

Plastic Bag Bans – Designed to Generate and Protect Bag Revenue from Competition!

THE ENVIRONMENT IS JUST A CONVENIENT RUSE TO SWINDLE MILLIONS OF DOLLARS FROM CUSTOMERS.

GROCCERS TEAM UP WITH ENVIRONMENTALISTS AGAINST INTERESTS OF THEIR OWN CUSTOMERS.

*By Anthony van Leeuwen
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Most people believe that laws banning plastic grocery bags are all about protecting the environment from plastic bag litter that damages the environment and harms wildlife. However, the real reason for a plastic bag ban has nothing to do with the environment and everything to do with generating profitable bag fees and protecting those bag fees from being eliminated or eroded away by competition.

This paper makes the case that grocers, reusable bag manufacturers, and environmental organizations have teamed up to pressure state and local officials in passing bag ban laws in their own self-interest at the expense of consumers while doing very little for the environment.

Grocers are Already Free to Offer Any Bag at Any Price

To begin our discussion, there are a number of things that **retail stores have the complete freedom to do any time they so choose, even without a plastic bag ban:**

1. Stop the distribution of lightweight plastic grocery bags.
2. Choose the types of carryout bags they distribute.
3. Sell bags to customers outright or embed bag costs in product pricing.
4. Provide customers a rebate for bringing and using their own reusable bags.

All four items listed above are approaches that stores have the absolute freedom to do any time they so choose. In fact, no laws are needed as demonstrated by [Trader Joe's](#) and [Whole Foods](#) who do not offer plastic bags and distribute paper bags at the point of sale to customers who did not bring their own reusable bags. In addition, these stores and many others provide customers a rebate for each reusable bag the customer brings in and uses. The rebate is an encouragement to customers to bring their own bags and also a reimbursement for the bag fees that customers pay indirectly to the store through higher prices.

Why Won't Grocers Voluntarily Implement Bag Ban Policies?

As we can see from the above paragraph, grocers are free to do any of the things that a bag ban requires them to do. So why don't grocers voluntarily implement bag ban policies? The answer

is very simple. A bag fee, whether instituted on a voluntary basis or imposed by a bag ban puts the grocer at a competitive disadvantage with competitors that have no bag fee or are located in an adjacent area with no bag ban. (Heinz, 2013)

An article by the [National Center for Policy Analysis](#) entitled "[A Survey on the Economic Effects of Los Angeles County's Plastic Bag Ban](#)" reported that grocery stores in an area with a bag ban lost shoppers to grocery stores in an area without a bag ban. It turns out that stores in an area with a bag ban reported an average **sales decline of 3.3%** and employment losses averaging 10.4%. In contrast, stores in adjacent areas with NO bag ban reported an average **sales increase of 3.4%** and an employment increase averaging 2.4%. (Villarreal & Feigenbaum, 2012)

A significant number of shoppers will choose to shop in neighboring communities where they do not have to put up with the hassle and inconvenience of a bag ban!

What the study clearly demonstrates is that a significant number of shoppers will choose to shop in neighboring communities where they do not have to put up with the hassle and inconvenience of a bag ban! The resulting loss of customers and decreased sales should have compelled opposition to bag bans; instead, grocers support government mandated bag bans! (Villarreal & Feigenbaum, 2012)

Why Do Grocers Want a Government Mandated Plastic Bag Ban?

As we see above, a store, as a private business, can remove the lightweight plastic bags and substitute environmentally friendly "reusable" shopping bags any time they want. Furthermore, they have the right to charge their customers for bags either by embedding the cost into higher product prices or charging customers outright for each bag distributed at the point of sale. **Since NO law is needed, why are grocers so desperate for a plastic bag ban law at the local or state level?**

The answer comes directly from representatives for the [California Grocers Association \(CGA\)](#) who attended city council meetings and other public meetings, where bag bans were on the agenda. These representatives testified that the grocers represented by their organization are in **support** of local ordinances banning plastic bags and implementing a minimum fee on paper bags. They also stated that they desire a "*level playing field*" and a uniform bag ban over a large area and not the "*patchwork quilt of bag bans*" where one community has a ban and the neighboring community does not.

In an article entitled "[California Grocers Lobby for First State Plastic Bag Ban](#)" Ron Fong, president and CEO of the California Grocers Association, said "*supermarket owners back a uniform statewide standard to eliminate confusion among shoppers navigating a patchwork of local rules.*" (Ross, 2014) It should be noted that bag bans are copied from one jurisdiction to

the next and the minor differences in local ordinances will not be noticed by shoppers. The only surprise occurs when a shopper from an area that does not have a bag ban visits a supermarket in an area that has a bag ban. But that only happens once.

