The Racial Justice Act's infringement on the judicial power

Overview

The California Supreme Court ordered supplemental briefing on the following question: "Does the Legislature have authority to declare that certain errors are a 'miscarriage of justice' within the meaning of article VI, section 13 of the California Constitution and thereby obligate courts to reverse a judgment whenever such an error is found, even when the error in question would otherwise be subject to review for harmless error?" The court is asking this question in three Racial Justice Act (RJA) cases, *People v. Barrera*, *People v. Chhuon & Pan*, and *People v. Bankston*. The court should answer its question by holding that the legislature's attempt to revise the existing judicial interpretation of "miscarriage of justice" unconstitutionally abridges the court's power to interpret the California constitution.

Analysis

The RJA conflicts with the existing judicial interpretation of "miscarriage of justice."

Courts interpret the term "miscarriage of justice" in article VI, section 13 of the California constitution to bar reversal of cases where the error appellant points to is harmless. Section 13 provides:

No judgment shall be set aside, or new trial granted, in any cause, … for any error as to any matter of procedure, unless, after an examination of the entire cause, including the evidence, the court shall be of the opinion that the error complained of has resulted in a miscarriage of justice.[1]

Two independent lines of cases define what types of errors fall into the category of "miscarriage of justice." The *Watson* line of cases limited "miscarriage of justice" to errors where, after reviewing the evidence, the court finds that "it is reasonably probable that a result more favorable to the appealing party would have been

reached in the absence of the error."[2] In a narrower set of extreme procedural transgressions, the structural error doctrine defines "miscarriage of justice" to include errors that are so foundational that measuring their impact is impossible and harmless-error review is futile.[3] Combining these two definitions, the California Supreme Court's cases interpreting section 13 make clear that an error constitutes a "miscarriage of justice" only when the court cannot be reasonably confident that the error was harmless.[4] These the cases also suggest that the standard of review is an integral part of the courts' definition of "miscarriage of justice."[5]

The RJA creates a new cause of action that requires appellate courts to reverse trial court convictions if racial bias tinged any part of the trial process. Under the RJA, criminal defendants can file a claim to an appellate court alleging racial bias or animus toward the defendant by any party involved in the conviction.[6] If the defendant succeeds in proving racial bias in a post-conviction RJA claim, the RJA prescribes just one remedy for a violation: vacating the sentence and remanding for a new trial.[7] Courts have no discretion to decide whether to apply the vacatur remedy if the court rules for the defendant in the first instance, except in "cases for which judgment was entered before January 1, 2021, and only in those cases."[8] Thus, the RJA necessarily "forecloses any traditional case-specific harmless error analysis" by mandating vacatur, even in cases where the court could easily determine that the racism did not impact the conviction.[9]

Requiring reversal in such cases directly conflicts with the existing judicial interpretation of "miscarriage of justice" in section 13. That section bars reversal in all cases where the court can determine that the error was harmless.[10] To square this inconsistency, the legislative findings to the RJA redefined "miscarriage of justice," declaring that "racism in any form or amount, at any stage of a criminal trial, is intolerable, inimical to a fair criminal justice system, is a miscarriage of justice under Article VI of the California Constitution."[11] Yet the legislature cannot by statute override a judicial interpretation of a constitutional provision, because

interpreting the state constitution is an exclusive judicial power.

A legislative act violates the separation of powers when it impinges on the judiciary's discretion to interpret the law.

California courts apply a two-step core powers analysis to decide whether a regulation violates the separation of powers.[12] First, the court must "determine whether the acts of one branch implicate the 'core zone of authority' or powers of another branch."[13] If a core power is restricted, then the court must decide "whether that power has been materially impaired."[14]

Interpreting the state constitution is a core judicial power. There is a long California tradition defining constitutional interpretation as the most essential judicial power, dating back to 1857.[15] *Raven* holds that this power is so foundational to the judiciary that even the voters are limited in the restrictions they can impose on it.[16] Thus, constitutional interpretation is a core judicial power.

The RJA materially impairs that core judicial power by attempting to define a constitutional provision — and in so doing, abolishes judicial discretion to interpret that provision. That such discretion is an essential component of the judicial power was recently demonstrated in *Briggs v. Brown*, where the court held that it retained discretion to decide its cases and rejected an attempt by the voters to impose mandatory time limits on decisions.[17] The court held that strict time limits excessively burden courts by denying them enough time to provide "careful consideration" to their rulings, and enforcing the provision strictly "would materially impair fair adjudication."[18]

The legislature cannot reinterpret laws that the courts have already parsed.[19] Because the constitution gives the judiciary the power to interpret laws, "'a legislative declaration of an existing statute's meaning' is but a factor for a court to consider and 'is neither binding nor conclusive in construing the statute.'"[20]

Therefore, "legislative clarification … may not be used to overrule this exercise of the judicial function of statutory construction and interpretation."[21] Restricting judicial discretion to interpret the law materially impairs a core judicial power.

