

Proposition 64

State Supreme Court Ruling Undermines Proposition 64 Lid on Frivolous Lawsuits

Summary

Background

California's Unfair Competition Law, Business and Professions Code Section 17200 and Section 17500, was designed to protect consumers from unfair and fraudulent business practices and deceptive or misleading advertising.

The ease with which one could sue and recover damages under the statute, however, resulted in a frenzy of frivolous shakedown lawsuits in which the statute was used to leverage settlements, particularly from small businesses.

In response, Proposition 64, overwhelmingly approved by California voters, required that plaintiffs in lawsuits filed under the state's Unfair Competition Law must actually have suffered harm, and also required that all representative actions meet regular class action requirements.

Court Ruling

In May 2009, the California Supreme Court issued a 4-3 decision that appears to significantly undermine the voters' intent in Proposition 64. The court majority ruled that only the named class representative(s), rather than all class members, must satisfy Proposition 64's standing requirement, including a showing of injury. (*In re Tobacco II Cases*, No. S147345, May 18, 2009).

The three dissenting justices strongly criticized the majority's holding. Raising the concern that the decision will invite the very kinds of mischief Proposition 64 was intended to curtail, the dissent characterized the majority's determination as "erroneous," and stated that it "turns class action law upside down and contravenes the initiative measure's plain intent."

The high court's decision will make it easier for plaintiffs to move forward with the type of meritless lawsuits that were stifling small businesses and led to passage of Proposition 64. Companies, in turn, will see greater litigation costs if they must defend against increased meritless lawsuits.

CalChamber Position

The California Chamber of Commerce opposes reversing pleading and class action standards established by Proposition 64.

Reasons for Position

- It could reopen the door for frivolous shakedown lawsuits, which harm businesses and do not advance the purpose of the law.
- This is contrary to the will of the voters.

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