

Filed  
Superior Court of California,  
Sacramento

Exempt from filing fee per  
Gov. Code, § 6103  
galaviz

By \_\_\_\_\_, Deputy  
34-2023-80004106-CU-W

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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF SACRAMENTO

14 CALIFORNIA CHAMBER OF  
15 COMMERCE,

16 Petitioner,

17 v.

18 CALIFORNIA PRIVACY PROTECTION  
19 AGENCY; JENNIFER M. URBAN,  
20 ALASTAIR MACTAGGART, LYDIA DE  
21 LA TORRE, and VINHCENT LE, in their  
22 official capacities as board members of the  
23 California Privacy Protection Agency; ROB  
24 BONTA, in his official capacity as Attorney  
25 General of the State of California; AND  
26 DOES 1-100,

27 Respondents

Case No. 34-2023-80004106

**RESPONDENTS' OPPOSITION TO  
PETITION FOR WRIT OF MANDATE  
AND COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF**

*[Filed Concurrently with Respondents'  
Request for Judicial Notice]*

Date: June 30, 2023  
Time: 11:00 a.m.  
Dept: 32  
Judge: Hon. James P. Arguelles  
Trial Date: None Set  
Action Filed: March 30, 2023

**By Fax**

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## INTRODUCTION

In November 2020, voters overwhelmingly approved Proposition 24 (Prop. 24), expanding upon and strengthening California’s consumer privacy laws, with the aim of giving California consumers more control over how data brokers and other businesses collect, use, share, and profit from their personal information. Recognizing that the unauthorized use and sharing of personal information creates a “heightened risk of harm” for consumers, particularly children, the voters also established a new agency—the California Privacy Protection Agency (Agency)—to vigorously enforce the law. (Prop. 24, §§ 3(A)(2), 2(J), 2(L).)<sup>1</sup>

On March 29, 2023, the first set of regulations implementing Prop. 24 became final. Under statute, enforcement is set to begin on July 1, 2023, for violations occurring on or after that date—over three months after the first regulatory package was finalized. While rulemaking is still ongoing in three specific areas—cybersecurity audits, risk assessments, and automated decision-making technology—the Agency has publicly stated that it will not enforce the law in these areas until the remaining regulations, which themselves could contain provisions deferring their enforcement, have been made final and approved by the Office of Administrative Law (OAL).

Petitioner, the California Chamber of Commerce, seeks a writ of mandate compelling the Agency to promulgate all regulations required by Prop. 24—even though that process is already largely complete—and prohibiting Respondents<sup>2</sup> from enforcing *any* aspect of Prop. 24 until at least one year after *all* regulations are finalized in *all* of the required topic areas. The petition should be denied. Contrary to Petitioner’s contentions, there is no clear, unambiguous language in Prop. 24 imposing a mandatory duty on the Agency, either to promulgate all final regulations by a date certain or refrain from enforcing the law in its entirety until one year after all regulations have become final. There is also no support for Petitioner’s requested relief in the

<sup>1</sup> The full text of Prop. 24 is attached as Exhibit 1 to the Petition.

<sup>2</sup> Respondents here are the 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.

1 ballot materials provided to the voters. The Voter Information Guide, the Legislative Analyst’s  
2 analysis, and the printed arguments for and against the measure are silent with respect to both the  
3 supposed mandatory deadline for promulgating regulations and the supposed one-year “grace  
4 period” (Petrn., ¶ 2) before enforcement may begin that Petitioner is reading into Prop. 24.

5 Petitioner also fails to support its bare assertions that businesses would be “severely  
6 prejudice[d]” (Petrn., ¶ 2) if enforcement were to commence on July 1, 2023—three months *after*  
7 the Agency’s first regulation package was approved by OAL, and eight months after those  
8 regulations, which remain mostly unchanged, were first proposed and circulated for public  
9 comment; indeed, the language of the final regulations largely comes directly from pre-existing  
10 regulations under the California Consumer Privacy Act of 2018 (CCPA), which Prop. 24  
11 amended, or from the Prop. 24 amendments themselves. Petitioner has not submitted evidence  
12 identifying a single business that cannot comply with even one of the March 29 regulations. Yet  
13 Petitioner would have this Court excuse all businesses, regardless of their ability, from complying  
14 with every provision, and do so at the expense of the privacy rights that Californians have  
15 unequivocally said they want to be the law. Many companies in California are already (or will  
16 soon be) subject to similar laws in other jurisdictions, including Colorado, Virginia, and Utah, in  
17 addition to the European Union. And many of the March 29 regulations simply update provisions  
18 that businesses were already required to follow. Petitioner’s claims of prejudice ring hollow.

19 At bottom, the sweeping relief sought by Petitioner cannot be justified by Prop. 24’s text or  
20 the supporting ballot materials and would severely undermine the voters’ overriding purpose in  
21 enacting Prop. 24, which was to strengthen and build upon already established and enforceable  
22 privacy rights—not allow data brokers and businesses with more than \$25 million in gross annual  
23 revenues still more time to profit from the misuse of consumers’ personal information.

24 This Court should decline Petitioner’s invitation to thwart the will of the voters by  
25 significantly delaying enforcement.  
26  
27  
28

## BACKGROUND

The California Constitution includes privacy among the “inalienable rights” enjoyed by the “free and independent” people of the State. (Cal. Const., art. I, § 1.) Since the voters added that provision to the Constitution in 1972, the Legislature has adopted numerous laws to safeguard that right. (See, e.g., Prop. 24, § 2(B).)

### I. THE CALIFORNIA CONSUMER PRIVACY ACT OF 2018

In 2018, the Legislature enacted the CCPA, a landmark statute giving consumers more control over the personal information that businesses collect from and about them. The CCPA secured new privacy rights for Californians, including: (1) the right to know about the personal information a business collects about them and how it is used and shared; (2) the right to delete personal information collected from them (with some exceptions); (3) the right to opt-out of the sale of their personal information; and (4) the right not to be discriminated against for exercising their consumer privacy rights. (Assem. Bill No. 375, Stats. 2018, ch. 55, § 3.) The CCPA only applied to businesses: (1) with annual gross revenues in excess of \$25 million<sup>3</sup>; (2) that buy, sell, or share the personal information of 50,000 or more consumers, households, or devices; and/or that (3) derive 50 percent or more of their annual revenues from selling consumers’ personal information. (Former Civ. Code, § 1798.140, subd. (c).)

The CCPA became operative on January 1, 2020. (Civ. Code,<sup>4</sup> § 1798.198, subd. (a).) It required the Attorney General to adopt final regulations implementing the Act “[o]n or before July 1, 2020,” and vested the Attorney General with enforcement authority. (§ 1798.185, subd. (a); former § 1798.155, subd. (a).) It further provided that the Attorney General could not bring an enforcement action under the CCPA until July 1, 2020—the same date by which regulations had to be finalized—or “until six months after the publication of the final regulations . . . , whichever is sooner.” (§ 1798.185, subd. (c).) Regulations implementing the CCPA became

<sup>3</sup> The CCPA provides that the monetary thresholds of businesses subject to the consumer privacy laws shall be adjusted in January of every odd-numbered year. (Civ. Code, § 1798.185, subd. (a)(5).) This remains the case under Prop 24.

<sup>4</sup> All further statutory references are to the Civil Code unless otherwise noted.

operative on August 14, 2020.<sup>5</sup> A set of amendments to the regulations went into effect on March 15, 2021.<sup>6</sup>

## II. PROPOSITION 24

In 2020, proponents of Proposition 24, urged voters to “make California privacy laws stronger” because, despite earlier efforts, “[t]he world’s biggest corporations are collecting deeply personal and private information about all of us” and “our current laws aren’t strong enough to protect us or our families from those who would abuse our most personal information.”

(Respondents’ Request for Judicial Notice (Resp. RJN), Ex. A at p. 70.)

