In the Court of Appeal for the State of California
Second Appellate District
Division 6

CITY OF CARPINTERIA	)	No. B218607
Plaintiff and Appellant,	)	(Santa Barbara Sup. Ct.
vs.	)	No. 1305637, Judge
	)	Thomas P. Anderle)
VENOCO, INC., et al.,	)	
Defendants and Respondents.	)	

APPLICATION FOR PERMISSION TO FILE A BRIEF AMICUS CURIAE; BRIEF OF AMICUS CURIAE ENVIRONMENTAL DEFENSE CENTER, CARPINTERIA VALLEY ASSOCIATION, CITIZENS FOR THE CARPINTERIA BLUFFS AND GET OIL OUT! IN SUPPORT OF PLAINTIFF/APPELLANT THE CITY OF CARPINTERIA

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APPLICATION FOR PERMISSION TO FILE A BRIEF AMICUS CURIAE

The Environmental Defense Center ("EDC"), Carpinteria Valley Association ("CVA"), Citizens for the Carpinteria Bluffs ("Citizens") and Get Oil Out! ("GOO!") respectfully request permission to file the attached brief as Amicus Curiae in support of Plaintiff and Appellant City of Carpinteria. No party or counsel to a party for the pending appeal has authored the proposed amicus in whole or in part or made a monetary contribution intended to fund the preparation or submission of the attached brief.

Applicants' Statement of Interest

EDC is a non-profit public interest law firm that represents community organizations in environmental matters affecting California's south central coast. EDC protects and enhances the environment through education, advocacy and legal action.

CVA's mission is to preserve and enhance the rural beauty of the Carpinteria Valley, and to maintain the charm of Carpinteria and Summerland as small beach towns. CVA strives to accomplish these goals by providing education and advocacy on issues related to land use, planning and community development with an emphasis on the natural resources and environment of the Carpinteria Valley, Summerland and the surrounding region.

Citizens works to preserve the Carpinteria Bluffs as open space. Citizens uses educational and promotional activities to raise public knowledge and appreciation of the Bluffs and its natural resources. Citizens aims to ensure that the Bluffs remain an area for active and passive recreation.

The mission of GOO! is to protect the Santa Barbara Channel and coastline from all environmental, economic and esthetic encroachments by petroleum development.

EDC regularly practices under the California Elections Code and under the California Coastal Act and has worked with land use voter initiatives in particular. For example, in 2008, EDC authored a successful land use initiative in the City of Buellton. EDC has represented CVA, Citizens and GOO! since 2007, when the City of Carpinteria issued a Draft Environmental Impact Report ("EIR") for Venoco's proposed "Paredon" oil and gas drilling project. In general, EDC and our clients are concerned about the impacts of oil and natural gas development on and off of the California coast, and about a private corporation's abuse of the voter initiative. (Cal. Rules of Court, Rule 8.1125(a)(3).)

How Proposed Amicus Will Assist The Court

The attached amicus is limited to an examination of how a private corporation's abuse of the voter initiative subverts the purpose of voter initiatives and the local planning process, and threatens public health, safety and the environment. Amici submit this brief in the hope that it will provide the Court with additional insight into how: (1) Venoco, Inc.'s Paredon Oil & Gas Drilling Initiative names and identifies a private corporation to perform functions and to have powers and duties, in violation of Article 2, Section 12 of the California Constitution; (2) the Initiative violates the California Coastal Act by placing unrealistic impediments on the planning process and by frustrating requirements for public participation; and (3) it is impossible to sever offending sections of the Initiative without negating the purpose and application of the Initiative, and/or rendering the Initiative illegal for other reasons.

Dated at Santa Barbara, California on July 16, 2010.

Respectfully submitted,

By:________________________________

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I. INTRODUCTION

This case involves abuse of the voter initiative to confer special privilege upon a private corporation and to "place unrealistic impediments upon the planning process." (*Citizens for Jobs and the Econ. v. County of Orange* (2002) 94 Cal.App.4th 1311, 1330.)

The California Constitution, Article 2, Section 12 provides:

> [N]o statute proposed to the electors by initiative, that names or identifies any private corporation to perform any function or to have any power or duty, may be submitted to the electors or have any effect.

The purpose of Article 2, Section 12 is to "safeguard the people's precious right of initiative from the very risks of confusion and manipulation that the [initiative power] was intended to eliminate." (*Senate of the State of Cal. v. Jones* (1999) 21 Cal.4th 1142, 1168.)

