Save the Plastic Bag Coalition v. City of Manhattan Beach: California Supreme Court Answers More Than "Paper or Plastic?" in Major Decision on Corporate Standing under CEQA

INTRODUCTION

Local governments across the United States have explored and implemented ordinances prohibiting grocers and other retail stores from offering customers plastic bags.[1] In some California jurisdictions, plastic bag manufacturers have pushed back using the California Environmental Quality Act (CEQA).[2] In *Save the Plastic Bag Coalition v. City of Manhattan Beach*, the California Supreme Court not only answered the substantive question of whether adoption of a plastic bag ban requires an Environmental Impact Report (EIR), but also shed light on a major procedural question: when does a business have standing to bring a CEQA suit?[3] The court held that Manhattan Beach ("City") acted within its discretion in approving the plastic bag ban on the basis of a Negative Declaration (ND), rather than a full EIR.[4] On the standing question, however, the court sided with Save the Plastic Bag Coalition, sharply rejecting the ruling in *Waste Management v. County of Alameda* that a corporate entity must meet a higher standard than an individual to establish public interest standing.[5] The court also clarified that in order to claim standing as a beneficially interested party under California Code of Civil Procedure section 1086, a party's interest does not need to fall within the zone of interests

1. *See, e.g.*, *State and Local Laws*, PLASTICBAGLAWS.ORG, http://plasticbaglaws.org/legislation/state-laws (last visited Apr. 11, 2012).

2. *See generally Litigation*, SAVETHEPLASTICBAG.COM, http://savetheplasticbag.com/ReadContent541.aspx (last visited Apr. 11, 2012); *see also* Save the Plastic Bag Coal. v. City of Manhattan Beach, 254 P.3d 1005 (Cal. 2011) (involving bag manufacturers' challenge to a local ordinance under CEQA); Order on Submitted Matter, Save the Plastic Bag Coal. v. Cnty. of Marin, No. 1100996 (Marin Cnty. Super. Ct. Sept. 14, 2011), *available at* http://dl.dropbox.com/u/2494842/LEGAL/CA_Marin_OrderonSubmittedMatter.pdf.

3. *Save the Plastic Bag Coal.*, 254 P.3d at 1008.

4. *Id.*

5. *Id.*; *see also* Waste Mgmt. v. Cnty. of Alameda, 94 Cal. Rptr. 2d 740, 752 (Ct. App. 2000).

that the applicable law was meant to protect.[6] This expansive definition of "beneficial interest," coupled with the court's broad grant of public interest standing to corporate plaintiffs, confers an unsettling legitimacy on even the most cynically motivated CEQA suits.

I. BACKGROUND

A. CEQA Requirements

CEQA requires public agencies[7] to evaluate and, where feasible, minimize the environmental impacts of proposed projects.[8] CEQA review typically begins with an initial study (IS),[9] which a public agency may complete using a checklist of potential environmental impacts, supported by a brief explanation or some form of documentation.[10] If the IS suggests that those impacts will be "less than significant," the public agency may fulfill its CEQA obligations by issuing an ND.[11] If, however, there is substantial evidence that a project will have significant environmental impacts, the agency must prepare an EIR.[12] An EIR is more in-depth than an IS, and must enumerate all potentially significant environmental impacts, proposed measures to mitigate significant impacts, and environmentally superior alternatives to the project.[13]

B. California Standing Rules

Standing requirements control if and when a party may pursue a given legal action and play an important role in ensuring that courts only adjudicate disputes between parties with a real stake in the outcome.[14] In California,

---

6. *See Save the Plastic Bag Coal.*, 254 P.3d at 1015; CAL. CIV. PROC. CODE § 1086 (West 2012) (restricting petitioners for writs of mandamus to "beneficially interested" parties).

7. A "public agency" is "any state agency, board, or commission, any county, city and county, city, regional agency, public district, redevelopment agency, or other political subdivision." CAL. PUB. RES. CODE § 21063 (West 2012).

8. *See id.* §§ 21002–21002.1; *see also id.* § 21065 (defining a "project" as an activity undertaken, supported, or permitted by a public agency "which may cause either a direct . . . or reasonably foreseeable indirect physical change in the environment").

