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Coastal Commission Case Heads Toward U.S. Supreme Court

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SAN FRANCISCO The attorney who led the losing legal challenge to the constitutionality of the California Coastal Commission says his client will try to pursue the matter before the U.S. Supreme Court.

Sacramento lawyer Ronald Zumbrun, in a commentary submitted to newspapers Monday, said the California Supreme Court's June 23 vindication of the commission created federal due process and constitutional "takings" issues that could interest the nation's highest court. His client, Zumbrun wrote, plans to seek such a review by a petition for a writ of certiorari.

Zumbrun had hinted at such a move shortly after the California high court ruled.

A staunch proponent of property rights, Zumbrun represents the Marine Forests Society, which wants to create an artificial Marine habitat near Newport Beach where sea life can breed. The nonprofit organization has been experimenting with the construction of an artificial reef system and kelp bed using old tires, plastic pipe and nylon mesh. The commission has tried to stop the project.

In its decision, the high court rejected the society's challenge, which was based on the

membership of the commission.

The organization had argued that the powerful panel was unconstitutionally structured because the Legislature appoints two-thirds of the commission's 12 members.

The nonprofit group's case was considered the most serious legal challenge to the coastal panel in its three decades of existence. The agency regulates development along more than 1,000 miles of the state's shoreline.

But the Supreme Court held that the current plan for legislative appointments, which imposes four-year terms on those members, does not violate the separation of powers doctrine. *Marine Forests Society v. California Coastal Commission*, 36 Cal. 4th 1. State lawmakers acted after the 3rd District Court of Appeal found the previous scheme, allowing legislative appointees to be dismissed at will, unconstitutional.

Zumbrun, in his commentary, said that the Supreme Court "was on new ground, without precedents to support its unconventional conclusions." That, he maintained, created a federal issue, given the fact that the coastal commission was seeking to close down the Marine Forests Society's project.

He also argued that the Supreme Court

wrongfully applied a legal doctrine that was meant to be imposed only when there existed defects in the appointments of public officials. Zumbrun wrote Marine Forests had not challenged the appointment power of the Legislature or the appointment of any particular commissioner, but rather the commission's ability to perform executive and judicial functions given its membership. "If the California Supreme Court's decision is left to stand, that court will have allowed a state agency to take Marine Forests' project without just compensation or due process of law," Zumbrun wrote. "This becomes a federal issue because the California Supreme Court suddenly and arbitrarily changed state law. This action was totally unpredictable in terms of relevant precedents."

In an interview, Zumbrun said the Supreme Court writ would be filed by the end of August.

Christopher Pederson, the coastal commission's supervising staff counsel, declined to comment Tuesday, saying he had not seen Zumbrun's argument.