Venoco, Inc., a private corporation, sponsored "Measure J: the Paredon Oil & Gas Drilling Initiative" ("Initiative" or "Measure J") on the June 8, 2010, ballot in the City of Carpinteria in order to circumvent the normal local planning process and to secure approvals for Venoco's Paredon oil and natural gas drilling project. The Initiative contains certain provisions that name and identify Venoco to perform functions and to have both powers and duties, in clear violation of Article 2, Section 12.

Initiative Subsection 7(b) specifically names Venoco to perform functions and to have both powers and duties under the California Coastal Act (Pub. Res. Code §§ 30000 et seq.). (CT 38.) Subsection 7(b) violates the Coastal Act's Local Coastal Plan ("LCP") amendment procedures, and

undermines the Coastal Act's provisions for public participation. (Pub. Res. Code, §§ 30512-30514.)

It is impossible to sever offending provisions of the Initiative. If every provision that references "Venoco" or the "Operator" is removed from the Initiative, the Initiative will no longer be "grammatical, functional or volitional" as defined by the court in *Pala Band of Mission Indians v. Bd. of Supervisors of San Diego County* (1997) 54 Cal.App.4th 565. Nor would the Initiative retain its fundamental purpose; therefore the entire Initiative must fail. (*Kopp v. Fair Pol. Practices Comm.* (1995) 11 Cal.4th 607, 661.)

These flaws render the Initiative wholly deficient. Although Measure J was rejected by the voters on June 8, 2010, it is incumbent upon this Court to ensure that no similar measure will be allowed to qualify for the ballot in Carpinteria or any other California municipality in the future. The Court should reverse and vacate the Superior Court decision upholding the validity of Measure J.

II. PROCEDURAL HISTORY

Venoco's proposed "Paredon" project "consists of the exploration, development, production, gathering and transmission of oil and natural gas from onshore and offshore fields from the existing [Venoco Carpinteria Processing Facility] using extended reach drilling." (RJN, Exh. 3, p. 1.)

Venoco submitted an application for the Paredon project to the City of Carpinteria in 2004. The application was deemed complete in 2005. In June 2007, the City published a Draft Environmental Impact Report ("EIR") for the project, in its role as lead agency under the California Environmental Quality Act. EDC, CVA, Citizens, GOO! and others submitted extensive comments on the Draft EIR. The City published a Proposed Final EIR in March 2008. The EIR identified eleven Class I, or

"significant and unavoidable," impacts that were expected to emanate from the proposed drilling project.

EDC and its clients submitted comments on the Proposed Final EIR to the City of Carpinteria's Environmental Review Committee, which met in May 2008 and subsequently directed City staff to provide certain additions and revisions to the Proposed Final EIR. In particular, the Environmental Review Committee expressed concerns about the project's noise impacts and the risk of subsidence affecting the project. Before the revised EIR could be returned to the Environmental Review Committee, however, Venoco filed a Notice of Intent to Circulate an Initiative Petition ("NOI") with the City. The express purpose of the Initiative is stated on page one of the NOI: "*Venoco* would be authorized to . . . access offshore oil and natural gas reserves from *Venoco's* existing onshore facility." (RJN, Exh. 1, p.1, emphasis added.) The City's administrative review of the Paredon project was summarily suspended at Venoco's request.

The City promptly challenged the Initiative in Santa Barbara County Superior Court. The case proceeded to trial on July 28, 2009, and the court found that Venoco's Initiative was valid, save for one component: the trial court severed a Development Agreement that Venoco had drafted to bind the City. (CT 1549.) The court issued a tentative ruling prior to trial but declined the City's request to issue a further written statement of decision. The tentative ruling contained a perfunctory explanation for the trial court's decision, but it did not offer a rigorous analysis of any issues presented by the Plaintiff/Appellant. Rather, the trial court expressed a keen but generalized interest in preserving voter initiatives for the ballot and for this post-election challenge.

When Amici learned that the City intended to file an appeal of the trial court's decision, we immediately decided to author this brief for the Court's benefit. When Measure J failed decisively at the polls on June 8,

2010, our determination to pursue legal action was undaunted. Measure J still haunts Carpinteria, even though its specific threat no longer looms over the town. The trial court's ruling has been taken as gospel by private development interests who no doubt have their own ideas about how to exploit the initiative power. Indeed, private interests throughout Santa Barbara County will be emboldened to use the voter initiative to circumvent city and county permit processes, and to subvert sound local planning and laws protecting the environment. It is incumbent upon this Court to close the book on Measure J for all time, and to send a message across California that the sanctity of the voter initiative and the California Constitution are intact.

III. STATEMENT OF FACTS

Venoco, Inc. sponsored a voter initiative, Measure J, on the June 8, 2010, ballot in the City of Carpinteria. Appellant's brief can be fairly read to state the relevant facts.

