

RYAN v. LOS ANGELES COUNTY BOARD OF SUPERVISORS

Case Number: 21STCV38353

Hearing Date: April 8, 2022

FILED
Superior Court of California
County of Los Angeles

APR 14 2022

Sherri R. Carter, Executive Officer/Clerk of Court

By: F. Becerra, Jr., Deputy

ORDER DENYING PETITION FOR WRIT OF MANDATE

Petitioner, Joseph J. Ryan, requests the court issue a writ of mandate precluding Respondent, the Los Angeles County Board of Supervisors (Board), from transferring Peck's Manhattan Beach Tract Block 5, Lots 8 and 9 (Bruce's Beach), to the legal heirs of Charles and Willa Bruce, Intervenor Derrick V. Bruce and Marcus Bruce.

The petition is opposed by both the Board and Intervenor.

The petition is DENIED.

Consistent with the parties' representations concerning matters to be judicially noticed at the trial setting conference, Petitioner's request for judicial notice (RJN) is granted as to: Exhibit H (text Senate Bill 796), Part One in its entirety (entire condemnation court file), Part II Exhibit P, Part II Exhibit I, Part II Exhibit K, Part II Exhibit Q, and Part I Exhibits G through S.¹

The Board's RJN of Exhibits 1 through 11 is granted (both Parts 1 and 2).

The Board's objection to Petitioner's reply papers is overruled.

STATEMENT OF THE CASE

In February 1912, Willa Bruce bought a beach front lot—lot 8 in Block 5 of Peck's Manhattan Beach tract—from Henry Willard in the area that became the City of Manhattan Beach (City).² (Estrada 2/7/22 Decl., ¶¶ 2-3, Exs. 1-2.) On the property, Ms. Bruce and her husband, Charles Bruce, opened and operated a beach resort business catering to Black residents of Los Angeles. (Estrada 2/7/22 Decl., ¶ 4, Ex 3.) In 1916, the Bruces constructed a building on the property that included 30 dressing rooms for bathers, a kitchen and dining room, a parlor for listening to music and dancing, and rooms for let. (Estrada 2/7/22 Decl., ¶¶ 5-8, Exs. 4-7.)

In November 1923, a petition was presented to the Manhattan Beach Board of Trustees asking it to form a park district. The petition sought to condemn the block that included the Bruces'

¹ Petitioner represented the documents he wished to have judicially notice for purpose of the trial on his petition where those referenced in his Opening Brief.

² There is no factual dispute sometime later Ms. Bruce purchased lot 9 in the same block and tract. (See Pet.'s RJN, Part II, Ex. I.)

property (as well as an adjoining block that included the improved properties owned by four other Black property owners in the City) for public park purposes. (Estrada 2/7/22 Decl., ¶ 12, Ex. 11 [November 15, 1923 meeting minutes Manhattan Beach Board of Trustees].)

On February 7, 1924, the Manhattan Beach Board of Trustees unanimously passed an ordinance declaring the City's intent to condemn the land and form a park district. (Estrada 2/7/22 Decl., ¶ 16, Exs. 15.)

In June 1924, the Manhattan Beach Board of Trustees passed Ordinance No. 276, resolving to condemn the property of the Bruces as well as others. (Estrada 2/7/22 Decl., ¶ 19, Ex. 18, 18A [June 19, 1924 meeting minutes Manhattan Beach Board of Trustees].) On October 16, 1924, the trustees passed Ordinance No. 282, condemning the property, and, in November 1924, the City served all 23 owners of the 30 lots in Blocks 5 and 12 of Peck's Manhattan Beach Tract—four of which were owned by Black persons—with a complaint for condemnation. (Estrada 2/7/22 Decl., ¶¶ 54-55, Exs. 53, [October 16, 1924 meeting minutes Manhattan Beach Board of Trustees], 54 [Manhattan Beach Ordinance 282].) In 1929, the court entered a final judgment of condemnation awarding Bruce's Beach to the City. (Estrada 2/7/22 Decl., ¶ 30, Ex. 29 [Final Judgment for City of Manhattan Beach v. Dyer (L.A. Super. Ct. No. 157,573)].)

In 1948, the City transferred Bruce's Beach to the State of California. (Resp.'s 12/9/21 RJN Pt. 1, Ex. 1 at § 1, subd. (g); McLain 2/2/22 Decl., Ex. 9.) In 1956, the City built a park on the land behind the Bruce's Beach resort. (Resp.'s 12/9/21 RJN Pt. 1, Exh. 3 at 2.) In 1995, the State of California transferred the land to the County of Los Angeles subject to various deed restrictions effectively precluding the County from returning the land to the Bruce family. (Resp.'s 12/9/21 RJN Pt. 1, Ex. 1 at § 1, subd. (g); McLain 2/2/22 Decl., Ex. 10.) The deed restrictions on the land required the County to utilize the property in perpetuity for public recreation and beach purposes only. (McLain 2/2/22 Decl., Exs. 10, 11.) The deed restrictions also prevented the County from expanding commercial development on the property or from transferring it. (McLain 2/2/22 Decl., Exs. 10, 11.)

