

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

Gordon D. Schaber Superior Court, Department 32

JUDICIAL OFFICER: HONORABLE JAMES P. ARGUELLES

Courtroom Clerk: Deanna Ward
Bailiff: John Gonzales

CSR: Leslie McKee #1810

34-2023-80004106-CU-WM-GDS

June 30, 2023
11:00 AM

**California Chamber Of Commerce vs. California Privacy
Protection Agency**

MINUTES

APPEARANCES:

Petitioner California Chamber Of Commerce represented by Kurt R Oneto.

Other Appearance Notes: Natasha Saggar Seth, counsel present for Respondent via remote appearance.

David Lazarus and Kurt Oneto counsel present for Petitioner via remote appearance

NATURE OF PROCEEDINGS: Petition for Writ of Mandate - Writ of Mandate

The parties appeared for hearing on June 30, 2023. After hearing oral argument, the Court issues its final order as follows:

Petitioner California Chamber of Commerce's (Petitioner) Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief is GRANTED, in part.

Petitioner's Request for Judicial Notice (RJN) and Supplemental RJN are unopposed and are GRANTED.

Respondent California Privacy and Protection Agency (Agency)'s RJN is unopposed and is GRANTED.

OVERVIEW

In 2018, the California Legislature enacted the California Consumer Privacy Act of 2018 (CCPA), providing consumers with various rights regarding the collection and use of consumer data. (See Cal. Civ. Code § 1798.185(a)(1).) The CCPA became operative on January 1, 2020 and required the Attorney General to adopt final regulations implementing the Act “[o]n or before July 1, 2020.” (Civ. Code § 1798.198, subd. (a).) The Attorney General was prohibited by statute from bringing an enforcement action under the CCPA until July 1, 2020, or “until six months after the publication of the final regulations...whichever is sooner.” (Civ. Code § 1798.185, subd. (c).)

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

In November 2020, California voters approved Proposition 24, known as the California Privacy Rights Act of 2020 (Act). The Act established new standards regarding the collection, retention, and use of consumer data and created the California Privacy Protection Agency (Agency) to implement and enforce the law. The Act also imposed new obligations governing personal information, including requirements that businesses adopt certain mechanisms permitting consumers to opt out of data sharing.

The Act's enforcement provision as it applies to the Agency appears in section 1798.185, subdivision (d) of the Civil Code:

The timeline for adopting final regulations required by the act adding this subdivision shall be July 1, 2022. Beginning the later of July 1, 2021, or six months after the agency provides notice to the Attorney General that it is prepared to begin rulemaking under this title, the authority assigned to the Attorney General to adopt regulations under this section shall be exercised by the California Privacy Protection Agency. **Notwithstanding any other law, civil and administrative enforcement of the provisions of law added or amended by this act shall not commence until July 1, 2023,** and shall apply to violations occurring on or after that date. Enforcement of provisions of law contained in the California Consumer Privacy Act of 2018 amended by this act shall remain in effect and shall be enforceable until the same provisions of this act become enforceable.

(Civ. Code § 1798.185, subd. (d) [emphasis added].)

In October 2021, the Agency informed the Attorney General it was prepared to assume rulemaking authority pursuant to Subdivision (d). On July 8, 2022, the Agency released a Notice of Proposed Rulemaking and published proposed regulations, commencing a 45-day public comment period consistent with the Administrative Procedures Act. The Agency reviewed a number of public comments and ultimately issued revised proposed regulations on November 3, 2022.

On March 29, 2023, the Agency's first set of regulations under the Act were approved by the Office of Administrative Law (OAL) in twelve of the fifteen areas contemplated by Section 1798.185. The Agency concedes it has not yet finalized regulations regarding the three remaining areas--cybersecurity audits, risk assessments, and automated decision-making technology--as contemplated by Section 1798.185. Regulations will not be finalized in these areas until sometime after July 1, 2023. The Agency has publicly stated it will not be enforcing the law in these areas until the Agency has finalized applicable regulations. It does, however, intend to enforce the law in the other twelve areas as soon as July 1, 2023.

The parties largely agree on the purpose and scope of the CCPA and the Act, as well as the events leading to the instant Petition. The Agency does not dispute that it is required to adopt regulations in all of the areas described in Section 1798.185, subdivision (a). The parties diverge on the result of the Agency's failure to pass final regulations in all contemplated areas by July 1, 2022, the timeline for enforcement by the Agency, and the voters' intent regarding the same.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

Petitioner argues California voters “intended for the Agency to issue the complete regulations covering the fifteen mandatory issues by July 1, 2022,” and that “. . .the voters intended businesses to have one year from the Agency’s adoption of final regulations before the Agency could begin enforcement.” (Brief, pp. 18, 21.) Petitioner further argues businesses will be unfairly prejudiced by the Agency’s enforcement of the Act beginning July 1, 2023.

