RENNE SLOAN HOLTZMAN SAKAI LLP

350 Sansome Street, Suite 300
San Francisco, CA 94104-1304
t: 415.678.3800
f: 415.678.3838

RANDY RIDDLE
415.678.3814
rriddle@rshslaw.com

ALBERT YANG
415.678.3809
ayang@rshslaw.com

VIA HAND DELIVERY

December 20, 2012

The Honorable Chief Justice Tani Cantil-Sakauye and
Honorable Associate Justices
California Supreme Court
350 McAllister Street
San Francisco, CA 94102-4712

Re: Letter Supporting Review: *Tuolumne Jobs & Small Business Alliance v. Superior Court* (2012) 210 Cal.App.4th 1006, Case No. S207173, F063849 (decision filed October 30, 2012)

Dear Chief Justice Cantil-Sakauye and Associate Justices:

Pursuant to California Rules of Court, rule 8.500(g), the League of California Cities ("League") respectfully submits this letter in support of the Petitions for Review filed by the City of Sonora ("City") and Real Parties in Interest James Grinell and Wal-Mart Stores, Inc. in *Tuolumne Jobs & Small Business Alliance v. Superior Court of Tuolumne County (Wal-Mart Stores, Inc., et al., Real Parties in Interest)*, 210 Cal.App.4th 1006, Case No. S207173, F063849.

I. Interest of the League

The League of California Cities is an association of 467 California cities dedicated to protecting and restoring local control to provide for the public health, safety, and welfare of their residents, and to enhance the quality of life for all Californians. The League is advised by its Legal Advocacy Committee, which is comprised of 24 city attorneys from all regions of the State. The Committee monitors litigation of concern to municipalities, and identifies those cases that are of statewide or nationwide significance. The Committee has identified this case as having such significance.

II. Why the Court Should Grant Review

The question presented in this case is whether a city must prepare an environmental impact report ("EIR") under the California Environmental Quality Act ("CEQA") when it acts on an initiative petition proposed by its citizens pursuant to Article II, section 11 of the California Constitution and Elections Code section 9200 et seq. In a dramatic departure from existing authority, the Fifth District Court of Appeal's opinion ("Opinion") in this case answered in the affirmative. The Opinion has the potential to impact the local initiative process across the State, significantly restricting the people's constitutionally reserved power to propose legislation, while at the same time creating uncertainty regarding the duties and authority of city councils when presented with an initiative petition. This is a matter of statewide importance touching on "one of the most precious rights of our democratic process," (*Associated Home Builders v. City of Livermore* (1976) 18 Cal.3d 582, 591) and requires prompt resolution by this Court.

A. The Opinion Expressly Creates a Conflict Among the Courts of Appeal and Review Is Necessary to Facilitate Uniformity of Decision.

In *Native American Sacred Site and Environmental Protection Association v. City of San Juan Capistrano* ("*Native American Sacred Site*") (2004) 120 Cal.App.4th 961, the Fourth District Court of Appeals held that CEQA review did not apply when a city implemented an initiative petition without alteration, pursuant to Elections Code section 9214. (*Id.* at 966.) The Fourth District court correctly noted that section 9214 "manifests the power of initiative reserved to the people under the Constitution." (*Id.* at 968.)

The Opinion expressly rejects the conclusion in *Native American Sacred Site* and creates significant uncertainty in the law. As the Fifth District states, "we publish the portion of our opinion dealing with this issue because it creates a split of authority, as we respectfully decline to follow [*Native American Sacred Site*]." (Opinion at pp. 2-3.) Thus, the Opinion concludes, "when a city council uses Elections Code 9214, subdivision (a), to approve a project by bypassing voters and directly adopting an initiative that has been presented to it by petition, the voters' constitutional power of initiative cannot support a CEQA exemption for the project." (Opinion at p. 15.)

