Master the distinctions between mandamus and mandate

Overview

The writ of mandate developed around 150 years ago to allow for judicial action when all else failed. Since then, its evolution has produced confused interpretations of the writ's essential aspects. This article provides practical guidance for employing mandate and mandamus writs in California: which writ to bring, whether both would be appropriate and desirable, and how to anticipate the fact that a court always retains equitable discretion to deny a petition. This article concludes with a brief survey of structural changes that would do away with administrative mandamus and even the traditional writ of mandate altogether, save for the most extreme cases.

Analysis

Historical origins

The concept of mandamus traces back at least to 1615 with *James Bagg's Case*,[1] and some scholars suggest its roots reach even further back to the Magna Carta and medieval times.[2] Originally it operated as a "prerogative writ," brought exclusively by the British Crown.[3] Over time subjects gained the ability to use the writ, but the authority underpinning it still rested with the Crown.[4] Much like the contemporary writ, mandamus served to "compel public officials to perform their legal duties toward others."[5] Historically, the terms *mandate* and *mandamus* have been used interchangeably, but in California practice there is a fundamental distinction between the two, which is explained in more detail below.

Mandamus was written into the earliest versions of California's Code of Civil Procedure (later amended to the modern California usage *mandate*), and in the 1930s it proved to be the only viable solution for reviewing decisions of state and local agencies. As citizens of a newly chartered state, early California politicians were tasked with developing and implementing a new legal system. Elisha Crosby,

the first Senate Judiciary Committee chair, argued vigorously for adopting a common law system rather than a civil law system.[6] He succeeded, and in 1851 the state legislature enacted the California Practice Act, which was based largely on the Field Code from New York and included provisions for writs of prohibition, mandamus, and certiorari.[7] In 1872 the Practice Act became the California Code of Civil Procedure, and its sections on extraordinary writs remain largely the same today.[8] These writs are denominated *extraordinary* relief because they are equitable last-resort remedies that are available only when no ordinary procedural vehicle is available.

The next major event in the writ's evolution occurred with the emergence of the administrative state in the early 1900s, when the common law writ of mandate evolved to allow for judicial review of agency decisions. Applying this extraordinary relief to ordinary situations presented a judicial conundrum: by its nature mandate implicates the separation of powers. The essence of the writ is a judicial order compelling other officers to perform a duty, which presents the risk of overextending judicial branch authority. The next section explains how courts resolved that problem.

Evolution of administrative mandamus

While the traditional writ of mandate was adopted and implemented without issue in California courts, administrative mandamus developed in the mid-1930s as a last resort for reckoning with the growing administrative state. Faced with novel agencies that rapidly increased in number and powers, courts struggled with determining if and how they could review agency orders and decisions. There are three basic types of writs that a court could employ for that purpose: certiorari, which allows a court to review an inferior tribunal's exercise of discretion; [9] prohibition, which allows a court to arrest the proceedings of an inferior tribunal;[10] and mandate or mandamus, which allows a court to compel an inferior tribunal or officer to perform some duty.[11] Early in this evolutionary process, the California Supreme Court rejected the writs of certiorari and prohibition in the administrative context.

In 1936, the California Supreme Court in *Standard Oil Co. v. State Bd. of Equalization* foreclosed the writ of certiorari as an option for dealing with agency decisions. The case involved the Board of Equalization and its decision to assess additional retail taxes against the petitioner.[12] The legislature had by statute provided for court review of certain board decisions, which effectively amounted to certiorari by another name. The state high court explained that the legislature cannot enlarge a court's jurisdiction without constitutional authority.[13] Worse, courts could only entertain writs of certiorari for *judicial* decisions, and accepting certiorari review would effectively confer judicial functions on the administrative agency.[14] Since the legislature could neither expand the courts' jurisdiction nor create a new judicial institution, the writ of certiorari was abandoned as a method for reviewing agency decisions.[15]

Just a year later, in *Whitten v. State Bd. of Optometry* the California Supreme Court barred using the writ of prohibition to review agency decisions, relying on separation of powers concerns.[16] As with certiorari, the court construed prohibition as applying only to the "restraint of a threatened exercise of the judicial power in excess of jurisdiction" and therefore inapplicable to the determination of a decidedly non-judicial agency.[17] Again, the legislature lacked the power to create new judicial institutions by statute.

