project boundaries.⁷³

⁶⁸ CAL. PUB. RES. CODE §§ 21100(a), 21151(a) (West 2012). A significant effect includes any substantial, or potentially substantial, adverse change in the environment. *Id.*

⁶⁹ 529 P.2d 66, 72 (Cal. 1974).

⁷⁰ 226 P.3d 985, 991 (Cal. 2010).

⁷¹ *Id.* at 992.

⁷² CAL. PUB. RES. CODE §21080(c)(1) (West 2011). A negative declaration means the project will have no significant environmental effect. *Id.*

⁷³ *Save the Plastic Bag Coal. v. City of Manhattan Beach*, 254 P.3d 1005, 1017 (Cal. 2011).

Less detail is required in studying the indirect effects of a proposed project.⁷⁴

Some cases have raised the issue of the cumulative effect of passing legislation that has a minimal, but still negative, effect on the environment.⁷⁵ In *Environmental Protection Information Center v. California Dept. of Forestry and Fire Protection*, the court found that an EIR:

Must reasonably include information about past projects to the extent such information is relevant to the understanding of the environmental impacts of the present project considered cumulatively with other pending and possible future projects.⁷⁶

Courts have also addressed the issue of applying the “common sense” exemption to the CEQA application of a proposed government project.⁷⁷ The “common sense” exception in the CEQA allows the state to deny an EIR when it can be seen with certainty there is no possibility the

⁷⁴ *Muzzy Ranch Co. v. Solano Co. Airport Land Use Comm’n*, 160 P.3d 247, 259 (Cal. 2007). Indirect effects include environmental effects outside of the directly affected project area and in the environment at large. *Id.*

⁷⁵ See *Envtl. Prot. Info. Ctr. v. California Dept. of Forestry & Fire Prot.*, 187 P.3d 888, 931 (Cal. 2008); *Sierra Club v. The West Side Irrigation Dist.*, 27 Cal. Rptr. 3d 223, 230-32 (Cal. 2005).

⁷⁶ 187 P.3d at 932.

⁷⁷ *Muzzy Ranch*, 160 P.3d at 380..

activity in question may have significant effects on the environment.⁷⁸ This exemption is permitted at all levels of CEQA review.⁷⁹

IV. INSTANT DECISION

Chief Justice Corrigan delivered the opinion of the Supreme Court of California and began by addressing the two critical questions raised in the case.⁸⁰ First, what are the standing requirements for a corporate entity when challenging an agency's decision to not produce an EIR.⁸¹ Second, the court considered whether the City was required to prepare an EIR on the effects of an ordinance banning the use of plastic bags by local businesses.⁸²

A. *Standing*

On the issue of standing, the court found the enhanced standing requirements outlined in *Waste Management* for corporate entities trying to bring a "citizen suit" did not apply to SPBC; the court considered SPBC

⁷⁸ *Id.* (citing CAL. CODE REGS. tit 14, §15061(b)(13) (2012)).

⁷⁹ *Martin v. City and County of San Francisco*, 37 Cal. Rptr. 3d 470, 475 (Cal. Ct. App. 2005).

⁸⁰ *Save the Plastic Bag Coal. v. City of Manhattan Beach*, 254 P.3d 1005, 1008 (Cal. 2011).

⁸¹ *Id.*

⁸² *Id.*

a citizen for the purposes of the claim.⁸³ The court found heightened scrutiny for standing was unnecessary, and the “public interest standing” exception was not required since SPBC had a “particular right to be preserved or protected over and above the interest held in common with the public.”⁸⁴ The court concluded that because SPBC represented the businesses directly affected by the City’s ordinance, it had standing in its own right to challenge the City’s analysis of environmental impacts of the plastic bag ban.⁸⁵

The City relied on *Waste Management*,⁸⁶ arguing that SPBC is not a “citizen” and has not demonstrated a “genuine and continuing

⁸³ *Id.* at 1008.

⁸⁴ *Id.* at 1008, 1015.

