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## Community Rights: Fighting the Walmart Invasion of Small Town American with Legal Intelligence.

Andre M. Larkins

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**COMMUNITY RIGHTS: FIGHTING THE WALMART INVASION OF SMALL TOWN AMERICA WITH LEGAL INTELLIGENCE**

**ANDRE M. LARKINS\***

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## I. INTRODUCTION

Walmart is the most powerful retail enterprise in the world.<sup>1</sup> In terms of gross revenue (\$483 billion),<sup>2</sup> market capitalization (\$279 billion),<sup>3</sup> gross profits (\$118 billion),<sup>4</sup> and global footprint,<sup>5</sup> it is unrivaled by any retail challenger on earth.<sup>6</sup> The combined net income of its top three worldwide competitors—Costco, Carrefour, and Target—amounts to just 34.9% of Walmart's alone—\$5.39 billion to \$15.44 billion respectively.<sup>7</sup> Among the 192 countries ranked by the World Bank,<sup>8</sup> Walmart's annual revenues exceed the gross domestic product of 166.<sup>9</sup> Walmart revenues ranked 27th—below Norway and above Venezuela.

Beyond its raw economic power, Walmart is a multinational corporate giant that employs over 2.2 million people worldwide.<sup>10</sup> In comparison, the active duty personnel of the U.S. Armed Forces, including the Air

1. See WALMART, *Our Story, Interactive Maps*, <http://corporate.walmart.com/our-story/locations> (last visited Dec. 13, 2013) (describing the history, size, and scope of Walmart operations in 27 countries around the world including the United States); see also Jim Hopkins, *Wal-Mart's influence grows*, USA TODAY [http://usatoday30.usatoday.com/money/industries/retail/2003-01-28-walmartnation\\_x.htm](http://usatoday30.usatoday.com/money/industries/retail/2003-01-28-walmartnation_x.htm) (last updated Jan. 1, 2003, 9:07AM) (discussing Walmart's pervasive impact on the U.S. and world economy and its potential impact on product choices, prices, employment, and productivity); *Wal-Mart Stores Inc. (WMT): Competitors*, YAHOO! FINANCE (Jan. 16, 2015, 7:53 PM), <http://finance.yahoo.com/q/co?s=WMT+Competitors> (illustrating Walmart's revenue and resource superiority over its closest retail competitors, Carrefour SA, Costco Wholesale Corporation, and Target Corporation). See generally Peter Jacques, *Wal-Mart or World-Mart? A Teaching Case Study*, 35 REV. OF RADICAL POL. ECON., No. 4, 2003, at 513 (profiling Walmart as the world's largest corporation).

2. See *Wal-Mart Stores Inc. (WMT): Competitors*, *supra* note 1 (comparing Walmart's revenues to its closest retail competitors, Carrefour SA, Costco Wholesale Corporation, and Target Corporation).

3. See *id.*

4. See *Wal-Mart Stores Inc. (WMT): Key Statistics*, YAHOO! FINANCE (Jan. 16, 2015, 7:53 PM), <http://finance.yahoo.com/q/ks?s=WMT+Key+Statistics> (reporting Walmart's gross profits over a twelve month period).

5. See generally *Our Story, Interactive Map*, WALMART, <http://corporate.walmart.com/our-story/locations> (last visited Dec. 13, 2013) (reporting the number of Walmart owned or operated retail stores at 11,098 in 27 countries around the world).

6. See generally *Wal-Mart Stores Inc. (WMT): Competitors*, *supra* note 1 (comparing Walmart financial statistics with its closest retail competitors, Carrefour SA, Costco Wholesale Corporation, and Target Corporation).

7. See *id.*

8. See World Bank, GROSS DOMESTIC PRODUCT 2013, GDP Ranking, Data Catalog, WorldBank.org, (Last updated Dec. 16, 2014), available at <http://data.worldbank.org/data-catalog/GDP-ranking-table> (click: GDP(PDF) to download).

9. See *id.*

10. See *Our Story, Interactive Map*, WALMART, *supra* note 5 (displaying the number of Walmart associates employed worldwide).

Force, Army, Navy, and Marines total just 1.4 million.<sup>11</sup> Between the years 2000 and 2013, Walmart expanded its retail empire at an unbelievable average pace of 546.8 new stores per year.<sup>12</sup> To put this figure into perspective, Walmart opened or acquired 1.5 new stores on average *per day* for thirteen years straight.<sup>13</sup> Walmart is a global retail war machine<sup>14</sup> with over 11,000 retail bases in twenty-seven countries around the world.<sup>15</sup>

Having achieved global retail superiority<sup>16</sup> over its U.S. and international competitors at the macro level, Walmart is now invading small towns and communities across America to secure local retail dominance

11. DEFENSE MANPOWER DATA CENTER, ACTIVE DUTY MILITARY STRENGTH REPORT FOR SEPTEMBER 30, 2013 *available at* <https://www.dmdc.osd.mil/appj/dwp/reports.do?category=reports&subCat=milActDutReg> (right-click on the “Monthly Summaries—last 12 months” hyperlink; then click “Save target as” to download the report.) The actual number of active duty military personnel documented in this report is 1,382,684. The report is only viewable after downloading it as a PDF file to a computer.

12. *See History Timeline*, WALMART <http://corporate.walmart.com/our-story/heritage/history-timeline> (last visited Aug. 29, 2014) (reporting the total number of retail stores owned by Walmart as 3,989 in the year 2000 and first exceeding 10,000 in 2011); *Our Locations*, WALMART (visited Dec. 13, 2013) <http://corporate.walmart.com/our-story/locations> (reporting the total number of retail stores owned by Walmart as 11,098). Subtracting the year 2000 store total (3,989) from the December 2013 total (11,098) and dividing by thirteen years, yields an average increase of 546.8 new stores per year.

13. *See id.* (dividing 546.8 new stores per year by 365 days per year, averages to 1.5 new stores per day (1.49 rounded)).

14. The “war machine” metaphor is in reference to Walmart’s prolific success in the international competition among discount retailers to acquire an ever-increasing market share of retail dollars spent in a given market area. *See, e.g., State grocery change to sell 8 stores, blames Wal-Mart*, SEATTLE TIMES.COM (March 5, 2005, 12:00 AM), [http://seattle-times.com/html/business/technology/2002194015\\_browncole02.html](http://seattle-times.com/html/business/technology/2002194015_browncole02.html) (describing the closing of local grocery stores located near active and planned Walmart locations); *see also Our Locations*, WALMART, *supra* note 12 (reporting by country and region the number of retail stores owned and operated by Walmart worldwide); *see also Wal-Mart Stores Inc. (WMT): Competitors*, *supra* note 1 (illustrating Walmart’s superior size in revenues, profits, capitalization, and employees compared to its closest retail competitors).

15. *See* WALMART, *Our Story, Interactive Maps*, *supra* note 1 (reporting the number Walmart stores owned or operated by country and region).

16. *Retail Superiority* is the degree of dominance in retail competition by one retailer that permits it to expand its market share in a given market area without prohibitive interference from the retail operations of its competitor(s). Conceptually derived from the concept of *air superiority* in U.S. military doctrine. *See* JOINT CHIEFS OF STAFF, JOINT PUBLICATION 1-02, DEPARTMENT OF DEFENSE DICTIONARY OF MILITARY AND ASSOCIATED TERMS 11 (amended through Dec. 15, 2013) (2010), [http://www.dtic.mil/doctrine/new\\_pubs/jp1\\_02.pdf](http://www.dtic.mil/doctrine/new_pubs/jp1_02.pdf) (“air superiority—That degree of dominance in the air battle by one force that permits the conduct of its operations at a given time and place without prohibitive interference from air and missile threats.”).

at the neighborhood level.<sup>17</sup> In many cases, these invasions come against the will and at the expense of neighborhood residents whose individual and collective resources to resist pale in comparison to Walmart's.<sup>18</sup> Nevertheless, communities nationwide have successfully opposed unwanted Walmart invasions for over two decades.<sup>19</sup> From Albuquerque, New Mexico,<sup>20</sup> to Dekalb County, Georgia,<sup>21</sup> from New Berlin, Wisconsin<sup>22</sup> to Tucson, Arizona,<sup>23</sup> and from Turlock, California,<sup>24</sup> to Cibolo, Texas,<sup>25</sup> newspapers and court records recount the stories of communities fighting

17. See generally *Sprawl-Busters Newsflash Blog!*, SPRAWL-BUSTERS.COM, <http://www.sprawl-busters.com/search.php?SRCHrecent=1> (listing from 1998 to 2014 hundreds of news reports on communities opposing Walmart which are organized by date, and each month has a range of four to twenty plus articles on community attempts to combat stores like Walmart); see also *Victorious Secrets*, SPRAWL-BUSTERS.COM (Dec. 12, 2013), <http://www.sprawl-busters.com/victoryz.html> (listing hundreds of cities where big box stores like Walmart have attempted to set up stores but were met with resistance).

18. See *Victorious Secrets*, SPRAWL-BUSTERS.COM, *supra* note 17 (listing hundreds of cities where big box stores like Walmart have attempted to set up stores but were met with resistance); see also *Sprawl-Busters Newsflash Blog!*, *supra* note 17 (listing from 1998 to 2014 hundreds of news reports on communities opposing Walmart which are organized by date, and each month has a range of four to twenty plus articles on community attempts to combat stores like Walmart).

19. See *Sprawl-Busters Newsflash Blog!*, *supra* note 17 (listing hundreds of cities where big box stores like Walmart have attempted to set up stores but were met with resistance); see also *Victorious Secrets*, SPRAWL-BUSTERS.COM, *supra* note 17 (listing hundreds of cities where big box stores like Walmart have attempted to set up stores but were met with resistance).

20. *West Bluff v. City of Albuquerque*, 50 P.3d 182 (N.M. App. 2002) (documenting neighborhood associations' legal efforts to protect their community from unwanted Walmart development).

21. See Ken Watts, *Walmart opponents rally as lawsuit begins*, CROSSROADS NEWS (Atlanta) (Aug. 9, 2013, 6:00 AM), <http://crossroadsnews.com/news/2013/aug/09/walmart-opponents-rally-lawsuit-begins/> (reporting that members of a grassroots community group in DeKalb County rallied outside of the county courthouse as their lawsuit against Walmart began).

22. See *New Berlin, WI. Residents File Lawsuit to Block Wal-Mart Rezoning*, SPRAWL-BUSTERS.COM (Jun. 29, 2013), <http://www.sprawl-busters.com/search.php?readstory=4036> (illustrating the concerns of New Berlin citizens and addressing a lawsuit brought by those citizens in regard to the rezoning of a new Walmart).

23. See *Hause v. City of Tucson*, 19 P.3d 640 (Ariz. Ct. App. 2001) (noting two Tucson citizens sued the City of Tucson and Walmart claiming that the issued building permits given to Walmart were invalid due to a new city ordinance regulating large retail business).

24. *Wal-Mart Stores, Inc. v. City of Turlock*, 138 Cal. App. 4th 273 (2006).

25. See David Dekunder, *Cibolo residents voice opposition to Wal-Mart*, MY SAN ANTONIO (July 2, 2013) <http://www.mysanantonio.com/community/northeast/news/article/Cibolo-residents-voice-opposition-to-Wal-Mart-4643641.php> (discussing citizen resistance to Cibolo City Council's and Walmart's plan to build a Walmart store in their community); see also Mayra Moreno, *In wake of Wal-Mart negotiations, Cibolo city council leaders will hold recall election in November*, KENS5 (Oct. 1, 2013, 1:59 PM), <http://www.kens5.com/on-tv/kens-reporters/mayra-moreno/In-wake-of-Wal-Mart-negotiations-city-council-lead->

to preserve the quality and character of their neighborhoods in the shadow of Walmart's advance against local competitors.<sup>26</sup> Because of its overwhelming financial and human resource advantages over individuals and community groups, many neighborhoods simply become collateral damage<sup>27</sup> in Walmart's quest for local retail dominance. Further, with economic resources greater than three quarters of the world's nation-states at its disposal, its ability to overwhelm small town community opposition seems virtually assured.<sup>28</sup> However, some communities have been successful in countering the Walmart retail offensive by turning to the great American equalizer: the law.<sup>29</sup> In Red Bluff, California, residents waged a ten-year legal campaign to defend their small town com-

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ers-will-be-recalled-in-November-220881611.html (reporting on updates in regard to Cibolo residents' ongoing battle with Cibolo City Council and Walmart).

26. See Associated Press, *State grocery chain to sell to 8 stores, blames Wal-Mart*, SEATTLE TIMES, March 2, 2005, [http://seattletimes.com/html/business/technology/2002194015\\_browncole02.html](http://seattletimes.com/html/business/technology/2002194015_browncole02.html) (relaying that Brown & Cole Stores plans to sell eight of its locations in Washington state because of the competition Walmart has brought to local business); see also DEMOCRATIC STAFF OF THE U.S. HOUSE COMM. ON EDUC. AND THE WORKFORCE, *THE LOW-WAGE DRAG ON OUR ECONOMY: WAL-MART'S LOW WAGES AND THEIR EFFECT ON TAXPAYERS AND ECONOMIC GROWTH 1-2* (Comm. Print 2013), available at <http://democrats.edworkforce.house.gov/sites/democrats.edworkforce.house.gov/files/documents/Wal-MartReport-May2013.pdf> (reporting on the deleterious effect of Walmart's low wages on worker and the US economy as a whole); TOM ANGOTTI ET AL., *WAL-MART'S ECONOMIC FOOTPRINT: A LITERATURE REVIEW PREPARED BY HUNTER COLLEGE CENTER FOR COMMUNITY PLANNING & DEVELOPMENT AND NEW YORK CITY PUBLIC ADVOCATE BILL DE BLASIO* (2010), available at <http://pubadvocate.nyc.gov/files/Walmart.pdf> (discussing Walmart's negative impact on small business, the middle class, and neighborhoods); Ashley M. Gibson, *Whitehall Rising*, CHARLOTTE BUSINESS JOURNAL, Nov. 26, 2001, <http://www.bizjournals.com/charlotte/stories/2001/11/26/story2.html?page=all> (discussing the disadvantages and advantages that can result from having a Walmart store open up in Whitehall). *Contra* Anna Douglas, *Third Walmart super center coming to Rock Hill*, CHARLOTTE OBSERVER, Nov. 2, 2013, <http://www.charlotteobserver.com/2013/11/02/4434426/third-walmart-super-center-coming.html#.VBNOF2RdV8N> (indicating another instance of Walmart opening a super center in a small town). See generally *Sprawl-Busters Newsflash Blog!*, *supra* note 17 (cataloguing news and personal reports on communities opposing Walmart into a searchable database).

