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## How will Supreme Court Opinions Affect California?

By Christopher B. Dolan and Cristina Garcia

**This week's question comes from Leticia who asks:**

*Lately, the news has focused on the Supreme Court and their rulings. I'm concerned how all this will affect me. I live in the Bay Area and don't plan to leave California any time soon. I want to know how the opinions released by the Supreme Court of the United States affect Californians?*

Dear Leticia:

Thank you for your question. The Supreme Court of the United States, also called SCOTUS, has released a series of opinions that affect various issues, from reproductive rights to environmental protection. A question that many Californians are asking themselves is how do the SCOTUS decisions affect our state?

To understand how the SCOTUS decisions will affect Californians, reviewing the Supremacy Clause is essential. The Supremacy Clause is a clause within Article VI of the United States Constitution, which states that federal law is the "supreme law of the land." Federal law preempts state law if it interferes with or conflicts with federal law.

For example, the case of the New York State Rifle & Pistol Association, Inc., et al. v. Bruen, et al. illustrates how the Supremacy Clause preempted New York state law. This case involved two men who applied for permits to carry a concealed weapon in public. Under New York State's Sullivan Act, local officials were given discretion in determining whether the applicant proved "good moral character" and "proper cause" for needing the concealed-carry licenses for self-protection distinguishable from the general community. Local officials determined that neither of the men had demonstrated proper cause and denied their requests. The two men then sued the state officials who oversee the process of licensing applications, alleging that their Second and Fourteenth Amendment rights were violated by denying their unrestricted-license applications.

After reviewing the case, the SCOTUS determined that "New York's proper-cause requirement violates the Fourteenth Amendment. It prevented law-abiding citizens with ordinary self-defense needs from exercising their Second Amendment right to keep and bear arms in public for self-defense." (Id.) The SCOTUS effectively struck down New York State's Sullivan Act, which placed restrictions on individuals carrying concealed weapons.

The SCOTUS decision is important to California specifically, as we have similar gun control laws to New York, and the recently decided case is now precedent. This means that the SCOTUS opinion will be used as authority by other courts when deciding subsequent cases involving similar facts or similar legal issues. Therefore, the SCOTUS opinion may be used to challenge gun laws in California.



Although in New York's case, the SCOTUS determined that federal law preempted state law, it has also issued opinions that embolden a state's ability to enact legislation on various other issues, including those which the SCOTUS itself had once settled. A couple of those decisions are Dobbs, et al. v. Jackson Women's Health Organization, et al., which overturned the landmark case of Roe v. Wade. The SCOTUS opined that the Constitution does not confer a right to abortion. They would return the authority to regulate abortion to the states. As a result, each state can ban abortions, place restrictions on abortions, or allow for safe abortions to take place. Similarly, in West Virginia v. Environmental Protection Agency ("EPA"), the SCOTUS limited the federal EPA's ability to overhaul the nation's electricity supplies in favor of wind power and other renewable resources. Therefore, allowing the states to determine what legislation to enact.

Thus, although the SCOTUS opinions did not involve California, they may affect California laws. The cases discussed above are a short synopsis of the SCOTUS opinions. We strongly encourage everyone to read the opinions themselves or the detailed summaries of organizations such as the American Civil Liberties Union (ACLU).

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## I Work for a Temporary Agency: Do I Have Legal Remedies If I'm Injured at Work?

By Christopher B. Dolan and Emile Davis



**This week's question comes from Mel in Oakland who asks:**

*I worked for a temp agency and was assigned to work reception at a startup company. While I was working, the boss of the startup asked a few of us to move a large desk in the entrance way. When we were moving the desk, one of the employees lost their grip, and the desk fell directly on me, fracturing my ankle. I was the only temp and hoped to be made permanent.*

*Am I entitled to get worker's compensation; can I sue them in court? Who is responsible for this- the startup or my temporary agency? I am lost, please help.*

Dear Mel,

I am sorry you suffered an injury at work and that the lack of guidance from your employers has compounded your frustration. Your question raises some interesting legal issues. The first issue is whether you would be entitled to worker's compensation benefits. Generally, a person is entitled to worker's compensation benefits if they are injured within the scope of or arising out of their employment. At first glance, that appears to be the case with your situation, but the employer who provides your paycheck is the temporary agency. The law has anticipated this type of situation, and there is something known as the "dual employment" or "borrowed servant" doctrine. The dual employment doctrine, at its core, recognizes that while the agency is your "employer," the startup company is controlling the day-to-day activities of your work, and should also be recognized as your employer. The agency is considered the "general employer" and

your relationship with the startup is what is known as a "special employer."

