

# Los Angeles Times

## High Court Tilts Toward Coastal Panel

**A suit claims the Coastal Commission is subject to political whims and asks that its power be stripped. Newport Harbor case at issue.**

By Maura Dolan, Times Staff Writer  
April 7, 2005

The California Supreme Court appeared unlikely Wednesday to force a major overhaul of the California Coastal Commission or a reconsideration of its permit denials over the last 30 years.

During a televised hearing in Los Angeles, several members of the state high court seemed doubtful of a lawsuit's claims that the makeup of the coastal regulatory agency violates the state Constitution.

When told that the commission should be stripped of its authority to deny permits for coastal development, Chief Justice Ronald M. George asked, "What can they do? Put out pretty brochures?"

Lower courts have ruled that the makeup of the commission violated the state Constitution because the panel performs executive duties, yet most of its members are appointed by the Legislature.

The 3rd District Court of Appeal in Sacramento, in ruling against the commission in 2002, expressed particular concern that the Legislature had the power to replace a commissioner at any time over her or his position on a development question.

In response to that court's ruling, a special session of the Legislature in 2003 voted to give coastal commissioners fixed, four-year terms.

With that change in place and term limits for legislators in Sacramento, coastal commissioners now have more job security than leaders of the Assembly and the Senate, George observed.

Justice Ming W. Chin agreed, saying "the likelihood of mischief is substantially reduced by the term limits of the Legislature."

The case before the court was brought by the Marine Forests Society, which the Coastal Commission ordered in 1999 to dismantle an artificial reef off Newport Harbor in Orange County. The society went to court to save the reef, an experiment for growing mussels and kelp.

In its lawsuit, the group charged that the commission's makeup — eight of its 12 members are appointed by the Legislature — gave the Legislature unrestrained power over the commissioners and violated separation of powers rules in the state Constitution.

If the Legislature had failed to change the commission appointment process in 2003, the Coastal Commission might well have been in trouble, some justices' remarks indicated Wednesday.

Chin noted that the Legislature previously had the power to remove commissioners any time legislators disagreed with their decisions.

"How does that not mean the Legislature is controlling the commission?" Chin asked.

If the court determines that the previous appointment process was unconstitutional, the justices may also decide whether the permits approved or rejected under the old scheme should be reviewed.

George seemed skeptical of reviewing all permit decisions made before 2003, noting that the panel has dealt with more than 100,000 matters over the last 30 years.

The court, however, gave few indications of how a ruling against the former appointment process might affect 20 appeals, including the Marine Forests' challenge, that are pending in the courts.

California voters, worried that development was marring the state's coast and closing it to the public, approved the Coastal Act in a ballot measure in 1972, and the Legislature later established rules for regulating development. Before the Coastal Commission existed, cities and counties decided which coastal properties could be developed.

Since its creation, the commission has been attacked by property-rights activists for interfering with the ability of property owners to do as they wish with their land.

Ronald A. Zumbrun, attorney for the Marine Forests Society, told the state high court Wednesday that the Coastal Commission should be permitted to establish policy but not issue or deny permits.

"The Coastal Commission is subject to political influence," Zumbrun said. "Their decisions are not consistent. They are erratic. They aren't fair."

The speaker of the Assembly selects four members, the Senate Rules Committee appoints four and the governor appoints four.

But Deputy Atty. Gen. Joseph Barbieri, representing the commission, said panel members do not have wide latitude to follow the wishes of the legislators who appoint

them. "They have the Coastal Act to follow," he said. "Their decisions have to be based on evidence."

Justice Joyce L. Kennard noted that most states permit legislatures to make appointments to boards and commissions. She also said she found "reasonable" the argument that the governor's power in California was not impeded by the Legislature's appointments to the Coastal Commission because the governor historically has not controlled coastal development.

The high court has consistently upheld the Legislature's power to make appointments to state bodies, Kennard said.

"So how do you overcome that hurdle?" she asked toward the end of the one-hour hearing. "So far, I don't think you have done that."

After the hearing, Zumbrun said he thought the court would issue a divided decision on whether the makeup of the commission was constitutional. But he said he expected that the Marine Forests Society would win its case because it began before the 2003 changes to the appointment process.

The court is to decide the case within 90 days.