IV. ARGUMENT

A. The Doctrine Of Mootness Should Not Be Invoked, Because The Issues Posed By Appellant Are Of Broad Public Interest And Are Likely To Recur.

Although voters in the City of Carpinteria soundly rejected Measure J on June 8, 2010, the Court should consider the City's appeal, because the issues raised by Appellant are of broad public interest and are likely recur. (*Edelstein v. City & County of San Francisco* (2002) 29 Cal.4th 164, 172.) Appeals involving election issues are especially amenable to the "public interest exception" to the doctrine of mootness. (*Id.*)

The issues presented by Appellant are of great interest to every local government in California. Similarly, citizen groups such as Amici that

engage in administrative and political advocacy are threatened by this attack on local planning and laws protecting the environment. Corporate interests will monitor the appeal to measure just how much power may be usurped from the local governments. Amici urge the Court to resolve these questions that are fundamental to the local planning process, to protection of the environment and to implementation of the initiative power in California.

In the alternative, if the Court decides that the doctine of mootness should apply in this case, Amici urge the Court to vacate the trial court's ruling.

B. The Initiative Violates The California Constitution, Because It Names And Identifies A Private Corporation To Perform Functions And To Have Powers And Duties.

The initiative power was added to the California Constitution in 1911, as a product of the reform movement working to "wrest control of the political process from private interests" and restore control to the people. (James E. Castello, *The Limits of Popular Sovereignty: Using the Initiative Power to Control Legislative Procedure*, 74 Cal.L.Rev. 491, 503 (March 1986).)

At first, there was no subject matter limitation on the initiative power other than its general focus on statutes and constitutional amendments, but a number of constitutional amendments have since been adopted that impose some restrictions on the initiative power. For example, Article 2, Section 12 of the California Constitution was "enacted to prevent the initiative from being used to confer special privilege or advantage on specific persons or organizations." (*Calfarm Ins. Co. v. Deukmejian* (1989) 48 Cal.3d 805, 832.) Article 2, Section 12 states:

> No amendment to the Constitution, and no statute proposed to the electors by the Legislature or by initiative, that names any individual

> to hold any office, or names or identifies any private corporation to perform any function or to have any power or duty, may be submitted to the electors or have any effect.[1]

Multiple provisions of the Paredon Oil & Gas Drilling Initiative both name Venoco, Inc. and identify a private corporation to perform certain functions and to have both powers and duties, thereby rendering the Initiative unconstitutional.

Article 2, Section 12 derived from two constitutional provisions enacted in 1950 and 1964, respectively, in order to curb observed abuse of the initiative power by both individuals and corporations. The first constitutional provision placed a prohibition on any initiative which names any individual to hold any office. The second provision came from a 1964 ballot measure that prohibited initiatives which name any private corporation to have any power or duty.[2]

In 1966, the state's Constitution Revision Commission combined the two provisions into Article 2, Section 12, and specifically expanded the "naming" provision to include a prohibition against "identifying" private corporations to perform functions or to have powers or duties. The Revision Commission's language was subsequently ratified by the electorate. (*Calfarm*, *supra*, 48 Cal.3d at 832-33.)

The extension of the constitutional prohibition on "identifying" a corporation is quite practical; it is easy to imagine an initiative that clearly benefits or burdens a private corporation but that does not expressly name

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[1] The *Pala* court has clarified that Article 2, Section 12 applies to both state and local initiatives. (*Pala*, *supra*, 54 Cal.App.4th at 581.)
[2] In 1964, the American Sweepstakes Corporation financed a proposed constitutional amendment which would have establishd a California state lottery, and which designated the private corporation to administer said lottery. Voters rejected both the corporate proposal and the right of corporations to propose amendments in the future.

the corporation. One rationale for the prohibition on "identifying" corporations was elucidated by the *Calfarm* court:

> The evil which the constitutional prohibition seeks to prevent – the conferring of special privilege upon some organization sponsoring the initiative – is most easily perpetrated by referring to an existing entity. But if the prohibition were limited to existing entities, it could readily be evaded by conferring a privilege upon some future corporation, describing its formation and governance so as to ensure its control by the proponents of the initiative.

(*Calfarm*, *supra*, 48 Cal.3d at 833.)

Courts have applied the prohibition against corporations "performing any function" broadly; see, for example, *Calfarm*, *supra*, 48 Cal.3d at 835 ("functions" can include both public and private functions). It is perhaps easiest, however, to ascertain a constitutional violation when the corporation is tasked with performing functions normally reserved for local governments. A clear example of abuse would be when a corporation seeks to control an otherwise discretionary process, such as approval of a development permit. A clear example of corporate abuse of the initiative power is Venoco's Measure J.

