S283856

No.

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

CALIFORNIA CHAMBER OF COMMERCE
Petitioner,

v.

CALIFORNIA PRIVACY PROTECTION AGENCY; JENNIFER M. URBAN, ALASTAIR MACTAGGART, LYDIA DE LA TORRE, AND VINHCENT LE, IN THEIR OFFICIAL CAPACITIES AS BOARD MEMBERS OF THE CALIFORNIA PRIVACY PROTECTION AGENCY; AND ROB BONTA, IN HIS OFFICIAL CAPACITY AS ATTORNEY GENERAL OF THE STATE OF CALIFORNIA,
Respondents.

PETITION FOR REVIEW

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CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

Pursuant to the California Rules of Court, rules 8.488 and 8.208 and Part IV(L) of the Operating Practices and Procedures of the California Supreme Court, Petitioner California Chamber of Commerce hereby certifies that as of this date, other than the named parties, there are no interests to report.

Dated: February 20, 2024

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By: _____

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ISSUES PRESENTED FOR REVIEW

1. Whether the regulations required by the statewide initiative statute known as Proposition 24 (2020) can be enforced by the regulating agency in contravention of the measure's express one-year period between the adoption of implementing regulations and the commencement of enforcement.

2. Whether the Court of Appeal was correct in adopting a new rule of statutory construction requiring laws to include "explicit and forceful language" addressing the specific meaning and purpose of a particular statutory provision before that provision can be given effect and enforced.

INTRODUCTION

The primary issue in this lawsuit is whether state agencies may disregard statutory obligations. Respondent California Privacy Protection Agency ("Agency") has breached, and is poised to further breach, two requirements in its implementation of a statewide initiative of critical importance to both California businesses and consumers. The Agency failed to adopt regulations necessary to implement the initiative by the statutory deadline, and it continues to repudiate the linked requirement—set forth in the very same statutory provision—to abstain from commencing regulatory and civil enforcement until one year after issuance of those regulations. The Agency's conduct threatens substantial harm to thousands of California businesses and the consumers they serve.

The Superior Court correctly issued a writ of mandate requiring the Agency to abide by the one-year period mandated by

Proposition 24. (Order, attached hereto as Exhibit A.) Although the Court of Appeal acknowledged that the statutory language contains "what amounts to a one-year delay" between the deadline to adopt final regulations and the commencement of enforcement, it nonetheless reversed, and in doing so erred with respect to well-established rules of statutory construction. (Opinion, attached hereto as Exhibit B.) Petitioner respectfully requests that this Court grant review.

When California voters adopted Proposition 24, the "California Privacy Rights Act of 2020," they enacted a bespoke, phased implementation and enforcement schedule for the new law that departed significantly (and intentionally) from the default rulemaking schedule prescribed in the Administrative Procedure Act (the "APA"). Specifically, Proposition 24 directs the Agency to adopt a mandatory set of regulations needed to operationalize fifteen new requirements imposed by the law on or before July 1, 2022, and simultaneously barred the Agency from commencing enforcement until exactly one year later:

> [T]he timeline for adopting final regulations required by the act adding this subdivision **shall** be July 1, 2022 . . . 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 only apply to violations occurring on or after that date.

(Civ. Code § 1798.185(d), emphasis added; see Ex. C (excerpts).) Contrary to the voters' clear instructions, the Agency ignored the July 2022 deadline for issuing final regulations. This conclusion is undisputed. (Opinion at 18 ["There

is no dispute that the Agency failed to comply with the express terms of this provision, which clearly and unequivocally imposed a mandatory duty on the Agency to adopt final regulations required by the Act on or before July 1, 2022"].)

Despite having nearly two years to issue necessary implementing regulations, the Agency did not even *propose* any regulations until after the July 2022 deadline for finalizing them had passed; it adopted only a *partial* set of regulations *nine months* late (the "Late Regulations"). The Agency nevertheless sought to make up for its own delay by substantially shortening the one-year implementation period provided by the voters to three months, which—under the Court of Appeal's holding—would have left California businesses scrambling to overhaul their operations to comply with the Late Regulations.

The remaining regulations required by Proposition 24—covering such significant topics as how Proposition 24's requirements apply to artificial intelligence—still have not yet been issued (the "Missing Regulations"). Initial proposals of these regulations were recently circulated in draft form for discussion but the formal rulemaking process has not yet commenced. Under the Court of Appeal's reasoning, businesses would be subject to enforcement of those regulations as soon as immediately following issuance.

The Superior Court, having been presented with briefing and argument related to the factual background, the specific text of Proposition 24's Section 1798.185, the broader statutory context, and legislative history materials, correctly determined

that 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." (Order, at 4.) The Court of Appeal's reversal of that decision, acting on the Agency's petition for a writ of mandate, is unsupported by the text of Proposition 24 or case law.

Rather than apply well-established rules of statutory interpretation to ascertain the intent of the voters that enacted Proposition 24, the Court of Appeal adopted a new, heightened standard for statutory construction that is both perplexing and dangerous. According to the Court of Appeal, it is not enough that the voters—*in lieu of otherwise generally applicable law*—expressly set a certain, specific implementation schedule for the adoption of final regulations and, in the same provision, barred enforcement until at least one year later. Instead, the Opinion establishes a new standard barring a court from enforcing statutory directives linking enforcement to the issuance of regulatory guidance unless the statute contains "explicit and forceful language" mandating that interpretation. (Opinion, at 21.)

This rule, which stands to drastically narrow the judiciary's ability to enforce statutory obligations owed by government agencies, runs counter to the core principle of statutory construction: "ascertaining and implementing the intent of the adopting body." (*Lesher Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531, 543.) The Court of Appeal's flawed approach, in contrast, would require legislative drafters to

anticipate every contingency that might arise during a law's implementation, regardless of how remote or unforeseeable, including the possibility that a government agency will flout its mandatory obligations. There is no authority for this novel rule, which contravenes established principles of statutory construction.

In any event, even under the Court of Appeal's heightened standard, Proposition 24 clearly requires a minimum one-year implementation period following issuance of regulations. The plain text of Proposition 24 required the Agency to adopt mandatory implementing regulations on July 1, 2022, and simultaneously barred the Agency from enforcing those regulations until at least one year later. The Court of Appeal's decision wholly disregards, and renders meaningless, the voter's adoption of a bespoke timeline that departs significantly from the state's otherwise generally applicable rulemaking schedule prescribed in the APA. Indeed, if the voters had intended the APA to apply to the Proposition 24 regulations, the initiative would have simply said nothing at all about an express "timeline" for the adoption of regulations and the commencement of enforcement. (Civ. Code § 1798.185(d).) The Court of Appeal's opinion, by eschewing established rules of statutory construction, impermissibly reduces section 1798.185(d) to mere surplusage. (See, e.g., *Estate of MacDonald* (1990) 51 Cal.3d 262, 267.)

The Opinion similarly disregards Proposition 24's findings of purpose and intent. A rushed and chaotic implementation process, which businesses were facing with respect to the Late

Regulations—and are still facing with respect to the Missing Regulations—is most assuredly not what the voters intended when they passed Proposition 24, with its phased-in implementation schedule and requirement that numerous substantive regulations be adopted. (See Civ. Code §§ 1798.185(a), (d).) Nor does such chaos benefit consumers. Proposition 24 specifically manifests an intent to not only "ensure that *businesses and consumers* are *well-informed* about their *rights and obligations*," but to provide businesses and consumers with "*clear guidance* about their responsibilities and rights," and "*assist businesses with compliance* with the continuing goal of strengthening consumer privacy." (Prop. 24, §§ 3(C)(1), (C)(2) & (C)(4) [emphasis added]). The voters thus recognized what the Court of Appeal did not: providing businesses with sufficient time to understand and implement Proposition 24's new requirements benefits consumers by ensuring that businesses' new processes are deliberative, robust, and complete rather than rushed and chaotic. Although the Opinion acknowledges these unequivocal statements in Proposition 24, it abruptly casts them aside to adopt its new and perplexing "explicit and forceful" standard of review. (Opinion, at 21.)

The Opinion, which has been certified for publication, errs in its interpretation of Proposition 24 and threatens to produce far-reaching, unfair, and unintended results. The immediate consequence is to improperly read out of the law the one-year implementation period the voters expressly allotted for businesses to comply after receiving the Agency's guidance, reducing section

1798.185(d) to mere surplusage. This will be particularly prejudicial to businesses with respect to the Missing Regulations, such as those regarding artificial intelligence, which still have not even been formally proposed. The longer-term consequence will be to encourage regulatory agencies to treat statutory guidelines as merely advisory, to the detriment of the regulated community and the rule of law. This Court should grant review.[1]

BACKGROUND

A. The 2018 CCPA

In 2018, the Legislature enacted the California Consumer Privacy Act of 2018 ("CCPA") (Tit. 1.81.5 [commencing with Section 1798.100] of Part 4 of Div. 3 of Civ. Code). The CCPA provides consumers with the right to know what information is being collected about them and whether and to whom that information is being sold; the right to access, delete, and opt-out of the sale of their personal information; and the right to equal service and price, even if they exercise such rights. Separate and apart from Proposition 24, these rights are currently in effect and are being enforced by Respondent Attorney General. (AB 375; Civ. Code § 1798.185.)

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[1] For the reasons stated herein, including to prevent the widespread adoption of a perplexing and dangerous new standard for statutory construction that limits the judiciary's role in interpreting laws and could lead to unintended consequences well beyond this case, Petitioner alternatively requests that the Court order the Court of Appeal to de-publish the Opinion.

The 2018 CCPA required Respondent Attorney General to promulgate regulations on a variety of subjects, including rules to ensure required notices are accessible and legible to consumers and procedures to facilitate a consumer's ability to submit requests for information about collection of personal information. (AB 375; Civ. Code § 1798.185(a) (2018).) Respondent Attorney General promulgated two sets of regulations implementing the CCPA, on August 14, 2020, and on March 15, 2021. (Pet. App., Vol. 1, p. 75.) Petitioner Attorney General began enforcing the CCPA on July 1, 2020 (Pet. App., Vol. 1, p. 217.)

B. Proposition 24 Significantly Broadens the 2018 CCPA, Including by Requiring a New Set of Regulations to Give Effect to the Measure.

In November 2020, California voters approved Proposition 24, which substantially broadened the regime created by the 2018 CCPA, transferred regulatory and enforcement authority from the Attorney General to the newly created California Privacy Protection Agency, and added 21 new statutory sections. Among other provisions, Proposition 24 creates a host of new (but largely undefined) obligations governing personal information, including requirements that businesses minimize data collection, limit data retention, limit data sharing, and protect data security. (See, e.g, Civ. Code §§ 1798.110, 1798.115, 1798.120, 1798.121, 1798.135.)

Proposition 24 requires businesses to adopt mechanisms permitting consumers to opt-out of the "sharing" of personal data, to "correct" inaccurate data held by the business, and to limit the business's use and disclosure of "sensitive" personal data, a novel

category not contained in the 2018 CCPA. (Civ. Code §§ 1798.106, 1798.120, 1798.121, 1798.130, 1798.140(ae).) It requires businesses to notify and work with contractors, service providers, and other third parties to implement consumer requests regarding data, including through the express adoption of certain contractual provisions. (Civ. Code §§ 1798.105, 1798.100(d) [requiring agreements with such entities that contain specified terms], 1798.121, 1798.130(a)(3)(A), 1798.140(ag).)

Proposition 24 also created a new enforcement regime. The law transferred enforcement authority to the Agency and required it to issue implementing regulations to give effect to Proposition 24 and help businesses understand their obligations, but barred the Agency from commencing enforcement until one year later. After the voter-mandated implementation period, violators are subject to substantial monetary penalties and injunctive relief, and Proposition 24 repeals mitigation provisions in the CCPA that previously allowed businesses to avoid penalties by curing alleged violations after receiving notice. (Civ. Code §§ 1798.199.90, 1798.150(b), 1798.155.)