⁸⁵ *Id.* at 1008. Typically, a party seeking a writ of mandate against a city must be “beneficially interested” to have standing, meaning the party has a right to protect or an interest to be served “over and above the interest held in common with the public at large.” CAL. CIV. PROC. CODE § 1086 (West 1907). Only one who is adversely affected by the actions of a state government has standing to challenge those actions if the matter is judicially reviewable. *Save*, 254 P.3d at 1011. However, because SPBC’s claim was one of “public right/public duty”, showing “any legal or special interest” in having the laws executed and the duty enforced was not required, as long as it was considered an interested citizen seeking to have the laws executed and a corresponding duty enforced. *Id.* The court noted that this “beneficial interest” must be direct and substantial, and not ambiguous. *Id.* The public right/public duty exception to the requirement of a beneficial interest is established so that no government body can impair the functioning of legislation that benefits the affected community. *Id.* The court refers to this type of interest as “public interest standing,” and this is the type of interest asserted by SPBC in bringing the CEQA claim. *Id.* at 1011-12.

⁸⁶ *Waste Mgmt. of Alameda County, Inc. v. County of Alameda*, 94 Cal. Rptr. 2d 740 (Cal. App. Dist. 2000). This case required that corporations seeking a writ of mandate based on public interest standing be held to a higher standard than an individual citizen. *Id.*

environmental concern sufficient to support a public interest standing.”⁸⁷ The court affirmed the appellate ruling, which drew a distinction from *Waste Management* and observed SPBC did not have a purely competitive or commercial interest, but rather an “interest in maintaining a quality environment.”⁸⁸ The high court noted, “strict rules of standing that might be appropriate in other contexts have no application where broad and long term [environmental] effects are involved.”⁸⁹

SPBC’s qualification as a “citizen” for the purposes of standing was also reviewed.⁹⁰ The appellate court stated, “absent compelling policy reasons to the contrary, it would seem that corporate entities should be as free as natural persons to litigate in the public interest.”⁹¹ The court drew another distinction from the *Waste Management* case, indicating corporate interests are not always contrary to public interest, and may be the same.⁹² The instant court affirmed the appellate court’s ruling that

⁸⁷ *Save the Plastic Bag Coal. v. City of Manhattan Beach*, 254 P.3d 1005, 1012 (Cal. 2011). In *Waste Management of Alameda County, Inc. v. County of Alameda*, the court denied standing for a CEQA brought by a corporation because it asserted only a commercial and competitive interest. 94 Cal. Rptr. 2d at 744-45. The corporation asserted that its competitor should be required to undergo an extensive CEQA review in the same way it was required, and claimed it would suffer economic injury due to the competitor escaping such costs of compliance. *Id.* at 746.

⁸⁸ *Save*, 254 P.3d at 1013.

⁸⁹ *Id.* at 1014.

⁹⁰ *Id.* at 1013.

⁹¹ *Id.*

⁹² *Id.* Because the petitioner in *Waste Management* sought to use CEQA to impose regulatory burdens on a business competitor, with no demonstrated concern for the environment, those interest were not aligned with the public interest. 94 Cal. Rptr. 2d at 749.

SPBC's claims were aligned with the public interest because, although they had commercial interests in the outcome of action, "maintaining a quality environment was a [matter of] statewide concern."⁹³ Thus, SPBC's claims were appropriate for a citizen suit and resorting to the public interest exception was unnecessary.⁹⁴

The high court stated SPBC had the "direct, substantial and beneficial interest required to seek a writ of mandate."⁹⁵ The ordinance's ban on plastic bags would have had a direct and severe impact on the business of plastic bag manufacturers and suppliers.⁹⁶ The City argued that a particular plaintiff must be affected by an adverse environmental impact to qualify as a "beneficially interested" party to bring a claim under the CEQA.⁹⁷ The court stated such a limited scope for standing was not necessary, and SPBC satisfied standing as a "citizen."⁹⁸ The court concluded its discussion of the standing issue by stating that SPBC was adversely affected by government action and had standing to challenge the action.⁹⁹

⁹³ *Save the Plastic Bag Coal. v. City of Manhattan Beach*, 254 P.3d 1005, 1013 (Cal. 2011).

⁹⁴ *Id.* at 1014. The court noted that "strict rules of standing... might be appropriate in other contexts where broad and long term environmental effects are involved." *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.* at 1014-1015.

⁹⁷ *Id.* at 1015.

⁹⁸ *Id.*

⁹⁹ *Save the Plastic Bag Coal. v. City of Manhattan Beach*, 254 P.3d 1005, 1015 (Cal. 2011).

