

No. B240592

COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT, DIVISION 3

LEE SCHMEER, et al.,

Petitioners and Appellants,

v.

COUNTY OF LOS ANGELES, et al.,

Respondents and Appellees.

Appeal from Judgment by the Los Angeles County Superior Court
Hon. James C. Chalfant
Superior Court Case No. BC470705

**APPLICATION FOR LEAVE TO FILE *AMICI CURIAE* BRIEF IN
SUPPORT OF RESPONDENTS COUNTY OF LOS ANGELES, ET
AL.; PROPOSED BRIEF OF *AMICI CURIAE* SURFRIDER
FOUNDATION, HEAL THE BAY, THE 5 GYRES INSTITUTE,
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**APPLICATION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF
AND STATEMENT OF INTERESTS OF *AMICI CURIAE***

TO THE HONORABLE JUSTICES OF THE CALIFORNIA COURT OF
APPEAL, SECOND APPELLATE DISTRICT, DIVISION THREE:

Amici curiae Surfrider Foundation, Heal the Bay, the 5 Gyres Institute, Environment California Research and Policy Center, and Seventh Generation Advisors (collectively, “*amici*”) make this application to file the accompanying brief pursuant to California Rules of Court, Rule 8.200, subd. (c)(2). *Amici* believe that our brief will assist the Court by providing further documentation that the challenged County ordinance is a valid exercise of Los Angeles County’s police power, that the ordinance’s paper bag purchase requirement is not a “tax” under Proposition 26, and that the Court should uphold the ordinance given the significant adverse impacts of single-use plastic bag litter on urban and marine environments.

Surfrider Foundation (“Surfrider”) is a grassroots, non-profit environmental organization dedicated to the protection and enjoyment of the world’s oceans, waves, and beaches for all people, through a powerful activist network. Organized as a 501(c)(3) non-profit corporation, Surfrider brings this amicus brief on behalf of more than 250,000 supporters, activists, and members who live in the United States. Surfrider has over 80 local chapters nationwide, including the volunteer-based grassroots

chapters located in Los Angeles County, including the West Los Angeles/Malibu, South Bay, and Long Beach Chapters. Surfrider has a particular interest in protecting Los Angeles County beaches and waterways. Surfrider brings this action on its own institutional behalf and on behalf of its members, board, and staff, some of whom regularly enjoy and will continue to enjoy surfing, bathing, swimming, and recreating in the waters of Los Angeles County. The interests of Surfrider and its members, board, and staff in surfing, bathing, swimming, and recreating in the waters of Los Angeles County have been, and will continue to be, harmed by the prevalence of physical trash, including single-use bags, impacting these waters and the wildlife that live in Los Angeles County's waterways, wetlands, and coast. Surfrider, its members, board, and staff have worked to protect the coastal environment, including the beaches, waterways, and related wildlife habitat in Los Angeles County for twenty-eight years, and have expended significant organizational resources on advocacy and public education efforts aimed at protecting the oceans, waves, and beaches in Los Angeles County. Specifically, in support of the Los Angeles County bag ban, Surfrider Foundation submitted written commentary, participated in the public hearings, and educated the public on the matter.

Heal the Bay is a regional nonprofit organization based in Santa Monica, California with 13,000 volunteers and members. Founded in 1985, Heal the Bay is dedicated to making coastal waters and watersheds in

Southern California, including the Santa Monica Bay, safe, healthy and clean for all users. Heal the Bay uses science, education, community action and advocacy to pursue these objectives.

Heal the Bay frequently participates in proceedings related to preventing plastic pollution and improving water quality in California, and has long advocated for legislation banning single-use plastic bags, both at the state and local levels. Plastic litter, including plastic bag litter, is a source of urban and beach blight, and is a persistent threat to marine life because it may never completely biodegrade. Heal the Bay has worked with local governments, including the City of Santa Monica, City of Long Beach, and the County of Los Angeles, to develop and successfully pass ordinances banning single-use plastic bags. Specifically, Heal the Bay was a participant in the lengthy stakeholder process in developing Los Angeles County's single-use bag ordinance. Heal the Bay submitted extensive comments on Los Angeles County's environmental impact report and drafts of the single-use bag ordinance, testified at all hearings on the issue, and educated its members about the ordinance. The interests of Heal the Bay and its members have been, and will continue to be, harmed by the prevalence of physical trash, including single-use bags, impacting Los Angeles coastal waterbodies.

The 5 Gyres Institute is a non-profit organization that researches the impacts of plastic pollution in the global ocean, then returns to land to

mitigate the loss of plastic to the sea through education, policy, and product change. By chasing the problem of plastic pollution from environmental impacts to consumer and producer behavior, the 5 Gyres Institute believes it can help save the seas. In recent years, the 5 Gyres Institute has traveled more than 40,000 miles through all of the five subtropical ocean gyres and the Great Lakes. The 5 Gyres Institute is focused on solutions that address individual products, their production and use, and the policies that manage their full life-cycle. The 5 Gyres Institute provides unbiased, research-based testimony on what it finds around the world and its local work in California watersheds.

Environment California Research and Policy Center (“Environment California”) is a statewide, citizen-based environmental advocacy organization with approximately 53,000 members and 183,000 email supporters in California. Organized as a 501(c)(3) non-profit corporation, Environment California has offices in Los Angeles, San Francisco, and Sacramento. Environment California works to preserve state parks, protect public health, build a clean energy future, and keep plastic out of the Pacific Ocean. Environment California is committed to ending environmental damage and wildlife injuries from marine debris, and has worked to ban single-use plastic bags in local communities and statewide.

Seventh Generation Advisors (“SGA”) is organized as a 501(c)(3) non-profit corporation and was founded by former Secretary of the

California Environmental Protection Agency Terry Tamminen. SGA puts into modern practice the ancient Native American philosophy that the decisions we make today should result in a sustainable world seven generations into the future. SGA works in the areas of energy, water, and natural resources, and is known worldwide for climate change policy. For the last six years, SGA has focused its ocean work solely on source reduction of plastic trash. SGA works locally, regionally, nationally, and internationally on plastic trash reduction, and specifically plastic bag ban legislation and policy. SGA serves as the facilitator and coordinator for the Clean Seas Coalition, a growing group of environmentalists, scientists, lawmakers, students, community leaders, and businesses pushing to strengthen laws reducing trash in seas and on beaches. SGA also acts as the clearinghouse for information for both the California and Atlantic divisions of the Clean Seas Coalition. SGA brings this action on its own institutional behalf, and on behalf of its board and staff who regularly enjoy and will continue to enjoy surfing, bathing, swimming, and recreating in the waters of Los Angeles County. The interests of SGA, its board, and its staff in surfing, bathing, swimming, and recreating in the waters of Los Angeles County have been, and will continue to be, harmed by the prevalence of physical trash, including single-use bags, impacting Los Angeles coastal waterbodies.

Pursuant to California Rules of Court, Rule 8.200, subd. (c)(3), *amici* declare that no party or counsel for a party in the pending appeal authored the accompanying brief in whole or in part. Furthermore, no party, counsel for party, or other person or entity made a monetary contribution intended to fund the preparation or submission of the accompanying brief.

The decision of this Court will directly affect *amici*, and *amici* may assist the Court's decision through their unique perspectives. Accordingly, *amici* respectfully request the permission of the Justices to file this *amici curiae* brief.

Dated: December 13, 2012

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AMICI CURIAE BRIEF

I. Introduction

Ordinance No. 2010-0059 (“Ordinance”) (Joint App. (“JA”), Vol. 3, 464-473; 592 [3 JA 464-473: 592]), which prohibits stores in unincorporated areas of Los Angeles County (“County”) from providing customers with plastic carryout bags and requires those stores to sell each paper carryout bag for 10 cents, does not impose a tax subject to the voting requirements of Proposition 26. The Ordinance, including its requirement that consumers who wish to purchase paper carryout bags pay 10 cents each (“Bag Purchase Requirement”) (Ord. § 12.85.040), is a valid exercise of the County’s regulatory police power, and is not a tax. Article XI, section 7 of California’s Constitution permits the County to make and enforce ordinances to protect the general health and welfare. The County enacted the Ordinance pursuant to its constitutional police powers as a rational regulatory response to the serious impacts to public health and welfare that plastic bags impose on Los Angeles County, its residents, and the region. The Court should uphold the Superior Court’s judgment to protect the Ordinance and other environmental regulatory programs from voting requirements that were designed for government revenue-raising mechanisms.

