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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

LEE SCHMEER, SALIM BANA, JEFF WHEELER, CHRIS KUCMA, and HILEX POLY CO. LLC,

Petitioners/Plaintiffs,

vs.

COUNTY OF LOS ANGELES, CALIFORNIA; GAIL FARBER in her official capacity as Los Angeles Co. Director of Public Works; KURT FLOREN in his official capacity as Los Angeles Co. Director of the Dept. of Agricultural Commissioner/Weights and Measures; DR. JONATHAN FIELDING in his official capacity as Los Angeles Co. Director of Public Health; and DOES 1-10,

Respondents/Defendants.

Case No.: BC470705

REPLY MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PETITIONERS' MOTION FOR WRIT OF MANDATE (CCP § 1085)

DATE: March 15, 2012
TIME: 9:30 a.m.
DEPT: 85
JUDGE: Hon. James C. Chalfant

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This case is about enforcing the plain text of the state Constitution as amended by Prop 26. Rather than address the broad and clear language of Prop 26, the County—in a full-throated (but half-baked) effort to claim that the paper bag charge is not a "tax"—makes two fundamentally flawed arguments: that the Court should "imply" an exception to Prop 26 by judicially re-writing the constitution, and that Prop 26 destroys local police power and undermines the structure of representative government. These arguments have no merit and are no doubt intended to create confusion. When the County's smokescreen is cleared away, three simple questions control this case:

1. Is the bag fee a "levy, charge, or exaction of any kind imposed by a local government"? (Cal. Const., art. XIII C § 1(e).) **Yes**, it is a new 10 cent charge that stores are required to collect from customers by L.A. County ordinance.

2. Do any of the seven, specific exceptions to Prop 26 apply? (*Id.* at § 1(e)(1-7).) **No**. No service or product is provided *by the County*, and a cornerstone of the County's opposition is that the stores are providing the bags, not the County. The 10 cent bag charge is therefore a tax under Prop 26.

3. Was the new bag fee approved by L.A. County voters? (*Id.* at § 2.) **No**. It is undisputed that the fee was never even presented to the voters, in violation of Prop 26.

With these controlling questions answered, the County's opposition is exposed as nothing more than an invitation for this Court to override the plain language of Prop 26. But as the California Supreme Court stated recently when it struck down another illegal local tax, "We must enforce the provisions of our Constitution and 'may not lightly disregard or blink at... a clear constitutional mandate.'"[1]

A. Prop 26 Puts the Burden of Proof Squarely on the County.

The County attempts to turn Prop 26 on its head by disingenuously claiming that Code of Civil Procedure § 1085 trumps Prop 26's key burden shifting provision. (Opp. Memo at 7; but see Cal. Const., art. XIII C § 1(e) ["The *local government* bears the burden of proving by a preponderance of the evidence that a levy, charge, or other exaction is not a tax"].) Although totally ignored by the County, the California Supreme Court, in *SVTA*, placed great weight on a similar burden shifting provision in Prop 218, holding that the voters' adoption of Prop 218 overturned the then existing deferential standard

[1] *Silicon Valley Taxpayers Assn. Inc. v. Santa Clara County Open Space Authority* ("*SVTA*") (2008) 44 Cal.4th 431, 448. This case was cited extensively in Petitioners' opening brief, but not even mentioned in the County's opposition – an admission that the County has no answer to this important case.

of review of the validity of assessments *and shifted the burden* of establishing the validity of the assessment *to the government*. (44 Cal.4th at 445 ["it is clear that the voters intended to reverse the usual deference accorded governmental action and to reverse the presumption of validity by placing the 'burden' on the agency"].) The plain, burden-shifting language of Prop 26 must be similarly respected, and it is the County that bears the burden to prove here, by a preponderance of the evidence, that the carryout bag fee is not an unlawful tax.[2]

B. The County Concedes the Bag Charge falls within Proposition 26's definition of "tax": "<u>any levy, charge, or exaction of any kind imposed by a local government</u>"

Prop 26 fundamentally changed the law by amending into the state Constitution a very broad definition of tax – "any levy, charge or exaction of any kind imposed by a local government." Petitioners' moving papers and declarations demonstrated that prior to enactment of the Ordinance, retail stores provided paper bags to customers without any separately stated charge. The County does not dispute this. (See, e.g., Opp. Memo at 1, 6:13-14.)