27. See DEMOCRATIC STAFF OF THE U.S. HOUSE COMM. ON EDUC. AND THE WORKFORCE, *supra* note 26 (reporting on the deleterious effect of Walmart's low wages on workers and the US economy as a whole); see also ANGOTTI ET AL., *supra* note 26, at 3-6 (discussing Walmart's detrimental impact on small business, the middle class, and neighborhoods).

28. See United Nations Development Programme, *International Human Development Indicators* (Last Viewed Dec 11, 2013) <http://hdrstats.undp.org/en/tables/> (on file with *The Scholar: St. Mary's Law Review on Race and Social Justice*) (providing United Nations database on economic and quality of life human development indicators, including GDP, searchable by country or region).

29. See *Victorious Secrets*, SPRAWL-BUSTERS.COM, *supra* note 17 (listing, by city name, reports on communities opposing Walmart by legal and political means); see also *Sprawl-*

munity from the inherent side effects of traffic, noise, and pollution that accompany superstore operations.<sup>30</sup> Citizens in Windsor Township, Pennsylvania, went to court and scuttled Walmart's plans to build a 197,000 square foot supercenter that did not conform to city zoning regulations.<sup>31</sup> In Deschutes County, Oregon, residents filed suit and defeated Walmart's attempt to circumvent its local requirement for preconstruction road improvements.<sup>32</sup>

How is it that a single small town, community, or neighborhood can resist the will of a corporate giant with the equivalent economic power of the 27th ranked nation in the world? What is it that these successful communities know or do that others do not? Are there common threads that run through successful cases on which other communities can rely in developing their neighborhood defense plans?

Part II of this Article utilizes the concept of *legal intelligence*<sup>33</sup> to help answer these questions. The concept is applied to historic court cases to reveal the key factor(s) that correlate to a higher probability of victory for communities in Walmart related legal disputes. These factor(s), or LEGINT,<sup>34</sup> are integrated with military concepts of strategic and opera-

*Busters Newsflash Blog!*, *supra* note 17 (listing news reports on communities opposing Walmart in a searchable database or by date).

30. See *Wal-Mart Still Engaged In 10 Year Battle*, SPRAWL-BUSTERS.COM (Nov. 11, 2012), <http://www.sprawl-busters.com/victoryz.html/search.php?readstory=3991> (describing the ten-year legal battle between residents of Red Bluff, CA and Wal-Mart); see also Janet O'Neil, *Appeal period expires for Red Bluff Wal-Mart Supercenter*, REDDING.COM (Jan. 15, 2013, 6:21 PM), <http://www.redding.com/news/2013/jan/15/appeal-period-expires-for-red-bluff-wal-mart-can> (describing in further detail the outcome of the ten year legal battle between residents in Red Bluff, CA and Wal-Mart).

31. See *Citizens for Responsible Development–Windsor Twp., Inc. v. Windsor Twp. Zoning Hearing Bd.*, 917 A.2d 918, 922 (Pa. Commw. Ct. 2007) (citing a case in which residents were successful in halting the opening of a Walmart based on local zoning restrictions).

32. *Franklin v. Deschutes Cnty.*, 911 P.2d 339, 340 (Or. Ct. App. 1996).

33. *Legal intelligence* is the product resulting from the collection, processing, integration, analysis, and interpretation of information related to the practice, study, or history of law that is usable for achieving the objectives of a legal intelligence consumer. The concept, as used in this article, is derived from US military doctrine and intelligence principles of the US Intelligence Community. Compare JOINT CHIEFS OF STAFF, JOINT PUBLICATION 2–0, JOINT INTELLIGENCE, at GL-8 (2013), [http://www.dtic.mil/doctrine/new\\_pubs/jp2\\_0.pdf](http://www.dtic.mil/doctrine/new_pubs/jp2_0.pdf) (“The product resulting from the collection, processing, integration, evaluation, analysis, and interpretation of available information . . .”), with LEXISNEXIS, *Lexis Legal Intelligence*, (June 30, 2015, 12:26 PM), <http://www.lexisnexis.co.uk/en-uk/lexis-legal-intelligence/overview.page>. See also OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE, U.S. NATIONAL INTELLIGENCE: AN OVERVIEW, p. 7–12 (2011), [http://www.dni.gov/files/documents/IC\\_Consumers\\_Guide\\_2011.pdf](http://www.dni.gov/files/documents/IC_Consumers_Guide_2011.pdf), [http://www.dtic.mil/doctrine/new\\_pubs/jp2\\_0.pdf](http://www.dtic.mil/doctrine/new_pubs/jp2_0.pdf).

34. LEGINT is an acronym for “legal intelligence” and is used throughout this article to refer specifically to the product of legal intelligence as distinguished from the doctrine,



tional planning to develop the template for a neighborhood defense plan to counter Walmart retail invasions. Part III examines how citizens of the small town community of Cibolo, Texas, developed and employed this plan to defend the quality of life and residential character of their neighborhoods against Walmart encroachment. Finally Part IV identifies some important lessons learned from the Cibolo experience. The intent is to highlight key concepts and principles to help other Walmart targeted communities decide *whether* to fight, and *how* to fight, should they choose to do so.

## II. LEGAL INTELLIGENCE 101

*Legal intelligence* is the collection, processing, integration, analysis, and interpretation of information related to the practice, study, or history of law, and the products resulting from these activities that are useable for achieving the objectives of a legal intelligence consumer.<sup>35</sup> A legal intelligence consumer is a person, group, or entity that uses legal intelligence. The legal intelligence concept is derived from the integration of principles and practices of the U.S. Intelligence Community and U.S. Military planning doctrine with the full body of U.S. federal, state, administrative and common law and their associated legal doctrines and procedures.<sup>36</sup>

In the context of legal intelligence, *collection* is the acquisition of legal data or information through research, investigation, or legal action (e.g., case law review, witness interview, discovery request, or subpoena) for the purpose of processing, analysis, or interpretation.<sup>37</sup> *Processing* is a technical step required to convert unintelligible legal data into useful

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theory, and practice of legal intelligence. The acronym is derived from the military practice of combining the word describing the source of a particular type of intelligence with the word “intelligence” to form an acronym referring to a specified intelligence discipline as in COMINT (communications intelligence), ELINT (electronic intelligence), or HUMINT (human intelligence). See JOINT CHIEFS OF STAFF, JOINT PUBLICATION 2-0, JOINT INTELLIGENCE, *supra* note 33, at GL-1–GL-2.

35. See *id.* (outlining the key principles and doctrine for the conduct of intelligence operations and activities in support of military operations); OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE, U.S. NATIONAL INTELLIGENCE: AN OVERVIEW, *supra* note 33, at 7–12.

36. Compare JOINT CHIEFS OF STAFF, JOINT PUBLICATION 2-0, JOINT INTELLIGENCE, *supra* note 33, at GL-8 (“The product resulting from the collection, processing, integration, evaluation, analysis, and interpretation of available information . . .”), with LEXISNEXIS, *Lexis Legal Intelligence*, *supra* note 33. See also OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE, U.S. NATIONAL INTELLIGENCE: AN OVERVIEW, *supra* note 33, at 7–12.

37. Derived from the definition of “collection” by the Director of National Intelligence. See OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE, U.S. NATIONAL INTELLIGENCE: AN OVERVIEW, *supra* note 33, at 79–80.

pieces of information.<sup>38</sup> For example, a contract written in a language not understood by the attorney who collected it via subpoena, must be processed (i.e., translated) before it becomes information. The distinction between data and information is the understandability of the material collected and its usability for analysis.<sup>39</sup> Not all collections require processing. However, this phase of the legal intelligence process is distinguished to ensure that collected data that requires processing is not overlooked completely and is processed in a timely enough manner to be integrated into analysis.<sup>40</sup> *Integration* is the aggregation of collected information from all available sources (e.g., witness interviews, statutes, court opinions, internet searches, depositions, police reports, public records etc.) into a single information repository.<sup>41</sup> This enables complete analysis on the full body of knowledge available on the issue rather than incomplete analysis on individual knowledge segments. *Analysis* is the “systematic examination of information to identify significant facts, make judgments, and draw conclusions.”<sup>42</sup> It is “the process by which information is transformed into intelligence.”<sup>43</sup>

Two important qualities distinguish intelligence from mere information. First, intelligence makes it possible to anticipate or predict future situations and circumstances.<sup>44</sup> Second, because of its anticipatory nature, intelligence informs decision-making by highlighting potential courses of action available to the intelligence consumer while revealing potential courses of action available to an adverse party.<sup>45</sup> *Interpretation* is the part of analysis in which judgment is made as to the significance of newly collected or analyzed information in relation to what is already known about the issue under study.<sup>46</sup> These distinctions are fundamental

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38. *See id.* at 79.

39. *See id.* at 84 (defining raw data and raw intelligence).

40. *See* JOINT CHIEFS OF STAFF, JOINT PUBLICATION 2-0, JOINT INTELLIGENCE, *supra* note 33, at I-20, available at [http://www.dtic.mil/doctrine/new\\_pubs/jp2\\_0.pdf](http://www.dtic.mil/doctrine/new_pubs/jp2_0.pdf) (discussing intelligence dissemination and integration).

41. *See id.*

42. OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE, U.S. NATIONAL INTELLIGENCE: AN OVERVIEW, *supra* note 33, at 11.

43. *Id.* at 79.

44. JOINT CHIEFS OF STAFF, JOINT PUBLICATION 2-0, JOINT INTELLIGENCE, *supra* note 33, at I-1, available at [http://www.dtic.mil/doctrine/new\\_pubs/jp2\\_0.pdf](http://www.dtic.mil/doctrine/new_pubs/jp2_0.pdf) (discussing intelligence integration and dissemination).

45. *Id.*

46. JOINT CHIEFS OF STAFF, JOINT PUBLICATION 2-01, JOINT AND NATIONAL INTELLIGENCE SUPPORT TO MILITARY OPERATIONS, *supra* note 33, at GL-13, available at [http://www.dtic.mil/doctrine/new\\_pubs/jp2\\_01.pdf](http://www.dtic.mil/doctrine/new_pubs/jp2_01.pdf).

tenets of U.S. Military and Intelligence Community doctrine<sup>47</sup> and are fully assimilated into the doctrine of legal intelligence.

It is important to note that legal intelligence is neither traditional legal research nor a specific analytic technique. Rather, it is both the product and process of an intelligence-centered approach to solving legal problems. The data and information collected and the specific analytic techniques employed may vary widely according to the nature of each case and the objectives of the client and the adverse party. Potential courses of action will also vary from case to case according to the product derived from the legal intelligence process. However, the process will remain essentially the same regardless of case type. Conceptually, it is the legal intelligence process that produces the legal intelligence product, and it is the legal intelligence product that illuminates courses of action for the legal intelligence consumer and reveals courses of action for the adverse party.

The following sections apply these legal intelligence concepts to Walmart-related zoning disputes in order to illuminate a defensive course of action for communities opposing Walmart encroachment on schools and neighborhoods in small town America.

#### A. *Collection*

The LEGINT below is derived from the collection and analysis of thirty-nine Walmart related zoning disputes in which Walmart is a named party or intervenor in the case.<sup>48</sup> In every case, at least one of the parties was Walmart, an individual or community group opposed to Walmart expansion (herein Community), or a city or county government entity responsible for some aspect of land use zoning (herein Local Government).<sup>49</sup> In some cases, two of these three were co-plaintiffs or co-defendants against the other.<sup>50</sup> In none of the cases was the Community a co-plaintiff or co-defendant with Walmart.<sup>51</sup>

#### B. *Analysis*

Systematic analysis of historic case information is essential to discovering which factors are most significant in obtaining a favorable court decision for communities under siege by Walmart. Once identified, these

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47. See generally, OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE, U.S. NATIONAL INTELLIGENCE: AN OVERVIEW, *supra* note 33; JOINT CHIEFS OF STAFF, JOINT PUBLICATION 2-0, JOINT INTELLIGENCE, *supra* note 33.

48. See Appendix.

49. See *id.*

50. See *id.*, cases 1–31, 37 and 39.

51. See *id.*

factors are transformed into LEGINT to guide development and execution of a neighborhood defense plan. Primary analysis of the cases collected for this study, as seen in Table 1, establishes the following baseline information: (1) of the thirty-three cases in which the Community opposing Walmart invasion of their neighborhoods was a named party<sup>52</sup> in the lawsuit, only six times was the court decision favorable to the Community,<sup>53</sup> an 18.2% success rate; (2) of the thirty-nine cases in which Walmart was a named party in the suit, the court decision was favorable to Walmart twenty-eight times,<sup>54</sup> a 71.8% success rate; and (3) of the thirty-nine cases in which Local Government was a named party in the suit, the court decision was favorable to Local Government thirty-three times,<sup>55</sup> an 84.6% success rate.