On February 19, 2021, State Senator Steven Bradford introduced Senate Bill (SB) 796 in the Legislature to exclude Bruce's Beach "from the requirement that the property be used only for public recreation and beach purposes. SB 796 also "authorize[d] the property to be sold, transferred, or encumbered upon terms and conditions determined by the [Board] to be in the best interest of the [C]ounty and the general public." (Resp.'s 12/9/21 RJN Pt. 1, Exh. 1 at § 6.)

In April 2021, the County unanimously approved two motions regarding Bruce's Beach. The first motion directed County staff to prepare a plan for the return of the Bruces' property (Bruce's Beach) to the Bruce's legal heirs. (McLain 2/2/22 Decl., ¶ 2, Ex. 2.) The second motion authorized the County to sponsor SB 796. (McLain 2/2/22 Decl., ¶ 2, Ex. 3). (McLain 2/2/22 Decl., ¶ 2, Exs. 2-4.)

On September 30, 2021, SB 796 unanimously passed in the Legislature, and Governor Newsom signed SB 796 into law. (Estrada 2/7/22 Decl., ¶ 39-40, Exs. 38-39.) On December 21, 2021, the

Board voted to accept the State's amended land deed and to adopt as its own the Legislature's findings that Bruce's Beach was wrongfully taken from the Bruces and that its return to the Bruces' legal heirs would serve the public interest. (Estrada 2/7/22 Decl., ¶ 41, Exs. 40.)

On October 5, 2021, pursuant to SB 796, the Board adopted a motion to initiate the process of returning Bruce's Beach to the Bruce family. (McLain 2/2/22 Decl., ¶ 4, Ex. 7.) On December 21, 2021, the Board voted to accept the State's amended land deed and adopt the Legislature's findings that Bruce's Beach was wrongfully taken and that its return to the Bruce family would serve the public interest.³ (Estrada 2/7/22 Decl., ¶ 41, Ex. 40.) The Board's grant of Bruce's Beach to the Bruces' heirs is imminent.

This action ensued.

STANDARD OF REVIEW UNDER TRADITIONAL MANDAMUS

Code of Civil Procedure section 1085, subdivision (a) provides in relevant part:

"A writ of mandate may be issued by any court to any inferior tribunal, corporation, board, or person, to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station, or to compel the admission of a party to the use and enjoyment of a right or office to which the party is entitled, and from which the party is unlawfully precluded by that inferior tribunal, corporation, board, or person."

"To obtain writ relief under Code of Civil Procedure section 1085, the petitioner must show there is no other plain, speedy, and adequate remedy; the respondent has a clear, present, and ministerial duty to act in a particular way; and the petitioner has a clear, present[,] and beneficial right to performance of that duty." (*County of San Diego v. State of California* (2008) 164 Cal.App.4th 580, 606.) "A ministerial duty is an obligation to perform a specific act in a manner prescribed by law whenever a given state of facts exists, without regard to any personal judgment as to the propriety of the act. [Citation.]" (*People v. Picklesimer* (2010) 48 Cal.4th 330, 340.)

"An action in ordinary mandamus is proper where . . . the claim is that an agency has failed to act as required by law." (*California Ass'n for Health Services at Home v. Department of Health Services* (2007) 148 Cal.App.4th 696, 705.)

An agency is presumed to have regularly performed its official duties. (Evid. Code § 664.) "Unless otherwise provided by law, 'the petitioner always bears the burden of proof in a mandate proceeding brought under Code of Civil Procedure section 1085.'" (*Khan v. Los Angeles City Employees' Retirement System* (2010) 187 Cal.App.4th 98, 106.)

³ During argument the court noted the Legislature's findings are also those of the Board.

Finally, judicial review of a quasi-legislative action, like here, “is confined to the question [of] whether the [agency’s action] is arbitrary, capricious, or [without] reasonable or rational basis.” (*American Coatings Ass’n v. South Coast Air Quality Dist.* (2012) 54 Cal.4th 446, 460.)

ANALYSIS

Petitioner argues the Board’s transfer of property to the Bruce family pursuant to SB 796 is a “gift” under Article XVI, section 6 of the California Constitution rendering SB 796 unconstitutional on its face. Petitioner also contends transferring the property to the Bruce family violates the Public Use Clause of the Fifth Amendment and the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution. Petitioner also believes notions of *res judicata* prevent the Board’s transfer of Bruce’s Beach to the Bruces’ heirs.

The Board argues Petitioner fails to demonstrate any ministerial duty owed by it, or Petitioner’s beneficial right to performance of any such unidentified duty. The Board also contends return of Bruce’s Beach is not an unconstitutional gift. Finally, the Board asserts neither the Fifth nor Fourteenth Amendments apply under these circumstances.

Intervenors contend transferring Bruce’s Beach back to the Bruce family will serve a public purpose and therefore is not an unconstitutional “gift.”

