A governor may use a legitimate common factor to commute many inmates at once

This argument was submitted to the California Supreme Court by amicus curiae California Constitution Scholars in S299513, S299690, and S299798.

Summary of argument

California's governor can commute a group of inmates who share a common factor. Because our state charter is a document of limitation, challengers must find some constitutional provision that bars this act. Since nothing in California's constitution so limits the governor's powers, his action is proper. This Court's limited review here looks only to confirm that the clemency act is not an abuse of power. Once the Court finds that the governor has acted lawfully, its work is done, and the recommendation should follow.

Governors have sole and plenary clemency powers. The state constitution places but few restrictions on those powers in general. The limits on the power to commute sentences in particular are even less. A governor can commute a single sentence on its individual merit, or a group of sentences that all share a common feature. Only evidence of an abuse of power should give pause, and that concern is absent here.

A governor may commute all sentences that share a common factor. The governor's reason here is the same for all condemned inmates: they are condemned. One reason, and one action, suffices to commute them all. Individual review or action is necessary only when the underlying reasons for extending clemency to each inmate are distinct. It serves no end of justice to require a governor to do the same act 382 times.

This Court may recommend a group commutation. The review is only for potential abuses of power. When a governor relies on a shared, rational factor, he acts within his power. Confirming that state of the case suffices for the Court to discharge its

duty. And as with the governor's act, this Court's recommendation need only be stated once.

A governor may commute sentences based on a common factor.

A governor may commute the sentences of all inmates who share a common factor, because a governor may base commutation decisions on any honest rationale. The federal constitution places virtually no limits on a state executive's clemency powers beyond those limits imposed by the state itself.[1] California's constitution places only two limitations on a governor's clemency powers. Article V, section 8(a) bars clemency in cases of impeachment (which is not implicated here). And it requires this Court's recommendation when the governor seeks clemency for one who has been convicted of two-or-more felonies. In considering that recommendation only evidence of corruption or caprice should give pause. Those concerns are absent here. That ends the constitutional analysis.

Outside those narrow confines California's governor has sole and plenary clemency powers.[2] The restraints on this power are scant and weak. Judicial review is limited to checking for compliance with the few constitutional constraints that may exist.[3] The legislature may only prescribe application procedures and is entitled to a report.[4] And the separation of powers doctrine prevents those constraints from being more than reasonable procedural regulations.[5] Otherwise, any complaints about how the governor exercises this power must be addressed by constitutional changes, at the ballot box, or through political pressure.

Under the federal constitution, a state governor's clemency power is broad and unreviewable: "pardon and commutation decisions have not traditionally been the business of courts" and are "rarely, if ever" appropriate subjects for judicial review.[6] This is because clemency is "an act of grace" by the executive, outside the judicial system, delivered by the one who otherwise would be charged with imposing punishment.[7] From its origin and inception, the clemency power was "something above and beyond the normal workings, restrictions and limitations of the criminal justice system."[8] Such acts are not subject to judicial review.

Nor may a legislature interfere. Courts have long held that the executive clemency power is "unlimited" but for any exceptions stated, and it is not subject to legislative control: the "benign prerogative of mercy" reposed in a governor "cannot be fettered by any legislative restrictions."[9] The pardon prerogative "was clearly established in English practice as early as the seventh century;" by the Norman Conquest of 1066 the view was that clemency was an exclusive privilege of the king.[10] And by the time of the 1789 constitutional convention it was "implicitly understood that unless specifically limited, the King's power was plenary and without restriction."[11]

Given the lack of federal constitutional limitations, any restrictions on the California governor's clemency powers must be found in California's constitution. Yet article V, section 8(a) places no limits on those powers other than impeachment (irrelevant here) and this Court's recommendation for multiple felons. The only procedural provisions require the governor to follow the legislature's application procedures and to report clemency decisions to the legislature with an explanation. The first condition does not apply here, and the second condition arises only after this Court grants a governor's request. So other than this Court's recommendation for the multiple felons, no substantive or procedural constitutional limits exist here.

Even if they applied here, any procedural statutes could not direct the governor's discretion. California's legislative branch cannot curtail the state executive's constitutional clemency power in any substantive way, because clemency is an "act of grace by a governor."[12] The legislature concedes as much: "The general authority to grant reprieves, pardons and commutations of sentence is conferred upon the Governor by Section 8 of Article V of the Constitution of the State of California."[13] At most, the legislative branch may regulate the application and investigation process for clemency (as it did by adopting Penal Code sections 4800–13). But those procedures do not apply here because the governor acted on his own, not on applications. Nor does the California constitution provide a clear remedy if the governor fails to adhere to those statutory procedures.