B. The EIR Requirement

California statutory law states a “public agency pursuing or approving a project need not prepare an EIR unless the project may result in a ‘significant effect on the environment.’”¹⁰⁰ A significant effect includes any “substantial, or potentially substantial, adverse change to the environment.”¹⁰¹ Here, the court noted this project was not considered exempt from review under the CEQA, and review of the possible effect on the environment was necessary.¹⁰²

The City’s decision to issue a negative declaration regarding the plastic bag ban was reviewed for “prejudicial abuse of discretion,” to make sure the City followed the law and based its decisions on substantial evidence.¹⁰³ The majority concluded, in light of the whole record, there was substantial evidence that the plastic bag ban “may have a significant effect” on the environment.¹⁰⁴ Various studies comparing the environmental impacts of different bags convinced the majority that a

¹⁰⁰ *Id.* (quoting CAL. PUB. RES. CODE §§ 21100(a), 21151(a), (West 2012)).

¹⁰¹ *Save*, 254 P.3d at 1015 (quoting CAL. PUB. RES. CODE §§ 21100(a), 21151(a), (West 2012)).

¹⁰² *Id.*

¹⁰³ *Save*, 254 P.3d at 1015 (citing CAL. PUB. RES. CODE § 21168.5 (West 2012)).

¹⁰⁴ *Save*, 254 P.3d at 1015.

plastic bag ban would lead to increase use of paper bags, which have a more harmful environmental impact.¹⁰⁵

The majority conceded, because the city is so small and because there are such a limited number of businesses distributing plastic bags, there would be a minimal effect on the use of paper bags as a result of the ordinance, and consequently little impact on the local environment.¹⁰⁶ The court noted the initial study's lack of information about the City's number of paper and plastic bags currently consumed, recycling rates, quantity of plastic bags disposed of in City trash, whether the City had a landfill that would be impacted, or a recycling program, and the likely impact of a campaign urging recycling and reusable bag use.¹⁰⁷

The court reiterated that the manufacture, transportation, recycling, and disposal of paper bags have more negative environmental effects than comparable plastic bag "life cycles."¹⁰⁸ The court reasoned the City's admission that paper bags were more likely to harm the environment than some other possible course of action did not necessarily require an EIR because "the CEQA does not demand an exhaustive comparative analysis

¹⁰⁵ *Save the Plastic Bag Coal. v. City of Manhattan Beach*, 254 P.3d 1005, 1016 (Cal. 2011). This included "greater non-renewable energy and water consumption, greenhouse gas emissions, solid waste production and acid rain." *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

of relative environmental detriments for every alternative course of action.”¹⁰⁹

The court noted that by comparing actual scale of the environmental impacts from the increased paper bag consumption in the City compared to the global impacts, the city acted within its discretion in determining its plastic bag ban would have no significant environmental effects.¹¹⁰

The court’s reason for applying a looser standard in this case was based on the minimal impact of the ordinance.¹¹¹ The court found the City to be small enough that the cumulative effect of such an ordinance would be negligible.¹¹² The court compared a large city like Los Angeles (“LA”), population 10 million, to the City, which contained only 40,000 residents, and found negligible comparative impact of the ban due to the size contrast.¹¹³

¹⁰⁹ *Id.* The EIR is only necessary for parts of the project that are likely to have a “significant environmental impact,” which includes any effect that is “substantial, or potentially substantial, adverse changes in physical conditions” of the area. *Id.*

¹¹⁰ *Id.* The local impacts included only transportation of paper bags, and possibly their disposal. *Id.* The increased vehicle traffic was found to be minimal, and an analysis of the additional garbage production was found to be unnecessary. *Id.* The court found that because only a regional landfill was used by the City, the City properly anticipated that the number of residents is small enough that the increase in regional solid waste would be insignificant. *Id.* at 1016-17.

¹¹¹ *Save the Plastic Bag Coal. v. City of Manhattan Beach*, 254 P.3d 1005, 1017 (Cal. 2011).

¹¹² *Id.* at 1017-18.

¹¹³ *Id.* at 1017.