The conflict raised by the Opinion results in an intractable problem for local agencies every time the governing body is presented with a voter-sponsored initiative and adopts the measure unchanged rather than submitting the measure to the voters. Must an agency prepare an EIR in these circumstances or not? This is a significant quandary for both local agencies and their citizens. Between 1990 and 2000, over 730 local initiatives were circulated for signatures, with the majority of cities and counties having at least one initiative. (Gordon, *The Local Initiative in California* (2004) Public Policy Institute of

California, p. v, *available at* http://www.ppic.org/content/pubs/report/R_904TGR.pdf.) Voter-sponsored initiatives are often timely responses to difficult political issues, but the preparation of an EIR is a costly and time-consuming process, often taking months – if not years – to complete. The uncertainty over whether an EIR is required before a governing body adopts a voter-proposed initiative will likely result in local agencies avoiding the direct-adoption option altogether. Ironically, the direct-adoption option was likely meant to provide a *faster* means of promoting the voters' constitutional initiative power than conducting an election. The Court should grant review to resolve this uncertainty and fully protect the reserved power of the people to propose legislation.

Moreover, in holding that a city must conduct CEQA review before implementing a ***voter-proposed*** initiative, the Opinion conflicts not only with *Native American Sacred Site*, but also with a long line of cases championing the voters' reserved power of initiative. For example, in *Friends of Sierra Madre v. City of Sierra Madre* (2001) 25 Cal.4th 165, this Court made a "clear distinction between voter-sponsored and city-council-generated initiatives," finding that only the latter involves the exercise of an agency's discretion and thus requires CEQA compliance. (*Id.* at 189-190.) In *DeVita v. County of Napa* (1995) 9 Cal.4th 763, this Court explained that the "statutory procedural requirements imposed on the local legislative body" generally do not apply to voter-sponsored initiatives, and that the procedural structure provided in the Elections Code "represents a legislative effort to balance the right of local initiative with the worthy goal of ensuring that elected officials and voters are informed about the possible consequences of an initiative's enactment." (*Id.* at 786, 795.)

By off-handedly dismissing the concern that under its holding, "the direct-adoption option of Elections Code section 9214, subdivision [a], will usually not be available," the Opinion upsets the settled law reflected in *Friends of Sierra Madre*, and *DeVita*. Review is additionally necessary to resolve these indirect, but nonetheless fundamental, conflicts.

B. The Question Presented in the Opinion Implicates a Fundamental Right Reserved by California Voters to Propose Legislation for Adoption.

The Opinion restricts the fundamental right of California voters to propose legislation for adoption by a local governing body. Attempting to explain this intrusion, the Opinion draws a sharp distinction between initiative petitions that result in elections and those that are adopted, without alteration, by the city council, concluding that the latter do not fall under the protection of "the constitutional principle – recognized in *Friends of Sierra Madre* – guarding voter-generated initiatives." (Opinion at pp. 9, 23.) To the contrary, the right to propose legislation to be adopted without change has been an

essential part of the initiative power since 1911, when it was first enshrined in the California Constitution by Proposition 7.

Proposition 7 amended former Article IV, section 1 of the Constitution to provide for the powers of initiative and referendum at both the State and local levels. Much like current Article II, section 11, Proposition 7 provided that the powers of initiative and referendum in local government would be governed by State statute. As originally adopted, the implementing statute read, in pertinent part:

> Ordinances may be enacted by and for any incorporated city or town of the state in the manner following: Any proposed ordinance may be submitted to the legislative body of such city or town by a petition filed with the clerk of such legislative body after being signed by qualified electors of the city or town not less in number than the percentages hereinafter required. . . . If the petition accompanying the proposed ordinance be signed by electors not less in number than twenty per cent of the entire vote cast within such city or town for all candidates for governor of the state, at the last preceding general election at which such governor was voted for, and contains a request that such ordinance be submitted forthwith to vote of the people at a special election, then the legislative body shall either:
>
> (a) Pass such ordinance without alteration at the regular session at which it is presented and within ten days after it is presented; or,
>
> (b) Forthwith, the legislative body shall proceed to call a special election at which such ordinance, without alteration, shall be submitted to a vote of the electors of the city or town.

