The California Chamber of Commerce initiative to rewrite the California Environmental Quality Act (CEQA) has strict limits on judicial review for challenges to agency decisions for projects covered by the initiative. Courts may only hear claims "limited to a public agency's non-compliance with objective existing laws, and the scope of the court's review shall be limited to whether the approval or authorization complies objective existing laws" [sic]. Proposed new Section 21026(b)(1).

There is a question about whether this kind of limitation on judicial review of an administrative agency's decision is consistent with separation of powers principles under the California state constitution. On the one hand, there is caselaw that holds that the legislature cannot prevent judicial review of agency adjudicatory decisions, on the grounds that delegation of adjudicatory, quasi-judicial decisionmaking to agencies is only consistent with separation of powers if judicial review is available as a "check" on agency adjudication. McHugh v. Santa Monica Rent Control Board, 49 Cal.3d 348, 371-374 (1989). Based on this reasoning, a recent case overturned a legislative prohibition on judicial review of fact finding by the California Energy Commission in making power plant siting decisions. *Communities for a Better Environment v. Energy Resources Conservation & Development Commission*, 57 Cal. App.5th 786 (2020).

Many local government land-use regulatory decisions are adjudicatory (such as variances and conditional use permits), particularly those that involve issuance of a permit to a particular project, which is the focus of the initiative. (Important exceptions are rezoning and general plan amendment decisions, which are legislative.) Thus, restricting judicial review of the application of CEQA to these kinds of permitting decisions could run afoul of separation of powers principles under this line of cases.

There is another line of cases, however, that upholds legislative restrictions on the remedies that courts can provide in reviewing agency decisions. An older California Supreme Court case upheld prohibiting the use of mandamus to challenge a state employment agency decision. *Modern Barber Colleges v. California Employment Stabilization Commission*, 31 Cal.2d 720, 724-31 (1948). A recent case followed *Modern Barber Colleges* in upholding state legislation restricting injunctive relief for violations of CEQA. *Saltonstall v. City of Sacramento*, 231 Cal. App. 4th 837 (2014). However, neither of these cases completely precluded judicial review. In *Modern Barber*, alternative mechanisms to ultimately challenge the decision were available to the employer. And in *Saltonstall*, the legislation limited the scope of injunctive

relief, rather than judicial review per se. But the reasoning in both *Modern Barber* and *Saltonstall* could apply more broadly, as the courts reasoned that just as the legislature can change non-constitutional rights, it can likewise change whether those rights can be enforced in court.

There are thus two competing lines of cases. Separate provisions in BACA that limit the granting of injunctions for covered projects (Section 21027(c)) fall more under the scope of the second line of cases and therefore might be on stronger footing. Perhaps one way to reconcile the cases, and think about how these provisions of BACA, if enacted, might fare, is to think about whether the limitations on relief (and partial limitations on judicial review) become so burdensome that they effectively foreclose judicial review at all, and thus violate separation of powers.