9. "Following preliminary review, the lead agency shall conduct an initial study to determine if the project may have a significant effect on the environment. If the lead agency can determine that an EIR will clearly be required for the project, an initial study is not required but may still be desirable." CAL. CODE REGS. tit. 14, § 15063(a) (2012).

10. STATE OF CALIFORNIA NATURAL RES. AGENCY, CEQA GUIDELINES AMENDMENTS, SB97, at 38–52 (2009), *available at* http://ceres.ca.gov/ceqa/docs/Adopted_and_Transmitted_Text_of_SB97_CEQA_Guidelines_Amendments.pdf.

11. Tit. 14, § 15063(b)(2).

12. Save the Plastic Bag Coal. v. City of Manhattan Beach, 254 P.3d 1005, 1015 (Cal. 2011); tit. 14, § 15064(f)(1).

13. Tit. 14, §§ 15063(a)(3), 15120, 15126–15126.6.

14. *See* In re N.J. Bd. of Pub. Util., 491 A.2d 1295, 1301 (N.J. Super. Ct. App. Div. 1985) ("Standing requires that a litigant have a sufficient stake and real adverseness with respect to the subject matter of the litigation, and a substantial likelihood that some harm will fall upon it in the event of an unfavorable decision.")

standing to compel a government action is governed by the section 1086 of the Code of Civil Procedure, which requires that a party be "beneficially interested" to seek a writ of mandate.[15] Beneficial interest is generally defined as having "some special interest to be served or some particular right to be preserved or protected over and above the interest held in common with the public at large."[16] However, some appellate courts prior to *Save the Plastic Bag Coalition* also applied the stricter "zone of interest" rule, which requires that a plaintiff's interest fall "within the zone of interests to be protected by the legal duty asserted."[17] In *Waste Management v. County of Alameda*, for instance, a private landfill operator sued the County of Alameda after it approved a competitor's waste disposal permit without an EIR.[18] The Court of Appeal held that the landfill operator was not a beneficially interested party because its interest in imposing greater regulatory costs upon a competitor was not within the zone of interests CEQA was meant to protect.[19]

California courts have established an important exception to section 1086, often referred to as "public interest standing."[20] The courts have held that if the legal issue is enforcement of a public right or duty, a party need not show beneficial interest to establish standing.[21] The policy underlying public interest standing is that citizens should be guaranteed the opportunity to ensure that "no governmental body impairs or defeats the purpose of legislation establishing a public right."[22] In a key case for interpreting the outer boundaries of public interest standing, the court held in *Waste Management* that a landfill operator did not have public interest standing to bring a CEQA suit for purely commercial or competitive reasons.[23] The court reasoned that in order to establish public interest standing, a corporate entity had to demonstrate the "attributes of a citizen litigant"[24] through several factors, including whether the corporation had shown an interest in or commitment to the public right being asserted and whether the corporate citizen suit would conflict with other

15. CAL. CIV. PROC. CODE § 1086 (West 2012).

16. Carsten v. Psychology Examining Comm., 614 P.2d 276, 278 (Cal. 1980).

17. Lindelli v. San Anselmo, 4 Cal. Rptr. 3d 453, 461 (Ct. App. 2003) (holding that a trash hauler had a beneficial interest in enforcing notice requirements for a change in service, since its interest, while commercial, was within the zone of interests that the ordinance was meant to protect); *see also* City of Manhattan Beach's Answer to Amicus Brief of Pacific Legal Foundation of the Decision of the Court of Appeal, Second Appellate District, Division Five, *Save the Plastic Bag Coal.*, 254 P.3d 1005 (No. S180720), 2010 WL 3777423, at *8; Waste Mgmt. v. Cnty. of Alameda, 94 Cal. Rptr. 2d 740, 751 (Ct. App. 2000).

18. *Waste Mgmt*., 94 Cal. Rptr. 2d at 751.

19. *Id.* at 744. *See also* Clear Channel Outdoor, Inc. v. Bd. of Appeals, No. A125636, 2011 WL 675976, at *1 (Cal. Ct. App. Feb. 25, 2011) (holding that an advertising business lacked standing to contest certain parts of a Board of Supervisors' decision on a signage permit because the company's business concerns fell outside the "zone of interests" that the signage ordinance was intended to protect).

