

FILED

SEP 14 2011

KIM TURNER  
Court Executive Officer  
MARIN COUNTY SUPERIOR COURT  
By: M. Murphy, Deputy

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF MARIN

2011 SEP 15 P 12:12

MARIN COUNTY  
COUNSEL'S OFFICE

SAVE THE PLASTIC BAG COALITION,	)	Case No.: 1100996
	)	ORDER ON SUBMITTED MATTER
Petitioner,	)	
	)	
and	)	
	)	
COUNTY OF MARIN,	)	
	)	
Respondent.	)	
	)	
	)	
	)	

Petitioner's writ of mandate on came on for hearing on September 13, 2011 in Department L of the above-entitled court. Stephen L. Joseph appeared for petitioner and David L. Zaltsman appeared for respondent. After argument, the matter was submitted. The following is the ruling of the court.

The petition for writ of mandate is denied.

After years of study, Marin County enacted an ordinance banning single use plastic bags. The Ordinance provides that beginning January 1, 2012, retail stores in the unincorporated areas of the County are banned from providing single-use plastic bags, and must charge the customer a reasonable cost, but not less than five cents, for a single-use paper bag. It requires merchants to make reusable bags available for purchase. The Ordinance expressly found that the use of all

1 single-use shopping has severe environmental impacts; that single-use plastic bags do not readily  
2 decompose; that numerous studies have documented the prevalence of single-use plastic carry-  
3 out bags littering the environment, blocking storm drains, and fouling beaches; that plastic bags  
4 are a significant source of marine debris and are hazardous to marine animals and birds which  
5 confuse these bags as a source of food and result in injury or death; that of all single-use bags,  
6 plastic bags have the greatest impacts on litter and marine life; that single-use paper bags result  
7 in greater emissions, water consumption and ozone production; that from an overall  
8 environmental and economic perspective, the best alternative to single-use bags is reusable bags;  
9 and that studies have shown that banning plastic bags and placing a mandatory charge on paper  
10 bags will dramatically reduce the use of both bags.

11         The County enacted the ordinance without a CEQA review as a regulatory measure  
12 designed to protect both natural resources and the environment. In its Notice of Exemption citing  
13 CEQA Categorical Exemptions Class 7 & 8, the County Explained the reasons for the  
14 exemption: "The Ordinance is intended to maintain, restore and enhance natural resources and  
15 the environment generally based upon substantial evidence that it will reduce the County's  
16 contribution of oil-based plastic waste as well as paper waste to the landfills; reduce oil  
17 consumption and greenhouse gas emissions in general; reduce the amount of plastic and paper  
18 litter in the environment; and reduce degradation of the marine environment and harm to marine  
19 wildlife."

20         The Court finds that the County acted reasonably in enacting the Ordinance and was  
21 entitled to rely on the CEQA Exemption. There is substantial evidence to support the County's  
22 legislative action, as required by Section 21168.5.

23         Indeed, this case is a good example of Voltaire's famous admonition not to throw out the  
24 good in search of the perfect. Eliminating single-use plastic bags is a valiant and important move  
25 to protect the environment and restore and enhance natural resources. It does not do away with  
the problem of single-use paper bags, although eliminating the plastic and placing a charge on


1 the use of single-use paper bags has been shown to reduce the reliance on single-use paper bags.  
2 But it is an urgent and correct first step.

3 While a clever lawyer can argue that it is a benefit that plastic bags take 500 years to  
4 decompose, it was reasonable for the County to conclude that it more beneficial for the  
5 environment to avoid the litter and pollution from the plastic bag in the first instance, so that this  
6 indestructible trash is not added to the landfill at all. For the reasons set forth in the adoption of  
7 the Ordinance, the Court finds that the County acted appropriately in eliminating single-use  
8 plastic bags.

9 The Court rejects petitioner's preemption argument. Public Resources Code Sections  
10 42240-42257, effective until January 1, 2013, enacted the At-Store Recycling Program.  
11 Petitioner's opening brief contains no citation to legal authority discussing the issue of  
12 preemption, and petitioner is deemed to have waived this argument. Nevertheless, the court finds  
13 that At-Store Recycling Program does not prevent communities from banning plastic bags.

14 Petitioner has requested a statement of decision. As this case was concluded in less than 8  
15 hours, the parties are ordered to appear on 9/27/11<sup>c 9 AM</sup> so that the court can give its statement of  
16 decision orally.

17  
18 Dated: 9/14/11

19   
20 LYNN DURYEE  
21 Judge of the Superior Court  
22  
23  
24  
25

STATE OF CALIFORNIA )  
COUNTY OF MARIN )

IN RE: **SAVE THE PLASTIC BAG COALITION v. COUNTY OF MARIN**

ACTION NO.: **CV110996**

(PROOF OF SERVICE BY MAIL – 1013A, 2015.5 C.C.P.)

I AM AN EMPLOYEE OF THE SUPERIOR COURT OF MARIN; I AM OVER THE AGE OF EIGHTEEN YEARS AND NOT A PARTY TO THE WITHIN ABOVE-ENTITLED ACTION; MY BUSINESS ADDRESS IS CIVIC CENTER, HALL OF JUSTICE, SAN RAFAEL, CA 94903.

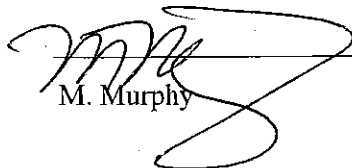
ON **September 14, 2011** I SERVED THE WITHIN

**ORDER ON SUBMITTED MATTER**

IN SAID ACTION TO ALL INTERESTED PARTIES, BY PLACING A TRUE COPY THEREOF ENCLOSED IN A SEALED ENVELOPE WITH POSTAGE THEREON FULLY PREPAID, IN THE UNITED STATES POST OFFICE MAIL BOX AT SAN RAFAEL, CA ADDRESSED AS FOLLOWS:

<b>STEVEN L. JOSEPH, ESQ.</b> <b>350 BAY STREET, #100-328</b> <b>SAN FRANCISCO, CA 94133</b>	<b>DAVID L. ZALTSMAN, ESQ.</b> <b>MARIN COUNTY COUNSEL</b> <b>ROOM 275</b>  <b>VIA INTER OFFICE MAIL</b>
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*I CERTIFY (OR DECLARE), UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING IS TRUE AND CORRECT.*

DATE: 9/14/11   
M. Murphy