

No. S180720

IN THE SUPREME COURT OF CALIFORNIA

**SAVE THE PLASTIC BAG COALITION,
an unincorporated association**

PLAINTIFF AND RESPONDENT

v.

**CITY OF MANHATTAN BEACH,
a municipal corporation**

DEFENDANT AND APPELLANT

BRIEF OF AMICI CURIAE IN SUPPORT OF PETITIONERS

FILED ON BEHALF OF

THE MANHATTAN BEACH RESIDENTS ASSOCIATION

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I. INTRODUCTION

We who live here care about our ocean and our beaches. They are often the reason we move here and they are crucial to our economic well-being. Manhattan Beach is a town with almost no industry. We have tourists, especially in the summer, and we have consistently high real estate values and both these “commercial enterprises” depend on our proximity to clean beaches and a healthy ocean, as does the quality of our lives. We are environmentally aware and sensitive, especially concerning what we treasure and face--- the ocean. Manhattan Beach features 2.1 miles of ocean frontage and 40 acres of recreational beach. Many people are active in water sports and large numbers of our children attend Junior Life Guards where they learn life saving skills and respect for the ocean. We have a teaching aquarium at the end of our pier that imparts in our schoolchildren a sense of stewardship of the ocean. The aquarium is free to the public. Our city also hosts high profile beach volleyball tournaments where the beach and shoreline are put on center stage. Needless to say the health of our beaches and ocean is of paramount interest to our residents.

We can see the effects of free disposable plastic bags in our town. Every morning large gas-guzzling raking machines clear litter from our beach including plastic bags that blow across the sand and stick in dune grasses and bushes on their way to the ocean. Just like sea turtles, we sometimes mistake soggy plastic bags for jelly fish as we walk along the beach.

When our city's regulation banning distribution of throw-away plastic bags passed, we were shocked to see it blocked by the plastics industry and the courts. Our city should be allowed to respond to an environmental crisis with regulations responsive to our local needs and conditions. The regulation was about plastic bag waste on our beaches and in the ocean. Two years later that pollution is unabated because “Save The Plastic Bag Coalition” (hereinafter, “BagCo”) has used CEQA to stop our efforts to clean it up. The courts and the regulations implementing the California Environmental Quality Act

(“CEQA”) (the CEQA guidelines) caution against allowing CEQA to be subverted into an instrument for the oppression and delay of social, economic, or recreational development or advancement.¹

II. THE APPELLATE RULING COULD APPLY TO ANY GOVERNMENTAL ACTION

An environmental regulation is not a “project” just because the word “environmental” is used to describe it. Regulating a source of litter and pollution is not unlike hundreds of regulations our city has passed and all of them have environmental impacts as does every human activity. We have laws banning the sale of fireworks and regulating noise after certain hours. Should these governmental actions be subject to CEQA? BagCo-type objections could easily apply to a decision to buy library books for our library. Kindle, for example, would seem to have a winning case if they sued to require an EIR before we could purchase any more books because the carbon footprint of ebooks is so much lighter than books made out of paper. Allowing BagCo's arguments to prevail would give a weapon to everyone hurt economically by any regulation to subvert legitimate environmental regulations.

Trying to protect the environment should not require a higher standard than any other regulation, but BagCo seems to argue that there is some sort of rule that you cannot help the environment without an Environmental Impact Report (“EIR”), unless you can do it with zero incidental negative impacts. In fact CEQA says just the opposite. CEQA provides for a “categorical exemption” from EIRs where the governmental action is “...for the protection of the environment.” 14 CCR § 15308. Even if our regulation is not categorically exempt (which amicus believes it is) this exemption reflects CEQA’s overall intent to foster, not hinder, environmental improvements. Interpreting it otherwise undermines the legislative intent.

¹ “CEQA requires that decisions be informed and balanced. It must not be subverted into an instrument for the oppression and delay of social, economic, or recreational development or advancement.” 14 CCR § 15003(j).