1. The Initiative Names Venoco, Inc. To Perform Functions And To Have Powers And Duties.

Venoco, Inc. is named in the NOI, throughout the campaign materials for Measure J, in the Sample Ballot sent to voters, and in the text of the Initiative itself. For example, the NOI filed by the proponents of Measure J on February 2, 2009, states that if the measure is approved, "*Venoco* would be authorized to . . . access offshore oil and natural gas reserves from *Venoco's* existing onshore facility." (RJN, Exh. 1, p. 1, emphasis added.) To paraphrase the *Pala* court, "the express intent and purpose of the initiative is to authorize a 'Project' to be constructed." (*Pala*, *supra*, 54 Cal.App.4th at 584.)

The Initiative itself specifically names Venoco in Subsection 7(b):

> In the event (1) the California Coastal Commission finds any inconsistency between this Act and the California Coastal Act, and (2) *Venoco agrees* that the California Coastal Commission's decision is proper, then the City Council shall amend this Act so as to remove any such inconsistency between the Act and the California Coastal Act. Any amendment pursuant to this section shall not require a vote of the voters at a City election.

(CT 38, emphasis added.)[3] This provision requires that Venoco perform a function normally reserved to local governments, vis-à-vis the Coastal Act, and confers special privileges and places specific duties on Venoco, in clear violation of Article 2, Section 12.

The Coastal Commission is tasked with reviewing amendments to local coastal plans ("LCPs") in order to ensure that the amendments are consistent with Chapter 3 of the Coastal Act. (Cal. Pub. Res. Code § 30514.) If the Coastal Commission determines that a proposed amendment is *not* consistent with the Coastal Act, the Coastal Commission may suggest modifications that would make the amendment consistent. The local government proposing the amendment is then tasked with accepting or rejecting the suggested modifications. If the modifications are accepted, the Coastal Commission certifies the amended LCP; if the modifications are rejected, the proposed amendment is thrown out, and the LCP remains as is. Initiative Subsection 7(b) requires that Venoco act *in situ* for the City of Carpinteria and that Venoco accept or reject the Coastal Commission's suggested modifications to the LCP amendments described in Measure J; Venoco is thereby empowered to impermissibly perform the function of a local government.

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[3] The original text of the Initiative also included a Development Agreement between the City of Carpinteria and, explicitly, Venoco, Inc.; however, the Development Agreement was rejected by the trial court and severed from the rest of the Initiative before Measure J went to the ballot.

In addition to prescribing functions for Venoco to perform, Measure J confers special privileges upon Venoco. One such privilege is the ability to act as decision-maker in the LCP amendment process. A second privilege is constituted by the entitlements approved for Venoco's Paredon oil and gas drilling project. Absent Measure J, neither of these substantial benefits would accrue to Venoco.

Measure J can be distinguished from *Tain v. State Bd. Of Chiropractic Examiners* (2005) 130 Cal.App.4th 609, in which the court found that an initiative did *not* confer special privilege upon a private corporation.

> The 1978 amendment to the Chiropractic Act did not violate the California Constitution, in that it did not confer a special privilege or advantage on the [Council on Chiropractic Education]. The 1978 amendment did not appoint the CCE to perform any governmental function. The CCE is one of many organizations that can be considered "accrediting agencies" by the Board under the Chiropractic Act. The 1978 amendment did not designate the CCE as the entity empowered to accredit schools for the Board, nor did it establish that the CCE will perform any other function under the Chiropractic Act.

(*Tain*, *supra*, 130 Cal.App.4th at 633.) In contrast, Subsection 7(b) designates Venoco as the sole entity empowered to perform a local governmental function; this is a special privilege not ascribed to private corporations generally.

Measure J concurrently imposes duties upon Venoco. The *Tain* court again provides a useful counter-example:

> The 1978 amendment to the Chiropractic Act also does not give the CCE any duties. As an accrediting agency under the 1978 amendment, the CCE is required to do nothing. They do not have to accredit any schools, nor do they have to assist in the approval process at all.

(*Tain*, *supra*, 130 Cal.App.4th at 633.) In contrast, Subsection 7(b) does indeed require Venoco to *do something*, either affirmatively accepting or affirmatively or passively rejecting the Coastal Commission's suggested modifications. Under no circumstance would Venoco's position *not* direct the City's actions. This places a tremendous duty and a special privilege on Venoco as decision-maker and is a direct violation of Article 2, Section 12.

2. The Initiative Identifies A Private Corporation To Perform Functions And Have Powers And Duties.

Measure J both names Venoco *and* identifies Venoco and/or some other private corporation to perform functions and to have powers and duties in clear violation of Article 2, Section 12.