Significantly, although Proposition 24 broadly impacts businesses across the state, the vast majority of its requirements are not spelled out in the statute with specificity. Instead, the voters delegated authority to the Agency to flesh out the new requirements on numerous major substantive topics through mandatory rulemaking. (Civ. Code §§ 1798.185(a)(8)-(22).)

C. Proposition 24 Contains a Specific Implementation Schedule Setting the Deadline for Final Rulemaking and the Start of Enforcement Exactly One Year Apart.

Proposition 24 explicitly mandates that the "timeline for adopting final regulations required by [Prop. 24] shall be July 1, 2022." (Civ. Code § 1798.185(d).) Notwithstanding the Agency's effort to argue that this language is ambiguous, (Pet. App., Vol. 1, p. 322) [arguing deadline might mean the Agency was only required to "commence" regulatory activity by July 1, 2022], this deadline is not in legitimate dispute and the Agency has repeatedly acknowledged it. (See, e.g., Pet. App., Vol. 6, pp. 1664-1665, Agency Statement of Reasons [Proposition 24 "directed the Agency to adopt final regulations required by the Act by July 1, 2022"].) So did the Court of Appeal. (Opinion, at 18 ["There is no dispute that the Agency failed to comply with the express terms [of the statute], which clearly and unequivocally imposed a mandatory duty on the Agency to adopt final regulations required by the Act on or before July 1, 2022"].)

In the next sentence after establishing this deadline for the Agency to flesh out Proposition 24's new requirements through mandatory rulemaking, the drafters mandated that "civil and administrative enforcement of [the new requirements] shall not commence until July 1, 2023 and shall only apply to violations occurring on or after that date." (Civ. Code § 1798.185(d).) The provision concludes by expressly clarifying that the Attorney General retains interim authority to enforce the 2018 CCPA, protecting consumers until the new law can be implemented

lawfully: "[e]nforcement of provisions of law contained in the [2018 CCPA] shall remain in effect and shall be enforceable *until the same provisions of this act become enforceable*." (Civ. Code § 1798.185(d) [emphasis added].) Notably, this sentence extended the Attorney General's enforcement authority until the law's new requirements "*become enforceable*" and did not assume that such enforcement would necessarily begin on July 1, 2023 (as did the Court of Appeal).

D. Due to Its Own Substantial Delay, the Agency Issued Only a Partial Set of Regulations Nine Months After the Deadline and Still Has Not Issued the Remaining, Required Regulations.

Section 1798.185(d) allotted the Agency more than 18 months to issue the necessary regulations. But as illustrated in the following table, the Agency breached—and continues to breach—this mandatory deadline due to its own repeated and unexplained delays:

Milestones in the Regulatory Process

Agency Milestone	**Text of Prop. 24**	**Timeline**
Effective Date	Dec. 16, 2020	
Board Appointments		March 17, 2021 (Effective Date +3 mos.)
First Board Meeting		June 14, 2021 (Effective Date +6 mos.)
Commencement of Pre-Rulemaking Activity		Sept. 22, 2021 (Effective Date +9 mos.)

Notice to AG of Rulemaking Transfer to Agency		Oct. 21, 2021 (Effective Date +10 mos.)
Transfer of Rulemaking Authority		Apr. 21, 2022 (Effective Date +16 mos.)
Rulemaking Deadline	**July 1, 2022**	
Issuance of a Proposed, *Partial* Set of Regulations (the Late Regulations)		July 8, 2022 (*late*)
Close of Comment Period for Late Regulations		Aug. 22, 2022 (*late*)
Issuance of Revised Version of Late Regulations		Nov. 3, 2022 (*late*)
Close of Comment Period for Revised Version of Late Regulations		Nov. 18, 2022 (*late*)
Submission of Late Regulations to OAL		Feb. 13, 2023 (*late*)
OAL Approval of Late Regulations[2]		Mar. 29, 2023 (**~9 Months Late**)
Issuance of Remaining Regulations		*Still Not Even Proposed* (**>19 Months Late and Counting)**

[2] Under the trial court's order, the Agency's ability to begin enforcing the Late Regulations was slated to begin on March 29, 2024, one year after adoption of those regulations. However, because the Late Regulations are only a *partial* set, and the Agency still has not even proposed the remaining regulations (the "Missing Regulations"), there is a wide discrepancy between the trial court's order and the Court of Appeal's Opinion as to when enforcement of the Missing Regulations might possibly begin.

All told, the Agency did not hold its first Board meeting until three months after Board appointments were complete; did not notify the Attorney General that it was prepared to begin rulemaking (Civ. Code § 1798.185(d)) until four months later; did not issue a proposed first (partial) set of regulations until eight months after that (15+ months after board appointments); and did not finalize the partial set of regulations for eight more months. The final version of the Late Regulations were approved by OAL on March 29, 2023, nearly nine months after the deadline.

The Agency alone was responsible for these delays. Yet, the Agency sought to require businesses to overhaul their operations to comply with these regulations in just three months.

Moreover, as of the date of this Petition, the Agency still "has not yet started the formal rulemaking process for" the remaining regulations required to be issued in final form by July 2022 (i.e., the Missing Regulations).[3] These Missing Regulations will, among other things, cover cybersecurity audits and risk assessments and businesses' obligations when utilizing "automated decision-

[3] The Agency has not yet moved beyond the pre-rulemaking stage with respect to the Missing Regulations, despite those regulations already being more than 19 months late. The Agency solicited preliminary written comments from the public through an "Invitation for Preliminary Comments on Proposed Rulemaking," in effect a comment period that ran from February 10, 2023 to March 27, 2023. (Pet. App., Vol. 7, pp. 1919-1927.) But to date, the Agency has published only draft regulations for public comment that are marked: "The Agency has not yet started the formal rulemaking process for cybersecurity audits, risk assessments, or automated decisionmaking technology." (See, e.g., https://cppa.ca.gov/meetings/materials/20231208_agenda_item2a_cybersecurity_audit_regulations_clean.pdf [Dec. 2023 draft].)

making technology" (a term the statute does not even define), including "access and opt-out rights," and businesses' obligations to provide "meaningful information about the logic involved in such decision-making processes, as well as a description of the likely outcome of the process with respect to the consumer." (Civ. Code §§ 1798.185(a)(15), (16).) Yet, per the Court of Appeal's Opinion, even though businesses do not know what is required of them because the Agency has not yet issued the necessary regulations, the Agency could enforce these requirements as soon as immediately after their adoption. This result is absurd, unfair, and contrary to the one-year notice requirement expressly contained in Proposition 24.

1. The Agency Could Have Met Its Deadline or Sought a Modification of the Deadline, Yet Did Neither.

The Agency recognized far in advance of July 1, 2022 that it would not meet its rulemaking deadline. The Agency also spent considerable time discussing whether and how to seek an extension of the deadline. (Pet. App., Vol. 8, p. 2086 [Respondent Le: "is there any way to push back that pretty concrete-sounding deadline of July 1st, 2022"?]; *id.* [Chairman Urban: wondering if the Agency should request "that the legislature revise the deadline"; id. at pp. 2096, 2098-2099 [Respondent Le: "we probably should try to find a legislative champion to push back this deadline"]; *id.* at p. 2116 [Agency discussed "requesting of the Legislature a change in timelines in the statute"]; *id.* at p. 2095 [Board Member Thompson: opining that July 1, 2022 "deadline" meant that draft regulations should be issued no later than

January or February 2022]; *id.* at p. 2109, February 17, 2022 Meeting Tr. [Agency Executive Director: status of rulemaking "put[s] us somewhat past the July 1 rulemaking schedule in statute"].)

Yet the Agency ultimately declined to expedite its processes or pursue any legislative or judicial solution to modify its deadline. Instead, it unilaterally claimed the authority to simply ignore it. (Cf. *California Legislature v. Padilla* (2020) 9 Cal.5th 867, 871, 874 [at government's request, pushing back redistricting deadlines mandated by Propositions 11 (2008) and 20 (2010) because of delays in the federal census caused by COVID-19 and granting corresponding extensions in related deadlines].)

2. The Regulations Are Substantive and the Late Regulations Were Substantially Amended During the Rulemaking Process.

The Agency expressly acknowledged that the Late and Missing regulations are integral to "operationaliz[ing] new rights and concepts introduced by [Proposition 24]" and to providing the "clarity and specificity [necessary] to implement the law." (Pet. App., Vol. 1, p. 76.)[4] The Late Regulations contain more than three

[4] The regulations are therefore critical to enabling businesses to understand and implement their obligations under Proposition 24, which in many cases consist of little more than skeletal statutory obligations. (Compare Civ. Code § 1798.135 [opt-out preference signals], with 11 C.C.R. § 7025; compare Civ. Code § 1798.140(l) [brief definition of "dark pattern" interface], with 11 C.C.R. § 7004 [extensive standards for interfaces for CCPA requests and requests to obtain consumer consent that must be followed to avoid a dark pattern]; compare Civ. Code §§ 1798.105, 1798.130 [exemptions from requirement to delete or disclose information if

dozen separate sections that require businesses to make extensive changes to their practices and policies. Among other things, the Late Regulations require businesses to redesign essential infrastructure of how they use and collect data; institute new processes to manage the new rights of "correction" and data use limitations; renegotiate and update contractual relationships with service providers, contractors, and third parties; revise privacy policies and external facing guidance; and redesign user interfaces on websites and apps. (See 11 C.C.R. §§ 7014, 7023, 7024(h)-(i), 7027, 7050-7053.)

3. The Agency Ignored Repeated Requests by Stakeholders to Preserve the Time Mandated by the Voters for Implementation.

At numerous points during the rulemaking process, Petitioner, its member companies, and numerous other businesses and other organizations expressed concerns about the commencement of enforcement on July 1, 2023, given the Agency's failure to issue final rules by the July 1, 2022 deadline for regulations. (Pet. App., Vol. 4, pp. 887-889 [compliance requires locating, renegotiating, and amending existing agreements with service providers and contractors, and without the "additional clarification [through regulations], businesses will inevitably interpret [the statutory] language differently from one another,

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doing so would require "disproportionate effort"], with 11 C.C.R. § 7001(j) [detailed definition of key term]; compare Civ. Code §§ 1798.140(j)(1), 1798.140(ai) [definitions of "contractor" and "third parties"], with 11 C.C.R. §§ 7051, 7053 [detailed requirements for contracts with service providers, contractors, and third parties].)

creating unnecessary compliance risks and resulting in inconsistent treatment for consumers"]; Vol. 5, p. 1196 ["CPPA missing the statuary deadline of July 1st, 2022 set by Prop 24 carries a significant financial burden and risk for my business and my customers"]; *id.* at p. 1222 ["small businesses should not have to spend more money to comply with a shorter time frame for something the Agency could have addressed but refused to"]; *id.* at 1225 ["compliance costs . . . are especially hard for small businesses to absorb"]; Vol. 7, p. 1874 [detailing substantial time and costs on businesses due to Agency's missed deadline, including 300 to 1,000 or more hours per business, with most businesses requiring one to five new employees, not including legal services]; Vol. 8, pp. 2129-2149.)

In February 2023, the Agency finally made starkly clear that it would not abide by the statute's one-year implementation period, rejecting repeated requests by Petitioner and California businesses to follow the law. (Pet. App., Vol. 6, pp. 1663-1664.) The Agency instead stated that it would exercise "prosecutorial discretion" in evaluating whether its "delay in adopting the regulations" has hindered the ability of businesses to comply. (Pet. App., Vol. 6, pp. 1663-1664.) Of course, this was cold comfort for businesses, who had scarce time to prepare and no mandatory protection against potential regulatory actions carrying significant penalties, as well as cease and desist orders and injunctions, and face substantial uncertainty with respect to the enforcement of the Missing Regulations. (Civ. Code §§ 1798.155, 1798.199.90,

1798.199.95).) Petitioner thereafter filed the instant case in Sacramento Superior Court. (Pet. App., Vol 1, pp. 8-34.)

E. The Trial Court Ruled That the Agency Missed the Rulemaking Deadline and Barred the Agency from Shortening the One-Year Implementation Period Mandated by the Voters.