The court found the appellate court erred by concluding there was substantial evidence to support the claim that the City's ordinance "might significantly effect the environment."¹¹⁴ Despite the likely increase in paper bag use, the court was not convinced the ban would "contribute to the negative environmental impacts in any significant way."¹¹⁵

The court further acknowledged the CEQA should be interpreted to give the "fullest possible protection to the environment, within a reasonable scope."¹¹⁶ The court viewed the instant case as a "cautionary example" of overreliance on "life cycle" impacts of a particular product, which must be kept in perspective when the scale of the project is such that the product use increase is "plainly insignificant."¹¹⁷ The court concluded its decision by stating the "common sense" analysis of CEQA issues is important at all levels of CEQA review and the "life cycle" studies should not be considered too greatly.¹¹⁸ The court held the environmental impacts discernible from "life cycle studies of paper and plastic bags" are not significant enough to mandate an EIR by the City.¹¹⁹

¹¹⁴ *Id.* at 1018.

¹¹⁵ *Id.*

¹¹⁶ *Id.* (quoting *Mountain Lion Found. v. Fish & Game Com.*, 939 P.2d 1280, 1284 (1997)).

¹¹⁷ *Save the Plastic Bag Coal. v. City of Manhattan Beach*, 254 P.3d 1005, 1018 (Cal. 2011).

¹¹⁸ *Id.*

¹¹⁹ *Id.*

V. COMMENT

A. *The Importance of Citizen Standing for a Corporation Bringing a CEQA Claim*

This case affirms a critical requirement for environmental claims brought under the CEQA, the standing of a corporate entity to bring a claim as a concerned citizen.¹²⁰ Although standing is a preliminary issue, it is critical for enabling the court to review the merits of the case. Corporate standing is particularly important in environmental claims because decisions with lasting environmental impacts can evade review if a corporation with greater resources than the average concerned citizen is unable to raise a claim against a proposed ordinance.

It is likely few individuals will have the resources, time, or willingness to bring an expensive CEQA claim against the government for a negative declaration on an ordinance that bans point of sale plastic bags in a city. This court, by allowing standing for an association of manufacturers whose business interests were similarly affected by the proposed ordinance, has made the process of bringing a CEQA claim more easily achievable for a concerned citizen.¹²¹

SPBC was considered a corporation asserting a public right/public duty under the exception to the “beneficial interest requirement.”¹²² Here,

¹²⁰ *Id.* at 1008.

¹²¹ *Id.*

¹²² *Id.*

the court properly decided to allow SPBC to have standing by recognizing that the extended requirements established in *Waste Management* were not necessary.¹²³ Because only one other Court of Appeals required the strict elements for corporate standing found in *Waste Management*, this court acted properly by granting standing to SPBC, so that these issues – otherwise unlikely to reach the Court – would have an opportunity to be heard.¹²⁴

B. EIR and Responsible Government Agency Action Under the CEQA

The fundamental goal of the CEQA is requiring public agencies to “identify the significant environmental effects of their actions” and avoid those effects, or at the very least mitigate them whenever possible.¹²⁵ A clear problem that arises from the holding of this case is the unfortunate precedent it sets regarding the application of the CEQA to city ordinances regulating point of sale bag distribution. The court ruled a plastic bag ban would likely have “significant environmental effects,” but chose not to require a full EIR because it concluded there would be no “significant effect” on the environment as a whole, due to the relatively small size of the City.¹²⁶ This extremely conservative approach to environmental

¹²³ *Burrtec Waste Indus., Inc. v. City of Colton*, 97 Cal. App. 4th 1133, 1139, 119 Cal. Rptr. 2d 410 (2002)

¹²⁴ *Save the Plastic Bag Coal. v. City of Manhattan Beach*, 254 P.3d 1005, 1013-16 (Cal. 2011).

¹²⁵ California Environmental Quality Act, CAL. PUB. RES. CODE § 21000, available at <http://ceres.ca.gov/ceqa/summary.html>.

¹²⁶ See *Save*, 254 P.3d at 1016-17.

regulation is not in the best interest of the state of California or the environment as a whole.

The CEQA leaves the “significant effect” phrase open to broad interpretation, and allows a court to consider direct and indirect effects of a project that are “reasonably foreseeable.”¹²⁷ The Act states there is no firm test for a “significant effect,” and an “ironclad definition” is not given.¹²⁸ Significant effects are limited to “substantially adverse changes” to the environment,¹²⁹ and while this ordinance may not *directly* have a “significant effect” that would require an EIR, the cumulative effects of the ordinance combined with similar ordinances from other California cities could amount to significant effects on the environment as a whole.¹³⁰ This is particularly true in the state of California where similar bans have been implemented in larger cities like San Francisco and Santa Monica.¹³¹ By looking for substantial adverse effects of the bag ordinance alone, the court failed to consider the ordinance in a larger context.¹³² The court had the opportunity to require that the City follow the strictest environmental standards and require an EIR, but erred in choosing not to do so.

