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California Standing Doctrine: The Enigma Explained

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I

INTRODUCTION

The doctrine of standing, an important part of federal court practice, derives from Article III of the Constitution, which “limit[s] the judicial power to ‘Cases’ and ‘Controversies’” and in so doing restricts that power “to the traditional role of Anglo-American courts, which is to redress or prevent actual or imminently threatened injury to persons caused by private or official violation of law.”\(^1\) Standing “reflects this fundamental limitation” by requiring federal plaintiffs to allege a personal, as opposed to a generalized, “stake in the outcome of the controversy.”\(^2\) The effect of this limitation is to prevent the courts from pronouncing on the legality of legislative or executive action unless within the context of a real dispute between adversarial parties.\(^3\) Thus, the doctrine “is founded in concern about the proper—and properly limited—role of the courts in a democratic society.”\(^4\) It is focused on more, however, than maintaining a healthy separation of powers; requiring litigants to have a real and personal stake in a case’s outcome “is the gist of the question of standing,” because such a personal stake helps ensure


\(^2\) Id. at 493.


“that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions.”

Reading the opinions of California courts, one could reasonably conclude that the doctrine shares an equal importance at the state level. Indeed, California decisions routinely discuss the requirement that a plaintiff have standing before a court can order relief on that party’s behalf. But the research and analysis in this article will reveal that, strictly speaking, there can be no doctrine of standing in California courts, and that careless importation of federal standing concepts and precedents into California law can have unintended and potentially harmful effects. Although California does not have a true doctrine of standing, many analogous doctrines have been developed that do much of the same work that standing doctrine does in the federal courts. The similarities and relationships between these standing-related doctrines and federal standing doctrine explain both why standing terminology is common in California decisions, and why courts and practitioners have become confused as to the nature of


6 See, e.g., Holmes v. Cal. Nat’l Guard, 109 Cal. Rptr. 2d 154, 170 (Cal. Ct. App. 2001) (“As a general principle, standing to invoke the judicial process requires an actual justiciable controversy as to which the complainant has a real interest in the ultimate adjudication because he or she has either suffered or is about to suffer an injury of sufficient magnitude reasonably to assure that all of the relevant facts and issues will be adequately presented to the adjudicator.”); Jauregi v. Superior Court, 85 Cal. Rptr. 2d 553, 558 (Cal. Ct. App. 1999) (“The doctrine of standing seeks to insure that courts decide actual controversies and not abstract questions.”); Municipal Court v. Superior Court, 249 Cal. Rptr. 182, 185 (Cal. Ct. App. 1988) (“[S]tanding requirements . . . exist both to preserve the court’s resources and to insure that issues are presented by those with strong interests in vigorous advocacy of the issues.”); id. at 184 (“In our common law judicial system, unlike a civil law system, individual precedents rather than general laws are the life of the law; and issues such as those posed here should properly be raised by interested parties on an individual basis.”).

7 See infra n.17.
California’s standing-related doctrines to federal standing doctrine. This confusion is the standing “enigma.” Accordingly, this article’s aim is to provide a road map to California courts and practitioners on dealing with what we term California’s quasi-standing and related doctrines. Knowing that federal standing precedents are not necessarily applicable to California law, and knowing how to satisfy California quasi-standing requirements, is important. Such knowledge will help practitioners defeat a dismissal motion and effectively litigate on behalf of their clients to obtain relief, and will assist the courts in determining whether a plaintiff has adequately established entitlement to such relief.

To demonstrate the differences between federal standing doctrine and California quasi-standing requires a knowledge of how the former has developed over the last century in the federal courts. The doctrine holds that a court which has jurisdiction over the subject matter of the action and the parties, and is presented with a cognizable cause of action, nevertheless must decline to hear the case because the plaintiff does not have the requisite interest in the legal claims presented. The necessary interest is defined by reference to (1) the causal link between the plaintiff’s interest and the defendant’s challenged conduct, and (2) the court’s power to remedy the plaintiff’s interest which the defendant’s conduct is alleged to have injured. Standing therefore focuses on whether the interest that the plaintiff presents is not just legally

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cognizable (i.e., is an interest for which the law has established a judicial process that results in a remedy for that interest when injured) but also constitutionally cognizable.¹⁰