	Total Cases	Case Wins	Success Rate <sup>56, 57</sup>
Community	33	6	18.2%
Walmart	39	28	71.8%
Local Gov't	39	33	84.6%

Table 1: Primary Analysis

At this level of analysis, the information appears to indicate that Walmart's success rate in court is 3.9 times<sup>58</sup> that of the Community. This is a potentially discouraging statistic for communities fighting to maintain a Walmart-free zone around their schools and neighborhoods. However, competent and effective community leaders—whether elected officials, concerned citizens, or legal advocates—can extract usable information from the primary case data through secondary analysis. In doing so, they can identify the key factors from each case that most frequently lead to victory in court. These correlates of victory are LEGINT, the usable product resulting from the legal intelligence process, to be employed in neighborhood defense planning.

Secondary analysis, as shown in Table 2, illustrates the effect of eliminating Community and Walmart victories in cases where they were co-parties with Local Government. Eliminating co-party victories with Lo-

52. *See id.*, cases 1–31, 37 and 39.

53. *See id.*, cases 1–6.

54. *See id.*, cases 7–31 and 37–39.

55. *See id.*, cases 1, 2 and 7–37.

56.  $\text{Total Wins} \div \text{Total Cases} \times 100$ .

57. The sum of the percentages in this column exceed 100% because cases in which multiple parties are the named plaintiff or defendant are included in the *Total Cases* and *Total Wins* calculations for both parties.

58.  $\text{Walmart Success Rate (71.8\%)} \div \text{Community Success Rate (18.2\%)} = 3.9$  times.

cal Government for the Community<sup>59</sup> lowers its success rate in court from 18.2 to 13.3%—a mere 4.9 percentage points reduction.

	Community	Walmart	Local Gov't
Total wins	6	28	33
Total cases	33	39	39
Overall success rate <sup>60</sup>	18.2%	71.8%	84.6%
Co-party wins	2	26	28
Non co-party wins	4	2	5
Total non-co-party cases	30	9	6
Non co-party success rate <sup>61</sup>	13.3%	22.2%	83.3%
Table 2: Secondary Analysis			

However, eliminating co-party victories with Local Government cut the Walmart success rate from 71.8 to 22.2%—a 49.6 percentage points reduction.<sup>62</sup> This dramatic reduction occurred because Walmart achieved twenty-six of its twenty-eight court victories, 92.9%, as a co-party or intervenor on the side of Local Government.<sup>63</sup> It only won two of the twenty-eight cases when it acted independently.<sup>64</sup> In other words, Walmart most often wins when the Local Government officials partner with the retail giant to take up legal arms against its own citizens.

This is critical information for concerned citizens and community advocates in every Walmart targeted community to know because it *factually* destroys the popular myth that Walmart is “too big to fight.” The myth is destroyed by revealing the *fact* that there is only an 8.9% difference between the Community and Walmart’s success rates in court.<sup>65</sup> At this level of analysis, it is no longer futile for residents to defend their neighborhood interests against Walmart’s corporate interests in court.

This is LEGINT—usable legal information to guide development and execution of a comprehensive neighborhood defense plan. The specific LEGINT here is that: (1) David *can* defeat Goliath<sup>66</sup>—which gives hope

59. See Appendix Cases 1 & 2.

60. Total wins ÷ Total cases × 100.

61. Non co-party wins ÷ Total non-co-party cases × 100.

62. See Appendix Cases 7-31 and 37.

63. See *id.*, cases 7–31 and 37.

64. See *id.*, cases 38 and 39.

65. See *tbl.2*.

66. 1 *Samuel* 17 (NIV), <http://www.biblica.com/bibles/chapter/?verse=1+Samuel+17&version=niv> (telling the story of David, a young shepherd boy, who defeated the giant Goliath).

and inspires community action and (2) the key to Walmart's expansion into small towns and communities is the support of Local Government officials—which provides planning focus and execution direction.

### C. *Application*

In order to effectively leverage LEGINT into focused, coordinated, and deliberate action, citizens of Walmart embattled communities must understand the strategic and operational planning concept of *center of gravity*. The prolific thinker, planner, and military strategist Colonel John Warden, III—architect of the Desert Storm air campaign in Gulf War I and Commandant of the U.S. Air Force's Air Command and Staff College (1992–1995)—describes center of gravity as:

[T]hat point where the [adverse party] is most vulnerable and the point where an attack will have the best chance of being decisive. The term is borrowed from mechanics, indicating a point against which a level of effort, such as a push, will accomplish more than the same level of effort could accomplish if applied elsewhere . . . . [T]he most important responsibility of a commander [community leader] is to identify correctly and strike appropriately [adversary] centers of gravity.<sup>67</sup>

With this conceptual understanding, and informed by LEGINT, citizens can easily recognize Local Government as the center of gravity in Walmart's neighborhood retail offensive. This recognition, in turn, illuminates the best course of action for Communities that choose to fight the Walmart invasion—*strike* Local Government *appropriately*.

In a democracy, the “appropriate” place to “strike” an unresponsive Local Government is at the ballot box. Therefore, Phase I of the neighborhood defense plan is, *Eliminate*. In the Eliminate phase, citizens must initiate a recall petition drive for every elected official with voting authority for land use zoning. Failing to do so will likely become the critical point of failure in the Community's effort to halt the Walmart offensive. Referring back to Table 2, note that the 84.6% overall success rate in court for Local Government is as much a hurdle to overcome for the Community as it is for Walmart. It amounts to a minimum 3.8 times advantage in court for whichever party Local Government officials choose to support.<sup>68</sup> Consequently, Local Government is the center of gravity in

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67. COL. JOHN A. WARDEN III, USAF, *THE AIR CAMPAIGN 7* (rev. ed., to Excel Press 2000) (1988) (describing the concept of “center of gravity”).

68. The overall success rate for Local Gov't (84.6%) ÷ non co-party success rate for Walmart (22.2%) = a 3.8 times advantage for Local Gov't over Walmart. The overall success rate for Local Gov't (84.6%) ÷ non co-party success rate for the Community (13.3%) = a 6.4 times advantage for Local Gov't over Community (Reference tbl.2).

both Walmart's invasion of the Community *and* the Community's neighborhood defense.

To the uninformed observer, a recall petition drive may appear to be a punitive political measure. In reality, it is a deliberate course of action, informed by LEGINT, with primary and secondary objectives. The primary and immediate objective is to compel Local Government officials, consistent with state and local zoning laws, to deny Walmart's request to build a superstore near an elementary school or neighborhood—to *eliminate* the store in the planning stage. If Local Government officials fail to deny approval of a site plan detrimental to the health, safety, or welfare of the community, the secondary objective of the recall is to replace those officials with Community advocates—trusted neighborhood leaders concerned with the public interest. Community advocates who take office can then respond to citizen concerns for proper regulation of the development going forward, deny economic incentives to the project, or even reverse an initial zoning approval if there is a proper legal basis.<sup>69</sup> A reversal is significant because it forces Walmart into the role of plaintiff against Local Government, should it decide to challenge the reversal decision in court. Local Government, now acting on behalf of the Community, would assume the defense.<sup>70</sup> Walmart has only won two of its twenty-eight court victories (7.1%) as a plaintiff against Local Government.<sup>71</sup> However, Local Government has won 84.6% of all its cases.<sup>72</sup> In this case, LEGINT has highlighted a course of action that can both re-

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69. In the *Cibolo* case discussed in Part II, homeowners abutting the proposed Walmart site and their homeowners' association challenged the commercial zoning classification in court asserting the city failed to provide them notice of the proposed zoning change in accordance with state law. In the same lawsuit, plaintiffs asserted that a Walmart superstore is beyond the scope of commercial activity contemplated by the current commercial zoning status. *Bentwood Ranch HOA v. City of Cibolo*, Cause No.13-1953-CV, (Guadalupe County District Court) available at <http://www.ksat.com/blob/view/-/22268978/data/1/-/4ka1vpz/-/cibolo-lawsuit.pdf> (on file with *The Scholar: St. Mary's Law Review on Race and Social Justice*); Letter from Frank Burney, Attorney at Law, to Falcon Ridge HOA an Bentwood Ranch HOA (July 23, 2013) (detailing the proposed Walmart nonconformance with Cibolo's zoning regulation the Unified Development Code) (on file with *The Scholar: St. Mary's Law Review on Race and Social Justice*). See also TEX. LOC. GOV'T CODE ANN. § 211.006(a) (West 2008) ("A regulation or boundary is not effective until after a public hearing on the matter at which parties in interest and citizens have an opportunity to be heard. Before the 15th day before the date of the hearing, notice of the time and place of the hearing must be published in an official newspaper or a newspaper of general circulation in the municipality.")

70. A Local Government entity will always be a defendant in these cases because it makes the zoning decisions over which the legal dispute arises. In cases where one Local Government entity reverses another on a zoning issue, however, Local Government may occupy the role of both plaintiff and defendant in the same case.

71. See Appendix, cases 38 and 39.

72. See tbl.2.

verse an unfavorable zoning decision by city council and shape the legal environment for victory if the reversal is challenged in court—84.6 versus 7.1%.<sup>73</sup>

Phase II of the neighborhood defense plan is *Regulate*. In the Regulate phase, citizens petition to place city ordinances on the ballot for public vote that address specific Community concerns about the proposed superstore development. These citizen initiative ordinances may limit store hours, specify delivery routes and times, or restrict where alcohol and firearms can be sold. The ordinances may not totally eliminate Community objections to the proposed Walmart location, but they can help mitigate some of them if Local Government officials remain unresponsive to Community concerns or legal efforts fall short in court. Local Government officials who support Walmart, rather than the community, will reveal themselves in their opposition or passiveness toward such ordinances initiated by Community. For this reason, it is important for the Community to petition to put these ordinances on the ballot simultaneously with the petitions for recall. Confronted with both sets of petitions, Local Government officials will be forced to take an unequivocal public stand with the Community or with Walmart. How each official votes on the ordinances informs the Community how to vote in the recall election of each official.

Phase III of the plan is *Vote*. Outside the courtroom, voting is the culmination of the Community's total effort in planning, organizing, and executing its neighborhood defense plan—from signing petitions to casting a ballot. It enables citizens to by-pass obstructive Local Government officials in their struggle to preserve neighborhood integrity, and to animate passive ones. In the Vote phase of the plan, if Local Government officials have failed to vote the petitioned ordinances into law during regularly scheduled city council meetings, citizens can do so themselves on Election Day.<sup>74</sup> On the same ballot, citizens can vote to recall officials who voted against the petitioned ordinances and those who abstained.<sup>75</sup>

The right to vote belongs to each individual member of the Community. However, individual voting yields random results. On the other hand, when exercised in coordination with neighbors, the right to vote can decisively reshape the Community's political and legal operating environments in favor of Community residents.<sup>76</sup> In a Walmart neighbor-

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73. *Id.*

74. *See, e.g.,* Cibolo, Tex., Ordinances Part 1, art. VI, § 6.13 (2014). (explaining the citizens' initiative process).

75. *See id.*

76. *See* Will Wright, *Cibolo voters opt for change*, LOCAL COMMUNITY NEWS (S.A.), Nov. 2013, at 1, available at [http://www.salocalowdown.com/issues/Zone%205/Local\\_Zone\\_5\\_Nov2013.pdf](http://www.salocalowdown.com/issues/Zone%205/Local_Zone_5_Nov2013.pdf) (reporting that voters may have "altered the course of the city" after recal-



hood invasion scenario, voting is the maximum *push* (influence) that can be exerted on the *center of gravity* (Local Government) in the least amount of time.<sup>77</sup> In Part III, we examine the real world development and application of this LEGINT inspired defense plan as employed by the citizens of Cibolo, Texas.<sup>78</sup>

### III. THE CIBOLO CASE

#### A. Background

On July 1, 2013, residents of Cibolo, Texas, a small town residential community of 20,000 near San Antonio, learned in a town hall meeting that Walmart intended to build a superstore in excess of 180,000 square feet in the residential and geographic center of the city.<sup>79</sup> The proposed superstore would be located across a two-lane road from a church, two neighborhood subdivisions, and an elementary school.<sup>80</sup> Residents packed the town hall meeting in record numbers<sup>81</sup> to oppose city council approval of the plan which they claimed would alter the quiet residential character of their neighborhoods, result in a significant increase in crime,

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ling two Council members and ousting two more in the Nov. 2013 elections) (on file with *The Scholar: St. Mary's Law Review on Race and Social Justice*); David Dekunder, *4 lose seats on Cibolo City Council*, MYSA (last updated Nov. 6, 2013, 12:06 AM) (reporting that four Council members were removed from office during the Nov. 2013 election and the citizens' initiative to prohibit alcohol sales within 300 feet of a school passed with 63% of the vote), <http://www.mysanantonio.com/news/politics/article/Early-results-show-recall-of-two-Cibolo-council-4958743.php>.

77. "[T]hat point where the [adversary] is most vulnerable and the point where an attack will have the best chance of being decisive. The term is borrowed from mechanics, indicating a point against which a level of effort, such as a push, will accomplish more than the same level of effort could accomplish if applied elsewhere . . . . [T]he most important responsibility of a commander [community leader] is to identify correctly and strike appropriately [adversary] centers of gravity." See generally WARDEN, *supra* note 67, at 7 (describing the concept of "center of gravity").

78. One hundred percent minus the 84.6% success rate in court for Local Government equals a 15.4% loss possibility for Local Government.

79. See Dekunder, *supra* note 25 (recounting the outpour of community opposition to the plan to build a Walmart at the July 1, 2013 Cibolo town hall meeting).

