

The Orange County Register

The coast is clear for restoring rights

Thursday, April 7, 2005

The California Supreme Court is considering a groundbreaking case that could determine whether Californians who own property near the coast have anything resembling property rights or whether they will remain subject to the whims of unaccountable officials.

The question is whether the California Coastal Commission, which exerts authority over development decisions from the Mexican to the Oregon border, is unconstitutional because it violates the separation of powers doctrine.

The American system of government clearly distinguishes between legislative branches that make the rules, executive branches that implement the rules and judicial branches that adjudicate the rules.

The founders believed that resting those powers in one body is a recipe for tyranny, and the courts have found that while the Coastal Commission is appointed by the Legislature, it acts like an executive body.

Two lower courts decided the commission was unconstitutional in 2002, and despite a superficial "fix" by the Legislature in 2003, the state's highest court began this week considering the commission's fate.

The case was sparked by the actions of Rodolphe Streichenberger, who tried to build a seawall off the Newport Beach coast that attracted marine life. The commission nixed the plan, and he took the commission to court. Peter Douglas, the commission's executive director, told the Sacramento Bee, in referring to Mr. Streichenberger's marine-planting project: "There is no science to it."

That in a nutshell summarizes the broader problem with the commission. The dictates of a small group of unelected people, most of whom share a strong ideological sense of mission, decide what individuals can do along the coast. The commission can nix virtually any building project, no matter how small.

Many organizations and property owners have filed briefs explaining how their rights have been trampled by the commission, the Bee reported.

One crucial means to limit tyranny is to separate judicial, legislative and executive branches, so that one agency cannot make decisions, enforce decisions and rule on decisions. That's common sense. But the coastal commission functions as an executive agency, with the only semblance of recourse being that the Legislature appoints the majority of commission members.

"The controversy it has engendered is due in no small part to the combination of its extraordinary power and the legislative control over the commission that removes any sense of accountability to the voters for the actions of the committee," wrote the Pacific Legal Foundation in an amicus brief.

The best way to fix the situation, argued the legal foundation's James Burling in a recent Register column, would be for the court to vest the power of approvals along the coast in the hands of the local governments accountable to local people. Next best would be placing a majority of Coastal

Commission appointments in the hands of the governor, who at least could face the wrath of the state's voters.

The commission has its own approval and appeals process, but the commission controls that process. It lacks proper outside oversight.

This isn't about gutting environmental protections but about making decisions in a way that is worthy of a free society rather than an authoritarian, centrally planned one. Mr. Douglas has publicly criticized the courts in the past for promoting property rights. We certainly hope the California Supreme Court gives him more reason to complain.