SUPREME COURT
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Case No. S207173

IN THE
SUPREME COURT OF THE STATE OF CALIFORNIA

TUOLUMNE JOBS & SMALL BUSINESS ALLIANCE,

Petitioner,

v.

THE SUPERIOR COURT OF TUOLUMNE COUNTY,

Respondent,

WAL-MART STORES, INC.; JAMES GRINNELL,

Real Parties in Interest.

After a Decision by the Court of Appeal
Fifth Appellate District
Case No. F063849

REAL PARTY IN INTEREST'S REPLY BRIEF

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TO THE HONORABLE PRESIDING JUSTICE AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE SUPREME COURT:

Real Party in Interest, James Grinnell ("Grinnell"), respectfully offers this Reply Brief in support of its Petition for Review of the published decision of the Court of Appeal, Fifth Appellate District, issued on October 30, 2012, entitled *Tuolumne Jobs & Small Business Alliance v. The Superior Court of Tuolumne County*, Case No. F063849 (the "Opinion").

I. The Opinion Creates A Split of Authority on an Issue of Broad Public Concern That Requires Resolution by This Court

In its Answer to the Petitions for Review that have been filed, Petitioner Tuolumne Jobs and Small Business Alliance ("TJSBA") puts forth a number of arguments as to why Real Party Grinnell's Petition for Review should not be granted. Respectfully, all of TJSBA's arguments miss the mark. Indeed, TJSBA's Answer reinforces the fact that (i) no material factual dispute exists among the Parties and that (ii) the Opinion creates an irreconcilable and express conflict with the Fourth Appellate District's decision in *Native American Sacred Site and Environmental Protection Association v. City of San Juan Capistrano* (2004) 120 Cal.App.4th 961 ("*NASSEPA*").

Moreover, the conflict created by the Opinion and *NASSEPA* involves the voters' constitutionally reserved powers of initiative. This Court has repeatedly held that "direct initiation of change by the citizenry through initiative" (*Robins v. Pruneyard Shopping Center* (1979) 23 Cal.3d 899, 907-08) is "vital to a basic process in the State's constitutional scheme" (*id.*). To this end, this Court has acknowledged that it has a "solemn duty to jealously guard the precious initiative power, and to resolve reasonable doubts in favor of its exercise." (*Legislature v. Eu* (1991) 54 Cal.3d 492, 501.)

It is difficult to imagine a case that better necessitates review by this Court than the present. As set forth in Grinnell's Petition for Review, this Court has, on numerous occasions, construed the scope of the voters' reserved initiative power in the context of proposed legislative actions that may otherwise be governed by other statutory requirements if the proposed action was undertaken by an elected body as compared to the voters exercising the initiative power. (*See Associated Homebuilders, Inc. v. City of Livermore* (1976) 18 Cal.3d 582; *DeVita v. County of Napa* (1995) 9 Cal.4th 763.) Certainly the singular legal issue that is the subject of the split of authority in the Opinion and the *NASSEPA* decision – *i.e.*, whether a city council's adoption of a voter-sponsored initiative is subject to CEQA – is of broad constitutional interest to citizens, public agencies, public interest groups, religious entities, and business groups throughout

the State. Indeed, the Amicus Curiae letters filed in support of the Petitions for Review amply demonstrate this.

TJSBA's argument that somehow the Petitions for Review should not be granted because the "split is factually limited and unlikely to be repeated in any case except those involving Walmart or its supporters circulating similar initiative petitions" (Answer, p. 2) is both inaccurate and reveals precisely why this Court exercises a "solemn duty to jealously guard the precious initiative power." (*Legislature v. Eu*, 54 Cal.3d at 501.)

First, prior to the Opinion, the other reported decisions concerning the adoption of a voter-sponsored initiative by a legislative body pursuant to Elections Code section 9214 pertained to attempts by the voters to (i) enact a general plan policy protecting open space, parks and recreation (*Mervyn's v. Reyes* (1998) 69 Cal.App.4th 93, 96-98); and to (ii) authorize the development of a religious high school (*NASSEPA*, 120 Cal.App.4th at 964.) In light of the fact that these reported decisions involved attempts by the voters to protect the environment and authorize the development of a religious school, TJSBA's assertion that the split of authority is somehow limited to land use decisions involving Wal-Mart is simply belied by these existing decisions.