Having no alternative to preserving the one-year implementation period or helping businesses avoid this fraught, chaotic, and expensive process, Petitioner filed a Petition for Writ of Mandate in Sacramento County Superior Court on March 30, 2023. (Pet. App., Vol. 1, pp. 8-160.) Petitioner's advocacy through the regulatory process and the Agency's ultimate decision just a few weeks earlier to depart from its legal obligations explain the timing and rationale for the instant litigation. (Cf. Opinion, at 10-11 [incorrectly contending that "Chamber provided no explanation for why it did not seek writ relief earlier"].)

The Petition requested issuance of a writ of mandate barring the Agency from enforcing Proposition 24's implementing regulations until one year after the regulations' adoption. (*Id.* at pp. 30-31.) On June 30, 2023, after hearing oral argument on the Petition, the trial court (Hon. James P. Arguelles, presiding) granted the Petition, in part, in a written order. (Pet. App., Vol. 8, pp. 2150-2163; see also Order at Attachment A hereto.)

The court reasoned that Section 1798.185(d), which provides that "the timeline for adopting final regulations [] shall be July 1, 2022," does in fact establish a "deadline to adopt final regulations." (*Id.* at p. 2161) Further, the court concluded that the inclusion of parallel dates governing implementation one year apart "indicates

the voters intended there to be a gap between the passing of final regulations and enforcement of those regulations." (*Id.*) The court specifically rejected the Agency's "argument that it may ignore one date while enforcing the other." (*Id.*)

On July 20, 2023, the trial court entered judgment in favor of Petitioner. (Pet. App., Vol. 8, pp. 2213-2215.) On August 4, 2023, Respondents filed a Petition for Extraordinary Writ of Mandate in the Court of Appeal for the Third Appellate District. The Petition in the Court of Appeal did not seek a temporary stay of the trial court ruling.

F. The Court of Appeal Reversed.

On February 9, 2024, the Third District Court of Appeal issued a decision granting the Extraordinary Petition, with directions for the trial court. First, the Court of Appeal concluded that writ review was appropriate under the circumstances since the "timing of the Agency's authority to enforce the changes to consumer privacy rights effected by the Act presents a novel issue of law that is of widespread interest and requires prompt resolution to establish the guidelines for the enforcement of the new consumer privacy rights." (Opinion, at 13-14.)

The Court of Appeal initially concluded that the implementation clause of Proposition 24, Civil Code section 1798.185(d) "clearly and unequivocally imposed a mandatory duty on the Agency to adopt final regulations required by the Act on or before July 1, 2022." (Opinion, at 18.) The Court of Appeal then addressed the trial court's conclusion that the use of linked deadlines in Section 1798.185(d) and surrounding legislative

history and context indicated that the voters sought to provide a minimum one-year period between the issuance of regulations and the commencement of enforcement. The Opinion concluded that "explicit and forceful language" in the statutory text is required for writ relief, and despite acknowledging that the specific dates used in Proposition 24 are exactly one year apart and create "what amounts to a one-year delay" between final regulations and enforcement, the Opinion nonetheless held that because the "statute does not unambiguously require a one-year gap," a writ should not have been issued. (Opinion, at 19-21.)

Based on this reasoning, the Court of Appeal granted the peremptory writ of mandate, directing the trial court to vacate its order and judgment staying the Agency's regulations for a period of 12 months from the date that each individual regulation becomes final, and enter a new order denying relief and considering any non-moot issues. (*Id.* at 22.) The Court of Appeal made the Opinion final "immediately upon filing" and certified it for publication.

REASONS FOR GRANTING REVIEW

1. This Court Should Settle the Important Legal Issues Raised by the Text of Proposition 24, Which Expressly Provides a One-Year Period Between Adoption of Regulations and Their Enforcement.

It is beyond dispute that the proper interpretation of Proposition 24 is an important legal question in an area of heightened public scrutiny. The Court of Appeal premised its decision to grant review of the Agency's petition for extraordinary

writ relief on the single ground that "the timing of the Agency's authority to enforce the changes to consumer privacy rights effected by the Act presents a novel issue of law that is of widespread interest." (Opinion, at 14). Respondent Agency concurs, arguing below that "the issue presented here is one of great, statewide public importance," and is "an issue of first impression." (Pet. at 13.)

Further, the Agency's implementation of significant and far-reaching privacy rules is a question of intense practical and economic consequence for companies that do business in California. Many of the regulations required by Proposition 24 involve technical, complex, and novel subjects like the use of artificial intelligence and machine learning. (Civ. Code § 1798.185(a)(16).) Absent review by this Court, the Agency will be poised to commence enforcement of the Missing Regulations as soon as immediately after they are issued.

A rushed implementation schedule of significant new requirements will impose considerable financial burdens and risks on California businesses, including on small businesses. (Pet. App. Vol. 5, pp. 1195-1196, 1221-1223, 1874.) Not to mention the harm to consumers that stems from such a slapdash and chaotic approach to the new regulations, such as uneven, inconsistent, and downright confusing online experiences. (*Id.*; see also *id.* at 1321-1339, 1869-1918; Pet. App., Vol. 2, at pp. 390-395 [not surprisingly, the Agency received hundreds of comments during the rulemaking process, many of them thorough and detailed, including numerous

comments urging the Agency to abide by the one-year implementation period in the statute].)

The intense public debate surrounding the issue of privacy regulation underscores the importance of adjudicating the controversy over when the Agency may begin enforcing California's landmark privacy rules. The Legislature has enacted "various laws" in this area since 2018, and the voters approved Proposition 24 in November 2020. (Opinion, at 5-6.) Given that the implementation of privacy rules will impact thousands of California businesses and the consumers they interact with, including many that are of importance to the State's economy, the Court should grant review.

2. Review by this Court is Necessary to Correct the Court of Appeal's Adoption of a New, Flawed Rule of Statutory Construction.

This Court's review is necessary to correct the adoption of a perplexing and dangerous new standard for statutory interpretation. The Court of Appeal's published decision imposes a heightened standard for parties who seek to require that an administrative agency upholds its statutory duties. Under the Court of Appeal's reasoning, not only must a party prove that an interpretation of a contested provision is what the voters or the legislative body intended, but they must also point to "express statutory language" in support of their position. (Opinion, at 20; see also *id.* at 21 [to give effect to a provision the language must be both "explicit and forceful"].)

This new and dangerous "explicit and forceful" statement rule promises to ensconce agency interpretations in a layer of deference that has never been recognized. Administrative deference is limited to statutory provisions that are "technical, obscure, complex, open-ended, or entwined with issues of fact, policy, and discretion." (*Citizens for Beach Rights v. City of San Diego* (2017) 17 Cal.App.5th 230, 241). Such deference is unwarranted, however, where the question before the court is a pure legal issue of statutory interpretation. (*State Building v. Duncan* (2008) 162 Cal.App.4th 289, 304 (2008) [such issues involve a "quintessential judicial function" where the administrative agency has no "comparative interpretative advantage"]; see also *BullsEye Telecom, Inc. v. Public Utilities Com.* (2021) 66 Cal.App.5th 301, 309 [agencies are not entitled to deference when it comes to determining the extent of their jurisdiction]; *Malaga Cnty. Water Dist. v. Central Valley Regional Water Control Bd.* (2020) 58 Cal.App.5th 418, 435-436 [interpretations of procedural requirements for rulemakings are reviewed "purely de novo"].)

As such, the Court of Appeal's new test not only unwisely jettisons a court's toolbox of long-standing rules of statutory construction, but it runs counter to the very goal and purpose of statutory interpretation. It is axiomatic that a court's task when interpreting a voter-enacted measure is "to effectuate the electorate's intent." (*Save Our Sunol, Inc. v. Mission Valley Rock Co.* (2004) 124 Cal.App.4th 276, 280.) Naturally, that means starting with the plain text, presuming that the "voters intend the

meaning apparent on the face of an initiative measure" (*Lesher*, *supra*, 52 Cal.3d at 543), and moving on to consider external aids and ballot measure materials in the event the textual meaning is ambiguous (*People v. Valencia* (2017) 3 Cal. 5th 347, 358). In assessing a statute's text, courts "accord significance, if possible, to every word, phrase and sentence in pursuance of the legislative purpose" and avoid constructions that make "some words surplusage" or yield absurd results. (*Id.* at 357.) Further, courts examine the contested provisions "in light of the initiative as a whole" to determine the intent of the electorate. (*Prof'l Eng'rs in Cal. Gov't v. Kempton* (2007) 40 Cal.4th 1016, 1037.)

Indeed, in countless writ cases arising from challenges over the proper interpretation of voter-enacted measures, this Court has clearly and repeatedly recited the full complement of established principles of statutory construction. (See, e.g., *People v. Superior Court (Pearson)* (2010) 48 Cal 4th 564, 571; *Tuolumne Jobs & Small Bus. All. v. Superior Court* (2014) 59 Cal.4th 1029, 1037; *Kempton*, *supra* 40 Cal. 4th at 1037; *Silicon Valley Taxpayers' Ass'n, Inc. v. Santa Clara Cty. Open Space Auth.* (2008) 44 Cal.4th 431, 444.) No case we have located embraces the Court of Appeal's requirement that it may reach a potential interpretation only if its meaning is "explicit and forceful" in "express statutory language."

The Court of Appeal's reliance on *In re Dohner* (2022) 79 Cal.App.5th 590, the only case it cites for its holding, is entirely misplaced. *In re Dohner* stands for a separate proposition that is not at issue in this case – whether a statute imposes a "mandatory

duty" or "ministerial duty" on an agency, such that the agency is subject to enforcement by writ relief. (79 Cal.App.5th at 598-599; see also *Assn of Deputy Dist. Attorneys v. Gascon* (2022) 79 Cal.App.5th 503, 529; *Cal. Pub. Records Research, Inc. v. Cty. of Yolo* (2016) 4 Cal.App.5th 150, 184.) *In re Dohner* involved the question of whether writ relief was available to require state prison officials to allow inmates to possess a personal television in their cells. (79 Cal.App.5th at 592-593.) Because the regulation governing the relevant facility expressly prohibited the ownership of personal televisions in dormitory housing, respondents were not subject to any duty, and the court rejected the request for writ relief. (*Id.* at 597-600.)

The case is inapposite. At issue here is the proper interpretation of a provision in an *initiative statute*, Section 1798.185(d), in the present circumstance, where the Agency has undisputably failed to abide by its mandatory duty to issue final regulations by July 1, 2022, yet seeks to enforce those regulations on a timeline that would violate the one-year period set forth in the initiative statute between the adoption of regulations and their enforcement. This pure legal question must be determined under the longstanding rules of statutory interpretation, which applied properly, indicate the voters intended to provide a minimum one-year period between regulatory adoption and commencement of enforcement. (See *infra* Section 3.)

In any event, as set forth herein, it is without question that Section 1798.185(d) expressly imposes mandatory duties on the Agency. The Court of Appeal even specifically recognized that the

provision "clearly and unequivocally imposed a mandatory duty on the Agency" through use of the mandatory language "shall." (Opinion, at 18.) The text of Proposition 24 is equally clear with respect to the prohibition on premature enforcement; it says, "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." (Civ. Code § 1798.185(d), emphasis added.) It is incoherent for the first "shall" clause to impose a mandatory duty and for the second "shall" clause in the same provision to be interpreted as somehow affording the Agency limitless discretion that cannot be enforced through writ review.

The implications of the Court of Appeal's standard are potentially sweeping. It would require legislative drafters to anticipate wide ranges of potential scenarios and address each one with express statutory language. Here, that would have required voters to predict the Agency would *violate* its clearly stated duty to issue final rules by the specified date certain and address that contingency with specific statutory instructions. (But see generally *Mateel Envtl. Justice Found. v. Office of Envtl. Health Hazard Assessment* (2018) 24 Cal. App. 5th 220, 239 [there is a presumption that agencies fulfill their official duties].)

