IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

No. S180720

SAVE THE PLASTIC BAG COALITION,

Plaintiff and Respondent,

v.

CITY OF MANHATTAN BEACH,

Defendant and Appellant.

After an Opinion by the Court of Appeal,
Second Appellate District, Division Five
(Case No. B215788)

On Appeal from the Superior Court of Los Angeles County
(Case No. BS116362, Honorable David Yaffe, Judge)

APPLICATION AND BRIEF AMICUS CURIAE OF PACIFIC LEGAL FOUNDATION IN SUPPORT OF PLAINTIFF AND RESPONDENT

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APPLICATION TO FILE AMICUS CURIAE BRIEF

Pursuant to California Rule of Court 8.520(f), the undersigned, Pacific Legal Foundation, requests leave to file the attached brief as amicus curiae in support of Petitioner/Appellee Save the Plastic Bag Coalition. As explained below, applicants believe that their experience in environmental litigation and litigating citizen suits will aid this Court in reaching a decision in the present matter. This application is timely made.

INTEREST OF AMICUS CURIAE

Pacific Legal Foundation (PLF) is the oldest and largest public interest law foundation of its kind in America. Founded in 1973, PLF provides a voice in the courts for mainstream Americans who believe in limited government, private property rights, individual freedom, and free enterprise. Thousands of individuals across the country support PLF, as do numerous organizations and associations nationwide. PLF is headquartered in Sacramento, California, and has offices in Washington, Florida, and Hawaii.

PLF actively engages in research and litigation nationwide over a broad range of public interest issues. PLF has participated as amicus curiae on environmental law cases in this Court on numerous occasions in the past. *See, e.g.*, *Ebbetts Pass Forest Watch v. Cal. Dep't of Forestry & Fire Prot.*, 47 Cal. Rptr. 3d 777 (2006); *Envtl. Prot. Info. Ctr. v. Cal. Dep't of Forestry & Fire Prot.*, 41 Cal. Rptr. 3d 872 (2006); *Big Creek Lumber Co. v. County of Santa*

Cruz, 38 Cal. 4th 1139 (2006). PLF also participated as amicus curiae in many other important cases dealing with environmental regulation both at the federal and state levels. *See, e.g., Bennett v. Spear*, 520 U.S. 154 (1997); *Babbitt v. Sweet Home Chapter of Communities for a Great Or.*, 515 U.S. 687 (1995); *Tenn. Valley Auth. v. Hill*, 437 U.S. 153 (1978); *Communities for a Better Env't v. Cal. Res. Agency*, 103 Cal. App. 4th 98 (2002). In addition, PLF attorneys have published extensively on the subject of environmental law. *See, e.g.*, Gregory T. Broderick, *From Migratory Birds to Migratory Molecules: The Continuing Battle Over the Scope of Federal Jurisdiction Under the Clean Water Act*, 30 Colum. J. Envtl. L. 473 (2005); Damien Schiff, *Nothing New Under the Sun: The Minimalism of Chief Justice Roberts and the Supreme Court's Recent Environmental Law Jurisprudence*, 15 Mo. Envtl. L. & Pol'y Rev. 1 (2007). Furthermore, PLF attorneys have previously litigated citizen suit petition for writ of mandate cases. *See Connerly v. State Pers. Bd.*, 92 Cal. App. 4th 16, 29 (2001).

PLF attorneys are familiar with the legal issues raised by this case and the briefs on the merits filed with this Court. PLF believes that its public policy perspective and litigation experience in support of individual rights and governmental accountability will provide a useful additional viewpoint on the issues presented in this case. PLF particularly wishes to emphasize the importance of uniform rules on the applicability of citizen standing, and the

inequity and adverse consequences of fashioning a rule that affords standing based on the ideology of the petitioner. PLF also seeks to emphasize the original purpose of the citizen standing doctrine as a protection for individuals seeking to ensure their government follows the law.

PLF believes that these arguments supplement the presentations of the parties, and will help this Court provide guidance to lower courts which will allow citizens, of any ideology, to ensure their rights are protected by government.

