Libertarian Parkland!

Libertarians have long castigated environmental review statutes, such as NEPA and CEQA, for trampling private property rights, the theory being that they make developing property so difficult and expensive that they are tantamount to disrupting those right.

That's why it was so odd to see the Pacific Legal Foundation advocating for more prolix environmental review in *Save the Plastic Bag v. Manhattan Beach,* a case decided a few weeks ago by the California Supreme Court.

Plastic Bag's facts are pretty straightforward: the City of Manhattan Beach banned the use of "point-of-sale carry-out bags", and issued a negative declaration for the action, arguing that the ordinance would have no significant negative impact on the environment. A coalition of companies, plastic bag manufacturers and suppliers, sued and demanded a full EIR. The California Supreme Court quite correctly upheld the use of a negative declaration.

Now, you would think that an ostensibly libertarian outfit like PLF would advocate for less environmental bureaucratic red tape. But no: it filed an amicus brief on behalf of the plaintiffs. Why that could be?

Well, there was an important subsidiary issue in the case, viz. whether the group of companies suing had standing. PLF focused on this aspect of the case, and argued that the *form* of a plaintiff — individual, unincorporated association, corporation, LLC, whatever — should not be the touchstone of whether a plaintiff has citizen suit standing (which under California law is much broader than Article III standing).

The Supreme Court very rightfully agreed, but pointed out that PLF's argument was irrelevant: this wasn't a citizen suit at all but rather a suit brought by companies with financial interests in plastic bags that would be adversely affected. That's garden variety standing, and the Court quite properly held that the companies had it. PLF now inaccurately claims that this case means "Obligations To Do Environmental Reviews Can't Be Imposed or Withheld Based on Ideological Bias," but of course it is nothing of the kind.

Again, this seems odd: why would libertarians, who claim to oppose environmental

regulation, attempt to expand citizen suit standing in a case where it didn’t apply?

So what we have is PLF deciding to invest resources to expand environmental red tape and allow more citizen suit standing, two positions that they usually oppose. I’m sure the fact that the plaintiffs were powerful corporations attempting to continue pollution had *absolutely nothing* to do with it.