Eliminating Competition through a “level playing field”

The phrase to “*level the playing field*” means that stores can compete with one another on an equal footing, with respect to not offering plastic bags and charging a minimum fee for store-provided paper or reusable bags. For example, a store that requires you to bring your own reusable bags or charges you for a store-provided bag would lose customers to a store that freely provides shopping bags to their customers.

So the phrases to “*level the playing field*” and a “*patchwork quilt of bag bans*” has more to do with eliminating competition and preventing bag policies from being used by competitors to gain market share. In other words, it is all about keeping the existing customer base and to protect business revenue while they pursue a profitable new revenue stream from bag fees “mandated” by bag ban laws.

In defense of grocers, the retail grocery industry is said to be highly competitive and supermarkets have to compete with discount and big box stores. Grocers, therefore, have to keep their [overhead expenses](#) as low as possible in order to successfully compete. Many shoppers are not necessarily loyal to a particular retailer and shop where they find the best prices. Retailers claim that they operate on slim profit margins and are always looking for ways to reduce overhead expenses. By selling carryout bags rather than giving them away at no charge is one way to reduce costs so that they can hold their own in a competitive marketplace. (Christ, 2011) Of course, that will only work if all stores compete on an equal footing i.e. a “*level playing field.*”

So How Much Money Will California Grocers Stand to Make?

The [American Progressive Bag Alliance \(APBA\)](#) commissioned a study in 2014 that estimates grocers stand to make **between \$189 and \$442 million** from the California statewide bag ban SB-270. (Blue Sky Consulting Group, 2014) The study also stated that some of these revenues are already being collected by grocers in those jurisdictions that have implemented plastic bag bans including charging a fee for paper or plastic reusable bags. Of course, actual revenues collected will vary depending upon consumers, the types of bags they choose to use, and how many times bags are reused.

In an article entitled “[Big Grocery Stores SUPPORT Plastic Bag Ban—Will Make Hundreds of Millions of \\$\\$ From Stealing from Customers](#)” author and political consultant Stephen Frank estimates that grocers will stand to make upwards of \$700 million per year, and that plastic bag bans are all about greed and that grocers are stealing from their own customers. (Frank, 2016)

In an article entitled "[California Grocers Gear Up to Protect Plastic Bag Ban Windfall](#)" the author Lachlan Markay states that grocers stand to make hundreds of millions of dollars from the plastic bag ban. (Markay, 2015)

In an article entitled "[California Grocers Lobby for First State Plastic Bag Ban](#)" author James Nash states that California grocers may realize as much as \$1 billion in new revenue from the 10-cent bag fee. (Nash, 2014)

In defense of grocers, Ron Fong, president and CEO of the California Grocers Association in an article entitled "[Plastic bag ban could mean sacks of cash for grocers](#)" is reported to have said that the "grocers group never asked for a mandatory bag charge. It was environmentalists who pushed for the 10-cent cost as a "disincentive" for shoppers to use non-recyclable bags." (Ross, 2014) However, that begs the question, why did the California Grocers Association write letters in opposition the plastic bag ban in South Lake Tahoe because the ban did not mandate a minimum fee for paper or reusable bags? (DiCamillo, 2013)

Overcoming A Competitive Disadvantage!

The only opportunity that grocers have to overcome the competitive disadvantage of bag bans is to either (1) eliminate mandatory bag fees, or (2) expand mandatory bag fees to all competitors and thereby "level the playing field."

In fact, if competing grocers had gotten together or communicated with one another and agreed to set a minimum fee for paper bags or reusable bags they would have violated [federal](#) and [state](#) anti-trust laws, and could be prosecuted, fined and spend time in prison.

Anti-Trust Laws and Price Fixing

An article entitled "[Antitrust Enforcement in California: How You Can Help](#)" posted on the California Attorney General's website describes what businesses cannot do:

"It is illegal for business competitors to have any agreement to raise, stabilize or otherwise affect prices. The agreement need not be in writing or otherwise formalized. Even an informal understanding between competitors concerning prices is illegal. The agreement need not set specific prices; any agreement affecting price levels is illegal. Even a practice of exchanging price information with competitors, where this practice affects prices, violates the antitrust laws. Even an attempt at price-fixing can be illegal." (California State Attorney General's Office, 2016)

In addition, the article states:

"A business may not unfairly keep others from competing with it. Businesses may and should compete vigorously to obtain and to retain customers. Growth through superior ability and efficiency is not illegal. However, a business with significant market power may not, without legitimate business justification, take actions that exclude or handicap its competitors." (California State Attorney General's Office, 2016)

The article goes on to state the goals of anti-trust legislation.