INTRODUCTION AND SUMMARY OF ARGUMENT

As in this case, writs of mandate can be brought under Code of Civ. Proc. section 1085(a)[1] "to compel the performance of an act which the law specially enjoins." Statutorily, such claims need to be brought by parties "beneficially interested" under Section 1086. Yet, this Court has recognized citizen suits which supplant the normal "beneficial[] interest" requirement of Section 1086. *Green v. Obledo*, 29 Cal. 3d 126, 145 (1981). Indeed, this relaxed standing rule in mandamus cases has a history that stretches back over a century in California. Informally, this doctrine is known as "citizen standing." Understanding how citizen standing came to be recognized in California mandamus cases is instrumental in understanding how this Court

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[1] All statutory references are to the California Code of Civil Procedure unless otherwise indicated.

should resolve the standing issues presented here. Most fundamentally, the inquiry employed by this Court is not directed at the type of legal entity seeking the writ (whether a person, union, corporation, or city), but rather at the type of right or duty that the party is seeking to have enforced. *See, e.g., Bd. of Soc. Welfare v. County of L.A.*, 27 Cal. 2d 98, 100-01 (1945); *Green*, 29 Cal. 3d at 145. Thus, the ability to bring citizen suits is liberally allowed, so long as the duty being enforced is one that stems from a legislatively created body.

Nevertheless, this Court has recognized practical limitations on citizen suits, for example, where allowing claims to go forward would amount to advisory opinions, or eviscerate prosecutorial discretion. *See, e.g., Carsten v. Psychology Examining Comm. of the Bd. of Med. Quality Assurance*, 27 Cal. 3d 793, 798 (1980); *Dix v. Superior Court*, 53 Cal. 3d 442, 453-54 (1991). Yet, none of the concerns present in the line of cases rejecting citizen suits are present here. The Save the Plastic Bag Coalition (the Coalition) presents a routine claim of citizen standing based on enforcement of the legislatively adopted California Environmental Quality Act (CEQA). While amicus offers no opinion on the merits of the Coalition's claim, this Court should recognize the Coalition's right to bring its claim. Indeed, such citizen suit claims have been heard by this Court before. *Bozung v. Local Agency Formation Comm'n of Ventura County*, 13 Cal. 3d 263, 272 (1975).

However, Appellant urges this Court to adopt a new rule for citizen standing based on its reading of the court of appeal's decision in *Waste Mgmt. of Alameda County, Inc. v. County of Alameda*, 79 Cal. App. 4th 1223 (2000). While the holding of that case has been hotly debated in the briefing by the parties, amicus urges this Court to reject its reasoning outright. Most fundamentally, the court there created a hurdle for corporations in pursuing citizen suits that was not previously recognized by any California court. *Id.* at 1237-38. The *Waste Mgmt.* court's error was one of imprecise language in correlating "citizen standing" with "citizens" or "persons." But as is clear from the evolution of citizen suits in California, the term is reflective of the duty being enforced, not the party doing the enforcing.

I

THE REQUIREMENTS OF MAINTAINING CITIZEN SUITS IN CALIFORNIA

A writ of mandate sought under Section 1085 must be brought by a party "beneficially interested." Code of Civ. Proc. § 1086. As originally understood, the beneficial interest requirement was strictly applied, and where a citizen had "only the general interest that every citizen has in the proper discharge of public duties confided by law to public officers," a party lacked standing to maintain a claim. *Linden v. Bd. of Supervisors of Alameda County*, 45 Cal. 6, 7 (1872). Yet during this period of early California law, California courts allowed relaxed standing doctrines in cases seeking injunctive or

declaratory relief. For example, persons with interests no greater than that of a taxpayer at large could petition the court to force the government to restrain or prevent illegal expenditures. *See, e.g., Schumacker v. Toberman*, 56 Cal. 508, 512 (1880) ("Every tax payer [sic] is interested, and may properly commence a proceeding to enjoin the city council from doing an act which may result in an addition to the burdens of taxation"); *Gibson v. Bd. of Supervisors of Trinity County*, 80 Cal. 359, 362 (1889); *Barry v. Goad*, 89 Cal. 215, 216 (1891) ("A tax-payer [sic] may restrain any illegal action which would increase the burden of taxation."). Thus, California had a *de facto* two track-system; a general taxpayer could seek an *injunction* to prevent illegal governmental activity, but that same taxpayer could not proceed in *mandamus* to compel required governmental activity.