80. See *id.* (reporting the location of the proposed Walmart supercenter); see also David Dekunder, *Cibolo residents hope they can deter Wal-Mart*, MY SAN ANTONIO (July 9, 2013) <http://www.mysanantonio.com/community/northeast/news/article/Cibolo-residents-hope-they-can-deter-Wal-Mart-4655433.php> (reporting the size and location of the proposed supercenter).

81. Dekunder, *supra* note 25 (reporting an estimated 500 residents attended the July 1, 2013 Cibolo City Council meeting, many of whom were unable to fit inside the council chambers).

traffic, pollution, and noise in the community, and lower the property values of the recently constructed homes bordering the project.<sup>82</sup>

Residents expressed particular concern about the increased traffic and danger to children ages six to ten years that walked or rode bicycles to the elementary school.<sup>83</sup> The residents perceived the expected addition of regional Walmart shoppers, 18-wheeler delivery trucks, and numerous product vendors to the neighborhood traffic mix as a tragedy in the making.<sup>84</sup> The access roads to the proposed Walmart site for these vehicles would be directly adjacent to the school, separating the school from the neighborhoods where many of the children lived.<sup>85</sup>

Despite citizen concerns for the health, safety, and welfare of the surrounding community,<sup>86</sup> the Cibolo City Council approved Walmart's plan to build its new superstore in the heart of the city's residential center.<sup>87</sup> When pressed for an explanation during their recall hearing, council members claimed they were unaware of Walmart's interest in the proposed building site until just days before the town hall meeting announcement.<sup>88</sup> When pressed further, the volunteer council members pleaded,

82. *See id.* (reporting citizens' concerns for rising crime, safety concerns, and traffic as a result of permitting the construction of the proposed Walmart); *see also* City of Cibolo, *City Council Meeting Minutes*, CIBOLOTX.GOV (July 9, 2013 7:00 PM), <http://www.cibolotx.gov/AgendaCenter/ViewFile/Minutes/07092013-69> (illustrating some of the specific concerns citizens levied in opposition to the proposed Walmart site at the July 9, 2013 Cibolo City Council meeting).

83. *See* City of Cibolo, *supra* note 82 (illustrating community concerns of problems arising from the proposed Walmart site); *see also* Dekunder, *supra* note 80 (stressing the concerns of the citizens in attendance at the July 1, 2013 Cibolo City Council meeting).

84. *See* Dekunder, *supra* note 80 (detailing residents' concerns with traffic safety with Walmart entering their neighborhood). *See generally* City of Cibolo, *supra* note 82 (identifying the influx of new hazards and annoyances that citizens expect would accompany the introduction of a Walmart store in their community).

85. *See* Dekunder, *supra* note 25 (reporting the reaction of an estimated 500 Cibolo Texans to the proposed location of an 182,000 square-foot Walmart superstore at a Town Hall meeting).

86. *See id.* Compare City of Cibolo, *City Council Meeting Minutes*, CIBOLOTX.GOV 1, 2 (Sept. 10, 2013, 7:00 PM), <http://www.cibolotx.gov/AgendaCenter/ViewFile/Minutes/09102013-103> (reporting on citizens who voiced concerns about the zoning of the Walmart development); *with* Wright, *supra* note 76 (reporting on the removal of five of eight city Council members while predicting that Walmart is expected spend \$3.3 million on improvements around the projected store, in exchange for receiving compensation through a portion of the city's future sales-tax revenues).

87. *Cf.*, Will Wright, *Cibolo Council members grilled on when they first knew about Walmart*, LOCAL COMMUNITY NEWS (S.A.), Sept. 2013, at 5, 9, available at [http://image.issuu.com/130928212547-3ac2c6bff92315785325d491c89b284d/jpg/page\\_5.jpg](http://image.issuu.com/130928212547-3ac2c6bff92315785325d491c89b284d/jpg/page_5.jpg) and [http://image.issuu.com/130928212547-3ac2c6bff92315785325d491c89b284d/jpg/page\\_9.jpg](http://image.issuu.com/130928212547-3ac2c6bff92315785325d491c89b284d/jpg/page_9.jpg) (reporting that the Cibolo City Council approved the Walmart plan).

88. *See id.* (reporting Council members' claim at during their recall hearing before residents that they first found out about the Walmart location in late June 2013).

“Walmart is smarter than us, they’re richer than us and they outmaneuvered us . . . . It’s not because we’re bad, but because they have better-paid, higher-thinking people.”<sup>89</sup> Incomprehensibly, the city council subsequently voted to give Walmart \$2.89 million in sales tax rebates over 14 years as an economic incentive to build—despite the widespread public opposition to the building site.<sup>90</sup> Wittingly or unwittingly, city council members spearheaded the Walmart invasion of Cibolo’s small town residential enclave.

### B. *Rules of Engagement: The City Charter*

Recognizing City Council’s commitment to Walmart—and its unresponsiveness to community concerns—Cibolo residents looked to the municipal law of Cibolo, codified in the *City of Cibolo City Charter*, for relief.<sup>91</sup> Analysis of the *Charter* provided citizens the *legal intelligence* necessary to develop a neighborhood defense plan to preserve and protect the character and security of their community.

Article VI of the *Charter* subjected each council member to recall from office by petition and public vote.<sup>92</sup> Pertinent sections of article VI read as follows:

#### Section 6.01. Scope of recall.

Any elected City official, whether elected to office by qualified voters or appointed by the City Council to fill a vacancy, shall be subject to recall and removal from office by the qualified voters of the City on grounds of incompetency, misconduct or malfeasance in office.<sup>93</sup>

#### Sec. 6.02. Petitions for recall.

Before the question of recall of such officer shall be submitted to the qualified voters of the City, a petition demanding such question to be so submitted shall first be filed with the person performing the duties

89. *Id.* (quoting Cibolo City Council member Steve Liparoto).

90. *Compare* City of Cibolo, *Chapter 380 Economic Agreement* (Sep. 10, 2013) (explaining that Walmart will receive \$2.89 million over 14.45 years in sales tax rebates for making road and infrastructure improvements at its building site in Cibolo) (on file with *The Scholar: St. Mary’s Law Review on Race and Social Justice*) with City of Cibolo, *supra* note 86, at 1, 2 (reporting on citizens who voiced grievances concerning the zoning of the Walmart development), and Wright, *supra* note 76 (reporting that the City of Cibolo will reimburse Walmart for improvements around its new store through future sales tax revenues).

91. *See* CIBOLO, TEX., ORDINANCES Part 1 art. I § 1.01–1.02 (2014) (acknowledging that all powers of the City of Cibolo shall be exercised according to this charter, and identifies that inhabitants of Cibolo, Texas, living within corporate limits, shall continue to be a municipal body as allowed by law).

92. *See* § 6.01 (addressing the scope of recall of any elected or appointed city official).

93. *Id.*

of City Secretary, which said petition must contain the number of valid signatures totaling at least thirty percent (30%) of the number of votes cast at the last general City election, or one hundred and fifty (150), whichever is greater.<sup>94</sup>

Additionally, article VI enabled citizens to directly enact city ordinances protecting the community's health, safety, and welfare by petitioning to place them on an election ballot for public vote.<sup>95</sup>

Sec. 6.13. Initiative.

(1) Following a review by the City Attorney for enforceability and legality, qualified voters of the City may initiate legislation by submitting a petition addressed to the City Council, which requests the submission of a proposed ordinance or resolution to a vote of the qualified voters of the City. Said petition must contain the number of valid signatures totaling at least thirty percent (30%) of the number of votes cast at the last general City election or one hundred and fifty (150), whichever is greater, and each copy of the petition shall have attached to it a copy of the proposed legislation. The petition shall be signed in the same manner as recall petitions are signed, as provided in this Article, and . . . [s]uch petition shall be filed with the person performing the duties of City Secretary. . . .

(2) Within twenty-one (21) days after the filing of such petition, the person performing the duties of City Secretary shall present said petition and proposed ordinance or resolution to the City Council. Upon presentation to the City Council, *it shall become the duty of the City Council*, within two (2) regularly scheduled City Council meetings after the receipt thereof, to pass and adopt such ordinance or resolution without alteration as to meaning or effect, in the opinion of the persons filing the petition, or to call a special election, to be held on a date allowed under the Texas Election Code [Tex. Election Code, § 1.001 et seq.], at which the qualified voters of the City shall vote on the question of adopting or rejecting the proposed legislation. Any election order so issued shall comply with the Texas Election Code [Tex. Election Code, § 1.001 et seq.]. Unless otherwise provided by law, any election for an initiative under this Charter shall be held on the first authorized uniform election date that occurs after the sixty-fifth (65th) day after the petition was presented to the City Council.<sup>96</sup>

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94. art VI § 6.02.

95. See § 6.12–13 (detailing how Article VI of the City's Charter supports citizens in mounting an "effective neighborhood defense").

96. § 6.13 (alteration in original) (emphasis added).

### C. *Community Takes Action*

In Phase I of the plan, citizens successfully petitioned for a recall election of four of the seven at-large council members in the November 2013 election.<sup>97</sup> The petitioned council members' terms would have normally expired in November 2014.<sup>98</sup> By provisions of the city charter, the terms of the Mayor and remaining three council members were already scheduled to expire in November 2013.<sup>99</sup> As a result of the four recall petitions, all eight council positions were subject to removal from office by recall or election in November 2013.<sup>100</sup> The looming recall and regular elections of every sitting council member gave citizens a voice in Cibolo government for the first time since the Walmart site announcement on July 1, 2013.<sup>101</sup> They also created a means to reverse city council support for the proposed Walmart site by changing council member votes, or

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97. See City of Cibolo, Minutes of Special Council Meeting/Budget Workshop, CIBOLOTX.GOV (Jul. 30, 2013 4:00 PM), <http://www.cibolotx.gov/AgendaCenter/ViewFile/Minutes/07302013-82> (presenting validated recall petitions for 4 at-large city Council members; no action taken at this time) (emphasis added); see also Cory Smith, *Cibolo residents file recall petitions over Walmart plans*, KSAT.COM, (Jul. 19, 2013, 10:45 PM), <http://www.ksat.com/news/cibolo-residents-file-recall-petitions-over-walmart-plans/-/478452/21080246/-/382kuaz/-/index.html> (describing the citizen's concerns regarding the location of the anticipated Walmart and the Council's failure to listen to the complaints against Walmart).

98. See generally art III § 3.01 (defining a "Council Members" term limit as 2 years with alternating even and odd expiration years by member's placement).

99. The four Council Places petitioned for recall in the Nov 2013 election were at-large Place numbers 1, 4, 5, and 6. The terms of these Council Places expire in even numbered years. Compare art III, § 3.01(2) ("The terms of Council Members holding places 1, 4, & 5 shall expire in even-numbered years. The terms of Council Members holding places 2 & 3 shall expire in odd-numbered years. The Mayor shall be elected in an odd-numbered year."), and § 3.01(3) (2008), <https://library.municode.com/index.aspx?clientId=14252&stateId=43&stateName=Texas> ("By Ordinance No. 787, adopted January 9, 2007, the city council, established two new council positions called Council Position Place No. 6 and Council Position Place No. 7. According to the ordinance, the May 2007 ballot provided that Council Position Place No. 6 was for a one-year term, and Council Position Place No. 7 was for a full two-year term. The ordinance continued by stating that Council Position Place No. 6 will be for a full two-year term on the May 2008 ballot."); with Ordinances No. 1055 § 2, 5–28–13 (2013) (amending section 3.01 of the City Charter to include seven council members instead of five).

100. Dave Dekunder, *Entire Cibolo Council on November ballot*, SAN ANTONIO EXPRESS-NEWS, (updated Aug. 23, 2013 1:32 PM) (reporting that all Cibolo City Council positions are subject to recall or election in the November 2013).

101. See Wright, *Cibolo council members grilled on when they first knew about Walmart*, *supra* note 87, at 5 (reporting Council members began to respond publicly to citizen concerns over the Walmart location for the first time at a City Council meeting on Aug. 19, 2013, and apologized for how they handle the Walmart situation).

changing council members.<sup>102</sup> Consequently, the community's concerns over the proposed site became a priority topic on the city council agenda through the November 2013 election and beyond.<sup>103</sup>

In Phase II, citizens of Cibolo successfully petitioned to place two public safety and welfare ordinances on the November 2013 election ballot.<sup>104</sup> The first citizen's initiative prohibited the sale of alcohol within 300 feet of a church or school.<sup>105</sup> The second initiative prohibited the sale of firearms within 300 feet of a church or school.<sup>106</sup> The proposed Walmart location was directly across a two-lane street from both a church and an elementary school.<sup>107</sup>

Section 6.13(2) of the *Charter, supra*, required the city council to vote the alcohol and firearms initiatives into law within two regularly scheduled council meetings or place them on the November 2013 ballot for a public vote.<sup>108</sup> This *Charter* provision provided the Cibolo community a

102. See generally Wright, *Cibolo council members grilled on when they first knew about Walmart, supra* note 87, at 5 (providing background information on the protests leading to the recall petitions certified on July 30, 2013).

103. See generally ANDRE LARKINS & JONI LARKINS, PETITION FOR CITY ORDINANCE PERTAINING TO THE SALE OF ALCOHOL (2013) (on file with *The Scholar: St. Mary's Law Review on Race and Social Justice*) (petitioning for the citizens' initiative to prohibit the sale of alcoholic beverages within 300 feet of a church or a public or private school to be brought for a public vote); see also ANDRE LARKINS & LISA BATY, PETITION FOR CITY ORDINANCE PERTAINING TO THE SALE OF FIREARMS (2013) (on file with *The Scholar: St. Mary's Law Review on Race and Social Justice*) (petitioning for the citizens' initiative to prohibit the sale of firearms within 300 feet of a church or a public or private school to be brought for a public vote).

