

Local Agencies Cannot Challenge State Project Approvals on Constitutional Grounds in Federal Court

Cities and other political subdivisions lack standing to mount a constitutional challenge in federal court against an administrative decision by a state agency. *City of San Juan Capistrano v. California Public Utilities Commission*, 937 F.3d 1278 (9th Cir. 2019). The City of San Juan Capistrano sued in federal court to set aside a decision of the California Public Utilities Commission ("CPUC") approving a utility project within the City boundaries. The administrative law judge who presided over the CPUC approval proceeding recommended the project alternative, which was expected to have fewer environmental impacts. The presiding commissioner, however, decided against the project alternative allegedly after attending closed-door "ex parte" meetings with the utility that sponsored the project. The other CPUC commissioners agreed with the presiding commissioner and voted to approve the project rather than the alternative. In its federal court challenge, the City claimed the commissioner's meetings with the utility caused the CPUC to reject the project alternative without the "due consideration" of alternatives required by California environmental law and thus violated the City's due process rights. The Ninth Circuit affirmed the dismissal of the City's lawsuit. The controlling Ninth Circuit precedent—*City of South Lake Tahoe v. California Tahoe Regional Planning Agency*—held that cities and other political subdivisions lacked standing to attack decisions made by state entities for constitutional violations. *South Lake Tahoe*, consistent with decisions of the Supreme Court and other federal circuits, held that such challenges would "interfere with states' internal political organization." The City attempted to distinguish *South Lake Tahoe* and its progeny by asserting that their holdings were limited to facial challenges against state statutes and regulations, not administrative decisions by state agencies. The court disagreed. It observed that *South Lake Tahoe* and later cases did not depend on the nature of the challenged source of state authority; instead, they "relied only on the identity of the parties." Thus, because the CPUC was a state agency, the City lacked standing to assert its due process claim in federal court. Even if the City had standing, the Ninth Circuit found that the due process claim would have been barred by the Eleventh Amendment, which grants sovereign immunity to states. The CPUC, as an "arm of the state," was entitled to immunity. Finally, the court rejected the City's request to amend its complaint to add claims against a CPUC commissioner under *Ex Parte Young*, which allows suits against state officials for violation of federal law. At trial, the City never sought to add the commissioner as a party and hence waived its right to amend the complaint to include the *Ex Parte Young* claim.

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