Such a rule would provide carte blanche for agencies to violate their statutory obligations unless the drafters expressly anticipate the agency's violations of the law. This would create perverse incentives and is directly contrary to the presumption that public officials carry out their duties with regularity. It would also radically depart from the longstanding rule that statutes do

not have to anticipate all possible circumstances to be enforceable by or against an executive agency. (*Calif. Chamber of Commerce v. State Air Resources Bd.* (2017) 10 Cal.App.5th 604, 625-26 ["failure to anticipate all ramifications…does not change the scope of the statutory language" because "[t]hat a statute can be applied in situations not expressly anticipated does not demonstrate ambiguity. It demonstrates breadth"].)

3. This Court's Review is Necessary to Protect California Businesses from Immediate Enforcement of New Regulations—Which Are Still Not Adopted—Due to the Court of Appeal's Flawed Interpretation of Proposition 24.

The Court of Appeal's improper application of the rules of statutory construction will allow the Agency to disregard the one-year implementation period enacted by the voters, thus giving rise to severe prejudice to California businesses that will be required to comply with the rules governing automated decision-making, cybersecurity audits, and risk assessments. The upshot is that California businesses may have no time between issuance of these regulations and commencement of enforcement, rather than the twelve months mandated by the voters. (See Gov. Code § 11343.4 [rules may become effective immediately upon filing with Secretary of State].)

The Court of Appeal's interpretation is plain error, even in its application of a novel "express statutory language" requirement. It impermissibly substitutes the state's *general* schedule for the implementation of regulations for the *specific* schedule selected by the voters in Proposition 24. This contravenes

longstanding principles of statutory interpretation as well as the express instructions in the Government Code, which provide that the state's general implementation schedule "shall not apply" when a specific enforcement date is "provided by the statute." (Gov. Code § 11343.4(b)(1).) More specifically, the Court of Appeal opinion disregards Proposition 24's text and context, which set forth a comprehensive timeline for the measure's implementation. And, it impermissibly sets aside, without explanation or justification, the extrinsic aids and statements of purpose that corroborate the plain text meaning confirmed by the trial court.

a. The Court of Appeal's Opinion Deviates from Proposition 24's Text and Context.

Because the Agency unquestionably violated its obligation to adopt mandatory regulations by July 1, 2022 (missing its deadline by more than 9 months on the Late Regulations and by more than 19 months and counting on the Missing Regulations), the trial court properly ruled that the corresponding enforcement deadline must be extended to preserve the measure's clear statutory implementation schedule. (Order at 4-5; Civ. Code § 1798.185(d) ["the timeline for adopting final regulations . . . shall be July 1, 2022 . . . civil and administrative enforcement of the [new provisions] shall not commence until July 1, 2023, and shall only apply to violations occurring on or after that date"].)

The evidence in support of this straightforward interpretation of the statute is plentiful. The voters established a timeline with two inter-related steps: (1) the Agency was to issue final regulations no later than July 1, 2022; and (2) the Agency

could begin enforcement no earlier than one year later, July 1, 2023. (See *Snidow v. Hill* (1950) 100 Cal.App.2d 31, 35 [exact dates are unambiguous].) The parallel use of the word "shall," the selection of dates precisely one year apart in the same subdivision, and the care taken to specify that enforcement commenced after July 2023 could not apply to earlier violations, all illustrate with express language the voters' intent to require the Agency to issue critical guidance to assist businesses and simultaneously bar the Agency from commencing enforcement until at least one year later. Even under the Opinion's flawed "explicit and forceful" standard, the dates for rulemaking and enforcement are clearly interrelated, not independent.

The statutory structure mandates the same conclusion. (See *Robert L. v. Sup. Ct.* (2003) 30 Cal.4th 894, 903 ["Statutory language should not be interpreted in isolation, but. . . must be construed in the context of the entire statute of which it is a part, in order to achieve harmony among the parts"].) Significantly, the choice to prescribe a one-year delay in enforcement in the very same paragraph directing the Agency to complete rulemaking by a date certain—and in a section of the law entitled "Regulations"—demonstrates that the bar on enforcement is inextricably connected to the Agency's deadline for issuing regulations. Were the two provisions not interrelated, the enforcement date would have instead been placed in Section 17, which establishes penalties for violations of the law, or in Section 24, which assigns enforcement authority to the Agency. But that is not what the voters adopted.

Relatedly, the voters used parallel, mandatory clauses to describe the implementation timeline and bar on enforcement, stating that the regulatory deadline "shall be July 1, 2022" and—just one sentence later—that enforcement "shall not commence until July 1, 2023." (Civ. Code § 1798.185(d).) A directive framed in this way is deemed to be an expression of intent that the provision of law at issue is not to take effect until implementing actions have been taken. (See *People v. Vega-Hernandez* (1986) 179 Cal.App.3d 1084, 1092; *McCarthy v. CB Richard Ellis, Inc.* (2009) 174 Cal.App.4th 106, 136; *Sweet v. Sheahan* (2d Cir. 2000) 235 F.3d 80, 88 ["[i]f Congress anticipated that the regulations would be a mere recitation and explanation of the statutory provisions, there would be no reason to build" a one-year delay between the deadline to promulgate regulations and the time for when such regulations would be enforceable].) Given this structure, it would be contrary to core principles of statutory interpretation to read the enforcement date in isolation from the regulatory deadline.

In so deciding, the voters specifically eschewed the default quarterly timeline established by the APA (Gov. Code § 11343.4(a), (b)(1)) in favor of a one-year period between regulation adoption and the start of enforcement. Again, the voters' deliberate choice to deviate from the default framework reflects a specific intent to provide a minimum one-year lead time before the Agency was permitted to begin enforcement.

The Court of Appeal's interpretation of Section 1798.185(d), on the other hand, yields incoherent and absurd results. (See *Smith v. LoanMe, Inc.* (2021) 11 Cal.5th 183, 192.) If the two dates

in Section 1798.185(d) are in fact independent, that would render the one-year gap between the rulemaking deadline and the commencement of enforcement meaningless, a view that runs afoul of the rule that statutes cannot be construed to render its language "mere surplusage." (*Estate of MacDonald* (1990) 51 Cal.3d 262, 267.) Further, the interpretation impermissibly imports into Proposition 24 the state's general rulemaking schedule in the APA that the voters *specifically rejected* in crafting Section 1798.185(d), and which would result in the Agency's enforcement of the regulations as soon as immediately upon publication. (See *Professional Engineers in Calif. Gov't v. Kempton* (2007) 40 Cal.4th 1016, 1037 [courts "may not add to the statute or rewrite it to conform to an assumed intent that is not apparent in its language"]; cf. Gov. Code § 11343.4.)

b. The Court of Appeal Ignored Statements of Purpose and Extrinsic Aids, Which Corroborate the Plain Text Meaning of Proposition 24.

The legislative history fully supports the plain text meaning. The statements adopted by the voters confirm that Proposition 24 was intended to be implemented on a schedule that addresses the needs of businesses subject to new and novel consumer privacy requirements. (*Carter v. California Department of Veterans Affairs* (2006) 38 Cal.4th 914, 925 [uncodified sections of a bill are "part of the statutory law" and may be used "as an aid in construing a statute"]; *People v. Canty* (2004) 32 Cal.4th 1266, 1280 [statements of intent in preamble sections "are entitled to consideration"].)

Here, the voters clearly indicated that California's implementation of the Act should strengthen privacy rights "*over time*" with simultaneous "attention to the impact on business and innovation." (Prop. 24, §§ 2(E), 3(C)(1).) They further recognized that businesses "should be provided with clear guidance about their responsibilities and rights" (*id.*, § 3(C)(2)) and should be "assist[ed] ... with compliance[.]" (*Id.*, § 3(C)(4).) Rushed enforcement would be incompatible with these directives. Further, legislative statements also indicate that the voters included a deliberate phase-in schedule to enable businesses to innovate and achieve solutions that would be beneficial to consumers. (See *id.* §§ 3(C)(1) [implementation should be guided by principle that strong rights will "create incentives to innovate and develop new products that are privacy protective"].)

Finally, the voters' directive that the earlier enacted CCPA protections stay in effect and continue being enforced undercuts the notion that the voters intended to adopt a rushed implementation and enforcement schedule. The 2018 CCPA established substantial consumer privacy protections and lodged enforcement responsibilities with the Attorney General, all of which remain in effect during the period while new regulations are being implemented. (See Civ. Code § 1798.185(d) ["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"]; Pet. App., Vol. 1, at pp. 214-222 [Attorney General statements that consumer complaints may be filed and that

predecessor regulations are in effect].) Moreover, the Court of Appeal acknowledged, as is reflected in the actual text of the measure, that Proposition 24 was introduced in response to efforts by the Legislature to amend CCPA—and that Proposition 24 did not replace CCPA. (Opinion, at 6 fn. 5.) No concerns were expressed by the Court of Appeal, or in Proposition 24 itself, with inadequate enforcement of CCPA by the Attorney General.

In fact, the Court of Appeal itself recognized these key statements of voter intent in the measure itself, even acknowledging that they made it "equally clear" Proposition 24 was intended to balance the new consumer protections against the rights of businesses to be adequately informed and prepared prior to enforcement of the new regulations. But without any explanation or justification, it simply waved them away. (Opinion, at 20-21 ["*In any event*, because there is no 'explicit and forceful language' . . ." (emphasis added)].) In doing so, the Court of Appeal erred in its application of the rules of interpretation as to both the text of Proposition 24 and its legislative history materials.

CONCLUSION

For the foregoing reasons, the Court should grant this Petition for Review. We also request that the Court order the Court of Appeal to de-publish the decision, for the reasons stated above, including to prevent the widespread adoption of a perplexing and dangerous new standard for statutory construction that limits the judiciary's role in interpreting laws and could lead to unintended consequences well beyond this case.

Respectfully submitted,

Dated: February 20, 2024

NIELSEN MERKSAMER PARRINELLO GROSS & LEONI LLP

By: _____

Sean P. Welch
Kurt R. Oneto
David J. Lazarus
Attorneys for Petitioner California Chamber of Commerce

CERTIFICATION OF WORD COUNT

Pursuant to rule 8.504(d)(1), California Rules of Court, the undersigned hereby certifies that Petitioner's Petition for Review contains 8,030 words, excluding tables and this certificate, according to the word count generated by the computer program used to produce the brief.

February 20, 2024

Sean P. Welch

Attorney for Petitioner California Chamber of Commerce

PROOF OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am a citizen of the United States employed in the County of Marin. I am over the age of 18 and not a party to the within cause of action. My business address is 2350 Kerner Boulevard, Suite 250, San Rafael, California 94901. On February 20, 2024, I served the following document(s):

Petition for Review

on the parties for service as designated below:

By filing via TrueFiling: I filed and served such document(s) via TrueFiling, thus sending an electronic copy of the filing and effecting service.

By email: I caused such document(s) to be served via electronic mail on the parties in this action by transmitting true and correct copies to the following email addresses:

Rob Bonta
Attorney General Of California
Thomas S. Patterson
Senior Assistant Attorney General
Paul Stein
Supervising Deputy Attorney General
Natasha Saggar Sheth
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Attorneys for Respondents California Privacy Protection Agency, et al.

By First-Class Mail: By following ordinary business practices and placing for collection and mailing at 2350 Kerner Boulevard, Suite 250, San Rafael, California 94901, a true and correct copy of the document(s), enclosed

in a sealed envelope; in the ordinary course of business, the document(s) would have been deposited for first-class delivery with the United States Postal Service the same day they were placed for deposit, with postage thereon fully prepaid.

The Hon. James P. Arguelles
Sacramento County Superior Court, Dept. 32
Gordon D. Schaber County Courthouse
720 9th Street
Sacramento, CA 95814

The Hon. Jorge E. Navarrete
Supreme Court Clerk and Executive Officer
350 McAllister Street
San Francisco, CA 94102-4797

I declare under penalty of perjury that the foregoing is true and correct. Executed in San Rafael, California on February 20, 2024.

Sharon Roberts

EXHIBIT A

(TRIAL COURT ORDER)

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).)

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.

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

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

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.

/s/ D. Ward

By: D. Ward, Deputy Clerk

Minutes of: 06/30/2023
Entered on: 06/30/2023

EXHIBIT B

(COURT OF APPEAL OPINION)

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

CALIFORNIA PRIVACY PROTECTION AGENCY et al.,

Petitioners,

v.