SB 796 and Article XVI, Section 6 of the California Constitution:

Article XVI, section 6 of the California Constitution provides in relevant part: “The Legislature shall have no power to . . . make any gift or authorize the making of any gift, of any public money or thing of value to any individual, municipal or other corporation[.]”

Petitioner claims the Board’s transfer of the public’s wealth (the land that was Bruce’s Beach) constitutes a “gift” within the meaning of Article XVI, section 6 of the California Constitution. According to Petitioner, SB 796 is unconstitutional on its face. (Opening Brief 3:12-14.) Petitioner reports in 1893, our Supreme Court advised:

“An appropriation of money by the legislature for the relief of one who has no legal claim therefor must be regarded as a gift within the meaning of the terms as used in this section, and it is none the less a gift that a sufficient motive appears for its appropriation, *if the motive does not rest upon valid consideration.*” (*Conklin v. Board of Supervisors* (1893) 99 Cal. 17, 22 [emphasis by Petitioner].)

The Supreme Court also instructed in *Conklin v. Board of Supervisors*:

“moral considerations or demands resting merely upon some equitable consideration or idea of justice, which in an individual acting in his own right would be upheld, are insufficient as basis for making an appropriation of public moneys.” (*Ibid.* [Emphasis added].)

Resolution of the dispute requires the court to determine whether transferring the land that was Bruce's Beach to Intervenor constitutes a "gift" in the context of Article XVI, section 6 of the California Constitution. That question turns on whether the property is given for a private or public purpose. (*Alameda County v. Janssen* (1940) 16 Cal. 2d 276, 281 ["It is well settled that, in determining whether an appropriation of public funds or property is to be considered a gift, the primary question is whether the funds are to be used for a 'public' or a 'private' purpose."].)

According to the California Supreme Court, there is no gift of public property "if a direct and substantial public purpose is served and non-state entities are benefited only as an incident to the public purpose." (*California Housing Finance Agency v. Elliott* (1976) 17 Cal.3d 575, 583.) "The concept of public purpose has been liberally construed by the courts, and the Legislature's determination will be upheld unless it is totally arbitrary." (*Mannheim v. Superior Court* (1970) 3 Cal.3d 678, 691.)⁴ Finally, a declaration of policy "by the legislative branch of government is not necessarily binding or conclusive upon the courts, [but] it is entitled to great weight and it is not the duty or prerogative of the courts to interfere with such legislative finding unless it clearly appears to be erroneous and without reasonable foundation." (*Housing Authority of Los Angeles County v. Dockweiler* (1939) 14 Cal.2d 437, 459-460.)⁵ Importantly, "under an unbroken line of cases the determination of what constitutes a public purpose is primarily a matter for the Legislature, and its discretion will not be disturbed by the courts so long as that determination has a reasonable basis [citations]." (*Schettler v. County of Santa Clara* (1977) 74 Cal.App.3d 990, 1004. Accord *Sturgeon v. County of Los Angeles* (2008) 167 Cal.App.4th 630, 637-638.)

Petitioner takes exception with the court's position on its standard of review under Article XVI, section 6 of the California Constitution for SB 796; however, the strict scrutiny review suggested by Petitioner is not supported by the authorities.⁶ "The determination of what constitutes a public purpose is primarily a matter for the Legislature and will not be disturbed as long as it has a reasonable basis." (*San Diego County Dept. of Social Services v. Superior Court* (2005) 134 Cal.App.4th 761, 766. See also *County of Alameda v. Janssen, supra*, 16 Cal.2d at 282 ["The determination of what constitutes a public purpose is primarily a matter for legislative

⁴ In his Opening Brief, Petitioner summarizes the law as follows:

"If, in reading the text of the statute, the Court can fathom a substantial benefit the public is to receive from the transfer, that is within the constitutional limits of reasonable legislative judgment, then the Court cannot possibly provide Petitioner with the relief he seeks, and his motion must be denied and his petition dismissed as Petitioner has nothing more to allege." (Opening Brief 3:7-11.)

⁵ Cf. *Hawaii Housing Authority v. Midkiff* (1984) 467 U.S. 229, 240-241 [public use in Takings Clause context] ["In short, the Court has made clear that it will not substitute its judgment for a legislature's judgment as to what constitutes a public use 'unless the use be palpably without reasonable foundation.' [Citation.]"]

⁶ To some extent it appears Petitioner conflates the standard of review for his gift of public funds claim with his equal protection claim.

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discretion [citations], which is not disturbed by the courts so long as it has a reasonable basis.”].)