Perhaps as a result of this dichotomy, California courts soon recognized that a party's status as a taxpayer was a sufficient "beneficial interest" showing to allow a claim in mandamus as well. *See, e.g., Hyatt v. Allen*, 54 Cal. 353, 360 (1880):

> We think that the petitioner, who is a tax-payer [sic] within the district of which the respondent is Assessor, is 'a party beneficially interested' in having all the taxable property in the district assessed, and is therefore a proper party to make the affidavit for the issuance of the writ in this case.

See also Frederick v. San Luis Obispo, 118 Cal. 391, 393 (1897) ("it is sufficient, at least in a case like the one at bar, to aver that the petitioner is a

property owner and taxpayer."); *Conn v. City Council of Richmond*, 17 Cal. App. 705, 716 (1911) (court issued a writ of mandate brought by a taxpayer "where the requirements and purpose of the law have been disregarded and defeated, of their own volition, by the very officers intrusted with the performance of a public duty which was clearly obligatory."). In these early mandamus cases, taxpayer status was seen as a beneficial interest insofar as a taxpayer had an interest in seeing the law followed. Thus, they were unlike traditional taxpayer standing cases where the interest was in a loss of taxpayer monies. It should be noted, however, that throughout all of these early mandamus cases, the Courts were not carving out an "exception" to the "beneficial[] interest" requirement of Section 1086 (as becomes the case later), rather, the courts saw taxpayer status as a sufficiently beneficial interest in which to proceed to the merits of a writ petition.

Soon thereafter, California courts began shifting the focus of the inquiry from the type of interest asserted by the petitioner, to the type of duty or right that was being affected. For example, in *San Diego v. Capps*, 32 Cal. App. 461 (1917), the City of San Diego sought a writ to compel the mayor to appoint a chief of police. *Id.* at 462. Because a City is, in the main, a legislative body, it is not a party that would normally be considered "beneficially interested" in having a police chief appointed. Nevertheless, the Court issued the writ because,

> [w]here officers of a city charged with the performance of ministerial duties, neglect or refuse to follow the direction of the law under which they have assumed office, . . . [the City] should be permitted in [mandamus] to compel such officers to fulfill the obligation which their oath has imposed upon them.

Id. Because the city demonstrated that the law imposed a duty on a public official, and that the duty would affect the public at large, the court issued the writ. *Id.* at 463; *see also Platnauer v. Bd. of Supervisors of Sacramento County*, 65 Cal. App. 666, 669 (1924) (court issued writ to Sacramento taxpayer directing the Board of Supervisors of Sacramento County to appoint a justice of the peace).

This shift in the view of certain mandamus proceedings was in line with other states throughout the country that maintained mandamus actions. By the middle of the twentieth century, it was hornbook law that mandamus could be used to compel the performance of a public duty by a citizen at large. *See Bd. of Soc. Welfare*, 27 Cal. 2d at 100-01 (citing 35 American Jurisprudence 73, section 320). Thus, in *Bd. of Soc. Welfare*, the Court adopted the rule that,

> where the question is one of public right and the object of the mandamus is to procure the enforcement of a public duty, the relator need not show that he has any legal or special interest in the result, since it is sufficient that he is interested as a citizen in having the laws executed and the duty in question enforced.

