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Coastal case set to begin

•Coastal Commission decisions could be nixed if state high court agrees with appellate jurists.

By Andrew Edwards, Daily Pilot

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The attorney representing the Newport Beach nonprofit in its battle against the California Coastal Commission said the legal remedy sought by his client would strip away the commission's powers to issue or deny coastal development permits.

"The Coastal Commission cannot be involved in the implication of laws, because it's a legislative commission controlled by the legislature," attorney Ronald Zumbrun said.

Zumbrun is representing Rodolphe Streichenberger's Marine Forests Society, a nonprofit group that filed suit against the Coastal Commission in 2000.

The nonprofit claimed that since eight of the commission's 12 members are appointed by the legislature, the body violates the constitutional principal of separation of powers by enforcing the Coastal Act, an executive function.

Streichenberger won his case, and again was victorious in 2002 when a state appeals court ruled in his favor. Oral arguments before the state Supreme Court are scheduled to begin Wednesday.

If Streichenberger wins again, Zumbrun said the Coastal Commission would be able to issue broad regulations consistent with the Coastal Act but lose its power over individual projects.

Upholding the appellate court's decision could also open the floodgates to future lawsuits.

Zumbrun said if the Supreme Court finds the Coastal Commission did not have proper jurisdiction to make its previous decisions, courts would have to determine whether to allow litigation to reverse previous commission decisions.

"The courts can decide what can be overturned and can't be challenged," Zumbrun said.

However, law professors at Whittier Law School doubted the state's highest court would issue a ruling that could have a sweeping impact on coastal policy.

"I think the Supreme Court will be loathe to uphold the decision in its current form," visiting assistant law professor Kenneth Agran said.

Agran, who primarily studies the federal judiciary, suggested the state Supreme Court could take a middle road by evaluating interactions between the Coastal Commission and the legislature.

The appellate court ruled the commission was unconstitutional on the basis of the body's structure, but Agran said the state Supreme Court may focus on whether legislators can control the commission.

The process for appointing Coastal Commissioners changed after the appellate court sided with the Marine Forests Society. In 2003, Gov. Gray Davis signed a law giving four-year terms to commissioners appointed by the legislature, who previously could have been removed at will.

The law was a welcome reform, Coastal Commissioner Toni Iseman said. Iseman said legislators can try to influence commissioners' decisions but can't fire anyone over their positions.

"The appointing agent can call as many times as they like, but they can't give you the hook," Iseman said.

Newport Beach's Judy Rosener, a former member of the Coastal Commission, said officials would appoint members they expected to agree with but attributed that dynamic to basic politics.

Rosener said she served on the commission from 1973 to 1981 and did not know of any commissioners being removed because legislators disagreed with their actions.

When Assembly Speaker Willie Brown ousted her from the commission, Rosener said she was not given a specific reason why she was told to leave. She also said she never met the legislators who appointed her -- George Moscone and Leo McCarthy.

If the state's highest court finds the Coastal Commission's structure is unconstitutional, the ruling would not necessarily invalidate past decisions, Whittier Law School professor David Treiman said.

"They usually don't do it completely retroactively," he said.

One possibility, Treiman speculated, is that the court could issue what he called a prospective ruling. In this situation, the commission could lose power to make future decisions or be given a grace period during which lawmakers could restructure the body.