The court’s ruling that there would be little to no increase in paper bag use was based only on an initial study. However, that study contained

¹²⁷ CAL. CODE REGS. tit. 14, § 15064(d) (2010).

¹²⁸ CAL. CODE REGS. tit. 14, § 15064(b) (2010).

¹²⁹ CAL. PUB. RES. CODE § 21100(d) (2007).

¹³⁰ *Save the Plastic Bag Coal. v. City of Manhattan Beach*, 254 P.3d 1005, 1017-18 (Cal. 2011).

¹³¹ *Id.*

¹³² *See id.*

no information about the city's actual consumption of plastic bag products, which would give a much clearer picture of the actual environmental effects, and should have been considered.¹³³ This means the court affirmed an environmental ordinance based on incomplete information. Thus, the ordinance could actually harm the environment, despite its intent. Only a full analysis could confirm the intent of the act would actually be attained after its enactment.

There are many arguments as to why the increase in paper bag use resulting from a ban of point of sale plastic bags has a significant negative effect on the environment.¹³⁴ Whether or not the production of paper bags has a positive environmental impact depends on how the timber was processed and whether it came from an environmentally sustainable forest.¹³⁵ Paper bag transport requires up to seven times as much space in trucks to deliver the same quantity of bags.¹³⁶ Paper occupies approximately half of the landfill volume, and plastic accounts for only 9-12% of landfill volume in general.¹³⁷

Disposal of paper bags is not more eco-friendly than plastic bags even though the bags are made from tree pulp and not spare petroleum products. Modern landfills are designed in such a way that the isolation

¹³³ *Id.* at 1016.

¹³⁴ *Myth: Paper is Better than Plastic*, REUSABLES FOR EVERY PART OF YOUR LIFE, <http://www.reuseit.com/learn-more/myth-busting/why-paper-is-no-better-than-plastic> (last visited Apr. 6, 2012).

¹³⁵ *Paper or Plastic?*, ENVIRONMENTAL LITERACY COUNCIL (Aug. 4, 2008) <http://www.enviroliteracy.org/article.php/1268.php>.

¹³⁶ *Id.*

¹³⁷ *Id.*

from air and water prevents anything from biodegrading, so using paper bags with this intention is not realistic.¹³⁸ Similarly, much of what goes into a paper bag is not renewable or energy efficient.¹³⁹ The pulping and bleaching processes used for paper bag creation produce more CO₂ emissions per year than comparable plastics manufacturing.¹⁴⁰ Paper bags have advantages in that they are less damaging to marine life,¹⁴¹ but plastic bags use 71% less energy in the production process, which means paper bags produce more carbon that arguably does greater damage to the marine environment.¹⁴² Paper bags take nearly twenty-six times as much water to produce as plastic bags, and require nearly eighty-five times as many BTUs to recycle.¹⁴³

The 1-3 percent of stray plastic bags levels the playing field between plastic and paper in terms of environmental damage, but this is exactly why even a small place such as the City must do an EIR to avoid acting on incomplete evidence when creating legislation.¹⁴⁴

Sources have shown plastic bags are less harmful to the environment, but there are still better alternatives, particularly reusable

¹³⁸ *Id.*

¹³⁹ *Paper Versus Plastic Bags*, APPROPEDIA (last updated Mar. 30, 2011) http://www.appropedia.org/Paper_versus_plastic_bags.

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ *Paper or Plastic?*, *supra* note 135.

bags brought to stores by customers.¹⁴⁵ According to study conducted by San Francisco before implementing a similar ban,

the best way to reduce the environmental impacts and litter associated with grocery bags is very much in line with both longstanding EPA guidelines and the *ULS Report*¹⁴⁶ philosophy: the issue is not paper or plastic, but rather finding ways to reduce, reuse, and recycle both of them – *in that order*.¹⁴⁷

Creating legislation requiring consumers to buy reusable bags and use them, or suffer a penalty that would greatly offset any environmental damage from non-reusable bags, would advance environmental policy in a more sound direction. Such a change can only be done when conclusive evidence on the environmental effects of a bag ban is determined. Moreover, a larger governmental body requires as much analysis as possible to shift in the direction of better use of non-renewable or semi-renewable resources. Therefore, an EIR by a small city will still be intrinsically valuable.