In another effort to protect its beach, Manhattan Beach uses large tractors to rake trash off the sand. Though those tractors clearly pollute, an EIR has not been required, and the burden to conduct one is certainly not *higher* just because the city is trying to protect the environment.² In a case where the city is already acting primarily with environmental consequences in mind, the requirement to perform an EIR should be *lower*. A city must be allowed to enact regulations, ban items it sees as dangerous, and take steps to protect the environment without the delays and financial burdens required by an EIR.

Especially when a city is trying to perform an environmental cleanup, the argument that more paper “might” get used should not be given any weight. CEQA should not be available as a tool to bludgeon our environment by allowing litigants to make it unnecessarily difficult and expensive for governments to limit pollution.

III. OUR CITY’S DECISION WAS WELL FOUNDED

Though amicus does not believe CEQA should apply, our City Council treated the issue as subject to CEQA and then regulated appropriately. The city acted on a local matter, well within its competence, after a democratic process in which the plastic bag industry could (and did) present any evidence and arguments it wished.³

In this political process, the Council considered the effect of litter, the effect of waste in our oceans, the renewability of trees, the emission of greenhouse gases, and the effect of the proposed legislation on merchants and shoppers. In short, a variety of environmental concerns were weighed and considered together when the Council reached a decision.

² “The purpose of CEQA is not to generate paper, but to compel government at all levels to make decisions with environmental consequences in mind.” 14 CCR § 15003(g)

³ Members of the Manhattan Beach Residents Association and other residents were allowed only two minutes each to talk at the June and July, 2008 City Council meetings while BagCo used the threat of possible litigation to wrangle a much longer time to present their arguments. (Plaintiff’s Answer Brief on the Merits, Footnote 26 at p.30).

A “significant impact on the environment” requires an “adverse change within any of the physical conditions within the area affected by the project...” Pub. Resources Code § 21068; 14 CCR § 15382. When, as here, the ordinance will obviously create a positive change in the environment, the “fair argument” proving an adverse change must require a weighing of the good and the bad. As our Council properly did.

BagCo argues that they are allowed to compare paper and plastic within the parameters they choose. By their analysis (which ignored detrimental effects of plastic like Gulf oil drilling disasters and wars in the Middle East as well as thousands of years of plastic waste in the ocean) paper is so bad that a possible incidental increase in its use requires an EIR. Then they proclaim that Manhattan Beach is not allowed to compare the total effect of paper vs. plastic bags. It is like “apples and oranges” according to BagCo.

[Plaintiff's Answer Brief on the Merits at p.30, n. 26]. Despite the difficulty of weighing paper’s greenhouse gas effects versus unending plastic bag waste in the ocean, our City Council made that comparison (as BagCo should have had to do before claiming adverse effects). The City Council found the effect of the possible use of some greater amount of paper to be de minimus while the beneficial environmental effects of banning throwaway non-biodegradable plastic bags were important and significant. It was fitting and proper that it did this. That is its job.

IV. BAGCO LACKS STANDING

BagCo members are people and corporations whose wealth depends on the continued sale of plastic bags. They describe their stake in this case not as a disinterested hope for a better environment, but as the chance to “counter misinformation about the effect of plastic bag usage on the environment and to require government agencies to prepare environmental impact reports...” *Save the Plastic Bag Coalition*, 181 Cal. App. 4th 521, 537 (2010) [superseded by grant of review]. It seems they are freely admitting that their only interest is to slow down or stop environmental legislation that could hurt them economically and to spread their notion of “the truth.”

BagCo claims they have standing under the public interest exception. They distinguish themselves from the commercial litigants in *Waste Management v. County of Alameda* 79 Cal. App. 4th 1223 (2000), by noting that those petitioners did not “raise any environmental concerns or issues whatsoever.” BagCo is alleging that by raising the tiniest or flimsiest of environmental issues CEQA can be invoked and an EIR demanded and granted. This cannot be the rule. If it were, all legislation in California would require an EIR if an opposing party demanded one by invoking the environment on “whatsoever” pretext.

