Finally, some good news from the courts for advocates of PACE financing for energy efficiency and renewables. Federal Judge Claudia Wilken in the Northern District of California issued a ruling late Friday on the Federal Housing Finance Authority's (FHFA) motion to dismiss a challenge from the Sierra Club, Placer and Sonoma Counties, Palm Desert, and the State of California. These plaintiffs sued the agency over its decision not to underwrite mortgages on residential properties with PACE assessments. Among other findings, Judge Wilken found that the plaintiffs' claims that FHFA violated the Administrative Procedures Act (APA) and the National Environmental Policy Act (NEPA) were valid and can proceed. Although the court allowed the FHFA policy to remain in place, it issued an injunction ordering FHFA to start a notice-and-comment rulemaking procedure under the APA.

As I've described previously, PACE allows local governments to finance efficiency and clean energy upgrades to properties via the sale of bonds, with property owners repaying the local government via property tax assessments. After FHFA effectively halted the residential PACE program by telling Fannie and Freddie, its client entities, to stop underwriting mortgages on PACE-assessed properties, enviros and state and local governments sued on both coasts. Two New York federal courts tossed out the east coast parties by ruling that they did not have standing because they couldn't show that a favorable decision would "redress" the injury.

This decision takes an entirely different tack and affirms Article III standing due to redressability. Unlike her federal counterparts in the east, Judge Wilken acknowledged that FHFA's decision "decimated" residential PACE programs around the country and that:

> "…the financing and benefits previously afforded by PACE programs could be renewed as a result of new information gleaned through the notice and comment and environmental review processes and a resulting change in Defendants' position and related marketplace practices."

Meanwhile, the NEPA claims survive, and given Judge Wilken's favorable language in this decision, it seems likely that she would eventually order FHFA leaders to prepare a full-blown environmental impact statement (EIS) to analyze the impacts of their policy. But with the contrary New York decisions, FHFA has strong grounds to appeal this decision to resolve the split. However, the Tea Party just may ride to the rescue and legislate a fix. Ultimately, such a bipartisan legislative solution would be the best way to end these proceedings and get residential PACE programs back up and running.