Castellanos is about framing

Overview

The key takeaway from the California Supreme Court's recent decision in *Castellanos v. State of California* (S279622) is less about the initiative power or workers' compensation and more about framing: how a court or advocate can control a case and direct its outcome by carefully defining the question to be answered. Here, by limiting the question presented to a narrow issue, the court set itself up to give a clear answer. This limited approach contrasts with the court's comprehensive treatment of the Taxpayer Protection and Government Accountability Act in *Legislature v. Weber* (S281977). This contrast is explained by the core principle of deference to the initiative power: as in other familiar standard-of-review contexts, striking down an initiative requires full review, while upholding an initiative requires only one good reason. Viewed together, these two cases suggest that the court's standard of upholding initiatives wherever possible endures. These cases represent no substantial change to the fundamental principles guiding judicial review of ballot measures.

Analysis

***Castellanos* framed its question narrowly**

Because the *Castellanos* decision is quite narrow it is as significant for what it avoided as for what it did decide. The California Supreme Court has discretionary authority over what issues it will decide when it grants a petition for review.[1] The court exercised this discretion in *Castellanos*, limiting review to whether Business and Professions Code section 7451 conflicted with California constitution article 14, section 4, which would require invalidating Proposition 22 entirely. The unanimous opinion focused on that question alone, affirming only the Court of Appeal's holding that Business and Professions Code section 7451 does not conflict with article 14, section 4.

The court made a difficult case easy with this narrow framing. Lacking the California Supreme Court's discretion to decide only particular questions, the Court of Appeal

opinion had to tackle every issue raised by the parties. But the high court allowed just one narrow question. This limited review was important for several reasons. One is that the limited question about whether the voters and the legislature have coextensive statutory powers is a relatively straightforward interpretation matter. Is the constitutional provision ambiguous? (Yes.) And does any extrinsic evidence suggest the provision was intended to preclude the initiative? (No.) Simple question, simple answer.

But concluding that law-making power over workers' compensation is shared necessarily raises the question of who has the final word. This is the second reason limited review was important: it allowed the court to defer the more difficult question of how to sort out disagreements between the voters and the legislature on workers' compensation. Deciding only that the voters may alter *existing* workers' compensation policy leaves for another day harder questions about how to reconcile the legislature's options with voter authority's outer bounds under article 14, section 4. Indeed, the opinion telegraphed a roadmap for a legislative response, noting that "section 7451 itself says nothing about workers' compensation, and the Legislature has made a number of exceptions to the general eligibility rule in order to extend workers' compensation to nonemployees." The court expressly left open whether the legislature responding in this way, with a new statute that changes the consequences of section 7451, would constitute an amendment to the initiative's statutory scheme and require a seven-eighths majority vote.

A third reason for limiting review here is that questions about how article 14, section 4 might limit the initiative power are necessarily fact dependent. It's much easier to compare Proposition 22 to existing law than it is to compare that measure to a hypothetical future law — contents to be determined. Indeed, in a facial constitutional challenge a statute must be invalid "under any and all circumstances."[2] And a court cannot foresee what the legislature may do in response; it may do nothing, or it may pass a law that neatly dovetails with Proposition 22. These possibilities would foreclose a facial challenge, so by limiting the question presented the court avoided the problem of trying to speculate about how the legislature might respond.

Finally, Justice Liu peppered his opinion with caveats that the court was not

considering whether other parts of Proposition 22 may improperly constrain the legislature's article 14, section 4 authority to enact future legislation. It's difficult to avoid the impression that the court envisioned multiple potential scenarios playing out and foresaw that the legal issues presented by those scenarios would be fact dependent. And those issues may be much harder to resolve.

The next case may present a harder question

Recall that during the *Castellanos* argument the justices asked if the voters could abolish workers' compensation by initiative. The advocates struggled with that hypothetical, which we think has a clear answer. Still, the court's opinion declined to confront that scenario, and noted that much could depend on the details of whatever legislative act is challenged as an amendment to Proposition 22. Absent an actual statute, the court rightly refused to speculate in a vacuum. Yet the justices' oral argument hypothetical foreshadows a challenge: whatever the legislature does may be attacked as an impermissible amendment to Proposition 22, assuming the legislature's action is not by seven-eighths vote.

Like Justice Liu we prefer not to speculate against unknowns, so we will take the broad hint in his opinion and analyze this scenario: What if the legislature (by simple majority) extends workers' compensation to nonemployees by making an exception to the general eligibility rule and removing the employment requirement?

That might not be an amendment to section 7451. We (for once!) think this is not a separation of powers issue. California's core powers analysis permits a "reasonable" degree of interbranch regulation, to the limit of defeating or materially impairing another branch's core functions.[3] Ordinarily as between the branches that reasonable-regulation principle cuts both ways — but while that principle may limit voter acts against the legislature, it does not apply to the legislature acting against the voters.