The Ordinance regulates economic transactions between private parties to achieve positive environmental outcomes. Plastic bag use has

significant environmental and economic impacts. The Ordinance has been remarkably successful in reducing both plastic and paper carryout bag waste. In the year since its enactment, the County Department of Public Works cites that the Ordinance has resulted in a 94 percent reduction in single-use bag usage at large retailers and pharmacies, including the elimination of all single-use plastic bags and a 25 percent reduction in paper bags. (L.A. County Dept. of Public Works, Implementation of the County of Los Angeles Plastic and Paper Carryout Bag Ordinance (Nov. 2012) p. 1 (hereafter County's November 2012 Status Report).¹)

Quite unlike a tax, the Ordinance has resulted in public cost-savings as well as positive environmental outcomes, which is why numerous local governments across the state and nation have adopted similar laws and why the Ordinance receives broad-based public support. The Ordinance is now under legal attack from the plastic bag manufacturing industry. While Appellants assert in their Reply Brief that the use of plastic bags is not at issue in this lawsuit (Appellants' Reply Brief at p. 26), their aim is to invalidate the entire Ordinance, including the ban on plastic bags. This case is an attempt by a major plastic bag manufacturer to use Proposition 26 as a mechanism to invalidate the plastic bag ban under the guise of attacking the Ordinance's other provision, which mandates that retailers not

¹ Available at < <http://dpw.lacounty.gov/epd/aboutthebag/PDF/Bag%20Ban%20Status%20Nov%202012.pdf>>.

offer single-use paper bags for free, and instead require consumers to purchase those bags if consumers want them. Unfortunately for local governments, this lawsuit is one prong of a large-scale, coordinated attack by the plastics industry on bag bans across California and the nation.

II. Argument

A. The Ordinance is a Valid Exercise of the County’s Police Power as an Integral Piece of a Regulatory Program to Remedy the Harmful Economic and Environmental Impacts of Plastic Bag Pollution.

A county has broad authority to make and enforce ordinances. (Cal. Const., art. XI, § 7.) A county ordinance generally will “be upheld if ‘it is reasonably related to promoting the public health, safety, comfort, and welfare, and if the means adopted to accomplish that promotion are reasonably appropriate to that purpose.’” (*Sunset Amusement Co. v. Bd. of Police Commissioners* (1972) 7 Cal.3d 64, 72 [101 Cal.Rptr. 768, 496 P.2d 840] [citations omitted].) The County Board of Supervisors properly exercised its police power to protect public health and welfare in enacting the Ordinance.

The Ordinance was enacted to reduce the County’s economic burden from litter and to protect the health of waterways and the public from plastic debris. Each year, approximately six billion single-use plastic bags are consumed in the County. (Certified Record (“CR”), Vol. 1, 0047 [1 CR 0047].) Plastic bags are easily carried by the air and water, and make up as

much as 25 percent of the litter stream.² (*See, e.g.*, 1 CR 0057-0058 [noting that plastic bags constituted 25 percent of the weight and 19 percent of the volume of trash collected during the 2004 Great Los Angeles River Clean Up].) As noted in the County’s environmental review documents, the County’s objective is to

substantially reduce the operational cost and environmental degradation associated with the use of plastic carryout bags in the County, particularly the component of the litter stream composed of plastic bags, and reduce the associated government funds used for prevention, cleanup and enforcement efforts.

(2 JA 0476, 0521.) Other goals of the Ordinance include blight prevention, protection of coastal waterways and wildlife, sustainability, and landfill disposal reduction. (*Ibid.*) The Ordinance has been effective at reducing the use of plastic bags as well as paper bags in the County. (County’s November 2012 Status Report, *supra*, at p. 1.)

1. The Ordinance Constitutes a Proper Exercise of the County’s Police Power, and Thus Does Not Impose a Tax, as a Matter of Law.

As the County has demonstrated in its brief, and as the Superior Court has held, the Ordinance is well within the County’s constitutional police powers. These powers extend to the limits of the County’s regulatory authority. “A city’s police power ‘is not a circumscribed

² The California Integrated Waste Management Board estimates that plastic bags comprise 0.4 percent of California’s total waste stream by weight, but contribute significantly to litter, especially within catch basins (openings in the curb into which stormwater flows). 3 JA 0045.

prerogative, but is elastic and, in keeping with the growth of knowledge and the belief in the popular mind of the need for its application, capable of expansion to meet existing conditions of modern life, and thereby keep pace with the social, economic, moral, and intellectual evolution of the human race.’’ (*Richeson v. Helal* (2007) 158 Cal.App.4th 268 [70 Cal.Rptr.3d 18], opn. mod. Dec. 21, 2007, review den. Feb. 20, 2008 [citation omitted].) Legislative enactments that further legitimate regulatory objectives under the traditional police powers should be construed broadly, with a presumption of validity. When a county’s action “is challenged as not being a valid exercise of police power, all presumptions favor its validity, and it will be upheld unless its unconstitutionality clearly and unmistakably appears.” (*San Diego County Veterinary Medical Assn. v. County of San Diego* (2004) 116 Cal.App.4th 1129 [10 Cal.Rptr.3d 885]; *Community Memorial Hospital v. County of Ventura* (1996) 50 Cal.App.4th 199, 206 [56 Cal.Rptr.2d 732].)

Contrary to Appellants’ arguments, “legitimate exercise of the police power” cannot violate Proposition 26, which regulates only exercises of the taxing power. (*See* Appellants’ Reply Brief at pp. 25-26.) A legitimate use of the police power is not, and cannot be, a tax. Thus, Proposition 26 cannot apply to the Ordinance at all if the Ordinance is not a “levy, charge, or exaction” under Proposition 26’s definition. (Cal. Const., art. XIII C, § 1, subd. (e).) The County has demonstrated that the Ordinance does not fall

into any of these categories. (Respondents' Brief at pp. 16-34.) Rather, the County's purpose in enacting the Ordinance was to use its regulatory power to substantially reduce costs and environmental degradation from the use of plastic bags. (2 JA 0476, 0521.) Thus, any doubt must be resolved in favor of viewing the Ordinance as a lawful exercise of police powers (although there is no such doubt here). While Appellants claim in their Reply Brief that the Ordinance is "an extraordinary and unprecedented usurpation of power by a local government, and would raise serious constitutional questions" (Appellants' Reply Brief at p. 25), they cite no authority at all for this proposition, which is demonstrably incorrect given the many other local governments that have enacted similar laws. (*See infra* pt. II.B.3.) They have not made any showing that this is the case, much less the "clear[] and unmistakabl[e]" demonstration of unconstitutionality required by law.

As the County has established in its brief, the Ordinance is not a "levy, charge, or exaction" under Proposition 26; moreover, based on the record in front of the Court and the clear evidence of the purpose and effect of the Ordinance that we outline below, the Ordinance is a valid exercise of traditional police powers to protect public health, safety, comfort, and welfare, employing means reasonably appropriate to that purpose.

2. The County Properly Exercised its Police Power in Response to the Negative Economic Consequences of Plastic Bag Litter.

As the County has demonstrated in its Respondents' Brief, courts do not and should not examine the economic wisdom of legislative enactments. (Respondents' Brief at p. 44 and authority cited therein; *Loska v. Superior Court* (1986) 188 Cal.App.3d 569, 575 [233 Cal.Rptr. 213] [holding that "a city has broad discretion to determine what is reasonable in endeavoring to protect public safety, health, morals, and general welfare."].) Nonetheless, evidence of the economic benefits of the Ordinance is useful here to demonstrate that the County's regulation furthers legitimate governmental objectives.

The Ordinance is reasonably related to promoting the economic welfare of the County and its residents. Plastic bag litter has significant negative economic consequences for local governments and consumers. Single-use plastic bags do not biodegrade, and travel easily through air and water. (3 JA 0521-0524; 2 CR 049.) Consequently, single-use plastic bags contribute significantly to the County's larger plastic debris problem. Plastic debris imposes significant direct costs on the County, including costs associated with landfill trash, marine pollution, urban and beach blight, and litter clean-up. Moreover, banning plastic bags—which are a major component of trash—reduces the regulatory costs of complying with state and federal rules that require the County to eliminate all trash from local waterways. Additionally, individual taxpayers and consumers within the County benefit economically from the plastic bag ban because of both

reduced costs to the County and net savings for individual consumers. Finally, the plastic bag ban reduces the negative economic impacts of plastic pollution on coastal recreation and tourism in the County. The Ordinance reasonably and appropriately reduces the impacts of single-use bags in the County. Reducing the negative economic impacts of single-use bag litter on the County and its residents is well within the police power of the County. In stark contrast to Appellants' attempts to paint the Ordinance as a burden on consumers, the Ordinance saves taxpayers money by reducing litter clean-up costs and eliminating costs of providing free bags.

a. Single-Use Plastic Bags Impose Significant Direct Economic Costs on the County.

Discarded plastic bags impose significant direct costs on the County. According to the California Department of Transportation, state and local governments in California spend over \$375 million per year on litter prevention and cleanup. (3 JA 0521-0522; Don't Trash California, CalTrans, Facts at a Glance.³) The County Department of Public Works and the Los Angeles County Flood Control District implement a variety of programs to reduce litter in the County. (6 CR 1559-1561; 3 JA 0521-0522.) For example, the County sweeps over 81,000 miles of streets weekly to prevent litter from entering catch basins and the storm drain system, and cleans out litter from 78,000 County-owned catch basins and

³ Available at <<http://www.donttrashcalifornia.info/pdf/Statistics.pdf>>.

additional city-owned catch basins at least once per year. (5 CR 1561.)