Many commentators contend that federal standing doctrine is an invention of the twentieth century¹¹ and inconsistent with Article III as originally understood.¹² Whether that be the case, the doctrine is, at its roots, a species of public law, i.e., the law of citizens suing the

¹⁰ See, e.g., 13A WRIGHT & MILLER § 3531.4 (“It is not enough to establish standing than an identifiable interest has been injured. The injured interest must be one that the courts will recognize for standing purposes.”); William Burnham, Aspirational and Existential Interests of Social Reform Organizations: A New Role for the Ideological Plaintiff, 20 HARV. C.R.-C.L. L. REV. 153, 200-01 (1985) (“An injured interest will be acknowledged as a cognizable injury in fact only if it can be cast in terms of a public value. Only if the interest is a trait or motive of behavior widely enough shared to permit us to recognize it as a social role will courts recognize its invasion as harm. By contrast, invasions of private interests—interests which are idiosyncratic or not widely shared or understood—are not seen as actionable injuries.”) (footnotes and internal quotation marks omitted).


¹² See, e.g., Raoul Berger, Standing to Sue in Public Actions: Is It a Constitutional Requirement?, 78 YALE L.J. 816, 818 (1969) (“‘Standing’ is not mentioned in the Constitution or the records of the several conventions. It is a judicial construct pure and simple . . . .”); Sunstein, Standing, supra n.11, at 1433 (“While [standing] is often justified by reference to the case or controversy requirement of article III, there is in fact no basis in that article or in any other provision of the Constitution for the view that [modern standing doctrine] is constitutional in status.”). But see Steel Co. v. Citizens for a Better Eureka, 523 U.S. 83, 103 n.5 (1998) (“Contrary to Justice Stevens’ belief that redressability ‘is a judicial creation of the past 25 years,’ . . . the concept has been ingrained in our jurisprudence from the beginning.’”); Ann Woolhandler & Caleb Nelson, Does History Defeat Standing Doctrine?, 102 MICH. L. REV. 689, 691 (2004) (“We do, however, argue that history does not defeat standing doctrine; the notion of standing is not an innovation, and its constitutionalization does not contradict a settled historical consensus about the Constitution’s meaning.”).
government. Indeed, the central purposes underlying federal standing doctrine—avoiding unnecessary judicial decisions, preserving the separation of powers, ensuring effective adversarial presentation of the case—13—are generally not implicated in disputes among private parties. When they are, these concerns are addressed by doctrines pertaining to a cause of action’s merits, such as the real party in interest doctrine.14 In contrast, to determine whether a plaintiff has federal standing requires an analysis separate from whether the plaintiff has a valid and good cause of action. To be sure, aspects of the standing inquiry—such as whether the plaintiff’s injury is fairly traceable to the defendant’s conduct—track a merits analysis.15

Nevertheless, the determination whether a party has standing to sue and the determination

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13 13A WRIGHT & MILLER § 3531.3. See Duke Power Co. v. Carolina Envtl. Study Group, Inc., 438 U.S. 59, 72 (1978) (“The essence of the standing inquiry is whether the parties seeking to invoke the court’s jurisdiction have ‘alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions.’”) (quoting Baker, 369 U.S. at 204).

14 For real party in interest, see infra Part III.A. See also infra n.75 (discussing global warming public nuisance litigation and the standing objections that have been raised in those cases).

15 This is especially so with respect to so-called “nexus standing,” i.e., the occasional requirement that the proffered injury fall within the “zone of interests” sought to be protected or regulated by the law under which suit is brought. See Richard H. Fallon, Jr., Of Justiciability, Remedies, and Public Law Litigation: Notes on the Jurisprudence of Lyons, 59 N.Y.U. L. REV. 1, 20 & n.7 (1984). Some commentators, Professor Fallon among them, go further to argue that the standing and merits analyses are often coextensive. See Richard H. Fallon, Jr., The Linkage Between Justiciability and Remedies—and Their Connections to Substantive Rights, 92 VA. L. REV. 633, 639 (2006) (“The penetration of merits judgments into justiciability determinations prominently occurs in standing analysis.”). But as alluded to in the text, perhaps the best example of standing analysis functioning as a “merits-lite” analysis is with causation: it would be hard to imagine any cause of action that did not incorporate some causation connection between the injury and challenged action. But the courts have made clear, for example, that federal standing’s fair traceability element is not the same as traditional proximate causation. See Barbour v. Haley, 471 F.3d 1222, 1226 (11th Cir. 2006).
whether that same party has a cause of action are not identical. Indeed, it can often be the case that a federal plaintiff would have a good cause of action were it not that she lacked a constitutionally cognizable interest. California, however, has no authentic analogue to these federal rules of standing, notwithstanding the case law’s frequent affirmations of the necessity of a plaintiff’s standing. But these affirmations are an unfortunate result of imprecise language. To remedy such imprecision is in fact the principal reason for this article.