To be sure, the legislature may enact laws that reasonably regulate judicial functions. For example, court closure days or employee furlough days can be set by statute.[22] But the regulation principle only covers acts that do not prevent courts from functioning, or defeat or impair judicial discretion in deciding cases. For example, the legislature went too far when it attempted to bar courts from reconsidering prior rulings *sua sponte*.[23] The RJA strays into such forbidden territory. Just as restricting a court's ability to reconsider its own rulings "would directly and materially impair and defeat the court's most basic functions, exercising its discretion to rule upon controversies," a rule directing a ruling on an issue is an unconstitutional impairment.[24]

Courts must defend their discretionary judgment; indeed, they have in the past. For example, in a series of 1929 cases, the California Supreme Court affirmed the legislature's power to delegate admission and disciplinary proceedings to the State Bar, but only because the judiciary retained the power to issue final orders in both cases.[25] Similarly, in the state agency delegation cases, the court allowed the legislature to delegate some adjudicatory decisions to agencies, but only if the agency decision is subject to subsequent judicial review.[26] The court later narrowed this requirement by allowing the legislature to specify deferential standards for that review.[27] Yet these cases all preserved the core judicial discretionary power to interpret the law — while the RJA would compel the exercise of that discretion in a particular way. This the legislature cannot do.

The RJA bars courts from interpreting article VI, section 13 consistently with prior holdings.

The RJA materially impairs the judiciary's ability to use its core interpretive power by limiting judicial discretion in two ways. It eliminates the courts' discretion to

review case-specific evidence and decide whether there is a "miscarriage of justice" the cases before them.[28] The RJA also requires that courts adopt a definition of "miscarriage of justice" that conflicts with the existing judicial interpretation.

The RJA differs from permitted regulations because it restricts discretion in specific cases. This substantive attack is an even more serious invasion than the attempted procedural limits in *Briggs* and *Le Francois* — even those laws did not attempt to restrict the judicial power to interpret the law. Similarly, granting the State Bar power to adjudicate disciplinary proceedings did not constitute material impairment because the courts could still independently review the rulings.[29] By contrast, the RJA restricts and directs judicial discretion to interpret the state constitution.

The structural error doctrine, the only exception to section 13's mandate to review the evidence, illustrates how the RJA restricts judicial discretion. The California Supreme Court has gradually narrowed the structural error doctrine as it more critically applied its interpretation of section 13's requirements.[30] In each case the court independently reviewed the facts and decided that determining the error's effect was possible, so section 13 required the court to perform a harmless error analysis.[31] By defining racism as a structural error for the courts, the RJA forecloses the case-specific analysis the court applies to miscarriage of justice questions.[32] The RJA provision requiring reversal thus violates the separation of powers because it "would directly and materially impair" the courts' ability to engage in their judgment about the necessity of reversal of particular errors, just as *Le Francois*'s bar on *sua sponte* reconsideration restricted the courts' ability to apply their own judgment.[33]

Forcing the courts to adopt a particular definition of a constitutional term is even more constitutionally questionable than the statutory redefinition the court rejected in *McClung*. The RJA is only constitutional if the courts overrule the existing judicial definition of a miscarriage of justice.[34] Just as the court in *McClung* held that the legislature cannot rewrite existing judicial interpretations by statute, the RJA cannot declare that "miscarriage of justice" includes all racism when courts have already

held otherwise.[35] The legislature cannot pass statutes to overrule cases interpreting the constitution.[36] Therefore, the RJA's redefinition of "miscarriage of justice" violates the separation of powers.

Comparing the current rule to a hypothetical less restrictive RJA alternative emphasizes how the RJA exceeds the legislative power. If the RJA imposed the *Chapman* rule requiring reversal unless the error is "harmless beyond a reasonable doubt," the courts would maintain discretion in individual cases, but would still be forced to reverse cases that *Watson*'s "reasonably probable" standard requires them to affirm.[37] Such a law would conflict with the court's established standard, impacting the court's discretion in setting the standard of review, but would be a more limited impairment than the current version of the RJA because courts could still review individual cases.[38] That *Raven* invalidated a law requiring courts to adopt federal Fourth Amendment rules suggests that even this more limited approach would excessively impair the court's power by removing the discretion to independently interpret the state constitution.[39]

The legislature can only regulate the courts consistently with the state constitution. The court in *Tex-Cal Land Management* allowed the legislature to lower the standard of review for agency decisions despite prior cases imposing a higher standard because "[t]he language … that described constitutional limitations on legislative power was unnecessary to the holdings."[40] By contrast, *Watson*'s interpretation of section 13, barring reversal unless it is reasonably probable that the error was prejudicial, was essential to its judgment.[41] Therefore, the standard of review from section 13 better resembles the court's criminal procedure rules that *Raven* protected, and is distinct from the standard of review that *Tex-Cal* allowed the legislature to change.[42] The *Tex-Cal* court's reliance on the absence of a conflicting constitutional rule, combined with *Raven*'s statement that imposing constitutional interpretations is beyond the legislative power, confirms that the legislature cannot force the courts to adopt the RJA's interpretation of "miscarriage of justice."