(Stats. 1911, Ex. Sess. 1911, ch. 33, § 1, pp. 131-132, a true and correct copy of which is attached as Appendix A to this letter.) A similar provision applicable to county initiative ordinances was adopted during the same year. (*Ex parte Zany* (1912) 20 Cal.App. 360, 364-365.) In addition, at the state level, Proposition 7 provided that the Secretary of State would transmit to the Legislature any initiative supported by at least five percent (5%) of the voters, "to be either enacted or rejected without change or amendment by the legislature, within forty days." (Cal Const., former art. IV, § 1, as adopted October 10, 1911.) Thus, the ability for a legislative body to adopt without alteration a law proposed by initiative has always been an integral part of the people's reserved right of initiative. It is no less deserving of judicial and legislative deference than any other aspect of the initiative power.

By the Fifth District's own admission, the Opinion effectively nullifies the direct-adoption option for any initiative "that would have a significant environmental impact." (Opinion at p. 26.) Review is especially appropriate here because the ability to propose legislation for "direct adoption" has always been an integral part of the initiative power.

III. Conclusion

The Opinion in the instant case deliberately creates a conflict among the Courts of Appeal on the application of CEQA to a local agency's adoption, without alteration, of *voter-generated* initiative petitions. The Opinion also unsettles the law surrounding the primacy of the people's reserved right of initiative, creating further uncertainty for local agencies that must regularly respond to initiative petitions. Moreover, the Opinion admits that, under its reasoning, "the direct-adoption option . . . will usually not be available," implicating a fundamental right of California voters. The League therefore respectfully requests that the Petitions for Review in the instant case be granted to resolve these important questions of law.

Sincerely,

Randy Riddle
Albert Yang

AY/rr

APPENDIX A

THE

STATUTES OF CALIFORNIA

AND

AMENDMENTS TO THE CONSTITUTION

PASSED AT THE

EXTRA SESSION OF THE THIRTY-NINTH LEGISLATURE

1911

BEGAN ON MONDAY, NOVEMBER TWENTY-SEVENTH, AND ENDED ON SUNDAY, DECEMBER TWENTY-FOURTH, NINETEEN HUNDRED AND ELEVEN

SACRAMENTO

FRIEND WM. RICHARDSON - - - SUPERINTENDENT STATE PRINTING

1912

SEC. 2. This act is not intended to apply to those cities having a freeholders' charter, adopted under the provisions of section 8 of article XI of the constitution, and having in such charter provision for the recall of elective officials by the electors. Application of act to chartered cities.

SEC. 3. Section one (1) of an act entitled "An act adding three new sections to an act entitled 'An act to provide for the organization, incorporation and government of municipal corporations,' approved March 13, 1883, to be numbered 10, 11 and 12 and relating to the government of municipal corporations and providing for the recall, initiative and referendum," and approved March 14th, 1911, is hereby repealed. Repeal of former law.

CHAPTER 33.

An act to provide for direct legislation by cities and towns, including initiative and referendum.

[Approved January 2, 1912.]

The people of the State of California do enact as follows:

SECTION 1. Ordinances may be enacted by and for any incorporated city or town of the state in the manner following: Any proposed ordinance may be submitted to the legislative body of such city or town by a petition filed with the clerk of such legislative body after being signed by qualified electors of the city or town not less in number than the percentages hereinafter required. The signatures to the petition need not all be appended to one paper. Each signer shall add to his signature his place of residence and occupation, giving street and number, where such street and number, or either, exist, and if no street or number exist, then such a designation of the place of residence as will enable the location to be readily ascertained. Each such separate paper shall have attached thereto an affidavit made by a qualified elector of the city or town, and sworn to before an officer competent to administer oaths, stating that the affiant circulated that particular paper and saw written the signatures appended thereto; and that according to the best information and belief of the affiant, each is the genuine signature of the person whose name purports to be thereunto subscribed, and of a qualified elector of the city or town. Within ten days from the date of filing such petition, the clerk shall examine, and from the records of registration, ascertain whether or not said petition is signed by the requisite number of qualified electors, and he shall attach to said petition his certificate showing the result of said examination. If by the clerk's certificate the petition is shown to be insufficient, it may be supplemented within ten days from the date of such certificate by the filing of additional papers, duplicates of the

Direct legislation by municipal corporations.