Why is there no California standing doctrine on the federal model? The answer to that question requires an investigation into the reasons for a standing doctrine in the federal courts, and why those reasons do not apply to California. As mentioned above, federal standing

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16 Commentators have argued, however, that standing is best considered as part of a merits-based analysis and not as a jurisdictional prerequisite. See, e.g., Lee A. Albert, Standing to Challenge Administrative Action: An Inadequate Surrogate for Claim for Relief, 83 YALE L.J. 425, 450 (1974) (“Standing serves to sort out the elements of a cause of action. These are issues better addressed under the law governing claims for relief.”); Fallon, supra n.15, at 639.

doctrine is principally\(^\text{18}\) a constitutional doctrine derived from Article III, which provides that the federal courts have power to hear “Cases” or “Controversies” dealing with an enumerated list of subjects.\(^\text{19}\) Hence, federal courts have interpreted Article III’s case or controversy language as imposing some minimal requirements of justiciability before a plaintiff is entitled to the exercise of judicial power.\(^\text{20}\) At the federal level, a court may lack jurisdiction, \textit{i.e.}, “the power to declare the law,”\(^\text{21}\) if the proper subject matter is absent,\(^\text{22}\) or if standing is lacking.\(^\text{23}\) Both requirements go to the fundamental power of a federal court to hear and decide a case. They are evident in the structure of Article III itself, which sets forth both the types of issues federal courts may hear, as well as the contexts in which they may hear them (\textit{i.e.}, cases or controversies).\(^\text{24}\)

\(^\text{18}\) Federal courts have acknowledged that certain standing-like rules are really just prophylactic, prudential measures that are not constitutionally compelled. \textit{See generally} Elk Grove Unified Sch. Dist. v. Newdow, 542 U.S. 1, 12 (2004) (“[O]ur standing jurisprudence contains two strands: Article III standing, which enforces the Constitution’s case-or-controversy requirement, and prudential standing, which embodies judicially self-imposed limits on the exercise of federal jurisdiction.”) (internal citations and quotation marks omitted).

\(^\text{19}\) \textit{See} U.S. CONST. art. III, § 2.

\(^\text{20}\) \textit{See, e.g.}, Sprint Communs. Co., L.P. v. APCC Servs., 128 S. Ct. 2531, 2535 (2009) (“Article III, § 2, of the Constitution restricts the federal ‘judicial Power’ to the resolution of ‘Cases’ and ‘Controversies.’ That case-or-controversy requirement is satisfied only where a plaintiff has standing.”).

\(^\text{21}\) \textit{Ex parte McCardle}, 74 U.S. (7 Wall.) 506, 514 (1869).

\(^\text{22}\) \textit{See} Carlsbad Tech., Inc. v. HIF Bio, Inc., 129 S. Ct. 1862, 1866 (2009) (“Subject matter jurisdiction defines the court’s authority to hear a given type of case; it represents the extent to which a court can rule on the conduct of persons or the status of things.”) (internal citations and quotation marks omitted).

\(^\text{23}\) \textit{See} Steel, 523 U.S. at 101-02.

In California, only part of that jurisdictional predicate has been imported. One has “standing” in California if one can establish the existence of a cause of action.\(^ {25} \) Whether that cause of action uses relaxed standards of causation, redressability, or injury is a matter of whether the plaintiff has a right of relief, rather than a matter of the courts’ constitutional competence “to declare the law.”\(^ {26} \) It is true that California courts employ concepts similar to federal standing to serve many of the same ends that the latter doctrine achieves.\(^ {27} \) Nonetheless, these concepts appear in California decisions under a different name and frequently are wielded in a different way.\(^ {28} \)

In summary, there are three basic reasons why there is no true federal standing analogue in California.