Second and perhaps more importantly, TJSBA's dismissive and somewhat derogatory view of the use of the initiative process by Wal-

Mart "supporters" such as Grinnell illustrates precisely why this Court exists to "jealously guard" (*Legislature v. Eu*, 54 Cal.3d at 501) the initiative power. The exercise of the initiative powers by common citizens such as Grinnell is at the core of the right to petition to the government and has long been part of this State's constitutional scheme. (*Robins*, 23 Cal.3d at 907-08.) When citizens such as Grinnell "exercise their right of initiative, the[] public input occurs in the act of proposing and circulating the initiative itself. . . ." (*DeVita*, 9 Cal.4th at 786.) The very existence and efficacy of reserved, core constitutional powers does not depend on whether the political cause of Grinnell and other alleged "Wal-Mart supporters" is one deemed unfavorable by TJSBA.

The Opinion creates a clear and uncontroverted split of authority with the *NASSEPA* decision, and the identical issue is currently pending before the Sixth District Court of Appeal in *Milpitas Coalition for a Better Community v. City of Milpitas*, Court of Appeal Case No. H038380. Review should be granted to secure uniformity of decision and to settle this important question of law.

II. Grinnell's Petition for Review is Properly Before the Court and Does Not Raise Any New Issues

TJSBA's assertion that somehow Grinnell waived his right to file a Petition for Review is unmeritorious. Grinnell is the official proponent of the initiative. In *Perry v. Brown* (2011) 52 Cal.4th 1116 this Court

recognized the unique role and standing of initiative proponents to defend initiative measures that are challenged in court:

> Under article II, section 8 and the Elections Code, the official proponents of an initiative measure have a unique relationship to the voter-approved measure that makes them especially likely to be reliable and vigorous advocates for the measure and to be so viewed by those whose votes secured the initiative's enactment into law. As we have seen, the Legislature has recognized the unique role played by the official proponents in the initiative process embodied in Article II, section 8 . . .

(*Id.* at 1152; *see also id.* at 1143 ["The decisions in which official initiative proponents . . . have been permitted to participate as parties in California proceedings involving challenges to an initiative measure are legion."].) Grinnell filed an informal opposition to TJSBA's extraordinary Petition for Writ of Mandate and as a defendant in this action Grinnell has the right to file a Petition for Review with this Court. (*See Woods v. Young* (1991) 53 Cal.3d 315, 333; *County of San Bernardino v. Superior Court* (1994) 30 Cal.App.4th 378, 382, n. 6 [failure to file a return is not a default].) Moreover, there are no factual disputes at issue in this case which raises a singular legal issue of broad public importance.

Lastly, Grinnell's Petition for Review does not raise any "new issues." The legal issue of whether the Initiative may be adopted by the City Council without compliance with the California Environmental

Quality Act ("CEQA") (Pub. Resources Code sections 21000 *et seq.)* has been at the core of this action since it was filed and was the sole basis on which the Court of Appeal issued the Opinion for which Review is sought. TJSBA's assertion that Grinnell's Petition for Review should be denied because Grinnell is making (in TJSBA's incorrect opinion) slightly different arguments in support of Grinnell's Petition for Review as compared to Wal-Mart is without merit. (*See, e.g., Yee v. City of Escondido* (1992) 503 U.S. 519, 534-35 [noting the distinction between claims and issues raised before courts versus arguments made in support of such claims and issues].)

III. Conclusion

For all of these reasons, and for the reasons set forth in Grinnell's Petition for Review, review should be granted to secure uniformity of decision and to settle this important issue of law.

Dated: January 2, 2013

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CERTIFICATE OF WORD COUNT

(Cal. Rule of Court 8.504(d)(1))

The text of this Petition for Review consists of 1,288 words, including footnotes, as counted in Microsoft Word, Version 2007 used to generate the brief.

Dated: January 2, 2013

RUTAN & TUCKER, LLP
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PROOF OF SERVICE BY U.S. MAIL

(Tuolumne Jobs & Small Business Alliance v. Superior Court of Tuolumne County, et al Petition for Review From Court of Appeal Case No. F063849)

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed by the law office of Rutan & Tucker, LLP in the County of Orange, State of California. I am over the age of 18 and not a party to the within action. My business address is 611 Anton Boulevard, Suite 1400, Costa Mesa, California 92626-1931.

On January 2, 2013, I served on the interested parties in said action the within:

REAL PARTY IN INTEREST'S REPLY BRIEF

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Lauren E. Ramey
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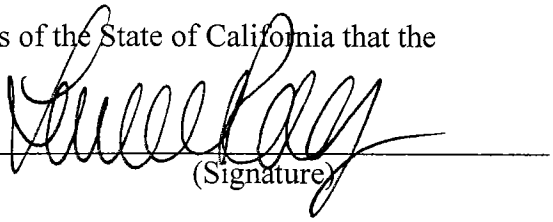
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