This is not the only such power a governor holds: the gubernatorial veto is similarly

sole, unrestrained, and unreviewable. Nor is this the only instance of a complete power being vested in one government branch or actor. The legislature has sole and unreviewable powers to adopt bills, to investigate, and to appropriate funds. The judicial branch has sole and unreviewable power to interpret the law, and the state's chief justice has sole and unfettered appointment powers for pro tem justices and Judicial Council seats. To say that this act is within the governor's power alone is to acknowledge what the state constitution requires.

All this places clemency outside the legal process. "If at the end of court procedures there is claimed to persist a miscarriage of justice, despite all the precautions of the law to the contrary, the ultimate remedy rests in an appeal to the Governor for a pardon."[14] This necessarily makes clemency extralegal because it applies even when courts cannot find a miscarriage of justice. In such cases courts are bound by law — but a governor is not, and may show compassion.[15] A commutation "is in the nature of a favor" that may be withheld or granted for reasons and on conditions as the governor may think proper.[16] As a condition of commutation a governor may even change a sentence to one not provided by statute.[17] Granting mercy to the inmates at issue here is within the governor's power.

A governor may commute a group of inmates.

Courts have long recognized that a governor may commute a group of inmates together.[18] Here, the governor's reason is the same for all condemned inmates: they are condemned. One reason, and one action, suffices for all. Individual review or action is necessary only when the reasons for each inmate are distinct. It serves no end of justice to require a governor to do the same act 382 times. And both state and federal executives have a long tradition of ordering group clemency.

The high court has held that presidential pardons can apply to such groups. "The executive can reprieve or pardon all offenses after their commission, either before trial, during trial or after trial, by individuals, or by classes, conditionally or absolutely, and this without modification or regulation by Congress."[19] Categorical clemency by a president has a long history. President George Washington granted

clemency to all participants in the Whiskey Rebellion.[20] President Andrew Johnson granted "amnesty and pardon" to "all persons" who had participated in the rebellion — that was tens of thousands of former Confederates.[21] President Joe Biden granted clemency on categorical grounds by listing 1,499 names above his signature in a single document.[22]

State governors can and have done the same, reflecting the fact that their clemency power is much the same. The governor's clemency power "is of the same general nature as that conferred upon the President of the United States by the Federal Constitution."[23] The tradition of departing state governors blanket-commuting their entire state's death row spans over 100 years.[24] Three state governors have done so in the 50 years since the U.S. Supreme Court reinstated capital punishment in 1976, and all were done in a single act:

- Arkansas Governor Winthrop L. Rockefeller commuted 15 death sentences in 1970.[25]
- New Mexico Governor Toney Anaya granted five clemency petitions in 1986.[26]
- Illinois Governor George Ryan emptied his state's death row in 2003.[27]

Governor Newsom's act follows this tradition of a departing executive officer achieving a last great act of mercy at a stroke. Now the Court need only ensure this decision bore no corrupt motive.

Judicial review is concerned only with abuse of power.

Whether guided by this Court's 2018 order or considered anew, the review here is only for abuses of power: that could be corruption, arbitrary or capricious acts, or evildoing. This Court is not passing on substance, and there are no merits issues or good cause requirement. The only task here is to identify a legitimate reason for the governor's decision. When a governor relies on a common, neutral, and objective factor, he acts within his power. The governor's stated reason (killing is a moral

wrong) is not arbitrary. If anything, that the governor used consistent reasoning applied evenhandedly militates against any concerns about corrupt motives.

Confirming that state of the case satisfies this Court's duty. In its 2018 order on clemency requests this Court unanimously endorsed a view that its only role was "to provide a check on potential abuses of the power conferred on the executive," and that to guard against such this Court would only determine whether "a legitimate basis" exists for the governor to grant clemency.[28]

And that inquiry applies only to those twice convicted of a felony.[29] In that context the 1879 constitutional convention intended the Court to exercise a limited power to "provide some check on the arbitrary use of the pardon power," such as corrupt motives.[30] The 2018 order is consistent with the convention's intent — that the Court's recommendation means only that a grant of clemency by the governor would not be an "abuse of power."[31] This Court should apply that standard and find no abuse of power here.

The 1879 convention intended only a limited judicial role.

