

Taxpayer and Citizen Suits:



Direct
Promotion
of Public
Purposes

By Stewart D. Jenkins

Californians enjoy more rights to directly correct illegal or unconstitutional government action (or inaction) in court than most Americans. To *restrain or enjoin* a city, county or even state officeholders, Californians may bring a “Taxpayer Suit.” (Don’t be fooled: as will be explained, a taxpayer suit is not actually about taxes.) To *compel or mandate* a government officeholder to *take action* in accordance with the law or constitution, Californians are empowered to bring “Citizen Suits.”

California citizens or taxpayers can bring the suit without necessarily having been the target of illegal government action or inaction. This is because California’s Constitution broadened a citizen’s rights by leaving out any requirement that a “case or controversy” exist before a court can take jurisdiction over an alleged wrong. In federal courts, a plaintiff must have suffered an actual, concrete injury, or be about to suffer an imminent actual injury before bringing suit against the government. But in California:

“Citizen suits may be brought without the necessity of showing a legal or special interest in the result where the issue is one of public right and the object is to procure the enforcement of a public duty. Citizen suits promote the policy of guaranteeing citizens the opportunity to ensure that governmental bodies do not impair or defeat public rights. ...[A] taxpayer suit seeks preventative relief, to restrain an illegal expenditure, while a citizen suit seeks affirmative relief, to compel the performance of a public duty. Where standing appears under either rule, the action may proceed regardless of the label applied by the plaintiff.”

(*Connerly v. State Personnel Bd.* (2001) 92 Cal.App.4th 16, 29, internal citations omitted.)

TAXPAYER SUITS

By statute, California has given the taxpayer broad standing to *stop* illegal government action. Code of Civil Procedure section 526a reads in part: “An action to obtain a judgment, *restraining*

and preventing any illegal expenditure of...funds, or other property of a county, town, city...may be maintained *against any officer thereof, or any agent, or other person, acting in its behalf, either by a citizen resident* therein, or by a corporation, who is assessed for and is liable to pay, or, within one year before..., has paid, a tax therein.” (Emphasis added.)

The short-winded way of explaining this taxpayer authority is that if a resident or corporation has paid any tax within a city, county, or other taxing California jurisdiction, they have the authority to seek an injunction restraining illegal acts being perpetrated by government officials. Any tax payment gives this authority, and the illegal acts need not relate to the tax paid. Here is an easy illustration: in the recent case brought by the SLO Homeless Alliance and three impoverished citizens of the City of San Luis Obispo (in which this writer represented the plaintiffs), the taxes paid by the plaintiffs that were sufficient to give them standing, were gasoline taxes, sales taxes, and city use taxes paid upon registering vehicles. The illegalities alleged, and found by the Superior Court to give the SLO Homeless Alliance a high probability of prevailing were (1) illegal application of an ordinance restricting parking on *public* streets that had been adopted only to apply to *private* property, and (2) severe enforcement methods that impaired the Constitutional privileges and immunities of these poor citizens who were living in their vehicles. Evidence of the latter included multiple declarations recounting police sweeps in which multiple officers frightened schoolchildren, women and men awake by loudly pounding on and rocking their campers or motor homes, even shining flashlights in roof vents, and then issued misdemeanor citations under a zoning ordinance, while telling the vehicle occupants to “get out of town.” Once the City had been enjoined, it settled the case, dismissing all the criminal cases.

CITIZEN SUITS

Unlike a Taxpayer Suit, a Citizen Suit seeks

to *compel action* to comply with the law. A Writ of Mandate can require expending tax money for the public’s benefit under Code of Civil Procedure section 1086. Unlike section 526a, section 1086 does contain language suggesting that the plaintiff must be directly injured, or face potential injury. But, case law gives a citizen a direct interest in having government comply with the Constitution and state law. A government violation of state law or the Constitution infringes that interest even if the citizen bringing suit is not directly harmed. An exception to the actual or potential injury requirement is therefore justified, as the California Supreme court has explained.

“It is true that ordinarily the writ of mandate will be issued only to persons who are ‘beneficially interested.’ [However] this court recognized an exception to the general rule[:] where the question is one of public right and the object of the mandamus is to procure the enforcement of a public duty, the [plaintiff] need not show that he has any legal or special interest in the result, since it is sufficient that he is interested as a citizen in having the laws executed and the duty in question enforced. The exception promotes the policy of guaranteeing citizens the opportunity to ensure that no governmental body impairs or defeats the purpose of legislation establishing a public right. It has often been invoked by California courts.”

(*Green v. Obledo* (1981) 29 Cal.3d 126, 144, internal citations and quotation marks omitted.)

This California Supreme Court opinion has clarified that citizens will have standing to seek court orders, for instance, to compel a city, county or special district to take action to comply with a Constitutional precept or with a preemptive state statute. Recently, the U.S. Supreme Court,

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declining to hear challenges to Proposition 8, acknowledged that California has expanded the rights of citizens *in California Courts* beyond the rights afforded citizens to bring federal court challenges to government action. (*Hollingsworth v. Perry* (2013) 133 S.Ct. 2652.)

A request to compel City funding of compliance with state law was made by the SLO Homeless Alliance citizens in the suit against the City of San Luis Obispo. One cause of action charged that the City had not complied with the California Vehicle Code, which preempts city or county restrictions on parking and city or county regulation of the stopping of vehicles. The City had never posted specific signs as required by the Vehicle Code to give adequate notice of its local "parking" regulation. That is just one of the requirements appearing in the Vehicle Code to prevent cities or counties from restricting use of the public streets and sidewalks. It keeps cities and counties from springing surprise traps and fines on unsuspecting visitors and residents.

Part of the SLO Homeless Alliance settlement required the city to post signage that would have been ordered if a Writ of Mandate had been issued. Approximately 60 large signs at city entrances and on major roadways now give residents and visitors warning of a limited night-time-only parking ordinance, after expert traffic engineers determined the signage would give adequate public notice of the city's unique parking regulation.

AVAILABILITY OF ATTORNEY'S FEES

Californians in Taxpayer and Citizen Suits ask a court to restrain government acting in ways that "impair or defeat" broad public rights or to compel government action to give broad public rights actual effect. When Taxpayers and Citizens do so, they act as Private Attorneys General, eligible when they succeed to ask the court to order government or government officials to pay the taxpayer's or citizen's attorney and expert fees under Code of Civil Procedure section 1021.5. ■

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