When the Legislature passed SB 796, it included findings that the true purpose of the City’s vote to condemn Bruce’s Beach, “as evidenced by historical materials, including those cited or discussed in the June 7, 2021, City of Manhattan Beach History Advisory Board Report . . . was to shut down the Bruce’s Beach resort because the Bruces and their patrons were Black.” (Estrada 2/7/22 Decl., ¶ 41, Ex. 40, § 1, subd. (g).) The Legislative findings reiterated the government’s “responsibility to prohibit and eliminate racial discrimination in all forms and to ensure that all persons are entitled to security against forced removal, harassment, and intimidation by entities who seek to deprive individuals of their rights to self-determination and dignity on the basis of their race.” (Estrada 2/7/22 Decl., ¶ 41, Ex. 40, § 1, subd. (j).) The Legislature also found “[g]overnment must act in the public’s interest to ensure that communities can fairly access justice and an effective remedy, including, when appropriate, the potential return, restitution, resettlement, rehabilitation, or compensation, for unlawful and race-based displacements.” (Estrada 2/7/22 Decl., ¶ 41, Ex. 40, § 1, subd. (k)). Finally, the Legislature found:

“The fraudulent appropriation of land from private persons in general, and especially on the basis of race, is against the public interest and denies individuals and communities the right to enjoyment, the right to own property alone, as well as one’s association with others, the right to inherit, and the right to control one’s property.” (Estrada 2/7/22 Decl., ¶ 41, Ex. 40, § 1, subd. (i)).

Ultimately, in considering SB 796, the Legislature concluded the land that is Bruce’s Beach should be returned to the Bruce family. The Legislature determined returning the land was in the public interest of the State of California, the County, the City and the People of the state. (Estrada 2/7/22 Decl., ¶ 41, Ex. 40, § 1, subd. (l).)

After passage of SB 796, the Board adopted a motion to initiate the process of returning Bruce’s Beach to the Bruce Family. The Board’s motion adopted the Legislature’s findings that Bruce’s Beach was wrongfully taken from the Bruces, and the land’s return to the Bruce family would serve the public interest. (McLain 2/2/22 Decl., Ex. 8.)

In addition, the Board noted it believed returning Bruce’s Beach to the Bruces’ heirs furthered its “Anti-Racist County Policy Agenda.” (Resp.’s 12/9/21 RJN Pt. 1, Exh. 5.) The Board adopted the policy agency “to address systemic inequities and racist structures within the County and demonstrating its commitment to leading the nation in antiracist policymaking and dismantling institutional racism.” (Resp.’s 12/9/21 RJN Pt. 1, Exh. 5.) The Board explained: “With increased awareness of historical acts of racism that deprived African American County residents of opportunity, fairness, and justice, the Board has recognized that it is in the public’s interest to eliminate structural racism and bias in all of its forms.” (Resp.’s 12/9/21 RJN Pt. 1, Exh. 5.)

The Board and Intervenors argue the stated public purpose of SB 796—addressing and redressing a racially discriminatory event—serves a “public purpose” as a matter of law. They contend the Legislature’s finding of the need to redress racial discrimination was not totally arbitrary. (See *Mannheim v. Superior Court*, supra, 3 Cal.3d at 691.)

Petitioner characterizes “public purpose” in this context as something more concrete:⁷

“The purpose of [SB 796], it is plain to see from its text, is not to use the public’s money for the public’s general health or welfare, to use it to build schools and hospitals, or to get the homeless off the streets, for example” (Opening Brief 5:24-26.)

Seemingly, Petitioner believes the stated purpose of remedying or redressing past racial injustice is too ephemeral under his proposed definition of a “public purpose.”

Accordingly, the court must address (1) whether redressing and/or preventing future racial discrimination may be considered a “public purpose, and (2) whether the Legislature’s justification to enact SB 796 was arbitrary. The court addresses the issues in turn.

“Discrimination on the basis of race or color is contrary to the public policy of the United States and of this state.” (*Burks v. Poppy Const. Co.* (1962) 57 Cal.2d 463, 471.) Addressing claims of racial discrimination is a public purpose. For example, in *Don Wilson Builders v. Superior Court* (1963) 220 Cal.App.2d 77, the Court addressed the Attorney General’s standing to sue to enforce the Unruh Civil Rights Act (Civ. Code § 51). The Court determined the Attorney General could bring such an action. The Court found the effect of the act was to “safeguard the public” and noted acts of racial discrimination are contrary to the public policy of the state. (*Id.* at 83.)

In the context of Article XVI, section 6 of the California Constitution, the Supreme Court has held “aiding the judicial process and preserving constitutional rights cannot be deemed a ‘gift.’ ” (*Payne v. Superior Court* (1976) 17 Cal.3d 908, 920.)⁸ The entire State benefits when “the public policy of the state as expressed in the Constitution” is fulfilled. (*Church of the Brethren v. City of Pasadena* (1961) 196 Cal.App.2d 814, 820 [Revenue and Taxation Code provision excusing waiver of tax exemption not gift of public funds].)

The court finds a clear distinction between the circumstances in *Conklin v. Board of Supervisors*, supra, 99 Cal. at 17 and those here. In *Conklin v. Board of Supervisors*, the government had committed no wrongdoing; it was not at fault for the contractor’s waiver resulting in non-payment. In contrast, as to the Bruces’, the Legislature found the City had committed a grievous

⁷ The Board labels Petitioner’s view of “public purpose” as his “opinion.” (Board Opposition 16:18.)