V. CONCLUSION

Just like buying library books should not trigger an EIR about paper manufacturing, this is a regulation that should not require a CEQA analysis at all. But if for some reason CEQA is considered necessary, then Manhattan Beach had sufficient information and made a proper decision about banning plastic bags. Throw-away plastic bags are not biodegradable. This is undisputed. Like a zombie, plastic rises from any grave in which it might be interred, and its effects are cumulative and forever.⁴ Paper in the ocean biodegrades. Plastic in the ocean, especially the plastic in disposable bags, photo-degrades into tiny bits and then is eaten by filter feeders like jellyfish and becomes part of the marine food chain.⁵

Our city deliberated and weighed the environmental consequences before passing Manhattan Beach Ordinance 2115. The cumulative environmental damage of disposable bags, considered for the millennia that they will be with us, vastly exceeds any imaginable damage from the hypothetical extra carbon or other pollution on which

⁴ “Except for a small amount that’s been incinerated, every bit of plastic manufactured in the world for the last fifty years or so still remains. It’s somewhere in the environment.” Tony Andrady, senior research scientist at North Carolina’s Research Triangle. Andrady suggests that in 100,000 years bacteria may develop that can eat plastic and biodegrade it. Orion Magazine, May/June 2007 at <<http://www.orionmagazine.org/index.php/articles/article/270/>>).

⁵ A Canadian scientist warns that plastic is “...in every bite of fish that we eat.” Kai Chan, Canada Research Chair at the Institute for Resources, Environment and Sustainability at the University of British Columbia. Globe and Mail, Jul. 27, 2010 <<http://www.theglobeandmail.com/news/technology/science/plastiki-a-message-in-12500-bottles/article1652748/>>)

BagCo relies. Our elected representatives should be allowed to protect our town, our beaches and our ocean from serious pollution without the plastics industry using CEQA to stop them.

Dated: August 3, 2010

CARICO JOHNSON TOOMEY LLP

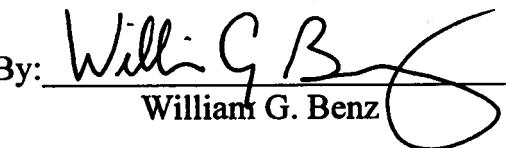
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**CERTIFICATE OF WORD COUNT
COMPLIANCE PURSUANT TO RULE 8.204(c)(1)**

Pursuant to California Rule of Court 8.204(c)(1), counsel for Amicus Curiae Manhattan Beach Residents Association hereby certifies that the number of words contained in this Brief of Amicus Curiae, including footnotes, but excluding the Table of Contents, Table of Authorities , and this Certificate is 1,802 words as calculated using the word count feature of the computer program used to prepare this brief.

Respectfully submitted this 3rd day of August, 2010.

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PROOF OF SERVICE
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I am employed in the County of Los Angeles; I am over the age of eighteen years and not a party to the within action; my business address is: 841 Apollo Street, Suite 450, El Segundo, California 90245.

On August 5, 2010 I served the following document described as **BRIEF OF AMICI CURIAE IN SUPPORT OF PETITIONERS FILED ON BEHALF OF THE MANHATTAN BEACH RESIDENTS ASSOCIATION** on the interested parties to be noticed in said action, by mailing a true copy as follows to the addressee(s) on the attached service list:

- BY MAIL** I am "readily familiar" with the firm's practice for collection and processing of correspondence for mailing; under the practice it would be deposited with the United States Postal Service on the same day with postage thereon fully prepaid at El Segundo, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.
- BY FACSIMILE** I transmitted the foregoing document to the addressee(s) as listed above.
- BY FEDERAL EXPRESS** I am "readily familiar" with the firm's practice for collection and processing of correspondence for overnight mail/Federal Express; under the practice it is deposited in a box or other facility regularly maintained by the express service carrier, or delivered to an authorized courier or driver authorized by the express service carrier to receive documents, in an envelope or package designated by the express service carrier with delivery fees paid or provided for to the addressee(s) as listed above.
- BY PERSONAL SERVICE** I caused the foregoing document to be hand delivered to the offices of the addressee(s) as listed above.
- STATE** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on August 3, 2010 at El Segundo, California.



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