\(^ {25} \) See, e.g., Marshall v. Pasadena Unified Sch. Dist., 15 Cal. Rptr. 3d 344, 352 (Cal. Ct. App. 2004) (“Lack of standing is not waived by failure to raise it in the trial court and may be raised at any point in the proceedings, in that the question of standing to sue goes to the existence of a cause of action against the defendant.”).

\(^ {26} \) See Jasmine Networks, Inc. v. Superior Court, 103 Cal. Rptr. 3d 426, 435 (Cal. Ct. App. 2009) (“[S]ome cases have extended the term ‘standing’ to situations where, if the rights being asserted exist at all, they are the plaintiff’s. But this use of the term often if not always obscures the real question in those cases, which is whether the plaintiff has pled, or can prove, one or more \textit{elements of his cause of action}—typically the breach of a duty owed to him, or consequent damages sustained by him.”).

\(^ {27} \) See, for example, the illustrative case cited supra n.17.

\(^ {28} \) Cf. Midpeninsular Citizens for Fair Housing v. Westwood Investors, 271 Cal. Rptr. 99, 104 (Cal. Ct. App. 1990) (“Standing requirements will vary from statute to statute based upon the intent of the Legislature and the purpose for which the particular statute was enacted.”).
First, no such analogue exists because the California Constitution contains no parallel to the federal Constitution’s case or controversy clause. Rather, the state constitution invests California’s Supreme and Appellate Courts with the power to hear enumerated “proceedings,” and its Superior Courts with the power to hear all other “causes.” Hence, to fall within the subject matter jurisdiction of the California judiciary, it is generally enough to state a cause of action.

Second, through case law and statute, California recognizes citizen and taxpayer standing. Citizen standing is the doctrine that the illegal actions of a governmental entity injure

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29 Grosset v. Wenaas, 175 P.3d 1184, 1196 n.13 (Cal. 2008) (“Article III of the federal Constitution imposes a case-or-controversy limitation on federal court jurisdiction, requiring the party requesting standing [to allege] such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues. There is no similar requirement in our state Constitution.”) (internal citations and quotation marks omitted); Nat’l Paint & Coatings Ass’n, Inc. v. California, 68 Cal. Rptr. 2d 360, 58 Cal. App. 4th 753, 761 (Cal. Ct. App. 1997) (“Our state Constitution contains no ‘case or controversy’ requirement.”).

30 CAL. CONST. art. VI, § 10.

31 There are a few caveats. A California court might otherwise have jurisdiction over a given cause of action were it not for some preemptive bar; for example, instances where Congress has provided that certain causes of action may be heard only in federal courts, such as copyright, 28 U.S.C. § 1338(a), and admiralty cases, id. § 1333. Another important caveat is the jurisdictional, or perhaps quasi-jurisdictional, limitations on California courts’ power to hear otherwise good causes of actions, which we shall discuss in the proceeding sections. See infra Parts II & III. Finally, there is an important distinction between whether a complaint states a cause of action, and whether a complaint states a cause of action inhering in the plaintiff. That distinction is usually covered by the real party in interest doctrine, see infra Part III.A.; see generally CAL. CODE CIV. PROC. § 367, which, although analogous in some respects to federal standing, is nevertheless conceptually distinct from it. See Jasmine Networks, 103 Cal. Rptr. 3d at 433.

32 See infra Parts IV.C. & V. See generally Bd. of Social Welfare v. County of Los Angeles, 162 P.2d 627, 628-29 (Cal. 1945) (citizen standing); CAL. CODE CIV. PROC. § 526a (taxpayer standing).
a citizen’s interest in the laws being observed, and that this interest can form the basis of an action seeking to correct the illegality, generally in the context of writ of mandate proceedings. Taxpayer standing allows a taxpayer to prevent the government’s expenditure of taxpayer funds for an illegal purpose. The federal courts have almost completely rejected these doctrines. Moreover, their rejection defines the doctrine of federal standing itself. That is so because the types of injury that are not cognizable under Article III are precisely the undifferentiated or generalized injuries to one’s status as a federal citizen and taxpayer. Thus, for California to admit taxpayer and citizen injuries as cognizable is not so much to expand standing beyond the federal model, but to subvert it.