Id. at 100-01. Furthermore, the *Bd. of Soc. Welfare* Court did not see this as an evisceration of the requirement that a person be "beneficially interested" within the requirement of Code. of Civ. Proc. § 1086. Instead, the beneficial

interest was deemed to include a citizen's interested in, and benefits from, enforcing the rule-of-law. Thus, the court viewed "citizen status" as a consistent if broad interpretation of the statutory requirement of a beneficial interest. *Bd. of Soc. Welfare*, 27 Cal 2d. at 100 ("nevertheless the board is a 'party beneficially interested' in the issuance of such warrant"). *Id.*

Three years later this Court backed away from reliance on the "beneficial interest" language when determining standing in mandamus cases. *Hollman v. Warren*, 32 Cal. 2d 351 (1948). Instead, this Court simply cited the standing rule from *Bd. of Soc. Welfare* that there was no "merit to the contention that petitioner is not a properly interested party" by virtue of petitioner's status as a citizen. *Id.* at 356. By 1962, the rule relied on by this Court was that a "*citizen* with a substantial interest in the enforcement of [a] . . . public duty" had standing to maintain an action in mandamus. *Pitts v. Perluss*, 58 Cal. 2d 824, 829 (1962) (emphasis added). The difference is not in the rule itself, but how the court characterized that rule in relation to the statute—instead of reasoning that the rule was consistent with the statute (if broadly so), the court now held that the rule was essentially independent of the statute. In other words, this Court adopted the "citizen standing" rule, or exception, from *Bd. of Soc. Welfare*, but did not hold that the rule was derivative of a "beneficial interest" as that court had.

While this Court had yet to officially declare "citizen standing" an exception to the Section 1086 "beneficial[] interest" requirement, lower courts were not so hesitant. *See Fuller v. San Bernardino Valley Mun. Water Dist.*, 242 Cal. App. 2d 52, 57 (1966) ("An exception to the foregoing general rule is recognized where the question is one of public right and the object of the writ is to procure performance of a public duty."); *Kappadahl v. Alcan Pac. Co.*, 222 Cal. App. 2d 626, 643 (1963) (calling the beneficial interest requirement "modified" where "public duties are enforced."); *Am. Friends Serv. Comm. v. Procunier*, 33 Cal. App. 3d 252, 256 (1973) (saying the standing rule is "relaxed" where "the question is one of public, as opposed to private, interest, and petitioner seeks performance of a public duty.").

Then, in 1981, this Court squarely held that there was a "'public right/public duty' exception to the requirement of beneficial interest for writ of mandate." *Green*, 29 Cal. 3d at 145. *Green* remains this Court's most thorough discussion of what has since become informally known as "citizen standing." *See Connerly*, 92 Cal. App. 4th at 29. The *Green* Court explained that, "[t]he exception promotes the policy of guaranteeing citizens the opportunity to ensure that no governmental body impairs or defeats the purpose of legislation establishing a public right." *Green*, 29 Cal. 3d at 144. Thus, the writ petitioners, by establishing that they were "certainly citizens

seeking to procure the enforcement of a public duty," were entitled to proceed to the merits of their claim. *Id.* at 145.

Thus, a proper understanding of the evolution of the doctrine of citizen standing allows this Court to synthesize a number of concrete rules. First, a claim brought in mandamus under Section 1085 can be pursued as a party beneficially interested in the outcome (through Section 1086's standing requirements), or through a citizen theory. A petitioner that pursues her claim under a citizen theory need not establish a beneficial interest in the subject matter of the litigation, since such suits are exceptions to the usual requirement of a beneficial interest. *Id.* Second, in determining whether a party has pled facts sufficient to maintain a citizen suit, this Court focuses on the type of right or duty that is allegedly being affected. *See Bd. of Soc. Welfare*, 27 Cal. 2d at 100-01. In order to proceed to the merits of a mandamus petition under a citizen theory, the petitioner must demonstrate that the right being affected, or the duty being ignored, is a public one. *Green*, 29 Cal. 3d at 145. In other words, the right must be enjoyed by the citizenry (of a given locality) at large, or the duty must be legislatively imposed by a publicly elected body. *See, e.g.*, *Conn*, 17 Cal. App. at 716 (right granted by city charter to allow petition for removal of officer); *Hollman*, 32 Cal. 2d at 354 (legislature created duty in the governor to appoint notaries). Lastly, this Court does not inquire into the status of petitioners seeking to proceed under a citizen theory. Therefore, so