Nor does the County dispute that the bag charge falls within Prop 26's broad definition of a tax as "any levy, charge or exaction *of any kind*." (*Id.* at 9:17-18.) Instead, the County erroneously contends that the bag charge is not a "tax" because it does not fall within the Prop 218 definition of a "special tax" or "general tax." (*Id.* at 9-10.)[3] This is nonsense. First, Prop 26 created a completely new constitutional

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[2] The County's related argument that mandate is not available unless Petitioners demonstrate an abuse of legislative "discretion" is also without merit. (Opp. Memo at 21.) No amount of "legislative discretion" can save a county ordinance that is in violation of the <u>state constitution</u>. Moreover, the *inapposite* cases cited by the County involved claims that the government should be ordered to exercise its *discretion* in a particular way (e.g., to award a certain contract). (*Id.* at 7, 21.) Petitioners here, however, are challenging an ordinance on state constitutional grounds. (See, e.g., *Bramberg v. Jones* (1995) 20 Cal.4th 1045, 1055, fn. 15 ["Mandamus is also appropriate for challenging the constitutionality or validity of statutes or official acts"]; *SVTA, supra,* 44 Cal.4th at 440.) Mandate is <u>not</u> limited to actions where the petitioner seeks to compel a particular "ministerial duty" (as the County erroneously contends), but is a recognized means to directly challenge the constitutionality of statutes and ordinances.

[3] In fact, Prop 218 did not contain a definition of "tax". The County, based on its misinterpretation of the placement of a comma in a provision of Prop 218, suggests that under 218 [art. XIII C (1)(d)], a special tax only occurs when revenues are placed into an agency's general fund—but that interpretation is fanciful as there is no such requirement in 218 either for special or general taxes. (*Id.* at 10:1-2.) Contrary to the County's theory, this provision was included in Prop 218 to negate a court ruling that allowed a loophole in the 2/3 vote requirement for taxes imposed for specific purposes but which were placed in an agency's general fund (*San Francisco v. Farrell* (1982) 32 Cal.3d 47), and to codify another court decision that closed that loophole (*Rider v. San Diego* (1991) 1 Cal.4th 1). California Courts have rejected the notion that special taxes must be placed into an agency's general fund. (See *Bay Area Cellular Tele. Co. v. City of Union City* (2008) 162 Cal.App.4th 686, 686.)

standard, casting a wide net by broadly defining "tax" and placing the burden on the government to prove that the exaction in question was not subject to voter approval. Second, a key purpose of Prop 26 was to close a loophole in Prop 218 (i.e., that 218 did not define "tax"), which had opened the door for local governments to circumvent Prop 218's voter approval requirement by labeling taxes with other names ("fees," "charges," etc.). (See Cal. Const., art. XIII C, § 1(e) ["*as used in this article*, "tax" means..."]; see also Section C, *infra*.)

The cases cited by the County, *Neecke v. City of Mill Valley* (1995) 39 Cal.App.4th 946 and *Howard Jarvis Taxpayers Assn. v. City of Roseville*, *infra*, are completely off-point. Not only were both cases pre-Prop 26, but in both there was absolutely no dispute that the charges in question were "taxes." The only question was whether they were general taxes, requiring majority voter approval, or special taxes, requiring 2/3 voter approval. Here, whether the bag charge is a general tax (imposed for general purposes) or a special tax (imposed for specific purposes) is beside the point – it was not approved by the voters either by 2/3 or majority vote.

C. Although Conceding Proposition 26's Definition of Tax Is Clear And Unambiguous, the County Invites The Court To Commit Error By Ignoring the Plain Language of Proposition 26 And "Implying" a Major Restriction on Its Scope.

The County asks this Court to hold that "implicit" in Prop 26 is that a levy, charge or exaction must be *received by the government* to be a tax.[4] (Opp. Memo at 4:22-25; 8:10-11.) For the court to imply such a restriction on the scope and application of a ballot measure—which is nowhere to be found in the plain, unambiguous language of Prop 26—would judicially re-write Prop 26 and stand on its head well settled law that the judiciary must liberally construe voter-passed initiative measures. (See Pet. MPA at 7-8.)