The 1879 convention started with the gubernatorial clemency provision in the 1849 constitution's article V, section 13. To revise that text the convention formed a Committee on Pardons "to consist of nine members."[32] Its members were delegates "Shafter, Laine, Johnson, Barry, Rolfe, Hall, Huestis, Kelley, George V. Smith."[33] Starting at page 81 the committee received a raft of initial proposals; at page 236 the committee recommended that all not be adopted. The committee then prepared and presented an initial draft of a new clemency provision.

In presenting its first draft of a new article V, section 13 the committee explained its key changes from the 1849 constitution:

The committee have retained the right of reprieve in the Governor, but yielding to an apparent public desire, have joined the Chief Justice of the Supreme Court to the Governor, as a Commission of Pardons and Commutations. We have recommended that neither pardons nor reprieves should be extended to persons thrice convicted of

felony, and we have further required the reasons for pardon or commutation to be given."[34]

In explaining the committee's first draft, Mr. Shafter noted that the principal change was "on the power of commutation and pardon," which the committee vested in the governor and chief justice and recommended "as a sort of compromise between those who favored leaving the power in the hands of the Governor and placing it in a Board."[35] But the committee recommended no change in the essential nature of the clemency power as plenary, undefined, and discretionary:

It is exceedingly difficult to state the grounds that ought to govern the executive clemency. It has been left undetermined. No rules have been laid down in the Constitution, none have been attempted to be stated in the laws, because it is exceedingly difficult for any one to state the grounds on which alone executive clemency should be granted. The Governors themselves have never attempted to reduce it to any rule. There are cases where simple sentiment, simple emotion, or outside influence has operated upon the Executive and induced him to grant pardons. While they cannot fully agree with the arguments presented to them, they still have respect for those making the application and must entertain their plea, and, while not fully justifying their own course, silently acquiesce, even when their judgment cannot render any good reason for it. Such has been the system and the law. Such has been the idea of the Constitution by leaving it in the discretion of the Executive.[36]

The convention debated this draft and many proposed amendments. The debate and amendments on this section fell into two broad categories. One concerned who should exercise the power. The other concerned categories of exclusion, such as those convicted of multiple felonies.

Regarding who should exercise the power, the committee draft would have required joint action by the governor and chief justice. After much debate and various proposed-and-rejected amendments, the convention adopted Mr. McFarland's amendment to strike the chief justice and leave the power with the governor alone. Mr. McFarland explained: "If that is adopted it leaves it as it is in the old

Constitution, except that provision that a man three times convicted shall not be pardoned."[37]

The debates evidence the convention's ultimate intent to leave substantive discretion with the governor alone, allowing only procedural regulation by the legislature. The convention considered and rejected a proposal that would have codified the exact position petitioners argue for here: that statutes can limit gubernatorial discretion. Mr. Hager's amendment would have allowed the legislature to regulate both the applications procedure and the substance of pardons:

I am therefore inclined to adhere to the present provisions, that it shall be left to the Governor, subject to such legislation as the Legislature may pass, not only to the mode of applying for pardons, but the mode of granting pardons . . . As it now reads, the Legislature can only regulate the matter of applying for pardons. This is the purpose of the amendment, to regulate the manner of applying for pardons, and the manner in which they shall be granted. . . . The Legislature, therefore, might impose certain rules and regulations upon the acts of the Governor, not only as to the matter of applying for pardons, but also as to the manner of granting pardons.[38]

The convention rejected that proposal. The delegates were quick to identify its true effect of vesting ultimate pardon power in the legislature. Mr. Shafter noted the amendment's ambiguity on that score, and declared "I shall object to the Legislature passing laws to fix and define the grounds upon which a pardon shall be granted."[39]

Mr. Hager conceded that was his intent, arguing:

I can see no harm in lodging with [the legislature] the power to say, in case the Governor did abuse his power, that he should be restricted in the exercise of that power. . . . I do not see why we need hesitate about saying that both branches of the Legislature may pass a law regulating the mode of granting pardons, especially when the Governor has the veto power on that as in all other cases.[40]

Mr. Shafter pounced:

He proposes to have the Legislature exercise the pardoning power. That is the whole proposition. To take it away from the Governor virtually by giving the Legislature power to control it. When it comes to a difference between the Legislature and the Governor in regard to the grounds upon which a pardon shall be granted, the Legislature will control. The whole proposition is, that the Legislature is to have the pardoning power, and to that I object.[41]