long as a public right or public duty was being implicated, California courts have reached the merits of petitions raised by parties as diverse as a class of welfare recipients (*Green*, 29 Cal. 3d at 133), the City of San Diego (*Capps*, 32 Cal. App. at 462), a union official (*Pitts*, 58 Cal. 2d at 828), and taxpayer and voting rights organizations (*Common Cause of Cal. v. Bd. of Supervisors of L.A. County*, 49 Cal. 3d 432, 439 (1989)).

From this history, it is clear that the Save the Plastic Bag Coalition, meets this Court's threshold requirements for maintaining a citizen suit in mandamus under Section 1085. First, the Coalition is relying on its public interest as a citizen group, and not on any private economic interest, to bring its suit. Second, the Coalition has alleged that the City of Manhattan Beach has failed to comply with CEQA, a question of public duty. *Save the Plastic Bag Coal. v. City of Manhattan Beach*, 181 Cal. App. 4th 521, 529 (2010), *review granted*, 108 Cal. Rptr. 3d 555 (2010). Accordingly, the Coalition has standing to pursue its claim in mandamus under a citizen theory, and this Court should proceed to the merits of its petition.

II

LIMITS ON MAINTAINING A CITIZEN SUIT IN MANDAMUS UNDER SECTION 1085

While this Court has defined the requirements for maintaining citizen suits broadly to promote the goals of "guaranteeing citizens the opportunity to ensure that no governmental body impairs or defeats the purpose of

legislation," (*Green*, 29 Cal. 3d at 144), this Court has also fashioned practical rules to limit the availability of citizen suits in certain actions, none of which would prohibit the Coalition from pursuing its petition in this case. In *Carsten*, 27 Cal. 3d at 795-96, the petitioner sought a writ of mandate compelling the Psychology Examining Committee, *on which she sat*, to follow certain laws with respect to the licensing of psychologists. This Court refused to allow the petitioner to proceed under a citizen theory, "because of the inevitable damage such lawsuits will inflict upon the administrative process." *Id.* at 798. The Court noted several problems with affording the petitioner citizen status to pursue her claim. First, she was seeking an advisory opinion in that she could not demonstrate that a "judgment . . . would affect [any] person either favorably or detrimentally." *Id.* at 798. Second, since she was suing the board on which she sat, she was "in effect suing herself," and "courts should [not] encourage or permit this type of narcissistic litigation." *Id.* Third, allowing claims by disgruntled administrative board members to go forward against their own board would "be disruptive to the administrative process and antithetical to its underlying purpose of providing expeditious disposition of problems in a specialized field without recourse to the judiciary." *Id.* at 799.

This Court reached a similar conclusion in *Dix*, 53 Cal. 3d 442. There, a victim of a crime sought a writ of mandate compelling the court to order the perpetrator back to prison. *Id.* at 450. This Court refused to allow a citizen

suit to proceed on those grounds. As a threshold matter, this Court noted that the petitioner was not alleging a "public duty," because "[t]he public prosecutor has no enforceable 'duty' to conduct criminal proceedings in a particular fashion." *Id.* at 453. Moreover, "recognition of citizen standing to intervene in criminal prosecutions . . . would undermine the People's status as exclusive party plaintiff in criminal actions, interfere with the prosecutor's broad discretion in criminal matters, and disrupt the orderly administration of justice." *Id.* at 453-54.

