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### Law Restricting Judicial Review of Thermal Power Plant Licensing Decisions Ruled Unconstitutional

The First District Court of Appeal held that Public Resources Code section 22531 unconstitutionally restricted judicial review of licensing decisions by the Energy Resources Conservation and Development Commission regarding thermal power plants over 50 megawatts. [Communities for a Better Environment v. Energy Resources Conservation and Development Commission](#), No. A157000 (1st Dist. Dec. 8, 2020), [Sect. 22531\(a\)](#)



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Two

nonprofit environmental groups challenged the constitutionality of section 22531. Plaintiffs argued that (1) section 22531(a) unconstitutionally restricted the powers of the superior and appellate courts, and (2) section 22531(b) unconstitutionally restricted a court's ability to review the facts in such challenges. **Section 22531(a)** The court of appeal held that section 22531(a) violated the California Constitution because it impermissibly divested lower courts of jurisdiction. The court relied on caselaw holding that the state Legislature may not divest courts of their original jurisdiction granted under Article VI, section 10 of the California Constitution unless another provision of the Constitution empowers the Legislature to do so. Article VI, section 10 vests original jurisdiction in the Supreme Court, courts of appeal and superior courts in matters involving extraordinary relief, including petitions for mandamus and prohibition. The court rejected the Energy Commission's argument that Article VI, section 10 was ambiguous as to which courts can hear extraordinary writ proceedings such as those concerning Energy Commission decisions. It also declined to consider the legislative history of Article VI, including a failed amendment that would have limited the Legislature's ability to restrict review to the Supreme Court. In addition, the court held that Article XII, section 5 of the Constitution, which gives the Legislature plenary power over the Public Utilities Commission (including the scope of judicial review of PUC decisions), did not authorize section 22531(a) in its current form. The previous version of section

25531(a) made Energy Commission decisions subject to judicial review "in the same manner as" PUC certificate decisions, which were only reviewable by the Supreme Court. The version under review did not equate Energy Commission review with PUC review and covered all Energy Commission licensing decisions, not just ones that required a PUC certificate. Thus, while the prior version of section 25531(a) limited judicial review in matters involving applications by regulated electric utilities that would *also* need PUC approval (of a certificate of public convenience and necessity), the current version allowed licensing decisions involving independent power producers without any additional PUC review. Article XII, section 5 of the Constitution did not authorize this impingement on court jurisdiction. **Section 25531(b)** The court also held that Section 25531(b) violated Article VI, section 1 of the Constitution because it prevented courts from reviewing evidence and effectively conferred judicial power on an administrative agency. Unlike the PUC, the Energy Commission was not created by the Constitution nor was it vested with independent judicial powers. Because section 25531(b) did not allow for the review of the Energy Commission's factual findings by a court, it was unconstitutional.

## **Authors**