Initiative; ordinance proposed by electors.

original petition except as to the names signed. The clerk shall, within ten days after such supplementing papers are filed, make like examination of the supplementing petition, and if his certificate shall show that all the names to such petition, including the supplemental papers, are still insufficient, no action on the petition shall be mandatory on the legislative body; but the petition shall remain on file as a public record; and the failure to secure sufficient names shall be without prejudice to the filing later of an entirely new petition to the same or similar effect. If the petition shall be found to be sufficient, the clerk shall submit the same to the legislative body at its next regular session. If the petition accompanying the proposed ordinance be signed by electors not less in number than twenty per cent of the entire vote cast within such city or town for all candidates for governor of the state, at the last preceding general election at which such governor was voted for, and contains a request that such ordinance be submitted forthwith to a vote of the people at a special election, then the legislative body shall either:

(*a*) Pass such ordinance without alteration at the regular session at which it is presented and within ten days after it is presented; or,

Election.

(*b*) Forthwith, the legislative body shall proceed to call a special election at which such ordinance, without alteration, shall be submitted to a vote of the electors of the city or town.

If the petition be signed by electors not less in number than ten per cent of the entire vote cast for all such candidates for governor at the last preceding election when such candidates for governor were voted for, and the ordinance petitioned for is not required to be, or for any reason is not, submitted to the electors at a special election, and is not passed without change by said legislative body, then such ordinance, without alteration, shall be submitted by the legislative body to a vote of the electors at the next regular municipal election.

Ballots used at elections.

The ballots used when voting upon said proposed ordinance shall have printed thereon the words "Shall the ordinance (stating the nature thereof) be adopted?" Opposite such proposition to be voted on, and to the right thereof, the words "Yes" and "No" shall be printed on separate lines, with voting squares. If an elector shall stamp a cross (X) in the voting square after the printed word "Yes," his vote shall be counted in favor of the adoption of the ordinance, and if he shall stamp a cross (X) in the voting square after the printed word "No," his vote shall be counted against the adoption of the same. If a majority of the qualified electors voting on said proposed ordinance shall vote in favor thereof, such ordinance shall thereupon become a valid and binding ordinance of the city or town, and be considered as adopted upon the date that the vote is canvassed and declared by the canvassing board, and go into effect ten days thereafter. Such ordinance shall have the same force and effect as one passed by the legislative body of the city or town, except that no ordinance proposed by

petition as in this section provided, and thereafter passed by the vote of the legislative body of the city or town without submission to a vote of the people, or voted upon and adopted by the people, shall be repealed or amended except by a vote of the people, unless provision otherwise be made in the ordinance itself. Any number of proposed ordinances may be voted upon at the same election in accordance with the provisions of this statute; *provided*, that there shall not be held under this statute more than one special election in any period of six months. If any measure be submitted upon an initiative petition of registered voters, as hereinbefore provided, the persons filing said petition shall have the right, if they so choose, to present and file therewith a written argument in support thereof not exceeding three hundred words in length, which argument shall be printed upon the sample ballot issued for said election. Upon the same ballot shall also be printed any argument of not exceeding three hundred words in length in opposition thereto which may be prepared by the legislative body. If the provisions of two or more ordinances adopted at the same election conflict, then the ordinance receiving the highest number of affirmative votes shall control. The legislative body of the city or town may submit to the people, without a petition therefor, a proposition for the repeal of any adopted ordinance, or for amendments thereto, or for the enactment of any new ordinance, to be voted upon at any succeeding regular or special municipal city or town election, and if such proposition so submitted receive a majority of the votes cast thereon at such election, such ordinance shall be repealed, amended or enacted accordingly. Whenever any ordinance or proposition is required by this statute to be submitted to the voters of a city or town at any election, the clerk of the legislative body shall cause the ordinance or proposition to be printed and he shall mail a copy thereof, enclosed in an envelope with a sample ballot to each voter at least ten days prior to the election. All the provisions of this statute are to be liberally construed for the purpose of ascertaining and enforcing the will of the electors. The enacting clause of an ordinance passed by the vote of the electors shall be substantially in the following form: "The people of the city (or town) of ——— do ordain as follows:". When a special election is to be called under the terms of this section, it shall be held not less than thirty nor more than sixty days after the date of the presentation of the proposed ordinance to the legislative body, and shall be held as nearly as may be in accordance with the election laws of the state; *provided, however*, that, to avoid holding more than one such election within any six months, the date for holding such special election may be fixed later than sixty days, but at as early a date as practicable after the expiration of such six months; *provided, further*, that when under any of the terms of this statute fixing the time within which a special election shall be held it is made possible to hold the same within six months prior to a regular munic-

Arguments.