The California Supreme Court should hold that the RJA violates the separation of powers by forcing courts to adopt the statutory definition of "miscarriage of justice." Although the legislature can regulate the courts, it exceeds that power when it restricts the court's ability to determine the law in particular cases. By impeding courts from engaging in a case-by-case interpretation of the term "miscarriage of justice" and forcing the courts to adopt an interpretation contrary to the existing interpretation of section 13, the RJA materially impairs the judiciary's exercise of a core power. The RJA's mandatory remedy is unconstitutional.

Conclusion

The RJA is an unconstitutional violation of the separation of powers. By forcing courts to overturn a class of convictions without performing a harmless error analysis, the RJA requires courts to adopt a definition of "miscarriage of justice" in article VI, section 13 that is inconsistent with existing judicial interpretations of that term. Limiting the judicial power to rule in specific cases and reinterpreting constitutional terms in ways that conflict with existing law exceeds the legislature's authority.

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1. Cal. Const., art VI, § 13. ↑
2. *People v. Watson* (1956) 46 Cal.2d 818, 836–37. ↑
3. See, e.g., *F.P. v. Monier* (2017) 3 Cal.5th 1099, 1111–13. ↑
4. See *id*.; *Watson,* 46 Cal.2d at 836–37. ↑
5. See *Watson,* 46 Cal.2d at 836–37. ↑
6. *People v. Simmons* (2023) 96 Cal.App.5th 323, 336, citing Pen. Code § 745(a)(2). ↑
7. *Id.* at 337, citing Pen. Code § 745(e). ↑

8. *Id.* at 337, quoting Pen. Code § 745(k). ↑
9. *Id.* ↑
10. *Watson,* 46 Cal.2d at 836–37. ↑
11. Assem. Bill No. 2542, § 2(i). ↑
12. Carrillo & Chou, *California Constitutional Law: Separation of Powers* (2011) 45 U.S.F. L.Rev. 655, 680. ↑
13. *Id.,* citing *Marine Forests Society v. California Coastal Com.* (2005) 113 P.3d 1062, 1067. ↑
14. Carrillo & Chou 45 U.S.F. L. Rev. at 680; *Superior Court v. County of Mendocino* (1996) 13 Cal.4th 45, 58–59. ↑
15. See generally *Nougues v. Douglass* (1857) 7 Cal. 65. ↑
16. *Raven v. Deukmejian* (1990) 52 Cal.3d 336, 352. ↑
17. *Briggs v. Brown* (2017) 3 Cal.5th 808, 854. ↑
18. *Id.* at 850–52, 854. ↑
19. *McClung v. Employment Development Dept.* (2004) 34 Cal.4th 467, 470. ↑
20. *Id.* at 473, quoting *Western Security Bank v. Superior Court* (1997) 15 Cal.4th 232, 244 ↑
21. *Id.* at 474, quoting *People v. Cuevas* (1980) 111 Cal.App.3d 189, 200. ↑
22. *Superior Court v. County of Mendocino* (1996) 13 Cal.4th 45, 48–49. ↑
23. *Le Francois v. Goel* (2005) 35 Cal.4th 1094, 1096–97. ↑
24. *Id.* at 1104–05. ↑
25. *Brydonjack v. State Bar of Cal.* (1929) 208 Cal. 439, 445; *In re Shattuck* (1929) 208 Cal. 6, 12. ↑

26. *Drummey v. State Board of Funeral Directors and Embalmers* (1939) 13 Cal.2d 75, 85. ↑

27. See *Tex-Cal Land Management, Inc. v. Agricultural Labor Relations Bd.* (1979) 24 Cal.3d 335, 344. ↑

28. See *Watson,* 46 Cal.2d at 836. ↑

29. *In re Shattuck,* 208 Cal. at 11. ↑

30. *Monier,* 3 Cal.5th at 1111–13. ↑

31. See *Soule v. General Motors Corp.* (1994) 8 Cal.4th 548, 579–80. ↑

32. See *Simmons,* 96 Cal.App.5th at 337; *Monier,* 3 Cal.5th at 1113. ↑

33. See *Le Francois,* 35 Cal.4th at 1104–05. ↑

34. See *Simmons,* 96 Cal.App.5th at 337; *Watson,* 46 Cal.2d at 836. ↑

35. See *McClung,* 34 Cal.4th at 474; *Watson*, 46 Cal.2d at 836–37. ↑

36. *McClung*, 34 Cal.4th at 471; *Nougues*, 7 Cal. at 78–79 (Murray, C.J., concurring). ↑

37. See *Chapman v. California* (1967) 386 U.S. 18, 23; *Watson,* 46 Cal.2d at 836–37. ↑

38. See *Watson,* 46 Cal.2d at 836–37. ↑

39. *Raven*, 52 Cal.3d at 352. ↑

40. *Tex-Cal Land Management, Inc.*, 24 Cal.3d at 345. ↑

41. *Watson,* 46 Cal.2d at 837. ↑

42. See *id.*; *Raven*, 52 Cal.3d at 352; *Tex-Cal Land Management, Inc.*, 24 Cal.3d at 345. ↑