After rejecting certiorari and prohibition, that left just mandamus. The court in *Whitten* suggested that mandamus could lie to review administrative decisions, and the California Supreme Court adopted that view just a few years later in *Drummey v. State Bd. of Funeral Directors and Embalmers*.[18] *Drummey* is important because it resolved the separation of powers problem: rather than being prevented by separation of powers concerns from reviewing agency decisions, that doctrine instead *required* judicial review. Agency decisions like this implicate constitutional property rights, and the separation of powers doctrine would be violated if courts could not review such deprivations: "[T]here is no warrant for the view that the judicial power of a competent court can be circumscribed by any legislative arrangement designed to give effect to administrative action going beyond the limits

of constitutional authority."[19] And having previously rejected certiorari and prohibition, "mandate is the only possible remedy available to those aggrieved by administrative rulings" of this nature.[20]

The legislature codified *Drummey* in 1945 with the Administrative Procedure Act. The APA adopted administrative mandamus as the appropriate avenue for reviewing agency decisions under Code of Civil Procedure section 1094.5.[21] The APA authorizes courts to issue extraordinary relief by writ of administrative mandamus to "any inferior tribunal, corporation, board, or person, to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station . . . ."[22] Any duty provided for by law — counting votes, levying taxes, suspending professional licenses — may be compelled through the writ under the right circumstances and according to the court's discretion.

Mandamus and mandate are different

In this writ's ancient beginnings *mandamus* and *mandate* had no distinction and were used interchangeably, but in current California practice they are distinct. Present-day writers often confuse the terms and use them synonymously; understandably so, given the historical evolution described above. But knowing what now distinguishes them is important. *Mandate* refers to the traditional writ, codified in Code of Civil Procedure sections 1085 and 1086, which require the absence of a "plain, speedy, and adequate remedy" as a basis for extraordinary relief.[23] *Mandamus* refers to the administrative writ, and it is almost always preceded by the modifier *administrative*. Administrative mandamus is codified in sections 1094.5 and 1094.6. One should avoid saying *administrative mandate* — that's not a thing.

The distinction between traditional mandate and administrative mandamus stems from the distinction between legislative and adjudicatory decisions.[24] Legislative matters involve "the adoption of a broad, generally applicable rule of conduct on the basis of public policy," while adjudicatory decisions "affect an individual as determined by facts peculiar to that individual."[25] As with many legal binaries, the extremes are easily categorized, but the "middle ground . . . is not clear at all."[26] In

practice, the writs can be distinguished by the end goal. If one individual seeks to overturn one agency determination, use mandamus. If the petitioner hopes to change the way the agency makes a determination, use mandate. Finally, while most administrative mandamus cases must be filed first in the trial court, traditional mandate petitions may be brought in any court under its original jurisdiction. Note that writ petitions filed first in an appellate court likely will be rejected with directions to refile in the trial court — but if the facts are settled and an entire class of people is impacted then a higher court may be willing to intervene.[27]

Traditional mandate

Traditional mandate can touch any area wherein an individual has a clear and certain right and a public official or agency has a duty.[28] The writ may also be invoked when a party is unlawfully precluded from enjoying a right, including civil rights.[29] In determining whether an official has a particular duty, courts look to statutes, constitutional provisions, and other precedential decisions. There must be a present duty to perform; the writ cannot compel an official to perform a "future act" based on speculation that the official would refuse, nor an act "which it is too late to perform."[30] That present duty must also be rooted in statutes as enacted, because statements of legislative intent do not create "any affirmative duty that is enforceable via writ of mandate."[31] Unlike declaratory relief, which "simply pronounces the duty to perform," mandate "commands performance."[32] (The term *mandate* means "an authoritative order" or "formal command.")[33]