⁸ While the preservation of constitutional rights “cannot be deemed a ‘gift,’ ” the Supreme Court noted until the Legislature would be required to decide how appointed counsel may be paid from public funds in civil cases. (*Id.* at 920 n. 6.)

act of racial discrimination to eliminate the Bruces' presence (and the presence of their Black patrons) at the beach in the City. It used its police power of eminent domain to condemn Bruce's Beach under "the pretense of building a park." (Resp.'s 12/9/21 RJN Pt. 1, Exh. 5.) The Legislature found the true purpose for condemning the land was illegitimate and an act of racial discrimination—clearly not a legitimate public use under the Takings Clause.⁹

Thus, the court finds where the appropriation of public funds and/or property is to address and/or remedy racial discrimination committed by the government, it serves a public purpose.¹⁰ Righting a government wrong perpetrated in breach of our core and fundamental constitutional principles works to strengthen governmental integrity, represents accountability in government and works to eliminate structural racism and bias. The government's act of rectifying a prior egregious wrong based on racism fosters trust and respect in government. It requires no leap in logic to find the inverse: where the government finds it previously acted as the perpetrator of racial discrimination to deprive its citizens of its property, public trust in our institutions and democracy is severely damaged. As argued by the Board during the hearing, redressing past acts of discrimination as well as preventing such acts in the future benefits the whole of the community and its general welfare. The public purpose served by SB 796 is direct and substantial.

⁹ While the court did not raise the issue during argument or in its written tentative decision, in the gift of public funds context, the origin of the funds/property at issue may figure into the overall analysis. For example, in *Atlantic Richfield Company v. County of Los Angeles* (1982) 129 Cal.App.3d 287, 289, 299, the court found no gift of public funds where vested taxes paid were returned to the taxpayer, the Court expressly noted the funds were being returned "to the very taxpayers who made the original payment." (*Id.* at 299.) *Mannheim v. Superior Court, supra*, 3 Cal.3d at 687 concerned avoiding an escheat of property to the state in favor of a decedent's heirs. (See also *Schettler v. County of Santa Clara, supra*, 74 Cal.App.3d at 1005-1006 [return of vested taxes paid].) Here, SB 796 and the County's resolution return Bruce's Beach to the Bruces' "living descendants." (Estrada 2/7/22 Decl., Ex. 39 [¶ (l)].) The Legislature found the Bruces lost their land and their business because of "intentionally racially discriminatory acts" by the City. (Estrada 2/7/22 Decl., Ex. 39 [¶ (g)].) The Legislature noted the City used its power of eminent domain fraudulently and misrepresented a legitimate public use for the property. (Estrada 2/7/22 Decl., Ex. 39 [¶¶ (g) and (i)].) That the court was involved in assisting the City's "false" taking under "unlawful pretenses" does not legitimize the City's action. (Estrada 2/7/22 Decl., Ex. 39 [¶ (m)].) In this court's view, returning property that was fraudulently and wrongfully taken by the government to the heirs of the original owners must be considered in the analysis.

¹⁰ Importantly, the Legislature's finding of public purpose need not be "clear and specific." (*Atlantic Richfield Company v. County of Los Angeles, supra*, 129 Cal.App.3d at 289. See also *Scott v. State Bd. of Equalization* (1996) 50 Cal.App.4th 1597, 1604 ["failure to explicitly state a public purpose is not decisive".]) "The courts may infer the public purpose from other legislation or the manner in which the legislation is enacted." (*Scott v. State Bd. of Equalization, supra*, 50 Cal.App.4th at 1604.)

Given the underlying public purpose, the court must consider whether the Legislature’s adoption of SB 796 was arbitrary. The court’s review is deferential.

“[A] court is without power to interfere with purely legislative action, in the sense that it may not command or prohibit legislative acts[.] . . . *The reason for this is a fundamental one—it would violate the basic constitutional concept of the separation of powers among the three coequal branches of the government.*” (*Monarch Cablevision, Inc. v. City Council* (1966) 239 Cal.App.2d 206, 211; *Sklar v. Franchise Tax Board* (1986) 185 Cal.App.3d 616, 624–625.) “If the underlying act involves the exercise of discretionary legislative power, the courts will interfere by mandamus only if the action taken “is ‘so palpably unreasonable and arbitrary as to indicate an abuse of discretion as a matter of law.’ ” (*United Assn. of Journeymen v. City and County of San Francisco* (1995) 32 Cal.App.4th 751, 759; see also *Schwartz v. Poizner* (2010) 187 Cal. App. 4th 592, 598 “[A] party seeking review under traditional mandamus must show the public official or agency invested with discretion acted arbitrarily, capriciously, fraudulently, or without due regard for his rights, and that the action prejudiced him.”].)