Third, California has no need for a federal standing analogue because its courts have imported many standing-like doctrines into the determination of whether a given plaintiff has


34 See CAL. CODE CIV. PROC. §§ 1085, 1094.5. But see id. § 1086 (requiring that a writ applicant be “beneficially interested” in the matter).


37 Our point is that the controversies over federal standing focus on whether one’s interest as a taxpayer or citizen should be sufficient when suing a governmental agency. See John Dimanno, Note, Beyond Taxpayers’ Suits: Public Interest Standing in the States, 41 CONN. L. REV. 639, 643-44 (2008).

38 Cf. Hein, 551 U.S. at 598 (“The constitutionally mandated standing inquiry is especially important in a case like this one, in which taxpayers seek to challenge laws of general application where their own injury is not distinct from that suffered in general by other taxpayers or citizens.”) (internal quotation marks omitted).
stated a cause of action. For example, whether a plaintiff has pled an interest in seeing certain laws faithfully executed and whether the alleged duty is a sufficiently important public question go to whether that plaintiff has “standing” as a citizen to challenge the alleged illegality. Similarly, whether a plaintiff has pled an interest as a taxpayer whose monies are being spent to further illegal governmental action goes to whether that plaintiff has “standing” as a taxpayer to challenge the illegality. Even in the private law context, California courts regularly observe that a plaintiff has no “standing” to pursue a given action against a particular defendant, on the grounds that the plaintiff has no cause of action. Thus, rather than disregarding the justiciability principles that undergird federal standing, California courts have inserted them into the state’s jurisprudence by repackaging them as “merits” concepts which determine whether “a particular plaintiff is a member of the class of litigants that can invoke the power of the court.”

In the following sections these differences will be fleshed out. First, the article discusses the constitutional limitations of California courts’ jurisdiction. Second, several “standing-like” doctrines that California courts have imported either from federal practice or the common law

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39 Parker v. Bowron, 254 P.2d 6, 9 (Cal. 1953) (“[T]he question of standing to sue . . . [i.e., the] right to relief, . . . goes to the existence of a cause of action.”); Marshall, 15 Cal. Rptr. 3d at 352.


42 See Keru Investments, Inc. v. Cube Co., 74 Cal. Rptr. 2d 744, 752 (Cal. Ct. App. 1998) (holding that, because the plaintiff had not been assigned its predecessor-in-interest’s chose in action, the plaintiff did “not have standing to pursue it”).


44 See infra Part II.
are reviewed, but which are not authentic standing doctrines, either because they concern the existence of a cause of action or because they are prudential limitations that the courts can waive. Third, specific California standing requirements for various important causes of actions are analyzed, including the state’s writ practice, various causes of action authorized by environmental, administrative, and consumer protection laws, and declaratory relief. This part of the analysis focuses on the type of injury that each cause of action requires; determining what is a cognizable injury for any given cause of action is perhaps California’s closest analogue to the federal standing requirement of concrete and particularized injury. Next, the article analyzes whether California law has any analogue to the other federal standing requirements of fair traceability and redressability. Finally, this cumulative research is reviewed and summarized and some practice pointers are offered.

II

THE BOUNDARIES OF CALIFORNIA COURTS’ JURISDICTION

In this section the constitutional and prudential limits placed on the power of California courts to hear a case are set forth. As just noted, the California Constitution does not contain the standing limitations like those within the federal Constitution’s Article III. Yet some semblance of those constitutional limitations is retained through the limitation of California courts’ jurisdiction to certain “proceedings” and to “causes” generally.

45 See infra Part III.

46 See infra Parts VI-VII.

47 See infra Part VIII.

48 See infra Part IX.
In addition to this textual limitation to causes, there are other boundaries to California courts’ power “to declare the law,” such as the prohibition against advisory opinions, mootness and ripeness, and the political question doctrine. Although California courts often treat these doctrines as constitutional limitations, by and large the doctrines have no justification in the absence of a standing doctrine like the federal model. Nevertheless, a knowledge of these standing-related doctrines, and the degree to which the California judiciary considers them to be constitutional limitations on its power, is important to understanding how California’s quasi-standing operates.