THE SUPERIOR COURT OF SACRAMENTO COUNTY,

Respondent;

CALIFORNIA CHAMBER OF COMMERCE,

Real Party in Interest.

C099130

(Super. Ct. No. 34-2023-80004106)

ORIGINAL PROCEEDING in mandate. Petition granted with directions. James P. Arguelles, Judge.

Rob Bonta, Attorney General, Thomas S. Patterson, Senior Assistant Attorney General, Paul Stein, Supervising Deputy Attorney General, Natasha A. Saggar Sheth, Deputy Attorney General for Petitioners.

No appearance for Respondent.

Nielsen Merksamer Parrinello Gross and Leoni, Sean Patrick Welch, Kurt R. Oneto and David J. Lazarus for Real Party in Interest.

This case concerns the implementation of Proposition 24, the California Privacy Rights Act of 2020 (the Act). The California Privacy Protection Agency and others (collectively, the Agency)[1] have filed a petition for extraordinary writ relief in the nature of mandamus, challenging the trial court's determination that any implementing regulation required by the Act is *not* enforceable on the date specified by the Act--July 1, 2023--but instead is enforceable one year after that regulation becomes final.

As we next explain, we shall issue a peremptory writ of mandate.

FACTUAL AND PROCEDURAL BACKGROUND

In view of the limited issue raised here, we dispense with a detailed recitation of the underlying facts and procedure and summarize the pertinent background of this case.

The Right of Privacy

In 1972, the electorate amended the California Constitution through an initiative measure to include the right of privacy as an inalienable right. (Cal. Const., art. 1, § 1; *Hill v. National Collegiate Athletic Assn*. (1994) 7 Cal.4th 1, 16.) The central concern of this initiative measure (referred to as the Privacy Initiative) was the protection of informational privacy. (*Williams v. Superior Court* (2017) 3 Cal.5th 531, 552; *Lewis v.*

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[1] The other petitioners are members of the Agency's board and the California Attorney General.

Superior Court (2017) 3 Ca1.5th 561, 569 ["The Privacy Initiative addressed the 'accelerating encroachment on personal freedom and security caused by increased surveillance and data collection activity in contemporary society' "].) "The principal ' "mischiefs" ' that the Privacy Initiative addressed were '(1) "government snooping" and the secret gathering of personal information; (2) the overbroad collection and retention of unnecessary personal information by government and business interests; (3) the improper use of information properly obtained for a specific purpose, for example, the use of it for another purpose or the disclosure of it to some third party; and (4) the lack of a reasonable check on the accuracy of existing records.' " (*Lewis*, at p. 569.)

The California Consumer Privacy Act of 2018

Since the right of privacy was added to the California Constitution, various laws have been enacted by the Legislature to safeguard the informational privacy of Californians, including the California Consumer Privacy Act of 2018 (CCPA), Civil Code section 1798.100 et seq.[2] (Stats. 2018, ch. 55, § 3.) The purpose of the CCPA, which was enacted in June 2018 and became operative on January 1, 2020, was to protect consumers' privacy rights by providing them meaningful control over how their personal information is collected, used, and disclosed by a covered business.[3] (Stats. 2018, ch. 55, §§ 2-3; see *id*. § 3 [defining the term "business" for purposes of the CCPA and granting

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[2] Further undesignated statutory references are to the Civil Code.

[3] The CCPA was enacted after it came to light in March 2018 that tens of millions of people had their personal data misused by a data mining firm called Cambridge Analytica. (See Stats. 2018, ch. 55, § 2.) The law was passed in response to an initiative measure advocated by various consumer privacy groups. The Legislature enacted the law after the initiative's official proponents withdrew the initiative from the ballot. (Guzzetta, Cal. Practice Guide: Privacy Law (The Rutter Group 2023) ¶ 3:1 (Guzzetta); see § 1798.198, subd. (b).)

consumers certain rights with respect to personal data collected by such businesses]; § 1798.198, subd. (a) [setting forth the operative date].)

In enacting the CCPA, the Legislature found that the ability of consumers to control the use (including the sale) of their personal information is fundamental to the right of privacy, and that the misuse of personal information (such as unauthorized disclosure) can have devastating effects for consumers (such as financial fraud, identity theft, and reputational damage). Thus, consumers should have certain rights so that they can effectively control their personal information collected by a covered business. Those rights include (but are not limited to) the right to know what personal information is being collected about them and whether that information is sold or disclosed and to whom, the right to prohibit the sale of their personal information, the right to request deletion of their personal information, and the right to nondiscrimination in service and price when they exercise privacy rights. (Stats. 2018, ch. 55, §§ 2-3; see § 1798.100, subd. (a) [right to know what personal information has been collected]; § 1798.105, subd. (a) [right to delete personal information that has been collected]; § 1798.115, subd. (a) [right to know whether personal information has been sold or shared and to whom]; § 1798.120, subd. (a) [right to prohibit (or opt-out of) the sale or sharing of personal information]; § 1798.125 [right to nondiscrimination for exercising privacy rights].)

The CCPA directed the Attorney General to adopt regulations concerning various delineated subject matter areas (e.g., the sale or sharing of personal information) by January 1, 2020, to carry out the provisions and purposes of the law, with the goal of, among other things, minimizing the administrative burden on consumers and the burden on businesses. (Stats. 2018, ch. 55, § 3; see former § 1798.185, subd. (a)(1)-(7).) The CCPA provided consumers a limited private right of action regarding certain unauthorized access and exfiltration (i.e., transfer of data from a computer or other device), theft, or disclosure of nonencrypted or nonredacted personal information by a covered business, and authorized the Attorney General to enforce the law through civil

enforcement actions. (Stats. 2018, ch. 55, § 3; see former § 1798.150 [private right of action]; former § 1798.155 [civil enforcement action by the Attorney General].) Under the CCPA, a covered business that failed to cure an alleged statutory violation within 30 days after being notified of such a violation was subject to civil penalties in an administrative action brought by the Attorney General. (Stats. 2018, ch. 55, § 3; see former § 1798.155, subd. (a).)

In September 2018, three months after its enaction, the CCPA was amended in part by the Legislature's extending the deadline for the Attorney General to adopt implementing regulations from January 1, 2020 (i.e., the operative date of the statute), to July 1, 2020.[4] (Stats. 2018, ch. 735, § 13; see § 1798.185, subd. (a).) The Legislature also added subdivision (c) to section 1798.185, which prohibited the Attorney General from bringing a civil enforcement action "until six months after the publication of the final regulations issued pursuant to [the statute] or July 1, 2020, whichever [was] sooner." (Stats. 2018, ch. 735, § 13; see § 1798.198, subd. (c).)

In August 2020, the Office of Administrative Law (OAL) approved the Attorney General's final implementing regulations, which govern compliance with the CCPA. (See Cal. Code Regs., tit. 11, § 7000 et seq. [formerly Cal. Code Regs., tit. 11, § 999.300 et seq].) A set of amendments to the regulations went into effect in March 2021. Any violation of the regulations constitutes a violation of the CCPA and is "subject to the remedies provided for therein." (Cal. Code Regs., tit. 11, § 7000, subd. (b).)

The Act

In November 2020, the electorate approved Proposition 24, the California Privacy Rights Act of 2020 (Prop. 24, as approved by voters, Gen. Elec. (Nov. 3, 2020) (Prop.

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[4] The September 2018 amendments to the CCPA went into effect immediately. (Stats. 2018, ch. 735, § 18.)

24)), to which we refer as the Act.[5] With a few immaterial exceptions, the Act became operative on January 1, 2023. (Prop. 24, § 31.) The Act amended and expanded the CCPA by, among other things, giving consumers the right to correct inaccurate personal information collected by a covered business and to limit a covered business's use and disclosure of "sensitive personal information" (e.g., social security number, racial or ethnic origin, religious beliefs, genetic data, precise geolocation) to specific identified purposes. (Prop. 24, §§ 4-24; see § 1798.106 [right to correct inaccurate personal information]; § 1798.121 [right to limit the use and disclosure of sensitive personal information]; § 1798.140, subd. (ae) [defining "sensitive personal information" for purposes of the CCPA]; Guzzetta, *supra*, at ¶ 3:2 [explaining that the Act incorporated several provisions of the European Union's data privacy and security law, the General Data Protection Regulation].)[6] The purpose of the Act was to further protect consumers' rights regarding the collection and use (including sale) of personal information by a covered business.[7] (Prop. 24, § 3.)

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[5] Proposition 24 was introduced as a ballot initiative in 2020, in response to the Legislature's consideration of various bills in 2019 to amend the CCPA, which the proponents of Proposition 24 viewed as an attempt to weaken the CCPA. (See Prop. 24, § 2.) Because the Act did not *replace* the CCPA, the proper name of the law remains the California Consumer Privacy Act or CCPA for short. (Guzzetta, *supra*, at ¶ 3:2.3.)

[6] The Act contains various exceptions to the applicability of the CCPA. (See, e.g., § 1798.140, subd. (v)(2) [personal information does not include publicly available information or lawfully obtained, truthful information that is a matter of public concern].) The Act also contains a set of exceptions for categories of information governed by other privacy-protecting statutes. (See, e.g., § 1798.145, subd. (c) [the CCPA does not apply to medical information governed by the Confidentiality of Medical Information Act].) These exceptions are immaterial to the resolution of this writ proceeding.

[7] The Act defines "personal information" broadly to include "information that identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular consumer or household." (See § 1798.140, subd. (v)(1).) Covered businesses include businesses that collect information from California consumers and either: have annual gross revenues exceeding $25 million

The Act established the Agency and vested it with the authority to administer, implement, and enforce the CCPA through administrative and civil actions for civil penalties. (Prop. 24, §§ 17, 21, 24; see §§ 1798.155, subd. (a), 1798.199.10, subd. (a), 1798.199.40, subd. (a), 1798.199.75, subd. (a).) The Act informed the electorate that the Agency would be an "independent watchdog" with a "mission" to protect consumer privacy, ensure that businesses and consumers are well-informed about their rights and obligations, and vigorously enforce the law against businesses that violate consumers' privacy rights. (Prop. 24, § 2(L).)

Of particular relevance here, as we emphasize below, the Act authorized the Agency to adopt, amend, and rescind regulations to carry out the purposes and provisions of the CCPA, directed the Agency to adopt final regulations concerning certain delineated subject matter areas, including 15 new areas (e.g., consumers' right to request the correction of inaccurate personal information), and *established a deadline of July 1, 2022, for the adoption of final regulations* in those 15 areas. (Prop. 24, § 21; see §§ 1798.185, subds. (a), (d), 1798.199.40, subd. (b).) The Act also *provided that the Agency's enforcement authority would take effect on July 1, 2023*, and that the Agency's enforcement authority only applied to statutory violations occurring on or after that date. (Prop. 24, § 21; see § 1798.185, subd. (d).) As for administrative enforcement, the Act eliminated the provision in the CCPA giving a business 30 days to cure an alleged statutory violation to avoid a civil penalty. (Prop. 24, § 17; see § 1798.155, subd. (a).) However, it added a provision granting the Agency discretion to allow a covered business "a time period to cure [an] alleged violation." (See § 1798.199.45, subd. (a) [in exercising its discretion, the Agency may consider a business's lack of intent to violate the statute and any voluntary efforts to cure the alleged violation].)

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a year; buy, sell, or share personal information of 100,000 or more consumers or households; or derive 50 percent or more of their annual revenues from selling or sharing consumers' personal information. (§ 1798.140, subd. (d).)

In the proposal section of the voter information guide, which was prepared by the Legislative Analyst, the electorate was advised as follows: "Proposition 24 (1) changes existing consumer data privacy laws, (2) provides new consumer privacy rights, (3) changes existing penalties and limits the use of penalty revenues, and (4) creates a new state agency to oversee and enforce consumer data privacy laws. If approved, most of this proposition would take effect in January 2023. Some portions of the proposition, such as the creation of the new state agency and requirements for developing new regulations, would go into effect immediately." (Voter Information Guide, Gen. Elec. (Nov. 3, 2020) analysis of Prop. 24 by the Legis. Analyst, p. 67 (Voter Guide).) The Legislative Analyst explained that the Agency would have "a wide range of responsibilities," including the investigation of statutory violations, assessment of penalties, and the "development of a wide range of new regulations," such as "rules for correcting consumer personal data and determining whether businesses must carry out a review of their ability to protect data." (Voter Guide, p. 68.)

