The Federal-State Tug-of-War: Constitutional Law Issues All California Attorneys Should Be Tracking in 2025

Constitutional law may not be the usual focus of attorneys representing businesses, nonprofits and public institutions, but in 2025, it should be a key consideration. As we navigate an unusually pivotal moment of friction between federal and California state law, a conservative-leaning U.S. Supreme Court and a regulatory landscape in flux, these tensions are far from abstract for attorneys across various practice areas. They're reshaping compliance obligations, litigation risk and the very boundaries of governmental authority.

For attorneys serving as in-house or advising clients navigating contracts, grants or regulatory compliance, the stakes are especially high. Major rulings on preemption, administrative power, civil rights and executive authority are expected this year and are likely to reverberate across sectors. From proposed federal policies affecting immigration and labor to California's efforts to chart its own course in various areas of law, the coming months will test the limits of state autonomy and corporate adaptability.

Here are the key constitutional law developments every California attorney should be watching closely.

Preemption in the spotlight

Conflicts between federal and state law have always been a natural feature of the American legal system. But in 2025, California attorneys can expect that friction to escalate into more frequent confrontations, particularly in areas where a conservative federal government collides with progressive state and local policies. Preemption litigation isn't new, but we are entering a phase where the stakes are higher, the issues are more polarized and the consequences are more immediate for regulated industries.

Grounded in the Supremacy Clause of the U.S. Constitution, preemption gives federal law precedence when it directly conflicts with state law. But the doctrine isn't always clear-cut. Courts must often parse whether federal law expressly preempts state law, whether preemption is implied, or whether the two can coexist. In California, that legal calculus is increasingly being tested across a range of sectors, but nowhere more intensely than immigration.

Immigration: the frontline of the preemption fight

Immigration has long been a flashpoint for federal-state clashes. One of the foundational preemption cases, *Hines v. Davidowitz* (1941), held that Pennsylvania couldn't require noncitizens to register with the state because the federal government had already "occupied the field." That principle still holds. But what happens when the federal government tries to compel states to enforce its immigration policy?

That's where the Tenth Amendment enters the equation, and with it, the anticommandeering doctrine. Under cases like *Printz v. U.S.* (1997), the federal government can't require state or local officials to administer federal programs. In *Printz*, the Supreme Court struck down a Brady Act provision that required local law enforcement to conduct background checks on gun buyers. Justice Antonin Scalia made clear in his majority ruling: Congress cannot compel states to carry out federal mandates.

A similar showdown is playing out with immigration law today. During President Donald Trump's first term, the administration attempted to condition federal funding on local law enforcement cooperation with U.S. Immigration and Customs Enforcement (ICE) — specifically, sharing information about or detaining undocumented immigrants. U.S. District Judge William H. Orrick of the Northern District of California issued a preliminary injunction, and the U.S. Court of Appeals for the 9th Circuit affirmed, citing the anticommandeering doctrine.

That case became moot when the administration changed. But it's now resurfacing under similar circumstances, and California is once again at the center of the fight. Orrick, presiding over the new round of litigation, has already signaled that the outcome will mirror the earlier decision: Forced cooperation is unconstitutional. "Here we are again," his April ruling said.

What this means for California employers

This evolving case law is consequential for attorneys advising public entities, educational institutions, healthcare providers and businesses interacting with local government or law enforcement.

- Private detention facilities are one flashpoint. Many operate in California under contracts that make them especially vulnerable to federal enforcement shifts and state resistance. For example, the city of Glendale in Los Angeles County **recently ended its agreement** with the federal government to house ICE detainees — a move that signals increasing local pushback. Attorneys advising such entities should assess potential liability or contract disruption as preemption battles unfold.
- Businesses employing noncitizens — including those in agriculture, construction, hospitality and the tech sector — face heightened risk as visa policies are shifting rapidly. Employers must understand how federal enforcement priorities and visa availability intersect with state-level labor protections.
- Universities are another area of concern. With large numbers of visa-dependent students and faculty, institutions are navigating increasing regulatory uncertainty. Title VI enforcement and visa rule changes could threaten both funding and enrollment.

Next steps for attorneys

For many California lawyers, preemption is not just an academic concern but a live wire running through immigration policy, public funding and the relationship between local institutions and federal authority.

- **Watch immigration enforcement policies closely**. If your clients include government contractors, health systems or public institutions, assess potential exposure to federal requirements that may conflict with California law.
  - **For employers**: Review hiring and verification practices to ensure they are current with shifting visa rules and enforcement priorities.
  - **For public entities**: Ensure the client understands their rights and limits regarding cooperation with federal authorities.
  - **For private detention facilities**: Help prepare them for regulatory whiplash and potential litigation.
- **Monitor not just statutes but also executive actions and agency rules**. Your clients' compliance strategies may need to pivot quickly.
- **Stay alert to shifts in funding conditions**. Grants or contracts tied to compliance with federal mandates may present preemption or anticommandeering issues.
- **Prepare for legal uncertainty**. Encourage clients to build flexibility into policies that may be impacted by shifting federal priorities.
- **Document compliance decisions**. When refusing to cooperate with federal immigration enforcement, agencies should have clear internal legal memos explaining their position, especially when funding is at stake.