Significantly, the County never asserts that Prop 26's operative language is unclear or ambiguous. While the County obviously disagrees with the wisdom of the voters in approving this constitutional amendment, that in no way authorizes this Court to imply a major restriction on the plain and unequivocal language expressed in Prop 26's operative sections. (*Prof. Engineers in Calif. Gov't v.*

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[4] The County also suggests the bag charge is "imposed by the stores" and not the County. (Opp. Memo at 11:28-12:1.) The claim is flat-out ludicrous. The Ordinance *requires* stores to charge for each bag and violators may be fined $500 per day. (Record at 21-23[§ 12.85.80(D)].)

Kempton (2007) 40 Cal.4th 1016, 1037 ["Absent ambiguity, we presume that the voters intend the meaning apparent on the face of an initiative measure and the court may not add to the statute or rewrite it to conform to an assumed intent that is not apparent in its language"]; *Pac. Hills Homeowners Assn. v. Prun* (2008) 160 Cal.App.4th 1557, 1564 ["[T]he plain meaning of the statute governs. This is so whatever may be thought of the wisdom, expediency, or policy of the act"].)

The County's attempt to imply an exception into Prop 26 has already been rejected in similar contexts. In *Howard Jarvis Taxpayers Assn. v. City of Roseville* (2003) 106 Cal.App.4th 1178, 1187, a local government argued that, under Prop 218, a tax was not a special tax even if its use was limited to specific purposes, as long as no formula for allocation of revenues among the various purposes was provided. The Court of Appeal rejected this argument, stating: "We disagree. *Nothing in Proposition 218 requires or suggests that, to be a special tax, a proposed tax must provide a detailed formula for allocation of revenues."* (*Id.* [emphasis added].) The County similarly argues here that it is implicit that Prop 26 is limited only to situations when revenues from a charge are received by the government. However, *no language of Prop 26 contains such a limitation, and the County points to none.*

In fact, the County's entire argument is premised on a few cherry-picked tidbits of ballot materials, all the time ignoring the actual language of the measure. Nevertheless, and although the plain, unambiguous language of Prop 26 controls, the ballot arguments in favor of Prop 26 illustrate that the constitutional amendment was not limited to revenue generation but was more broadly aimed at "protecting California *taxpayers* and *consumers*" from "*new and higher Hidden Taxes*" by "closing [the Prop 218] loophole." (Pet. RJN at Ex. 3, p. 60 ["DON'T LET THE POLITICIANS CIRCUMVENT OUR CONSTITUTION *TO TAKE EVEN MORE MONEY FROM US*"].)[5]

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[5] Pointing to several selectively chosen statements in the Legislative Analyst's fiscal summary regarding Prop 26's net effect on government revenues, the County contends that Prop 26 applies only to charges that result in revenue to government. (Opp. Memo at 8:23-28.) This is specious. The Legislative Analyst is required to describe the "net state and local government fiscal impact" of every initiative measure as a required part of the LAO's analysis for the voter handbook. (See Elec. Code § 9051(a)(2).) It is not anything unique to Prop 26, and there is no truth to the County's suggestion that this statutorily-mandated language in the LAO's Analysis re net impact on revenue is proof that Prop 26's "intent" was solely to curb government revenue generation. *The Analyst certainly does not say this.*

D. The Bag Charge Is Not a Valid Exercise of The Police Power Because It Violates the State Constitution.

The County contends that it may use its "police power" to require stores to charge 10¢ for a carryout paper bag previously provided without such charge, and misleadingly cites *Birkenfeld v. City of Berkeley* (1976) 17 Cal.3d 129 for the proposition that "the County's power to legislate pricing is well established." (Opp. Memo at 14.) *Birkenfeld* held that a city could use its police power to limit high rents charged by landlords; it did *not* hold the police power could be used by local government to order price increases at retail stores – a much different proposition, for which the County cites no legal authority.[6] Petitioner is unaware of any case holding that a *local government* has the authority to regulate the price of consumer goods.

Even more fundamentally, the County misleadingly omits mention of a key teaching of *Birkenfeld* – that a local government's exercise of its police power is trumped by a contravening general state law: a local law "cannot be given effect to the extent that it conflicts with general laws either directly or by entering a field which general laws are intended to occupy to the exclusion of municipal regulation." (*Birkenfeld* at 141 [multiple citations omitted].) And in the case at bench, the Ordinance does just that – it violates Article XIII C.