The uncodified purpose and intent section of Proposition 24 identified various principles that *shall* guide implementation of the Act. Of significance here, those principles include: (1) "The rights of consumers and the responsibilities of businesses should be implemented with the goal of strengthening consumer privacy while giving attention to the impact on business and innovation"; (2) "Businesses and consumers should be provided with clear guidance about their responsibilities and rights"; (4) "The law should . . . assist businesses with compliance with the continuing goal of strengthening consumer privacy"; (5) "The law should . . . promote efficiency of implementation for business provided that the amendments do not compromise or weaken consumer privacy"; and (7) "Businesses should be held accountable for violating the law through vigorous administrative and civil enforcement." (Prop. 24, § 3(C).)

The Agency's Final Implementing Regulations

It is undisputed that the Agency did not adopt any final regulations by the July 1, 2022, date mandated by the Act.

On July 8, 2022, the Agency published a notice of proposed rulemaking concerning the Act, announcing its intent to amend numerous regulations implementing the CCPA and repealing one of those regulations. The notice stated that the proposed regulations were "the most effective way to operationalize the [Act's] amendments to the CCPA," explaining that the regulations "primarily do three things: (1) update existing CCPA regulations to harmonize them with [the Act's] amendments to the CCPA; (2) operationalize new rights and concepts introduced by the [Act] to provide clarity and specificity to implement the law; and (3) reorganize and consolidate requirements set forth in the law to make the regulations easier to follow and understand."[8] The notice further explained, among other things, that the proposed regulations set forth clear requirements for how covered businesses are to satisfy their obligations under the Act.

On March 29, 2023--nine months after the July 1, 2022, statutory deadline had passed--the OAL approved the Agency's proposed final regulations, including regulations concerning 12 of the 15 required subject matter areas set forth in the Act. (See Cal. Code Regs., tit. 11, § 7000 et seq.)[9] In its notice of approval of regulatory

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[8] As the Agency recognized during the rulemaking process, it was delegated the authority to "fill up the details" of the statutory scheme through the promulgation of final regulations. (See *Batt v. City and County of San Francisco* (2010) 184 Cal.App.4th 163, 171 [describing authority of an agency vested with quasi-legislative power to adopt regulations implementing a statutory scheme].)

[9] It is undisputed that the Agency's proposed final regulations did not include regulations concerning the required subject matter areas of cybersecurity audits (§ 1798.185, subd. (a)(15)(A)), risk assessments (§ 1798.185, subd. (a)(15)(B)), and automated decisionmaking technology (§ 1798.185, subd. (a)(16)). The Agency has represented that it will not enforce the law in these areas until final regulations are adopted.

action, the OAL explained: "This proposed action provides comprehensive instructions and guidance to consumers, businesses, service providers, contractors, and third parties on how to implement and operationalize new consumer privacy rights endowed by the [Act]."

Like the final regulations implementing the CCPA, the final regulations implementing the Act govern compliance with the CCPA (as amended and expanded by the Act), and any violation of those regulations constitutes a violation of the CCPA and is "subject to the remedies provided for therein." (Cal. Code Regs., tit. 11, § 7000, subd. (b).) As for administrative enforcement, the OAL approved a regulation providing discretion to the Agency: "As part of the Agency's decision to pursue investigations of possible or alleged violations of the CCPA, the Agency may consider all facts it determines to be relevant, including the amount of time between the effective date of the statutory or regulatory requirement(s) and the possible or alleged violation(s) of those requirements, and good-faith efforts to comply with those requirements." (Cal. Code Regs., tit. 11, § 7301, subd. (b).)

Petition for Writ of Mandate

The day after the OAL approved the Agency's proposed final regulations implementing the Act, real party in interest the California Chamber of Commerce (Chamber) filed a verified petition for writ of mandate and complaint for injunctive and declaratory relief under Code of Civil Procedure section 1085. Among other things, the Chamber sought an order requiring the Agency to promptly adopt final regulations concerning the remaining three required subject matter areas set forth in the Act, and an order tolling enforcement of the Act, including all final regulations, until one year after the date the Agency adopts a *complete* set of final regulations. The Chamber claimed that "[s]uch tolling [was] necessary to conform to the statutory requirement and voters' intent that businesses receive a one-year grace period to update their systems and processes to comply with the new legal requirements." The Chamber provided no explanation for

why it did not seek writ relief earlier, that is, why its writ petition was filed nine months after the Agency failed to meet the July 1, 2022, deadline for adopting final implementing regulations required under the Act.

After a hearing in late June 2023, the trial court granted the Chamber's writ petition in part and dismissed as moot the Chamber's related requests for declaratory and injunctive relief. The court agreed with the Chamber that the Agency was required to adopt final regulations in each of the 15 subject matter areas delineated in the Act by the July 1, 2022, deadline, but had failed to do so. However, the court made no orders in that regard. The court also agreed with the Chamber that, in approving Proposition 24, the voters intended for (at least) a one-year delay between the adoption and the enforcement of those regulations (the period of time between the July 1, 2022, deadline for the adoption of final regulations and the July 1, 2023, effective date for enforcement authority). The court, however, disagreed with the Chamber that the one-year period should commence on the date the Agency adopted a *complete* set of final regulations. Instead, the court concluded that the Agency could begin enforcing any required regulation one year after it became final. Thus, under the court's order, the final implementing regulations approved by the OAL on March 29, 2023, could not be enforced by the Agency until March 29, 2024. Finally, the court rejected the Agency's prejudice argument, finding the Chamber was not required to show any prejudice from the Agency's failure to adopt final implementing regulations by the statutory deadline (July 1, 2022) or from the Agency's enforcement of those regulations beginning on July 1, 2023. In rejecting this argument, the court opined: "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."

In granting the Chamber's writ petition in part, the trial court "stayed" enforcement of any final implementing regulation required by the Act (§ 1798.185, subd. (a)) "for a period of 12 months from the date that individual regulation becomes final."

The court further ordered that, "[c]onsistent 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." The court, however, did not grant the Chamber's request to compel the Agency to promptly adopt final regulations in the remaining three areas required by the Act.[10]

Entry of Judgment and Petition for Extraordinary Writ Relief

In late July 2023, the trial court entered judgment in favor of the Chamber and against the Agency. In relevant part, the judgment stated: "Any and all final Agency regulations required by Civil Code § 1798.185(a), pursuant to Proposition 24 (2020), shall not be enforceable for a period of 12 months from the date that the individual regulation has become final through approval by the Office of Administrative Law ("OAL") . . . . This stay of enforcement does not apply to regulatory amendments made after the individual regulation has become final through approval by OAL and expiration of the aforementioned 12-month period. Regulations previously promulgated pursuant to the 2018 California Consumer Privacy Act will remain in full force and effect until superseding regulations promulgated by the Agency become enforceable in accordance with this Judgment."

In early August 2023, the Agency filed a petition for extraordinary writ relief in the nature of mandamus, seeking reversal of the trial court's order.[11] We issued an order

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[10] The issue of whether the trial court erred in failing to grant this relief is not before us. To the extent respondent court previously declined to grant this relief in light of its decision that a delay in implementation must be imposed, nothing in this opinion precludes the court from reconsidering that issue.

[11] Several weeks later, in late August 2023, the Agency filed an appeal from the judgment issued following the trial court's order. (See *California Chamber of Commerce v. California Privacy Protection Agency* (C099326, app. pending).)

to show cause why the relief requested in the petition should not be granted and directed the Chamber to file a written return, which was filed in early October 2023. A reply brief was filed two weeks later, and the matter was assigned to this panel on October 31, 2023. The Agency did not request a stay of the trial court's order after our issuance of the order to show cause; thus, the order has been in effect while this matter has been pending.

DISCUSSION

I

Review by Extraordinary Writ

The Agency argues, and we agree, that extraordinary writ review is appropriate.

"Extraordinary writ review by way of a petition for writ of mandate is ordinarily available only if the petitioner has no adequate legal remedy. [Citations.] An immediate direct appeal is presumed to be an adequate legal remedy. [Citation.] Writ review is appropriate, however, if such an appeal would be inadequate or the issues presented are of great public importance and require prompt resolution." (*Henry M. Lee Law Corp. v. Superior Court* (2012) 204 Cal.App.4th 1375, 1382-1383; see also *Dhillon v. John Muir Health* (2017) 2 Cal.5th 1109, 1119; *JSM Tuscany, LLC v. Superior Court* (2011) 193 Cal.App.4th 1222, 1235-1236; see *Los Angeles City Ethics Com. v. Superior Court* (1992) 8 Cal.App.4th 1287, 1299 [even though an appeal is available, review by extraordinary writ proper where the issue raised is substantial, the matter is one of widespread interest, and the issue is one that should be speedily resolved].) Writ review of an appealable order is also appropriate "where it is necessary to resolve an issue of first impression promptly and to set guidelines for bench and bar." (*Rodrigues v. Superior Court* (2005) 127 Cal.App.4th 1027, 1032.)

Here, it is undisputed that the judgment entered below was appealable. (Code Civ. Proc., § 904.1, subd. (a)(1).) Indeed, as noted *ante*, the Agency has appealed from it. (See *California Chamber of Commerce v. California Privacy Protection Agency* (C099326, app. pending).) However, writ review is appropriate under the circumstances

presented, as the timing of the Agency's authority to enforce the changes to consumer privacy rights effected by the Act presents a novel issue of law that is of widespread interest and requires prompt resolution to establish the guidelines for the enforcement of the new consumer privacy rights and the changes to existing consumer privacy rights. As discussed, the trial court stayed enforcement of any final implementing regulation required by the Act until one year after that regulation becomes final. Thus, under the court's order, the regulations adopted by the Agency on March 29, 2023, are not enforceable until March 29, 2024, for statutory violations occurring on or after that date. Further, the remaining regulations that were still pending at the time of the court's order are facing delayed enforcement of one year beyond their adoption. According to the Agency, this ruling was incorrect as a matter of law, as the text of the Act provides that all final implementing regulations required by the Act are enforceable beginning on July 1, 2023. In other words, the Agency claims that it currently has the authority to enforce the final regulations adopted in March 2023. On this record, it is clear that review by extraordinary writ is proper.

We next address the merits of the writ petition.

II

Interpreting the Relevant Provision of the Act

The Agency argues the trial court erred in interpreting the Act as prohibiting it from enforcing any implementing regulation required by the Act until one year after that regulation becomes final. The Agency claims the court's construction of the Act is erroneous in the absence of any clear, express statutory language requiring a one-year delay between its adoption of a required final regulation and its enforcement of that regulation. In support of its argument, the Agency asserts that the court's order contravenes the plain language of the Act, which provides that the Act became effective on January 1, 2023, and the Agency was permitted to exercise its enforcement authority as of July 1, 2023.

A. *Applicable Legal Principles and Standard of Review*

1. *Writ of Mandate*

A writ of mandate under Code of Civil Procedure section 1085[12] is a legal tool to compel a public agency to perform a legal, typically ministerial, duty. (*Association of Deputy District Attorneys for Los Angeles County v. Gascón* (2022) 79 Cal.App.5th 503, 528, review granted Aug. 31, 2022, S275478; *Association of Irritated Residents v. San Joaquin Valley Unified Air Pollution Control Dist.* (2008) 168 Cal.App.4th 535, 542.) A ministerial duty is an act that a public agency is required to perform in a prescribed manner under the mandate of legal authority without the exercise of judgment or opinion concerning the propriety of the act. (*Los Angeles Waterkeeper v. State Water Resources Control Bd.* (2023) 92 Cal.App.5th 230, 265-266.) "Put another way, a ministerial act is one ' " ' [w]here a statute or ordinance clearly defines the specific duties or course of conduct that a governing body must take,' " ' thus ' " 'eliminat[ing] any element of discretion.' " ' " (*Ibid*.)