Notwithstanding Section 7(b) discussed above or the severed Development Agreement, Venoco was careful to scrub its name from the remainder of Measure J. However, certain terms in the Initiative clearly refer to and "identify" Venoco, or at the very least identify *some* private corporation. For example, Initiative Section 4, titled "Paredon Specific Plan," which governs land use at Venoco's CPF, includes "Definitions":

> I. "Operator" means the *person* conducting day-to-day activities required to Explore, Develop, Produce, Gather and Transfer oil and natural gas.
>
> K. "*Person*" means an individual, organization, partnership, or other business association, *corporation* or entity.

(CT 20, emphasis added.) First, anyone with the knowledge that Venoco is the current CPF "operator" would conceive of the term "Operator" in the Paredon Specific Plan as synonymous with "Venoco." In fact, Measure J references a section of the existing Carpinteria General Plan which directly conflates "Operator" and "Venoco." As described on page 13 of the

Initiative, the "Hazardous Materials" section of the General Plan's Safety Element (beginning on page 163 of the General Plan) states:

> A risk assessment performed for *the Carpinteria Oil and Gas facilty* indicates that four types of hazards were possible from the facility: radiant heat from a fire; a flammable gas cloud moving off *the Venoco facility*; a blast strong enough to rupture eardrums; and a blast strong enough to cause major glass damage.

(Emphasis added.) In other words, the CPF and the "Venoco facility" are synonymous. If the City's current General Plan goes so far as to use these terms interchangeably, the electorate most certainly would. The Initiative's use of the term "CPF" unpermissably identifies Venoco and imposes functions, powers and duties in violation of Article 2, Section 12.

And if that were not enough, proponents of the Initiative drafted a Ballot Argument in Favor of Measure J, which specifically identifies Venoco as the "Operator" and owner of the CPF: "Measure J will require *Venoco* to upgrade *its facilities* . . . ." (RJN, Exh. 3, p. 25, emphasis added.)

Second, if Venoco were to quit its ownership and operation of the CPF today, there is a high level of certainty that some *other* private corporation will assume Venoco's rights and responsibilities. It is difficult to imagine a scenario, for example, where the Initiative term "Operator" would apply to anything *other* than a private corporation. Perhaps the only circumstance under which "Operator" might *not* refer to a private corporation is in the extremely unlikely event that the City, the County of Santa Barbara, the State of California or the federal government "nationalizes" operations at the CPF.

Respondents attempt to address this argument:

> The City's assertion that the term "Operator" should be interpreted to mean Venoco because Venoco's name appears in an unrelated section of the Initiative (section 7(b)) contradicts the plain language of the Initiative and is unpersuasive. The Initiative clearly defines

> "Operator" to mean whoever is conducting day-to-day activities at the CPF; it is not defined to mean Venoco. (1 CT 55.)

(RB 36, fn. 4.) Respondents miss the point. The fact that Venoco is named in a section of the Initiative is *one* factor in the analysis of whether the Initiative "identifies" a private corporation. Voters understand that "Operator" means "whoever is conducting day-to-day activities at the CPF." Voters also understand that Venoco is the current owner and operator of the CPF. (RB, p. 3.) Voters probably also know that Venoco has owned and operated the CPF for more than ten years and is likely to continue owning and operating the CPF for the foreseeable future. Voters certainly know that Venoco was the proponent of the Paredon Project as it was submitted to and reviewed by the City of Carpinteria. The Merriam-Webster Dictionary defines "identify" as: (a) "to cause to be or become identical"; or (b) "to conceive as united." It is clear that voters will "conceive as united" the word "Operator" in Measure J and the company "Venoco."

Once it is established that Measure J is referring to a private corporation whenever the word "Operator" is used, the Initiative reveals a host of constitutional violations. For example, Measure J vests Venoco with functions, powers and duties in Section XII, "Mitigation Monitoring and Reporting Program." The *Pala* court described an analagous measure, which it then found to be a violation of Article 2, Section 12:

> For example, the initiative states the Applicant . . . *shall* submit a mitigation and monitoring program . . . *shall* maintain trained, full-time personnel . . . *shall* retain a qualified archaeologist . . . and *shall* implement these mitigation measures.

(*Pala*, *supra*, 54 Cal.App.4th at 581.) Similarly, Section XII of the Paredon Initiative states that the "Operator *shall* select all monitors required in the Mitigation Monitoring and Reporting Program." (Emphasis added.)

Section XII clearly contemplates both functions and duties within the meaning of Article 2, Section 12, rendering the Initiative unconstitutional.