Writ relief is discretionary

Because it is an extraordinary remedy, writ relief is at the court's discretion. Courts, in their "wise discretion" and "to a considerable extent," control mandate proceedings.[34] They can transform a petition for a writ of habeas corpus into a writ of mandate.[35] They can deny the writ even when the requirements seem to be fully satisfied.[36] Thus, although litigants are advised to only raise issues of law during mandate proceedings at the appellate level,[37] the courts may use their discretion

when faced with questions of fact. Ultimately, "the petitioner's right to relief is determinable by the facts as they existed at the time the petition was filed,"[38] but when and how those facts are determined is up to the court. One Court of Appeal justice described it: "We deny the vast majority of [writ] petitions we see and we rarely explain why."[39]

Compelling Duty

Even when a duty exists, courts do not require public officials to attain perfect performance of those duties. And before mandating that a duty be performed, courts may consider the extent to which the party has performed or has attempted to perform the duty. [40] When courts do find a duty, they may not compel the performance of that duty or the exercise of discretion "in a particular manner"[41] unless there is but one "proper interpretation"[42] of how the duty can be performed. Similarly, the court can correct an officer's "erroneous conception"[43] of his or her duties but cannot compel specific action beyond the correction. And courts cannot "command a person to perform an act beyond that enjoined by law upon him as a duty pertaining to his office or position."[44]

Although these principles seem to restrict a court's ability to control the action compelled through mandate, some courts have offered guideposts to direct the party performing the mandated duty. In *Ley v. Dominguez* the court reminded the city clerk that "[u]nder the law, he should exercise his powers and perform his duties in such a manner as will, whenever possible, protect rather than defeat the right of the people to exercise their referendary powers."[45] In similar cases, courts have repeated this reminder that the clerk's duty serves a right that is "precious to the people" when discussing how the clerk should go about performing that duty.[46]

Similarly, in *Palmer v. Fox*, the court ordered the performance of a duty with specific directions. The plaintiffs were denied a residential building permit because of racially discriminatory deed restrictions. The court not only mandated that defendants issue the permit, but also required that plaintiffs receive "prompt and

courteous treatment by defendant." [47] Directing official behavior beyond the official's bare duties (do your job, and be nice about it) is a striking example of the broad powers of writ relief. Although courts cannot dictate how a duty should be performed, they may use writ relief to remind officials of the substantial rights that are served by their performance.

Establishing Facts

The traditional writ is the rare exception to the rule that appellate courts do not gather new evidence. Code of Civil Procedure section 1090 provides for a jury trial — on appeal — if a question of fact is raised during mandate proceedings.[48] At least once, a party in the California Supreme Court requested a factual hearing under this section.[49] Predictably, the court denied the request, stating that trial by jury is "singularly inappropriate for appellate courts."[50] Rather than engage in fact-finding or dismiss the case, the court issued a writ of mandate tailored to avoid the disputed facts and address only the question of law.[51]

When disputed facts arise on appeal in a mandate proceeding, the appellate court likely will reverse and remand with instructions to the trial court. For example, in *Stone v. Bd. of Directors of Pasadena*, the court held that, if facts alleged were true, then the writ of mandate should issue.[52] But some "controverted issues which should be determined by the trial court" remained, and so the court could neither issue the writ itself nor order the trial court to do so.[53] Alternatively, when a mandate writ with disputed facts arrives at the appellate level, courts may dismiss the case and advise the litigants to begin again at the trial court.[54]

Administrative mandamus

Code of Civil Procedure sections 1094.5 and 1094.6 provide a complex pleading procedure for administrative mandamus. Nonetheless, areas of uncertainty and strange results persist. For example, section 1094.5 states that the reviewing court may apply either independent judgment or review for substantial evidence. If the court issues the writ, then the respondent may appeal the decision, and in that

situation the appellate court treats the superior court as if it made a decision on the facts in the first instance.[55] Yet that was not the case — the trial court was acting as a reviewing court. The upshot is that the appellate court determines if the trial court abused its discretion, and the trial court in turn determined if the agency abused its discretion.[56] The central question of the case (the agency determination) moves to the periphery, and the lower court's finding becomes the focus of the appellate review.

