



## Opponents of Arena Project Foul Out

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On November 20, 2014, the Third District Court of Appeal (Court) handed a partial victory to the City of Sacramento (City), rejecting petitioners' appeal and thereby authorizing the continued construction of the Sacramento Kings arena in downtown Sacramento. In *Saltonstall v. City of Sacramento*, petitioners challenged the City's certification of the arena project Environmental Impact Report (EIR), alleging the approval violated the California Environmental Quality Act (CEQA) and the California Constitution, and sought a preliminary injunction to halt the ongoing construction of the arena project. The trial court denied the preliminary injunction motion and petitioners appealed. The Court affirmed the trial court's ruling, rejecting petitioners' constitutional claims.

The crux of the legal dispute is the validity of Senate Bill 743 (SB 743), signed into law by Governor Brown on September 27, 2013. SB 743, among other things, accelerated the timeline for preparing an EIR for the arena project, required project opponents to proceed to mediation with the City, specified the only basis on which a court could grant an injunction to stop the project, and imposed a non-binding limit on the time in which a court could resolve subsequent litigation against the City. With respect to the standard that has to be met to halt the arena project, Public Resources Code section 21168.6.6 provides that a court may grant an injunction only upon an opponent's showing of imminent threat to public health and safety or unforeseen important historical, archaeological, or ecological values. Public Resources Code section 21168.6.6 directs the Judicial Council to promulgate a rule requiring the courts, "to the extent feasible," resolve any action to set aside the project EIR within 270 days after the City certifies the administrative record for the action.

Petitioners argued that the above statutory limitations on judicial review intrude upon the core function of the courts and violate the separation of powers clause of the California Constitution. The Court rejected petitioners' constitutional arguments. The Court also affirmed the trial court's denial of petitioners' motion for preliminary injunction, finding that petitioners failed to meet the Public Resources Code section 21168.6.6 standard for imminent threat or unforeseen circumstances.

## **The Right to CEQA Review Is Not a Constitutional Right**

The Court began by drawing a distinction between constitutional and statutory rights. The Court observed that although the Legislature cannot abridge a court's discretion to grant injunctive relief to protect a person's constitutional rights, statutory rights may be augmented or diminished by the Legislature without invading upon the court's core functions. The Court noted that the public's rights under CEQA fall into the latter category. The Court also drew a distinction between rights and remedies, stating that the mere fact that the courts may grant various remedies to redress violations of statutory rights, does not transmute statutory rights into immutable constitutional rights.

## **SB 743 Is Constitutional Because It Does Not Invade Upon the Court's Core Function to Say What the Law Is**

The Court held that Public Resources Code section 21168.6.6 passes constitutional muster and is a valid exercise of the Legislature's policymaking functions because it does not truncate the ability of the courts to issue injunctive relief to compel compliance with the law, it does not tell a court how to ultimately decide an action challenging the arena project, and it does not alter the long-standing requirement that a court weigh competing interests when deciding to grant or deny injunctive relief. Relying on the California Supreme Court's decision in *Napa Valley Wine Train, Inc. v. Public Utilities Commission* (1990) 50 Cal.3d 370, the Court stated that it is entirely within the province of the Legislature to define which interests should be weighed or considered against the benefits of the arena project and that the Legislature may prioritize certain development projects above the benefits of environmental review.

## **SB 743 Is Constitutional Because It Does Not Divest the Courts of their Jurisdiction For Failing to Adhere to the Time Frame For Resolving Litigation**

Petitioners also argued that the Public Resources Code section 21168.6.6 270-day limit for resolving CEQA challenges violated separation of powers because mandating such a short time period for judicial review in effect prevents the courts from fulfilling their adjudicatory functions. The Court rejected this argument finding that SB 743 does not impose any penalty on the courts for failing to adhere to the statutory deadlines and, moreover, that the 270-day period was suggestive and not mandatory. Accordingly, the Court held that the aspirational goal of resolving CEQA challenges within 270 days does not materially impair a court's power to adjudicate cases.

The decision establishes that the Legislature may narrow the factors that a court can consider in determining whether to grant equitable relief in CEQA litigation without offending constitutional separation of powers principles. The decision also provides a detailed roadmap for drafters of future legislation seeking to limit judicial review of controversial development projects.