As noted, the Legislature expressly adopted SB 796 to address racial discrimination. To that end, the Legislature and County (through its adoption of the Legislature’s findings) found in most pertinent part that (1) Bruce’s Beach was “a seaside resort that welcomed Black beach goers from all over,” (2) “[t]he true purpose of the Manhattan Beach Board of Trustees in condemning Bruce’s Beach . . . was to shut down the Bruce’s Beach resort because the Bruces and their patrons were Black,” and (3) “[t]he land in the City of Manhattan Beach, which was wrongfully taken from Willa and Charles Bruce, should be returned to their living descendants, and it is in the public interest of the State of California, the County of Los Angeles, the City of Manhattan Beach, and the People of the State of California to do so.” (Estrada 2/7/22 Decl., Exs. 38, 40.)

The Legislature’s findings are amply supported by evidence.¹¹

¹¹ “Petitioner does not dispute the objective truth of [certain] legislative findings, . . . ” (Opening Brief 5:19.) Those findings include the government’s failure to “fully address the institution and practice of 250 years of chattel slavery; the ideology that established and maintained it has left an indelible stain on the fabric of the nation,” the legacy of slavery “has created, and continues to create, unfair disadvantages for Black people,” and “[r]acial discrimination has prevented entire communities of people from achieving their full potential value due to . . . Black Codes and Jim Crow laws, widespread and accepted practices of lynching and sexually assaulting Black men and women” Petitioner asks, however, “but are [the legislative findings] relevant to the judicial function’s task at hand, given the fact the statute is a special statute, its object being solely to transfer the public money to particular individuals for their personal use?” (Opening Brief 5:19-22.) As to others, such as the City acted to shut down Bruce’s Beach resort “because the Bruces and their patrons were Black,” Petitioner argues whether the “ ‘findings’ are objectively true or not, is beside the point, if the statute does not rest on valuable consideration, but merely upon ‘some supposed moral obligation resting upon the people of

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First, there is evidence the City's 1924 condemnation of the Bruce's property was racially motivated. Statements about the condemnation action show discriminatory motivation and animus behind it—including the City's efforts "never to admit the real purpose in establishing the park, especially during the council meeting." (Estrada 2/7/22 Decl., Exs. 16.)

In 1943, then 80-year-old Frank Daugherty,¹² the Trustee who moved the Manhattan Beach Board of Trustees to condemn Bruce's Beach in 1924, publicly admitted the City's "mean trick to make those people lose their homes . . ." (Estrada 2/7/22 Decl., Exs. 16.) In a talk given to the City Employees' Association on the history of the City, he admitted:

"At one time we thought the Negro problem was going to stop our progress. They erected a large building at the end of Twenty-seventh street. They had the first floor for dressing rooms for bathing and the entire second floor was a dining room and kitchen. . . . They came here in truck loads with banners flying – 'Bound for Manhattan Beach' – We tried to buy them out, but they would not sell.

. . . .
There were several families in the blocks We had to acquire these two blocks to solve the problem. We voted to condemn these two blocks and make a city park. We had to protect ourselves. Our attorney advised the members of the council never to admit the real purpose in establishing the park, especially during the council meeting. . . .

Those Negroes were Americans and had as much right to be here as we did. I always felt that it was a mean trick to make those people leave their homes, but it was the only way out. Being a member of the board, I had to participate or give up Manhattan Beach. I have always thought that was about the meanest thing I have ever done, but I suppose I had to, and all of us felt the same way about it." (Estrada 2/7/22 Decl., Ex. 16. See also Estrada 2/7/22 Decl., Ex. 17 [similar discussion by Daugherty].)

Further, there is evidence it was generally known the purpose of the City's condemnation action was to "get the colored people out." A September 1926 article in *The Manhattan Globe*, the Official Paper of the Taxpayers' Protective League, stated:

the state.' " (Opening Brief 6:23-26 [quoting *Conklin v. Board of Supervisors*, *supra*, 99 Cal. at 22.]

¹² During the hearing, Petitioner argued at the time Daugherty spoke he was no longer a Trustee and could not be believed. While that may be true, the statements admitted wrongdoing based on racial animus. Given the nature of the statements, it seems to the court "a reasonable man in his position would not have made the statement unless he believed it to be true." (Evid. Code § 1230.)

“Park and Playground, why? Original idea to get the colored people out. Does it accomplish it? No. . . . One thing all the white people in the city of Manhattan Beach are in accord on and that is to make Manhattan Beach a one hundred per cent [sic] white beach. How to accomplish this is the idea.” (Estrada 2/7/22 Decl., Ex. 32.)

Similarly, in 1927, the Manhattan Beach News acknowledged the real purpose of the 1924 condemnation in response to cost criticisms by the Taxpayers’ Protective League:

“Negros No Longer [C]ome.

While the purchase of the property does not eliminate colored people from Manhattan Beach entirely, the steps taken to acquire the former stronghold of the negroes in this city was a very definite gesture that the citizens of this city, while having respect for the rights of the colored man, did not desire that he should make it his playground. Three years ago colored people came to Manhattan Beach by the hundreds on Sundays and holidays. There have been times when there were as high as three thousand here. They no longer come.