The County also installs and maintains devices to remove litter from the storm drain system. (*Ibid.*)

Each year, the County and the Los Angeles County Flood Control District spend \$24 million or more on these and other cleanup and litter prevention and education programs. (3 JA 0521-0522; 3 CR 713.) This sum includes the costs of maintenance of structural and treatment control best management practices, municipal street cleaning, catch basin cleaning, trash collection and recycling, and associated capital costs. (3 CR 713.) Cleanup and litter prevention costs increased in the years leading up to the Ordinance, from \$18.1 million during fiscal year (FY) 2005-2006 to over \$24 million in FY 2008-2009.⁴

⁴ See L.A. County Municipal Storm Water Permit (Order 01-182) Individual Annual Report Form (Oct. 2010) *available at* <<http://www.ladpw.org/wmd/NPDESRSA/AnnualReport/2010/Appendix%20D%20%20Principal%20Permittee%20Annual%20Report/Individual%20Annual%20Report%202009-10.pdf>>; L.A. County Municipal Storm Water Permit (Order 01-182) Individual Annual Report Form (Oct. 2009), *available at* <<http://dpw.lacounty.gov/wmd/NPDESRSA/AnnualReport/2009/Appendix%20D%20%20Principal%20Permittee%20Annual%20Report/Principal%20Permittee%20Annual%20Report.pdf>>; L.A. County Municipal Storm Water Permit (Order 01-182) Individual Annual Report Form (Oct. 2008), *available at* <<http://dpw.lacounty.gov/wmd/NPDESRSA/AnnualReport/2008/Appendix%20D%20%20Principal%20Permittee%20Annual%20Report/Principal%20Permittee%20&%20County%20Annual%20Report%20FY07-08.pdf>>; L.A. County Municipal Storm Water Permit (Order 01-182) Individual Annual Report Form (Oct. 2007), *available at* <<http://www.ladpw.org/wmd/NPDESRSA/AnnualReport/2007/Appendix%20D%20%20Principal%20Permittee%20Annual%20Report/Annual%20Rpt%2006-07.pdf>>; L.A. County Municipal Storm Water

By drastically reducing the number of plastic bags sent to landfills, the Ordinance also reduces plastic bag control costs at waste facilities. Plastic bags require local landfill and solid waste transfer station operators to implement costly measures to prevent bags from escaping their facilities. (3 JA 0525; 6 CR 1557.) On top of the costs of providing cover and fences, each landfill spends approximately \$25,000 per month and each solid waste transfer station spends approximately \$1,500 per month to send roving patrols to pick up littered plastic bags. (3 JA 0525; 6 CR 1557.) Roving patrol costs are passed onto County residents in the form of higher trash disposal costs. (6 CR 1557; 1 CR 58.)

b. Single-Use Plastic Bags Impose Significant Regulatory Costs on the County and its Taxpayers.

The Ordinance will significantly reduce costs to the County and numerous other entities in complying with mandatory federal pollution limits for trash-impaired waterways. These pollution limits, which implement the Federal Water Pollution Control Act (the “Clean Water Act”) and state-law water quality requirements, recognize the significant economic and environmental costs of litter, including plastic bag debris. Trash pollution limits are enforced through the Clean Water Act’s Total Maximum Daily Loads (“TMDLs”), which specify the maximum amount

Permit (Order 01-182) Individual Annual Report Form (Oct. 2006) available at <http://www.ladpw.org/wmd/NPDESRSA/AnnualReport/2006/Appendix%20D%20%20Principal%20Permittee%20Annual%20Report/PrincipalPermittee_AnnualReportFY05-06.pdf>.

of a pollutant that can be discharged into a given waterway from all sources. (33 U.S.C § 1313, subd. (d)(1)(A); 40 C.F.R. § 130.7, subd. (b).) The TMDL for trash in the Los Angeles River and Ballona Creek—both of which discharge untreated stormwater directly onto local beaches and into the Pacific Ocean—requires a 10 percent annual reduction in trash entering the waterways, down to a target of zero trash by 2014. (5 CR 1561.)

Compliance with the trash TMDL measures will cost the County and its taxpayers money. Households in the Los Angeles River watershed will fund approximately half of the Los Angeles River compliance cost through fees, which are predicted to increase to approximately \$14.55 per household per year. (L.A. Regional Water Quality Control Bd., *Trash Total Maximum Daily Loads for the Los Angeles River Watershed* (2007) p. 42 (hereafter *L.A. River TMDL*).⁵) The other half of the cost will be borne by commercial, industrial, municipal, and public entities. (*Ibid.*) By passing the Ordinance, the County has decreased its regulatory compliance costs by reducing trash pollution at the source. Additionally, the Ordinance has reduced regulatory compliance costs associated with the Santa Monica Bay Marine Debris TMDL, which covers the Ballona Creek watershed. The Regional Water Quality Control Board provided the County a three-year extension on the compliance deadline associated with the Santa Monica

⁵ Available at <<http://www.epa.gov/waters/tmdl/docs/34863-RevisedStaffReport2v2.pdf>>.

Bay Marine Debris TMDL in response to the County's ban of single-use plastic bags, among other items. (Wu, L.A. Regional Water Quality Control Bd., Monitoring Trash, TMDLs and Efforts towards Compliance (2011) p. 19.⁶)

c. Single-Use Plastic Bags Impose Costs on Consumers and Taxpayers That Will be Reduced by Implementation of the Ordinance

Single-use bags harm all consumers, and especially the poor, because bag purchase costs are embedded in the prices of food, and because litter clean-up costs are charged to taxpayers. (Respondents' Brief at p. 37; 3 JA 0521-0522.) Grocery stores currently embed 2 to 5 cents per plastic bag and 5 to 23 cents per paper bag in food prices. (3 JA 0556-0557; 6 CR 1511; 3 JA 0556.) Thus, by eliminating the cost to retailers of providing bags free of charge, the Ordinance saves approximately \$18 to \$30 per person per year.⁷ (3 JA 556 [noting that the annual cost to retailers of providing plastic bags and paper bags is \$18 and \$30 respectively per

⁶ Available at

http://www.waterboards.ca.gov/mywaterquality/monitoring_council/collaboration_network/docs/ewu081711.pdf.

⁷ Another estimate by AECOM Technical Services of the hidden cost of plastic bags in Los Angeles County in 2010 is \$3.25 per person annually, assuming each person uses 433 bags each year at an average cost of \$0.008 per plastic bag. 5 CR 155. The Metropolitan Washington Council of Governments' estimate of hidden costs is similar to the County's, noting that the average consumer pays \$37.50 per year in hidden bag costs. Metropolitan Washington Council of Governments, Plastic Bag Report 2012 Update (Nov. 5 2012) p. 11, available at <http://www.mwcog.org/uploads/pub-documents/p15dW1820121105113857.pdf>.

consumer, and such costs were passed along to consumers].) Against these clear savings to taxpayers, the County estimates that the combined costs of the Ordinance to each unincorporated County resident is less than \$4 per year, including the cost of purchasing replacement plastic bags for trash liners and their associated taxes. (County’s November 2012 Status Report, *supra*, at p. 1.) It should be noted that this cost is less than the County’s original estimate of \$5.72 per resident per year because paper bag consumption has decreased rather than increased following implementation of the Ordinance, and the State Board of Equalization has since determined that paper bags are not taxable items. (*Ibid.*)

d. Plastic Bag Pollution Has Negative Impacts on Coastal Recreation and Tourism

Plastic bag debris that ends up on County beaches reduces recreational opportunities and negatively impacts the County’s tourism industry. Floating debris, including plastic bags, will end up on beaches or in the ocean if not captured and removed, repelling visitors. (L.A. River TMDL, *supra*, at p. 7.) According to a report prepared for the California Natural Resources Agency, “[a]ll economic activities relating to coastal recreation are affected by the quality of the environment,” and the level of participation in coastal recreation industries affects many other industries and sectors of the economy. (Kildow & Colgan, National Ocean Economics Program, California’s Ocean Economy: A Report to the

Resources Agency, State of California (2005) p. 106 [noting, e.g., coastal recreation's impacts on the hotel, restaurant, and service industries].⁸)

According to the report, tourism in California generates more than \$75 billion in spending every year. (*Ibid.*) "California has the largest Ocean Economy in the United States, ranking number one overall for both employment and gross state product . . . ," with a gross state product of approximately \$42.9 billion in 2000. (*Id.* at p. 1 [defining "Ocean Economy" to include coastal tourism and recreation, construction, living resources, offshore minerals, ship and boat building and repair, and maritime transportation and ports].) Southern California's world-famous sandy beaches and desirable weather conditions are critical components of the state's tourism industry. (*Ibid.*) In 2000, over twelve million people visited California beaches, each person making an average of more than twelve trips per year. (*Id.* at 107). One study estimated that local beachgoers in California spend as much as \$9.5 billion annually, with the average visitor making \$25 in beach-related expenditures per trip.

(Hannemann et al., Southern California Beach Valuation Project (2004) p. 1 [citing Pendleton, Harnessing Ocean Observing Technologies to Improve Beach Management: Examining the Potential Economic Benefits of An Improvement in the Southern California Coastal Ocean Observing System

⁸ Available at http://resources.ca.gov/press_documents/CA_Ocean_Econ_Report.pdf.

(2004)].⁹) This study estimates the average annual expenditures of beach visitors in Los Angeles and Orange Counties to be \$1.8 billion in 2004.