The Agency argues the text of the Act is not so straightforward as to confer a mandatory promulgation deadline of July 1, 2022, nor did the voters intend for impacted business to have a 12-month grace period between the Agency’s adoption of all final regulations and their enforcement.

PETITION

In its first cause of action, Petitioner seeks a writ of mandate pursuant to Code of Civil Procedure section 1085 seeking an order compelling the Agency to adopt final regulations and commanding Respondents to refrain from enforcing the Act within one year of the adoption.

The Petition also contains a cause of action for declaratory relief, seeking a declaration that the Agency has a mandatory duty to adopt final regulations by July 1, 2022, and that the Act establishes a minimum period of one year between promulgation of final regulations and enforcement of the regulations.

Petitioner’s third cause of action for injunctive relief seeks an order prohibiting Respondents from enforcing the Act until one year following its adoption of all required regulations under the Act.

DISCUSSION

The rules for interpreting statutes apply to voter initiatives. (*See People v. Buycks* (2018) 5 Cal.5th 857, 879.) The court endeavors to effectuate the voters’ intent, turning first to the measure’s language, and giving the terms their ordinary meaning. (*Id.* at 879-880.) “But the statutory language must also be construed in the context of the statute as a whole and the overall statutory scheme.” (*Id.* at 880.) In addition to giving effect to the measure’s specific language, the Court gives effect to its major and fundamental purposes. (*Id.*) An initiative’s general statement of purpose is one guide, but not the only one, informing the voters’ intent. (*See Gardner v. Schwarzenegger* (2009) 178 Cal.App.4th 1366, 1374.)

“Absent ambiguity, [the court] presume[s] that the voters intend the meaning apparent on the face of an initiative measure [citation] and the court may not add to the statute or rewrite it to conform to an assumed intent that is not apparent in its language.” (*Professional Engineers in Calif Gov’t V. Kempton* (2007) 40 Cal.4th 1016, 1037.) “Where there is ambiguity in the language of the measure, ‘ballot summaries and arguments may be considered when determining the voters’ intent and understanding of a ballot measure.’” (*Id.* [brackets in original].) While the Court accords “weak deference” to an agency’s statutory interpretation of its governing statutes “where its expertise gives it superior qualifications to do

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

so,” the issue is ultimately subject to de novo review. (*City of Brentwood v. Campbell* (2015) 237 Cal.App.4th 488, 500.) In ruling upon a petition for writ of mandamus, the Court may direct an agency not to enforce an invalid statute. (*Patterson v. Padilla* (2019) 8 Cal.5th 220, 250; *Planned Parenthood Affiliates v. Van De Kamp* (1986) 181 Cal.App.3d 245, 262.)

Petitioner first argues the Act required the Agency to have published final regulations by July 1, 2022. The Court agrees. Subdivision (d) reads, in relevant part, “...the timeline for adopting final regulations required by the [A]ct adding this subdivision shall be July 1, 2022.” (Civ. Code § 1798.185, subd. (d) [emphasis].) The term “shall” usually denotes a command, and the Court discerns no contrary intent elsewhere in the Act’s text. (See *Doe v. Albany Unified School Dist.* (2010) 190 Cal.App.4th 668, 676-677 [although “shall” ordinarily denotes a command, there may be cases in which it is intended differently].) The term “timeline for adopting” is not used elsewhere in the California Civil Code and thus has not previously been interpreted by the Court. While the Agency argues the phrasing is ambiguous, the deadline would be rendered meaningless and mere surplusage if the Court were to interpret the July 1, 2022 date as anything but a deadline to adopt final regulations. (See *Estate of MacDonald* (1990) 51 Cal.3d 262, 27 [The court may not construe a statute so as to render it “mere surplusage”].) For example, if the Court were to interpret July 1, 2022 as the date the Agency must begin the promulgation process, there would be no limit to how long the Agency could then take to ultimately pass final regulations. It is clear from the plain language of the statute that this was not the voters’ intent.

Petitioner next argues the voters intended for enforcement not to begin for one year following the Agency’s promulgation of final regulations so as to allow sufficient time for affected businesses to become compliant with the regulations. Thus, the Agency should be prohibited from enforcing the Act on July 1, 2023 when it failed to pass final regulations by the July 1, 2022 deadline. In opposition, the Agency argues there is no evidence of the voters’ intent to allow for a 12-month window between the passing of final regulations and the Agency’s enforcement. The Court agrees with Petitioner. As explained above, the plain language of the statute indicates the Agency was required to have final regulations in place by July 1, 2022. The parties agree Subdivision (d) allows the Agency to begin enforcement a year later on July 1, 2023. The very inclusion of these dates indicates the voters intended there to be a gap between the passing of final regulations and enforcement of those regulations. The Court is not persuaded by the Agency’s argument that it may ignore one date while enforcing the other.