....
There has been no injustice done the negro in Manhattan Beach, but through the action taken to acquire the park in the north end of Manhattan Beach, the serious aspect of the negro question has been entirely eliminated and people in Los Angeles can no longer refer to this city as the “negro beach.” (Estrada 2/7/22 Decl., Ex. 33; see also Ex. 41 [1930 Manhattan Beach News: “For many years, Manhattan Beach had a handicap as an ideal residence cause by a settlement of colored people, who owned and occupied a small amount of property on and near the ocean front.”])

The evidence before the Legislature—both direct and circumstantial--supports a finding of community animus and racial intolerance at and around the time of the condemnation action. The evidence also supports the Legislature’s finding the City—steeped in this environment of racial intolerance—took action against the Bruce’s based on racial discrimination.¹³ As Intervenor contend, the circumstantial evidence of racial motivation leading to the condemnation action is properly relied upon “given that ‘officials acting in their official capacities seldom, if ever, announce on the record that they are pursuing a particular course of action because of their desire to discriminate against a racial minority,’ we look to whether they have ‘camouflaged’ their intent.” (*Arce v. Douglas* (9th Cir. 2015) 793 F.3d 968, 978.)

¹³ SB 796 reflects at section 1, subdivision (g) historical reports were before it. In addition, the Board reflected its knowledge of Frank Daugherty’s statements about the intent of the Manhattan Beach Board of Trustees. (McLain Decl., Ex. 3 RJN.)

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The evidence discussed above as well as the other evidence cited by the Board and Intervenors relied upon by the Legislature and Board¹⁴ is more than adequate to demonstrate support the Legislature's findings past racial discrimination by the government deprived the Bruces' of their property; racial discrimination *by the government* caused the Bruces' to lose their property.¹⁵ Given this evidence, the court cannot find that Legislature's efforts to redress such discrimination through SB 796 is arbitrary, capricious or totally lacking in evidentiary support.¹⁶

Public Use Clause of the Fifth Amendment:

The Takings Clause of the Fifth Amendment provides that "nor shall private property be taken for public use, without just compensation." (U.S. Const. Amend. V.)

Petitioner contends "[t]he transfer clearly violates the Public Use Clause, because the lots were taken by the City of Manhattan Beach through the exercise of its right of eminent domain, and such property cannot thereafter be given to individuals for their personal use without the public retaining the substantial benefit of its use." (Opening Brief 1:19-22.) Relying on United State Supreme Court Justice William O. Douglas's opinion in *Berman v. Parker* (1954) 348 U.S. 26, Petitioner argues in the takings context property may only be taken by the government for "[p]ublic safety, public health, morality, peace and quiet, [and] law and order" (*Id.* at 32.) The opinion notes, "The concept of the public welfare is broad and inclusive." (*Id.* at 33.) Thus, Petitioner recognizes the government's police powers can be used "to promote government goals" (Opening Brief 11:1.)

The Board argues the Takings Clause does not apply under these circumstances. The court agrees.

The Takings Clause is implicated when the government exercises its power of eminent domain and takes private property for public use with just compensation provided to the land owner. Here, the government is not taking private property; the property belongs to the government

¹⁴ Petitioner objected during argument to the court considering information revealed by newspaper reports. As the court understood it, Petitioner contends (given the serious nature of the issue) the Legislature and Board should have relied upon evidence that would have been admissible in court to make their findings. Petitioner did not suggest legal authority for his position. The Legislature had before it the History Advisory Report of the City when it passed SB 796. (See Pet.'s RJN Part II, Ex. I; Estrada 2/7/22 Decl., Ex. 38 [§ 1 (g)].) That the Legislature relied on the historical report and referenced material therein was reasonable, credible and of solid value.

¹⁵ While Petitioner finds the court's failure to reference James Slaughter's experience in the City "telling," the court finds Slaughter's experience and ownership of a 10-room boarding house in May 1927 unrelated and irrelevant to the City's decision to condemn Bruce's Beach. (See Pet.'s RJN Part II, Ex. I, p. 65.)

¹⁶ Given the court's finding, the court need not address the Board's argument concerning the Board's lack of ministerial duty or Petitioner's beneficial interest.

and is being *returned* to the Bruce family. By its clear terms, the Takings Clause has no application here.

The court finds Petitioner's reliance on *City and County of San Francisco v. Ross* (1955) 44 Cal.2d 52, *Hawaii Housing Authority v. Midkiff, supra*, 467 U.S. at 229 and *Kelo v. City of New London* (2005) 545 U.S. 469 unavailing. The cases have no application in this context because the government is not condemning a private person's property.¹⁷

Equal Protection Clause of the Fourteenth Amendment:

"The Fourteenth Amendment to the United States Constitution and article I, section 7 of the California Constitution guarantee all persons the equal protection of the laws. To succeed on an equal protection claim, [petitioner] must first show that the state has adopted a classification that affects two or more similarly situated groups in an unequal manner." (*People v. Edwards* (2019) 34 Cal.App.5th 183, 195.) A state violates the equal protection clauses of the state and federal Constitutions if the government treats similarly situated classes of persons differently. "[E]qual protection of the law is denied only where there is no 'rational relationship between the disparity of treatment and some legitimate governmental purpose.'" (*People v. Turnage* (2012) 55 Cal.4th 62, 74-75.)