Another source of confusion is that some of the traditional writ (sections 1085 and 1086) procedures apply to section 1094.5 proceedings, raising questions as to whether other unwritten but persistent interpretations from traditional writ of mandate cases may apply. The exhaustion of remedies requirement is not mentioned in the text of section 1094.5. But it is required in traditional mandate, and exhaustion is often mentioned as a requirement for administrative mandamus.[57] This reflects the ancient nature of writ relief as an extraordinary remedy that will only lie where no other adequate remedy exists at law. The result: administrative mandamus should only lie where administrative direct review fails or does not exist.

Choosing between mandate and mandamus — or not

If a case satisfies the administrative mandamus requirements, then a petitioner must plead that writ.[58] Yet parties may also request section 1085 relief — in the same pleading — particularly if there is an argument that an agency decision will have an impact beyond the petitioner's individual case.[59] The upshot is that a party might plead *either* mandate or mandamus, or request *both* in the same pleading. And courts have discretion to consider one writ as the other when faced with a pleading that erroneously pleads the incorrect writ.[60] But note that if a party chooses the wrong writ, on appeal the matter may be reversed and retried under the proper section, "even if nobody objected!"[61]

A court's prerogative cuts both ways

The equitable discretion that permits courts to grant extraordinary relief is a two-

edged sword. Even if a petitioner satisfies the requirements of writ of mandate or administrative mandamus, it is the court's prerogative to draw upon their equitable discretion to *deny* relief.[62]

Because Code of Civil Procedure section 1085 gives no guidance on when writ relief is appropriate, courts have developed common law guidance. For example, in *Bartholomae Oil Corp. v. Super. Ct. of San Francisco*, the court explained that the writ "is not a matter of right but involves a consideration of its effect in promoting justice. Its issuance or refusal to a considerable extent lies within the sound discretion of the court."[63] Similarly, if compelling some individual or agency to perform a duty would align with the letter of the law but insult its spirit, then the court has the equitable power to deny that relief.[64]

That common law guidance conflicts somewhat with section 1086, which in mandatory language states: "the writ must be issued in all cases where there is not a plain, speedy, and adequate remedy."[65] These seemingly contradictory principles can be reconciled by examining the points at which courts exercise their discretion in deciding mandamus cases. For example, courts analyze whether "one has a substantial right to protect or enforce" and whether "this may be accomplished by such a writ."[66] If a court finds that a right is too abstract, that other remedies are available, or that writ relief would be fruitless, the court is not required to issue the writ.[67] On the other hand, if a substantial right exists, that mandamus would prevent injustice, and that no other avenue for relief is available, then "it would be an abuse of discretion to refuse it."[68] That equitable discretion even permits granting writ relief when no abuse of discretion occurred.[69]

The bottom line is that in deciding traditional writ of mandate proceedings, courts are held to much the same standard as the officials they are being asked to compel: they may exercise their discretion, unless there is only one way to do so. And the same equitable discretion applies to both traditional writ of mandate proceedings and to administrative mandamus. Despite the intricacies and complexities of section 1094.5, an imperfect petition may nonetheless be granted if it would achieve justice.

Finally, remember that writ relief will not permit a court to direct the legislature. Lawmaking is the opposite of a ministerial duty.[70] The legislature holds wide discretion in exercising its powers.[71] Take, for instance, coming together during a legislative session to enact laws.[72] Some commentators have suggested that the state legislature could be sued with a writ of mandate petition for its inaction around meeting remotely during the pandemic.[73] Courts generally refrain from telling lawmakers how to do their jobs, but they very well may have the authority to tell lawmakers to, at the very least, do their jobs.

Conclusion

Writ practice in California, and especially writ of mandate and administrative mandamus, is essential to developing state law, safeguarding the public interest, and vindicating individual rights. The California Supreme Court has issued writs of mandate against a wide range of executive officials, from city clerks all the way to the governor.[74] Laws may be invalidated when considered under a traditional writ of mandate petition.[75] And writs were at the procedural core of some of the most significant cases in California Supreme Court jurisprudence.[76]

Regardless of the future of administrative mandamus and traditional mandate, one thing remains certain: without a constitutional amendment cabining the original jurisdiction of the courts, some extraordinary relief procedure will persist. It releases the system's inequitable pressure, providing a remedy for rights that have none. Because the power underlying the common law writs stems from the state constitution, the legislature cannot by statute unravel a century and a half of writ jurisprudence.