Reference to people by legislative body without petition.

Copies sent to voters.

Time of holding elections.

ipal election, the legislative body may in its discretion, submit the proposed ordinance at such regular election instead of at a special election. Except an ordinance calling or otherwise relating to an election, no ordinance passed by the legislative body of a city or town, except when otherwise specially required by the laws of the state, and except an ordinance for the immediate preservation of the public peace, health or safety, which contains a declaration of, and the facts constituting its urgency and is passed by a four-fifths vote of the legislative body of a city or town, and no ordinance granting a franchise shall go into effect before thirty days from its final passage; and if, during said thirty days, a petition, signed by qualified voters of the city or town equal to ten per cent of the entire vote cast therein for all candidates for governor of the state at the last preceding general election at which a governor was voted for, protesting against the passage of such ordinance, be presented to the legislative body, the same shall thereupon be suspended from going into operation, and it shall be the duty of the legislative body to reconsider such ordinance. If said legislative body shall thereupon not entirely repeal said ordinance, it shall submit the same to a vote of the electors either at a regular municipal election or a special election to be called for the purpose, and such ordinance shall not go into effect or become operative unless a majority of the voters voting upon the same shall vote in favor thereof. Such petitions and the provisions of the law relative to the duty of the clerk in regard thereto and the manner of voting thereon, shall conform to the rules provided herein for the initiation of legislation by the electors.

Submission to people of ordinance passed by legislative body.

In cities or towns having a mayor (or like officer), with the veto power, the passage of an ordinance petitioned for by the electors, followed by its veto by the mayor (or like officer) and the failure of the legislative body to pass the same over such veto, shall be deemed and treated as a refusal of the legislative body to pass the ordinance, within the meaning of this statute; and a vote of the legislative body in favor of the repeal of an ordinance previously passed (but protested against by the electors as herein provided for) followed by a veto of such repeal by the mayor (or like officer) and the failure of the legislative body to pass said repeal over said veto, shall be deemed and treated as a refusal to repeal the ordinance so protested against. In such city or town the date of approval of an ordinance by the mayor or like officer (or of the expiration without his action thereon of the time within which he may veto the same, if such expiration of time for his action without his approval or veto has the effect of making the ordinance a law) shall be deemed the date of final passage of the ordinance by the legislative body, within the meaning of this statute. Any duty herein in terms, or by reasonable implication, imposed upon the legislative body in regard to calling an election, or in connection therewith, shall be likewise imposed upon any mayor, or any other officer having any duty to per-

Effect of veto by mayor.

Date of final passage.

form connected with the elections, so far as may be necessary to fully carry out the provisions of this statute.

Application of act to chartered cities.

SEC. 2. This act is not intended to apply to those cities having a freeholders' charter adopted and ratified under the provisions of section 8 of article XI of the constitution, and having in such charter provision for the direct initiation of ordinances by the electors.

Repeal of former law.

SEC. 3. Sections 2 and 3 of the act approved March 14th, 1911, entitled "An act adding three new sections to an act entitled 'An act to provide for the organization, incorporation and government of municipal corporations,' approved March 13, 1883, to be numbered 10, 11 and 12 and relating to the government of municipal corporations and providing for the recall, initiative and referendum," are hereby repealed.

CHAPTER 34.

An act to amend an act entitled "An act to provide for the organization and government of irrigation districts and to provide for the acquisition or construction thereby of works for the irrigation of lands embraced within such districts, and, also, to provide for the distribution of water for irrigation purposes," approved March 31, 1897, by adding a new section thereto to be numbered 28½, and providing for the recall of elective officers of irrigation districts.