Respondents cite to *Citizens for Responsible Govt. v. City of Albany*, 56 Cal.App.4th 1199 (1997), for the proposition that Article 2, Section 12 does not extend to initiatives that "impact private property." This logic is tenuous at best, and does not find support in any caselaw; but, more importantly, *Citizens for Responsible Govt.* is in no way applicable to the case at hand. The court in *Citizens for Responsible Govt.* clearly stated that the measure at contest was not an initiative, and therefore Article 2, Section 12 (which applies to initiatives) did not control. In contrast, Measure J is clearly an initiative and is subject to and violates the limitations set forth in Article 2, Section 12.

C. The Initiative Violates The California Coastal Act, Because It Interferes With The Local Coastal Plan Amendment Process And Inhibits Public Participation.

As discussed above, Subsection 7(b) of the Initiative places Venoco *in situ* for the City for the purposes of amending Carpinteria's LCP and implementing the Paredon Specific Plan. Holding the LCP amendment process subject to the whims of a private corporation (that will receive a direct benefit from the LCP amendment) is a fundamental and gross violation of the California Coastal Act, which requires that "the precise content of each [LCP] shall be determined by the local government . . . in full consultation with the commission and with full public participation." (Cal. Pub. Res. Code § 30500(c).)

California Coastal Act Section 30514 states:

> (a) A certified local coastal program [LCP] and all local implementing ordinances, regulations, and other actions may be amended by the appropriate local government, but no such

> amendment shall take effect until it is certified by the [Coastal Commission].
>
> (b) Any proposed amendments to a certified [LCP] shall be submitted to, and processed by, the commission in accordance with the applicable procedures and time limits specified in Sections 30512 and 30513 . . . .

Section 30512(b) describes a process whereby, if the Coastal Commission determines that a proposed amendment is *not* consistent with the Coastal Act, the Coastal Commission may suggest modifications that would make the amendment consistent. The local government proposing the amendment is then tasked with accepting or rejecting the suggested modifications. If the local government rejects the modifications, the LCP amendment is not certified. Accordingly, a back-and-forth often occurs between the local government and the Coastal Commission as they, in effect, negotiate which suggested modifications will be accepted and which suggestions will be rejected. This process is not uncomplicated and relies in part on the requirement for *maximum* public participation described in Coastal Act Section 30503. Under Measure J, however, the process of negotiating suggested modifications is directed by Venoco, Inc., does not involve appropriate public participation and limits the City of Carpinteria to a purely ministerial role. This does not comport with Sections 30500 or 30503 of the Coastal Act.

Amici, as organizations who are active in the coastal zone, enjoy and rely upon the protections and procedures inherent in the Coastal Act. The thought of a private corporation acting as local decision-maker is anathema to our work and to the principles upon which the Coastal Act was promulgated. Coastal Act Section 30514 dictates the procedures for amending an LCP; nothing in that section or any section of the Coastal Act

authorizes a private corporation to perform the functions of a local government.

Not only does Measure J deprive the City of its planning function under the Coastal Act, but it also deprives the public of its elevated role in the coastal planning process. The Coastal Act grew out of a 1972 statewide initiative that created the California Coastal Commission. Informed, democratic public participation is enshrined in the Coastal Act, which states:

> The Legislature further finds and declares that the public has a right to fully participate in decisions affecting coastal planning, conservation and development; that achievement of sound coastal conservation and development is dependent upon public understanding and support; and that the continuing planning and implementation of programs for coastal conservation and development should include the widest opportunity for public participation.

(Cal. Pub. Res. Code § 30006.) The Coastal Act also states:

> During the preparation, approval, certification and *amendment* of any local coastal program, the public, as well as affected governmental agencies, including special districts, shall be provided *maximum* opportunities to participate.

(Cal. Pub. Res. Code § 30503, emphasis added.) The Coastal Act encourages public participation in part by creating layers of administrative process that govern land use and development in the coastal zone. For example, in addition to the LCP process, development within the coastal zone requires a Coastal Development Permit (CDP) which may have to be authorized by both a local government *and* the Coastal Commission, as opposed to an inland development permit which only requires approval from the local government. The Coastal Commission's involvement in turn guarantees enhanced opportunities for public hearings and comment regarding important coastal and public trust resources. The layers of

process and public participation are intended as shields against private and corporate development interests, that may otherwise enjoy imbalances of power that attach to money and political access.

Measure J is easily distinguished from *San Mateo County Coastal Landowners' Assn. v. County of San Mateo*, 38 Cal.App.4th 523 (1995), in which the court held that an initiative did not conflict with Coastal Act requirements for public participation. At contest in *San Mateo County* was Measure A, an initiative that adopted an alternative process for approving future amendments to San Mateo County's LCP. Specifically, Measure A required that certain LCP land use policies "could not be weakened (that is no increase in nonagricultural development, density or use would be permitted) by amendment, absent a vote of the people." (*San Mateo County*, *supra*, 38 Cal.App.4th at 532, 540.) In contrast, Measure J specifically weakens LCP policies related to the protection of the environment, including policies to protect the Carpinteria Harbor Seal Colony and policies intended to preserve the small-town esthetic of the City of Carpinteria.