Instead, the separation-of-powers principle is in tension with the electorate's power under article 2, section 10(c) to vote down legislative amendments: the legislature "may amend or repeal an initiative statute by another statute that becomes effective only when approved by the electors unless the initiative statute permits amendment

or repeal without the electors' approval." This provision limits the legislature's ability to amend voter laws without later voter approval unless the initiative permits such amendment, "and then only upon whatever conditions the voters attached to the Legislature's amendatory powers."[4] The tension is between the constitutional voter power to protect their laws from legislative amendment and the separation-of-powers prohibition on invading another branch's powers (here, the legislature's article 14, section 4 power over workers' compensation).

The *Castellanos* court identified this tension as a potential source of future conflict because the voters and the legislature have coextensive power to enact workers' compensation laws. The difference is the voter power under article 2, section 10(c) to set conditions on amendments. Yet a *statutory* initiative like Proposition 22 cannot be read to defeat or materially impair the legislature's *constitutional* power to legislate on that subject. So whatever limits the electorate sets on amendments to statutory initiatives must in turn be inhibited by the legislature's own constitutional powers.

But what should the court do if the legislature attempts to sidestep Proposition 22 by removing the employment requirement for workers' compensation? Conflicts like this have occurred before. In *People v. Superior Court (Pearson)*, 1990 Proposition 115 established reciprocal pretrial discovery in criminal cases, made its statutory provisions exclusive, and made those provisions amendable only by a two-thirds majority vote of the legislature.[5] Acting with less than a two-thirds majority, the legislature enacted a statute that arguably amended Proposition 115.

In *Pearson* the court held that the legislature's act "clearly augment[ed]" rather than amended Proposition 115, providing for something not provided for in the initiative.[6] That did not amount to an amendment, which the court described as "a legislative act designed to change an existing initiative statute by adding or taking from it some particular provision."[7] Thus, legislation that concerns the same subject matter as an initiative, or even augments an initiative's provisions, is not necessarily an amendment. Accordingly, "[t]he Legislature remains free to address a related but distinct area or a matter that an initiative measure does not specifically authorize or

prohibit."[8]

Here, section 7451 says in part that "an app-based driver is an independent contractor and not an employee or agent with respect to the app-based driver's relationship with a network company" under certain conditions. Workers' compensation eligibility presently depends on the existence of an employment relationship.[9] Following *Pearson*, a legislative act that adds to the body of workers' compensation law by redefining the necessary employment relationship arguably does nothing that section 7451 forbids.

Other maxims of interpretation likely also operate here to avoid finding a conflict between an indirect legislative response like our hypothetical and section 7451. The first question will be whether a conflict exists at all — courts avoid these conflicts because of presumptions against invalidity and implied repeals.[10] If a conflict exists, the next step is to harmonize the provisions if possible to avoid any conflict.[11] "Well-established principles" applicable both to statutes and constitutional provisions "require that in the absence of irreconcilable conflict among their various parts, they must be harmonized and construed to give effect to all parts."[12]

So a reviewing court likely would apply harmony to resolve any apparent statutory conflict with section 7451, avoid any constitutional issue, and uphold both. "A court must, where reasonably possible, harmonize statutes, reconcile seeming inconsistencies in them, and construe them to give force and effect to all of their provisions."[13] It is possible to harmonize section 7451 with the hypothetical scenario of the legislature simply removing the employment relationship requirement because all the legislature accomplishes thereby is removing a condition that section 7451 requires to operate.

This arguably violates the maxim that an "interpretation which gives effect is preferred to one which makes void."[14] And a court must consider what the voters contemplated: "the voters should get what they enacted, not more and not less."[15] Harmony is not a license to redraft statutes to strike a new policy compromise.[16]

But the voters are presumed to be aware both of existing law and the fact that it may change.[17] Initiatives do not occur in a vacuum, nor do they freeze the law for all time. Much will depend on the details of whatever the legislature does. The key here is to leave both actors with their respective powers to continue making policy decisions going forward.

Castellanos and *Legislature v. Weber* are bookends

Taking a wider view, we can see that the opinions in *Legislature v. Weber* and *Castellanos* did prove to be bookends, in the sense that they produced opposing results. In *Legislature v. Weber* the court needed about 50 pages to apply the amendment–revision analysis to the Taxpayer Protection and Government Accountability Act, and invalidated the measure as a constitutional revision that exceeded the initiative power. In *Castellanos* the court needed only a brisk 25 pages with a few historical citations to voter intent and judicial policy to uphold Proposition 22 on the limited grant of review. A longer explanation for the more difficult problem, a short answer to the simpler question.

This pair of cases showcases this court's adherence to its existing direct democracy doctrine. A court on a mission to rein in the initiative power could have combined *Castellanos* with *Legislature v. Weber*, using one case to restrict the initiative amendment power and the other to restrict the statutory initiative power. Instead, the court presented *Legislature v. Weber* as an outlier, a rare instance of both granting preelection review and of an extreme circumstance that justified blocking a measure from the ballot. Rather than seizing a chance to carve out an initiative exclusion zone, *Castellanos* was no different from the court's many other opinions reiterating the judicial policy of liberally construing the initiative power to preserve and favor its use. In a case with extreme facts the court applied a rare remedy; in a case with a narrowed question the court took a more restrained approach. No surprises here.