20. *See, e.g.*, Dix v. Superior Court, 53 Cal. 3d 442 (1991).

21. Bd. of Soc. Welfare v. Cnty. of L.A., 162 P.2d 627, 628 (Cal. 1945).

22. Green v. Obledo, 29 Cal. 3d 126 (1981).

23. *Waste Mgmt*., 94 Cal. Rptr. 2d at 744.

24. *Id.* at 750.

legislative policies.[25] Since 2000, several appellate courts have cited the *Waste Management* factors, but only one has used them to deny a corporate plaintiff public interest standing.[26] *Save the Plastic Bag Coalition* represents the first time the state's highest court has weighed in on the *Waste Management* requirements for corporate public interest standing.[27]

C. *The Manhattan Beach Ordinance*

In June 2008, the City of Manhattan Beach circulated a staff report containing a proposed ordinance that would ban the use of plastic bags at the point of sale at licensed retail establishments.[28] It included a declaration of CEQA exemption on the grounds that the proposed ban would have no significant environmental impacts and that it qualified as a regulatory program designed to protect the environment.[29] Save the Plastic Bag Coalition, formed by Grand Packaging and Elkay Plastics on the day the City circulated its staff report, sent a letter to the City expressing its intent to sue under CEQA to block the ordinance.[30] In response, the City conducted an IS, concluding that the proposed ban's environmental impacts would be insignificant and an EIR would be unnecessary.[31] In July 2008, the Manhattan Beach City Council adopted an ND and approved the ordinance, and Save the Plastic Bag Coalition petitioned for a writ of mandamus to force the City to prepare an EIR.[32]

II. ANALYSIS

A. Save the Plastic Bag Coalition *Rejected a Categorical EIR Requirement for Plastic Bag Bans*

The Coalition claimed that since there was a "fair argument" the ordinance would have significant environmental impacts, the City violated CEQA by approving the project without an EIR.[33] Specifically, it asserted that banning plastic bags would increase paper bag consumption, and pointed to life-cycle studies showing that paper bags produce more methane when they decompose

25. *Id.* at 751.

26. Save the Plastic Bag Coal. v. City of Manhattan Beach, 254 P.3d 1005, 1013 (Cal. 2011); *see also* Regency Outdoor Adver., Inc. v. W. Hollywood, 63 Cal. Rptr. 3d 287, 293 (Ct. App. 2007) (holding that an advertising company lacked public interest standing to contest a city's signage ordinance under CEQA).

27. *See* Debra Kahn, *Plastic Bag Decision in Calif. Court Sets CEQA Precedent*, N.Y. TIMES, Aug. 2, 2011, http://www.nytimes.com/gwire/2011/08/02/02greenwire-plastic-bag-decision-in-calif-court-sets-ceqa-44970.html.

28. *Save the Plastic Bag Coal.*, 254 P.3d at 1008.

29. *Id.*

30. Brief of Amici Curiae League of California Cites and California State Association of Counties in Support of Appellant City of Manhattan Beach, *Save the Plastic Bag Coal.*, 254 P.3d 1005 (No. S180720), 2010 WL 3625315, at *5.

31. *Save the Plastic Bag Coal.*, 254 P.3d at 1009.

32. *Id.* at 1010–11.

33. *Id.* at 1011.

in landfills, take more energy and water to produce, and weigh more than plastic bags (thus contributing to higher transportation-related greenhouse gas emissions).[34] The City had looked at these and other studies when it prepared its IS,[35] but cited a number of mitigating factors that would offset those impacts, including the town's small population,[36] a dearth of high-volume retail stores that would be impacted by the ordinance,[37] and the fact that paper bags would not replace plastic bags by a one-to-one ratio, since paper bags hold more than plastic bags, and since some residents would use reusable bags.[38]

The trial court vacated the Manhattan Beach ordinance on the basis that CEQA required the City to conduct an EIR to evaluate the environmental impacts of increased paper bag use, and the Court of Appeals affirmed. [39] The California Supreme Court reversed, holding that the City acted within its discretion in adopting the ND.[40] While the court found that paper bags entail greater "life cycle" environmental impacts than plastic bags, the court clarified that CEQA does not require an agency to undertake "an exhaustive comparative analysis" of the potential detriments for "every alternative course of action."[41] On the contrary, the statute requires an EIR only when project impacts are likely to be significant.[42]