*“Antitrust offenses almost always raise the prices paid by consumers for goods or services. **Being forced to pay illegally high prices is the equivalent of having money stolen from your pocket.** Even relatively small price increases can have tremendous overall effects statewide. California’s economy and consumers can suffer from the economic dislocations caused by antitrust offenses.”* (California State Attorney General's Office, 2016)

The Federal Trade Commission also weighs in on Price Fixing and anti-trust laws with the following:

“When consumers make choices about what products and services to buy, they expect that the price has been determined freely on the basis of supply and demand, not by an agreement among competitors. When competitors agree to restrict competition, the result is often higher prices.” (Federal Trade Commission, 2016)

And

“For the most blatant agreements not to compete, such as price fixing, big rigging, and market division, the rules are clear. The courts decided many years ago that these practices are so inherently harmful to consumers that they are always illegal, so-called per se violations.” (Federal Trade Commission, 2016)

As we can see from the above, price-fixing and anti-trust laws are designed to ensure robust competition through a “*level playing field*” to protect consumers. When consumers are forced to pay higher prices for products and services as a result of an agreement among competitors, rather than normal supply and demand, they are being robbed.

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Before bag bans, grocers had a level playing field. With the introduction of plastic bag bans, the level playing field disappeared and grocers in an area with a bag ban were at a competitive disadvantage with grocers in a nearby area with no bag ban.

How to Achieve The “Level Playing Field”

For grocers to achieve a level playing field, they will have to eliminate the elements of a bag ban and bag fees from being used by competitors to compete for their customer base and increase their own market share. Unfortunately, bag bans and bag fees have been discussed within the grocery industry among competitors who are represented by one or more grocery associations. Because of that, they risk violating state and federal antitrust and price fixing laws if they now choose to voluntarily adopt the elements of a bag ban. So how will grocers get around these anti-trust and price fixing laws?

Getting Around Anti-Trust and Price Fixing Laws

To get around anti-trust and price fixing laws grocers, grocery associations, and reusable bag manufacturers teamed up with and joined forces with environmentalists to put pressure on state and local public officials to pass bag ban laws, forcing themselves and all of their competitors to implement mandatory fees on store-provided paper and reusable bags. While the environmentalists wanted to ban lightweight plastic carryout bags, reusable bag manufacturers wanted to increase their market share, and grocers wanted to enrich themselves through lucrative bag fees all at the expense of shoppers.

Public officials, sympathetic to the campaign by environmental organizations to ban lightweight plastic grocery bags, and who wanted to be identified as being “pro-environment” or “green”, jumped on the band wagon and passed bag ban laws. The bag ban’s mandatory minimum bag fees are not taxes since they are retained in whole by the retailer and the amount is arbitrarily set to discourage customers from switching to store-provided paper or reusable bags.

What grocers could not legally do on their own, set a minimum fee for store-provided bags for themselves and all of their competitors, public officials did by passing bag ban laws in pursuit of a flimsy environmental goal!

Crony capitalism is a term describing an economy in which success in business depends on close relationships between business people and government officials. It may be exhibited by favoritism in the distribution of legal permits, government grants, special tax breaks, or other forms of state interventionism. (Wikipedia, 2016)

Those public officials who passed bag bans under the guise of protecting the environment were actually pawns in a much larger scheme of creating and protecting a lucrative revenue stream for grocers. The intent of federal and state antitrust laws are to protect consumers from schemes designed to eliminate competition and fix prices. These public officials violated the spirit of the law by passing bag bans with minimum mandated bag fees. (California State Attorney General's Office, 2016) This is nothing short of Crony Capitalism. (Boychuk, 2014)

Secret Backroom Deals and the California Legislature

On 25 August, 2014 SB-270 failed to pass the California State Assembly by three votes short of the 41 needed, after the United Food & Commercial Workers Union (UFCW), which had earlier backed the bill, dropped its support. (Abraham, 2014) The union indicated that it would support the bill if the 10-cent charge were removed. (Larkin, 2014) The union pulled its endorsement because of concerns that the 10-cent fee would go straight into grocers’ pockets and that the bill has no enforcement mechanism to ensure the 10-cent fee stays at the local store and helps the community. (Matier & Ross, 2014) The union indicated that they would

support the bill if the fee stayed within the stores and went to helping the community. (Fleishchman, 2014)