[Approved January 2, 1912.]

The people of the State of California do enact as follows:

Irrigation districts.

SECTION 1. A new section is hereby added to an act entitled "An act to provide for the organization and government of irrigation districts and to provide for the acquisition or construction thereby of works for the irrigation of the lands embraced within such districts, and, also, to provide for the distribution of water for irrigation purposes," approved March 31, 1897, to be numbered 28½ and to read as follows:

Recall of officers.

Section 28½. The holder of any elective office of any irrigation district may be removed or recalled at any time by the electors; *provided*, he has held his office at least six months. The provisions of this section are intended to apply to officials now in office, as well as to those hereafter elected. The procedure to effect such removal or recall shall be as follows: A petition demanding the election of a successor to the person sought to be removed shall be filed with the secretary of the board of directors of such district, which petition shall be signed by registered voters equal in number to at least twenty-five per cent of the highest vote cast within such district for candidates for the office, the incumbent of which is sought to be removed, at the last general election in such district at

Petition for removal.

PROOF OF SERVICE

I, Rochelle Redmayne, declare:

I, the undersigned, am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is 350 Sansome Street, Suite 300, San Francisco, California, 94104.

On December 20, 2012, I served the **Letter in Support of Petition for Review**

By Mail: by placing a true copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Post Office mail at San Francisco, California, addressed as set forth below. I am readily familiar with my firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business.

Attorney for Petitioner Tuolumne Jobs & Small Business Alliance	Steven A. Herum Brett S. Jolley Ricardo Z. Aranda Herum Crabtree 5757 Pacific Avenue, Suite 222 Stockton, CA 95207 Phone: (209) 472-7700 Fax: (209) 472-7986 sherum@herumcrabtree.com bjolley@herumcrabtree.com raranda@herumcrabtree.com
Attorneys for Respondent City of Sonora	Richard Matranga City Attorney City of Sonora 94 N. Washington Street Sonora, CA 95370 Phone: (209) 532-4541 Direct: (209) 532-2657 Fax: (209) 532-2739 rdmatranga@msn.com

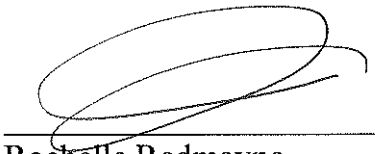
Counsel for Real Party in Interest Wal-Mart Stores, Inc.	Edward P. Sangster K&L Gates LLP Four Embarcadero Center, Suite 1200 San Francisco, CA 94111 Phone: (415) 882-8200 Fax: (415) 882-8220 ed.sangster@klgates.com
Counsel for Defendant James Grinnell	Roger A. Brown 38 N. Washington Street Sonora, CA 95370 Phone: (209) 533-7755 Fax: (209) 533-7757 rablaw@goldrush.com
Counsel for Howard Jarvis Taxpayers Association and Citizens in Charge Amicus Curiae for Real Party in Interest and Respondent	Timothy A. Bittle Howard Jarvis Taxpayer Assn. 921 Eleventh Street, Suite 1201 Sacramento, CA 95814 Phone: (916) 444-9950 Fax: (916) 444-9823
Counsel for CREED-21 Amicus Curiae for Petitioner	Cory Jay Briggs Briggs Law Corporation 99 East "C" Street, Suite 111 Upland, CA 91786 Phone: (909) 949-7115 Fax: (909) 949-7121
Counsel for Real Party in Interest James Grinnell	John A. Ramirez Robert S. Bower Rutan & Tucker, LLP 611 Anton Blvd., Suite 1400 Costa Mesa, CA 92626-1931 Phone: (714) 641-5100

Respondent Superior Court

Clerk of the Superior Court
Tuolumne Superior Court
41 West Yaney Avenue
Sonora, CA 95370

Clerk, Court of Appeal
Fifth District
2424 Ventura Street
Fresno, CA 93721

I declare under penalty of perjury that the foregoing is true and correct. Executed on December 20, 2012, at San Francisco, California.



Rochelle Redmayne