Whether this dual employment relationship exists is a question of fact and comes down to questions of control. The special employer must be controlling many of the aspects of the employment to be deemed responsible. They are very similar questions as determining if a person is an employee or independent contractor: who determines when the workday starts and ends; the ability to hire or fire; the assignment of tasks and projects; who is paying for the tools of the trade; and similar issues of control. In some cases, this can be a difficult analysis. However, in the standard reception position, the startup would be able to terminate your contract, ask you to answer phones in a specific way, greet people coming in, or even, move a desk. It seems, on the limited facts presented, that the startup would indeed be your special employer. That means that you would be eligible for worker's compensation benefits since your injury arose out of and within the course of your employment.

The best practice would be to immediately notify both the startup as well as the temporary agency of your injury and the manner it occurred. One of the two will likely provide contact information for their worker's compensation insurance to administer your claim. The startup and the temp agency may have contractually determined who will be responsible for providing worker's compensation benefits between themselves. Either way, you should be covered.

The last part of your question is whether you could sue the startup company in court. Generally, where someone is entitled

to worker's compensation benefits, those are the "exclusive remedies" available. You cannot sue either employer directly in court since the exclusive remedies are within the worker's compensation system. However, it is important to look whether a third party (someone other than your employers) contributed to the harm. A third party is not subject to the limitations of the worker's compensation system. If a separate company was moving a new desk in and they dropped it on your foot, you would likely be entitled to worker's compensation from your employers and have a right seek recovery from the third-party desk movers in court. Notably, that does not allow a person to seek recovery two times for the same injury. The worker's compensation provider would have a right to recovery of what they provided (wage loss and medical bills) from any recovery in the third-party court case.

I hope that helps you understand the complexities underlying your straightforward question.

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## What happens after I hire an attorney for my car accident?

By Christopher Dolan and Allison Stone



**This week's question comes from Anonymous who asks: What should I expect once I have hired an attorney after an accident?**

Dear Anonymous,

Thank you for your question. After you are involved in an accident and hiring an attorney, there are still a lot of unknowns and questions. What happens next? Here is an overview of what to generally expect during this time:

**Sign Initial Documents:** The first step in hiring an attorney is signing a retainer agreement along with other paperwork so your attorneys can start working on your case. This paperwork often includes signing various authorizations that allow your attorneys to get the necessary records to prove your case.

**Provide Documents and Information:** In addition to signing the retainer agreement and opening documents, you will need to provide your attorney with the information and documents you have. Documents include a copy of your ID, insurance cards (automobile and health insurance), photos, and other evidence relating to the incident. It is also essential to provide the facts about how and when the incident happened, what injuries and losses you suffered, if you have missed work, or if anyone witnessed the incident. You must also provide your attorney with a complete list of all the doctors and healthcare facilities that treated you. This documentation is necessary not just at the

beginning of the case but also crucial to keep attorneys updated as you continue to seek medical treatment. Your attorney can then obtain all medical records and bills.

**Attempt to Negotiate a Pre-Litigation Settlement:** Attorneys will often send the insurance company a settlement demand once they obtain documents. This demand will set forth the basis of your case, explain your injuries and damages, and provide photos, medical records, and bills. The insurance company will review the demand, typically make a counteroffer, and a negotiation process will generally follow.

**Filing a Lawsuit:** If your attorney cannot negotiate a pre-litigation settlement, they will file a complaint, starting the litigation process. Retaining an attorney as soon as you can after an accident is very important. There is a time limit when you can file a lawsuit called a statute of limitations. This statute of limitations varies depending on the type of case. If you miss the statute of limitations, you will not be able to file a lawsuit.

Once a complaint is filed, your attorney will find and serve the complaint on the defendant, advising them they are being sued. At this point, the defendant will hire an attorney or notify his/her/their insurance company who will represent him/her/them. The insurance company will hire a lawyer if the defendant has not already hired one.

**Discovery:** This is typically the longest phase of a case and can

take months, a year, or years depending on the circumstances of the case. During discovery, each side asks the other side for all the information and evidence they have to support their claim and arguments. Your attorney will likely contact you intermittently with specific questions about the accident, your injuries, status updates, etc. During discovery, both sides will also take depositions. As an injured party or a Plaintiff, you will have a deposition, which is a time for you to answer questions by the defense attorney. Another part of discovery in a personal injury case is a physical examination where the defense can have you examined by their medical expert. Also, during this discovery phase, your attorneys will often have various hearings with the other side and the judge to provide updates and reports as to how the case is progressing.

**Experts:** At any time during the case, your attorneys may hire various experts. Experts are needed to prove different aspects of your case, and the attorneys will hire the necessary experts for your case. Every case is different. You may have to meet with their experts. Or, experts may be involved in part of your case that does not require your involvement.

