

California Reprieve Power

Governor Newsom has plenary authority to grant reprieves to anybody serving a custodial sentence in California. A reprieve “is a temporary suspension of execution of [a] sentence.” *Santos v. Brown*, 238 Cal. App. 4th 398, 413–14, 189 Cal. Rptr. 3d 234, 244 (2015).

The California Constitution provides: “Subject to application procedures provided by statute, the Governor, on conditions the Governor deems proper, may grant a reprieve, pardon, and commutation, after sentence, except in case of impeachment.” Cal. Const. art. V, § 8. *See also* Cal. Penal Code § 4800 (West) (“The general authority to grant reprieves, pardons and commutations of sentence is conferred upon the Governor . . .”).

Clemency decisions in California are virtually, if not entirely, unreviewable. *Santos v. Brown*, 238 Cal. App. 4th 398, 414 (2015) (“Consistent with the separation of powers principle (Cal. Const., art. III, § 3), ‘pardon and commutation decisions have not traditionally been the business of courts...’ and are ‘rarely, if ever,’ appropriate subjects for judicial review.”). *See also In re Ramirez*, 94 Cal. App. 4th 549, 560, (2001) (referencing the executive branch’s “virtually unlimited discretion” over reprieves, pardons, and commutations).

The Governor’s reprieve power is especially broad. While several California statutes regulate the process of granting pardons and commutations, none regulates the reprieve power. *See, e.g.*, Cal. Const. art. V, § 8 (“The Governor may not grant a pardon or commutation to a person twice convicted of a felony except on recommendation of the Supreme Court, 4 judges concurring.”); Cal. Penal Code § 4802.5 (“The Governor shall make the application for a pardon and the application for a commutation available on the Governor’s Office Internet Web site and all applications for a direct pardon received by the Governor shall be promptly forwarded to the Board of Parole Hearings for an investigation and recommendation to the Governor.”); Cal. Penal Code § 4805 (West) (“At least 10 days before the Governor acts upon an application for a commutation of sentence, written notice of the intention to apply therefor, signed by the person applying, shall be served upon the district attorney of the county where the conviction was had, and proof, by affidavit, of the service shall be presented to the Governor.”).

By leaving the reprieve power free from substantive or procedural regulation, California—like many states—ensures the Governor’s ability to act swiftly in times of emergency.

Further, the legislature’s regulation of “application procedures” cannot interfere with the Governor’s exercise of clemency powers. *See People v. Ansell*, 24 P.3d 1174, 1189 (2001) (“[R]egardless of which statutory application procedure is used, and notwithstanding any recommendation by the superior court, the pardon decision is discretionary, and rests ultimately with the Governor.”). *Santos v. Brown*, 238 Cal. App. 4th 398, 419 (2015) (“Executive clemency is an *ad hoc* ‘act of grace’ that may be granted for any reason without reference to any standards.”).