Voters found that argument persuasive and enacted the law, known as the “California Privacy Rights Act of 2020,” which built upon the 2018 CCPA. The voters embraced the idea that, “rather than diluting privacy rights, California should strengthen them over time.” (Prop. 24, § 2(E).) In particular, they wanted to address the “asymmetry of information” created by the “opaque” process many businesses used to obtain consumers’ consent to use their personal information. (*Id.*, § 2(E)-(F).) Those opaque practices allowed businesses “to collect and trade vast amounts of personal information, to track [consumers] across the internet, and to create detailed profiles of their individual interests.” (*Id.*, § 2(I).) The voters wanted consumers to “have the information and tools necessary to limit the use of their information to noninvasive proprivacy advertising, where their personal information is not sold or shared with hundreds of businesses they’ve never heard of[.]” (*Ibid.*) Voters recognized that the unauthorized use or disclosure of consumers’ personal information “creates a heightened risk of harm to the consumer, and they should have meaningful options over how it is collected, used, and disclosed.” (*Id.*, § 3(A)(2).) They also recognized that “[c]hildren are particularly vulnerable from a negotiating perspective with respect to their privacy rights[, and p]arents should be able to control what information is collected and sold or shared about their young children and should

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<sup>5</sup> See Petn., Ex. 2 (July 8, 2022 Notice of Proposed Rulemaking) at p. 4; State of California Department of Justice web site, CCPA Regulations, Form 400 Endorsed and Filed Version, available at: <https://oag.ca.gov/sites/all/files/agweb/pdfs/privacy/ccpa-std400.pdf>?> (as of June 5, 2023).

<sup>6</sup> See Petn., Ex. 2 at p. 4; see also State of California Department of Justice web site, CCPA Regulations, available at: <https://oag.ca.gov/privacy/ccpa/regs>?> (as of June 5, 2023).

1 be given the right to demand that companies erase information collected about their children.”  
2 (*Id.*, § 2(J).) To achieve the goals of the new law, the voters created an independent  
3 “watchdog”—the California Privacy Protection Agency—whose mission is to “protect consumer  
4 privacy,” “ensure that businesses and consumers are well-informed about their rights and  
5 obligations,” and “vigorously enforce the law against businesses that violate consumers’ privacy  
6 rights.” (*Id.*, § 2(L).)

7 **A. Key Provisions**

8 **1. Expanding consumer privacy rights and creating a new agency**  
9 **specializing in the enforcement of privacy laws**

10 Among other provisions, the measure gave consumers additional rights over their personal  
11 information. Those rights include the right to correct inaccurate personal information maintained  
12 about them and the right to limit businesses’ use and disclosure of “sensitive personal  
13 information”—which includes precise geolocation, race, ethnicity, religion, genetic data, private  
14 communications, sexual orientation, and specified health information—to only specified purposes  
15 identified in the statute. (§§ 1798.106, 1798.121, 1798.140, subd. (ae)). It also:

- 16 • clarified that the existing right to opt-out of the sale of personal information includes  
17 the sharing of personal information for cross-context behavioral advertising  
18 (§§ 1798.120, 1798.140, subd. (ah)(1));
- 19 • restricts businesses’ collection, use, retention, and sharing of personal information to  
20 that which is reasonably necessary and proportionate to achieve the purposes for  
21 which the personal information was collected or processed or another disclosed  
22 compatible purpose (§ 1798.100, subd. (c));
- 23 • sets requirements for contracts governing the sale or sharing of personal information  
24 with service providers, contractors, and third parties (§ 1798.100, subd. (d));
- 25 • requires additional disclosures to consumers (§§ 1798.100, subd. (a), 1798.130, subd.  
26 (a)(5), 1798.135); and
- 27 • triples the maximum penalties for privacy violations concerning children and teens  
28 under age 16 (§ 1798.155).



1 It also narrowed the criteria that determine whether particular businesses must comply.  
2 Following Prop. 24, only those businesses: (1) with annual gross revenues in excess of \$25  
3 million in the preceding calendar year; (2) that buy, sell, or share the personal information of  
4 100,000 or more consumers or households; and/or that (3) derive 50 percent or more of their  
5 annual revenues from selling or sharing consumers' personal information, are subject to the  
6 CCPA, as amended by Prop. 24. (§ 1798.140, subd. (d).)

7 In addition to expanding and clarifying consumer privacy rights, Prop. 24 created a new  
8 state agency—the California Privacy Protection Agency—with responsibility for promulgating  
9 regulations and enforcing the law, alongside the Attorney General. (§§ 1798.199.10,  
10 1798.199.40.)

## 11 **2. Regulations**

12 Prop. 24 required the promulgation and adoption of additional regulations to further clarify  
13 certain aspects of law. (§ 1798.185.) Specifically, the measure required regulations in the  
14 following areas:

- 15     ▪ Rules and procedures governing consumer requests to opt-out of the sharing of  
16       personal information; limiting the use of sensitive personal information; and  
17       correcting personal information (§ 1798.185, subds. (a)(4)(A), (a)(7), (a)(8));
- 18     ▪ Requirements and technical specifications for an opt-out preference signal that is  
19       “consumer friendly, clearly described, and easy to use by an average consumer”  
20       (§ 1798.185, subds. (a)(19)-(20));
- 21     ▪ Standards governing a business's determination that providing information in response  
22       to a verifiable consumer request is either impossible or would require a  
23       disproportionate effort (§ 1798.185, subd. (a)(9));
- 24     ▪ Further refining the list of permissible business purposes for which businesses may  
25       use consumers' personal information or sensitive personal information, consistent with  
26       consumers' expectations, or when received pursuant to a business contract  
27       (§ 1798.185, subds. (a)(10), (a)(11), (a)(19)(C));
- 28     ▪ Further defining key terms (§ 1798.185, subds. (a)(12)-(14), (a)(17));



- 1       ▪ Requiring annual cybersecurity audits, regular risk assessments regarding the
- 2       processing of consumer personal information, and establishing parameters around
- 3       access and opt-out rights related to a business’s use of automated decisionmaking
- 4       technology (§ 1798.185, subds. (a)(15)-(16));
- 5       ▪ Defining the scope and process for the exercise of the agency’s audit authority
- 6       (§ 1798.185, subd. (a)(18)); and
- 7       ▪ Setting consumer privacy standards for insurance companies (§ 1798.185, subd.
- 8       (a)(21)).

9       The statute further specifies that the law “should adjust to technological changes” (Prop. 24,

10      § 3(C)(4), and makes clear that the Agency’s rulemaking authority is ongoing and iterative.

11      (§ 1798.185, subds. (a)(1)-(3) [updating or adding to certain definitions “to address changes in

12      technology, data collection practices, obstacles to implementation, and privacy concerns”], (a)(5)

13      [adjusting monetary thresholds], (a)(10), (12), (13), (17) [stating that the Agency “further define”

14      various terms], (a)(19)(A) [“the requirements and specifications for the opt-out preference signal

15      should be updated from time to time to reflect the means by which consumers interact with

16      businesses”], and (b) [“may adopt additional regulations as necessary to further the purposes of

17      this title”].)

### 18                   **3.   Implementation and enforcement**

19       As to the law’s implementation, Prop. 24 provides that “[t]he rights of consumers and the

20      responsibilities of businesses should be implemented with the goal of strengthening consumer

21      privacy while giving attention to the impact on business and innovation.” (Prop. 24, § 3(C)(1).)

22      It further provides that “[b]usinesses should be held accountable for violating the law through

23      vigorous administrative and civil enforcement.” (Prop. 24, § 3(C)(7).)

1 The Act specifies that certain provisions would become operative on December 16, 2020,  
2 the effective date of the Act,<sup>7</sup> and the rest of the Act “shall become operative January 1, 2023.”<sup>8</sup>  
3 (Prop. 24, § 31, subd. (a).) Prop. 24 also made it clear that “[e]nforcement of provisions of law  
4 contained in the [CCPA] amended by this act shall remain in effect and shall be enforceable until  
5 the same provisions of this act become enforceable.” (§ 1798.185, subd. (d).)

6 Finally, the measure provides that the “timeline for adopting” final regulations under Prop.  
7 24 shall be July 1, 2022, and that “[n]otwithstanding any other law, civil and administrative  
8 enforcement of the provisions of law added or amended by this act shall not commence until July  
9 1, 2023, and shall only apply to violations occurring on or after that date.” (§ 1798.185, subd.  
10 (d).)

11 Under Prop. 24, businesses that violate the provisions of the measure are subject to an  
12 injunction and maximum civil penalties of \$2,500 per violation, or \$7,500 for each intentional  
13 violation or violation involving the personal information of minors. (§§ 1798.199.90, subd. (a),  
14 1798.199.55, subd. (a)(2).) Enforcement agencies are required to “consider the good faith  
15 cooperation of the business” in determining the amount of any administrative fine or civil penalty  
16 for a violation. (§ 1798.199.100.) The Attorney General may not file a civil action for any  
17 violation after the Agency has issued a decision or order for the same violation against the same  
18 business. (§ 1798.199.90, subd. (d).) The Agency must stay an administrative action or  
19 investigation to permit the Attorney General to proceed with an investigation or civil action and  
20

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21 <sup>7</sup> Subdivision (a) of Section 10 of Article II of the California Constitution provides that  
22 “[a]n initiative statute . . . approved by a majority of votes cast thereon takes effect on the fifth  
23 day after the Secretary of State files the statement of the vote for the election at which the  
24 measure is voted on[.]” See, also, California Secretary of State Statement of Vote for Nov. 3,  
25 2020 General Election at p. 17 <[https://elections.cdn.sos.ca.gov/sov/2020-general/sov/complete-](https://elections.cdn.sos.ca.gov/sov/2020-general/sov/complete-sov.pdf)  
26 [sov.pdf](https://elections.cdn.sos.ca.gov/sov/2020-general/sov/complete-sov.pdf)> (certifying statement of the vote on Dec. 11, 2020.).