Mr. Townsend agreed: "This leaves the pardoning power with the Legislature."[42] Mr. Freeman went further, charging subterfuge:

[P]articularly from what has been said by the author, he is aiming, not at the mode and manner, but at the substance. He is aiming to accomplish something which the Convention does not intend shall be accomplished. He is aiming to subvert the vote which has already been taken, by which we have determined to vest this power in the Executive.[43]

Mr. Rolfe summarized the effect of the standing text, contrasting it with what Mr. Hager's amendment would achieve:

If I understand the proposition, it is that the Legislature may create a Board to act with the Governor; and following out that plan they may take the power entirely away from the Governor, and provide, if they see fit, that in certain classes of crimes, no pardon shall be granted at all. . . . As the section would stand the Legislature would have the power of saying in what manner pardons may be granted. . . . It is proposed by the old section to give the Legislature the power of regulating the manner of applying for pardons—simply the manner of applying, which I think is just and proper; and I think that much should be left to the discretion of the Legislature. I am willing to leave that to the Legislature. . . . This matter of the mode of applying for pardons can with entire safety be left to the Legislature, because that in nowise affects the power itself. It in nowise interferes with the Executive in the exercise of that power.[44]

Mr. Barry saw the same intent of vesting ultimate power in the legislature, and opposed it:

I say that if it is placed in the hands of the Legislature it is more liable to be abused than where it is now. I shall not now take the time to comment upon the acts which have been passed by the Legislature upon this subject. I am satisfied that it is not a safe place to lodge this power—in the hands of the Legislature—as provided by the amendment offered by the gentleman from San Francisco, Judge Hager."[45]

Mr. Hager changed tack, and disavowed an intent to vest pardon power in the legislature:

The language of the section is that the Governor shall have the sole power, because the Chief Justice was stricken out, and the amendment to add the Attorney-General was voted down, and it stands now that the Governor alone shall have power to grant pardons and reprieves. . . . The power is not taken from the Governor; there is no attempt to take it from him; there is no excuse for saying that it is to be taken away from him by this amendment . . . .[46]

To no avail. Mr. Johnson responded:

There are two propositions which it seems to me ought not to be considered at all. One is giving the Legislature power to grant pardons. That we certainly cannot do . . . But as I understand the amendment proposed by the gentleman from San Francisco, Judge Hager, it does contemplate something of that kind [requiring notice]. It has a great deal more in it. It adds to the mode of applying for pardons the mode of granting pardons. That would include notice; it would give the power to the Legislature to demand that notice be given to all persons they might see proper to designate. Therefore, I am not in favor of the amendment . . . .[47]

The convention rejected Mr. Hager's proposal to allow the legislature to regulate the granting of pardons.[48] And it rejected another proposal to limit the substance of a governor's clemency powers: by Mr. Blackmer's amendment pardons would have been available "only in cases where evidence is newly discovered after judgment establishing the innocence of the convicted party, or the injustice of the sentence."[49] Arguing against it, Mr. Howard quoted from Story: "If an arbitrary power is to be given to meet such cases, where can it be so properly lodged as in the executive

department? [¶] The power to pardon, then, being a fit one to be intrusted to all governments, humanity and sound policy dictate that this benign prerogative should be as little as possible fettered or embarrassed."[50]

Finally, the convention allowed for just one check on a governor's discretion, in the multiple-felony context, by interposing a recommendation by this Court to catch abuses of power. The debates on that proposal show that the delegates intended to retain ultimate judgment in the governor, and permitted this Court only a recommendation. And the discussion on that process focused only on pardons, never mentioning the sentence commutations at issue here.

Mr. Belcher proposed the provision that requires written recommendation of a majority of this Court's justices for those twice convicted of a felony.[51] Rather than the sentence commutation issue here, Mr. Belcher was concerned with factual innocence, and ensuring that even those with multiple felonies had a venue to prove their wrongful conviction and secure a pardon:

[He] may be pardoned, if new evidence appears tending to show that he is not guilty, but there is no way of testing how that fact shall be shown. It seems to me that it would be better, where such cases arise, to have somebody to whom that evidence can be submitted, and it seems to me that the evidence might best be submitted to the Judges of the Supreme Court; and if a majority of them say that the man ought to be pardoned, in view of the new facts elicited, then the Judges may recommend to the Governor, in writing, that the man be pardoned . . . .[52]