**Mediation:** Mediation is a process wherein the parties meet with a neutral third person, a mediator, who will help parties reach a settlement. It is not an adversarial process; typically, each party is in their room or space and never speaks to or sees the other party(s). Working with an independent person who helps to settle your case is an essential step in virtually every case.

**Trial:** During a trial, both sides have a chance to go to court and present evidence and witnesses that supports their case to a jury. In the end, either a judge or jury come to a verdict. At any time, the matter can settle, which ends the trial. Most personal injury cases settle and do not proceed to trial.

With all of this said, it is critical to be patient and trust your attorney who is there to guide you through the process and make recommendations along the way. The most important thing is to hire a trustworthy and hardworking attorney to handle your effectively and efficiently.

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## Building the Golden Parapet: California's Developing Role as the Sanctuary State for Reproductive Rights Nationwide

By Vanessa C. Deniston and Christopher B. Dolan

**This week's question comes from Amanda in Richmond CA who asks:**

*I have a number of young female relatives living in states that are expected to ban abortion. I am deeply concerned for their safety and bodily autonomy should they have an unplanned pregnancy. As a native Californian, I feel deeply privileged to live in a state that recognizes fundamental reproductive rights, but what about my relatives? Can our state help them? If so, how and to what extent?*

Thank you for your timely and thoughtful question. Weeks after the Supreme Court's unprecedented decision to overturn Roe v. Wade and the constitutional recognition of a woman's right to control her own reproductive destiny, many states with laws recognizing these rights are still reeling from the shock and grappling with how to respond. California lawmakers, however, have been anticipating and preparing for this moment for years and were ready with immediate, aggressive action. On June 24, 2022, the very day the Supreme Court announced its decision, Governor Gavin Newsom signed AB 1666, legislation designed to insulate patients and providers from civil liability in other states seeking to impose their anti-abortion laws on individuals within California's borders. Newsom has been adamant California will welcome women from other states seeking abortion care, stating, "We're not going to be asking for your ID. We're not going to be asking you a litany of questions that are asked in almost every other state. You have a right to confidentiality."

Post-Roe, California is the nearest legal abortion provider for an estimated 1.4 million women. It is estimated that up to 16,000 people will travel to California seeking an abortion per year. There can be no doubt that this is a humanitarian health crisis of epic proportions and will greatly impact California, the state slated to become a west coast stronghold for reproductive rights. To meet these challenges, Governor Newsom has proposed a \$125 million dollar package to expand access for women within the state and help the state

prepare for the influx of out-of-state women seeking reproductive healthcare that are likely to travel to California from states imposing bans or otherwise restricting access.

In addition to AB 1666, there are twelve other bills currently under consideration by California's legislature regarding reproductive rights within the state. Several of these bills address extending resources and support to out-of-state individuals seeking abortion access and shielding providers from out-of-state legal attacks. A few of these include:

- **SB 1142** – Establishes an "Abortion Support Fund" to provide grants to California organizations assisting patients, including out of state patients traveling to California, in overcoming barriers to abortion access through practical and logistical support such as covering the cost of travel expenses and medical procedures.

- **AB 2091** – Enhances privacy protections for medical records related to abortion care under California's Reproductive Privacy Act, greatly limiting disclosures to out of state law enforcement and third parties seeking to enforce out of state abortion bans.

- **AB 2626** – Protects abortion providers in California by prohibiting the removal or suspension of medical licenses of a licensed providers performing or assisting in abortions in California, compliant with California law.

This November, Californians will have an opportunity to vote on SCA-10, a proposed amendment to the California State Constitution that would explicitly enshrine the fundamental right to seek an abortion and access contraceptives. Currently, that right exists under California's Reproductive Privacy Act, which ensures privacy and liberty in personal reproductive decisions. SCA-10 seeks to further cement these rights by adding direct and unambiguous language to the state constitution. In relevant part, the proposed amendment in SCA-10 reads:

*"The state shall not deny or interfere with an individual's reproductive freedom in their most intimate decisions, which includes their fundamental right to choose to have an abortion and their fundamental right to choose or refuse contraceptives."*

For the first time in this nation's history, the U.S. Supreme Court has made the decision to revoke a fundamental right previously recognized nationwide. Prior to this Court's recent reversal, cases concerning the interpretation and limits of fundamental rights have either been expanded or clarified, but upheld. The significance of this preternatural decision by the Supreme Court cannot be understated as it signals, unambiguously, that other fundamental rights currently recognized at a national level are at risk of being recalled and shifted back to individual states to define, redefine and interpret as their state legislature sees fit. This will inevitably create cultural polarization and legal inconsistencies state to state.

For now, out-of-staters seeking refuge in California from oppressive laws in their home states limiting or revoking their reproductive rights, have resources that are likely to expand even further by the end of the year.

For further information regarding the bills currently under consideration by the California legislature, please visit at: Dolan Law Firm Blog.

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