For the most extraordinary cases, where individuals or groups suffer a violation but enjoy no recourse in the usual course of law, extraordinary relief is the only option. These hard cases sometimes result in significant, groundbreaking decisions, and practitioners should know how to recognize the situations that call for mandate or mandamus. Success lies in the framing: the hard-and-fast elements of traditional mandate give way when equity demands it, and courts locate and employ their

discretion accordingly.

—o0o—

Rachel Thompson is a research fellow at the California Constitution Center.

1. Flint, *The Evolving Standard for the Granting of Mandamus Relief in the Texas Supreme Court: One More Mile Marker down the Road of No Return* (2007) 39 St. Mary's L.J. 3. ↑
2. Howell, *An Historical Account of the Rise and Fall of Mandamus* (1985) 15 Victoria U. Wellington L.Rev. 127, 129–32. ↑
3. *Id.* at 128. ↑
4. *Ibid.* ↑
5. Flint, *supra* note 1, at 18. It was brought to restore individuals to public office, command outgoing officers to deliver records to successors, and require courts to render final judgments. *Id.* at 16 n.34. ↑
6. *See* Crosby, Memoirs of Elisha Oscar Crosby: Reminiscences of California and Guatemala from 1849 to 1864 (1945) 57–59. ↑
7. Blume, *Adoption in California of the Field Code of Civil Procedure: A Chapter in American Legal History* (1966) 17 Hastings L.J. 701. ↑
8. *See* Moskowitz, *Spinning Gold into Straw: The Ordinary Use of the Extraordinary Writ of Mandamus to Review Quasilegislative Actions of California Administrative Agencies* (1980) 20 Santa Clara L.Rev. 351, 365. ↑
9. Cal. Civ. Proc. § 1068. ↑
10. *Id.* § 1102. ↑
11. *Id.* § 1085(a). ↑
12. *Standard Oil Co. v. State Bd. of Equalization* (1936) at 559. ↑
13. *Ibid.* ↑
14. *Ibid.* ↑
15. *Id.* at 565. This decision came as a surprise to attorneys and the lower courts, who had been using certiorari in this nature for years, and one historian claimed in 1964 that "probably no California case has caused more comment." Clarkson, *The History of the California Administrative Procedure Act* (1964) 15 Hastings L.J. 237, 241. ↑
16. *Whitten v. State Bd. of Optometry* (1937). ↑

17. *Id.* at 445. ↑
18. *Drummey v. State Bd. of Funeral Directors and Embalmers* (1939) at 77. ↑
19. *Id.* at 85 (quoting *St. Joseph Stock Yards Co. v. United States* (1936) at 52); *see also Laisne v. Cal. State Bd. of Optometry* (1942) at 835 ("[A]ppellant would be deprived of his constitutional right unless he had a right to into a court of law and question the validity of [the agency's] order."). ↑
20. *Drummey* at 83. ↑
21. Clarkson, *supra* note 15. ↑
22. Cal. Code Civ. Proc. § 1085. ↑
23. Witkin referred to this as a "mystical concept," explaining that "the test of inadequacy of remedy is to a large extent an exercise of pure, uncontrolled discretion." Witkin, *Extraordinary Writ — Friend or Enemy?* (1954) 29 J. State Bar Cal. 467, 471. ↑
24. *See Saleeby v. State Bar* (1985) at 560. ↑
25. Asimow, *A Modern Judicial Review Statute to Replace Administrative Mandamus* (Nov. 1993) *in* 27 Cal. Law Revision Com. Rep. 403, 414. ↑
26. *Ibid.* ↑
27. *See, e.g., Mooney v. Pickett* (1971). ↑
28. For instance, courts can compel issuing a building or use permit (*Court House Plaza Co. v. Palo Alto* (1981)); signing a bond or warrant (*Paso Robles War Memorial Hospital Dist. v. Negley* (1946)); compliance with a city charter (*Squire v. San Francisco* (1970)); and the publication of a parking district ordinance (*Palm Springs v. Ringwald* (1959)). Although not discussed at length here, writs of mandate may also be used as a means of judicial review of court decisions. For instance, a reviewing court can compel a lower tribunal to exercise jurisdiction (*Golden Gate Tile Co. v. Super. Ct. of San Francisco* (1911) 159 Cal. 474); to prevent improper discovery proceedings (*Harabedian v. Super. Ct. of Los Angeles County* (1961)); and to set a case for trial (*Lindsay Strathmore Irrigation Dist. v. Super. Ct. of Tulare County* (1932) 121 Cal.App. 606). *See Appellate Review in California with the Extraordinary Writs* (1948) 36 Calif. L.Rev. 75 for a more extensive discussion; *see also* Friedhofer, *To Writ or Not To Writ? Taking the Drama Out of Deciding to File a Petition for Writ of Mandate* (2005) League of California Cities — City Attorneys Spring Conference. ↑