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A turning point in federal agency authority

The past 12 months have marked a seismic shift in administrative law for attorneys advising companies navigating complex regulatory environments. For 40 years, the Chevron doctrine was a cornerstone of administrative law: When a federal statute was ambiguous, courts would defer to an agency's reasonable interpretation. But in June 2024, the Supreme Court overturned that precedent in *Loper Bright Enterprises v. Raimondo*, fundamentally shifting the balance of power between courts and administrative agencies.

This decision significantly changes how businesses must assess regulatory risk. For corporate counsel and regulatory attorneys, *Loper Bright* raises the stakes when advising clients on compliance strategy and when to consider challenging agency interpretations. Companies now have a clearer path to litigate regulations they view as overreaching or misaligned with statutory text.

Chief Justice John Roberts anchored the majority opinion in *Marbury v. Madison*, reaffirming that it is "the duty of the judicial department to say what the law is." This rejected the need for deference, asserting that courts — not agencies — are best suited to interpret statutes. Justice Elena Kagan's dissent invoked stare decisis and noted that Congress could have eliminated Chevron if it disagreed. She also warned that agencies often operate in highly technical domains where judicial expertise can fall short.

While *Loper Bright* ended *Chevron* deference, it didn't eliminate all forms of deference to agencies. Auer deference still applies when agencies interpret their own regulations, and Skidmore deference remains available when agencies offer persuasive expertise. However, the decision joins a growing body of Supreme Court rulings that make it easier to challenge agency actions, particularly in federal court and industries where compliance obligations shift with political administrations. Attorneys should reevaluate existing compliance programs with an eye toward statutory interpretation rather than agency guidance alone. When regulatory burdens appear inconsistent with congressional intent, litigation may now be a more viable strategy, even for long-standing rules.

Loper Bright should also be viewed alongside several other recent Supreme Court decisions:

- **The major questions doctrine**: Cases like *West Virginia v. Environmental Protection Agency* (2022) and *Biden v. Nebraska* (2023) signaled the court's unwillingness to allow agencies to regulate on "major questions of economic or political significance" without clear congressional authorization. But the court hasn't defined what qualifies as "major" or what constitutes "sufficient" guidance, leaving uncertainty and inviting litigation.
- ***U.S. Securities and Exchange Commission v. Jarkesy* (2024)**: The court held that the SEC cannot impose civil penalties for fraud through administrative proceedings, expanding the right to a jury trial.
- ***Corner Post Inc. v. Board of Governors of the Federal Reserve System* (2024)**: The court ruled that the statute of limitations for challenging federal regulations begins when a plaintiff is injured, not when the rule was issued. This opens the door to challenges of decades-old regulations by newly affected parties.

Understanding the limits of agency authority is now central to advising companies on compliance, managing legal exposure and identifying strategic opportunities to challenge unfavorable regulations.

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What this means for regulated entities

As the court redefines the rules of engagement between agencies and the judiciary, attorneys advising businesses or institutions on regulatory compliance must remain vigilant.

- **Expect more litigation**: With *Chevron* gone, plaintiffs challenging federal regulations no longer face the uphill battle of agency deference.
- **Inconsistencies could emerge**: Although some hope *Loper Bright* may bring greater uniformity across administrations, the major questions doctrine injects significant unpredictability.
- **Impacts will span multiple sectors**: From tech and telecom to environmental law and higher education, virtually all industries subject to federal oversight could be affected by this evolving case law.

Next steps for attorneys

The fall of *Chevron* and reflect a more skeptical judicial posture toward federal agency authority. For attorneys counseling regulated entities, the challenge is not only legal compliance but also navigating a shifting and often ambiguous terrain.

- **Review compliance strategies**: Many businesses have relied on long-standing agency interpretations to guide compliance. With courts now more willing to question agency authority, revisit those assumptions and ensure compliance strategies are grounded in statutory text, not just agency guidance.
- **Evaluate litigation risk**: The erosion of deference may embolden challenges from competitors, advocacy groups or even clients themselves. Review whether your clients' positions could be vulnerable under the new guidance, or whether they have standing to challenge burdensome rules.
- **Keep up with agency rules and judicial challenges**: Regulatory frameworks are increasingly fluid. Track not only new rules but also pending litigation that could reshape their enforcement or validity.
- **Engage in rulemaking processes**: With judicial scrutiny increasing, agencies may become more cautious and responsive to public comments. Encouraging clients to participate in rulemaking can help shape more defensible final rules.
- **Document compliance decisions with statutory grounding**: When interpreting ambiguous regulatory requirements, tie internal policies and compliance decisions explicitly to statutory language, not just agency FAQs or interpretive bulletins.
- **Advise boards and leadership**: Corporate governance and strategic planning may need to adjust in sectors where regulatory certainty is weakening. Help leadership understand the potential for sudden shifts and the need for agility.

