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Barring California Taxpayers from the Courts.

Big government interests – and by "big government interests" we mean elected officials, bureaucrats, public sector unions and private corporations that live off taxpayer dollars – do everything they can to erect barriers to taxpayers seeking to vindicate their rights.

As this column has previously addressed, those barriers include making it difficult to vindicate rights at the ballot box by consistently changing election laws – often in the middle of an election cycle – in a manner designed to protect the existing political power structure.

But there is an equally virulent set of hurdles placed before taxpayers consisting of procedural barriers to obtaining relief in the courts. Just a few examples are short statutes of limitations, requirements that taxpayers must "exhaust administrative remedies" before filing a legal action, requirements that taxpayers must first pay the disputed tax in full before filing suit, and severe restrictions on the use of class actions that preclude meaningful tax relief when entire communities are hurt by an illegal tax.

Another example is the requirement that challenges to certain tax increases be brought exclusively as "validation actions." Such actions may be brought by government entities to "bulletproof" their tax or fee increases from any future legal attack. Typically, the lawsuit will be filed against "All Persons Interested" in the legality of a bond issuance or other public finance matter and, once filed, taxpayers have only a very limited time to respond.

The short time to respond to a validation action, however, isn't the biggest headache for taxpayers. Specifically, if the government entity doesn't file its own action, then the validation action must be filed by citizens (any "interested party") within 60 days of the resolution authorizing a bond or tax. The citizens' failure to do so results in the bond or tax becoming automatically "validated" through inaction, and forever insulated from judicial review. This puts the costs of litigation on the shoulders of those having to pay the tax. And those costs include the very expensive price tag of having to "publish" a summons in the local newspaper over several days.

Ordinary taxpayers rarely have the expertise or financial wherewithal to initiate a "validation" action in court and must rely on advocacy groups such as the Howard Jarvis Taxpayers Association, which has been involved in numerous such lawsuits. But even with that expertise, there remains much wrong with expanding the circumstances where the law requires that challenges must be brought as a validation action as opposed to more traditional legal actions such as taxpayer injunctions, declaratory relief or money damages.

Validation actions may make sense in the limited area of protecting municipal bonds from legal attack well after the bonds have been issued. There is arguably a public interest in protecting the "marketability" of public bonds so that government entities have access to capital markets in order to construct public projects such as schools.

However, a bill currently pending in the California Legislature, Senate Bill 323, would hijack the validation statutes and apply them to preclude ratepayers from challenging unlawfully high rates for

water or sewer – essential public services that no one can live without.

Simply stated, this expansion of the validation statutes is an unfair denial of due process that can have the effect of cementing into law illegal government acts that are then insulated from judicial review. Even the state Supreme Court has taken notice, writing in City of Ontario v. Superior Court that some applications of the validation statutes are "of doubtful constitutionality." Not surprisingly, the Howard Jarvis Taxpayer Association opposes all attempts to enlarge the universe of government actions that are subject to the validation statutes. And we are not alone.

Even a couple of water agencies in Orange County see a problem with this expansion. While generally supportive of the bill's aims, they also recognize the importance of providing adequate notice to ratepayers "in recognition of public water and sewer agencies' Constitutional responsibility to guarantee that ratepayers – particularly economically disadvantaged residents and marginalized communities – know their rights."
What ratepayers should really know about their rights is how Senate Bill 323 takes them away. The validation statutes were never meant to insulate water, sewer, or other agency rates and fees from legal challenge. If such rates are imposed in a manner contrary to the constitutional protections guaranteed to taxpayers by Proposition 13 and other laws, ratepayers must not have the courthouse door slammed in their faces by a burdensome process that makes such challenges difficult, if not impossible.

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