104. See City of Cibolo, *Special City Council/Public Hearing Minutes*, CIBOLOTX.GOV (Aug. 22, 2013, 7:00 PM), <http://www.cibolotx.gov/AgendaCenter/ViewFile/Minutes/08222013-93> (presenting petitions supporting the placement of two ordinances on the November 2013 ballot: Citizens Initiative for Alcohol Ordinance-Total Valid Signatures: 171; Citizens Initiative for Firearms Ordinance-Total Valid Signatures: 174).

105. See LARKINS & LARKINS, *supra* note 103 (describing the details of the petition for a city ordinance pertaining to the sale of alcohol).

106. See LARKINS & BATY, *supra* note 103 (describing the details of the petition for a city ordinance pertaining to the sale of firearms).

107. See Dekunder, *supra* note 25 (reporting the location of the proposed Walmart supercenter); see also Dekunder, *supra* note 80 (reporting the size and location of the proposed supercenter).

108. See generally CIBOLO, TEX., MUN. CODE ART. VI § 6.13 (2008), <https://library.municode.com/index.aspx?clientId=14252&stateId=43&stateName=Texas> ("Within twenty-one (21) days after the filing of such petition, the person performing the duties of City Secretary shall present said petition and proposed ordinance or resolution to the City Council. Upon presentation to the City Council, it shall become the duty of the City Council, within two (2) regularly scheduled City Council meetings after the receipt thereof, to pass and adopt such ordinance or resolution without alteration as to meaning or effect, in the opinion of the persons filing the petition, or to call a special election, to be held on a date allowed under the TEXAS ELECTION CODE [TEX. ELEC. CODE, § 1.001 et seq.], at

distinct opportunity to evaluate each council member's responsiveness to specific citizen concerns about the proposed Walmart site. Further, it enabled voters to evaluate each council member's prioritization of resident voter interests relative to Walmart corporate interests prior to recall and Election Day.<sup>109</sup> Caught between the hammer of the alcohol and firearms initiatives, and the anvil of the recall and regular elections, council members were forced to make an unequivocal public stand with concerned Community residents or with Walmart.<sup>110</sup>

#### D. *Evaluating City Council Response*

The city council response to the Phase II citizens' initiatives spoke volumes to the Cibolo Community. Instead of voting to adopt or reject the alcohol and firearms initiatives within two council meetings as required by the *City Charter*,<sup>111</sup> the council voted on whether to *allow* the public to vote on the two initiatives at all. The council voted 7–0 to deny voters their charter right to vote on the Firearms Sales Ordinance.<sup>112</sup> However, there was no provision in the *City Charter* for council members to approve or disapprove, accept or reject, or vote for or against placing on an election ballot any citizens' initiative or recall petition after validation and presentation by the City Secretary.<sup>113</sup> Article VI of the *Charter*

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which the qualified voters of the City shall vote on the question of adopting or rejecting the proposed legislation.”)

109. See generally Wright, *Cibolo council members grilled on when they first knew about Walmart*, *supra* note 87, at 5 (distinguishing community versus corporate interests amongst Cibolo's City Council and local residents).

110. The hammer and anvil is an ancient battle tactic in which side one rapidly outmaneuvers side two in such a way that side two is trapped between the two lines of side one and continuously attacked like a hammer pounding on an anvil. HAMMER AND ANVIL, <https://hammeranvil.wordpress.com/> (Last visited Aug. 15, 2015); Accord John M. Broder, *War's Climax: Big Battle Against Iraq's Elite Units : Strategy: The allied assault is modeled on a 'hammer and anvil.'* It is the centerpiece of *Desert Storm*, L.A. TIMES, Feb. 27, 1991, [http://articles.latimes.com/1991-02-27/news/mn-1915\\_1\\_desert-storm](http://articles.latimes.com/1991-02-27/news/mn-1915_1_desert-storm) (describing use of hammer and anvil maneuver in Operation Desert Storm).

111. In a separate vote, the Council voted 4–3 to place the alcohol sales ordinance on the November 2013 ballot. Neither vote had an authorized legal basis. See City of Cibolo, *Special City Council Minutes*, CIBOLOTX.GOV (Aug. 26, 2013, 9:00 AM), <http://www.cibolotx.gov/AgendaCenter/ViewFile/Minutes/08262013-97> (voting to put alcohol ordinance on the ballot and not to put firearms petition on the ballot).

112. In a separate vote, the Council voted 4–3 to place the alcohol sales ordinance on the November 2013 ballot. Neither vote had an authorized legal basis. See *id.* (voting to put alcohol ordinance on the ballot and not to put firearms petition on the ballot).

113. Compare Cibolo, Tex., Ordinances Part 1 art. VI § 6.13(2) (2013), <http://library.municode.com/index.aspx?clientId=14252&stateId=43&stateName=Texas> (compelling City Council to pass a citizens' initiative into law within two Council meetings, or to place it on a ballot for public vote), and § 6.23(2) (2013), <http://library.municode.com/index.aspx?clientId=14252&stateId=43&stateName=Texas> (prescribing the remedy for coun-

is clear on this point and has two specific directives to execute its own intent when council members refuse to do so:

Section 6.13(2)

*[I]t shall become the duty of the City Council, within two (2) regularly scheduled City Council meetings after the receipt thereof [a citizens' initiative], to pass and adopt such ordinance or resolution without alteration as to meaning or effect, in the opinion of the persons filing the petition, or to call a special election . . .*<sup>114</sup>

and

Section 6.23

If all of the requirements of this Charter have been met and the City Council fails or refuses to receive the initiative or referendum petition, or order such initiative or referendum election, or discharge any other duties imposed on the City Council by the provisions of this Charter with reference to such initiative or referendum, then the District Judge of Guadalupe County, Texas, *shall* discharge any of such duties herein provided to be discharged by the person performing the duties of City Secretary or by the City Council.<sup>115</sup>

The questionable authority of a municipal government to issue a standing order to a district court judge notwithstanding, the intent of the *Charter* is unambiguous that city council has no authority to refuse a properly validated citizens' initiative.

Moreover, the Supreme Court of Texas *compels* city councils to put a validated citizens' initiative on the ballot, even if the council actually believes the initiative is unconstitutional.<sup>116</sup> In *Glass v. Smith*,<sup>117</sup> the Court declared that “[citizens] being otherwise entitled to have the initiative

cil failure to pass a citizens' initiative into law or to place it on a ballot for public vote), *with Glass v. Smith*, 244 S.W.2d 645, 647 and 653 (Tex. 1951) (“When the people exercise their rights and powers under the initiative provisions of a city charter and thereby become the legislative branch of the city government, the members of the city council, like other city officials and employees, become ministerial officers in the legislative process, burdened with the mandatory obligation of performing the duties imposed upon them incidental to carrying out the initiative procedure . . . . There is nothing in the charter that qualifies the mandatory duty of petitioners in the calling and holding of initiative elections so that they may decline to hold those which in their opinion might result in the adoption of void ordinances.”).

114. § 6.13 (2) (emphasis added).

115. § 6.23 (emphasis added).

116. *See Glass v. Smith*, 244 S.W.2d 645, 648 (Tex. 1951) (“[citizens] being otherwise entitled to have the initiative election called and held, cannot be defeated in that right by the refusal of petitioners to perform purely ministerial duties on the ground that in their opinion the ordinance would be invalid if adopted”).

117. *Id.*



election called and held, cannot be defeated in that right by the refusal of [City Council] to perform purely ministerial duties on the ground that in their opinion the ordinance would be invalid if adopted.”<sup>118</sup> The plain language reading of the *City Charter* and Texas Supreme Court<sup>119</sup> precedent clearly established that the Cibolo City Council had no legal authority to deny citizens’ their right to vote on the properly petitioned firearms sales initiative.<sup>120</sup> Nevertheless, the city council replaced the citizens’ firearms initiative on the ballot with a charter amendment proposition to enable the city council to unilaterally *repeal* all citizens’ initiatives the public successfully votes into law with a two-thirds council vote.<sup>121</sup> Actions truly speak louder than words.

Despite these express provisions of the *City Charter*, the council voted 5–2 to give Walmart a 14-year, \$2.89 million dollars, sales tax rebate as an economic incentive to build at the site opposed by Community residents.<sup>122</sup> Finally, in an apparent effort to prevent themselves from being recalled in the November 2013 election, council members planned to restrict electronic and paper ballot<sup>123</sup> voting in the recall elections to sin-

118. *Id.* at 648.

119. *Id.* (“[citizens] being otherwise entitled to have the initiative election called and held, cannot be defeated in that right by the refusal of petitioners to perform purely ministerial duties on the ground that in their opinion the ordinance would be invalid if adopted”).

120. *Compare* § 6.13(2), (compelling city council to pass a citizens’ initiative into law within two council meetings, or to place it on a ballot for public vote), *with* § 6.23 (prescribing the remedy for council failure to pass a citizens’ initiative into law or to place it on a ballot for public vote).

121. General Election Sample Ballot, District 3, Cibolo, Tex., Nov. 5, 2013 (illustrating the text of Proposition 19 as “The amendment of the City Charter creating a process whereby City Council may repeal or amend ordinances adopted by popular vote after two years and then only upon a two-thirds vote by City Council”) (on file with *The Scholar: St. Mary’s Law Review on Race and Social Justice*); *see also* City of Cibolo, *Unofficial Election Day & Early Voting Results*, CIBOLOTX.GOV (Nov. 5, 2013 9:16 PM), <http://www.cibolotx.gov/DocumentCenter/View/438> (reporting Proposition 19 was rejected by voters).

122. *Compare* Minutes of Council Meeting, City of Cibolo, Tex., (Sept. 24, 2013), *available at* <http://www.cibolotx.gov/AgendaCenter/ViewFile/Minutes/09242013-107> (voting to approve economic incentives for Walmart to build at the disputed site), *with* Minutes of Council Meeting, City of Cibolo, Sep. 10, 2013, *available at* <http://www.cibolotx.gov/AgendaCenter/ViewFile/Minutes/09102013-103> (disclosing content of economic incentives to Walmart), *and* CITY OF CIBOLO, TEX., CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT, 3 (Sept. 10, 2013) (describing sales tax rebates to Walmart in Cibolo) (on file with *The Scholar: St. Mary’s Law Review on Race and Social Justice*).

123. *See* Cibolo, Tex., Ordinance 1065, Section Two (Aug. 22, 2013) (ordering the recall election of four Cibolo Council members on Nov. 5, 2013, declaring them to be “District” representatives, and declaring that only voters who live in each Council member’s “district” will be allowed to vote for his or her recall) (on file with *The Scholar: St. Mary’s Law Review on Race and Social Justice*); General Election Sample Ballot, District 1, Cibolo, Tex., Nov. 5, 2013 (illustrating that District 1 voters were prevented from voting to

gle member districts to which none of the council members were ever elected.<sup>124</sup> Under this voting scheme, a voter could only vote in the recall election of a council member if the voter lived in a single member voting district literally drawn around that council member's home address.<sup>125</sup>

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recall three of the four recall candidates by their omission from the ballot) (on file with *The Scholar: St. Mary's Law Review on Race and Social Justice*); General Election Sample Ballot, District 4, Cibolo, Tex., Nov. 5, 2013 (illustrating that District 4 voters were prevented from voting to recall three of the four recall candidates by their omission from the ballot) (on file with *The Scholar: St. Mary's Law Review on Race and Social Justice*); General Election Sample Ballot, District 5, Cibolo, Tex., Nov. 5, 2013 (illustrating that District 5 voters were prevented from voting to recall three of the four recall candidates by their omission from the ballot) (on file with *The Scholar: St. Mary's Law Review on Race and Social Justice*); General Election Sample Ballot, District 6, Cibolo, Tex., Nov. 5, 2013 (illustrating that District 6 voters were prevented from voting to recall three of the four recall candidates by their omission from the ballot) (on file with *The Scholar: St. Mary's Law Review on Race and Social Justice*).

124. David Dekunder, *Cibolo council members approve single-member district plan*, MYSA (Nov. 6, 2012) <http://www.mysanantonio.com/community/northeast/news/article/Cibolo-council-members-approve-single-member-4014000.php>. (reporting that Cibolo single-member district boundaries were drawn with feedback from Council members and such that all current Council members would have their own district-except one, and that the first single-member district election would occur in Nov. 2013); *see also* Wright, *Cibolo council members grilled on when they first knew about Walmart*, *supra* note 87, at 5, 9 (reporting that the November 2013 elections would be the first time that Cibolo would vote in single member districts).