27 <sup>8</sup> A statute’s “operative” date is “the date upon which the directives of the statute may be  
28 actually implemented.” (*People v. McCaskey* (1985) 170 Cal. App. 3d 411, 416.) Prop 24  
provided that “[s]ubdivisions (m) and (n) of Section 1798.145 [exempting from the Act personal  
information collected for employment purposes], Sections 1798.160 [outlining how Consumer  
Privacy Funds could be used], 1798.185 [requiring the promulgation of regulations], Sections  
1798.199.10 through 1798.199.40 [establishing the California Privacy Protection Agency],  
inclusive, and Section 1798.199.95 [appropriating monies from the General Fund to establish and  
support the Agency] shall become operative on the effective date of the act.” (Prop. 24, § 31,  
subd. (b).)

1 shall not pursue an administrative action or investigation, unless the Attorney General  
2 subsequently determines not to pursue an investigation or civil action. (*Id.*, subd. (c).) Moreover,  
3 a business cannot be required to pay both an administrative fine and a civil penalty for the same  
4 violation. (§ 1798.199.100.)

## 5 **B. The Rulemaking Process**

6 As noted, Prop. 24 provides that the “the timeline for adopting final regulations required by  
7 the act . . . shall be July 1, 2022.” (§ 1798.185, subd. (d).) The Attorney General was charged  
8 with rulemaking authority until July 1, 2021, or until six months after the newly established  
9 California Privacy Protection Agency provided notice that it was prepared to begin rulemaking,  
10 whichever was later. (§ 1798.185, subd. (d).) The regulations must be promulgated in  
11 compliance with the Administrative Procedure Act (APA), which prescribes specific steps and  
12 timelines that agencies must follow when enacting new regulations—a process that generally  
13 takes months of preparatory work and then a year of formal notice, public comment, and then  
14 review by OAL.<sup>9</sup>

### 15 **1. Pre-rulemaking activities**

16 When Prop. 24 took effect, an independent agency had to be created, board members  
17 appointed, resources and office space requisitioned, staff borrowed and, ultimately, hired. That  
18 started in March 2021—within 90 days of the effective date of the Act—when the Governor, the  
19 Attorney General, the Senate President, and the Speaker of the Assembly appointed the inaugural  
20 members to the five-member Board. (§ 1798.199.10.)<sup>10</sup> The Board first met in June<sup>11</sup> and by the

21 <sup>9</sup> “The [Administrative Procedure Act] was enacted to establish basic minimum  
22 procedural requirements for the adoption, amendment, or repeal of administrative regulations  
23 promulgated by administrative agencies.” (*Morales v. California Dept. of Corrections &*  
24 *Rehabilitation* (2008) 168 Cal.App.4th 729, 735.) The agency must give the public notice of its  
25 proposed regulatory action, issue a complete text of the proposed regulation with a statement of  
26 the reasons for it, give interested parties an opportunity to comment on the proposed regulation,  
respond in writing to public comments, and forward a file of all materials on which the agency  
relied in the regulatory process to the Office of Administrative Law, which reviews the regulation  
for consistency with the law, clarity, and necessity. (*Id.* at p. 736, citing Gov. Code, §§ 11346.2-  
11349.3.)

27 <sup>10</sup> See also Resp. RJN, Ex. H (Office of Governor Gavin Newsom, *California Officials*  
*Announce California Privacy Protection Agency Board Appointments* (Mar. 17, 2021).)

28 <sup>11</sup> *Id.*, Ex. I (June 14, 2021 Agency Board Meeting Minutes.)

1 end of September had hired an executive director and started preliminary rulemaking activities  
2 via an initial request for “input from stakeholders in developing regulations.”<sup>12</sup> On October 21,  
3 2021, the Agency notified the Attorney General that it was prepared to assume rulemaking  
4 authority. (§ 1798.185, subd. (d).)<sup>13</sup> Six months later, that authority was formally transferred, as  
5 outlined in statute. (§ 1798.185, subd. (d).)

6 During the transfer period, the Agency prepared for formal rulemaking by consulting with  
7 stakeholders, as the law recommends. (See Gov. Code, § 11346, subd. (b).) In March 2022, the  
8 Agency held a set of instructive pre-rulemaking informational sessions to inform the Agency  
9 Board, Agency staff, and the public on topics relevant to the upcoming rulemaking.<sup>14</sup> On May 4,  
10 5, and 6, 2022, the Agency held a set of sessions to provide an opportunity for stakeholders to  
11 speak on topics relevant to the upcoming rulemaking.<sup>15</sup> (*Id.*, § 11346.45.)

## 12 2. Rulemaking Package One

13 On July 8, 2022, the Agency released a Notice of Proposed Rulemaking and published  
14 proposed regulations, commencing a 45-day public comment period which ended on August 23,  
15 2022.<sup>16</sup> While the proposed regulations addressed most of the required areas listed under section  
16 1798.185, as amended by Prop. 24, they did not address cybersecurity audits (§ 1798.185, subd.  
17 (a)(15)(A)), risk assessments (§ 1798.185, subd. (a)(15)(B)), and automated decisionmaking  
18 technology (§ 1798.185, subd. (a)(16)).<sup>17</sup> The rulemaking package expressly stated that these  
19 three areas would be the subject of a future rulemaking.<sup>18</sup>

20 The Agency held two public hearings in connection with the proposed rulemaking, on  
21 August 24 and 25, 2022.<sup>19</sup> The Agency received 138 separate sets of comments (both oral and

22 <sup>12</sup> *Id.*, Ex. J (Sept. 22, 2021 Invitation for Preliminary Comments on Proposed  
23 Rulemaking); see also, *id.*, Ex. K (Oct. 18, 2021 Agency Board Meeting Minutes [introducing  
new Executive Director].)

24 <sup>13</sup> See also, Resp. RJN, Ex. L (Oct. 21, 2021 correspondence from Agency to Attorney  
General Bonta.)

25 <sup>14</sup> *Id.*, Ex. M (March 29-30, 2022 Pre-Rulemaking Informational Sessions Transcripts.)

26 <sup>15</sup> *Id.*, Ex. N (May 4-6, 2022 Pre-Rulemaking Stakeholder Sessions Transcripts.)

27 <sup>16</sup> Petn., Ex. 2 at pp. 1-2.

28 <sup>17</sup> *Id.* at p. 6.

<sup>18</sup> *Ibid.*

<sup>19</sup> *Id.* at p. 1; see also Resp. RJN, Ex. O (August 24-25, 2022 Agency Rulemaking Public  
Hearing Transcripts.)

1 written), consisting of over 1,100 pages, in the initial 45-day comment period.<sup>20</sup> (Gov. Code,  
2 § 11346.4, subd. (a).) In total, the Agency considered and responded to 782 separate comments.  
3 (See Gov. Code, § 11346.9, subd. (c).)<sup>21</sup>

4 On November 3, 2022, the Agency issued revised proposed regulations for a 15-day public  
5 comment period, ending on November 21.<sup>22</sup> (Gov. Code, § 11346.8, subd. (c).) The Agency  
6 received 54 separate sets of comments consisting of over 450 pages.<sup>23</sup> In total, the Agency  
7 considered and responded to 338 separate comments.<sup>24</sup> No material changes were made to the  
8 revised proposed regulations in response to the comments received; thus, on February 13, 2023,  
9 the Agency submitted its first regulatory package to OAL.<sup>25</sup>

10 The final regulations were approved by OAL on March 29, 2023.<sup>26</sup>

### 11 **3. The regulatory impact of the new rules on businesses**

12 In submitting the first regulatory package to OAL for approval, the Agency explained that  
13 the regulations would impose a minimal impact on businesses because, on the whole, the  
14 regulations largely mirrored provisions that were already in existing statutes or regulations.  
15 “[A]lthough the new proposed draft regulations initially appear significant in scope, . . . [t]he vast  
16 majority of language in the proposed regulations either comes directly from the existing CCPA  
17 regulations or from the [Prop. 24] amendments.”<sup>27</sup> “Upon a close comparison of language in the  
18 proposed regulations against language in the baseline legal environment,” the Agency determined  
19 that only two elements of the proposed regulations could possibly generate new or increased  
20 regulatory impacts.<sup>28</sup> Those two elements are:

21 <sup>20</sup> Resp. RJN, Ex. P (Overview of Public Comments) at pp. 2-13.