29. *See, e.g.*, *Piper v. Big Pine School Dist.* (1924) 193 Cal. 664, 667 (holding it unconstitutional to deny a Native American child access to a public school on the basis of her race). ↑
30. *Treber v. Super. Ct.* (1968) at 134. ↑
31. *Physicians Com. for Responsible Medicine v. Los Angeles Unified School Dist.* (2019) at 189 (citing *Common Cause v. Bd. of Supervisors* (1989) at 444. ↑
32. *Berkeley Unified School Dist. v. City of Berkeley* (1956) at 845. ↑
33. *Mandate*, Merriam-Webster Dictionary (accessed Feb. 25, 2021); *Mandamus*, Black's Law Dictionary (11th ed. 2019) (tracing the term's roots to the Latin for "we command"). ↑
34. *Wheelright v. County of Marin* (1970) at 457. ↑
35. *Escamilla v. Cal. Dept. of Corrections & Rehabilitation* (2006) at 419. ↑
36. *Fawkes v. City of Burbank* (1922) 188 Cal. 399, 401. ↑
37. *See* Fowler, *Mandamus as an Original Proceeding in the California Appellate Courts* (1963) 15 Hastings L.J. 177, 179. ↑
38. *American Distilling Co. v. City Council of Sausalito* (1950) at 666; *see Christ v. Super. Ct.* (1931) 211 Cal. 593, citing *United States ex rel. International Contracting Co. v. Lamont* (1894) 155 U.S. 303, 308. ↑
39. *Science Applications Internat. Corp. v. Super. Ct.* (1995) at 1100. ↑
40. *See, e.g.*, *Sutro Heights Land Co. v. Merced Irrigation Dist.* (1931) 211 Cal. 670, 704–05 ("[D]efendant . . . is endeavoring to comply with the requirements of said statute. While it has not succeeded in discharging this duty to its fullest extent, it has done all that could reasonably be required of it with the money available for that purpose."). ↑
41. *Common Cause v. Bd. of Supervisors* (1989) at 442. ↑
42. *Anderson v. Phillips* (1975) at 737. ↑
43. *Consolidated Printing & Publishing Co. v. Allen* (1941) at 66. ↑
44. *Davis v. Porter* (1885) 66 Cal. 658, 659. ↑
45. *Ley v. Dominguez* (1931) 212 Cal. 587, 602. ↑
46. *Wheelright* at 458–59; *see also Rakow v. Swain* (1960) at 899; *Reites v. Wilkerson* (1950) at 829. ↑
47. *Palmer v. Fox* (1953) at 455, 457. ↑
48. Administrative mandamus, on the other hand, expressly states that the court