Moreover, the County has conceded that Prop 26 trumps the police power, when it admitted that Prop 26 overrode the Supreme Court's decision in *Sinclair Paints*, *supra*, which had previously upheld lead fees and charges without a vote of the people. (Opp. Memo at 4.) The lead abatement fee at issue in *Sinclair* was upheld because it was "imposed under the police power, rather than the taxing power" (*Sinclair* at 875). The County concedes California voters overrode the exercise of police power upheld in *Sinclair* by adopting Prop 26. And Prop 26 similarly overrides the County's police power to adopt levies, charges, or exactions "of any kind" without a public vote.[7]

The County's police power argument fails in another way. It relies on the flawed premise that the

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[6] The County's citation to *Nebbia v. New York* (1934) 291 U.S. 502, is unavailing. *Nebbia* dealt with claims that a milk pricing regulation imposed by the *State of New York* violated the equal protection and due process clauses of the 14th Amendment. That case had nothing whatever to do with the enactment of a paper bag fee by a *local government* in violation of an express provision of the state constitution.

[7] The LAO's Analysis confirms this: "Generally, the types of fees and charges that would become taxes under the measure are ones that the government imposes to address health, environmental or other societal or economic concerns." (Pet. RJN at Ex. 3, p. 58.)

Ordinance does not impose a tax on the customer, but instead merely requires retailers to sell paper bags at a given price to customers rather than give them away. This is demonstrably false for at least three separate and independent reasons. First, as noted in the opening brief, the State Board of Equalization, the state agency charged with administering the taxation of retail sales of tangible personal property (such as bags), has ruled that bag charges such as those imposed by the Ordinance are not gross receipts from the sale of tangible personal property subject to sales tax, but instead "this charge is imposed by the local government upon the customer, not the retailer." (Pet. RJN at Ex. 4.) Second, the 10¢ charge is not the sales price of a bag because if it were, the store would have unfettered use of the proceeds of sale, as it does when it sells all other types of goods. Instead, the Ordinance makes clear that the bag charges collected by the store can *only* be used for three limited purposes. (Record at 0020 [§ 12.85.040(D); funds must be used to further the stated governmental purpose of the Ordinance – any excess funds held by the store cannot be used to pay salaries, increase the store's profits, etc.].) For the County to suggest the bag tax is akin to "price control" is laughable. Third, if the purpose of the 10¢ bag charge were (as the County claims) merely to make explicit the hidden charge for the cost of "free" bags—which is embedded in the store's increased prices of goods sold—the Ordinance would have required the stores to reduce all prices to reflect the fact that the stores no longer absorb the cost of those bags. The County did not do this, despite expressly acknowledging, "Residents in LA County currently spend tens of millions of dollars more on groceries each year to pay for the costs of these so-called single use bags which are embedded in the costs of groceries." (Record at 1609; 1507-08 [Econ. analysis re embedded costs of bags in retail prices].) Under the Ordinance, stores are free to continue embedding the "hidden cost" of the bag in their prices *in addition to* charging the required new 10¢ bag tax—such that, under the County's theory, customers pay the stores twice for a bag. This is not a "replacement" charge (as the County suggests), but is unquestionably a *new* charge. It is no wonder the windfall beneficiary, the California Grocers Association, supported the Ordinance. (See Opp. Memo at 7:3-4.)

E. The Arguments that the 10¢ Paper Bag Charge is Not Imposed by the County and is Voluntary are Wrong and do Not Remove the Charge from Proposition 26's Reach.

The County claims that "the stores who choose to provide paper bags to their customers" are the ones imposing the 10¢ charge because the Ordinance does not require stores to give out paper bags, and that the 10¢ charge is not a tax because the Ordinance does not "require a customer to use a paper bag"

and only imposes a charge when "a customer chooses to purchase a paper bag." (Opp. Memo at 11:28-12:8.) This is nonsense. The 10¢ charge is not "imposed" by the stores—it is required and "imposed" by the Ordinance. But for the Ordinance, no 10¢ charge would exist. This is proven by the simple fact that before the Ordinance no stores separately charged for bags, but after the Ordinance stores are legally required and do separately charge for bags. The fact that stores "voluntarily" offer bags and customers may "voluntarily" choose to pay 10 cents for them does not remove the charge from the definition of a tax. By way of analogy, no retailer is *required* to sell tangible personal property, but that does not make sales tax any less of a "tax"; and no one is *required* to earn income or buy property, but that does not make personal income or property tax any less of a "tax" either.