A. The Constitutional Limitation to “Causes”

Perhaps the most important distinction, for standing purposes, between the federal and California Constitutions is that the latter contains no case or controversy language. Rather, the California Constitution assigns to various courts the power to hear “proceedings” as to particular writs and “causes.” Specifically, Article VI, Section 10, of the state constitution provides, in relevant part:

The Supreme Court, courts of appeal, superior courts, and their judges shall have original jurisdiction in habeas corpus proceedings. Those courts also have original jurisdiction in proceedings for extraordinary relief in the nature of mandamus, certiorari, and prohibition. The appellate division of the superior court has original jurisdiction in proceedings for extraordinary relief in the nature of mandamus, certiorari, and prohibition directed to the superior court in causes subject to its appellate jurisdiction.⁴⁹ [¶] Superior courts have original jurisdiction in all other causes.

Section 10’s text has been amended several times since the adoption of the 1879 Constitution,⁵⁰ but its core can be traced back to the 1849 Constitution.⁵¹ Originally, Section

⁴⁹ CAL. CONST. art. VI, § 10.

⁵⁰ See CAL. CONST. art. VI, §§ 4 & 5 (1879).
10’s language was found in the prior Section 5. In 1966, a potentially important change to that language was made. That year, the new Section 10 was added and the relevant language from Section 5 was moved thereto, but the text was changed to describe the superior courts’ jurisdiction as extending to “causes” rather than “cases.” The old description in terms of “cases” naturally calls to mind the federal Constitution’s case or controversy language. If, prior to 1966, jurisdiction was thus limited to “cases,” does it not follow that there ought to have been a standing doctrine analogous to that which was developing in the federal courts?

Whether such a doctrine ought to have developed, it in fact never did. The Constitution Revision Commission did not consider the change from “cases” to “causes” to have any significance. No court since ever noted that significance. One good reason why the change was not thought significant may be that the California courts, by 1966, had already developed a doctrine of standing considerably at variance with the federal model. For example, and as we shall see in greater detail below, by the early twentieth century, the California courts had already developed theories of citizen and taxpayer standing that had been essentially rejected, in

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53 See Cal. Const. art. VI, § 10 (1967). Section 10 has been amended twice since in ways not relevant to the superior courts’ jurisdiction over “causes.”

54 See Constitution Revision Commission, Basic Recommendations Concerning Article VI, California Constitution ¶ 1 (Aug. 15, 1965) (“Many of the changes are of a technical rather than a policy nature. . . . [T]he Committee has sought, therefore, uniformity of language, such as use of the word ‘causes’ which is recommended to replace . . . ‘case.’”).

55 See infra Parts IV.C. & V.
the 1920s, by the United States Supreme Court interpreting Article III.\(^{56}\) If the state constitution’s limitation to “cases” had proved no obstacle to the state’s courts in developing an expansive theory of standing, then it is unsurprising that a change in the constitutional text authorizing that jurisdiction would not have caught anyone’s attention.

**B. Other Possible Limitations**

Notwithstanding the seemingly open-ended constitutional grant of jurisdiction, the California courts have developed standing-related doctrines that allow dismissal of what might otherwise appear to be good “causes.”

1. **“Actual Controversy,” Mootness, and Ripeness**

For example, the case law sets forth an “actual controversy” requirement.\(^{57}\) Some decisions articulate the position that giving “advisory opinions” in cases lacking an actual controversy is constitutionally or jurisdictionally forbidden.\(^{58}\) At least one court has concluded

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that the actual controversy requirement derives from the common law.\textsuperscript{59} Other decisions imply that adjudication of a case not presenting an actual controversy is a matter of judicial discretion.\textsuperscript{60} The issue is muddled\textsuperscript{61} because some of these cases arise from actions for declaratory relief, a necessary component of which is, by statute, the existence of an “actual opinion of the court is upon a question that has not been raised in the action, or what its decision would be if the question should be presented.”). \textsuperscript{59} Cal. Water & Tel. Co. v. County of Los Angeles, 61 Cal. Rptr. 618, 623 (Cal. Ct. App. 1967) (“The principle that courts will not entertain an action which is not founded on an actual controversy is a tenet of common law jurisprudence, the precise content of which is difficult to define and hard to apply.”).