Mr. Belcher thought "it would be better to have some tribunal to whom that evidence may be submitted, to determine whether a man is guilty or not, and that the Justices of the Supreme Court in this case would be the best tribunal to submit that question to. If a majority are satisfied that the man ought to be turned out, then they could make that recommendation to the Governor."[53]

Mr. Caples objected to "making the Judges of the Supreme Court doorkeepers to this pardoning chamber."[54] Mr. Andrews denied that it would be so, and said that it would still permit clemency "where there might be exceptional cases in which it

would be a great hardship and outrage that the pardoning power could not be exercised."[55]

Mr. Blackmer noted that the convention had already rejected other attempts to form a board of pardons, and argued "that it is in reality making the Supreme Court a Board of Pardons, and the Committee of the Whole refused to entertain that proposition."[56] Like Mr. Belcher, Mr. Blackmer was concerned with pardons being available for the factually innocent, even those with multiple felonies: "I believe this to be the best way, so that when a party has been convicted twice before, if his innocence is established by evidence, there shall be still a right in the Governor to pardon him."[57]

Mr. Wilson viewed the governor as retaining ultimate discretion: "It does not make the Supreme Court the pardoning power at all. It merely is a restriction upon the power of the Governor. When the Supreme Court have recommended the Governor to exercise the pardoning power, after an examination of the case, he still has to exercise his judgment. The Supreme Court has no power to pardon; they recommend it to the Governor, but he is not compelled to act upon it. He is the pardoning power, and they are no branch of the pardoning power at all. They simply recommend."[58]

Finally, Mr. Shafter thought the Court could "advise" the governor on a pardon after reviewing the evidence:

It is very apparent that after a man has been twice convicted, in the opinion of the convention he ought not to be pardoned except in the exceptional case of his innocence having been demonstrated, and if it is so demonstrated he ought to be pardoned. . . . I am inclined to the opinion that the Judges of the Supreme Court are the most competent tribunal, and the one to which this question could be most safely left. They must recommend to the executive and he pardon.[59]

The convention adopted Mr. Belcher's amendment.[60] The convention debate on that provision was concerned with pardons for multiple felons based on evidence of factual innocence. The delegates never once mentioned sentence commutation in this context. The debates provide no support for an argument that this Court should

or must look for any factual justification for the sentence commutations at issue here.

This Court's 2018 order concluded as much: The intent to provide "some check on arbitrary use of the pardon power" did not "to supplement or supplant the Governor's executive clemency authority" — the delegates believed the court "could serve as a check on the Governor within the confines of its traditional judicial role, determining whether there exists a legitimate basis on which the Governor could choose to grant clemency to the applicant."[61] That does not require the Court to determine whether an applicant merits clemency. The Court is not constitutionally authorized to substitute its view as to what is just; its role is to guard against dishonesty, abuse, corruption, and the like, and to stop there.

The 2018 order confirmed that limited role.

The 2018 order made clear the Court's view that it should exercise no substantive oversight over the governor's clemency decisions for repeat felony offenders. That abuse-of-power lodestar applies here. Many commutations is a matter of degree, not kind. If commuting one death sentence on that basis alone is proper, then all may be done.

That abuse-of-power condition is difficult to establish. California courts have upheld clemency even where the power has arguably been exercised improperly. In *Santos v. Brown* the Court of Appeal frowned at clear evidence of "[b]ackroom dealings" in a sentence commutation by Governor Arnold Schwarzenegger on his last day in office. Even so, the Court of Appeal upheld the commutation, finding that it was not "illegal" even though the governor's action "could be seen as deserving of censure and grossly unjust."[62] This shows that a high bar applies to abuse-of-power claims. No similar evidence of backroom dealings exists here, leaving even less concern than existed in *Santos.*

None of the classic abuse-of-power examples (corruption, bribery, persecution) are evident here. Corruption often concerns favor-trading.[63] Bribery is payment to influence official acts.[64] Persecution is personal or political motivations for

prosecution.[65] Arbitrary or capricious acts are those without evidence of a reasonable or rational basis.[66] Arbitrariness is a factual question that covers conduct unsupported by a fair or substantial reason, a stubborn insistence on following unauthorized conduct, or a bad-faith legal dispute.[67] A coin flip would be an arbitrary act.[68] None of these factors exist here.

This abuse-of-power standard is distinct from the standard for parole decisions. In that context article V, section 8(b) requires the governor to rely on "the same factors which the parole authority is required to consider." That goes to the substance and cabins the governor's discretion, which this Court held requires judicial review to determine whether the decision is based on "some evidence."[69] The constitutional power is different, so this Court treats the governor's power to review a parole board decision differently than the governor's other clemency powers.