To obtain a writ of mandate, " 'the petitioner must show there is no other plain, speedy, and adequate remedy; the respondent has a clear, present, and ministerial duty to act in a particular way; and the petitioner has a clear, present and beneficial right to performance of that duty.' " (*James v. State of California* (2014) 229 Cal.App.4th 130, 136 (*James*).) Where a public agency is required to act within a specified time period and it fails to do so, the time period may be enforced by a petition for writ of mandate. (*State Comp. Ins. Fund v. Workers' Comp. Appeals Bd*. (2016) 248 Cal.App.4th 349, 370.)

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[12] Code of Civil Procedure section 1085 states in pertinent part: "A writ of mandate may be issued by any court to any inferior tribunal, corporation, board, or person, to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station."

" 'In reviewing a judgment granting a writ of mandate, we apply the substantial evidence standard of review to the court's factual findings, but independently review its findings on legal issues. [Citation.]' [Citation.] 'Where, as here, the facts are undisputed and the issue involves statutory interpretation, we exercise our independent judgment and review the matter de novo.' " (*James*, *supra*, 229 Cal.App.4th at p. 136; see also *CV Amalgamated LLC v. City of Chula Vista* (2022) 82 Cal.App.5th 265, 280.)

2. *Voter-Enacted Statutes*

Under California law, the Secretary of State must prepare a voter information guide when voters are considering a new statute at the ballot box. The guide must include, among other things, a complete copy of the proposed measure, the official summary prepared by the Attorney General, arguments and rebuttals for and against, and an analysis prepared by the Legislative Analyst. (Elec. Code, §§ 9081, 9084, subds. (a)-(d), 9086, subds. (a), (b).) The Legislative Analyst must provide an "impartial analysis of the measure" (*id*. § 9087, subd. (a)) that is "easily understood by the average voter" (*id.*, subd. (b)). The analysis "may contain background information, including the effect of the measure on existing law and the effect of enacted legislation which will become effective if the measure is adopted, and shall generally set forth in an impartial manner the information the average voter needs to adequately understand the measure." (*Ibid.*) The measure's official proponents and opponents may use their designated space in the voter information guide to supply an argument addressing a perceived failure by the Legislative Analyst as to an effect of the measure. (See *id*. §§ 9064, 9069.)

When, as here, an appellate court is asked to interpret the meaning of a voter-enacted statute, our fundamental task is to ascertain the voters' intent in order to effectuate the purpose of the law. (*People v. Johnson* (2015) 61 Cal.4th 674, 682.) "To interpret a statute enacted by initiative, we apply the same principles we apply to interpret statutes enacted by the Legislature. 'We first consider the initiative's language, giving the words their ordinary meaning and construing [them] in the context of the statute and

initiative as a whole. If the language is not ambiguous, [then] we presume the voters intended the meaning apparent from that language, and we may not add to the statute or rewrite it to conform to some assumed intent not apparent from that language. If the language is ambiguous, [then we] may consider ballot summaries and arguments in determining the voters' intent and understanding of [the] ballot measure.' " (*B.B. v. County of Los Angeles* (2020) 10 Cal.5th 1, 9; see *People v. Morales* (2016) 63 Cal.4th 399, 406 [" ' "When the language is ambiguous, 'we refer to other indicia of the voters' intent, particularly the analyses and arguments contained in the official ballot pamphlet' " ' "].)

If the language used in the voter-enacted statute is clear and unambiguous, there is no need for construction, and it is not necessary to resort to indicia of the intent of the voters. (*People v. Valencia* (2017) 3 Cal.5th 347, 357.) In giving the language used in a statute its ordinary meaning, we generally must accord significance, if possible, to every word, phrase, and sentence in pursuance of the law's purpose, and avoid a construction that makes some words surplusage. (*Ibid*.)

To determine the scope and purpose of the provision we are interpreting, we look to the entire substance of the voter-enacted statute, that is, we construe the words in question in context, keeping in mind the nature and purpose of the statute. We must harmonize the various parts of a statutory enactment by considering the particular clause or section in the context of the statutory framework as a whole. (*People v. Lewis* (2021) 11 Cal.5th 952, 961.) The statements of purpose and intent in an uncodified section of an initiative measure may properly be utilized as an aid in construing the measure, but they do not confer power, determine rights, or enlarge the scope of the measure. (*People v. Guzman* (2005) 35 Cal.4th 577, 588; *People v. Lamoureux* (2019) 42 Cal.App.5th 241, 266.)

B. *Analysis*

We begin our analysis by setting forth the relevant language of the Act at the heart of this writ proceeding:

> "[T]he timeline for adopting final regulations required by the act adding this subdivision shall be July 1, 2022. . . . 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 only 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." (§ 1798.185, subd. (d).)

There is no dispute that the Agency failed to comply with the express terms of this provision, which clearly and unequivocally imposed a mandatory duty on the Agency to adopt final regulations required by the Act on or before July 1, 2022. (See *In re Luis B.* (2006) 142 Cal.App.4th 1117, 1123 [use of the mandatory language "shall" indicates an intent to impose a mandatory duty]; *County of Los Angeles v. Superior Court* (2002) 102 Cal.App.4th 627, 639 ["An enactment creates a mandatory duty if it requires a public agency to take a particular action"].) But compliance was sought by the Chamber only *after* the Agency had adopted final regulations in 12 of the required 15 areas, nine months after the deadline had passed. And the trial court did not make any orders enforcing that provision.

Instead, the trial court directed its remedy to the Chamber's challenge to the ongoing validity of the July 1, 2023, enforcement date--a challenge derived from the Agency's delay in adopting the final regulations. The Chamber sought an order staying enforcement of the Act and its implementing regulations until one year after the Agency adopted a complete set of final regulations required by the Act. As we noted *ante*, the trial court invalidated the July 1, 2023, enforcement date and ruled the Agency could not enforce any required regulation until one year after that regulation became final. The

court opined that its "finding that the Agency failed to timely pass final regulations as required by Section 1798.185 is sufficient to grant the Petition."

We are called upon to decide whether the trial court's remedy for the Agency's failure to timely adopt final regulations in compliance with the Act was permissible writ relief and, in so deciding, whether the trial court correctly interpreted the Act. The effect of the chosen remedy was to disregard the Act's unambiguous provision setting forth a July 1, 2023, date for the commencement of enforcement, and to substitute an enforcement schedule (i.e., a one-year gap regardless of the enforcement date) that was *not* set forth in the Act. The Chamber argues that the presence of a one-year gap between adoption (i.e., approval) of final regulations and enforcement is unambiguously dictated by the statutory language at issue here. The Agency counters that the Act is not properly interpreted as requiring a one-year delay between the Agency's approval of a final regulation required by the Act and the Agency's authority to enforce that regulation. We agree with the latter view. The statute does not unambiguously require a one-year gap between approval and enforcement regardless of when the approval occurs, and nothing in the relevant material presented for our review signals that the voters intended such a gap. Because the Agency did not have "clear, present, and ministerial duty" to delay enforcement of its final regulations for a year after their approval, and the Chamber did not have "a clear, present and beneficial right" to the delay in enforcement that it sought (and obtained), the writ should not have been issued. (See *James, supra,* 229 Cal.App.4th at p. 136.)

Although the specific statutory provision at issue here includes what *amounts* to a one-year delay between the deadline for the Agency to approve final regulations required by the Act (July 1, 2022) and the Agency's authority to enforce the Act (July 1, 2023), there is no clear, unequivocal language mandating a one-year delay between approval and enforcement. The Chamber has not pointed to, and we have not found, any language in the Act convincing us that the proper remedy for the Agency's failure to timely approve

final regulations (i.e., comply with the July 1, 2022, deadline) is to disregard the July 1, 2023, enforcement date explicitly set forth in the statute and stay enforcement of any untimely regulation until one year after that regulation becomes final. There is no express statutory language prescribing such a consequence. Had the drafters of the measure and the voters intended to achieve the result advocated by the Chamber and adopted by the trial court, they could have easily done so. At most, the Act is ambiguous on this point.

As the Agency correctly notes, there is no express language "linking enforcement [of the Act] with the promulgation of regulations." Further, nothing in the Voter Guide supports the conclusion that the voters contemplated a one-year delay in enforcement connected to the approval of final regulations. The guide is silent as to the purpose of the one-year gap between the July 1, 2022, and July 1, 2023, dates. Thus, while the one-year gap *could* have been included to allow covered businesses to adjust to the new rules and to prepare to comply with them, as the Chamber argues, the gap also *could* have been included to provide the newly formed Agency with sufficient time to prepare to enforce the new rules, including hiring staff, establishing internal procedures for investigating and processing reported violations, and helping businesses to understand their new responsibilities and obligations. Or there could be other reasons for the gap. Finally, there is nothing in the relevant materials other than the July dates themselves to indicate that any gap between approval and enforcement was intentionally set at one year for any specific reason, let alone that the gap needed to *remain* at one year regardless of when the approval occurred. The Chamber's argument that such a gap must be inferred here is belied by the fact there are other tools available to protect the interests it has identified. As one example noted above, the Agency itself has included a regulation that in deciding whether to pursue an investigation it will consider "all facts it determines to be relevant, including the amount of time between the effective date of the statutory or regulatory requirement(s) and the possible or alleged violation(s) of those requirements, and good-

faith efforts to comply with those requirements." (Cal. Code Regs., tit. 11, § 7301, subd. (b).)

The text of Proposition 24 makes clear that, in approving the initiative measure, the voters intended to strengthen and protect consumers' privacy rights regarding the collection and use (including sale) of their personal information. (Prop. 24, §§ 2-4.) It is also evident from the text of the measure that the voters intended for the Agency to "vigorously enforce the law against businesses that violate consumers' privacy rights." (*Id*., § 2(L); see also *id*., § 3(C)(7) ["Businesses should be held accountable for violating the law through vigorous administrative and civil enforcement"].) However, it is equally clear from the language of the measure that the voters intended for the Agency to "ensure that businesses and consumers are well-informed about their rights and obligations" (*id*., § 2(L)), that the responsibilities of businesses should be implemented with the goal of "giving attention to the impact on business and innovation," that businesses and consumers "should be provided with clear guidance about their responsibilities and rights," and that the law should "assist businesses with compliance with the continuing goal of strengthening consumer privacy" (*id*., § 3(C)(1), (C)(2) & (C)(4)).

In any event, because there is no "explicit and forceful language" mandating that the Agency is prohibited from enforcing the Act until (at least) one year after the Agency approves final regulations, the trial court erred in concluding otherwise. (See *In re Dohner* (2022) 79 Cal.App.5th 590, 598 [" 'To construe a statute . . . as imposing a mandatory duty on a public entity, "the mandatory nature of the duty must be phrased in explicit and forceful language" ' "].) The Chamber was simply not entitled to the relief granted by the trial court. Accordingly, we will grant the Agency's petition for

extraordinary writ relief and allow the trial court to consider any remaining issues concerning the propriety of compelling more prompt development of regulations.[13]

DISPOSITION

Let a peremptory writ of mandate issue directing the trial court to: (1) vacate its order and judgment granting the Chamber's verified petition for writ of mandate in part and staying the Agency's regulations "for a period of 12 months from the date that [each] individual regulation becomes final"; and (2) enter a new order denying such relief and otherwise considering any non-moot issue concerning the propriety of compelling more prompt development of regulations. Assuming no such issue remains, the superior court shall otherwise enter judgment in favor of the Agency and against the Chamber.

This opinion is made final as to this court immediately upon filing. (See Cal. Rules of Court, rule 8.490(b)(2)(A).) The Agency shall recover its costs in this writ proceeding. (Cal. Rules of Court, rule 8.493(a).)

Duarte

Duarte, J.

We concur:

Robie

Robie, Acting P.J.

Boulware Eurie

Boulware Eurie, J.

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[13] In light of our resolution of this matter as set forth above, we need not and do not consider the other arguments raised by the Agency. Given our Disposition of this case, we deny as moot petitioners' request for finality upon issuance.