\textsuperscript{60} See People v. Slayton, 32 P.3d 1073, 1077 (Cal. 2001) (“As a general rule, we do not issue advisory opinions indicating ‘what the law would be upon a hypothetical state of facts.’”) (emphasis added) (quoting Pac. Legal Found. v. Cal. Coastal Comm’n, 655 P.2d 306 (Cal. 1982)); In re William M., 473 P.2d 737, 741 (Cal. 1970) (“If a pending case poses an issue of broad public interest that is likely to recur, the court may exercise an inherent discretion to resolve that issue even though an event occurring during its pendency would normally render the matter moot.”); Ralphs Grocery Co. v. United Food & Commercial Workers Union Local 8, 192 Cal. App. 4th 200, 205 (Cal. Ct. App. 2011) (“In California, the ‘refusal to decide a case lacking in actual controversy is usually regarded as an exercise of discretion. Hence, a court will occasionally depart from its practice in order to decide a matter of public interest.”) (citation omitted) (quoting \textsc{Witkin, Cal. Proc. § 29}, \textit{review granted, depublished by}, Ralphs Grocery Co. v. United Food & Commercial Workers Union Local 8, 123 Cal. Rptr. 3d 576, 2011 Cal. LEXIS 4229 (Cal. Apr. 13, 2011).

\textsuperscript{61} A good example of such muddling is Feder v. Lahanier, 19 Cal. Rptr. 638 (Cal. Ct. App. 1962), where the court, while acknowledging “[its] duty . . . to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it,” \textit{id}. at 639 (quoting Consolidated Vultee Aircraft Corp. v. United Auto., Aircraft & Ag. Implement Workers of Am. Local 904, 167 P.2d 725, 727 (Cal. 1946)), and thus acknowledging “[its] duty to dismiss this appeal as being moot,” \textit{Feder}, 19 Cal. Rptr. at 640, nevertheless went on to express its opinion on the merits and conclude that the respondent committed no error, \textit{see id}.
Yet, the position that a California court has the power (although not the obligation) to issue an advisory opinion finds support in the established proposition that mootness is not a jurisdictional defect. Support also comes from the courts’ occasional practice to decline to dismiss a collusive action. Hence, if a court may address the merits of an action that once but no longer presents an actual controversy, it would seem reasonable to conclude that a court could address the merits of an action that has yet to present an actual controversy (unless,

62 See, e.g., Otay Land Co. v. Royal Indemnity Co., 86 Cal. Rptr. 3d 408, 412 (Cal. Ct. App. 2008) (“The courts do not issue advisory opinions about the rights and duties of the parties under particular agreements, if no actual, justiciable controversy has yet developed.”). Cf. CAL. CODE CIV. PROC. §§ 1060-1061. Recall, however, that the existence of a cause of action can, like jurisdiction, be challenged at any point. See id. § 480.30. Declaratory relief is a good example of how the California courts, with the help of the Legislature, collapse the normal elements of federal standing with the existence of a cause of action. See, e.g., Ephraim v. Metro. Trust Co., 172 P.2d 501, 509 (Cal. 1946) (“And since no present legal controversy exists, a cause of action for declaratory relief is not stated.”). But the statutory requirement of an actual controversy does have some effect. Unlike in mandate and similar proceedings, see infra Part IV, a party cannot obtain a declaratory judgment over an issue of “great public importance” simply because the issue is important, without an actual controversy. See Wilson v. Trans. Auth. of Sacramento, 19 Cal. Rptr. 59, 64-65 (Cal. Ct. App. 1962).

63 See WITKIN, CAL. PROC. § 36. Care must be taken in separating those California cases that articulate the well-established “capable of repetition yet evading review” exception to mootness, Brown, Winfield & Canzoneri, Inc. v. Superior Court, 223 P.3d 15, 19 (Cal. 2010), which even the federal courts adhere to, see Citizens United v. Fed. Elections Comm’n, 130 S. Ct. 876, 895 (2010), and those California cases following the broader state rule that the justiciability bar against addressing moot issues may be overcome if the issues presented that will eventually recur are of “great public interest.” E.g., Stroh v. Midway Rest. Sys., 226 Cal. Rptr. 153, 158 (Cal. Ct. App. 1986). For an example that seems to combine both strands, see Ballard v. Anderson, 484 P.2d 1345, 1347 (Cal. 1971). The California courts’ willingness to relax the mootness rules may simply be a result of their recognition of citizen standing, which we cover infra Part IV.B.-C. After all, to say that a case has become moot yet retains important public interest means nothing if not that the plaintiff’s former peculiar and personal interest has ceased, but his interest as a citizen remains.