¹⁴⁵ *Paper Versus Plastic Bags*, *supra* note 139.

¹⁴⁶ Robert Lilienfield, *Review of Life Cycle Data Relating to Disposable, Compostable, Biodegradable and Reusable Grocery Bags*, The ULS Report 4 (2008), available at www.use-less-stuff.com/Paper-and-Plastic-Grocery-Bag-LCA-Summary.pdf.

¹⁴⁷ *Id.* The “ULS” acronym stands for “use less stuff,” and the publication does various analyses on product related environmental issues. *Id.*

The “life cycle studies” compare the environmental impact of plastic bag “life cycles” and paper bag “life cycles.”¹⁴⁸ The problem with the “life cycle” studies from which the court based its EIR decision is the studies are inconsistent. Even in light of this, the majority acknowledged, “it is undisputed that...paper bags entail more negative environmental consequences than do the same aspects of plastic bag “life cycle[s].”¹⁴⁹ Since the current ordinance exchanges all plastic bags from major distributors in the City for paper bags, and it is only to be expected such a change will result in some increased use of paper bags. The decision not to require an EIR means there is no firm evidence the ban will not have a significant negative effect. A more logical step would be for the court to require the City to prepare an EIR to establish conclusively the “life cycle” impact of paper and plastic bags, and use that information to inform any future regulation of point of sale bags. The EIR could provide evidence that neither option is best for the environment, and could demonstrate that other courses of action must be researched. It could also add to the body of knowledge about the environmental effects of these types of products and support further analysis by a larger legislative body. Finally, an EIR would signify the importance of applying CEQA in a way that relies on conclusive evidence, and considers cumulative impacts of government ordinances.

The court’s reasoning that the CEQA requires considering only “significant environmental effects” on the project area did not consider *cumulative* impacts in any significant way. The CEQA itself states, “the project area ... does not define the relevant environment for purposes of

¹⁴⁸ See *id.* See also *Save the Plastic Bag Coal. v. City of Manhattan Beach*, 254 P.3d 1005, 1009 (Cal. 2011).

¹⁴⁹ *Save*, 254 P.3d at 1016.

CEQA when a project's effects will be felt outside the project area.”¹⁵⁰ The court dismissed the impact of such a ban in the surrounding areas as negligible due to the small size of the City.¹⁵¹ The impact was still deemed negligible when combined with the effects of similar bans in larger cities, which were also determined with inconclusive life cycle studies.¹⁵² Not requiring an EIR means that the cumulative effects of the ordinance, in the context of others bans of this type, cannot be accurately reviewed.

In addition to dismissing concerns about the cumulative negative environmental effects of the ordinance, the court did not address the cumulative legal effect of allowing the plastic bag ordinance to go forward. Because current case law does not require the state “afford the fullest possible protection” as the CEQA requires, all smaller government agencies, like the City, may now implement legislation that likely has a negative effect on the environment, either directly or cumulatively. This will also make it easier for government entities to pass environmental legislation based on incomplete or inconsistent evidence.

The court reasoned a larger legislative body would have better resources to establish the overall environmental effects of such a ban and would have better capability for implementing any environmental legislation uniformly throughout the country.¹⁵³ While this reasoning appears sound, the court sidestepped a critical opportunity to establish clarity on long-term plastic bag bans with an EIR and move progressively

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² *Id.* at 1017; CAL. PUB. RES. CODE § 21060.5 (2007).

¹⁵³ *Save*, 254 P.3d at 1018.

towards more environmental responsibility. The California Supreme Court requiring an EIR in this case would have signaled to government agencies at every administrative level, including smaller cities, that they must not rely on insubstantial environmental evidence when passing legislation controlling the use of high consumption disposable consumer products. In contrast, the ruling by this court does not allow the CEQA to truly “afford the fullest possible protection to the environment within the reasonable scope of the statutory language”¹⁵⁴ nor does it uphold the spirit of the act while remaining practical.

Looking ahead, a requirement for an EIR would have set the stage for the next step of legislative review and provided further evidence to larger government bodies tasked with creating environmental ordinances of this kind that would apply to the entire country. The cost of performing such an analysis could pale in comparison to the cost of repairing harm to the environment caused by making decisions based on insufficient evidence.

