

## Local election over Walmart project invalidated for violation of the Brown Act

The court of appeal has overturned a local initiative because the City Council failed to agendaize its consideration of Walmart's offer to fund election costs. The court also determined that the initiative measure did not run afoul of the constitutional prohibition against naming or benefitting a corporation, since it applied to any developer of the subject property, not just Walmart. *Hernandez v. Town of Apple Valley* (No. E063721, Jan. 5, 2017). The case concerned an initiative measure in the Town of Apple Valley intended to facilitate a Walmart project. The measure proposed to amend or adopt a Specific Plan to provide for retail development. The proposed development would have included a Walmart store. Proponents of the development project submitted an initiative petition to the Town, which contained sufficient valid signatures to qualify for a special election. **Brown Act Issue.** Town staff placed an item on the agenda for an upcoming Council hearing regarding the "Wal-Mart Initiative Measure." At the meeting, the Council voted to place the measure on the ballot and call a special election. However, at the same meeting, the Council also considered and acted on a Memorandum of Understanding that was not mentioned on the agenda. The MOU allowed the Town to accept a gift from Walmart to pay for the special election. A citizen, Gabriel Hernandez, notified the town of his claim that this action violated the Brown Act, but the town declined to cure. Hernandez then sued. The voters subsequently approved the initiative measure. The court ruled that the Town Council action taken on the MOU violated the Brown Act. The remedy, however, was surprising. Rather than invalidating the MOU, the court held that the Town's action in putting the initiative on the ballot was null and void. The court found that it was "conceivable [the funding] was a major factor in the decision to send the matter to the electorate." The court did not explain how its remedy was consistent with the ministerial duty imposed on the Council by the Elections Code to schedule an election within a certain number of days after initiative petition signatures are verified. Nor did it address caselaw indicating that post-election procedural challenges to initiatives are generally mooted out by the election. Instead, the court simply ruled that the Brown Act violation invalidated the special election held four years earlier. **Initiative Benefiting Private Developer.** The court also addressed the validity of the contents of the initiative based on the likelihood that the Town would again consider the Walmart initiative. Article II, section 12 of the California Constitution provides that "No amendment to the Constitution, and no statute proposed to the electors by the Legislature or by initiative, that names any individual or 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." The Walmart initiative did not expressly name Walmart, but it referenced the obligations of "developer" and defined "developer" as "any individual or other entity proposing any development within the Specific Plan area." The court agreed with the plaintiff that Walmart, as developer, would be responsible for the actions specified in the initiative. The court recognized, however, that if Walmart sold the property, or decided not to develop, it would have no rights under the initiative. Accordingly, the initiative did not assign power to Walmart per se, but only to any developer of the property. Moreover, the court found that plaintiff's argument would lead to the absurd conclusion that *any* land-use initiative involving a private project would be invalid, since an initiative opponent would need to establish only that a specific company intended to develop the property or owned the property to invalidate it. The court thus concluded that the initiative's imposition of obligations on "developer" did not constitute a violation of the constitutional prohibition against benefitting a private corporation.

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