EXHIBIT C

(PROPOSITION 24 Excerpts)

application not declared invalid or unconstitutional without regard to whether any portion of this act or application thereof would be subsequently declared invalid.

PROPOSITION 24

This initiative measure is submitted to the people in accordance with the provisions of Section 8 of Article II of the California Constitution.

This initiative measure amends and adds sections to the Civil Code; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

The California Privacy Rights Act of 2020

SEC. 1. Title.

This measure shall be known, and may be cited, as the "California Privacy Rights Act of 2020."

SEC. 2. Findings and Declarations.

The people of the State of California hereby find and declare all of the following:

A. In 1972, California voters amended the California Constitution to include the right of privacy among the "inalienable" rights of all people. Voters acted in response to the accelerating encroachment on personal freedom and security caused by increased data collection and usage in contemporary society. The amendment established a legal and enforceable constitutional right of privacy for every Californian. Fundamental to this right of privacy is the ability of individuals to control the use, including the sale, of their personal information.

B. Since California voters approved the constitutional right of privacy, the California Legislature has adopted specific mechanisms to safeguard Californians' privacy, including the Online Privacy Protection Act, the Privacy Rights for California Minors in the Digital World Act, and Shine the Light, but consumers had no right to learn what personal information a business had collected about them and how they used it or to direct businesses not to sell the consumer's personal information.

C. That changed in 2018, when more than 629,000 California voters signed petitions to qualify the California Consumer Privacy Act of 2018 for the ballot. In response to the measure's qualification, the Legislature enacted the California Consumer Privacy Act of 2018 (CCPA) into law. The CCPA gives California consumers the right to learn what information a business has collected about them, to delete their personal information, to stop businesses

from selling their personal information, including using it to target them with ads that follow them as they browse the internet from one website to another, and to hold businesses accountable if they do not take reasonable steps to safeguard their personal information.

D. Even before the CCPA had gone into effect, the Legislature considered many bills in 2019 to amend the law, some of which would have significantly weakened it. Unless California voters take action, the hard-fought rights consumers have won could be undermined by future legislation.

E. Rather than diluting privacy rights, California should strengthen them over time. Many businesses collect and use consumers' personal information, sometimes without consumers' knowledge regarding the business' use and retention of their personal information. In practice, consumers are often entering into a form of contractual arrangement in which, while they do not pay money for a good or service, they exchange access to that good or service in return for access to their attention or access to their personal information. Because the value of the personal information they are exchanging for the good or service is often opaque, depending on the practices of the business, consumers often have no good way to value the transaction. In addition, the terms of agreement or policies in which the arrangements are spelled out, are often complex and unclear, and as a result, most consumers never have the time to read or understand them.

F. This asymmetry of information makes it difficult for consumers to understand what they are exchanging and therefore to negotiate effectively with businesses. Unlike in other areas of the economy where consumers can comparison shop, or can understand at a glance if a good or service is expensive or affordable, it is hard for the consumer to know how much the consumer's information is worth to any given business when data use practices vary so widely between businesses.

G. The state therefore has an interest in mandating laws that will allow consumers to understand more fully how their information is being used and for what purposes. In the same way that ingredient labels on foods help consumers shop more effectively, disclosure around data management practices will help consumers become more informed counterparties in the data economy and promote competition. Additionally, if a consumer can tell a business not to sell the consumer's data, then that consumer will not have to scour a privacy policy to see whether the business is, in fact, selling that data, and the resulting savings in time is worth, in the aggregate, a tremendous amount of money.

H. Consumers need stronger laws to place them on a more equal footing when negotiating with businesses in order to protect their rights. Consumers should be entitled to a clear explanation of the uses of their personal information, including how it is used for advertising, and to control, correct, or delete it, including by allowing consumers to limit businesses' use of their sensitive personal information to help guard against identity theft, to opt-out of the sale and sharing of their personal information, and to request that businesses correct inaccurate information about them.

I. California is the world leader in many new technologies that have reshaped our society. The world today is unimaginable without the internet, one of the most momentous inventions in human history, and the new services and businesses that arose on top of it, many of which were invented here in California. One of the most successful business models for the internet has been services that rely on advertising to make money as opposed to charging consumers a fee. Advertising-supported services have existed for generations and can be a great model for consumers and businesses alike. However, some advertising businesses today use technologies and tools that are opaque to consumers to collect and trade vast amounts of personal information, to track them across the internet, and to create detailed profiles of their individual interests. Some companies that do not charge consumers a fee, subsidize these services by monetizing consumers' personal information. Consumers should have the information and tools necessary to limit the use of their information to noninvasive proprivacy advertising, where their personal information is not sold to or shared with hundreds of businesses they've never heard of, if they choose to do so. Absent these tools, it will be virtually impossible for consumers to fully understand these contracts they are essentially entering into when they interact with various businesses.

J. Children are particularly vulnerable from a negotiating perspective with respect to their privacy rights. Parents should be able to control what information is collected and sold or shared about their young children and should be given the right to demand that companies erase information collected about their children.

K. Business should also be held directly accountable to consumers for data security breaches and notify consumers when their most sensitive information has been compromised.

L. An independent watchdog whose mission is to protect consumer privacy should ensure that businesses and consumers are well-informed about their rights and obligations and should vigorously enforce the law against businesses that violate consumers' privacy rights.

SEC. 3. Purpose and Intent.

In enacting this act, it is the purpose and intent of the people of the State of California to further protect consumers' rights, including the constitutional right of

privacy. The implementation of this act shall be guided by the following principles:

A. Consumer Rights

1. Consumers should know who is collecting their personal information and that of their children, how it is being used, and to whom it is disclosed so that they have the information necessary to exercise meaningful control over businesses' use of their personal information and that of their children.

2. Consumers should be able to control the use of their personal information, including limiting the use of their sensitive personal information, the unauthorized use or disclosure of which creates a heightened risk of harm to the consumer, and they should have meaningful options over how it is collected, used, and disclosed.

3. Consumers should have access to their personal information and should be able to correct it, delete it, and take it with them from one business to another.

4. Consumers or their authorized agents should be able to exercise these options through easily accessible self-serve tools.

5. Consumers should be able to exercise these rights without being penalized for doing so.

6. Consumers should be able to hold businesses accountable for failing to take reasonable precautions to protect their most sensitive personal information from hackers and security breaches.

7. Consumers should benefit from businesses' use of their personal information.

8. The privacy interests of employees and independent contractors should also be protected, taking into account the differences in the relationship between employees or independent contractors and businesses as compared to the relationship between consumers and businesses. In addition, this law is not intended to interfere with the right to organize and collective bargaining under the National Labor Relations Act. It is the purpose and intent of the Act to extend the exemptions in this title for employee and business to business communications until January 1, 2023.

B. Responsibilities of Businesses

1. Businesses should specifically and clearly inform consumers about how they collect and use personal information and how they can exercise their rights and choice.

2. Businesses should only collect consumers' personal information for specific, explicit, and legitimate disclosed purposes and should not further collect, use, or disclose consumers' personal information for reasons incompatible with those purposes.

3. Businesses should collect consumers' personal information only to the extent that it is relevant and limited to what is necessary in relation to the purposes for which it is being collected, used, and shared.

4. Businesses should provide consumers or their authorized agents with easily accessible means to allow consumers and their children to obtain their personal information, to delete it or correct it, to opt out of its sale and sharing across business platforms, services, businesses, and devices, and to limit the use of their sensitive personal information.

5. Businesses should not penalize consumers for exercising these rights.

6. Businesses should take reasonable precautions to protect consumers' personal information from a security breach.

7. Businesses should be held accountable when they violate consumers' privacy rights, and the penalties should be higher when the violation affects children.

C. Implementation of the Law

1. The rights of consumers and the responsibilities of businesses should be implemented with the goal of strengthening consumer privacy while giving attention to the impact on business and innovation. Consumer privacy and the development of beneficial new products and services are not necessarily incompatible goals. Strong consumer privacy rights create incentives to innovate and develop new products that are privacy protective.

2. Businesses and consumers should be provided with clear guidance about their responsibilities and rights.

3. The law should place the consumer in a position to knowingly and freely negotiate with a business over the business' use of the consumer's personal information.

4. The law should adjust to technological changes, help consumers exercise their rights, and assist businesses with compliance with the continuing goal of strengthening consumer privacy.

5. The law should enable proconsumer new products and services and promote efficiency of implementation for business provided that the amendments do not compromise or weaken consumer privacy.

6. The law should be amended, if necessary, to improve its operation, provided that the amendments do not compromise or weaken consumer privacy, while giving attention to the impact on business and innovation.

7. Businesses should be held accountable for violating the law through vigorous administrative and civil enforcement.

8. To the extent it advances consumer privacy and business compliance, the law should be compatible with privacy laws in other jurisdictions.

SEC. 4. Section 1798.100 of the Civil Code is amended to read:

(i) Intentionally degrading the functionality of the consumer experience.

(ii) Charging the consumer a fee in response to the consumer's opt-out preferences.

(iii) Making any products or services not function properly or fully for the consumer, as compared to consumers who do not use the opt-out preference signal.

(iv) Attempting to coerce the consumer to opt in to the sale or sharing of the consumer's personal information, or the use or disclosure of the consumer's sensitive personal information, by stating or implying that the use of the opt-out preference signal will adversely affect the consumer as compared to consumers who do not use the opt-out preference signal, including stating or implying that the consumer will not be able to use the business' products or services or that those products or services may not function properly or fully.

(v) Displaying any notification or pop-up in response to the consumer's opt-out preference signal.

(C) Ensure that any link to a web page or its supporting content that allows the consumer to consent to opt in:

(i) Is not part of a popup, notice, banner, or other intrusive design that obscures any part of the web page the consumer intended to visit from full view or that interferes with or impedes in any way the consumer's experience visiting or browsing the web page or website the consumer intended to visit.

(ii) Does not require or imply that the consumer must click the link to receive full functionality of any products or services, including the website.

(iii) Does not make use of any dark patterns.

(iv) Applies only to the business with which the consumer intends to interact.

(D) Strive to curb coercive or deceptive practices in response to an opt-out preference signal but should not unduly restrict businesses that are trying in good faith to comply with Section 1798.135.

(21) Review existing Insurance Code provisions and regulations relating to consumer privacy, except those relating to insurance rates or pricing, to determine whether any provisions of the Insurance Code provide greater protection to consumers than the provisions of this title. Upon completing its review, the agency shall adopt a regulation that applies only the more protective provisions of this title to insurance companies. For the purpose of clarity, the Insurance Commissioner shall have jurisdiction over insurance rates and pricing.

(22) Harmonizing the regulations governing opt-out mechanisms, notices to consumers, and other operational mechanisms in this title to promote clarity and the functionality of this title for consumers.

(b) The Attorney General may adopt additional regulations as ~~follows.~~

~~(1) To establish rules and procedures on how to process and comply with verifiable consumer requests for specific pieces of personal information relating to a household in order to address obstacles to implementation and privacy concerns.~~

~~(2) As~~ necessary to further the purposes of this title.

(c) The Attorney General shall not bring an enforcement action under this title until six months after the publication of the final regulations issued pursuant to this section or July 1, 2020, whichever is sooner.

(d) Notwithstanding subdivision (a), 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 only 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.

SEC. 22. Section 1798.190 of the Civil Code is amended to read:

1798.190. Anti-Avoidance

~~1798.190.~~ *A court or the agency shall disregard the intermediate steps or transactions for purposes of effectuating the purposes of this title:*

(a) If a series of steps or transactions were component parts of a single transaction intended from the beginning to be taken with the intention of avoiding the reach of this title, including the disclosure of information by a business to a third party in order to avoid the definition of sell~~,~~ *or share.*

(b) If steps or transactions were taken to purposely avoid the definition of sell or share by eliminating any monetary or other valuable consideration, including by entering into contracts that do not include an exchange for monetary or other valuable consideration, but where a party is obtaining something of value or use ~~a court shall disregard the intermediate steps or transactions for purposes of effectuating the purposes of this title~~*.*

SEC. 23. Section 1798.192 of the Civil Code is amended to read:

1798.192. Waiver