The court here concludes that the “common sense doctrine” should be used at all levels of CEQA review, and states that life cycle studies can be a useful guide, but should be kept in perspective.¹⁵⁵ Although common sense analysis could imply that the ban’s minimal increase on use of paper bags will have only a small environmental effect, one cannot ignore the cumulative effects of this ordinance when taken together with other similar ordinances in California. Not requiring a more

¹⁵⁴ *Save the Plastic Bag Coal. v. City of Manhattan Beach*, 254 P.3d 1005, 1018 (Cal. 2011) (quoting *Mt. Lion Found. v. Fish & Game Com.*, 939 P.2d 1280, 1284 (Cal. 1997)); *see also* CAL. PUB. RES. CODE § 21000 et seq. (2007).

¹⁵⁵ *Save*, 254 P.3d at 1018; *see also* *Friends of Mammoth v. Bd. of Supervisors*, 502 P.2d 1049, 1065 (Cal. 1972), *Martin v. City of San Francisco* 37 Cal.Rptr.3d 470, 476 (Cal. Ct. App 1st Dist. 2005).

detailed analysis to clarify the ambiguity left by the life cycle studies is not a useful application of the “common sense doctrine.”¹⁵⁶ Common sense in environmental lawmaking, especially applied to every stage of the process in the CEQA, should mean using all of the state’s available resources to determine whether a proposed ordinance will have an overall negative environmental impact, not just an impact on the local project area.

Clearly, the court’s use of the “common sense” doctrine established in *Muzzy*¹⁵⁷ fails to take into account the bigger picture. The issue is not whether exclusive plastic or paper bag use is worse for the City, but whether an EIR on many possible options should be required so agencies can base their legislation on accurate information. This is the responsible action for agencies acting under the CEQA.

The court and other opponents of this idea will likely argue that a smaller city should not bear the cost of an expensive environmental review for an ordinance that only affects such a modest amount of people. This argument compares the City to larger California cities like Los Angeles, Santa Monica and San Francisco. However, larger cities have implemented similar bans based on evidence that is inconclusive regarding plastic and paper bag life cycles, meaning if there are negative cumulative effects, these larger cities are ignoring them as well.¹⁵⁸ To wait for government legislation that can be applied uniformly throughout the

¹⁵⁶ *Save*, 254 P.3d at 1018.

¹⁵⁷ *Muzzy Ranch Co. v. Solano County Land Use Comm’n*, 160 P.3d 116, 121 (Cal. 2007).

¹⁵⁸ *Env’tl. Prot. Info. Ctr. v. Cal. Dep’t of Forestry & Fire Prot.*, 187 P.3d 888, 931 (Cal. 2008); *see also* *Sierra Club v. W. Side Irrigation Dist.*, 27 Cal.Rptr.3d 223, 230-31 (Cal. Ct. App 3d Dist. 2005).

country means ignoring possible harm to the environment in an effort to put off more responsible environmental legislation. It also means that such cities could face greater costs in the future if the plastic bag ban results in greater harm to the environment, which this court has acknowledged as likely on at least a minimal level.¹⁵⁹

According to the ULS, legislation designed to reduce environmental impacts and litter by outlawing grocery bags based on the material from which they are produced will not deliver the intended environmental improvements alone.¹⁶⁰ It is important that small and large government agencies provide EIRs to explore this concept and come up with better solutions. Merely pushing off the task in hopes of a larger agency making the difficult decision is not making forward progress in protecting the environment.

VI. CONCLUSION

Because the CEQA should be interpreted to afford the fullest possible protection to the environment, the decision not to require an EIR for a proposed environmental ordinance that is based on incomplete evidence, and admittedly may have an overall negative effect on the environment, is irresponsible. The fact that the ordinance affects a small city does not mean the negative environmental effects will not be significant when the cumulative impact is assessed. The California Supreme Court's choice not to require an EIR based on the "common sense" doctrine was erroneous, and did not provide a meaningful forward

¹⁵⁹ See *Save*, 254 P.3d at 1016.

¹⁶⁰ Lilienfield, *supra* note 146, at 5.

step for environmental legislation in the state. To allow environmental ordinances to be created with this deficient level of scrutiny is a wasteful application of the CEQA and does not uphold the spirit of the act, or protect our valuable environment.

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