The union returned its support on Wednesday after securing an agreement with Safeway supermarkets, prompting seven Democrats who had initially withheld their votes to vote “aye” on the bill. (Planet Editor, 2014)

Representatives from Safeway and the UFCW acknowledged that they had reached an agreement, but details of the agreement, which had resulted in democrats changing their votes ensuring passage of the bill, were not disclosed. The media of course speculated about the nature of the agreement as can be seen from the following quotations:

- *“Unions had [been] resistant to the bill because the 10 cent fee for paper bags went to the grocery companies to do with as **they choose** (and presumably, not to the union members).”* (Shackford, 2014)
- *“The ban was also backed by United Food and Commercial Workers, a grocery workers union, which said it wants the money currently spent on plastic bags to be used for **worker training and food-safety initiatives**.”* (Lazo & Elisonson, 2014)

Some in the media demanded that details of the deal be made public: *“In the middle of all of this was Safeway, apparently **negotiating to give a big chunk of their new-found bag tax windfall to the union**. However, if an agreement was struck between Safeway and the UFCW union, shouldn’t lawmakers know the terms of the deal — especially since the people of California are paying this fee?”* (Fleishchman, 2014)

Others in the media stated: *“There should be no doubt who really runs things up here at the State Capitol,”* said Shannon Grove. *“A union changes its mind because of some backroom deal, and majority party politicians fall in line and change their votes. What other special interest group in California can wield such power? Certainly not the taxpayers, or in this case, grocery shoppers.”* (Grove, 2014)

California Statewide Bag Ban and Referendum

After California Governor Brown signed the statewide plastic bag ban SB-270 into law, the law was challenged by the American Progressive Bag Alliance (APBA) who collected enough signatures from voters to put SB-270 on the November 2016 statewide ballot.

The APBA is funded mainly by donations from manufacturers of plastic bags and other plastic products. The APBA raised a total of [\\$5,247,918](#) (as of 3/15/2016) on behalf of putting SB-270 on the statewide ballot. It would be fair to say that these companies have a financial interest in seeing that the voters reject the statewide bag ban, SB-270.

The APBA did the citizens of California a big favor! By qualifying the referendum for the statewide ballot, California citizens will be provided with their very first opportunity to vote on

this unpopular measure that significantly affects each and every family in the state. An opportunity to vote to keep their own bag choice, and not be forced to pay big grocers 10 cents per bag.

Opposing the APBA is an environmental front organization called [California Vs Big Plastic](#). Their initial aim was to disqualify the referendum (denying the vote of the people), but then to ensure that the statewide bag ban SB-270 becomes law. Not surprisingly, California Vs Big Plastic receives the vast majority of its support from local and out-of-state grocers, grocery associations, environmental organizations, and reusable bag manufacturers. They also boast a long list of local politicians who believe the government should be making bag decisions for the people, mandating minimum fees, and targeting specific behavior (use of plastic bags) as “undesirable.”

Follow the Money!

Grocers and the CGA have long been in support of local bag bans implemented by more than 100 jurisdictions in California. That support is evidenced by letters written to city councils and county board of supervisors; and by the testimony of support by CGA representatives during public meetings where the bag ban is on the agenda. Previously, environmental groups claimed that only they were concerned about the environment, and even accused anyone opposing a bag ban as being funded by the big evil plastic bag companies. But that all changed with California Vs Big Plastic.

There is a saying, “Follow the money” to see what it reveals. In Table 1, compiled from publically available information, we list the donors and the amounts contributed by Grocery Associations, Grocers, Reusable Bag Manufacturers, and Environmental Groups to **California Vs Big Plastic**. This table reveals how grocers and grocery associations have teamed up with environmental groups against the interests of their own customers.

We could give grocers the benefit of the doubt. Perhaps they are civic minded, concerned about their image and public perception, and are genuinely concerned about the environment. After all, some of those lightweight plastic bags that end up as litter have their name stenciled all over it!

On the other hand, it should be noted that in communities, e.g. South Lake Tahoe, that banned the plastic bag (without a paper bag minimum fee) that grocers and the CGA wrote letters opposing the bag ban without a minimum fee for paper bags. They also brought out the point that customers would just switch to paper bags saddling them with higher costs. (DiCamillo, 2013)

So here is the issue: If grocers were really concerned about the environment, all they had to do was to change the type of bag distributed to a paper bag or a thick plastic reusable bag, account for the bag cost in their pricing structure, then the customer wouldn't care about what type of

bag they are given to carry their purchases home. (Trader Joe’s and Whole Foods have already done this.) This is all about customer service. So why have these grocers continued to issue those lightweight plastic bags if they were genuinely concerned about the environment?