It is important to note that San Mateo County's Measure A preserved the "normal" method for adoption of LCP amendments, insofar as that after the voters approved Measure A, the Coastal Commission was able to suggest modifications and subsequently negotiate those modifications with the County Board of Supervisors. (*San Mateo County*, *supra*, 38 Cal.App.4th at 532.) In contrast, Measure J would prohibit the "normal" interplay between the Coastal Commission and the Carpinteria City Council by requiring Venoco's approval of any suggested modifications; Venoco's approval would trump any input from the public, from City staff and from the elected City Council. Post-election, Venoco would control the LCP amendment process. This violates both the spirit and the letter of

the Coastal Act and renders meaningless any provision for environmental protection.

D. Severance Is Impossible.

1. Severing Initiative Subsection 7(b) Creates A Violation Of The Coastal Act.

As described above, the LCP amendment process described in Initiative Subsection 7(b), whereby Venoco acts *in situ* for the City of Carpinteria, violates the LCP amendment procedures dictated by California Coastal Act Sections 30512 through 30514. Subsection 7(b) must be severed from the Initiative, because it violates the Coastal Act, and because it violates the "naming" provision of California Constitution Article 2, Section 12. Severing Subsection 7(b) from the Initiative, however, creates an alternative LCP amendment process that also violates provisions of the Coastal Act. Therefore, it is impossible to sever Subsection 7(b) without causing the remainder of the Initiative to fail.

The LCP amendment process can be compatible with the process for amending adopted voter initiatives, as described by California Elections Code Section 9217:

> No ordinance that is either proposed by initiative petition and adopted by the vote of the legislative body of the city without submission to the voters, or adopted by the voters, shall be repealed or amended except by a vote of the people, unless provision is otherwise made in the original ordinance.

For example, the court in *San Mateo County* found that provisions of Measure A were compatible with the Coastal Act's LCP amendment procedures. Measure A preserved the "normal" process for LCP amendments, which includes an "informal consultation" between the Commission, county planning department staff and interested local agencies. (*San Mateo County*, *supra*, 38 Cal.App.4th at 540.) Measure A

thus included a "provision otherwise made" for amendment, as described in Elections Code Section 9217, that complied with the Coastal Act.

In contrast, once Initiative Subsection 7(b) is severed, the Initiative will no longer contain a "provision otherwise made" for amending the Paredon Specific Plan/LCP. Instead, the only means to amend the Initiative would be by "a vote of the voters at a City election." (CT 39.) Such a requirement would frustrate the LCP amendment process described in Coastal Act Section 30512(b).

As noted in *Citizens for Jobs*, an initiative may "place unrealistic impediments upon the planning process." (*Citizens for Jobs*, *supra*, 94 Cal.App.4th at 1330.) Requiring a vote of the people in coordination with Section 30512(b) would place an unrealistic impediment upon the City of Carpinteria's planning process. For example, there would likely be confusion over what entity (Venoco, the City, etc.) would be responsible for sponsoring, funding, etc. a subsequent ballot measure to approve or reject the Coastal Commission's suggested modifications.

In addition, the "normal process" of negotiating suggested modifications would fall apart. The Section 30512(b) process often takes many months and many public hearings at both the local government level and at the Coastal Commission, in addition to the "offline" conversations that occur between Coastal Commission staff and the staff of local governments. Requiring voter approval of discrete actions/negotiations would be untenable from a planning standpoint. Although a textualist argument for equating a vote of the people with "maximum" public participation can be made, the practical reality would be ridiculous. Moreover, the City would be robbed of its role in the LCP amendment process, in sharp contrast to the situation in *San Mateo County*. Amici and other coastal residents rely on the interplay between local governments and

the Coastal Commission to ensure that the Coastal Act is properly implemented to protect coastal resources.

Initiative Subsection 7(b) may not be severed from the Initiative without creating a fatal conflict between the Initiative and the Coastal Act.

2. Severing The Identifying Provisions Undermines Remaining Provisions Of The Initiative And Affects Its Overall Purpose.