To determine whether the City had met its CEQA obligations, the court looked to the "actual scale" of the ordinance.[43] The court noted that the only environmental impact felt within Manhattan Beach itself would be the need for greater transportation and disposal of paper bags, which would be "minimal" given the city's size.[44] The court found that potential environmental impacts outside Manhattan Beach were "indirect and difficult to predict" and that CEQA allows agencies to evaluate such impacts at a "reasonably high level of generality."[45] Thus, the court found additional analysis unnecessary and held that the impacts of a shift from plastic to paper bags would be "insubstantial."[46]

Save the Plastic Bag Coalition was a victory for other California jurisdictions interested in pursuing plastic bag ordinances, particularly where local agencies may lack the resources to prepare an EIR. Nonetheless, the court limited its holding by emphasizing the scale of the Manhattan Beach ordinance, noting that the analysis would be different for a larger jurisdiction.[47] The court

34. *Id.* at 1016.
35. *Id.* at 1009.
36. *Id.* The population of Manhattan Beach is only 33,582, according to the 2000 census. *Id.*
37. *Id.* (noting that the ordinance would cover 217 licensed retail establishments, of which there were "only two supermarkets, three (and two future) drug stores, and one Target store . . . .").
38. *Id.*
39. *Id.* at 1011.
40. *Id.* at 1008.
41. *Id.* at 1016.
42. *Id.*
43. *Id.*
44. *Id*.
45. *Id.* at 1017.
46. *See id.*
47. *Id*.

also noted that due to the town's small size, the ordinance would have a negligible contribution to the cumulative impacts of plastic bag bans statewide,[48] but this calculus could differ for a larger jurisdiction. On the other hand, small and large jurisdictions alike can leverage the reasoning in *Save the Plastic Bag Coalition* that paper bag use will not supplant plastic bag consumption on a one-to-one basis,[49] an argument that analysis of the predicted shift to reusable bag use (though this was not included in Manhattan Beach's initial study) could bolster.[50]

B. Save the Plastic Bag Coalition *Rejected a Heightened Corporate Public Interest Standing Requirement*

Save the Plastic Bag Coalition also resolved a major procedural issue, which will impact not only litigation over plastic bag bans but also CEQA suits more generally.[51] First, the court rejected the *Waste Management* rule that corporations face a higher bar in establishing "public interest" standing.[52] *Save the Plastic Bag Coalition* took aim at the underlying assumption in *Waste Management* that corporations can generally be expected to act out of self-interest rather than in the public interest, deeming this presumption "overbroad."[53] The court noted that the *Waste Management* factors could deny standing to corporations who bring particular expertise to bear upon the "public interests at stake."[54] Rejecting the *Waste Management* factors, the court looked solely at the Coalition's arguments and, finding them "appropriate for a citizen suit," held that the Coalition qualified for public interest standing.[55]

Save the Plastic Bag Coalition thus raises the question of whether public interest standing is available to a CEQA plaintiff with solely commercial motives. If the sole criterion under the new standing test is whether the plaintiff offers environmental arguments, it appears that even the most commercially motivated plaintiff could establish public interest standing: after all, it would be difficult to establish the *substantive* merits of a CEQA suit without making any contentions about a project's environmental impacts.[56] Yet the court clarified that it was not making public interest standing available "as a matter of right" and that "the policy underlying public interest standing may be outweighed by competing considerations of an urgent nature."[57] The only time a "competing consideration" argument has prevailed, however, was in *Carsten v. Psychology*

48. *Id.* at 1018.
49. *See id.* at 1017.
50. *See* Save the Plastic Bag Coal. v. City of Manhattan Beach, 105 Cal. Rptr. 3d 41, 58 (Ct. App. 2010).
51. *See* Kahn, *supra* note 27.
52. *Save the Plastic Bag Coal.*, 254 P.3d at 1013.
53. *Id.* at 1013–14.
54. *Id.* at 1014.
55. *Id.*
56. An exception to this would be a suit that implicates a purely procedural issue, such as compliance with required public review periods. *See, e.g.*, CAL. CODE REGS. tit. 14, § 15105 (2012).
57. *Id.* at 1014 n.5.