Moreover, the argument that "voluntary" charges are not covered by Article XIII C has already been rejected by the courts. In *Bay Area Cellular, supra,* 162 Cal.App.4th at 690, a city imposed a "fee" on every person who subscribed to local telephone service within the city, arguing that the "fee" did not have the characteristics of a tax because, among other things, "the fee is voluntary." (*Id.* at 696.) According to the city, the fee's voluntary nature was shown by the fact that those subject to the "fee" voluntarily consented to pay it "when they chose to obtain telephone service." (*Id.* at 697.) The Court rejected this contention, noting that the fee was not "imposed in exchange for the voluntary decision to seek a governmental service, but is instead imposed upon the decision to seek telephone service from a private provider." (*Id.*)

F. The County's Claim that the Paper Bag Charge Falls Within Two of Proposition 26's Exceptions Is Without Merit.

The County incorrectly asserts that the 10¢ bag tax falls into two exceptions to Prop 26's local tax definition—art. XIII C § 1(e)(1) and (2). First, the Opp. Memo argues (e)(1) is met because the "County has conferred a specific privilege and product to the ultimate payor—the right to buy and use paper bags." (Opp. Memo at 15:13-15.) But that is plainly false. The "privilege" and the "right" to buy and use paper bags *predates* the Ordinance. Also, the 10¢ charge exceeds any cost to the County of conferring such "right" or "privilege," and the County provides no contrary proof. Thus the County does not satisfy exception (e)(1), which requires the charge be for "a special benefit conferred or privilege granted directly to the payor ... which does not exceed the reasonable costs *to the local government* of conferring the benefit or granting the privilege to the payor." (Emphasis added.) The Ordinance also fails to satisfy

this exemption as it authorizes certain customers to receive bags without charge. (Record at 0021 [§ 12.85.060].)

Nor does the Ordinance satisfy the requirements for an exception set forth in § (e)(2). That sub-section excepts a charge "imposed for a specific government service or product provided directly to the payer that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of providing the service or product." To attempt to shoehorn itself into this provision, the County nonsensically argues that the Ordinance requires retail stores to charge and collect the tax and thus the *County* is providing the paper bags to customers. (Opp. Memo at 16:2-5.) This argument is beyond frivolous.

G. The County's Argument that Enforcing Proposition 26 Would "Threaten Representative Government" Has Already Been Rejected By the Supreme Court.

The County next mis-cites cases to support its argument that if Petitioners are successful, the police power would be destroyed and "the continued vitality of representative government" would be threatened. (Opp. Memo at 14-15.) This is plainly intended to confuse the Court. As shown above, it is black letter law that the exercise of the police power by local government is subject to state law. Just three years ago the state Supreme Court in *SVTA , supra*, at 448, struck down a local tax and rejected the County's "local government discretion" argument:

> [A] local agency acting in a legislative capacity has no authority to exercise its discretion in a way that violates constitutional provisions or undermines their effect.

Further, the two cases the County cites in this section of its Opp. Memo are far off point. In *Simpson v. Hite* (1950) 36 Cal.2d. 125, a local initiative in LA County sought to nullify Board of Supervisor decisions designating a site for a state courthouse and courthouse construction contracts. The Court struck down the initiative because it "is not within the initiative function" (i.e., it was not a legislative act), and instead dealt with administrative matters (courthouse construction) which state law committed solely to the Board. (*Id.* at 127.) *Simpson* most certainly does not stand for the principle that a state constitutional amendment, passed by the state's voters, cannot impair the power of a local government. Statewide laws including those passed by initiative do so all the time.

Ironically, the other case cited by the County upholds just such a law – Prop 13. *Amador Valley Joint Union High School Dist. v. State Bd. of Eq.* (1978) 22 Cal.3d 208, rejected arguments that Prop

13's property tax restrictions impermissibly interfered with local governmental power. And, contrary to the Opp. Memo's misleading implication, the Court also rejected the claim that Prop 13 "threatened" representative government. (*Id.* at 227.) In upholding Prop 13, the Court showed great respect for the will of the people expressed thru the initiative process: "It should be borne in mind that notwithstanding our continuing representative and republican form of government, the initiative process itself adds an important element of direct, active, democratic contribution by the people." (*Id.* at 228.)

