

Hi, this is Chris Micheli with the Sacramento governmental relations firm of Aprea & Micheli and an adjunct professor at McGeorge School of Law in its Capital Lawyering Program. Today's podcast is on the role of the judicial branch in the lawmaking process here in California.

Members of the state and federal judiciary branches play a role in California lawmaking in the actual legislative process, as part of our state government system of checks and balances. When California statutes or regulations are legally challenged, for example, then the state or federal court that makes a determination establishes a public policy for the state.

Of course, California statutes and regulations may be challenged on either federal or state constitutional grounds. As a result, both state and federal courts may play a role in the state lawmaking process. In addition to these legal challenges, both federal and state courts may be called upon to interpret California statutes or regulations.

The judicial branch of the state and federal governments is granted its authority by the California and US constitutions. In addition, of course, the powers and duties of the judicial branch are enumerated in federal and state statutes.

Statutory interpretation is a primary role of the judicial branch of government in the state lawmaking process. In fact, courts are regularly called upon to interpret state statutes and regulations, sometimes to the dismay of elected officials in the executive or legislative branches of government.

This third branch of government does play a crucial role in the lawmaking process when the courts determine what the legislative intent was of a statute, or whether a regulation comports with the Administrative Procedure Act, or whether a statute or regulation is constitutional. This, of course, is the most critical role of the judicial branch in the state lawmaking process.

Occasionally, the California Legislature passes a law that does not comport with the state or federal constitutions. Despite claims by judges that they leave lawmaking to the elected branches of government, when judges modify statutes or issue a determination of how a statute or regulation is to be interpreted and applied, then judges do, to some degree, become a critical part of the state policymaking process.

Hence, from my perspective, all three branches of state government do, in fact, play a role in the development of state public policy.

When a statute, a regulation, or other governmental action is found to violate a provision of either the federal or the state constitutions, then the courts will not only invalidate that

law, regulation, or executive order, but the courts may also impose injunctive or other relief that is tantamount to a new public policy being adopted.

When provisions of law -- primarily statutes or regulations -- are unclear in some regard, then the courts will engage in statutory interpretation to clarify the law and do its best to determine what was the legislative intent in adopting the particular statute.

Sometimes, the court's interpretation is the creation of a new public policy. Generally speaking, the California courts are not really vested with the power to legislate, as this authority would conflict with the constitutional separation of powers and, of course, the roles of the legislative and executive branches of state government.

However, the courts can and do get involved in developing public policy. When they do, of course, that policy has the same effect as a statute adopted by the legislative branch. For example, look at the landmark case of *Serrano versus Priest* from 1971, which originated as a class action, which was brought by public interest attorneys on behalf of a class of all California public school students.

The case involved pressing issues of the day, public education as a fundamental right and discrimination against poor and minority students. What occurred was the California Supreme Court struck down California's public school general financing structure, claiming that it violated the state constitution's equal protection guarantee.

Under this system, per pupil expenditures varied greatly and depended on a school district's tax base. These kinds of tax-base disparities resulted in significant fiscal inequalities in actual education expenditures, on a per-pupil basis, from school district, around the state of California.

The Court's decision, including its follow-up decision in 1976, essentially gave instructions to the California legislature on what would be required to fix the state funding statutes. As a result of these court decisions, the legislature did so.

Another way in which the courts make state public policy, as we've discussed, is through statutory interpretation. In this regard, there may be a statute or group of statutes that are unclear or even silent on some aspect of public policy. The court is asked to fill in the gap, or at least discern the intent of the legislature.

To invoke this approach, the plaintiff challenging the statute will need to say that the statute or statutory scheme is unclear or silent. They must bring forth a statute and show standing to sue.

Finally, while the federal courts may be limited, in terms of their ability to adopt or create policy, they, too, often have a profound role in terms of the development of public policy.

In particular, newly adopted statutes, regulations, and executive orders are often challenged in the state and federal courts.

For those who might have lost in the legislative process, or even won, the courts have long been used as a means of preventing adopted policy from going into effect or correcting some other injustice in society.

Those are just some of the roles that the judicial branch can play in the California lawmaking process.

Chris: Thanks for joining this podcast.