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Civil liberties under pressure: threats to advocacy and equity

In addition to regulatory upheaval, intensifying threats to core civil liberties — including those affecting the practice of law itself — are triggering major questions over the independence of the legal profession and the future of equal protection under the law. Two areas demand particular vigilance from attorneys and general counsel alike: political retaliation against law firms and the dismantling of disparate impact liability.

Retaliation against law firms for client representation

In recent months, actions by the executive branch have raised concerns about political retaliation against law firms based on the clients they represent or the public positions their attorneys have taken. What began as an attack on individual attorneys — such as the revocation of security clearances from a Covington & Burling lawyer who once worked with Special Counsel Jack Smith — has escalated into sweeping actions against entire firms.

- Perkins Coie faced proposed sanctions that would have barred it from federal contracts, stripped its attorneys of security clearances and blocked its lawyers from entering federal buildings, potentially including courthouses. U.S. District Judge Beryl Howell in the District of Columbia issued a permanent injunction, finding that the sanctions violated the First Amendment's protection of lawful, zealous advocacy and the Sixth Amendment's guarantee of access to counsel.
- Paul, Weiss, Rifkind, Wharton & Garrison was targeted for employing former prosecutors who had investigated Trump and represented plaintiffs in civil suits over the Jan. 6 Capitol attack. The firm ultimately paid a $40 million settlement.
- Jenner & Block and Wilmer Cutler Pickering Hale and Dorr came under similar scrutiny for past affiliations with Robert Mueller or his team, with lawsuits filed to halt enforcement of analogous sanctions.
- Susman Godfrey also faced sanctions for its work on a high-profile defamation suit against Fox News over its 2020 election coverage, and the firm has secured temporary relief.

The First Amendment safeguards political expression while the Sixth Amendment ensures that every litigant — criminal or civil — has access to effective counsel. The idea that a firm could be financially crippled or blacklisted for past or present client representation raises serious questions about the independence of the legal profession.

Challenges to disparate impact liability

Recent executive actions have also included efforts to eliminate disparate impact liability, which holds employers liable for policies or practices that disproportionately harm a protected group. This doctrine has been a foundation of civil rights enforcement for decades, but in April, a Trump administration executive order challenged the validity of disparate impact liability, arguing it is "inconsistent" with the Constitution's guarantee of equal treatment.

This is no small shift. Disparate impact liability plays a crucial role in:

- Employment law under Title VII of the Civil Rights Act, which has recognized disparate impact since *Griggs v. Duke Power Co.* (1971).
- Voting rights through the Voting Rights Act Amendments of 1982.
- Fair housing enforcement, as reaffirmed by the Supreme Court in *Texas Department of Housing v. Inclusive Communities Project* (2015).

California has enacted numerous statutes and regulations that rely on disparate impact analysis. A successful challenge to this framework could weaken legal protections against systemic discrimination across hiring practices, housing, education and beyond.

Next steps for attorneys

- The convergence of political retaliation against law firms and efforts to eliminate disparate impact liability poses a direct challenge to the rule of law. Attorneys must prepare to defend not only their clients but their profession and the legal frameworks that uphold equal protection.
- Track developments in First and Sixth Amendment litigation: Monitor federal court decisions on the legality of sanctions targeting law firms, and consider whether your firms or clients are vulnerable.
- Review firm and client affiliations: Be proactive in assessing whether past or present representations could trigger scrutiny or retaliation, particularly for government contractors.
- Prepare for regulatory fragmentation: If disparate impact liability is dismantled at the federal level, affected institutions — especially those operating in California or other progressive states — will need to navigate dual compliance tracks.
- Reevaluate internal DEI policies: Programs based on disparate impact principles may need to be revised or reframed to withstand potential legal challenges, while still advancing equity goals.
- **Strengthen documentation and decision-making protocols**: In-house teams should keep detailed records of legal advice, risk analysis and the rationale behind sensitive decisions, especially those involving DEI or politically charged matters.
- **Engage with professional coalitions**: Consider coordinating with bar associations or civil liberties organizations to defend against encroachments on professional independence and constitutional rights.

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The growing importance of constitutional law proficiency

While most California attorneys don't routinely confront constitutional law or civil liberties in daily practice, the current climate of regulatory and constitutional upheaval is changing that reality. As federal and state priorities increasingly diverge, and as courts revisit the boundaries of agency power and civil rights, lawyers advising clients operating across multiple jurisdictions are more likely to encounter complex legal questions that reach beyond the usual scope of compliance.

*This guide distills insights from a recent CEB webinar, "**Navigating Civil Rights, Free Speech, and Preemption in a Shifting Legal Landscape**," featuring Dean Erwin Chemerinsky of the UC Berkeley School of Law. For a more detailed discussion, the webinar recording is available at **ceb.com/webinars**.*

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