H. The Bag Charge Is Not Severable From The Remainder Of The Ordinance.

The great weight the County puts on the Ordinance's severability clause is misplaced; severability clauses are not conclusive. (See, e.g., *Hotel and Restaurant Employees Int. v. Davis* (1999) 21 Cal.4th 585 [rejecting severability despite severability clause]; *Jevne v. Sup. Ct.* (2005) 35 Cal.4th 935 [same].) The Opp. Memo ignores these cases and relies almost exclusively on *California Redev. Assn. v. Matosantos* (2011) 53 Cal.4th 231, which is clearly distinguishable.

Matosantos did not, as the County incorrectly implies, involve a basic severability clause. Rather, the case presented a very unusual situation where the Legislature adopted *two separate bills*, one that shut down redevelopment agencies and another that permitted them to remain in existence if they made certain payments to the state. The legislation also contained a unique "interstatutory severability clause," by which the Legislature made clear its intent that the first bill remain in effect if the second was struck down. (*Id.* at 271-274.) When the Court upheld the first bill and struck down the latter, the question was whether the first bill would remain in effect under the interstatutory severability clause. (*Id.* ["It is no generic severability clause, providing nonspecifically that if any provision of a measure is invalidated the remaining portions of an act should remain in force...Rather, it deals with the precise severability question we face"].) The Court quite properly let the first bill stand.

Here, however, there is only a "generic severability clause" in a *single* Ordinance with a *single* purpose and various, related provisions all aimed at furthering that purpose: "regulating the use of plastic carryout bags and recyclable paper carryout bags and promoting the use of reusable bags within the County unincorporated area." (Record at 0016.) The established test for severability is whether the invalid provisions are grammatically, functionally and volitionally separable from the remainder. As *Jevne* made clear, "It is 'functionally' separable if it is not necessary to the measure's operation and

purpose. And it is 'volitionally' separable if it was not of critical importance to the measure's enactment." (*Jevne, supra*, 6 Cal.4th at 714.) Neither test is satisfied here.

Imposing the bag charge was necessary to discourage the use of paper bags because the County knew that banning plastic bags, while allowing paper bags to continue to be provided without a charge, would drastically increase the use of paper bags, *counter to the purpose of the Ordinance*. (Record at 006, 756, 776, 1460-61, 1507-08, 1603 & 1684 ["intent of the ordinance is to promote the use of reusable bags over single use plastic and paper carryout bags"]; see also Opp. Memo at 6:13-14 [fully admitting the tax was included "[t]o avoid a wholesale switch by customers to paper bags"].) The County is quick to point out that the Board rejected the "do nothing" option, but fails to mention that the Board also expressly rejected the option to ban plastic bags without imposing a charge on paper bags. (Record at 1460-61 ["The Board of Supervisors finds that specific economic, legal, social, technological, or other considerations make this alternative infeasible and therefore *rejects this alternative* . . . because it would not limit the issuance of paper carryout bags"]; Record at 012 [ban only option "not recommended because it does not regulate the issuance of paper carryout bags"].) Thus, there is no question that the Ordinance would not have been enacted without the bag tax, and if the Court strikes down the entire Ordinance (as it should), the Board could enact a plastic bag ban without a bag tax, should the votes be there to do so.[8]

Finally the Opp. Memo argues severing the bag tax would require eliminating "only" one section of the Ordinance. But that section, 12.85.040, contains seven sub-sections and is the most detailed substantive section of the entire Ordinance. The only other substantive section is 12.85.020, which is a short provision that bans plastic carryout bags.

I. Conclusion.

Petitioners respectfully request their motion be granted.

Dated: March 8, 2012

NIELSEN MERKSAMER PARRINELLO GROSS & LEONI

By: _____

Sean P. Welch, for Petitioners

[8] The County also asserts that the Ordinance should be severed on equitable grounds, yet cites not a single authority in support. The timing of a *constitutional* challenge to an Ordinance is simply irrelevant.