



The California State Constitution

AND ITS INDEPENDENT DECLARATION OF RIGHTS

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ARTICLE I WAS the first substantive item on the agenda of California's 1849 Constitutional Convention. At that time, the provisions of the federal Bill of Rights did not apply to the states, so except for those provisions of the federal Constitution directly applicable to the states (such as the Impairment of Contracts Clause), Article I of the California Constitution was the primary, if not the only, protection California would have against abuse of power by the state and local governments.

The Declaration of Rights survived the 1878–1879 Constitutional Convention virtually intact, except for the addition of provisions prohibiting the Legislature from granting irrevocable or preferential “privileges or immu-

nities” (now part of Section 7), prohibiting property qualifications for voting (now Section 22) and stating a rule of constitutional construction (now Section 24).

There were few important changes in Article I until 1972, when initiative measures added “privacy” to the list of inalienable rights protected under Section 1 and added what is now Section 27, sanctioning the death penalty. In its 1971 report, however, the California Constitution Revision Commission recommended a number of changes, some of them cosmetic but others substantive. The state Constitution, for example, contained no explicit clause guaranteeing equal protection of the laws or prohibiting the establishment of religion such as are contained in the federal Constitution. Throughout California's history, courts had relied on other provisions to provide equivalent or, in some cases, more protective doctrine, but the Constitution Revision Commission recommended inclusion of

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these specific clauses in the state Constitution. The Legislature agreed, and the voters enacted the changes into law in 1974.

The 1974 revision also confirmed the independence of the state Constitution through addition of a new provision (Section 24), declaring that the “rights guaranteed by this Constitution are not dependent on those guaranteed by the United States Constitution.” This was not a new concept. In the 1950s, California courts began to chart an independent course, beginning with *People v. Cahan* (1955),¹ which held that evidence seized in violation of the search and seizure provisions of the California Constitution was inadmissible in a criminal proceeding. This was six years before the U.S. Supreme Court reached a similar conclusion.

In *Cardenas v. Superior Court* (1961),² the California Supreme Court, rejecting federal constitutional law to the contrary, held that retrying a criminal defendant after a mistrial granted on the court’s own motion would violate the state Constitution’s ban on double jeopardy. In 1972, in *People v. Anderson*,³ the California Supreme Court, expressly declining to pass on the application of the federal cruel and unusual punishment clause, invalidated California’s death penalty statute on the ground that it violated the state constitutional prohibition of “cruel or unusual punishment.” In the years following, California courts built on these foundations to provide a variety of safeguards in criminal trials in addition to those required by the federal Constitution.

California courts staked out the independence of the state Constitution in other areas as well. The privacy clause, added in 1972, has been accorded a more generous scope and application than the implied privacy right of the federal Constitution. Due process and equal protection principles have been applied in broader fashion than their federal counterparts. The distinctive language of the California Constitution protective of free expression has been read more broadly than the First Amendment, and in *Robins v. Pruneyard Shopping Center* (1979),⁴ the California Supreme Court held — contrary to the federal rule — that under the state’s Constitution, the owner of a shopping center was required to permit the distribution of handbills containing a political message. Indeed, independence runs both ways: California’s constitutional guarantee of a speedy trial, for example, has been construed to provide less protection than the federal Constitution requires.

Judicial decisions relying on the state Constitution to provide additional protection beyond the federal Constitution have met with occasional resistance from the voters. In two areas — the rights of defendants in criminal trials and the rights of minorities to integrated schools — the voters came to reject

such decisions and to insist, through initiative constitutional amendments, that rights be limited to the federally mandated floor. In 1972, they added Section 27 to declare that the death penalty did not constitute cruel or unusual punishment under the state Constitution. In 1979, they amended Section 7, removing the authority of California courts to order busing as a remedy for school segregation except to the extent that the remedy was required by federal law. Three years later, they approved an initiative measure entitled Victims’ Bill of Rights (now Section 28), which made sweeping changes in criminal procedure. In 1990, voters approved another broad measure, Proposition 115, that (among other things) would have prohibited courts from affording “greater rights to criminal defendants than those afforded by the Constitution of the United States” and would have required courts to construe virtually all of Article I, as applied to criminal cases, “in a manner consistent with the Constitution of the United States.” The California Supreme Court, however, has held that such sweeping changes could be adopted only through the process of constitutional revision. More recently, voters adopted an initiative measure (Proposition 8) aimed at overruling the California Supreme Court’s decision upholding same-sex marriage.

The record of California courts in viewing constitutional issues through the prism of the state Constitution has been mixed. Occasionally the courts have disposed of rights claims without reference to the state Constitution, or instead of focusing first on the state constitutional issue — as would logically be required by the principle that rights under the state Constitution are independent — California courts occasionally focus first on federal jurisprudence and then add, without further analysis, that the result would be the same under the state Constitution. With respect to some provisions, the courts have declared that the meaning of the federal and state provisions is identical, leading to the awkward result in some cases that the meaning of the state Constitution varies with changing U.S. Supreme Court decisions. In recent years, however, the California Supreme Court has become more disciplined in its acknowledged obligation to construe the state Constitution independently and for decades has been in the forefront of state courts in recognizing that obligation. ☆

ENDNOTES

1. *People v. Cahan*, 44 Cal. 2d 434 (1955).
2. *Cardenas v. Super. Ct.*, 56 Cal. 2d 273 (1961).
3. *People v. Anderson*, 6 Cal. 3d 628 (1972).
4. *Robins v. Pruneyard Shopping Ctr.*, 23 Cal. 3d 899 (1979).