22 <sup>21</sup> See Resp. RJN, Ex. R (Final Statement of Reasons – Appendix A [45-Day Comment  
23 Summaries and Responses].)

24 <sup>22</sup> *Id.*, Ex. Q. (Nov. 3, 2022 – Public Notice of Proposed Modifications to Text of  
25 Proposed Regulations), at p. 5.

26 <sup>23</sup> *Id.*, Ex. P, at pp. 13-20.

27 <sup>24</sup> *Id.*, Ex. S (Final Statement of Reasons – Appendix C [15-Day Comment Summaries  
28 and Responses].)

29 <sup>25</sup> *Id.*, Ex. B (March 29, 2023, Notice of Approval of Regulatory Action) at p. 2.

30 <sup>26</sup> *Ibid.*

31 <sup>27</sup> *Id.*, Ex. D (Final STD 399 Addendum, Notes on Economic Impact Estimates for Form  
32 399) at p. 1.

33 <sup>28</sup> *Ibid.*

(1) Cal. Code Regs., tit. 11, § 7023 – Requests to Correct. Whereas Prop. 24 (§ 1798.145) requires businesses to process consumer requests to correct inaccurate information, section 7023(d) introduces an additional documentation requirement for businesses that decide to delete instead of correct;<sup>29</sup> and

(2) Cal. Code Regs., tit. 11, § 7026 – Requests to Opt-Out of Sale/Sharing. Whereas Prop. 24 establishes a requirement that businesses accept consumer requests to opt-out of the sale or sharing of their personal information, section 7026(h) creates a new option for businesses to use existing GDPR-compliant opt-out buttons to comply with the CCPA, rather than requiring a separate CCPA-specific opt-out button. Section 7026(a)(4) also clarifies that “cookie banners” by themselves are not an acceptable solution to the pre-existing “opt-out” button requirement.<sup>30</sup>

Petitioner California Chamber of Commerce was active throughout the rulemaking process, speaking at the pre-rulemaking stakeholder sessions and submitting written comments in response to both the proposed and the revised proposed regulations.<sup>31</sup> Throughout, Petitioner (as well as others) requested that the Agency postpone enforcement of Prop. 24 until one year after *all* regulations were finalized.<sup>32</sup> In response to these requests, the Agency adopted § 7301, subdivision (b), in the regulations, which recognizes the Agency’s authority to consider the amount of time between the effective date of the statutory or regulatory requirements and the possible or alleged violation of those requirements, as well as good-faith efforts to comply with those requirements. In its rulemaking package, the Agency explained:

The Agency has made every effort to issue final regulations in a timely manner that comply with the CCPA and the rulemaking procedures. The Agency has considered delaying the effective date and/or the enforcement date of the regulations and has

<sup>29</sup> *Id.* at Appendix 2, p. 17.

<sup>30</sup> *Ibid.*

<sup>31</sup> See, *id.*, Ex. T (Aug. 23, 2022 correspondence from Petitioner to Agency); *id.*, Ex. F (Aug. 23, 2022 correspondence from Petitioner to Agency); *id.*, Ex. N (May 4-6, 2022 Pre-Rulemaking Stakeholder Sessions, May 5, 2022 Transcript at pp. 59-65.)

<sup>32</sup> See, e.g., *id.*, Ex. T at p. 2; *id.*, Ex. F, at pp. 2-3. Indeed, this is not the first time that Petitioner has sought to delay the enforcement of consumer privacy laws. In 2020, Petitioner, along with other affected businesses, sought a six-month delay of enforcement of the 2018 CCPA, citing the COVID-19 crisis and a delay in the finalization of regulations. See Mohammed, *Amid COVID-19, Businesses Ask Attorney General for More Time to Comply With Unfinished CCPA Regulations* (Mar. 26, 2020), CalChamber Advocacy Press Release, available at: <https://advocacy.calchamber.com/2020/03/26/amid-covid-19-businesses-ask-attorney-general-for-more-time-to-comply-with-unfinished-ccpa-regulations/> (as of June 5, 2023).



1 determined that doing so is not more effective in carrying out the purpose and intent  
2 of the CCPA than having the regulations take effect in accordance with the standard  
3 rules governing rulemaking. See Gov. Code § 11343.4(a). Although Civil Code  
4 § 1798.185(d) directed the Agency to adopt final regulations required by the Act by  
5 July 1, 2022, that directive must be read in conjunction with the CCPA's overarching  
6 purpose and intent. The voters intended the law to take effect on January 1, 2023, and  
7 for enforcement to begin July 1, 2023. Delaying the regulations or enforcement would  
8 deprive millions of California consumers of the rights codified in the CCPA. Prop.  
9 24, as approved by voters, Gen. Elec. (Nov. 3, 2020), § 3(A); Civ. Code §§ 1798.105-  
10 125. In addition, the Agency has determined that businesses will have sufficient time  
11 to comply with the regulations before the Agency's enforcement commences.  
12 Although the proposed regulations are not yet final and have been subject to public  
13 comment and amendments, businesses have been aware of the proposed regulations  
14 general contours since July 8, 2022, when they were released. Many of these  
15 regulations have been in effect with only slight modifications since 2020. Moreover,  
16 when considering whether to investigate a violation or initiate an enforcement action,  
17 the Agency, in the exercise of its prosecutorial discretion, may consider the effect that  
18 the delay in adopting the regulations has had on a business's ability to comply.  
19 Prosecutorial discretion permits the Agency to choose which entities to investigate  
20 and whether to initiate an administrative action. How the Agency decides to exercise  
21 its enforcement authority is a context-specific, fact-specific, discretionary decision.  
22 Proposed regulation § 7301(b) also recognizes that, when the Agency investigates  
23 violations of the CCPA or its implementing regulations, the Agency has the  
24 discretionary authority to consider the effective date of statutory and regulatory  
25 requirements and businesses' good-faith efforts to comply with the law.<sup>33</sup>

14 As noted, under the terms of Prop. 24, civil and administrative enforcement of the new law  
15 will commence on July 1, 2023, for any violations occurring on or after that date. (§ 1798.185,  
16 subd. (d).)

#### 17 **4. Rulemaking Package Two**

18  
19 As for cybersecurity audits, risk assessments, and automated decisionmaking technology,  
20 the Agency issued an Invitation for Preliminary Comments on Proposed Rulemaking on February  
21 10, 2023, soliciting comments through March 27, 2023.<sup>34</sup> In response, the Agency received 57  
22 separate comments, totaling over 1,000 pages.<sup>35</sup> It is still in the process of promulgating  
23 regulations on these last three topics, and the Agency has expressly stated that "[r]egulations

24  
25 <sup>33</sup> *Id.*, Ex. R at pp. 314-315 (Response # 704, # 705); *id.*, Ex. S at pp. 156-157 (Response  
# 312).

26 <sup>34</sup> *Id.*, Ex. U (Feb. 10, 2023 Invitation for Preliminary Comments.)

27 <sup>35</sup> See Agency website, Regulations, Preliminary Rulemaking Activities on Cybersecurity  
28 Audits, Risk Assessments, and Automated Decisionmaking, Public Comments, available at:  
<[https://cppa.ca.gov/regulations/pre\\_rulemaking\\_activities\\_pr\\_02-2023.html](https://cppa.ca.gov/regulations/pre_rulemaking_activities_pr_02-2023.html)> (as of June 5,  
2023).