This Court also refused to allow a municipal court to pursue a mandamus action under a citizen theory against the Superior Court in which it sat. *Municipal Court v. Superior Court*, 5 Cal. 4th 1126, 1132 (1993). The municipal court sought a writ of mandate to set aside its superior court's determination that the municipal court could not have commissioners make probable cause determinations within 48 hours of a detainee's arrest. *Id.* at 1128-29. This Court refused to grant citizen status to the municipal court primarily because, "[t]here is no public duty to use court commissioners to make probable cause determinations. No public right would be enforced should the Municipal Court prevail in the mandamus proceeding." *Id.* at 1132. Additionally, this Court noted that, "the underlying issue can be raised by interested parties in another action, there is no reason to address it here." *Id.*

None of the limitations on citizen suits expressed by this Court in the foregoing cases are applicable to the Coalition. Unlike *Carsten*, the Coalition's petition for mandamus does not seek review of a decision made by an administrative agency of which it is a member, and therefore, it does not threaten the entire administrative system. The petition does not seek an advisory opinion, and resolution of the merits of the petition will undoubtedly affect all of the residents of the City of Manhattan Beach. Similarly, the Coalition's petition clearly implicates a legislatively imposed public duty (CEQA) unlike the petition that sought to undermine prosecutorial discretion in *Dix*, or the petition that sought recognition of a commissioner's authority to make probable cause determinations in *Municipal Court*.

Amicus does not take a position on whether Manhattan Beach has actually ignored CEQA, but the Coalition has presented a valid citizen claim for the court to make that determination. To hold otherwise would lessen the ability of citizens to guarantee that government doesn't ignore the commands of democratically passed legislation.

III

THE COALITION'S STATUS AS AN UNINCORPORATED ASSOCIATION IS IRRELEVANT TO THE CITIZEN SUIT ANALYSIS

Having established that the Coalition meets this Court's prerequisites for maintaining a citizen suit, and having shown that none of this Court's

recognized exceptions to bringing a citizen suit are applicable, amicus now turns to the unique theories urged by the Appellant to deny the Coalition's standing. Appellant contends that this Court should deny the Coalition the ability to maintain a citizen suit on two additional grounds. First, Appellant argues that the court of appeal's decision in *Waste Mgmt.*, 79 Cal. App. 4th 1223, should be followed by this Court. Appellant's Op. Br. at 24-27. Appellant argues that *Waste Mgmt.* requires rejecting the availability of citizen suits where even implicit profit motives may motivate the party. Appellant's Op. Br. at 24-27. Second, in effect, Appellant urges an ideology test for non-person entities seeking to maintain citizen suits. Appellant's Reply. Br. at 12 ("*Actual* citizen groups . . . were founded to pursue broad environmental goals unrelated to commercial interests of their members.") (emphasis added). Both of these arguments should be rejected by this Court.

Much attention in the briefing of this case centers around a proper interpretation of the court of appeal's decision in *Waste Mgmt.* While the *Waste Mgmt.* court correctly summarized the policy behind citizen suits, it held that the petitioner there could not maintain a suit primarily because it was not a citizen. *Id.* at 1236-39. Indeed, the crux of that court's analysis on the question of citizen suits centers around whether the petitioner-corporation could be considered a "citizen" under a variety of (non-citizen suit related) legal theories. *See id.* at 1238-39 (citing cases dealing with a corporation's

status as "citizens" in the context of diversity of citizenship, privacy, political contributions, etc.).

The lower court's analysis is completely inapposite. As noted *supra*, the "citizen suit" language is merely a (newly adopted) term of art that describes the right being asserted, not the status of the person or entity enforcing that right. Nowhere in this Court's analyses of citizen suits, has this Court attempted to limit the availability of citizen suits only to "persons." The opposite is the case. This Court has repeatedly allowed suits to go forward under a citizen theory where persons were not the party seeking the writ of mandate. *See, e.g., Common Cause*, 49 Cal. 3d at 437 (granting citizen status to "Los Angeles County taxpayer and several organizations concerned with voting rights"); *Bd. of Soc. Welfare*, 27 Cal. 2d at 99 (California's Board of Social Welfare could proceed under a citizen suit).