If all references to "Venoco," "Operator," "Person," "CPF," or any other provision that identifies Venoco or another private corporation are eliminated from Measure J, the remainder of the Initiative is rendered functionally and grammatically incomprehensible. (*Pala*, *supra*, 54 Cal.App.4th at 585-86.) For example, the Mitigation Monitoring and Reporting Program is referenced multiple times in the Initiative, and is a critical provision for both technical and policy reasons. Respondents relied on the Mitigation Monitoring and Reporting Program when selling the Initiative to voters as a high-tech and environmentally responsible operation. Voters see assurance in the Mitigation Monitoring and Reporting Program imposed on the "Operator" of the CPF. If the provision is eliminated, the Initiative will lack explicit safeguards to address the expected risks of an oil and gas drilling operation.

Similarly, deleting every reference to the CPF from the Initiative would render it completely meaningless. Measure J references a section of the existing Carpinteria General Plan which (beginning on page 163 of the General Plan) states:

> A risk assessment performed for *the Carpinteria Oil and Gas facilty* indicates that four types of hazards were possible from the facility: radiant heat from a fire; a flammable gas cloud moving off *the Venoco facility*; a blast strong enough to rupture eardrums; and a blast strong enough to cause major glass damage.

(Emphasis added.) The Ballot Argument in Favor of Measure J also identifies Venoco as the "Operator" and owner of the CPF: "Measure J will require *Venoco* to upgrade *its facilities* . . . ." (RJN, Exh. 3, p. 25, emphasis added.) The CPF is clearly identified with Venoco. The *Pala* court provided a bright-line rule for severability in this situation:

> "The test is whether it can be said with confidence that the electorate's attention was sufficiently focused upon the parts to be severed so that it would have separately considered and adopted them in the absence of the invalid portions."

(*Pala*, *supra*, 54 Cal.App.4th at 586, quoting *Gerken v. Fair Political Practices Com.* (1993) 6 Cal.4th 707, 714-15.)

In *Pala*, the court noted that there was "no showing that the identification of [the private corporation] as the operator of the proposed facility was part of the public debate about the merits of the initiative." (*Pala*, *supra*, 54 Cal.App.4th at 586.) In stark contrast, the identity of Venoco as the proponent of Measure J and operator of the CPF was a driver for much of the public debate about the merits of the Initiative. Venoco's reputation in the community played a deciding factor in many voters' minds. For example, many opponents of Measure J cited Venoco's spotty environmental and public health track record, while proponents of the Initiative cited Venoco's philanthropic work in Carpinteria. Ballot Arguments included in the Sample Ballot sent to voters specifically focused on Venoco. The Ballot Argument in Favor of Measure J states: "Measure J will require *Venoco* to upgrade its facilities." (RJN, Exh. 3, p. 25, emphasis added.) Even proponents of the Initiative made sure that voters could not escape the conclusion that Venoco, the CPF and the Initiative are all united as one.

Removing any reference to Venoco or some other private corporation that would seek authorization to drill for oil and natural gas at

the CPF would render the entire Initiative nonsensical, and therefore the entire Initiative must fail.

V. CONCLUSION

For the reasons set forth above and in the brief of Plaintiff/Appellant the City of Carpinteria, Amici respectfully request that the Court find that Measure J is illegal and unconstitutional, and that no similar initiative may be presented to the voters of the City of Carpinteria or of any local government in California in the future. In addition, the Court should reverse and vacate the Superior Court decision upholding the Initiative.

Dated at Santa Barbara, California on July 16, 2010.

Respectfully submitted,

By:________________________________

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GET OIL OUT!

CERTIFICATE OF WORD COUNT

(Cal. Rules of Court, Rule 14(c)(2))

The text of Amici's BRIEF AMICUS CURIAE consists of 6,195 words as counted by the Microsoft Word word-processing program used to generate the brief.

Dated at Santa Barbara, California on July 16, 2010.

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PROOF OF SERVICE

I, the undersigned, declare that:

I am a citizen of the United States of America; I am over the age of 18 years and not a party to this action. I am employed in the City of Santa Barbara, County of Santa Barbara and my business address is 26 West Anapamu Street, Second Floor, Santa Barbara, CA 93101.

On July 16, 2010, I served the following documents by mail:

APPLICATION FOR PERMISSION TO FILE A BRIEF AMICUS CURIAE; BRIEF OF AMICUS CURIAE ENVIRONMENTAL DEFENSE CENTER, CARPINTERIA VALLEY ASSOCIATION, CITIZENS FOR THE CARPINTERIA BLUFFS AND GET OIL OUT! IN SUPPORT OF PLAINTIFF/APPELLANT THE CITY OF CARPINTERIA

on the interested parties in this action by placing a true copy thereof in a separate, sealed envelope, addressed as follows:

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X **BY UNITED STATES MAIL**: I am readily familiar with my employer's practice for the collection and processing of correspondence for mailing. Under that practice, all mail is deposited with the United States postal service that same day, with first class postage thereon, in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on July 16, 2010, at Santa Barbara, California.

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