

FILED
Superior Court of California
County of Los Angeles

NOV 21 2016 *ph*

Sherri B. Carter, Executive Officer/Clerk
By *P. Horton* Deputy
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IVORY EDUCATION INSTITUTE V. STATE OF CALIFORNIA
BC 602584
November 21, 2016

ORDER ON MOTIONS

On November 30, 2015, plaintiff filed this action seeking to enjoin the implementation of Cal. Fish & Game Code 2022. At the initial Case Management Conference on March 25, 2016, the Court discussed with counsel the issues to be resolved and ordered briefing. On April 22, 2016, the Court granted the unopposed Motion to Intervene filed by the Natural Resources Defense Council, et al.

Following briefing, a second Case Management Conference was held on June 3, 2016. Having heard from the parties, the Court agreed that plaintiff was making only a facial attack on the constitutionality of the statute, that no discovery or trial would be necessary and that the parties would file motions to permit the Court to resolve the constitutional issues.

Thereafter, plaintiff filed its Motion for Summary Judgment ("MSJ"). The State of California and the Intervenors filed their Motions for Judgment on the Pleadings. Argument was heard on November 18, 2016. The Court now rules as set forth herein.

First, there are several procedural issues. As to plaintiff's MSJ, the submission of declarations and exhibits was not proper in making a facial challenge to the statute, and because it was contrary to the parties' agreement at the June 3, 2016 Case Management Conference and the resulting Court Order.¹ Plaintiff also improperly raised legal challenges outside the pleadings which is not proper in an MSJ (or, for that matter, in opposing a motion for judgment on the pleadings). Plaintiff's Separate Statement is also improper because it contains legal arguments and fails to comply with CRC 3.1350(d).²

¹ Even if such evidence was permitted, it was not properly submitted. Plaintiff's declarations and exhibits were not tabbed, in violation of CRC 3.1110(f) and plaintiff's Request For Judicial Notice was also improper. CRC 3.1350)c(5).

² These issues were raised in the opposition papers of the State of California and Intervenors, but plaintiff failed to address them in its reply brief, thereby conceding on these issues. At oral argument, plaintiff's counsel conceded that his papers had several procedural defects.

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On the other hand, the State of California and the Intervenors are correct that the Court may take judicial notice of the legislative history of Assembly Bill 96, enacted as Fish & Game Code 2022.

Turning to the merits, defendant and Intervenors are also correct that the statute passes constitutional muster. The Court has considered, and now rejects, plaintiff's arguments to the contrary. Accordingly, good cause having been shown,

IT IS ORDERED that plaintiff's Motion for Summary Judgment is Denied.

IT IS FURTHER ORDERED that the Motions for Judgment on the Pleadings are Granted.

IT IS FURTHER ORDERED that the State of California shall, by December 23, 2016, serve and lodge [proposed] Findings of Fact and Conclusions of Law.

Notice by the State of California.

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