(*Ibid.*) In addition, the non-market value associated with beach-going visits in California is estimated to range from \$2.25 billion to \$7.5 billion annually. (Pendleton, *The Non-Market Value of Beach Recreation in California* (2006) 74 *Shore & Beach* 34, 37.¹⁰) Preventing plastic bag litter from ending up on beaches, where it interferes with recreational activities, thus protects the value of beach tourism and other beach recreation in the County.

e. The Ordinance Reasonably and Appropriately Reduces the Impacts of Single-Use Bags in Los Angeles County

Reducing the negative economic impacts of single-use bag litter on Los Angeles County and its residents is well within the police power of the County. The Ordinance has achieved a 94 percent reduction in overall plastic and paper bag usage at large stores and pharmacies, which includes eliminating all single-use plastic bags and reducing paper bag usage by 25 percent. (County's November 2012 Status Report, *supra*, at p. 1.) In stark contrast to Appellants' attempts to paint the Ordinance as a burden on consumers, the Ordinance can save taxpayers money by reducing litter clean-up costs and eliminating costs of providing free bags. By drastically

⁹ Available at <http://coastalsocioeconomics.noaa.gov/core/scbeach/scab_modelling_final.pdf>.

¹⁰ Available at <http://www.valueofwaves.org/uploads/1/1/4/2/11420190/pendleton_and_kildow_2006.pdf>.

reducing the amount of plastic bags sent to landfills, the Ordinance also reduces plastic bag control costs at waste facilities.

3. The County Properly Exercised its Police Power in Response to Urban Blight, Marine Pollution, and Other Negative Environmental Consequences of Plastic Bag Litter.

By reducing plastic bag use and pollution, the Ordinance promotes the public health and safety of the County and its residents, as well as the welfare of the environment within the County and beyond. By achieving a 94 percent reduction in overall plastic and paper bag usage at large stores and pharmacies and eliminating all single-use plastic bags (County's November 2012 Status Report, *supra*, at p. 1), the Ordinance reduces litter and protects waterways and public health from the deleterious effects of plastic bag debris, including local impacts on marine life, quality of life, tourism, and recreation in our neighborhoods, waterways, and beaches, as well as more far-reaching impacts on our oceans.

a. Plastic Bags Are Ubiquitous and Represent a Significant Portion of Plastic Trash Pollution.

Single-use plastic bags make up a significant portion of the urban litter stream and marine plastic debris. Manufacturers produce plastic bags at such a large volume that Guinness World Records has named the plastic bag "the most ubiquitous consumer item in the world." (Doucette, *The Plastic Bag Wars* (Aug. 4, 2011) Rolling Stone

<<http://www.rollingstone.com/politics/news/the-plastic-bag-wars->

20110725> [as of Dec. 6, 2012]). American shoppers consume about 102 billion single-use plastic bags annually. (*Ibid.* See also U.S. Internat. Trade Com., Polyethylene Retail Carrier Bags from Indonesia, Taiwan, and Vietnam, pub. No. 4080 (May 2009) p. IV-7 [including statistics for 2008 U.S. plastic bag consumption].¹¹) Assuming that the average plastic bag is one foot long, if the United States population tied its annual consumption of plastic bags together in a giant chain, the chain could reach around the Earth's equator 773 times.¹²

Due to their lightweight nature and the fact that they may last indefinitely, plastic bags are more likely than reusable bags to end up as litter and to impact water quality locally and globally. (3 JA 521-524.) Most of the trash in the ocean is plastic. (Gordon, Eliminating Land-Based Discharges of Marine Debris in California: A Plan of Action from the Plastic Debris Project (Cal. Coastal Com. 2006) p. 2 [reporting that 60 to 80 percent of all marine debris, and 90 percent of all floating debris, is plastic].¹³) Plastic pollution is found floating in all of the world's oceans from the polar regions to the equator. (Allsopp et al., GreenPeace, Plastic

¹¹ Available at <http://www.usitc.gov/publications/701_731/pub4144.pdf>.

¹² This calculation is based on the Earth's equatorial circumference of 25,000 miles (132,000,000 feet) and a 2008 U.S. plastic bag consumption of almost 102 billion bags. See U.S. Internat. Trade Com., Polyethylene Retail Carrier Bags from Indonesia, Taiwan, and Vietnam, *supra*, at p. IV-7.

¹³ Available at <www.plasticdebris.org/CA_Action_Plan_2006.pdf>.

Debris in the World's Oceans (2006) p. 5.¹⁴) Over the past twenty-five years, plastic bags have been one of the top items collected on International Coastal Cleanup Day. (Ocean Conservancy, Tracking Trash: 25 Years of Action for the Ocean (2011) p. 5.¹⁵) The Ocean Conservancy reports that, on International Coastal Cleanup Day in 2010, plastic bags were the most commonly collected item after cigarettes and plastic bottles, accounting for 10 percent of total debris items collected worldwide. (*Id.* at 34. *See also* Ocean Conservancy, The Ocean Trash Index (2012) p. 36 [evidencing that over 64,000 plastic bags were collected in California on International Coastal Cleanup Day in 2012].¹⁶) Over the last twenty-five years, International Coastal Cleanup volunteers have collected more than 7 million plastic bags. (Ocean Conservancy, Tracking Trash: 25 Years of Action for the Ocean, *supra*, at p. 5.) This number is staggering, especially given that International Coastal Cleanup events only happen once per year.

b. Plastic Bags Harm the Environment, Especially the Marine Environment.

Plastic bag pollution adversely impacts the environment generally and marine wildlife in particular, as extensively documented in the County's Final Environmental Impact Report (FEIR) entitled "Ordinances

¹⁴ Available at <http://www.unep.org/regionalseas/marinelitter/publications/docs/plastic_ocean_report.pdf>.

¹⁵ Available at <http://act.oceanconservancy.org/pdf/Marine_Debris_2011_Report_OC.pdf>.

¹⁶ Available at <<http://www.oceanconservancy.org/our-work/marine-debris/2012-icc-data-pdf.pdf>>.

to Ban Plastic Carryout Bags in Los Angeles County.” (3 JA 481-503.)

Plastic bags are made from fossil fuels—typically, natural gas and petroleum. (Lajeunesse, *Plastic Bags: Plastic Bags are Not Created Equal Because They Are Meant for Different Purposes* (2004) 82 *Chemical & Engineering News* 51.¹⁷) Most plastic bags, although designed to be used only for minutes, may never degrade. (3 JA 0538-0540; Assemb. Bill No. 2449 (2005-2006 Reg. Sess.) § 1 [codified at Pub. Res. Code §§ 42250-42257].) Negatively buoyant plastics, including plastic bags, wraps, and films, have been found in the marine environment worldwide, and represent the majority of marine debris on the seafloor.¹⁸ Plastic bags also have been found to accumulate in the nearshore environment (Hinojosa & Thiel, *Floating Marine Debris in Fjords, Gulfs and Channels of Southern Chile* (2009) 58 *Marine Pollution Bulletin* 341; Galgani et al., *Distribution and Abundance of Debris on the Continental Shelf of the Bay of Biscay and in Seine Bay* (1995) 30 *Marine Pollution Bulletin* 58; Galgani et al.,

¹⁷ Available at

<<http://pubs.acs.org/cen/whatstuff/stuff/8238plasticbags.html>>.

¹⁸ Galgani et al., *Litter on the Sea Floor Along European Coasts* (2000) 40 *Marine Pollution Bulletin* 516; Hess, Ribic, & Vining, *Benthic Marine Debris, with an Emphasis on Fishery-Related Items, Surrounding Kodiak Island, Alaska, 1994–1996* (1999) 38 *Marine Pollution Bulletin* 885; Stefatos et al., *Marine Debris on the Seafloor of the Mediterranean Sea: Examples from Two Enclosed Gulfs in Western Greece* (1999) 36 *Marine Pollution Bulletin* 389; Galgani, Souplet, & Cadiou, *Accumulation of Debris on the Deep Sea Floor of the French Mediterranean Coast* (1996) 142 *Marine Ecology Progress Series* 225; Kanehiro, Tokai, & Matuda, *Marine Litter Composition and Distribution on the Seabed of Tokyo Bay* (1995) 31 *Fisheries Engineering* 195.

Distribution and Abundance of Debris on the Continental Shelf of the North-Western Mediterranean Sea (1995) 30 *Marine Pollution Bulletin* 30, 713–717.)

When plastic bag fragments find their way to the sea, seabirds and fish mistake them for food. (Teuten et al., *Transport and Release of Chemicals from Plastics to the Environment and to Wildlife* (2009) 364 *Philosophical Transactions of the Royal Society B: Biological Sciences* 2027, 2037.¹⁹) Floating plastic bags can resemble jellyfish, a common food source for sea turtles, and researchers commonly have found plastic bags in sea turtles' digestive tracts. (3 JA 0499, 0539; 5 CR 1266; Mrosovsky et al., *Leatherback Turtles: The Menace of Plastic* (2009) 58 *Marine Pollution Bulletin* 287 [noting that 37 percent of Leatherback turtle necropsies from 1968 to 2009 showed plastic in their stomachs, and plastic bags were the most commonly found item].²⁰) Over 267 different species, from seabirds to turtles, seals, sea lions, whales, and fish, have suffered from entanglement or ingestion of marine debris, including plastic bags. (Allsopp et al., Greenpeace, *Plastic Debris in the World's Oceans*, *supra*, at p. 5; Laist, *Impacts of Marine Debris: Entanglement of Marine Life in Marine Debris Including a Comprehensive List of Species with Entanglement and Ingestion Records* (1996), in Coe & Rogers, *Marine*

¹⁹ Available at <<http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2873017/>>.