Moreover, this Court has already recognized that the *Waste Mgmt.* court's interpretation of citizen suits was a *sui generis* interpretation of the law. *Envtl. Prot. Info. Ctr. v. Cal. Dep't of Forestry & Fire Prot.*, 44 Cal. 4th 459, 480 (2008) ("We need not decide whether the corporate exception to citizen suits articulated by the *Waste Management* court is a correct statement of the law."). Properly understood, a "citizen suit" is a term of art used to describe suits by parties not beneficially interested in the outcome of the litigation; parties that attempt, through writ of mandate, to enforce a public

right or public duty. Thus, the Coalition's status here, as an unincorporated association of plastic bag manufacturers, distributors, and others, has no bearing on whether they can proceed under a citizen suit.

To the extent that *Waste Mgmt.* requires non-person entities to establish some form of heightened burden before pursuing a citizen claim, this Court should overrule it. The proper inquiry in determining whether the petitioner there could maintain a citizen suit should have turned on the type of right being asserted. This Court has explicitly allowed citizen suits to proceed in order to effectuate CEQA's policy goals. *Bozung*, 13 Cal. 3d at 272. Yet, it is not clear that the *Waste Mgmt.* petitioner was concerned with enforcing CEQA's policy goals. *Waste Mgmt.*, 79 Cal. App. 4th at 1238 ("It has shown no demonstrable interest in or commitment to the environmental concerns which are the essence of CEQA."). In essence, *Waste Mgmt.* may be right for the wrong reasons. *See Schabarum v. California Legislature*, 60 Cal. App. 4th 1205, 1216 (1998). While the *Waste Mgmt.* petitioner's status as a for-profit corporation should have not have been considered relevant, its lack of *any* interest in effectuating a public duty or public right could be considered sufficient to defeat its ability to proceed under a citizen suit.

The Coalition here, however, has only raised concerns about CEQA compliance. *See Save the Plastic Bag Coal.*, 181 Cal. App. 4th at 538 ("Plaintiff's immediate goal is to require public agencies to consider the

impact of plastic bag usage on the environment as compared to other alternatives."). It is clear from the court below that the Coalition argued its case on purely environmental grounds. *See id.* at 530-35. This Court has recognized that similar environmental concerns are a proper basis upon which to allow citizen suits to go forward. ***See, e.g.***, *Envtl. Prot. Info. Ctr.*, 44 Cal. 4th at 480 ("Steelworkers had shown a continuing interest in and commitment to issues related to this case, including that of sustainable economic development and environmental quality and specifically issues regarding timber harvesting."); *Bozung*, 13 Cal. 3d at 272 ("Effects of environmental abuse are not contained by political lines; strict rules of standing that might be appropriate in other contexts have no application where broad and long-term effects are involved."). The Coalition has raised substantively similar environmental concerns, for which the citizen standing rules should apply.

Lastly, Appellant's ideological test for determining whether citizen suits may proceed should be flatly rejected by this Court. Appellant cites no legal authority for the proposition that a court should investigate the implicit motives of a party seeking to enforce a public right or public duty, and amicus is aware of none. Even the *Waste Mgmt.* court refused to go that far. Instead, the *Waste Mgmt.* court objected to the corporation's explicit rejection of the pursuit of any environmental concerns. *Waste Mgmt.*, 79 Cal. App. 4th at 1239

(rejecting corporation's right to maintain a citizen suit for avowed "personal economic and competitive purposes.").

As recognized by the court below, the Coalition is founded on express environmental concerns. *Save the Plastic Bag Coal.*, 181 Cal. App. 4th at 529. It submitted numerous environmental studies in the record, and it has only proffered CEQA-related environmental arguments for its merits claim. *Id.* at 530-35. This Court should not deny the Coalition the ability to proceed to the merits of its claim because some of its members may profit from the continued use of plastic bags. Such a double standard finds no support in the law. The Coalition is attempting to enforce a public duty, and this Court should affirm its claim.

On the issue of the Coalition's standing, the judgment of the court of appeal should be affirmed.

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Respectfully submitted,

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By _____
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