1 concerning cybersecurity audits, risk assessments, and automated decisionmaking technology will  
2 not take effect or be enforced by the Agency until adopted by the Board in compliance with the  
3 Administrative Procedures Act and approved by the Office of Administrative Law.”<sup>36</sup>

### 4 **III. THE INSTANT LITIGATION**

5 Though Petitioner participated in the rulemaking process and was well aware that the  
6 regulations would not be final by July 1, 2022, it waited until March 30, 2023 to commence this  
7 action.<sup>37</sup> In summary, Petitioner alleges that, because the “timeline for adopting” final  
8 regulations under Prop. 24 is July 1, 2022, and enforcement is set to begin on July 1, 2023, the  
9 voters provided businesses with a guarantee of sorts that no enforcement would occur until one  
10 year after the adoption of final regulations, regardless of when final regulations were actually  
11 adopted. (Petrn., ¶¶ 1-2.) As relief, the petition seeks: (1) a writ of mandate compelling the  
12 Agency to promptly adopt final regulations and commanding Respondents to refrain from taking  
13 any steps to enforce any aspect of Prop. 24 until at least one year after the Agency has adopted *all*  
14 regulations required by the Act; (2) a declaration that the Agency had a mandatory duty to adopt  
15 final regulations by July 1, 2022, and that Prop. 24 establishes a minimum 12-month period  
16 between the Agency’s adoption of final implementing regulations and the commencement of  
17 enforcement; and (3) an injunction prohibiting Respondents from taking any steps to enforce  
18 Prop. 24 until one year after the Agency has adopted all required regulations under the Act (*Id.*,  
19 ¶ 10.)

20 Although the Petition was verified and filed one day *after* the first set of regulations was  
21 approved by OAL, it makes no mention of that fact.<sup>38</sup> To the contrary, the petition inexplicably,  
22 incorrectly, and repeatedly alleges that “to date, the Agency still has not published a *single* final  
23 regulation.” (E.g., Petn., ¶¶ 2, 3, 42, italics in original.) It further alleges that the Agency “has  
24 blown through” and “disregard[ed]” Prop. 24’s deadlines for promulgating regulations; seeks to

25 <sup>36</sup> *Id.*, Ex. E (Frequently Asked Questions (FAQs), Regulations, *What is the status of the*  
26 *Agency’s future rulemaking on automated decision making, risk assessments, and cybersecurity*  
*audits?*) at pp. 2-3.

27 <sup>37</sup> Although Petitioner was aware for some time that the regulations would not be adopted  
28 by July 1, 2022, it waited until the eve of enforcement to bring this action, essentially requiring an  
expedited hearing on an undeveloped record.

<sup>38</sup> See Resp., RJN, Ex. B.



1 “regulat[e] by fiat” and “improperly rewrite[] Proposition 24”; and will “severely prejudice[]  
2 California businesses” with its plan to begin enforcement of the measure on July 1, 2023, by  
3 “depriving them of the one-year compliance grace period established in the plain language of  
4 Proposition 24.” (*Id.*, ¶¶ 2, 6.) The petition further alleges that businesses subject to Prop. 24—  
5 namely, those with more than \$25 million in annual gross revenues in the preceding year—will be  
6 “rush[ed]” to “reconfigure technical systems, re-engineer data flows, construct new tools,  
7 redesign websites and apps, update policies, revise contracts, train employees, and so on.” (*Id.*,  
8 ¶¶ 6, 9.) In their supporting brief, Petitioner provided no supporting declarations or other  
9 competent evidence supporting these allegations.

### 10 LEGAL STANDARD

11 Under Code of Civil Procedure sections 1085 and 1086, where a beneficially interested  
12 party has no other adequate remedy at law (Code Civ. Proc., § 1086), “[a] writ of mandate may be  
13 issued by any court . . . to compel the performance of an act which the law specially enjoins . . . .”  
14 (*Id.*, § 1085, subd. (a).) The petitioner bears the burden of pleading and proving the facts on  
15 which the claim for relief is based. (*Cal. Correctional Peace Officers’ Assn. v. State* (2010) 181  
16 Cal.App.4th 1454, 1460.) “Two basic requirements are essential to the issuance of the writ: (1) A  
17 clear, present and usually ministerial duty upon the part of the respondent [citations]; and (2) a  
18 clear, present and beneficial right in the petitioner to the performance of that duty[.]” (*California*  
19 *Corr. Supervisors Org., Inc. v. Dept. of Corr.* (2002) 96 Cal.App.4th 824, 827.)

20 “In interpreting a voter initiative, [courts] apply the same principles that govern statutory  
21 construction.” (*People v. Buycks* (2018) 5 Cal.5th 857, 879–80.) “Where a law is adopted by the  
22 voters, their intent governs. [Citation]. In determining that intent, [courts] turn first to the  
23 language of the statute, giving the words their ordinary meaning.” (*Ibid.*, internal citation and  
24 quotations omitted.) “The statutory language must also be construed in the context of the statute  
25 as a whole and the overall statutory scheme in light of the electorate’s intent.” (*Robert L. v.*  
26 *Super. Ct.* (2003) 30 Cal.4th 894, 900–01, internal citation and quotations omitted.) “When the  
27 language is ambiguous, [courts] refer to other indicia of the voters’ intent, particularly the  
28 analyses and arguments contained in the official ballot pamphlet.” (*Ibid.*) Finally, “[s]tatutes are

1 to be given a reasonable and commonsense interpretation consistent with the apparent [voter]  
2 purpose and intent and which, when applied, will result in wise policy rather than mischief or  
3 absurdity.” (*Dyna-Med, Inc. v. Fair Emp. & Housing Com.* (1987) 43 Cal.3d 1379, 1392.)

#### 4 ARGUMENT

5 Petitioner’s claims boil down to two assertions: first, that “the voters intended for the  
6 Agency to issue the complete regulations covering the fifteen mandatory issues by July 1, 2022”;  
7 and second, that “[t]he plain text of Proposition 24 . . . evinces a single conclusion: the voters  
8 intended business to have one year from the Agency’s adoption of final regulations before the  
9 Agency could begin enforcement.” (Mem. at pp. 18, 21.) However, these assertions are not  
10 supported by the plain text of Prop. 24 or the ballot materials presented to the voters. Petitioners  
11 do not, and cannot, show that Prop. 24 imposes a mandatory, inflexible duty to adopt regulations  
12 on all aspects of the statute by July 1, 2022, or to refrain from enforcing any aspect of the law  
13 until 12 months after the adoption of final regulations on all issues. In fact, a number of the  
14 rulemaking topics under the agency’s authority are discretionary and up to the agency to  
15 determine when best to pursue. (See § 1798.185, subd. (b).)

16 Petitioner’s interpretation would thwart voter intent by significantly delaying enforcement  
17 of the entirety of Prop. 24, leaving Californians without the enhanced privacy protections they  
18 voted for, even though the bulk of the regulations needed to implement the law have been in  
19 effect since late March, and those regulations largely mirror provisions that were already in  
20 existence (and being enforced)<sup>39</sup> long before that, either in regulations adopted under the CCPA  
21 or in Prop. 24 itself. Given this reality, the 12-month “grace period” sought by Petitioner would  
22 be a windfall to businesses, to the detriment of consumers, and in direct conflict with explicit  
23 language that enforcement of the CCPA, as amended by Prop. 24, “shall remain in effect and  
24 shall be enforceable until the same provisions of [Prop. 24] become enforceable.” (§ 1798.185,  
25 subd. (d).)

26  
27 <sup>39</sup> See, e.g., Resp. RJN, Ex. V (Aug. 24, 2022 Final Judgment and Permanent Injunction in  
28 *People of the State of Cal. v. Sephora USA, Inc.*, [San Francisco Superior Court, Case No. CGC-  
22-601380].)

Furthermore, aside from hyperbole and sweeping assertions, Petitioner fails to demonstrate that businesses actually *need* a 12-month “grace period” before the commencement of enforcement, let alone that they would be “severely prejudice[d]” without it. (Petr., ¶ 2.) Petitioner submitted no evidence on businesses’ ability to comply or the potential hardship they might face if enforcement begins on July 1. In essence, Petitioner is asking this Court to undermine the will of the voters with no factual showing at all. The Agency has already committed that it will not enforce the law in the three areas in which final regulations are still pending. In other areas, the Agency has discretion to consider the amount of time that businesses had to come into compliance in formulating an appropriate regulatory response to violations. (Cal. Code Regs., tit. 11, § 7301, subd. (b).) Meanwhile, the broad-brush remedy sought by Petitioner would give businesses an incentive to delay enforcement even further by delaying the remainder of the rulemaking process.

**I. THE MEASURE DOES NOT CLEARLY AND UNEQUIVOCALLY REQUIRE THAT REGULATIONS ON ALL ISSUES BE MADE FINAL AND EFFECTIVE BY JULY 1, 2022**

The relevant provision of Prop. 24 states:

[T]he 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.

(§ 1798.185, subd. (d).) Petitioner argues, in effect, that instead of a “timeline for adopting” final regulations, the voters imposed a hard-and-fast *deadline*. But that is not what the statute says. It says “timeline” which suggests a process or series of events. Coupled with the next sentence, which provides that rulemaking authority transfers to the Agency by 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, a “timeline for adopting” final regulations could just as plausibly signal voter intent that the Agency commence the regulatory process by July 1, 2022.