sit without a jury. Cal. Code Civ. Proc. § 1094.5(a). ↑

49. Mooney at 682–83. ↑
50. *Id.* at 683 (quotation and citation omitted). ↑
51. *Id.* at 671. ↑
52. *Stone v. Bd. Of Directors of Pasadena* (1941) at 754. ↑
53. *Ibid.* ↑
54. Robinson v. Moran (1935) at 637 (dismissing the case without prejudice because "the several issues of fact presented in this proceeding may readily be determined in the superior court"); *Boone v. Kingsbury* (1928) 206 Cal. 148, 179, 194 (asserting that "the pleadings in this proceeding should have been settled and the disputed questions of fact found and determined by the superior court" and dismissing the petitions marred by disputed facts before rendering a final decision on the questions of law). ↑
55. *State Bd. of Medical Examiners* (1948) at 316–18 (Traynor, J., dissenting). ↑
56. *See id.* ↑
57. *See Kumar v. Nat. Medical Enterprises, Inc.* (1990) at 1055; *see also Bollengier v. Doctors Medical Center* (1990). ↑
58. Asimow, *supra* note 25, at 412. ↑
59. *See Conlan v. Bonta* (2002) at 793–94. ↑
60. *See, e.g., Escamilla* at 411 (concluding that the "petition for writ of habeas corpus should be treated as a petition for writ of mandamus" given the circumstances). ↑
61. Asimow, *supra* note 25, at 410. ↑
62. *See* Witkin, *supra* note 23, at 470 ("[T]his vital and expanding part of our review system is still clouded with a completely anachronistic theory of prerogative power. . . . [T]his results in denying a writ to a petitioner entitled to it under the existing precedents, or in issuing it to a petitioner not entitled to it under those precedents (and both have happened often) . . . ."). ↑
63. *Bartholomae Oil Corp. v. Super. Ct.* (1941) at 730 (citations omitted). ↑
64. *Clough v. Baber* (1940) at 53; *see also Wiedwald v. Dodson* (1892) 95 Cal. 450, 453, 454 (holding that a statute, when strictly applied, would lead to the disincorporation of the town of San Pedro, which exceeded the true purpose of the statute). ↑
65. *See May v. Bd. of Directors* (1949) at 133–34 (holding that although

petitioner could have gone to the superior court for relief, the Court would nonetheless mandate the local government to take action); *Betty v. Super. Ct.* (1941) at 622 (explaining that the possibility of a procedural appeal did not foreclose the Court issuing a writ of mandate). ↑

66. *Gay v. Torrance* (1904) 145 Cal. 144, 147–48. ↑
67. *Id.* at 147. ↑
68. *Id.* at 148. ↑
69. For example, in *Curtin v. Dept. of Motor Vehicles* (1981) the trial court granted petitioner's writ although it found no error in the DMV's suspension of the petitioner's license. *Curtin* at 485 ("One's entitlement to a writ of mandate is largely controlled by equitable principles. The same equitable principles will apply to administrative mandamus . . . ."). ↑
70. *See Howard Jarvis Taxpayers Assn. v. Padilla* (2016) at 497–98 ("[T]he Legislature has the actual power to pass any act it pleases, subject only to those limits that may arise elsewhere in the state or federal Constitutions.") ↑
71. *See, e.g., Legislature v. Deukmejian* (1983) at 665–66 ("[T]he normal arguments in favor of the 'passive virtues' suggest that a court not adjudicate an issue until it is clearly required to do so."). But some challenges are allowed pre-election. *See Senate v. Jones* (1999). ↑
72. Cal. Const., Art. IV, sec. 3(a). ↑
73. Carrillo & Duvernay, Why Isn't California's Legislature Meeting Remotely? (July 16, 2020) The Recorder. ↑
74. *See, e.g., Harpending v. Haight* (1870) 39 Cal. 189, 213 ("Would the . . . great officers of State, by reason of their mere official rank, be beyond the reach of the process of the law in all cases, and not be compelled to perform any official act, no matter how distinctly enjoined upon them? . . . It seems to us that the assertion of such a doctrine would draw after it the most serious complication and confusion . . . and practically disrupt the whole fabric of government."). ↑
75. *See, e.g., Perez v. Sharp* (1948) (holding unconstitutional a law that forbade interracial marriages and mandating a county clerk to issue a marriage license to an interracial couple); *Davis v. Municipal Court* (1988) (reversing the Court of Appeal's holding that a section of the penal code was

unconstitutional on separation of powers principles and denying the petition for writ of mandate). ↑

76. *See, e.g., Lockyer v. City and County of San Francisco* (2004); *Strauss v. Horton* (2009). ↑