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Los Angeles City Council
200 N. Spring Street
Los Angeles, CA 90012

Dear City Councilmembers,

Enclosed is a letter to the City Attorney to be included in the Council File, CF 11-1531. The letter concerns the implications of Proposition 26 if the existing proposal is amended to include a ban on plastic bags and a fee on paper bags in the City of Los Angeles.

Respectfully,

James R. Parrinello

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May 17, 2012

Carmen A. Trutanich
City Attorney
City Hall East
200 N. Main Street, Room 800
Los Angeles, CA 90012

Dear Mr. Trutanich:

I understand the City Council of the City of Los Angeles is considering an ordinance banning plastic and paper bags. I also understand it is possible the current proposal may be amended to just ban plastic bags and instead require retailers to charge customers for each paper bag provided. I am writing to you in your capacity as City Attorney to provide information that you may find useful regarding pending litigation my firm is involved in concerning the legality of a very similar paper bag charge.

In the case *Schmeer, et al v. County of Los Angeles*, four individual plaintiffs and Hilex Poly Co., LLC are challenging the legality of an ordinance adopted by the Board of Supervisors which bans plastic bags and requires retailers to charge customers ten cents for each paper bag provided. My firm represents the plaintiffs.

The lawsuit alleges that the bag charge violates Proposition 26, a constitutional amendment approved by state voters in November 2010. As regards local government entities including cities and counties, Proposition 26 amended Cal. Constitution art. XIII C, to add section (1)(e) which states: "As used in this article, 'tax' means any levy, charge, or exaction of any kind imposed by a local government..." Plaintiffs assert that the bag charge fits within this definition, does not fall within any of the exceptions to the definition of a tax that are contained in subsections (1)(e)(1-7), and thus was required by Cal. Const art. XIII C section 2 to be approved by county voters in order to be effective.

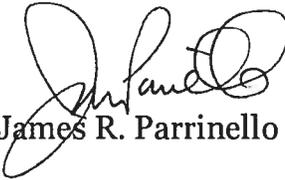
A Judge of the Superior Court in Los Angeles ruled in favor of the county, but the plaintiffs have appealed. The case is one of first impression and will be

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the first appellate court opinion on Proposition 26. We intend to proceed expeditiously with the appeal. The Second Appellate District case number is B240592.

If you would like any further information, please feel free to contact me. For your information, a copy of a release about the filing of the appeal is attached.

Very truly yours,



James R. Parrinello

JRP/pas
Enclosure

FOR IMMEDIATE RELEASE



April 16, 2012

Contact: Christopher Bastardi
212-704-4544
646-221-3666 (cell)

PLAINTIFFS FILE APPEAL IN *LEE SCHMEER V. LOS ANGELES COUNTY*

LOS ANGELES, CALIF. –The plaintiffs in *Lee Schmeer v. Los Angeles County* today filed an appeal to overturn the Los Angeles Superior Court ruling. The case will determine whether the will of California voters who approved Proposition 26 will be upheld.

The law, passed by California voters in 2010, requires that local taxes, defined as “any levy, charge or exaction of any kind”, be approved by a vote of the electorate.

“We respectfully disagree with the lower court’s ruling and are filing an appeal. Proposition 26 protects Californians from hidden taxes levied by local governments without a vote of the people, regardless of who collects the tax,” said James Parrinello, senior litigation partner at Nielsen Merksamer Parrinello Gross & Leoni LLP. “L.A. County’s ten-cent bag ‘charge’ clearly violates the voters’ will. We are confident in our case as it moves to the appellate court and believe the courts ultimately will strike down the illegal bag tax imposed by L.A. County.”

In July 2011, Los Angeles County imposed a ten-cent bag “charge” without a vote of the people.

“Los Angeles County’s bag ‘charge’ circumvents the law and violates the intent of Proposition 26,” said Mark Daniels, Vice President of Sustainability and Environmental Policy for Hilex Poly which is a plaintiff in the case. “Plastic bag bans and taxes destroy a preexisting and growing recycling infrastructure and are the wrong approach to addressing litter; we welcome an open debate about bag bans, but in this case, they were implemented against the will of the voters.”

In the initial complaint, the plaintiffs asked that the court declare the so-called “charge” invalid and prohibit the County from enforcing the ordinance that forces stores to collect the special tax.

Teresa Casazza, president of the nonpartisan, nonprofit California Taxpayers Association, commented on the government-imposed ten-cent charge: “When a shopper pays for the bag, the payment covers more than the actual cost of the bag, and the revenue benefits others who

don't pay. This is a clear example of an illegal tax from which California voters sought protection by passing Proposition 26 – and we fully support this appeal.”

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For more information on Proposition 26: The California Taxpayers Association report, "Understanding Proposition 26: A Sponsor's Guide to California's New Tax Structure."