1 “To construe a statute as imposing a mandatory duty on a public entity, the mandatory  
2 nature of the duty must be phrased in explicit and forceful language.” (*In re Dohner* (2022) 79  
3 Cal.App.5th 590, 598, review denied (Sept. 14, 2022), quoting *In re Groundwater Cases* (2007)  
4 154 Cal.App.4th 659, 689.) Here, Prop. 24 does not use language clearly and forcefully  
5 establishing July 1, 2022 as a mandatory, inflexible deadline for adopting final regulations on all  
6 issues, and Petitioner therefore fails to meet its burden.<sup>40</sup>

7 Several points support this conclusion. First, by contrast, the 2018 CCPA unequivocally  
8 and expressly required the Attorney General to solicit public comment and “adopt” final  
9 regulations “on or before July 1, 2020.” (§ 1798.185, subd. (a).) Prop. 24, by comparison,  
10 contains no command to “adopt”—i.e., finish adopting—final regulations on or before a date  
11 certain.

12 Second, the ballot materials presented to the voters make no mention of a mandatory  
13 deadline to adopt final regulations or otherwise ascribe any importance to the July 1, 2022 date.  
14 (See Resp. RJN, Ex. A.)

15 Third, Prop. 24 expressly contemplates that the regulatory process will be ongoing and  
16 iterative, in order, for example, to “address changes in technology, data collection practices,  
17 obstacles to implementation, and privacy concerns.” (§ 1798.185, subs. (a)(1)-(3); see also, *id.*,  
18 subs. (a)(5) [adjusting monetary thresholds], (a)(10), (12), (13), (17) [stating that the Agency  
19 “further define” various terms], (a)(19)(A) [“the requirements and specifications for the opt-out  
20 preference signal should be updated from time to time to reflect the means by which consumers  
21 interact with businesses”].) Moreover, a number of the rulemaking topics under the agency’s  
22 authority are discretionary and up to the agency to determine when best to pursue. (*Id.*,  
23 subd. (b).) This structure is not compatible with the rigid deadline posited by the petition.

24 Finally, an inflexible requirement that all regulations be made final by July 2022 would be  
25 impractical, and therefore should not be implied. (*Lopez v. Tulare Joint Union High Sch. Dist.*

26 <sup>40</sup> Petitioner notes that the drafters of Prop 24 contemplated that regulations would be  
27 adopted by July 1, 2022. (Mem. at p. 19.) However, “the opinion of drafters or legislators who  
28 sponsor an initiative is not relevant since such opinion does not represent the intent of the  
electorate and we cannot say with assurance that the voters were aware of the drafters’ intent.”  
(*Robert L. v. Super. Ct.*, *supra*, 30 Cal.4th at p. 904.)

(1995) 34 Cal.App.4th 1302, 1323 [statutes “should be interpreted to make them workable and reasonable, in accord with common sense and justice, and avoid an unjust or absurd result.”]; *Dyna-Med, Inc. v. Fair Emp. & Housing Com.*, *supra*, 43 Cal.3d at p. 1392 “[s]tatutes are to be given a reasonable and commonsense interpretation consistent with the apparent [voter] purpose and intent and which, when applied, will result in wise policy rather than mischief or absurdity.”].) Petitioner itself has recognized that getting final regulations on all issues in place by July 1, 2022, “less than 16 months after the first Board members were appointed,” posed a “considerable” challenge.<sup>41</sup> As it happens, far from “flout[ing] its statutory obligation,” (Mem. at p. 20), the newly created Agency, headed by unsalaried board members and only partially staffed, moved extremely quickly in promulgating the first regulatory package while still adhering to all applicable laws related to appointments, appropriations, hiring staff, and the Administrative Procedure Act, among others.

In sum, the best, fairest reading of the measure, consistent with voter intent, is that the Agency should commence the process for adopting regulations by July 1, 2022 and bring it to conclusion as expeditiously as possible, while allowing sufficient time to engage with stakeholders in the rulemaking process and outline a set of rules that “strengthen[s] consumer privacy while giving attention to the impact on business and innovation.” (Prop. 24, § 3(C)(1).) The Agency achieved that here.

**II. THE MEASURE DOES NOT CLEARLY AND UNEQUIVOCALLY TIE THE COMMENCEMENT OF ENFORCEMENT TO THE ADOPTION OF FINAL REGULATIONS ON ALL ISSUES, LET ALONE GUARANTEE BUSINESSES A ONE-YEAR “GRACE PERIOD”**

Petitioner’s further contention that the “voters intended business to have one year from the Agency’s adoption of final regulations before the Agency could begin enforcement” is even more tenuous. (Mem. at p. 21.) Petitioner implies this based on the one-year gap between the supposed July 1, 2022 deadline to adopt final regulations and the requirement that enforcement “shall not commence until July 1, 2023.” (*Ibid.*) This fails because the plain language of Prop. 24 does not clearly and unequivocally mandate a one-year “grace period,” much less

<sup>41</sup> Resp. RJN, Ex. F at p. 3.

1 prevent the Agency from enforcing *any* aspect of Prop. 24 until a year after the promulgation of  
2 final regulations on *all* required issues.

3 The language of the measure does not unequivocally tie enforcement to the adoption of  
4 final regulations, nor does it necessarily dictate a one-year gap—or any gap. Instead, the statute  
5 reasonably can be read to mean that enforcement may commence no sooner than six months after  
6 the January 1, 2023 operative date of the measure, similar to the 2018 CCPA. (Prop. 24, § 31(a);  
7 compare § 1798.198, subd. (a) [establishing operative date of Jan. 1, 2020 for 2018 CCPA] and  
8 § 1798.185, subd. (c) [providing that enforcement of 2018 CCPA shall begin July 1, 2020, or six  
9 months after promulgation of regulations, whichever was sooner].)

10 As Petitioner notes (Mem. at pp. 22-23), the 2018 CCPA expressly tied enforcement to the  
11 promulgation of regulations, or July 1, 2020, *whichever came sooner* (§ 1798.185, subd. (c)), but  
12 Prop. 24 contains no such language. In fact, the 2018 CCPA, which created a whole new set of  
13 consumer privacy rights, expressly contemplated that enforcement could begin on July 1, 2020—  
14 the same date it provided as the deadline by which regulations were to be promulgated.  
15 (Compare § 1798.185, subds. (a) [providing that Attorney General shall adopt regulations on or  
16 before July 1, 2020] and (c) [providing that enforcement shall begin the sooner of July 1, 2020 or  
17 six months after regulations are promulgated].) By contrast, Prop. 24, which expands upon  
18 existing consumer privacy rights, does not have any language linking the enforcement of the  
19 measure with the promulgation of regulations; it merely provides that enforcement shall not begin  
20 until July 1, 2023, and only for violations occurring on or after that date. (§ 1798.185, subd. (d).)

21 Petitioner argues that “when a statute mandates a delay between when regulations are  
22 promulgated and when the new legal requirements can first be enforced, it demonstrates a  
23 legislative intention that the administrative agency will institute new legal obligations and  
24 implement substantial additions to the statutory provisions . . . .” (Mem. at pp. 25-26.) But the  
25 cases cited by Petitioner do not support the proposition. Petitioner cites only the *dissenting*  
26 opinion in *McCarthy v. CB Richard Ellis, Inc.* (2009) 174 Cal.App.4th 106, 136,<sup>42</sup> and in the out-

27 <sup>42</sup> The primary issue in *McCarthy* was whether, in order to establish appellate jurisdiction  
28 to review pretrial rulings, the parties to an action could stipulate that the trial court would have



1 of-circuit federal case cited by Petitioner, the defendant was facing liability for actions taken  
2 before the promulgation of final regulations. (*Sweet v. Sheahan* (2d. Cir. 2000) 235 F.3d 80, 86,  
3 86.) Here, in contrast, regulations have been promulgated, enforcement is to begin on July 1,  
4 2023, and only violations occurring on or after that date are subject to potential fines and  
5 penalties.

6 Petitioner further argues that the “one-year implementation period is an essential feature of  
7 Proposition 24.” (Petn., ¶ 35.) If it was an “essential feature,” however, it presumably would  
8 have been included in the title and summary of the measure’s “chief purposes and points” (Elec.  
9 Code, § 9004, subd. (a)), or otherwise outlined in the Voter Information Guide. Yet, there is no  
10 mention of it anywhere in the Voter Information Guide, and thus no basis to assume that the  
11 voters contemplated any delay in enforcement connected to the promulgation of regulations.  
12 (See, e.g., *People v. Valencia* (2017) 3 Cal.5th 347, 371–72 [omission of any reference to Three  
13 Strikes Law in Attorney General’s Official Title and Summary and Legislative Analyst’s analysis  
14 of Proposition 47 suggests that no change to that law was contemplated by measure].)

