

Hi. This is Chris Micheli with the Sacramento governmental relations firm of Aprea & Micheli and an adjunct professor at McGeorge School of Law. Thanks for joining today's podcast which looks briefly at the question, why might a bill in California be declared unconstitutional?

As you can imagine, on occasion, California statutes can be challenged in either state or federal court with the argument being that the statute violates the California or United States Constitutions. What might be the basis for these alleged constitutional defects in state-enacted statutes?

One basis is vagueness, which essentially means that the statute was not written with some reasonable degree of certainty so that the average citizen could understand the meaning of the statute and how the statutory provisions would actually be applied.

Now, courts use descriptions of these unconstitutionally vague statutes with terms such as that they are “nearly unintelligible” and similar terminology.

Another basis is violation of the Equal Protection Clause, which is found in the 14th Amendment to the US Constitution. This principle of constitutional law essentially prohibits states from treating different classes of individuals in different ways. A number of state constitutions also provide expressed equal protection guarantees.

Generally, the rule is that a statute enacted by a state should not draw any distinction based upon different classes of people.

Another basis could be what's called the improper delegation of legislative authority. Here, the legislature is precluded from granting broad powers to an executive branch administrative agency. With too much authority delegated from the legislative branch to the executive branch, it could be deemed to be improper, in which case it would violate the Constitution.

Another is the separation of powers doctrine. That is not found in the words of the US Constitution, although applied naturally by the US Supreme Court in a myriad of decisions. The separation of powers doctrine is in fact found in the California Constitution in Article III.

It basically specifies that each of the three branches of state government have very specified powers and duties. Therefore, the legislative, executive, and judicial branch powers cannot be exercised by the other powers without violating the separation of powers doctrine. The goal here is to protect each branch from having any of their power usurped from the other two branches.

Another basis is the single-subject rule. California prohibits a bill from encompassing more than one subject.

By the way, that's not only found in Article IV of the California Constitution dealing with the legislative branch and bills, but also in Article II dealing with direct democracy and the initiative process. Both initiatives and bills in California are prohibited from encompassing more than one subject.

This term has been broadly defined by the courts. There have been quite a number of instances where California courts have ruled that the single-subject doctrine or limitation has in fact been

violated. The idea here is that you want to prevent the combination in one single bill of entirely unrelated matters that would probably not receive support if they were offered independently.

On this basis of some of these different doctrines, legislative bill drafters have to clearly be careful in drafting provisions of bills that they work on so that they don't raise these potential constitutional concerns.

Now, there are many other constitutional challenges, eminent domain, the impairment of contracts, the supremacy clause, due process, and of course the First Amendment. There have also been a number of California statutes that have been appealed to the United States Supreme Court and where the California statutes were actually struck down by the Federal High Court.

For example, in 2018, in *National Institute of Family and Life Advocates v. Becerra*, a state statute was struck down on First Amendment free speech clause grounds. In 2011, in *Brown v. Entertainment Merchants Association*, likewise a state statute was struck down on First Amendment free speech clause grounds.

In 2007, in *Parents Involved in Community Schools* case, there was a striking down of the state statute based upon six amendment grounds. In 2003, in *American Insurance Association v. Garamendi*, it was an Article II vesting clause basis for striking down the state statute.

In 2003, there was also *Stogner v. California* which was struck down on the Ex Post Facto Clause found in Article I, Section 10, Clause 1 of the US Constitution. In 2000, on Commerce Clause and 14th Amendment Due Process Clause grounds, *Hunt-Wesson v. Franchise Tax Board*, a rev and tax code section statute was struck down.

The list goes on, but at least that gives you a flavor of some of the now constitutional grounds in which California-enacted statutes were struck down by the High Court. Again, that's just a look at some of the bases for why a Californian-enacted law might be declared unconstitutional under federal or state grounds.

Thanks for joining today's podcast. I hope you enjoyed it.