Substantive due process does not apply here. Substantive due process covers "only the most egregious official conduct," where government officials are guilty of grave unfairness in discharging their duties or employ their power to oppress.[70] To be actionable, executive abuse of power must shock the conscience; this Court requires a substantial infringement of state law prompted by personal or group animus, or a deliberate flouting of the law that trammels significant personal or property rights.[71] The governor's stated reason meets none of those requirements.

The deferential standard that this Court adopted for its assent in double-felon applications describes "mercy" and "other grounds" as permissible bases for granting an application.[72] Given that, what factual scenario would require the Court to find insufficient support for executive clemency? Drafting an opinion that concludes "I will not kill" is not a form of "mercy" and is an abuse of power is a tall order.

This Court need rule only once.

This Court may recommend a group commutation. As with the governor's act, this Court's recommendation need only be stated once. In this novel scenario the maxims

of jurisprudence are a sure guide. Every applicable maxim supports the governor's act.

The law respects form less than substance.[73] The commutations are the point here, not the manner of conveyance.

The law neither does nor requires idle acts.[74] It is pointless to require 382 separate acts when one suffices.

The law disregards trifles.[75] The governor could have used a crayon, carved a stone tablet, or shouted in the public square to achieve the same end; the distinctions are trifling.

Where the reason is the same, the rule should be the same.[76] The same reason applies to all condemned inmates, so one act covers all.

One who grants a thing is presumed to grant also whatever is essential to its use.[77] California's constitution grants the governor clemency powers, and all things necessary to exercise them.

The law has been obeyed.[78] And that which ought to have been done is to be regarded as done, in favor of a person to whom, and against a person from whom, performance is due.[79] Any challenger bears the burden of showing that the governor's act is unlawful.

It serves no purpose to pettifog over the difference between 382 orders, or one order that lists 382 names, or one order that applies to all. The governor's act is either lawful or not. This Court need rule only once.

Rejection risks a separation-of-powers violation.

The risk of this Court unconstitutionally intruding here on the governor's express and core commutation power is grave. California's constitution grants this Court only a limited role in the commutation process. The branches may apply reasonable

procedures that affect another branch's inherent powers or functions.[80] But it is "equally true that those constitutional powers may not be so restricted by unreasonable rules as to virtually nullify them."[81] This Court's review must stop short of defeating or materially impairing the governor's commutation power.[82] This is not an instance of two branches sharing concurrent authority, as with the legislature and the judiciary jointly regulating courtroom procedure.[83] Here the governor has near-complete power, with this Court only checking manifest abuses of it.

Conducting substantive review would present a separation-of-powers problem. Courts will not, of course, direct the decisions of a coordinate branch.[84] This Court has long refused such requests, often stating that mandate will not lie to direct a discretionary act.[85] That rule applies with equal force in the clemency context.[86] There could be no greater example of a discretionary decision than a governor's call to spare a life rather than end it. The People vested this solemn exercise of judgment in their chief executive. For this Court to countermand that decision would materially impair the governor's sole and plenary clemency powers.

Conclusion

This proceeding is about following the law, which allows the governor to act as he did. To the extent some judicial discretion exists here, granting the request is proper because doing justice is this Court's ultimate duty. Do what the law permits and justice requires. This Court should grant the governor's request, and recommend the commutations.

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1. Connecticut Bd. of Pardons v. Dumschat (1981) 452 U.S. 458, 467. ↑
2. People v. Ansell (2001) 25 Cal.4th 868, 891 (pardon decision is discretionary and rests ultimately with the governor). ↑
3. Cal. Const., art. V, § 8(a). ↑