Examining Committee, where a member of a State of California Medical Quality Assurance subcommittee brought suit to invalidate a decision made by the board on which she sat.[58] In that case, the California Supreme Court held that granting public interest standing would allow other disgruntled board members to sue whenever a board they were on made a decision they disliked, and decided that the chilling effect this would have on the decision-making process outweighed the interest in allowing the lawsuit to proceed.[59]

While the *Save the Plastic Bag Coalition* court repudiated the *Waste Management* rule for corporate standing, the court did agree with the outcome in that case, noting that the "use of CEQA to impose regulatory burdens on a business competitor, with no demonstrable concern for protecting the environment" is "improper."[60] Yet it is unclear what boundary, if any, replaces the *Waste Management* limitations on economically motivated "citizen" suits. Could the plaintiff in *Waste Management* have gotten public interest standing by more convincingly showing "demonstrable concern" for the environment? Would forming a cleverly titled ad-hoc committee have sufficed? While the court does not explore the requirements for demonstrating environmental concern, the facts of *Save the Plastic Bag Coalition* indicate that even a nominal showing will suffice.[61] To be sure, interrogating every plaintiff's motives in bringing a CEQA suit could present standing problems for non-corporate litigants as well, as not every citizen plaintiff has an established history of environmental advocacy.[62] Rather than addressing this thorny question head-on by refining the criteria for public interest standing, however, *Save the Plastic Bag Coalition* establishes a rule broad enough to capture even the most self-interested plaintiff.

C. Save the Plastic Bag Coalition *Clarified "Beneficial Interest" Under Section 1086*

In *Save the Plastic Bag Coalition*, the court concluded that the Coalition had not only public interest standing, but standing to sue as a beneficially interested party as well.[63] The court rejected the City's argument that a plaintiff needs be impacted by an adverse environmental effect to sue under CEQA, stating that the scope of beneficial interest has never been so limited.[64] While the court did not explicitly overrule lower court decisions relying on the "zone of interest" rule, it clarified that this is not the rule in California.[65] Accordingly, the court found that the Coalition was beneficially interested because it had a "particular right to be preserved or protected over and above the interest held in

58. *See* Carsten v. Psychology Examining Comm., 614 P.2d 276, 277 (Cal. 1980).
59. *Id.* at 279–80.
60. *Save the Plastic Bag Coal.*, 254 P.3d at 1014.
61. *See id.* at 1009.
62. *See generally* Daniel P. Selmi, Themes in the Evolution of the State Environmental Policy Acts, 38 URB. LAW. 949 (2006).
63. *Save the Plastic Bag Coal.*, 254 P.3d at 1014.
64. *Id.* at 1015.
65. *Id.* at 1012 n.3.

common with the public at large."[66] While the boundary of "beneficial interest" was not the central issue in *Save the Plastic Bag Coalition*, the dicta rejecting the "zone of interest" rule nonetheless represents an important expansion for commercial plaintiffs' claim to standing in environmental cases.

CONCLUSION

On its merits, *Save the Plastic Bag Coalition* is a victory for local government and a cautionary tale about the limits of general life-cycle studies in illustrating project-specific impacts. Yet, the case's broader reverberations are in its procedural precedent, with the court rejecting the restricted "zone of interest" test in favor of the more relaxed threshold for beneficial interest and eliminating the heightened requirement for corporate public interest standing. The danger of such an expansive standing rule is that in a time of constrained resources, even the specter of litigation can chill local agencies' resolve to pursue new regulation. When the potential for CEQA litigation comes from environmentally-motivated plaintiffs, this can at least encourage an agency to make more environmentally-minded decisions in order to avoid a legal showdown. No such benefit is served, however, by the threat of CEQA litigation from purely economic plaintiffs, since environmental concessions are unlikely to satisfy commercial objectives. An overly broad standing rule may therefore have a chilling effect on environmentally beneficial regulation, for fear of litigation wholly unrelated to CEQA's purpose.

Jessica Diaz

66. *Id.* at 1015.