

WE'RE PEOPLE TOO: CORPORATIONS HAVE STANDING TO FILE CEQA CITIZEN SUITS

Save the Plastic Bag Coalition v. City of Manhattan Beach (July 14, 2011, S180720)

August 5, 2011 by James Pugh & Shoshana Zimmerman

Corporations now have the ability to file citizen suits to assert public interests without facing heightened scrutiny by the courts. The California Supreme Court ruled that a coalition of plastic bag manufacturers and distributors (“Plaintiff”) had standing to maintain a citizen suit to vindicate the asserted public interest in environmental quality. This means more generally that a corporation has greater freedom to bring a CEQA-based citizen suit to further the public interest in environmental quality. Additionally, the court ruled that any corporation or business interest whose operations are directly affected by a government project has standing in their own right to raise a CEQA challenge.

In 2008, the City of Manhattan Beach passed an ordinance banning retailers from providing plastic bags to customers at the point of sale. The ordinance adopted a Negative Declaration based on the findings of an Initial Environmental Study made in compliance with the California Environmental Quality Act (“CEQA”). This Negative Declaration stated the initial environmental study had determined that banning plastic bags was not an action involving any significant impact on the environment. Plaintiff then filed suit for a writ of mandate, asking the court to bar the city from enforcing the ordinance until it prepared an environmental impact report. Plaintiff claimed it had standing to bring the suit because its public rights were at stake and its objective was that “of an interested citizen seeking to procure enforcement of ... public duties.” The

court ultimately held the Plaintiff had standing to sue, but rejected its claims on the merits.

Previously, under the *Waste Management* standard (*Waste Management of Alameda County, Inc. v. County of Alameda* (2000) 79 Cal.App.4th 1223, 1238), a corporation could only bring a “citizen” suit if it could demonstrate certain factors indicating it “should be accorded the attributes of a citizen litigant.” Here, the California Supreme Court expressly overruled that standard. Instead, the court held that absent compelling policy reasons to the contrary, corporate entities “should be as free as natural persons to litigate in the public interest.” Natural persons can litigate in the public interest, by bringing a citizen suit, when the action is undertaken to further the public interest and is not limited to only the plaintiff’s private concerns. In other words, a corporation still cannot bring a citizen suit if its only purpose is competitive or commercial advantage. However, a corporation now has the freedom to bring a citizen suit to further the public interest, such as in environmental quality.

The court also held Plaintiff had direct standing to bring its CEQA claims. The court held that because the ordinance would have a “severe and immediate effect” on the business of the plaintiff association’s members, Plaintiff had the “direct, substantial sort of beneficial interest” required for standing. Finally, the court rejected the argument that a plaintiff must be affected by a particular environmental impact to qualify as a beneficially interested party in a CEQA suit. Rather, a business interest whose operations are directly affected by a government project has standing in their own right to raise a CEQA challenge to the government’s environmental analysis.

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