4. Cal. Const., art. V, § 8(a), (b). ↑
5. Superior Court v. County of Mendocino (1996) 13 Cal.4th 45, 53, 58–59. ↑
6. Ohio Adult Parole Auth. v. Woodard (1998) 523 U.S. 272, 275 (quoting Dumschat, 452 U.S. at 464). ↑
7. U.S. v. Wilson (1833) 32 U.S. 150, 160. ↑
8. Hoffa v. Saxbe (D.D.C. 1974) 378 F.Supp. 1221, 1229. ↑
9. Ex parte Garland (1866) 71 U.S. 333, 380. ↑
10. Hoffa, 378 F.Supp. at 1226–27. ↑
11. Hoffa, 378 F.Supp. at 1227. ↑
12. Santos v. Brown (2015) 238 Cal.App.4th 398, 430–31 (Raye, P.J., concurring). ↑
13. Penal Code § 4800. ↑
14. Ex parte Horowitz (1949) 33 Cal.2d 534, 546. ↑
15. People v. Danielly (1949) 33 Cal.2d 362, 383. ↑
16. Ex parte Collie (1952) 38 Cal.2d 396, 398. ↑
17. Green v. Gordon (1952) 39 Cal.2d 230, 232–33. ↑
18. People v. Blocker (2010) 190 Cal.App.4th 438, 443 (a "single pardon can extend to a group"); Way v. Superior Court (1977) 74 Cal.App.3d 165, 177 (governor has power to grant a general pardon or commutation). ↑
19. Ex parte Grossman (1925) 267 U.S. 87, 120. ↑
20. Marteeny v. Brown (2022) 321 Or. App. 250, 264–265. ↑
21. U.S. Congress, United States Statutes at Large (Washington D.C.: U.S. G.P.O., 1937), vol. 13, pp. 758–60. ↑

22. The White House, Fact Sheet: President Biden Announces Clemency for Nearly 1,500 Americans, December 12, 2024 (https://bidenwhitehouse.archives.gov/briefing-room/statements-releases/2024/12/12/fact-sheet-president-biden-announces-clemency-for-nearly-1500-americans/). ↑

23. People v. Bowen (1872) 43 Cal. 439, 441; In re Rosenkrantz (2002) 29 Cal.4th 616, 663. ↑

24. The California Anti-Death Penalty Coalition lists 24 instances of governors in 16 states commuting groups from dozens to hundreds of capital inmates since 1909. See https://clemencyca.org/facts/. ↑

25. "Arkansas spares all on Death Row," New York Times, December 30, 1970; "The Law: Clemency in Arkansas," Time Magazine, January 10, 1971. ↑

26. "A governor's fit of conscience over an unconscionable crime," Chicago Tribune, December 7, 1986. ↑

27. "Death Row is empty," The Washington Post, January 12, 2003. ↑

28. Admin. Order 2018-03-28 (2018) 4 Cal.5th 897, 900. ↑

29. Cal. Const., art. V, § 8(a). ↑

30. Admin. Order, 4 Cal.5th at 899–900. ↑

31. Admin. Order, 4 Cal.5th at 902. ↑

32. Willis & Stockton, Debates And Proceedings of the Constitutional Convention of the State Of California, Convened at the City Of Sacramento, Saturday, September 28, 1878 (1880) at page 62. All following "Page" references are to this source. ↑

33. Page 77. ↑

34. Page 236. ↑

35. Page 274. ↑
36. Page 274. ↑
37. Page 355. ↑
38. Page 355. ↑
39. Page 355. ↑
40. Page 355. ↑
41. Page 355. ↑
42. Page 356. ↑
43. Page 356. ↑
44. Page 356. ↑
45. Page 356. ↑
46. Page 356–57. ↑
47. Page 357. ↑
48. Page 357. ↑
49. Page 357. ↑
50. Page 358. ↑
51. Page 1195. ↑
52. Page 1195. ↑
53. Page 1195. ↑
54. Page 1195. ↑
55. Page 1195. ↑

56. Page 1196. ↑

57. Page 1196. ↑

58. Page 1196. ↑

59. Page 1197. ↑

60. Page 1197–98. ↑

61. Admin. Order, 4 Cal.5th at 900. ↑

62. Santos, 238 Cal.App.4th at 404 and 406. ↑

63. Gilbert v. Chiang (2014) 227 Cal.App.4th 537, 548 (describing judicial corruption as the opportunity for a judge to trade a favorable decision for a promised public appointment). ↑

64. U.S. v. National Treasury Employees Union (1995) 513 U.S. 454, 472 (concern that federal officers not misuse or appear to misuse power by accepting compensation for private activities is "undeniably powerful"). ↑

65. Skripkov v. Barr (6th Cir. 2020) 966 F.3d 480, 483 (prosecution was a pretext for persecution for political opinion); People v. Suarez (2020) 10 Cal.5th 116, 176 (discriminatory law enforcement may be a valid defense where defendant can establish deliberate invidious discrimination by prosecutorial authorities). ↑