The Agency notes that as of March 29, 2023, it implemented final regulations in twelve of the fifteen areas contemplated by Section 1798.185. As to the three remaining areas (cybersecurity audits, risk assessments, and automated decisionmaking technology), it concedes no final regulations will be in place by July 1, 2023, when Section 1798.185, subdivision (d) permits it to begin enforcing violations of the Act. While the Agency has stated “[r]egulations concerning [these areas] will not take effect or be enforced by the Agency until adopted by the Board in compliance with the Administrative Procedures Act and approved by the Office of Administrative Law,” (Opposition, pp. 19-20) the Agency has not indicated any timeline by which it plans to enforce the law in these remaining three areas. As stated, the Agency could plan to begin enforcing final regulations in these areas immediately upon their finalization, giving effected business no time to come into compliance. The Court agrees with Petitioner that this would not be in keeping with the voters’ intent. Simultaneously, the Court agrees with the

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

Agency that delaying the Agency's ability to enforce *any* violation of the Act for 12 months after the last regulation in a single area has been implemented would likewise thwart the voters' intent to protect the privacy of Californians as contemplated by Proposition 24. Striking a balance between the two, the Court hereby stays the Agency's enforcement of any Agency regulation implemented pursuant to Subdivision (d) for 12 months after that individual regulation is implemented. (*See Legislature of State of Cal. v. Padilla* (2020) 9 Cal.5th 867, 879 [the Court may reform statutory and constitutional amendment deadlines to effectuate the enactors' clearly articulated policy judgments when it is feasible to do so].) By way of example, if an Agency regulation passes regarding Section 1798.185 subdivision (a), subsection (16) (requiring the Agency issue regulations governing automated decisionmaking technology) on October 1, 2023, the Agency will be prohibited from enforcing a violation of said regulation until October 1, 2024. The Agency may begin enforcing those regulations that became final on March 29, 2023 on March 29, 2024.

Finally, the Court is not persuaded by the Agency's argument that Petitioner has not demonstrated how California businesses have been prejudiced by the Agency's failure to adopt final regulations by July 1, 2022, or how they will be prejudiced by the Agency's enforcement of regulations beginning July 1, 2023. The Agency points to no authority indicating Petitioner must make any such showing, nor is the Court persuaded that Petitioner must do so. The Court's finding that the Agency failed to timely pass final regulations as required by Section 1798.185 is sufficient to grant the Petition.

Petitioner's second and third causes of action for declaratory and injunctive relief are rendered moot by the Court's order, and are dismissed in the Court's discretion.

DISPOSITION

The Petition is granted, in part. Enforcement of any final Agency regulation implemented pursuant to Subdivision (d) will be stayed for a period of 12 months from the date that individual regulation becomes final, as described above. The Court declines to mandate any specific date by which the Agency must finalize regulations. This ruling is intended to apply to the mandatory areas of regulation contemplated by Section 1798.185, subdivision (a). Consistent with the plain language of Section 1798.185, subdivision (d), regulations previously passed pursuant to the CCPA will remain in full force and effect until superseding regulations passed by the Agency become enforceable in accordance with the Court's Order.

Pursuant to Cal. R. Ct. 3.1312, counsel for Petitioner shall **serve and then lodge** (1) for the court's signature a proposed judgment to which this ruling is attached as an exhibit, and (2) for the clerk's signature a proposed writ of mandate.

The Petition for Writ of Mandate filed by California Chamber Of Commerce on 03/30/2023 is Granted in Part.

Certificate of Mailing is attached.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

/s/ D. Ward

By: **D. Ward, Deputy Clerk**

Minutes of: 06/30/2023

Entered on: 06/30/2023

SUPERIOR COURT OF CALIFORNIA COUNTY OF SACRAMENTO	Reserved for Clerk's File Stamp
COURTHOUSE ADDRESS: Gordon D. Schaber Superior Court 720 Ninth Street, Sacramento, CA 95814	FILED Superior Court of California County of Sacramento 06/30/2023 D. Ward, Deputy
PLAINTIFF/PETITIONER: California Chamber Of Commerce	
DEFENDANT/RESPONDENT: California Privacy Protection Agency et al	
CERTIFICATE OF MAILING	CASE NUMBER: 34-2023-80004106-CU-WM- GDS

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the Minute Order (Petition for Writ of Mandate - Writ of Mandate) upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States mail at the courthouse in , California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.

Kurt R Oneto
Nielsen Merksamer Parrinello Gross & Leoni, LLP
1415 L STREET
1200
Sacramento, CA 95814

Sean P Welch
Nielsen Merksamer Parrinello Gross & Leoni LLP
2350 Kerner BOULEVARD
250
San Rafael, CA 94901

Dated: 07/03/2023

By: */s/ D. Ward*
D. Ward, Deputy Clerk

CERTIFICATE OF MAILING