15 Notably, the Legislative Analyst’s analysis of Prop. 24 simply states that “[i]f approved,  
16 most of this proposition would take effect in January 2023. Some portions of the proposition,  
17 such as the creation of the new state agency and requirements for developing new regulations,  
18 would go into effect immediately.” (Resp. RJN., Ex. A at p. 67.) It also notes that the Agency is  
19 charged with developing a wide range of new regulations, but does not suggest a date certain by  
20 which regulations must be promulgated, nor does it say that the commencement of enforcement is  
21 tied to the adoption of final regulations on all issues. (*Id.* at p. 5.) Thus, the voters understood  
22 that the law would take effect January 1, 2023; there is no indication that they intended a one-year  
23 implementation period following the promulgation of regulations before enforcement could  
24 begin, much less that it was an “essential feature” of Prop. 24.

25 Even if voters intended for *some* “grace period” between the promulgation of regulations  
26 and enforcement—which, again, is not clearly supported in the text of the measure or the  
27 granted summary judgment based on its rulings on certain threshold issues; the Court of Appeal  
28 did not reach the merits of any of the underlying issues. (*McCarthy v. CB Richard Ellis, Inc.*,  
*supra*, 174 Cal.App.4th at pp. 110, 114.)

1 supporting ballot materials—Petitioner overreaches in asserting that *any* aspect of Prop. 24 cannot  
2 be enforced until a year after the promulgation of final regulations on *all* required issues.

3 Prop. 24 itself expressly provides that the provisions of the 2018 CCPA and its  
4 implementing regulations are still in effect, and thus should be enforceable by all Respondents.  
5 (Prop. 24, § 31(c); § 1798.185(d).) By the same token, regulations that reflect already-existing  
6 requirements, but were moved to different sections simply to make the regulations easier to read  
7 and digest, should continue to be enforceable. (See, e.g., Cal. Code Regs., tit. 11, §§ 7002, subd.  
8 (f) [previously § 7012, subd. (c)(5)]; 7003 [previously in different sections]; portions of 7004  
9 [previously in § 7026, subd. (h), as it pertained to requests to opt-out of sale]; 7011 [non-  
10 substantive reorganization]; 7025, subds. (a)-(c)(3) [opt-out preference signal operates how the  
11 “global privacy control,” previously in § 7026, subd. (c), operated and was enforced by the  
12 Attorney General]; 7026(a)-(e), (h)-(k) [required by statute or an existing requirement under  
13 previous regulations]; 7060-7102 [existing requirements for verification, minors, non-  
14 discrimination, training and record-keeping].)

15 Additionally, those aspects of Prop. 24 that do not require regulations should be enforceable  
16 as of July 1, 2023. (See, e.g., §§ 1798.100, subds. (a)-(b) [requirements for notices at collection];  
17 1798.100, subd. (c) [restrictions on the collection, use, retention, and sharing of personal  
18 information]; 1798.100, subd. (d) [contractual requirements for service providers, contractors, and  
19 third parties]; 1798.105, subd. (c) [downstream notification requirements and obligations for  
20 requests to delete]; 1798.115 [consumers’ right to know what personal information is sold or  
21 shared and with whom]; 1798.120 [consumers’ right to opt out of the sale or sharing of personal  
22 information]; 1798.130 [notice and disclosure requirements and obligations for service providers  
23 and contractors]; 1798.135, subd. (a) [requirement to post “Do Not Sell or Share My Personal  
24 Information” and “Limit the Use of My Sensitive Personal Information” links]; 1798.140,  
25 subd. (h) [definition of consent].)

26 Similarly, regulations that the Agency promulgated for purposes of clarity and consistency,  
27 but was not required to do so, should also be enforceable. (See, e.g., Cal. Code Regs., tit. 11,  
28 §§ 7011 [outlining all the requirements for a privacy policy]; 7022 [reiterating what the CCPA



1 requires businesses, service providers, and contractors to do in response to requests to delete], and  
2 7051, 7053 [reiterating in one place the various provisions required in contracts with service  
3 providers, contractors, and third parties with whom businesses sell or share personal  
4 information].)

5 Petitioner simply cannot meet its burden to demonstrate a clear right to a one-year “grace  
6 period” commencing with the adoption of final regulations on all issues; thus, the petition should  
7 be denied.

8 **III. PETITIONER’S REQUESTED RELIEF WOULD THWART THE WILL OF THE VOTERS**  
9 **AND CREATE PERVERSE INCENTIVES TO DELAY RULEMAKING**

10 Where, as here, “a law is adopted by the voters, their intent governs.” (*People v. Buycks*,  
11 *supra*, 5 Cal.5th at p. 879; see also, e.g., *Robert L. v. Super. Ct.*, *supra*, 30 Cal.4th at p. 901;  
12 *People v. Jones*, (1993) 5 Cal.4th 1142, 1146.) Petitioner’s requested relief—to delay  
13 enforcement of *any* aspect of Prop. 24 until one year after *all* regulations are final—would thwart  
14 voter intent. It would also incentivize businesses who disagree with the law to delay the  
15 rulemaking process as much as possible.

16 In enacting Prop. 24, the voters intended “to further protect consumer rights[.]” (Prop. 24,  
17 § 3.) The entire measure is focused on strengthening consumer rights and ensuring that  
18 consumers have more control over how their personal information, including their sensitive  
19 personal information, is used. They also intended that businesses should be held accountable  
20 when they violate consumers’ privacy rights through “vigorous administrative and civil  
21 enforcement.” (Prop. 24, §§ 3(B)(7), 3(C)(7).)

22 To be sure, the law further provides that “the impact on business and innovation” must be  
23 taken into account (Prop. 24, §§ 3(C)(1)), but Petitioner has failed to demonstrate that businesses  
24 will be negatively impacted, let alone “severely prejudice[d],” without the one-year “grace  
25 period” to which they claim entitlement. (Petn., ¶ 2.) Petitioner offers only vague, unsupported  
26 assertions that the regulations will require “redesigning the essential infrastructure of how  
27 businesses use and collect data; instituting new processes to manage the new rights of correction  
28 and sensitive data use limitations; renegotiating and updating contractual relationships with

1 service providers, contractors, and third parties; revising privacy policies and other consumer-  
2 facing documents and consent interfaces; updating websites and apps; and designing and  
3 implementing employee training.” (Mem. at pp. 10, 15.) As explained, the regulations made  
4 final in March largely mirror provisions that already existed, either in regulations under the  
5 CCPA or in Prop. 24 itself. Petitioner does not explain how complying with the new regulations,  
6 as opposed to the changes brought by Prop. 24 itself, will impose a significant burden on  
7 businesses. Petitioner offers no evidence as to how much *more* time or money it would take to  
8 get into compliance with the new regulations; it simply asks the Court to take it at its word.

9 As outlined above, the Agency determined that, “although the new proposed draft  
10 regulations initially appear significant in scope, . . . [t]he vast majority of language in the  
11 proposed regulations either comes directly from the existing CCPA regulations or from the CPRA  
12 [Prop. 24] amendments.”<sup>43</sup> Petitioner provides no reason to doubt those conclusions beyond its  
13 own self-serving and unsubstantiated claims.

14 The regulations build on existing law; to the extent Prop. 24 created new rights and  
15 requirements, businesses have known of those requirements since 2020. And while the first  
16 regulatory package was finalized on March 29—over three months before July 1, 2023, when  
17 prospective enforcement is set to begin—the regulations did not materially change since the time  
18 the revised proposed regulations were issued in November 2022. Thus, by July 1, 2023,  
19 businesses will have had at least eight months to become familiar with the new regulations.

20 A review of the regulations demonstrates that they are focused on:

21 (1) Updating existing regulations to reflect the amendments made by Prop. 24. For  
22 example, all references in the prior regulations to the “right to opt-out of sale” were changed to  
23 the “right to opt-out of sale/sharing.” (See, e.g., Cal. Code Regs., tit. 11, §§ 7001, subd. (hh);  
24 7010, subd. (c); 7013; 7026; see also, *id.*, §§ 7050, 7051 [requirements for “service providers”  
25 now apply to “contractors”].)

26 (2) Implementing the two new consumer rights within the existing regulatory framework.  
27 For example, the methods for submitting, responding to, and verifying requests for the newly

28 <sup>43</sup> Resp., RJN, Ex. D at p. 1.