125. Cibolo, Tex., Ordinance 1065, Section Two (Aug. 22, 2013) (ordering the recall election of four Cibolo Council members on Nov. 5, 2013, declaring them to be "District" representatives, and declaring that only voters who live in each Council members' "district" will be allowed to vote for his or her recall) (on file with *The Scholar: St. Mary's Law Review on Race and Social Justice*); Cibolo, Tex., Ordinance 1053 (Apr. 9, 2013) (adopting a single member voting district map for Cibolo with seven districts, which includes a legend identifying current at-large Council members' homes, and illustrating that the boundaries of districts one through six are drawn around the at-large Council members' homes) (on file with *The Scholar: St. Mary's Law Review on Race and Social Justice*). *See* General Election Sample Ballot, District 1, Cibolo, Tex., Nov. 5, 2013 (illustrating that District 1 voters were prevented from voting to recall three of the four recall candidates by their omission from the ballot) (on file with *The Scholar: St. Mary's Law Review on Race and Social Justice*); General Election Sample Ballot, District 4, Cibolo, Tex., Nov. 5, 2013 (illustrating that District 4 voters were prevented from voting to recall three of the four recall candidates by their omission from the ballot) (on file with *The Scholar: St. Mary's Law Review on Race and Social Justice*); General Election Sample Ballot, District 5, Cibolo, Tex., Nov. 5, 2013 (illustrating that District 5 voters were prevented from voting to recall three of the four recall candidates by their omission from the ballot) (on file with *The Scholar: St. Mary's Law Review on Race and Social Justice*); General Election Sample Ballot, District 6, Cibolo, Tex., Nov. 5, 2013 (illustrating that District 6 voters were prevented from voting to recall three of the four recall candidates by their omission from the ballot) (on file with *The Scholar: St. Mary's Law Review on Race and Social Justice*). *See also* Dekunder, *Cibolo council members approve single-member district plan*, *supra* note 124 (reporting that Cibolo single-member district boundaries were drawn such that all current

The names of the remaining council members petitioned for recall were omitted from the voter's electronic or paper ballot so that no votes could be cast.<sup>126</sup>

### E. *Community Response*

The Community response was comprehensive. First, they publicly censured the remaining three council members, Places 2, 3, 7, and the Mayor by submitting valid recall petitions for each to the City Secretary to express voter disapproval.<sup>127</sup> Citizens signed these petitions despite the fact the at-large council positions occupied by these council members would legally dissolve at the conclusion of their terms with the November 2013 elections.<sup>128</sup>

Second, homeowners abutting the proposed Walmart site and their homeowners' association filed suit in Guadalupe County District Court challenging the validity of its declared zoning status.<sup>129</sup> The plaintiffs asserted the city failed to notify them, in accordance with state law, of the

Council members would have their own district—except one, and that the first single-member district election would occur in Nov. 2013).

126. *Id.*

127. See City of Cibolo, Special City Council Minutes, CIBOLOTX.GOV (Oct. 1, 2013, 9:00 AM), <http://www.cibolotx.gov/AgendaCenter/ViewFile/Minutes/10012013-110> (informing the council that, in accordance with the City Charter, each petition was valid with signatures totaling “30% of the number of votes cast at the last General Election or 150 whichever was greater.”).

128. City Council Places 2, 3 and 7 would legally dissolve at this time. Cibolo would, for the first time in its history, elect three single member district representatives to districts designated as Districts 2, 3 and 7 in the November 2013 election. Sitting Council members, except for Place 7, Melvin Hicks, had previously approved single member district boundaries for Cibolo drawn around each Council member's home address and given the Districts in which they resided the same district number as their City Council Place numbers. The official single member district adopted by the sitting Council members actually includes place markers for their houses. Map of Cibolo, Tex., Ordinance 1055 (May 28, 2013) (amending the City Charter to institute a single member district city council system) available at <http://library.municode.com/index.aspx?clientId=14252&stateId=43&stateName=Texas> (on file with *The Scholar: St. Mary's Law Review on Race and Social Justice*); Cibolo, Tex., Ordinance 1053 (Apr. 9, 2013) (adopting a single member voting district map for Cibolo) (on file with *The Scholar: St. Mary's Law Review on Race and Social Justice*); Wright, *Cibolo council members grilled on when they first knew about Walmart*, *supra* note 87, at 5, 9 (reporting that Cibolo voters would vote for Council members in single member districts for the first time in the November 2013 elections).

129. Bentwood Ranch HOA v. City of Cibolo, Cause No.13-1953-CV, (Guadalupe County District Court) available at <http://www.ksat.com/blob/view/-/22268978/data/1/-/4ka1vpz/-/cibolo-lawsuit.pdf> (on file with *The Scholar: St. Mary's Law Review on Race and Social Justice*). See also 2010 Rezoning PowerPoint Presentation, Cibolo, Tex., slide 20, Sept. 16, 2013 (alleging proper public notification of rezoning hearings on proposed Walmart site in Cibolo in the Seguin Gazette newspaper) (on file with *The Scholar: St. Mary's Law Review on Race and Social Justice*).

proposed zoning change of the site to commercial status in September 2010.<sup>130</sup> The city claimed the notification requirement was fulfilled by a posting in the *Seguin Gazette*, the local newspaper of the county seat located sixteen miles away from Cibolo.<sup>131</sup> As a result of the latter filing, Walmart was effectively precluded from building until the case was resolved. Plaintiffs sought relief in the form of a declaratory judgment that the September 2010 rezoning ordinance changing the proposed building site to commercial status was null and void.<sup>132</sup> In addition, Plaintiffs sought an injunction and a declaratory judgment that the proposed Walmart superstore did not conform to the requirements of the current commercial status designation of the proposed building site.<sup>133</sup>

Third, the Community pooled its financial resources to challenge the recall voting restrictions by mandamus request to the Texas Fourth Court of Appeals.<sup>134</sup> The group sought a court order compelling the city council to conduct an at-large recall election consistent with the at-large status of the four council members petitioned for recall. The Fourth Court denied the request advising only that the plaintiff representing recall voters<sup>135</sup> was “not entitled to the relief sought” without further explanation.<sup>136</sup> The lack of explanation in the court response had a chilling effect on the Community’s willingness to commit more of their limited financial resources to the pursuit of their voting rights in an appeal.

130. See TEX. LOC. GOV'T CODE ANN. § 211.006(a) (West 2008) (stating “[a] regulation or boundary is not effective until after a public hearing on the matter at which parties in interest and citizens have an opportunity to be heard. Before the 15th day before the date of the hearing, notice of the time and place of the hearing must be published in an official newspaper or a newspaper of general circulation in the municipality.”).

131. See 2010 Rezoning PowerPoint Presentation, Cibolo, Tex., slide 20, Sep. 16, 2013 (alleging proper public notification of rezoning hearings on proposed Walmart site in Cibolo in the *Seguin Gazette* newspaper) (on file with The Scholar: *St. Mary's Law Review on Race and Social Justice*). See generally City of Cibolo, Special City Council Minutes, CIBOLOTX.GOV (Sept. 16, 2013, 5:00 PM), <http://www.cibolotx.gov/AgendaCenter/ViewFile/Minutes/09162013-105> (discussing “the city procedures and conduct relating to the zoning of Sept. 2010 of properties”).

132. See *Bentwood Ranch HOA v. City of Cibolo*, Cause No.13-1953-CV, (Guadalupe County District Court) available at <http://www.ksat.com/blob/view/-/22268978/data/1/-/4ka1vpz/-/cibolo-lawsuit.pdf> (on file with The Scholar: *St. Mary's Law Review on Race and Social Justice*).

133. *Id.* at 6-8.

134. Financial Pledge Certificates from the Community (on file with Author); *In re Larkins*, No. 04-13-00711-CV, 2013 WL 5763294 (Tex. App.—San Antonio Oct. 23, 2013) (mem. op., not designated for publication) (per curiam) (noting that the petition was filed “with respect to a scheduled recall election in the City of Cibolo, Texas” and identifying the Mayor and City Council Members of Cibolo as respondents).

135. Author was the representing plaintiff.

136. *In re Larkins*, No. 04-13-00711-CV, 2013 WL 5763294 (Tex. App.—San Antonio Oct. 23, 2013) (mem. op., not designated for publication) (per curiam).

As a result, the city council followed through on its plan to prevent Cibolo voters from voting at-large in the recall elections of the at-large city council members.<sup>137</sup>

Fourth, the community successfully petitioned for a third initiative to be voted into law or placed on a May 2014 election ballot: The *Child Safety Traffic Ordinance*.<sup>138</sup> This initiative was designed to partially mitigate danger to school children, one of the most vulnerable segments of the population, from the expected increase in the volume and duration of

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137. Based on City Council Ordinance 1065, electronic voting machines were programmed so that only voters who lived in one of the single member districts drawn around the recall candidates' home addresses could vote in recall elections and only *for* or *against* that one recall candidate. Those not living in any of the specified districts had no option on the electronic or paper ballot to vote *for* or *against* any of the recall candidates. The council implemented these voting restrictions despite the fact that every recall candidate was elected at-large to at-large council positions, were petitioned by voters for recall at-large, and if they survived the recall elections would continue to serve in at-large until the expiration of their terms in November 2014 in accordance with the City Charter. Cibolo, Tex., Ordinance 1065, Section Two (Aug. 22, 2013) (ordering the recall election of four Cibolo Council members on Nov. 5, 2013, declaring them to be "District" representatives, and declaring that only voters who live in each Council members' "district" will be allowed to vote for his or her recall) (on file with *The Scholar: St. Mary's Law Review on Race and Social Justice*). See also General Election Sample Ballot, District 1, Cibolo, Tex., Nov. 5, 2013 (illustrating that District 1 voters were prevented from voting to recall three of the four recall candidates by their omission from the ballot) (on file with *The Scholar: St. Mary's Law Review on Race and Social Justice*); General Election Sample Ballot, District 4, Cibolo, Tex., Nov. 5, 2013 (illustrating that District 4 voters were prevented from voting to recall three of the four recall candidates by their omission from the ballot) (on file with *The Scholar: St. Mary's Law Review on Race and Social Justice*); General Election Sample Ballot, District 5, Cibolo, Tex., Nov. 5, 2013 (illustrating that District 5 voters were prevented from voting to recall three of the four recall candidates by their omission from the ballot) (on file with *The Scholar: St. Mary's Law Review on Race and Social Justice*); General Election Sample Ballot, District 6, Cibolo, Tex., Nov. 5, 2013 (illustrating that District 6 voters were prevented from voting to recall three of the four recall candidates by their omission from the ballot) (on file with *The Scholar: St. Mary's Law Review on Race and Social Justice*). See also Cibolo, Tex., Ordinance 1053 (Apr. 9, 2013) (adopting a single member voting district map for Cibolo with seven districts, which includes a legend identifying current at-large Council members' homes, and illustrating that the boundaries of districts one through six are drawn around the Council members' homes—including the homes of the November 2013 recall candidates) (on file with *The Scholar: St. Mary's Law Review on Race and Social Justice*). See also Dekunder, *Cibolo council members approve single-member district plan*, *supra* note 124 (reporting that Cibolo single-member district boundaries were drawn such that all current Council members would have their own district-except one, and that the first single-member district election would occur in Nov. 2013).

138. City of Cibolo, *City Council Meeting Minutes*, CIBOLOTX.GOV (Nov. 14, 2013 7:00 PM), <http://www.cibolotx.gov/AgendaCenter/ViewFile/Minutes/11142013-124> (presenting the validated Child Safety Traffic Ordinance petition to the City Council).

neighborhood traffic due to the presence of a big box retailer.<sup>139</sup> The key provisions of this initiative read:

It shall be unlawful for any person, persons, or business entity to operate a discount club, discount store, or discount superstore at a distance equal to or less than one thousand (1000) feet of any one of the following; a public or private elementary school, a public or private middle school, a public or private junior high school, a public or private high school, a residential subdivision of twenty-five (25) or more dwelling units, or an apartment or condominium complex of twenty-five (25) or more dwelling units.

The measurement of the 1000 feet minimum distance shall be measured from the two closest points of the property lines in a straight line (point-to-point) regardless of intervening structures, roads, or other topographical features.<sup>140</sup>

For the purpose of enforcement, the petitioned initiative defines a “discount store” as:

[A] store with off-street parking that; offers a variety of customer services, multiple checkout lanes, a wide range of products such as clothing, furniture, office supplies, electronics, and food; operates thirteen (13) hours per day or more and is open to operate on at least (6) days of the week; and exceeds ninety-thousand (90,000) square feet of sales floor area. A discount store may operate exclusively from an independent business site or in conjunction with a related or unrelated garden center, gas station, or auto service station. Discount stores may also be found on separate land parcels within a retail complex with their own dedicated parking.<sup>141</sup>

A “discount superstore,” the category in which most Walmart supercenters tend to fall is distinguished by definition as:

[A] store with the same characteristics of a “discount store” described above which also contains a grocery department under the same roof that shares entrances and exits with the discount store area. Discount superstores exceed ninety-thousand (90,000) square feet of sales floor area and devote at least five percent (5%) of the sales floor area to the grocery department or nontaxable merchandise.<sup>142</sup>

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139. PAMELA JARNAGAN & WILLIAM VOGEL, CITIZENS’ INITIATIVE FOR A CHILD SAFETY TRAFFIC ORDINANCE (Oct. 2013) (on file with *The Scholar: St. Mary’s Law Review on Race and Social Justice*).

140. *Id.*

141. *Id.*

142. *Id.*

The ordinance would create a buffer zone around schools and neighborhoods where the greatest concentrations of children are logically to be found. Neighborhood parents were highly interested in this initiative because the proposed Walmart site sat at the traffic hub of four neighborhood schools<sup>143</sup> to which children walked and rode bicycles. Additionally, the three remaining schools in the area were situated less than one mile from the proposed building site.<sup>144</sup> The *Child Safety Traffic Ordinance* petition was presented to the City Secretary on November 5, 2013, Election Day, and validated on November 14, 2013, at the first city council meeting after the election and recall vote.<sup>145</sup>

#### F. Phase III: Voting

The November 2013 election and recall results were a huge victory for the citizens of Cibolo.<sup>146</sup> Five of the eight council members, including the Mayor, were removed by recall or replaced by election.<sup>147</sup> Additionally, the citizens' initiative to prohibit the sale of alcohol within 300 feet of a

143. See Schertz-Cibolo-Universal City Indep. Sch. Dist., <http://www.scuc.txed.net/aboutus.cfm?subpage=202> (last visited Sept. 29, 2014) (providing specific on the location of O.G. Wiederstein Elementary School, Barbara C. Jordan Intermediate School, J. Frank Dobie Junior High School, and Byron P. Steele II High School).

