

Admin.

October 27, 2005

First Supplement to Memorandum 2005-39

2005-2006 Annual Report: Unconstitutional Statutes

The staff draft of the *2005-2006 Annual Report* attached to Memorandum 2005-39 does not include the section relating to unconstitutional statutes. A staff draft of that section is attached to this memorandum.

Respectfully submitted,

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Report on Statutes Repealed by Implication or Held Unconstitutional

Government Code Section 8290 provides:

The commission shall recommend the express repeal of all statutes repealed by implication, or held unconstitutional by the Supreme Court of the state or the Supreme Court of the United States.

Pursuant to this directive, the Commission has reviewed the decisions of the United States Supreme Court and the California Supreme Court published since the Commission's last Annual Report was prepared¹ and has the following to report:

- No decision holding a state statute repealed by implication has been found.
- No decision of the United States Supreme Court holding a state statute unconstitutional has been found.²
- One decision of the California Supreme Court holding a state statute unconstitutional has been found.³

1. This study has been carried through 37 Cal. 4th 406 and 125 S. Ct. 2854 (end of 2004-05 Term).

2. In *Gonzales v. Raich*, 125 S. Ct. 2195 (2005), the United States Supreme Court held that federal regulation of intrastate manufacture, distribution, or possession of marijuana for medical purposes authorized by Health & Safety Code Section 11362.5 does not violate the Commerce Clause of the United States Constitution. See U.S. Const. art. I, § 8, cl. 3. The constitutionality of Health & Safety Code Section 11362.5 was not before the Court, but the Court indicated that to the extent a conflict exists between federal and state law in this area, the Supremacy Clause of the United States Constitution requires that federal law prevail. See U.S. Const. art. VI.

3. In other cases, the California Supreme Court restricted the applicability of a statute on constitutional grounds, held a non-statutory action of the Legislature unconstitutional, and held that certain ethics standards for arbitrators promulgated by the Judicial Council were constitutionally preempted by federal law.

In *Le Francois v. Goel*, 35 Cal. 4th 1094, 112 P.3d 636, 29 Cal. Rptr. 3d 249 (2005), the California Supreme Court held that Code of Civil Procedure Sections 437c(f)(2) and 1008, relating to motions for reconsideration, if

In *People v. Thomas*,⁴ the California Supreme Court stated that a part of Penal Code Section 1170.19(a)(4), requiring prosecutorial consent before a judge may impose a juvenile disposition on certain minors prosecuted and convicted as an adult, is unconstitutional.⁵ The court held that the limitation on a trial court's sentencing discretion violates the separation of powers provision of the California Constitution.⁶

interpreted to limit a court's inherent ability to reconsider a prior interim order on its own motion, would violate the separation of powers provision contained in the California Constitution. See Cal. Const. art. III, § 3. The court recognized that the separation of powers limitation on the Legislature's power to regulate procedure is narrow. However, the court held that a legislative regulation of court procedure will nevertheless be held invalid if it defeats or materially impairs a court's ability to perform its constitutional core functions, which include the resolution of a controversy between parties.

In *California State Personnel Board v. California State Employees Ass'n Local 1000*, 36 Cal. 4th 758, 15 P.3d 506, 31 Cal. Rptr. 3d 201 (2005), the California Supreme Court held that the Legislature's ratification of certain state employment memoranda of understanding was unconstitutional, as the memoranda and subsequent ratification violated the merit principle contained in Article VII of the California Constitution relating to civil service appointments and promotions. See Cal. Const. art. VII, § 1(b).

In *Jevne v. Superior Court (JB Oxford Holdings, Inc.)*, 35 Cal. 4th 935, 111 P.3d 954, 28 Cal. Rptr. 3d 685 (2005), the California Supreme Court held that, pursuant to the Supremacy Clause of the United States Constitution (U.S. Const. art. VI, cl. 2), ethics standards promulgated by the Judicial Council for a person serving as a neutral arbitrator under a contractual arbitration agreement (Cal. R. Ct. app. div. VI) were preempted by the federal Securities Exchange Act of 1934 (15 U.S.C. §§ 78a-78mm) in an arbitration administered by the National Association of Securities Dealers, Inc.

4. 35 Cal. 4th 635, 109 P.3d 564, 27 Cal. Rptr. 3d 2 (2005).

5. The precedential value of the court's determination of unconstitutionality is uncertain, as the court ultimately held that the minor before the court was ineligible for sentencing under Section 1170.19 due to other statutory considerations.

6. Cal. Const. art. III, § 3.