In a brief analysis, Petitioner argues "the transfer clearly violates the Equal Protection of the Laws Clause, because the 'act of racism,' or the 'act motivated by racism,' which the Board deems occurred, affected the property interests not only of C.A. and Willie Bruce, but also the property interests of fourteen other lot owners whose rights to equal treatment under law are being ignored."¹⁸ (Opening Brief 1:22-26.) Petitioner posits:

"Having deemed the act of eminent domain to be '*fraudulent*' and '*wrongful*' toward the Bruces, and its purpose being to '*rectify*' an '*injustice*,' the question for the judicial branch of our government becomes—how is the act not, then, '*fraudulent*' and '*wrongful*' toward those other lot owners who had the same property rights taken from them, and were treated by government no differently tha[n] were the Bruces? What 'rational relationship' does the Board's different

¹⁷ To be sure, *Hawaii Housing Authority v. Midkiff, supra*, 467 U.S. at 229, in the Takings Clause context found "[r]egulating oligopoly and the evils associated with it is a classic exercise of a State's police powers." (*Id.* at 242.) The United State Supreme Court found the public use requirement satisfied where the state acted "to reduce the perceived social and economic evils of a land oligopoly traceable to their monarchs." (*Id.* at 241.)

¹⁸ The logical extension then of Petitioner's argument is for SB 796 to pass constitutional muster under the equal protection clause, the Legislature and Board must return all property condemned in 1924 to its original owners.

treatment of the lot-owners bear to its motive of ‘rectifying’ the ‘injustice,’ it perceives was visited upon the Bruces?” (Opening Brief 13:8-14.)¹⁹

The Board also argues the equal protection clause is not implicated here. The court agrees.

The court has no evidence before it of whether and to what extent, if at all, the City intends to address its condemnation of other beach front property owners whose property the City took in 1924 through condemnation. Thus, the court cannot on this record find evidence of different treatment.

The court also cannot find the Bruces and others were similarly situated with all others. The Legislature found the Bruces (and other Black property owners whose property the City condemned) were targeted by racial discrimination. Unlike the Black property owners, the white owners whose parcels were condemned had no structures built on them. In addition, the Bruces used Bruce’s Beach for their business. (See Estrada 2/7/22 Decl., Ex. 7.)

Petitioner’s equal protection argument is not sufficiently developed to meet his burden of demonstrating a constitutional violation. Accordingly, the claim fails.

Issue and Claim Preclusion:

Petitioner’s claim principles of *res judicata* or collateral estoppel are implicated here is unpersuasive. Petitioner contends the Board is merely “readjudicating” what was already decided in a final order in the condemnation action.

“ ‘Res judicata’ describes the preclusive effect of a final judgment on the merits. Res judicata, or claim preclusion, prevents relitigation of the same cause of action in a second suit between the same parties or parties in privity with them. Collateral estoppel, or issue preclusion, ‘precludes relitigation of issues argued and decided in prior proceedings.’ [Citation.] Under the doctrine of res judicata, if a plaintiff prevails in an action, the cause is merged into the judgment and may not be asserted in a subsequent lawsuit; a judgment for the defendant serves as a bar to further litigation of the same cause of action.” (*Mycogen Corp. v. Monsanto Co.* (2002) 28 Cal.4th 888, 896-897 [emphasis added].)

Res judicata simply does not apply here. That the underlying condemnation action filed by the City against the Bruces may have raised a defense of racial discrimination does not preclude the Legislature from making its own assessment of the City’s racially motivating taking—there is no second lawsuit involved. This action is not brought by the Bruces (or those in privity with them) to obtain damages based on racial discrimination where the City might assert collateral estoppel if the court finally adjudicated the issue.

¹⁹ Whether Petitioner has standing to assert an equal protection claim is not addressed by the parties.

Instead, this action is about the constitutionality of SB 796. The issues here are separate and distinct from the condemnation action in 1924. *Res judicata* and collateral estoppel do not prevent the Legislature from conducting research, considering evidence and making its own factual determination. Nothing relied upon by Petitioner suggests the Legislature is bound by the court's 1924 condemnation decision.

CONCLUSION

Based on the foregoing, the petition is denied.

Petitioner's request for a stay is denied. While the Board prepares the judgment, Petitioner has sufficient time to prepare to prosecute his appeal.

This order shall constitute the court's statement of decision.

IT IS SO ORDERED.

April 14, 2022



Hon. Mitchell Beckloff
Judge of the Superior Court

04/15/2022