144. The significance of the one mile distance to parents is that children are not authorized to ride the bus to school if they live within one mile of the school. Consequently, parents unable to accompany their child(ren) feared the greater exposure to the shopping and delivery traffic from big box store operations so close to schools and neighborhoods. See City of Cibolo, Minutes of City Council Meeting, [CIBOLOTX.GOV](http://www.cibolotx.gov/AgendaCenter/ViewFile/Minutes/07092013-69) (Jul. 9, 2013, 7:00 PM), <http://www.cibolotx.gov/AgendaCenter/ViewFile/Minutes/07092013-69> (illustrating citizen opposition to proposed Walmart Site); see also Dekunder, *supra* note 80 (illustrating the concerns of the citizens of Cibolo in regards to the placement of the Walmart); see also Dekunder, *supra* note 25 (reporting community concern that the proposed Walmart location was across the street from Wiederstein Elementary School).

145. See City of Cibolo, *supra* note 138 (presenting the validated Child Safety Traffic Ordinance petition to the City Council).

146. See Wright, *supra* note 76 (reporting that voters may have "altered the course of the city" after recalling two Council members and ousting two more in the Nov. 2013 elections) (on file with *The Scholar: St. Mary's Law Review on Race and Social Justice*); Dekunder, *supra* note 76 (reporting that four Council members were removed from office during the Nov. 2013 election and the citizens' initiative to prohibit alcohol sales within 300 feet of a school passed with 63% of the vote), <http://www.mysanantonio.com/news/politics/article/Early-results-show-recall-of-two-Cibolo-council-4958743.php>.

147. Dekunder, *supra* note 76 (reporting that four Council members were removed from office during the Nov. 2013 election and the citizens' initiative to prohibit alcohol sales within 300 feet of a school passed with 63% of the vote) <http://www.mysanantonio.com/news/politics/article/Early-results-show-recall-of-two-Cibolo-council-4958743.php>. See also Wright, *supra* note 76 (reporting that voters may have "altered the course of the city" after recalling two Council members and ousting two more in the Nov. 2013 elections) (on file with *The Scholar: St. Mary's Law Review on Race and Social Justice*).

church or school passed with 63% of the votes.<sup>148</sup> Citizens also rejected the city council's Charter Amendment proposition to enable council members to repeal all citizens' initiative ordinances by a two-thirds vote.<sup>149</sup> Further, Cibolo had a record turnout of voters for the election with over 2,000 ballots cast.<sup>150</sup> Only 332 ballots were cast in the previous Cibolo general election in May 2012.<sup>151</sup>

The Council restrictions on recall voting were effective in suppressing the number of recall votes cast.<sup>152</sup> A total of 1,857 voters cast ballots in the at-large Cibolo mayoral race in November 2013.<sup>153</sup> However, no more than 360 total votes were cast in any one of the four recall elections of the at-large council members—a recall voter suppression rate of 80.6%.<sup>154</sup> Two council members survived the recall.<sup>155</sup> Council Member

148. City of Cibolo, *Unofficial Election Day & Early Voting Results*, *supra* note 121 (reporting the number of "cards" cast as 2016 which represented 8.93% of the registered voters).

149. *Compare* General Election Sample Ballot, District 3, Cibolo, Tex., Nov. 5, 2013 (illustrating the text of Proposition 19 as "The amendment of the City Charter creating a process whereby City Council may repeal or amend ordinances adopted by popular vote after two years and then only upon a two-thirds vote by City Council") (on file with *The Scholar: St. Mary's Law Review on Race and Social Justice*) with City of Cibolo, *Unofficial Election Day & Early Voting Results*, *supra* note 121 (reporting Proposition 19 was rejected by voters).

150. City of Cibolo, *Unofficial Election Day & Early Voting Results*, *supra* note 121 (recording the number of "cards" cast as 2016 which represented 8.93% of the registered voters).

151. Official Results, Gen. Elec. Cibolo, Tex., (May 12, 2012) (on file with *The Scholar: St. Mary's Law Review on Race and Social Justice*).

152. Voter suppression is "any behavior intended to deter an eligible voter from casting a ballot" including "disinformation," and "challenging someone's right to vote." Brian Freeman, et al., Rockefeller Ctr. at Dartmouth College, *Voter Suppression: New Hampshire's Response to a National Problem* 1 (2009), <http://rockefeller.dartmouth.edu/shop/PRS%20Policy%20Brief%200809-02.pdf>. In the Cibolo case, the at-large elected Council members subject to recall declared the at-large voting public that elected them to office to be ineligible to vote at-large in their recall elections in an official city ordinance. The ordinance was based on the disinformation that the recall candidates were sitting single member district representatives when in fact they were all elected to at-large City Council place numbers in May of 2012. *Compare* Cibolo, Tex. Ordinance 1065, Section Two (Aug. 22, 2013) (ordering the recall election of four Cibolo Council members on Nov. 5, 2013, declaring them to be "District" representatives, and declaring that only voters who live in each Council member's "district" will be allowed to vote for his or her recall from office) (on file with *The Scholar: St. Mary's Law Review on Race and Social Justice*) with Official Results, Gen. Elec. Cibolo, Tex., (May 12, 2012) (illustrating that Council members subject to recall in Nov 2013 were elected at-large City Council *place* positions) (on file with *The Scholar: St. Mary's Law Review on Race and Social Justice*).

153. City of Cibolo, *Unofficial Election Day & Early Voting Results*, *supra* note 121 (reporting the results of Cibolo's Mayoral, Council member, and recall elections in November 2013—including vote tallies for each election and recall).

154. *See Id.* (1857—360) / 1857 X 100 = 80.6%.



Ron Pedde, who was elected unopposed to at-large Place 1 in May 2012<sup>156</sup> and then petitioned for recall at-large in July 2013, survived recall by one vote.<sup>157</sup> Council Member Larry Carlton, elected unopposed to at-large Place 5 in May 2012<sup>158</sup> and petitioned for recall at-large in July 2013 survived recall by just twenty-four votes.<sup>159</sup> Using the 63% voter approval of the citizens' initiative to prohibit the sale of alcohol next to a church or school as a bellwether of voter sentiment for recalling council members, both Pedde<sup>160</sup> and Carlton<sup>161</sup> would have been recalled had the recall elections been held at-large.

The City Charter rule for filling vacant council seats due to recall elections required the remaining council members to fill the vacancies by a three quarters majority vote.<sup>162</sup> Consequently, the election and recall survival of the three voting council members supporting Walmart, including Pedde and Carlton, made it unworkable to replace the recalled council members with more community advocates. Nevertheless, citizens

155. *Id.* (reporting the results of Cibolo's Mayoral, Council member, and recall elections in November 2013—including vote tallies for each election and recall).

156. Official Results, Gen. Elec. Cibolo, Tex., (May 12, 2012) (on file with *The Scholar: St. Mary's Law Review on Race and Social Justice*).

157. City of Cibolo, *Unofficial Election Day & Early Voting Results*, *supra* note 121 (reporting the number of "cards" cast as 2016 which represented 8.93% of the registered voters). <http://www.ksat.com/content/pns/ksat/news/2013/11/06/voters-in-cibolo-recall-two-council-members.html>. (on file with *The Scholar: St. Mary's Law Review on Race and Social Justice*). *Id.*

158. Official Results, Gen. Elec. Cibolo, Tex., (May 12, 2012) (on file with *The Scholar: St. Mary's Law Review on Race and Social Justice*).

159. See Tim Gerber, *Voters in Cibolo recall two Council members*, KSAT12 (June 07, 2014, 12:47 PM), (reporting that recall candidate Ron Pedde survived recall by one vote and recall candidate Larry Carlton survived by 24 votes) <http://www.ksat.com/content/pns/ksat/news/2013/11/06/voters-in-cibolo-recall-two-council-members.html> (on file with *The Scholar: St. Mary's Law Review on Race and Social Justice*). *Id.*

160. Total ballots cast (2,016) minus ballots cast in Pedde's recall (151) equals 1,865 times passage rate of alcohol initiative (62.87%) equals 1,173 estimated at-large ballots cast to recall Pedde plus the number of actual single member district ballots cast to recall Pedde (75) equals 1,248 total estimated at-large votes for recall of Pedde, with total a ballots cast 2016 minus 1,248 equals 768 total estimated votes against recall of Pedde.

161. Total ballots cast (2,016) minus ballots cast in Carlton's recall (360) equals 1,656 times passage rate of alcohol initiative (62.87%) equals 1,041 estimated at-large ballots cast to recall Carlton plus the number of actual single member district ballots cast to recall Carlton (168) equals 1,209 total estimated at-large votes for recall of Carlton, with total a ballots cast 2016 minus 1,209 equals 807 total estimated votes against recall of Carlton.

162. A vacancy in the City Council, other than that of the Mayor, shall be filled within thirty (30) days of the occurrence of the vacancy by a three quarters (3/4) majority vote of the remaining Council Members by selection of a person qualified for the position, as described in this Charter. This appointee shall serve until the next general or special election, as determined by the City Council at the time of the appointment. CIBOLO, TEX., ORDINANCES Part 1 art. III § 5 (2014).

passed their own law to regulate the sale of alcohol in the vicinity of their schools and churches without support of their city council. Additionally, Walmart was precluded from building next to the elementary school until the homeowners' zoning lawsuit against the city was resolved in court. More significantly, the citizens demonstrated their resolve to participate in their city government and their ability to remove city council members who are unresponsive to the needs and concerns of the residential community—the ability to *eliminate* and *regulate* from the ballot box.

#### IV. LESSONS FROM THE FRONT

Some very important lessons can be derived from the ground truth of the Cibolo Community's experience. To the degree these lessons result in favorable outcomes for other embattled communities, they may serve as strategic and operational doctrine for countering a Walmart invasion of any small town or neighborhood.

##### A. *Lesson One: Recognize*

When Walmart attempts to establish a superstore at an undesired neighborhood location, residents of the targeted community must immediately recognize that their community is under attack. The adversary is a \$483-billion-a-year, multinational corporation with seemingly unlimited financial, physical, and personnel resources to crush any community opposition in the press, at city hall, or in the courts.<sup>163</sup> Without recognizing it as an attack, a conscious community decision to fight or make way cannot be undertaken, and the community response will lack the required vigor and sustainability to successfully repel the attack. You cannot win a battle if you do not know you are in one.

##### B. *Lesson Two: Decide*

When a community comes under such an attack, it must make a deliberate decision to fight or make way. Time is of the essence, and the decision must be made quickly. The decision must also include at least a general knowledge of the level of effort, resources, and commitment required to achieve success. In general, citizens should expect to hire a lawyer, expect to go to court, and expect to conduct education and orga-

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163. *Compare Wal-Mart Stores Inc. (WMT): Competitors*, *supra* note 1 (highlighting that Walmart's gross revenue during 2013 was over \$480 billion dollars), *with* CITY OF CIBOLO, TEX., PROPOSED FISCAL YEAR 2013–2014 BUDGET 3 (July 17, 2013), <http://www.cibolotx.gov/DocumentCenter/View/367> (stating that the proposed fiscal budget for the city of Cibolo was \$18,959,635). When comparing Walmart's approximately \$480 billion in revenue with Cibolo's total proposed budget of \$18,959,635 in 2013, it is clear which party has the clear economic advantage. *Id.*

nizational activities to move Walmart for at least two years or two Local Government election cycles—whichever comes first. The frequency and intensity of organizational activities will vary with surges and lulls throughout the period. Understanding in advance what is physically, mentally, and financially involved in neighborhood defense will help ensure that the community's will to *sustain* the fight is just as strong as its initial emotional *impulse* to fight.

### C. *Lesson Three: Unified Action*

Residents of Walmart targeted communities must make time to defend their neighborhoods after work and on the weekends without compensation. On the other hand, Walmart and supporting Local Governments are standing organizations. They have paid staff, budgets, offices, and meeting rooms at their disposal to plan and legally execute the invasion of targeted neighborhoods while the neighborhood residents themselves are at work. To overcome these financial, logistic, and organizational disadvantages, communities must maximize the results gained from the few after-work and weekend hours they have to mount a defense with focused, coordinated, and deliberate action. Random or individual actions lack any real potential to change circumstances. Therefore, the entire community must act in unison on a finite number of specific tasks, rather than independently on random acts of protest. In this way, one signature becomes 500 signatures, one email becomes 500 emails, one phone call becomes 500 phone calls, and a \$10-dollar contribution becomes a \$5,000-dollar contribution at the specific time and place they are needed to make a difference. These are the battle tools of your neighborhood defense. They must be aimed in the same direction and fired in coordination for a specific purpose. Individuals acting alone will dissipate their limited time, energy, and money without achieving the desired effects. Consequently, their will to fight (i.e., go to meetings, write emails, make phone calls, collect petition signatures, contribute to the legal fund, etc.) will be overcome by a sense of isolation and powerlessness. Unified action in support of a deliberate plan is essential to sustaining the neighborhood defense effort over the course of the election and litigation process.<sup>164</sup>

### D. *Lesson Four: It's Not About Walmart!*

The combination of Walmart's massive financial and physical resources and the land-use regulatory authority of Local Government can easily

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164. In the Cibolo Case, citizens removed seven of eight City Council members in just sixteen months—July 1, 2013 through the elections of November 2014. Unity of action was the key element in sustaining each citizen's attention and energy over the period through two election cycles.

blind targeted communities to any possibility of victory. However, David was not blinded when he saw the size of Goliath. He saw Goliath's center of gravity<sup>165</sup> and he pushed.<sup>166</sup> Every significant milestone achieved in the Community's battle for neighborhood self-determination will be achieved by focused, coordinated, deliberate action culminating in a push directed at a center of gravity. Therefore, it is imperative that the Community focus its neighborhood defense effort on Walmart's center of gravity—not Walmart. Reiterating the words of Colonel Warden, "[T]he most important responsibility of a commander [community advocate] is to identify correctly and strike appropriately [adversary] centers of gravity."<sup>167</sup> Legal Intelligence has revealed the one center of gravity common to both Walmart and the Community—Local Government and its 84.6% success rate in defending its position in Walmart related zoning disputes in court. *It's not about Walmart!*

#### E. *Lesson Five: Strike Appropriately*

Communities fighting to protect the health, safety, and welfare, of their neighborhoods from the threat of Walmart superstore encroachment must take action. Not just any action will do. Communities must take the legally *appropriate* action necessary to deny the retail giant the legal right to build at the inappropriate location or to regulate its operation in order to mitigate specific Community concerns. The vast majority of Walmart success in overcoming Community legal opposition has come with Local Government support. Therefore, appropriate Community action must center on persuading Local Government to support the Community rather than Walmart. Recalls and citizen initiatives are powerful tools that enable a Community to exercise its authority over an unresponsive Local Government. Communities that choose to fight should look first to these two solutions to maximize their chances of victory.