²⁰ Available at <http://5gyres.org/media/Leatherback_turtles_The_menace_of_plastic.pdf>.

Debris—Sources, Impacts and Solutions pp. 99-139.) Ingestion can lead to internal blockages and starvation, reproductive failure, toxic poisoning, and death. (U.S. Environmental Protection Agency, *Marine Debris Impacts*, <http://www.epa.gov/owow/oceans/debris/md_impacts.html> [as of Nov. 7, 2012] (hereafter EPA Marine Debris Impacts).) The County’s FEIR studied the impacts of plastic bag litter on marine wildlife local to the Southern California coast (3 JA 481-503; 537-39) and identified the endangered leatherback, green, loggerhead, and olive ridley turtles, amongst other marine wildlife, as threatened by the ingestion of plastic debris, including plastic bags. (3 JA 489-95; 538-39.)

Left in the marine environment, plastic breaks down into smaller and smaller particles that attract and accumulate toxic chemicals from surrounding seawater. Through ultraviolet degradation and hydrolysis (reactions that cause chemicals to decompose), plastic loses its elasticity; powered by the wind and waves, plastic gradually breaks down into smaller particles, eventually forming tiny particles of plastics called “microplastics.” (5 CR 1283; Cole et al., *Microplastics As Contaminants in the Marine Environment: A Review* (2011) 62 *Marine Pollution Bulletin* 2588;²¹ Thompson et al., *Lost at Sea: Where is All the Plastic?* (2004) 304 *Science* 838; Andrady, *Plastics in the Environment* (2003) in *Plastics in the*

²¹ Available at <<http://www.sciencedirect.com/science/article/pii/S0025326X11005133>>.

Environment (ed. Andrady) p. 762.²²). Microplastics, including fragmented plastic bags, can adsorb many persistent organic pollutants (POPs) in seawater, including polychlorinated biphenyls (PCBs), dichlorodiphenyltrichloroethane (DDT) and its metabolites, and polybrominated diphenyl ethers (PBDEs), and act as a global transport mechanism for these chemicals.²³ POPs are synthetic compounds used for pest and disease control, agriculture, and industry. (Stevenson, U. of So. Cal. Sea Grant, Plastic Debris in the California Marine Ecosystem: A Summary of Current Research, Solutions, Strategies, and Data Gaps (2011) p. 23 (hereafter Plastic Debris in the California Marine Ecosystem).²⁴)

They have been linked to disease, behavioral and physical abnormalities, and adverse reproductive, developmental, neurological, endocrine, and

²² Available at <<http://www.sciencemag.org/content/304/5672/838>>.

²³ U.S. Environmental Protection Agency, Marine Debris in the North Pacific – A Summary of Existing Information and Identification of Data Gaps (2011) p. 9 (hereafter EPA Marine Debris in the North Pacific), available at <<http://www.epa.gov/region9/marine-debris/pdf/MarineDebris-NPacFinalAprvd.pdf>>; Teuten et al., *supra*, 364 *Philosophical Transactions of the Royal Society B: Biological Sciences* at 2036, 2040-42 [demonstrating that as a seabird, the Short-tailed shearwater, ingests additional plastic fragments, more PCBs accumulate in its tissues]. See also Rios et al., *Quantification of Persistent Organic Pollutants Adsorbed on Plastic Debris from the Northern Pacific Gyre's "Eastern Garbage Patch"* (2010) 12 *J. of Environmental Monitoring* 2226; Teuten et al., *Potential for Plastics to Transport Hydrophobic Contaminants* (2007) 41 *Environmental Science & Technology* 7759; Mato et al., *Plastic Resin Pellets as a Transport Medium for Toxic Chemicals in the Marine Environment* (2001) 35 *Environmental Science & Technology* 318.

²⁴ Available at <http://calost.org/pdf/science-initiatives/marine%20debris/Plastic%20Report_10-4-11.pdf>.

immunologic health impacts. (*Ibid.*) Strikingly, plastic debris has been found to accumulate contaminants at up to one million times the amount found in water alone. (EPA Marine Debris Impacts, *supra*; *see also* EPA Marine Debris in the North Pacific, *supra*, at p.9.)

Other pollutants may be added to plastics at the time of manufacturing and ultimately leach into the environment. (Plastic Debris in the California Marine Ecosystem, *supra*, at p. 24.) Up to 50 percent of the weight of plastics can consist of fillers, reinforcements, and additives, which are used as, for example, flame retardants and colorants. (*Ibid.*) Two of the most common plastic additives are phthalates and bisphenol A (BPA), which are linked to endocrine disruption in wildlife and humans. (*Ibid.*) Marine debris can act as a transport mechanism for these endocrine disrupters. (EPA Marine Debris in the North Pacific, *supra*, at p. 8. *See generally* Koch & Calafat, *Human Body Burdens of Chemicals Used in Plastic Manufacture* (2009) 364 *Philosophical Transactions of the Royal Society B: Biological Sciences* 2063.²⁵) One study suggests that, due to the pervasive nature of plastic debris and wide use of plastics, these toxic chemicals may impact the entire food chain. (*See* EPA Marine Debris in the North Pacific, *supra*, at p.8.) Indeed, harmful chemicals leached by plastics are already present in the bloodstream and tissues of almost every

²⁵ Available at <<http://rstb.royalsocietypublishing.org/content/364/1526/2063.full>>.

one of us, including newborns.²⁶ Microplastics pose similar threats to the more than 180 species of marine wildlife that have ingested them (Teuten et al., *supra*, 364 Philosophical Transactions of the Royal Society B: Biological Sciences at pp. 2036, 2040-42).

c. Plastic Bags Harm Recreational Resources, Urban Communities, and Ecosystems in and Around Los Angeles County.

Plastic bag pollution contributes significantly to litter and marine pollution in the County. Approximately six billion single-use plastic bags are consumed each year. (4 CR 1536.) This is equivalent to 600 bags per person per year. (*Ibid.*) Prior to the Ordinance, over 95 percent of plastic bags used in the County were discarded, creating approximately 45,000 tons of plastic bag waste every year. (*Ibid.*) Single-use plastic bags also made up as much as 25 percent of the litter stream. (1 CR 0057-0058.) During the 2004 Great Los Angeles River Clean Up, for example, plastic film litter, a category that includes plastic bags, made up 34 percent of the

²⁶ For example, the National U.S. Environmental Protection Agency's Human Adipose Tissue Survey of 1986 identified styrene residues in all samples of human fat tissue taken in 1982. Leaching of BPA also has led to widespread human exposure. Ninety-five percent of people in a recent UC Centers of Disease Control study had a measurable amount of BPA in their urine. The prevalence and levels of BPA in the study are consistent with blood and tissue levels detected in 100 percent of pregnant women and their fetuses in Germany and Japan. These findings suggest that humans are continuously exposed to BPA. Vom Saal, *Low-Dose bisphenol A: Confirmed by an Extensive Literature* (2005) 7 Chemistry & Industry 14, available at <<http://endocrinedisruptors.missouri.edu/pdfarticles/vomsaalC-I2005.pdf>>.

total 60 cubic feet of litter collected. (4 CR 1558.)

All of this plastic bag trash and litter impairs the beneficial uses of waterways and watersheds in Los Angeles County. For example, the Los Angeles River, which flows into the Pacific Ocean, provides recreation benefits and habitat for numerous species of fish, birds, ducks, frogs, and turtles. (L.A. River TMDL, *supra*, at p. 7.) The river is accessible by County residents and used for many forms of recreation, including walking, jogging, horseback riding, bicycling, bird watching, photography, and crayfishing. (*Id.* at 8.) Habitat and recreational uses are impaired by plastic bag trash in the river, which deters recreational use and tourism and harms wildlife. (*Id.* at 15.)

Trash in waterways also creates significant local water quality problems. (*Ibid.*) Plastic trash can negatively affect local resources by inhibiting the growth of aquatic vegetation, by reducing spawning and other habitat for wildlife, and through ingestion by wildlife, as described further above. (*Ibid.*) The Los Angeles storm-drainage system consists of 1,500 miles of underground pipes and channels that are designed to prevent flooding and to channel stormwater through a collection system out to sea. (1 CR 190.) Stormwater runs from the street, into the gutter, and into a catch basin, and then is channeled directly into the ocean. (*Ibid.*) Thus, if not properly controlled, floating debris like plastic bags inevitably ends up on beaches where it repels visitors and degrades coastal waters. (L.A.

River TMDL, *supra*, at p. 16.) Eliminating plastic bags from the waste stream significantly reduces the negative impacts of plastic bag pollution on recreational resources, urban communities, and ecosystems.