66. Baker v. Carr (1962) 369 U.S. 186, 226; Fullerton Joint Union High School Dist. v. State Bd. of Education (1982) 32 Cal.3d 779, 794; American Coatings Assn. v. South Coast Air Quality Management Dist. (2012) 54 Cal.4th 446, 460; In re Joey G. (2012) 206 Cal.App.4th 343, 346; Santa Cruz County Redevelopment Agency v. Izant (1995) 37 Cal.App.4th 141, 150; Gunn v. Employment Development Dept. (1979) 94 Cal.App.3d 658, 665 (an action that lacks any reasonable basis whatsoever); Marin Hospital Dist. v. Department of Health (1979) 92 Cal.App.3d 442, 450 (is without any rational support whatsoever); A.B.C. Federation of Teachers v. A.B.C. Unified Sch.

Dist. (1977) 75 Cal.App.3d 332, 343 (stubborn insistence on following an unauthorized course of action); Olson v. Hickman (172) 25 Cal.App.3d 920, 923 (discriminatory and illegal). ↑

67. Halaco Engineering Co. v. South Central Coast Regional Com. (1986) 42 Cal.3d 52, 79; Atkinson v. Department of Motor Vehicles (2024) 102 Cal.App.5th 997, 999; Hall-Villareal v. City of Fresno (2011) 196 Cal.App.4th 24, 35. ↑

68. See, e.g., In re Ramirez (2001) 94 Cal.App.4th 549, 564 (determining whether inmates are suitable for parole by flipping a coin is arbitrary), disapproved of by In re Dannenberg (2005) 34 Cal.4th 1061. ↑

69. Rosenkrantz, 29 Cal.4th at 658; In re Lawrence (2008) 44 Cal.4th 1181, 1212 (standard of review is whether "some evidence" supports the conclusion that the inmate is unsuitable for parole because they are currently dangerous). ↑

70. DeShaney v. Winnebago County Dept. of Social Services (1989) 489 U.S. 189, 196 (Fourteenth Amendment's Due Process Clause was intended to prevent government from abusing its power, or employing it as an instrument of oppression, to secure the individual from the arbitrary exercise of government powers); County of Sacramento v. Lewis (1998) 523 U.S. 833, 849; Galland v. City of Clovis (2001) 24 Cal.4th 1003, 1034. ↑

71. Galland, 24 Cal.4th at 1034; see e.g., Las Lomas Land Co., LLC v. Los Angeles (2009) 177 Cal.App.4th 837, 857 (claimed unfairness did not amount to outrageous or egregious abuse of power necessary to establish substantive due process violation). ↑

72. Admin. Order, 4 Cal. 5th at 902. ↑

73. Civil Code § 3528. ↑

74. Civil Code § 3532 ↑

75. Civil Code § 3533 ↑

76. Civil Code § 3511. ↑

77. Civil Code § 3522. ↑

78. Civil Code § 3548. ↑

79. Civil Code § 3529. ↑

80. Even Zohar Construction & Remodeling, Inc. v. Bellaire Townhouses, LLC (2015) 61 Cal.4th 830, 840. ↑

81. Briggs v. Brown (2017) 3 Cal.5th 808, 850. ↑

82. Walker v. Super. Ct. (1991) 53 Cal.3d 257, 267; Millholen v. Riley (1930) 211 Cal. 29, 34. ↑

83. People v. Bunn (2002) 27 Cal.4th 1, 14. ↑

84. Mandel v. Myers (1981) 29 Cal.3d 531, 539 (describing the "venerable precept" that courts may not compel the legislature to enact a legislative measure, compel the legislature to appropriate funds, nor order the payment of funds that have not been appropriated by the legislature). ↑

85. Saleeby v. State Bar (1985) 39 Cal.3d 547, 561 (mandate "of course" will not lie to compel a particular method of exercising discretion); Shepherd v. Superior Court (1976) 17 Cal.3d 107, 118, overruled on another point by People v. Holloway (2004) 33 Cal.4th 96; Anderson v. Phillips (1975) 13 Cal.3d 733, 737 ("Mandate does not lie to control the exercise of discretion."); People ex rel. Younger v. County of El Dorado (1971) 5 Cal.3d 480, 491; Ballard v. Anderson (1971) 4 Cal.3d 873, 885 (mandamus unavailable to compel an officer to exercise discretion in a particular manner or to reach a particular result). ↑

86. Jenkins v. Knight (1956) 46 Cal.2d 220, 223 (courts will not interfere with the governor's performance of political or executive acts that involve "the exercise of judgment and discretion"). ↑