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165. See generally 1 Samuel 17 (New International Version), available at <http://www.biblica.com/bibles/chapter/?verse=1+Samuel+17&version=niv> (illustrating that even a giant can fall when the "center of gravity" is affected) The "center of gravity" of Goliath was the giant's head. This is illustrated in 1 Samuel 17 when, once Goliath was struck, he fell. *Id.*

166. See WARDEN, *supra* note 67, at 7 (describing "center of gravity" as the point on an object where a push "[w]ill accomplish more than the same level of effort could accomplish if applied elsewhere"); see also 1 Samuel 17 (New International Version), available at <http://www.biblica.com/bibles/chapter/?verse=1+Samuel+17&version=niv> (recounting the story of David and Goliath when David defeated Goliath by striking him in the head with a shot from his sling).

167. See WARDEN, *supra* note 67, at 7 (illustrating that an important part of defeating an enemy is to identify their "centers of gravity" and striking at them).

## V. CONCLUSION

Walmart is a global retail war machine speeding at a pace of 1.5 new stores per day and powered by \$483 billion in annual revenues, a structural base of over 11,000 retail outposts worldwide, and a global staff of 2.2 million. As its retail empire continues to grow, and its competitors' to contract, it will increasingly challenge the ability of small towns and communities to determine their own economic destinies and the character of their neighborhoods. Despite these vast economic resources, legal intelligence informs us that Walmart retail invasions can be regulated, and even defeated, by small towns and neighborhoods.

Communities across America have fought Walmart encroachment for over a decade. In most cases, successful opponents had the support of Local Government or took the battle for neighborhood self-determination to court. Without Local Government support, legal action, alone, to counter the invasion is likely to fall short. To increase the probability of success, legal action should be integrated into a comprehensive neighborhood defense plan guided by legal intelligence.

Legal intelligence informs us that, at the local level, Walmart's success depends on co-opting Local Government officials into its expansion plans regardless of Community opposition. This divide and conquer strategy is necessitated by the extreme deference courts give Local Governments in the development, interpretation, and application of their zoning laws, regulations, and ordinances.<sup>168</sup> Rational basis scrutiny (the least strict) is the standard by which courts measure Local Government zoning decisions for constitutionality.<sup>169</sup> Analysis of Walmart-specific zoning cases reveals an 84.6% victory rate in court for Local Government versus 22.2% for Walmart without Local Government support. This fact highlights Local Government as the center of gravity in Walmart's quest for local retail dominance in every neighborhood market in America. Consequently, when confronted with an unresponsive Local Government—acting as a political and legal blocking force for Walmart—community action to repel the attack must center on Local Government.

The Cibolo case illustrates this truism in action. In their campaign to preserve the quality and character of their neighborhoods from Walmart encroachment, citizens submitted eight validated recall petitions, three validated citizens' initiatives, and replaced five of eight city council posi-

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168. See 12B TEX. JUR. 3d *Constitutional Law* § 311 (2012) (citations omitted) (noting that “[e]conomic regulations, including zoning decisions, have traditionally been afforded only rational relation scrutiny under the Equal Protection Clause”).

169. See *id.* (explaining that for a law to be upheld under the rational basis test, in an equal protection challenge, it only requires a government showing of a legitimate government interest).

tions in one election cycle. Additionally, citizens passed, by direct election, a citizens' initiative ordinance prohibiting the sale of alcohol within 300 feet of a church or school, both adjacent to the proposed Walmart site, over the objections of the sitting city council. Precise application of legal intelligence principles in developing and executing their neighborhood defense plan enabled voters to reassert citizen authority over the unresponsive city council. Extraordinarily, the Cibolo community accomplished these feats in just four months and five days.<sup>170</sup>

Ultimately, the Homeowners Association, the city, and Walmart settled their zoning lawsuit on July 1, 2014—one year to the day of the town hall meeting announcing Walmart's intent to build in Cibolo.<sup>171</sup> The Community, having demonstrated its ability to legislate directly from the ballot box, resolved to *regulate* neighborhood concerns arising from the store location rather than continue pursuing its *elimination* from the site in court.

Support of Local Government officials *before* public announcement of a development site is the legally critical element in Walmart's neighborhood expansion plans when community opposition is anticipated. This LEGINT puts small towns and communities nationwide on notice. How can communities reduce the likelihood of their elected leaders and zoning officials being co-opted, wittingly or unwittingly, into Walmart development plans opposed by Community residents? This is the question that every small town and neighborhood in America must ask itself because Walmart *is* coming. At an average pace of 550 new stores per year, it will eventually get to your neighborhood—if it is not already there. One important thing citizens can do is to establish a professional, on-going relationship with local elected officials. By doing so, they can articulate community interests and establish clear expectations on neighborhood and development issues before their community is targeted. If this ounce of prevention fails to secure the support of your local elected officials when a Walmart superstore comes too close to your neighborhood, you now have a defense plan to help your community eliminate it or regulate it based on legal intelligence. However, to maximize the opportunities

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170. The time period between the first town hall meeting publicly announcing Walmart's intent to build across the street from Wiederstein Elementary School, July 1, 2013, and election day, November 5, 2013. Only ten days were required to gather sufficient signatures to force the recall elections, July 10–19, 2013, which laid the foundation for the subsequent actions.

171. David DeKunder, *Cibolo residents drop lawsuit against city over Walmart zoning*, MYSANANTONIO.COM (last updated July 10, 2014 12:29 AM) <http://www.mysanantonio.com/news/local/communities/northeast/article/Cibolo-residents-drop-lawsuit-against-city-over-5605024.php> (reporting that parties to the lawsuit settled on July 1, 2014 and agreed not to seek legal fees from each other).

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and probability of success provided by the plan, the community must first recognize it is under attack, make a deliberate decision to fight, and strike *appropriately*.

APPENDIX: COLLECTED CASES

Case #	Case Citation	C=Community G=Local Government, W=Walmart				
		Community wins in court	Local Gov't wins in court	Walmart wins in court	Plaintiff	Defendant
1	Lawrence v. Jones, 18 P.3d 1245 [Ct. App. 2001]	1	1		W	GC
2	Wal-Mart Stores v. City of Cent. Points, 144 P.3d 914 [Or. 2006]	1	1		W	GC
3	Franklin v. Deschutes Cnty., 911 P.2d 339 [Or.App. 1996]	1			C	GW
4	Speakman v. City of Cullman, 829 So.2d 176, 146 Civ.App. 2002]	1			C	GW
5	Holland v. City Council of Decorah, 662 N.W.2d 681 [Iowa 2003]	1			C	GW
6	Citizens for Responsible v. Windsor TP., 917, A.2d 918 [Pa.Cmw[th. 2007]	1			C	GW
7	Greenbrier Hills, Inc. v. Boes, 473 N.E.2d 1040 [Ind. Ct. App. 1985]		1	1	C	GW
8	Faulhaber v. Twp. Comm. of Twp. of Howell, 643 A.2d 52 [N.J. Super. Ct. 1994]		1	1	C	GW
9	Melton v. City of Cottage Grove, 887 P.2d 359 [131 Or. App. 626]		1	1	C	GW
10	Kelley v. Walmart Stores, Inc., 658 A.2d 1077 [Me. 1995]		1	1	C	GW
11	Blanchard v. Show Low Planning, 993 P.2d 1078 [Ariz.App. Div. 1 1999]		1	1	C	GW
12	Hause v. City of Tuscon, 19 P.3d 640 [Ariz.App. Div. 2 2001]		1	1	C	GW
13	West Bluff v. City of Albuquerque, 50 P.3d 182 [N.M.App. 2002]		1	1	C	GW
14	Nickerson v. Zoning Bd. of App. of Raynham, 761 N.E.2d 544 [Mass.App.Ct. 2002]		1	1	C	GW
15	Oates v. Vill. of Watkins Glen, 736 N.Y.S.2d 478 [2002]		1	1	C	GW
16	Citizens for Smyrna-Clayton First v. Town of Smyrna, 818 A.2d 970 [Del. 2003]		1	1	C	GW
17	Zajac v. City of Casa Grande, 102 P.3d 297 [Ariz. 2004]		1	1	C	GW
18	Batavia First ex rel. Wilkes v. Town of Batavia, 357 N.Y.S.2d 277 [1974]		1	1	C	GW
19	O'Neill v. Town of Middletown, No. 2478-VCN, 2007 WL 2752981 [Del. Ch. Mar. 29, 2007]		1	1	C	GW
20	Card v. Zoning Bd. Of Honolulu, 159 P.3d 143 [Hawaii 2007]		1	1	C	GW
21	Berlin Cross-Keys Residents Against Walmart, Inc. v. Borough of Berlin Land Use Bd., No. A-3713-Q711, 2009 WL 232318 [N.J. Super. Ct. App. Div. Feb. 3, 2009]		1	1	C	GW
22	In re Arnold, 984 A.2d 1, 1 Pa. Commw. Ct. 2009]		1	1	C	GW
23	Lake Cnty. First v. Poison City Council, 218 P.3d 816 [Mont. 2009]		1	1	C	GW
24	Lockport Smart Growth, Inc. v. Town of Lockport, 880 N.Y.S.2d 412 [2009]		1	1	C	GW
25	Residents Against Wal-Mart ex rel. Rice v. Planning Bd. of Town of Greece, 875 N.Y.S.2d 691 [2009]		1	1	C	GW
26	Cortesini v. Hamilton Twp. Planning Bd., 417 N.J. Super. 210 [App. Div. 2010]		1	1	C	GW
27	Siporen v. City of Medford 243 P.3d 776 [Or. 2010]		1	1	C	GW
28	Gibson v. Twp. of Monroe Planning Bd., No. A-3847-0811, 2010 WL 1929590 [N.J. Super. Ct. App. Div. May 14, 2010]		1	1	C	GW
29	Joseph v. N. Whitehall Twp. Bd. of Sup'rs, 16 A.3d 1209 [Pa. Commw. Ct. 2011]		1	1	C	GW
30	Rialto Citizens for Responsible Growth v. City of Rialto, 208 Cal. App. 4th 899 [2012]		1	1	C	GW
31	Stockton Citizens for Sensible Planning v. City of Stockton, 210 Cal. App. 4th 1484 [2012]		1	1	C	GW
32	Wal-Mart Stores Inc. v. Campbell, 656 N.Y.S.2d 536 [1997]		1		W	G
33	Wal-Mart Stores Inc. v. Planning Bd. of Town of N. Elba, 238 A.D.2d 93 [1998]		1		W	G
34	Wal-Mart Stores, Inc. v. City of Turlock, 483 F. Supp. 2d 987 [E.D. Cal. 2006]		1		W	G
35	Wal-Mart Stores East L.P. v. Town of Dave, 977 So.2d 636 [Fla.App. 4 Dist. 2008]		1		W	G
36	DeKalb County v. Wal-Mart Stores, Inc. 604 S.E.2d 162 [Ga. 2004]		1		W	G
37	Hartford-North Bailey Homeowners Ass'n ex rel. Pasztor v. Zoning Bd. of Appeals of Town of Amherst, 63 A.D.3d 1721 [2009]		1	1	C	GW
38	Wal-Mart Stores, Inc. v. Cnty. of Clark, 125 F. Supp. 2d 420 [D. Nev. 1999]			1	W	G
39	Wal-Mart Stores, Inc. v. Clark Cnty., 154 Wash. App. 1022 [2010], as corrected [Apr. 27, 2010]			1	W	GC
	Total Wins	6	33	28		





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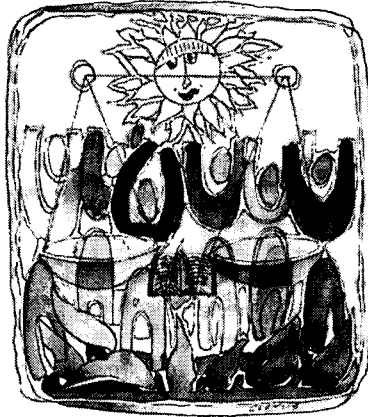
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The goal of *The Scholar* is giving “a voice to the voiceless.” *The Scholar: St. Mary's Law Review on Race and Social Justice* strives to speak to all members of our society about issues of race and social justice: to inform them, to share with them, to educate them, and to grow with them.

Our primary goal is educating ourselves, and in the process, offering some different perspectives not often allowed or sought after in our society. *The Scholar* members will strive diligently and honestly to produce articles offering insights into the daily struggles of those marginalized in society.

We hope and anticipate that Articles published in *The Scholar* will be building blocks upon which a greater understanding of issues facing society is built. Our hope is that these building blocks will form bridges: bridges to bring together all the members in our society, bridges to connect all the groups that comprise our community, bridges to access self-discovery, and an understanding of the “other.”

We hope this law review's work will be transformative; that it will educate, inform, and enlighten those who participate. We wish to create an environment that will allow everyone to learn, to teach, to share, to work together, and to contribute to the legal and educational communities.

Finally, we offer this law review as a sign of hope for a promising future and for better understanding of all of the members within our society.

### **In Appreciation . . .**

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