Moreover, plastic bag litter captured in catch basins and other devices can prevent storm drains from functioning properly to prevent flooding. (1 CR 173.) Los Angeles County relies on more than 80,000 catch basins to collect runoff throughout its six major watersheds. (*Ibid.*) Plastic bags that are caught in storm drains can clog catch basins, storm drain inlet racks, and other devices. (*Ibid.*) This reduces the ability of the drainage system to channel flood waters and may result in flooding of adjacent neighborhoods. (*Ibid.*)

B. Bag Bans and Purchase Requirements are Proven, Effective Policy Tools Utilized by Jurisdictions Across California and Throughout the World to Reduce Bag Pollution and Its Negative Economic and Environmental Impacts.

Bag bans and purchase requirements are essential policy tools for governments burdened by plastic bag pollution. Neither recycling nor voluntary bag reduction programs are effective at combating the harmful economic and environmental impacts of single-use bags. The experiences of the numerous jurisdictions around the country and throughout the world that have successfully implemented single-use bag bans and purchase requirements show that these tools are effective at reducing plastic bag usage with minimal burden to consumers. While a plastic bag ban, on its

own, would have positive environmental impacts and would be amply justified without the Bag Purchase Requirement, the Ordinance's strategy—banning plastic bags and requiring consumers to pay retailers for paper bags—was developed to reduce plastic bag usage while minimizing any corresponding increase in paper bag usage. This strategy has had positive economic and environmental results for Los Angeles County, even more so than initially predicted.

1. Neither Recycling nor Voluntary Reduction Programs are Effective at Combating Plastic Bag Pollution.

Bag bans and purchase requirements are essential policy tools for local governments unable to recycle their way out of the plastic bag litter problem. In spite of the existence of recycling policies and voluntary single-use bag reduction programs, most plastic bags are never recycled, and instead enter the waste stream, storm sewer systems, and too often, the ocean. (3 JA 0540 [noting that the statewide recycling rate for plastic bags is still only 1 to 5 percent]. *See also 2009 Statewide Recycling Rate for Plastic Carryout Bags: At-Store Recycling Program* (Apr. 6, 2011) Cal. Dept. of Resources Recycling & Recovery <<http://www.calrecycle.ca.gov/Plastics/AtStore/AnnualRate/2009Rate.htm>> [as of Dec. 6, 2012] [reporting that the statewide recycling rate for plastic bags was only about 3 percent in 2009]). For instance, four years after Assembly Bill No. 2449 instituted a pilot program requiring most large

California retailers to host in-store plastic bag recycling programs, the statewide plastic bag recycling rate has remained virtually unchanged. (*The Failure of Plastic Bag Recycling* (Feb. 6, 2012) Californians Against Waste <<http://www.cawrecycles.org/node/5232>> [as of Dec. 6, 2012].)

Plastic bag recycling programs fail to solve the litter problem because plastic bags are extraordinarily costly and difficult to recycle. (6 CR 1555; Romer, *The Evolution of San Francisco's Plastic-Bag Ban* (2007) 1 Golden Gate U. Envtl. L.J. 439, 445.²⁷) Thin, lightweight plastic bags placed in curbside recycling bins often jam screens used to separate materials and damage recycling equipment, thus hindering the overall recycling process. (6 CR 1555; *Bring Your Own Bag*, City of San Jose <<http://www.sanjoseca.gov/index.aspx?nid=1526>> [as of Dec. 6, 2012].)

As one illustration, the City of San Jose estimates costs of one million dollars per year to repair municipal recycling equipment jammed by plastic bags. (*Bring Your Own Bag*, City of San Jose <<http://www.sanjoseca.gov/index.aspx?nid=1526>> [as of Dec. 6, 2012].

See also City of San Jose, Draft Environmental Impact Report: Single-Use Carryout Bag Ordinance, File No. PP09-193 (July 2012) p. 35 [“The City’s experience with recycling plastic bags has been that processing costs

²⁷ Available at <<http://plasticbaglaws.org/wordpress/wp-content/uploads/2010/04/The-Evolution-of-SFs-Plastic-Bag-Ban.pdf>>.

greatly exceed their value”].²⁸) Plastic bag recycling is further hindered by the fact that the market is limited for recycled plastic bags. (6 CR 1555. *See* Moore Recycling Associates Inc., 2010 National Postconsumer Plastic Bag & Film Recycling Report (Jan. 2012) p. 3 [reporting that almost half of all plastic film, including plastic bags, recovered in the United States in 2010 was shipped overseas for processing].²⁹) Recovered plastic bags cannot be recycled into new plastic bags; recycled bags can only be “down-cycled” into other plastic products that are not themselves recyclable. (Romer, *supra*, 1 Golden Gate U. Envtl. L.J. at p. 445.)

Failed examples of voluntary plastic bag reduction programs in Los Angeles County, the City of San Francisco, and Santa Clara County demonstrate that restrictions and price signals are necessary to adjust consumer behavior. In 2008, the County launched its “Single Use Bag Reduction and Recycling Program,” a voluntary recycling program with a target plastic bag disposal reduction of 30 percent by July 2010. (1 CR 0060-0061; 5 CR 1306-1307; L.A. County, Single Use Bag Reduction and Recycling Program: Program Resource Packet (Oct. 2008) p. 1.³⁰) In

²⁸ Available at <<http://www.sanjoseca.gov/index.aspx?NID=2435>> [scroll down to “Single-use Carryout Bag EIR” and select “Draft EIR”].

²⁹ Available at <<http://plastics.americanchemistry.com/Education-Resources/Publications/2010-National-Postconsumer-Plastic-Bag-Film-Recycling-Report.pdf>>.

³⁰ Available at <http://dpw.lacounty.gov/epd/aboutthebag/PDF/ResourcePacket_100108.pdf>.

November 2010, the County Department of Public Works reported that the voluntary recycling program “was not successful in achieving its goals” as “[o]ver a two-year period and despite State law requirements under AB 2449 not more than eight (8) stores at any given time had met the minimum participation levels.” (3 CR 0720.) The County Board of Supervisors responded by enacting the Ordinance.

Voluntary bag reduction programs in San Francisco and Santa Clara County had similarly lackluster results. In November 2005, San Francisco forged an agreement with grocers to reduce plastic bag usage by 10 million bags through a one-year voluntary program and public education campaign; but most retailers failed to report their numbers by the reporting deadline, even though the city extended the deadline three times. (Romer, *supra*, 1 Golden Gate U. Envtl. L.J. at pp. 445-46.) Without verifiable numbers, San Francisco’s voluntary program was declared a failure. (*Id.* at p. 446.) Like the County, San Francisco has since enacted an ordinance banning traditional plastic carryout bags and requiring consumers to purchase paper bags. (S.F. Environment Code, §§ 1701-1709.) Santa Clara County, too, scrapped its voluntary “Got Bags” single-use bag reduction program in favor of an ordinance after administrators saw only a 2 percent increase in reusable bag use. (Santa Clara Ord. No. NS-517.77, adding ch. XVII to Santa Clara County Ord. Code div. B11; Acting Dir. of Agriculture & Environmental Management, letter to Board of Supervisors of Santa Clara

County re single-use carryout bags, Apr. 13, 2010, p. 3.³¹)

2. Bag Bans and Purchase Requirements Are the Favored Policy Tools to Reduce the Negative Impacts of Bag Litter Worldwide.

In contrast to the failure of plastic bag recycling and voluntary reduction programs to reduce litter, bag bans and purchase requirements have been extraordinarily effective at addressing the negative environmental and economic consequences of single-use bags. Indeed, police power bag restrictions are the generally favored policy tool to address plastic bag pollution, as evidenced by the fact that much of the world's population resides in a jurisdiction with single-use plastic bag restrictions. At least thirty-seven other countries outside of the United States have adopted policies to restrict single-use plastic bags, including China, Italy, Mexico City, Delhi, and some of the world's least-developed nations, like Bangladesh and Ethiopia. (*Retail Bags Report Maps and Related Detailed Lists*, Fla. Dept. of Environmental Protection <http://www.dep.state.fl.us/waste/retailbags/pages/mapsandlists.htm> [as of Dec. 11, 2012].)

Bag bans are so widely supported that the United Nations Environmental Programme Executive Director has called upon all nations

³¹ Available at <<http://www.sccgov.org/keyboard/attachments/BOS%20Agenda/2010/April%2013,%202010/202926812/KeyboardTransmittalWeb202991800.PDF>>.

of the world to take action: “[T]hin film single use plastic bags which choke marine life[] should be banned or phased-out rapidly everywhere—there is simply zero justification for manufacturing them anymore, anywhere.” (*Report Brings to the Surface the Growing Global Problem of Marine Litter* (June 8, 2009) U.N. Environment Prog.

<<http://www.unep.org/Documents.Multilingual/Default.asp?DocumentID=589&ArticleID=6214&l=en>> [as of Dec. 6, 2012]. *See also* The Future We Want, Final Rep. of the U.N. Conf. on Sustainable Development, Rio de Janeiro, Brazil, June 20-22, 2012, ¶163 [“We note with concern that the health of the oceans and marine biodiversity are negatively affected by marine pollution, including marine debris, especially plastic”].³²⁾

Successful international examples of bag bans and purchase requirements demonstrate that such policies are effective at achieving positive environmental outcomes for local governments with minimal burdens to retailers and consumers.