Table 1. Contributions to California Vs Big Plastic (As of 03/14/2016)

Line No.	Organization	Date of Contribution	Amount
<i>Grocery Associations</i>			
1	Retailers for A Better California, Sacramento, CA 95814	9/28/2015	\$5,000
2	California Grocers Association, Sacramento, CA 95814	2/24/2015	\$100,000
<i>Grocers</i>			
3	Smart & Final, Commerce, CA 90040	3/14/2016	\$10,000
4	Raley’s, West Sacramento, CA 95605	2/11/2016	\$25,000
5	Albertson’s Safeway, Phoenix, AZ 85027	2/11/2016	\$150,000
6	Ralphs/Food 4 Less, Los Angeles, 90054	2/5/2016	\$80,000
<i>Reusable Bag Companies</i>			
7	Earthwise Bag Company Inc., Burbank, CA 91504	10/27/2014	\$5,000
8	1 Bag at A Time, Inc., Inglewood, CA 90301	10/27/2014	\$2,500
9	Green Bag Company, Inc., San Francisco, CA 94133	10/23/2014	\$2,500
<i>Environmental Organizations</i>			
10	California League of Conservation Voters Issues Committee, Oakland CA 94612	5/6/2015	\$5,000
11	Californians Against Waste, Sacramento CA 95814	10/23/2014	\$16,500
12	Environment California, Sacramento, CA 95814	10/28/2014	\$10,000
13	Natural Resources Defense Council, New York, NY 10011	4/21/2015	\$5,000
Data derived from: http://cal-access.sos.ca.gov/Campaign/Committees/Detail.aspx?id=1372900&session=2015&view=late1			

It appears that grocers continued to offer those lightweight plastic bags until they are forced to do otherwise by a local or a statewide bag ban. There are several possible reasons for this: (1) not to run afoul of anti-trust laws; (2) to keep operating costs as low as possible and remain competitive, or (3) to keep pressure on local jurisdictions to pass bag ban laws.

Regardless of the reason, grocers appear to be more concerned about minimum bag fees and preventing those bag fees from being eliminated or eroded away by competition than about their customers.

Conclusion

On the surface, plastic bag bans, appear to be all about the environment. The truth is that plastic bag litter is a very small percentage of the total number of plastic bags used. According to the article “[Bag Bans – A Waste of Time & Money](#)” the author shows that bag bans result in a minuscule reduction in litter and yet cost consumers on the order of **\$251** to eliminate a single littered (1-cent) plastic grocery bag! (van Leeuwen, 2015)

Grocers have had every opportunity to do the right thing if they were genuinely concerned about the environment. They did not, because the issue is not about the environment, but about changing an overhead cost into a new profit center. A plastic bag ban law has just one purpose, to **eliminate competition and set an arbitrary minimum bag fee for store-provided carryout bags**. With a bag ban law in place, competitors are not able to offer customers free bags or charge customers less than the minimum fee, thereby guaranteeing grocers millions of dollars in new profits. **This is crony capitalism at work.** (Boychuk, 2014)

While the grocers, reusable bag manufacturers, environmental groups, and public officials manipulate the system to get bag bans passed, everyone should realize that each of these groups are getting exactly what they want:

- Environmental groups are able to eliminate lightweight plastic grocery bags and forcefully change people’s shopping behavior (whether or not it does any good for the environment).
- Big grocers make millions in new profits from bag fees.
- Reusable bag and paper bag manufacturers increase their market share.
- Politicians get to feel warm and fuzzy about themselves for being seen as caring about the environment and caring about the poor (free bags for people on public assistance).

And who loses? The people. Not only have they been denied the freedom of choosing their own type of bag at the store (and most choose the plastic bags that can be reused for many other purposes), they now have to deal with the inconvenience of having to bring their own reusable bags, paying mandatory “minimum fees” (both options cost money and time) or not using bags at all (an inconvenience). The big grocers, politicians, and people who love to control us win, and the people lose. All without a vote. Until now!

About The Author

Anthony van Leeuwen is the founder of the [Fight The Plastic Bag Ban](#) website and writes extensively on the subject. He holds a bachelors and Master's degree in Electronics Engineering and has over 40 years of experience working for the federal government and private industry.

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