As we suspected, Justice Liu wrote the majority opinion for both cases. But after reading both opinions it is unclear whether much follows from this fact. As a practical matter it is common for one chambers to issue opinions in small batches, so one often sees two or three majorities in a row authored by the same justice. And it's

difficult to read these opinions as establishing a new view of voter power. Justice Liu's broader structural concerns from the oral arguments about the balance between republican and democratic government are absent from both opinions. Instead, as with much of the court's work now, these unanimous opinions better reflect the court's views. These opinions are written in Justice Liu's crisp, tight hand — but we hear the whole court's voice in both. That collective judgment here is quite consistent with the court's longstanding approach to the initiative as a precious right the courts are duty-bound to jealously guard.

Conclusion

We note for the record the *amicus curiae* brief filed by center affiliates in *Castellanos*. To summarize, viewing *Legislature v. Weber* and *Castellanos* together and in context, we see three major takeaways. One is that how a case is presented (on a hard ballot-printing deadline) or how the court frames the case (in a limited way to avoid speculative constitutional questions) can often be outcome-determinative, and this factor at least had substantial effects in both cases. Next, the court reiterated and applied its oft-stated principle of deference to the initiative power, and these cases show just how hard the court will work to avoid invalidating a voter measure. This leads to the final conclusion: that this court maintains the long- and well-established doctrine of upholding voter acts whenever possible. The initiative power abides.

—o0o—

Stephen M. Duvernay, chief senior research fellow, and Brandon V. Stracener, senior research fellow, contributed to this article.

1. Rule 8.516 of the California Rules of Court outlines the court's power to set the issues at every procedural stage. The court may specify the issues to be briefed and argued on or after ordering review; order oral argument on fewer or additional issues or on the entire cause; decide any issues raised or fairly included in the petition or answer; decide an issue that is neither raised nor fairly included in the petition or answer; and decline to decide every issue the parties raise or the court specifies. ↑

2. *Superior Court v. County of Mendocino* (1996) 13 Cal.4th 45, 60. ↑

3. The court framed the matter in *Legislature v. Weber* as an unconstitutional revision, but that analysis does not work here because Proposition 22 was a statutory initiative, not a constitutional amendment. ↑

4. *People v. Superior Court (Pearson)* (2010) 48 Cal.4th 564, 568. ↑

5. *Id.* at 567–69. ↑

6. *Id.* at 570. ↑

7. *Id.* at 571, citing *People v. Cooper* (2002) 27 Cal.4th 38, 44. ↑

8. *Id.* at 570–71 (internal quotations and citation omitted). ↑

9. Lab. Code § 3600(a) ("Liability for the compensation provided by this division, in lieu of any other liability whatsoever to any person except as otherwise specifically provided in Sections 3602, 3706, and 4558, shall, without regard to negligence, exist against an employer for any injury sustained by his or her employees arising out of and in the course of the employment and for the death of any employee if the injury proximately causes death, in those cases where the following conditions of compensation concur: . . ."). ↑

10. *John v. Superior Court* (2016) 63 Cal.4th 91, 95–96 (courts strive to avoid construing ambiguous statutes in a manner that creates doubts as to their validity); *State Dept. of Public Health v. Superior Court* (2015) 60 Cal.4th 940, 955–56 (all presumptions are against implied repeal and courts will find an implied repeal only when there is no rational basis for harmonizing the two potentially conflicting statutes, and the statutes are "irreconcilable, clearly repugnant, and so inconsistent that the two cannot have concurrent operation"); *Loeffler v. Target Corp.* (2014) 58 Cal.4th 1081, 1131 ("of

course" statutes should be interpreted to avoid potential constitutional concerns). ↑

11. *Ruelas v. County of Alameda* (2024) 15 Cal.5th 968, 979; *State Dept. of Public Health*, 60 Cal.4th at 956 (court harmonizes potentially conflicting statutes by choosing one plausible construction of a statute over another to avoid a conflict with a second statute). ↑

12. *In re Clifford C.* (1997) 15 Cal.4th 1085, 1092. ↑

13. *Pacific Palisades Bowl Mobile Estates, LLC v. City of Los Angeles* (2012) 55 Cal.4th 783, 805. ↑

14. Civ. Code § 3541. ↑

15. *Hodges v. Superior Court* (1999) 21 Cal.4th 109, 114. ↑

16. *State Dept. of Public Health*, 60 Cal.4th at 956. ↑

17. See *People v. Rojas* (2023) 15 Cal.5th 561, 575 (assuming that the voters are aware of existing laws at the time an initiative was enacted, knew that statutory definitions are changeable, and declining to presume they intended to foreclose future changes to the definition or to allow only expansion and not contraction of the definition). ↑