1 added right to correct are the same as for existing requests to delete and requests to know. (See,  
2 e.g., *id.*, §§ 7020-7022, 7060-7063; see also, e.g., *id.* §§ 7026-7027.) Also, the methods for  
3 submitting and responding to requests to exercise the newly added right to limit use of sensitive  
4 personal information are similar to existing methods for requests to opt-out of sale/sharing (see,  
5 e.g., *id.*, §§ 7026-7027), and the training and recordkeeping requirements are the same for all  
6 consumer requests (see *id.*, §§ 7100-7102).

7 (3) Consolidating all the various components of existing law in one place to simplify  
8 compliance for businesses. (See, e.g., *id.*, § 7011 [reiterating all the information that must be  
9 included in a privacy policy]; *id.*, §§ 7051, 7053 [consolidating provisions that must be included  
10 in contracts with service providers, contractors, and third parties].)

11 (4) Providing illustrative examples to help businesses understand new provisions introduced  
12 by Prop. 24. (See, e.g., *id.*, § 7002 [providing examples relating to restrictions on the use and  
13 collection of personal information]; § 7004 [providing examples relating to submitting requests  
14 for personal information and obtaining consent]; *id.*, § 7012 [providing examples relating to  
15 notice requirements]; *id.*, § 7025, [providing examples related to opt-out preference signals]; *id.*,  
16 § 7027 [providing examples of permissible uses for sensitive personal information]; *id.*, § 7053  
17 [providing examples relating to contract requirements for third parties].)

18 The regulations also provide businesses with flexibility in many areas with respect to how  
19 new consumer rights can be effectuated. (See, e.g., *id.*, § 7012, subd. (c) [providing various  
20 options by which a business can provide consumers with a notice of collection]; *id.*, § 7020, subd.  
21 (b) [providing various options for methods for submitting requests to delete, know, or correct];  
22 *id.*, § 7060 [providing various options for verifying a request to correct].) And a number of  
23 regulations address the Agency's own powers and contain no requirements for businesses at all.  
24 (See, *id.*, §§ 7300-7304 [addressing Agency's powers].) Given their limited scope, the suggestion  
25 that entire business models need to be revamped as a result of the *regulations themselves* rings  
26 hollow and, tellingly, Petitioner offers no support for this assertion.

27 Even assuming that some smaller businesses may have a harder time getting into  
28 compliance (which, again, Petitioner has not supported with evidence), if they find themselves

1 subject to an enforcement action, they will have an opportunity to demonstrate that they have  
2 been attempting to comply in good faith. (See, e.g., § 1798.199.100 [requiring enforcement  
3 agencies to “consider the good faith cooperation of the business”]; Cal. Code Regs., tit. 11,  
4 § 7301, subd. (b) [“As part of the Agency’s decision to pursue investigations of possible or  
5 alleged violations of the CCPA, the Agency may consider all facts it determines to be relevant,  
6 including the amount of time between the effective date of the statutory or regulatory  
7 requirement(s) and the possible or alleged violation(s) of those requirements, and good-faith  
8 efforts to comply with those requirements.”].) Such a unique, context-specific, fact-specific  
9 circumstance can be managed on an individual basis, and does not warrant broad relief for *all*  
10 affected businesses for an indefinite period of time.

11 Moreover, seeing as how Prop. 24 contemplates that the law and regulations will be  
12 regularly updated as needed to address changes in technology, data collection practices, obstacles  
13 to implementation, and privacy concerns (see, e.g., Prop. 24, § 3(C)(4); § 1798.185, subds. (a)(1)-  
14 (3), (a)(5), (a)(19)(A), (a)(22), (b)), it is not clear when the regulations will ever be sufficiently  
15 “final” in Petitioner’s view. Relatedly, tying the commencement of enforcement to the  
16 completion of the regulatory process would perversely incentivize businesses who may disagree  
17 with the law to attempt to delay the rulemaking process.

18 Petitioner would have this Court ignore the overriding purpose of Prop. 24—strengthening  
19 consumer privacy rights—and instead focus on the alleged unfairness to businesses. But the  
20 reality is that businesses dealing heavily in consumers’ personal data that are subject to the  
21 CCPA, as amended by Prop. 24, have known of the law’s new requirements since 2020, and will  
22 have had over three months to digest the regulations before enforcement begins on July 1, 2023.  
23 Indeed, many companies in California currently do or will soon have to comply with laws in other  
24 states such as Colorado (Colo. Rev. Stat. Ann. § 6-1-1301 et seq.) Virginia (Va. Code Ann.  
25 § 59.1-575 et seq.), and Utah (Utah Code Ann. § 13-61-101 et. seq.), in addition to the European  
26 Union, all of which impose similar obligations for compliance.<sup>44</sup> They should not be permitted to  
27 avoid enforcement and instead continue to profit from the misuse of consumers’ personal and

28 <sup>44</sup> *Id.*, Ex. D at pp. 1, 8-9; see also, *id.*, Ex. W (GDPR, EU Regulation 2016/679.)

1 sensitive information when they have been aware of the new regulations since late last year, and  
2 the new regulations will have been in effect as a legal matter for three months before enforcement  
3 can commence on a prospective basis.

4 As outlined above, Petitioner's requested relief is overbroad and contrary to the voters'  
5 intent in enacting Prop. 24. As Petitioner cannot demonstrate a clear right to relief, the petition  
6 should be denied.

7 **IV. THERE IS NO BASIS FOR RELIEF COMPELLING THE AGENCY TO PROMULGATE**  
8 **REGULATIONS**

9 As outlined above, the majority of regulations in connection with Prop. 24 have already  
10 been finalized, and rulemaking is underway for the remaining areas. As such, there is no basis for  
11 a writ, as Petitioner has requested, "compelling the Agency to promptly adopt [] final  
12 regulations[.]" (Petn., ¶ 10(a); see also Mem. at p. 30:4-25.) Petitioner cannot pursue a writ of  
13 mandate to compel Respondents to take an action which they have already committed to take.  
14 (See, e.g., *California High-Speed Rail Auth. v. Super. Ct.* (2014) 228 Cal.App.4th 676, 707 ["a  
15 writ of mandate must be necessary []; courts will not issue a useless or unenforceable writ"].)

16 The Agency has determined that it needs more time to gather input from stakeholders in  
17 connection with cybersecurity audits, risk assessments, and automated decisionmaking  
18 technology, to ensure a fair and appropriate scheme in order to allow time to receive additional  
19 public input in such an important and rapidly evolving area. Indeed, as the Petitioner itself  
20 understands, "it is critical to get this done right, rather than to get it done rushed."<sup>45</sup> It would be  
21 premature to challenge how these three subject areas may be enforced in the future as final  
22 regulations may allow for delayed enforcement or otherwise take relevant factors into  
23 consideration. In that sense, Petitioner is asking the Court to interfere with the regulatory process  
24 and make decisions that, in the first instance, the Agency is in the best position to make.  
25 "Mandate will not issue to compel action unless it is shown the duty to do the thing asked for is  
26 plain and unmixed with discretionary power or the exercise of judgment." (*California High-*  
27 *Speed Rail Auth. v. Super. Ct., supra*, at p. 715, italics omitted.)

28 <sup>45</sup> Resp. RJN, Ex. F at p. 3.


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**CONCLUSION**

Petitioner overreaches by requesting that enforcement of Prop. 24 be delayed in its entirety until one year after all regulations are finalized. There is no support for this construction in the text of the measure or the accompanying ballot materials, and such a reading would be counter to the intent of the measure as enacted by the voters. Petitioner cannot demonstrate a clear, present and beneficial right to relief; thus, the petition must be denied.

Dated: June 5, 2023

Respectfully submitted,  
  
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SA2023301850

**DECLARATION OF SERVICE BY E-MAIL**

Case Name: *California Chamber of Commerce v. California Privacy Protection Agency, et al.*

Case No.: **34-2023-80004106**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter.

On June 5, 2023, I served the attached

- 1. RESPONDENTS' OPPOSITION TO PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**
- 2. RESPONDENTS' REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF OPPOSITION TO PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

by transmitting a true copy via electronic mail, addressed as follows:

**Kurt Oneto**  
**Sean P. Welch**  
**David Lazarus**  
**NIELSEN MERKSAMER**  
**PARRINELLO GROSS & LEONI LLP**  
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*Attorneys for Petitioner*

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on June 5, 2023, at San Francisco, California.

\_\_\_\_\_  
M. Mendiola  
Declarant

\_\_\_\_\_  
*M. Mendiola*  
Signature

G. GALANZ