Ireland is the most frequently cited example of an effective price signal-based policy. In 2002, Ireland began requiring consumers to pay 0.15 Euros for single-use plastic bags in order to reduce rural plastic bag litter.³³ (Convery, McDonnell, & Ferreira, *The Most Popular Tax in Europe? Lessons from the Irish Plastic Bags Levy* (2007) 38 Environmental

³² Available at <<http://www.uncsd2012.org/>>.

³³ Unlike the Ordinance, Ireland’s bag policy constitutes a levy or charge because revenues inure to the government.

& Resource Economics 1, 2.³⁴) The price signal effectively altered consumer behavior. (*Id.* at p. 10 [stating the Irish case study proves, when taken in consideration with evidence from other jurisdictions, that “where policymakers are trying to reduce plastic bag consumption considerably and there is a well-developed and defined retail market . . . a consumer-based ‘downstream’ levy is the appropriate policy measure.”].)

Researchers estimate that the price signal has reduced the number of single-use plastic bags in Ireland’s litter stream by 94 percent and increased areas of Irish landscape that are “clear” of plastic bag litter by 21 percent. (*Id.* at p. 7.) Likewise, Ireland’s National Litter Pollution Monitoring System reported that plastic bag litter fell from 5 percent of national litter before the requirement to a mere 0.22 percent in 2004. (*Ibid.*) Researchers have since declared that Ireland’s policy “has proved so popular with the Irish public that it would be politically damaging to remove it,” and found that it “induces . . . an enthusiasm and affection from those who are liable to pay it.” (*Id.* at pp. 2, 10.)

China has implemented an effective policy combining a ban with a price signal. In 2008, China banned ultra-thin plastic bags (which are more likely than thicker bags to be carried by wind into the litter stream) and required consumers to pay retailers for thicker plastic bags. (Romer, A

³⁴ Available at <https://wiki.umn.edu/pub/ESPM3241W/S12TopicSummaryTeamFour/Lessons_from_Irish_Plastic_bag_levvy.pdf>.

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Golden Gate U. Envtl. L.J. 377, 388-89.³⁵) China's policy also achieved remarkable environmental outcomes: overall plastic bag use decreased by two-thirds, or 40 billion bags, in the first year of implementation alone.

(*Ibid.*)

3. Bag Bans and Purchase Requirements Are the Favored Policy Tools to Reduce the Negative Impacts of Bag Litter in California and Throughout the United States.

In the United States, numerous local governments in addition to the County have banned and/or require purchase of single-use plastic bags, including Fairbanks, Alaska; Telluride, Colorado; Washington, D.C.; and Maui, Hawaii. (Romer, *supra*, 5 Golden Gate U. Envtl. L.J. at p. 412.)

Within the State of California, fifty-three local jurisdictions, including San Francisco, Monterey, and Palo Alto, are covered by ordinances implementing plastic bag bans and/or purchase requirements.

(Plasticbaglaws.org, California Single-Use Bag Ordinances (Dec. 1, 2012).³⁶) Within the County, the cities of Calabasas, Long Beach, Malibu,

³⁵ Available at <http://plasticbaglaws.org/wordpress/wp-content/uploads/2010/04/article_Wolf-in-Sheeps-Clothing.pdf>

³⁶ Available at <http://plasticbaglaws.org/wordpress/wp-content/uploads/2010/05/PBL-Single-Use-Bag-Ordinances_CA_Status_Dec-2012_CAW-links2.pdf> [listing the following California localities, in addition to the County, that have adopted combined ban and purchase requirement ordinances: City of Calabasas, City of Fort Bragg, City of Laguna Beach, City of Long Beach, City of Millbrae, City of Monterey,

Manhattan Beach, Pasadena, Santa Monica, and West Hollywood have all adopted ordinances banning plastic bags.³⁷ At the state level, California's Ocean Protection Council has called upon the California Legislature to ban or require consumers to purchase single-use plastic bags. (Cal. Ocean Protection Council, An Implementation Strategy for the California Ocean Protection Council Resolution to Reduce and Prevent Ocean Litter (Nov. 20, 2008) p. 8.³⁸) The West Coast Governors' Agreement on Ocean Health Action Plan (2006) has identified marine debris, including plastic, as a priority area for all three West Coast states. (Off. of the Governors of Wash., Ore., & Cal., West Coast Governors' Agreement on Ocean Health Action Plan (July 29, 2008).³⁹).

Local governments in the United States that have enacted single-use

City of Ojai, City of Pasadena, City of San Jose, City of Santa Cruz, City of Santa Monica, City of Solana Beach, City of Sunnyvale, City of Ukiah, City of Watsonville, City of West Hollywood, City and County of San Francisco, Alameda County Waste Management Authority, Unincorporated Marin County, Unincorporated Mendocino County, San Luis Obispo County Integrated Waste Management Authority, County of San Mateo, Unincorporated Santa Clara County, and Unincorporated Santa Cruz County].

³⁷ Calabasas Ord. No. 2011-282; Long Beach Ord. No. ORD-11-0009; Malibu Ord. No. 323; Manhattan Beach Ord. No. 2115, as amended; Pasadena Ord. No. 7214; Santa Monica Ord. No. 2348 (CCS); West Hollywood Ord. No. 12-898. For copies of all Los Angeles County cities' plastic bag ban ordinances, see *About the Bag*, L.A. County Dept. of Public Works <<http://dpw.lacounty.gov/epd/aboutthebag/ordinancebasics.cfm>> [as of Dec. 6, 2012].

³⁸ Available at <http://www.opc.ca.gov/webmaster/ftp/pdf/opc_ocean_litter_final_strategy.pdf>.

³⁹ Available at <http://www.opc.ca.gov/webmaster/ftp/pdf/docs/Documents_Page/Reports/WCGA_ActionPlan_low-resolution.pdf>.

bag restrictions report positive outcomes. Washington, D.C. became the first U.S. jurisdiction to require consumers to pay for single-use bags in 2009, when it mandated that food and liquor retailers collect five cents per paper or plastic carryout bag provided. (1 CR 0052; Romer, *supra*, 5 Golden Gate U. Envtl. L.J. at p. 385.) As a result of the bag policy, the District of Columbia Office of Tax and Revenue estimated that affected retailers issued 86 percent fewer bags in January 2010 (about 3.3 million bags) as compared to the estimated number of bags issued per month in 2009 (22.5 million bags). (1 CR 0053.) According to a survey conducted by the Alice Ferguson Foundation, 74 percent of polled District of Columbia residents reported that they reduced their plastic bag usage in response to the price signal. The majority of surveyed businesses that offered bag reduction estimates reported that consumption of single-use bags is at least 50 percent lower as a result of the policy. (Metropolitan Washington Council of Governments, Plastic Bag Report 2012 Update, *supra*, at p. 12. *See also* Steve Raabe, OpinionWorks, mem. to Exec. Dir. of Alice Ferguson Fund Tracy Bowen re Public Perceptions and Willingness to Address Litter in the District of Columbia, Feb. 15, 2011, p. 6 [noting that “[b]usinesses are not very bothered by the new law, and neither are their customers Instead, businesses are using many fewer bags and like the impact of that on their bottom line.”].⁴⁰)

⁴⁰ Available at <<http://fergusonfoundation.org/wp-content/uploads/2012/05/>

There is evidence that these policy tools are equally as effective in California municipalities. San Jose, California’s third largest city, was motivated to restrict single-use bags by trash-impaired local waterways and the urban blight caused by litter. (Kerrie Romanow, City of San Jose, mem. to Transportation & Environment Com. re: Bring Your Own Bag Ordinance Implementation Results and Actions to Reduce EPS Foam Food Ware, Nov. 20, 2012, p. 3.⁴¹) Since January 2012, San Jose’s “Bring Your Own Bag” ordinance has prohibited all single-use bags except for recycled-content paper bags, which consumers must purchase for 10 cents (until 2014, when the purchase requirement escalates to 25 cents). (*Id.* at p. 2.) As of November 2012, San Jose reports “downward trends in presence of single-use plastic bags in street, storm drain, and creek litter, and an upward trend in use of reusable bags by shoppers.” (*Ibid.*) The City of San Jose’s 2012 litter surveys indicate that plastic bag litter has been reduced by “approximately 89 percent in the storm drain system, 60 percent in the creeks and rivers, and 59 percent in City streets and neighborhoods, when compared to [pre-ordinance] data” (*Id.* at p. 5). Additionally, as a result of the “Bring Your Own Bag” ordinance, observed reusable bag usage in San Jose skyrocketed from 4 percent of bags to approximately 62 percent of bags. (*Ibid.*) Significantly, California Waste Solutions, which

AFF_DC_-ResearchMemo021511.pdf>.

