Dan Walters: Publishing appellate decisions

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The Sacramento region's state appeals court declared three decades ago that when a corporation hires lobbyists to pass a bill, it loses its claim of privacy in a libel action.

I was particularly interested because it upheld a trial court judge's decision to toss out a libel case filed against me by a chain of for-profit colleges, stemming from a 1983 column about the corporation's efforts to be exempted from state accreditation standards.

While the appellate decision was gratifying, it was, unfortunately, confined just to my case because it was not "published," meaning it could not be cited in other libel cases.

The vast majority of California appellate court decisions are not published, but the practice varies widely and there's an ongoing debate within the legal community over whether there should be more uniformity.

Moreover, when appellate court decisions are published, losing parties often petition the state Supreme Court to depublish them, thereby seeking to limit their effects to just one case.

Last week, the Supreme Court refused to depublish a very important appellate court ruling that local water agencies could not battle drought by arbitrarily raising rates to coerce customers into reducing water use.

The case, involving the city of San Juan Capistrano, was a test of Proposition 218, passed in 1996, which requires governmental fees to be based on the cost of providing services, rather than to raise revenues or serve other purposes.

Rather than challenge the appellate decision on its merits vis-à-vis Proposition 218, Gov. Jerry Brown and Attorney General Kamala Harris had asked the Supreme Court to depublish it, thereby limiting its impact, but their pleas were spurned.

The case's effects on water use aside, it's a milestone in the debate over whether appellate court decisions should be published, as they are in virtually every other legal system in the nation, including the federal courts.

A rule adopted by the Supreme Court allows appellate courts to decide not to have their decisions published, as well as depublication of those that are published but not overturned on their merits.

"In truth, only special interests benefit from depublication orders," Michael Schmier, director of the Committee for the Rule of Law, wrote to the Supreme Court before its decision. "For the rest, they create uncertainty, confusion and anarchy. Depublication artificially and capriciously obliterates our law, and causes the revision and re-writing of history."

While Schmier's organization presses for repeal, or at least major changes, in the rule, other legal groups say that the volume of cases handled by appellate courts, many of which don't involve larger legal principles, would create more judicial clutter were all to be published.

The situation cries out for rational resolution to create more uniformity and less legal gamesmanship.

Important judicial decrees in one region of California that survive appeal should be law for the entire state.