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No CEQA Review Required For Initiative Measures, Whether Adopted By City Council Or Voters

By Tiffany Duong on August 8, 2014

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Tuolumne Jobs & Small Business Alliance v. Wal-Mart Stores, Inc., et al. (8/7/14, S207173)

The Supreme Court of California has held that CEQA review was not required before the Sonora City Council adopted an initiative measure approving a specific plan for expansion of a Wal-Mart store. The court held that: (1) the Elections Code, which requires at most an abbreviated review, provides the exclusive process regarding voter initiatives, (2) the legislative body does not have to obtain full CEQA review before it can directly adopt a voter initiative, and (3) a full CEQA review would be incompatible with the requirements of the Elections Code. The court's conclusion highlights the judiciary's staunch protection of the initiative process.

In 2007, Wal-Mart sought to expand an existing Wal–Mart store in the City into a new Wal-Mart Supercenter. In December 2009, the City circulated a draft environmental impact report for public comment, and the City Planning Commission unanimously recommended that the project be approved. Before the project was put up for a vote, the City Council was served with a notice of intent to circulate an initiative petition. This "Wal-Mart Initiative" proposed a specific expansion plan and was ultimately signed by over 20% of the City's registered voters.

When an initiative petition meets the requirements of Elections Code Section 9214, the recipient city council must either: (1) adopt the initiative without alteration, (2) submit it to a special election, or (3) order an abbreviated report on the initiative pursuant to Elections Code Section 9212. Within 10 days of receipt of the report, the city council must either adopt the ordinance without alteration or submit it to the electorate in a special election.

On September 20, 2010, the Council ordered a Section 9212 report to examine the Wal-Mart Initiative's consistency with the previously approved plans for the expansion. At its next meeting, the Council considered the Section 9212 report, and after weighing the countervailing arguments, adopted the ordinance.

Petitioner Tuolumne Jobs & Small Business Alliance ("TJSBA") sought a writ of mandate, asserting, among other things, that the Council violated CEQA when it adopted the ordinance without first conducting a complete environmental review. TJSBA received a favorable ruling in the Court of Appeals, which held that CEQA review was required if a city council adopted an ordinance rather than submitting it to election. The Supreme Court of California granted review and reversed.

The court grounded its decision on the Elections Code, highlighting how "courts have a duty 'to jealously guard [the initiative] right of the people'" (citing *Associated Home Builders etc., Inc. v. City of Livermore* (1976) 18 Cal.3d 582, 591). According to the court, the Elections Code presents a clear and simple process, which gives city councils only three options when presented with a voter initiative. The court noted that it is well–established law that CEQA compliance is not required before a city council submits an initiative *to voters* under Elections Code 9214(b). The court also stated that full CEQA review would actually be "contrary to the statutory language and legislative history pertaining to voter initiatives, and . . . [does] not compel a different result" because of policy considerations. The abbreviated review under a Section 9212 report (as required by Section 9214(c)) therefore remained the "exclusive" means to assess potential environmental impacts of such voter initiatives.

The court emphasized timing as one of the incompatibilities of CEQA and the Elections Code. CEQA reporting and public comment periods typically take months — drastically longer and irreconcilable with the 10 days a city council has to adopt an initiative or the 40 days such city council would have to adopt the initiative if a Section 9212 report is ordered. These timing differences would nullify any city council's options to directly adopt and still meet the timing deadlines in the Elections Code for all voter initiatives with potential environmental impact.

The court also pointed out that the underlying concerns of CEQA — review of potential environmental impacts — are covered by the Section 9212 report. This report, albeit abbreviated, represented the Legislature's intentional compromise and balance of interests, allowing for both environmental review and prompt action on initiatives. The Legislature historically has opted for the abbreviated Section 9212 review and specifically rejected bills that would require CEQA review, finding the former sufficient and preferable.

Finally, the court addressed the appellants' warning that the initiative process could be used to skirt CEQA review, stating that (1) the opposite could also occur where initiative power could be used to thwart development, (2) these are legislative concerns rather than judicial, (3) the process outlined in the Elections Code itself is "neutral," and (4) the judiciary has the duty to protect the initiative process.

The court's decision has resolved any doubts regarding the duties of a local legislative body when presented with a qualified initiative petition. CEQA review is not required, and is in fact inappropriate, regardless of whether the measure is directly adopted or put to a vote.