⁴¹ Available at <http://www3.sanjoseca.gov/clerk/CommitteeAgenda/TE/20121203/TE20121203_d5.pdf>.

collects recycling from the majority of San Jose's single-family residences, reports a 35 to 50 percent reduction in downtime associated with plastic bags and film jamming screening machines in its facility. (*Ibid.*)

4. The Ordinance Has Already Achieved Positive Economic and Environmental Results in Los Angeles County.

Given the effectiveness of bag bans and purchase requirements around the world, it is little surprise that the Ordinance has had positive economic and environmental effects in the County. (*See infra* pt. II.A.) The Ordinance has been successful in altering consumer behavior. As stated above, the Ordinance already has resulted in a 94 percent reduction in single-use bag usage at large retailers and pharmacies, including the elimination of all single-use plastic bags and a 25 percent reduction in paper bags. (County's November 2012 Status Report, *supra*, at p. 1.) Most retailers "report that customers have quickly adapted and are now quite used to the ban." (*Ibid.*)

The County's plastic bag ban would provide an important regulatory tool on its own. Nonetheless, the County's plastic bag ban and paper Bag Purchase Requirement are complementary; the Bag Purchase Requirement augments the benefits of the plastic bag ban by providing incentives for consumers to use reusable bags instead. Although paper bags are a preferable choice to plastic bags given that they are biodegradable and recycled at a higher rate than plastic bags, paper bags are not without their

own environmental impacts. Allowing consumers to purchase a paper bag allows consumers to consider the environmental impacts associated with paper bag usage. The production of paper bags depletes forests and other natural resources, emits greenhouse gasses, and pollutes water bodies with toxic chemicals. (Kinsella et al., *The State of the Paper Industry* (2007) pp. 3-5.⁴²) The U.S. paper industry is the nation's largest industrial user of water per ton of product, is the third largest industrial consumer of energy, ranks fourth among industrial sectors in the release of toxic chemicals in water, and ranks third in toxic air emissions. (*Id.* at p. 3.) Compounding the environmental impacts of paper bag production is the fact that only about 50 percent of paper bags are recycled in the United States. (U.S. Environmental Protection Agency, *Municipal Solid Waste in the United States: 2009 Facts and Figures* (Dec. 2010) table 4, p. 40.⁴³)

The County's November 2012 Status Report states that, during the first full year of implementation of the Ordinance, large retailers provided approximately 125,000 paper bags per store, which is significantly less than the 196,000 paper bags and over two million plastic bags provided per store prior to the Ordinance. (County's November 2012 Status Report, *supra*, p. 2.) Thus, the Ordinance has been successful in reducing plastic bag usage

⁴² Available at <<http://www.greenpressinitiative.org/documents/StateOfPaperInd.pdf>>.

⁴³ Available at <<http://www.epa.gov/osw/nonhaz/municipal/pubs/msw2009rpt.pdf>>.

without inciting a corresponding surge in paper bag usage. Paper bag usage continues to decline each quarter. (*Ibid.*)

C. This Lawsuit is One Prong of a Large-Scale, Coordinated Attack by the Plastics Industry on Grassroots Efforts to Minimize Plastic Bag Pollution Across California and the Nation.

Given that Appellants are members of the plastics industry and not the paper industry,⁴⁴ it is likely that Appellants' claims against the Bag Purchase Requirement represent a pretextual effort by the plastics industry to attack the County's plastic bag ban. Indeed, in the context of the plastics industry's large-scale attack on single-use bag restrictions across the nation, this lawsuit appears to be an attempt by Appellants to protect profits at the expense of local taxpayers and our marine and riverine environments.

As a recent law journal article has noted, the plastics industry has "sued or threatened to sue virtually every California municipality that has recently taken steps to adopt a plastic bag ordinance." (Romer, *supra*, 5 Golden Gate U. Envtl. L.J. at p. 378. *See* Stephen L. Joseph, Counsel to Save the Plastic Bag Coalition, mem. to California cities and counties re Restaurant Bags, Oct. 31, 2012, p. 1 ["Save The Plastic Bag Coalition . . . will sue *every* city or county that adopts an ordinance that bans, restricts, limits, or requires a charge for plastic bags at any restaurant or "food

⁴⁴ Appellants include Hilex Poly Co., LLC, a South Carolina plastic bag manufacturer, and two of its employees. Respondents' Brief at p. 1, fn. 2.

facility.” (emphasis in original)].⁴⁵) Three plastic bag manufacturers even sued ChicoBag, a California small business that manufactures reusable bags and is sympathetic to environmental concerns about single-use bags. Plastic bag manufacturers sued ChicoBag for false advertising and unfair competition in the State of South Carolina, which has no anti-SLAPP (Strategic Lawsuit Against Public Participation) laws. (*Bag Wars / Plastic Giants Sue Reusable Bag Entrepreneur for Loss of Sales*, ChicoBag, <<http://www.chicobag.com/sued-by-plastic-press-release>> [as of Dec. 11, 2012].)

With over 1.4 million employees, the plastics industry is one of the largest manufacturing industries in the United States and a powerful special interest lobbying force against policies that propose to restrict the industry. (Romer, *supra*, 1 Golden Gate U. Env'tl. L.J. at p. 442.) The American Chemistry Council, a \$120 million industry group whose members include ExxonMobil and Dow Chemical, has established groups that include top bag manufacturers, like Hilex Poly Co., LLC, to oppose plastic bag bans with the help of the same lobbying firm that fought tobacco regulation in the 1990s. (Doucette, *The Plastic Bag Wars* (Aug. 4, 2011) Rolling Stone <<http://www.rollingstone.com/politics/news/the-plastic-bag-wars-20110725>> [as of Dec. 6, 2012]. See also *Full Summary Disclosure Report*

⁴⁵ Available at <<http://savetheplasticbag.com/UploadedFiles/STPB%20restaurant%20bag%20memo.pdf>>.

– 6/1/09 to 7/27/09 for *Coalition to Stop the Seattle Bag Tax* (July 27, 2009) Seattle Ethics & Elections Comm’n,
<<http://www2.seattle.gov/ethics/eldata/filings/popfiling.asp?prguid={C877AEFE-CE2E-4345-9CF5-843FA5493793}>> [as of Dec. 6, 2012]
[evidencing that the Coalition to Stop the Seattle Bag Tax, which is nearly wholly funded by the American Chemistry Council, spent \$1.4 million to defeat Seattle’s 20-cent plastic bag fee].) Significantly, some of the same special interests that help fund the plastics industry’s challenges to bag bans were also among the largest supporters of Proposition 26. (*See Who is Funding California’s Proposition 26?*, Oil Change Internat. (Oct. 5, 2010) <<http://prop26.dirtyenergymoney.com/>> [as of Dec. 6, 2012].) “The [opposition] effort includes well-placed political donations, intensive lobbying at both the state and national levels, and a pervasive PR campaign designed to shift the focus away from plastic bags to the supposed threat of canvas and paper bags — including misleading claims that reusable bags ‘could’ contain bacteria and unsafe levels of lead.” (Doucette, *The Plastic Bag Wars* (Aug. 4, 2011) Rolling Stone <<http://www.rollingstone.com/politics/news/the-plastic-bag-wars-20110725>> [as of Dec. 6, 2012].) The American Chemistry Council even successfully lobbied California school officials to rewrite curricula, textbooks, and teacher’s guides to include positive messages about plastic bags. (Susanne Rust, *Plastic Bag Lobbying Group Influences Curriculum*

(Aug. 19, 2011) S.F. Chronicle

<<http://www.sfgate.com/green/article/Plastic-bag-lobbying-group-influences-curriculum-2334747.php>> [as of Dec. 11, 2012].)

In stark contrast to the goliath plastics industry, the County's Ordinance is the result of a grassroots movement. Many County residents issued letters in support of the Ordinance. In total, the County received over 1800 postcards from County residents in support of banning single-use carryout bags. (5 CR 1129-1204.) The groundswell of local support for the Ordinance and public recognition of its environmental benefits only further solidifies that the Bag Purchase Requirement is a proper use of the County's police power to enact ordinances to protect the general health and welfare from the adverse impacts of plastic bag pollution, and not a tax subject to Proposition 26.

For all of the foregoing reasons, the Amici respectfully request this Court to affirm the judgment below.

Dated: December 13, 2012

Respectfully Submitted,

Frank G. Wells Environmental Law
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By:

Sean B. Hecht
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Advisors

CERTIFICATION OF WORD COUNT

I certify that the total word count of this brief, including footnotes, is 12,036 words, as determined by the word count of the Microsoft Word program on which this brief was prepared.

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I am employed in the County of Los Angeles, State of California. I am over the age of eighteen and am not a party to the within action; my business address is 405 Hilgard Avenue, Los Angeles, California 90095.

On December 14, 2012, I served the foregoing document described as:

APPLICATION FOR LEAVE TO FILE *AMICI CURIAE* BRIEF IN SUPPORT OF RESPONDENTS COUNTY OF LOS ANGELES, ET AL.; PROPOSED BRIEF OF *AMICI CURIAE* SURFRIDER FOUNDATION, HEAL THE BAY, THE 5 GYRES INSTITUTE, ENVIRONMENT CALIFORNIA RESEARCH AND POLICY CENTER, and SEVENTH GENERATION ADVISORS.

on the interested parties in this action, as addressed as follows:

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on December 14, 2012, at Los Angeles, California.

Jeanne Fontenot