64 WITKIN, CAL. PROC. § 31.
again, the existence of such a controversy is an element of the cause of action). To be sure, California courts routinely dismiss actions for being unripe; but the rationale of those decisions is founded more on prudential concerns\textsuperscript{65} than on the fear of transgressing some jurisdictional or constitutional barrier.\textsuperscript{66}

2. Political Question

“The political question doctrine excludes from judicial review those controversies which revolve around policy choices and value determinations constitutionally committed for resolution to the [legislative and executive branches].”\textsuperscript{67} “The rule compels dismissal of a lawsuit when complete deference to the role of the legislative or executive branch is required and there is nothing upon which a court can adjudicate without impermissibly intruding upon the authority of

\textsuperscript{65} But see Midpeninsula Citizens for Fair Housing, 271 Cal. Rptr. at 104 (observing that “California courts . . . are not constrained by . . . the traditional ‘prudential barriers’ to standing”).

\textsuperscript{66} See, e.g., Pac. Legal Found., 655 P.2d at 313-14 (noting that the ripeness doctrine “is primarily bottomed on the recognition that judicial decisionmaking is best conducted in the context of an actual set of facts so that the issues will be framed with sufficient definiteness to enable the court to make a decree finally disposing of the controversy,” but also recognizing that courts should “resolv[e] concrete disputes if the consequence of a deferred decision will be lingering uncertainty in the law, especially when there is widespread public interest in the answer to a particular legal question”). That Pacific Legal Foundation deemed ripeness considerations not to be of jurisdictional moment is supported by the decision’s discussion of and reliance on Abbott Laboratories v. Gardner, 387 U.S. 136 (1967), see Pac. Legal Found. v. Cal. Coastal Comm’n, 655 P.2d 306, 314-15 (Cal. 1982), the leading federal prudential ripeness decision. See Reno v. Catholic Soc. Servs., 509 U.S. 43, 57 (1993).

another branch of government." Thus, the rule is a function of the separation of powers doctrine.

III

CALIFORNIA QUASI-STANDING REQUIREMENTS IMPORTED FROM THE COMMON LAW AND FEDERAL PRACTICE

In this section we set forth our understanding of two doctrines that have parallels in the federal courts and that straddle the line between the merits and nonmerits, prudential and jurisdictional: the real party in interest doctrine and third party standing.

A. Real Party in Interest Doctrine

The real party in interest doctrine derives from equity practice. Its purpose is both remedial and prophylactic: it allows the assignee of a chose in action to sue in her own name, and protects a defendant from duplicate liability. The doctrine applies at the federal level through the Rules of Civil Procedure, but in California it is part of the Code of Civil


69 Id. at 749 (“Essentially the ‘political question’ rule relates to the appropriate role of the judiciary in a tripartite system of government.”).

70 Michael C. Ferguson, Comment, The Real Party in Interest Rule Revitalized: Recognizing Defendant’s Interest in the Determination of Proper Parties Plaintiff, 55 Cal. L. Rev. 1452, 1453 (1967) (“While the history of the real party in interest rule cannot be traced with any certainty before 1848, the rule probably originated in the practices of the English and American courts of equity.”).


Procedure. That Code provides: “Every action must be prosecuted in the name of the real party in interest, except as otherwise provided by statute.” The question, however, is whether this doctrine bears any of the hallmarks of federal standing doctrine.

At first blush it appears not. Federal standing concerns whether a plaintiff has the requisite interest, apart from the merits of the action, to bring suit. The real party in interest doctrine, however, is concerned with whether, under the substantive law, the plaintiff has the right to bring suit. The real party in interest doctrine is most commonly invoked in private law disputes, whereas federal standing generally concerns public law disputes.

73 CAL. CODE CIV. PROC. § 367.

74 Jasmine Networks, Inc. v. Superior Court, 103 Cal. Rptr. 3d 426, 433 (Cal. Ct. App. 2009); 4 WITKIN, CAL. PROC. § 121 (“The purpose of the statute . . . is to save a defendant, against whom a judgment may be obtained, from further harassment of vexation at the hands of other claimants to the same demand.”) (quoting Giselman v. Starr, 40 P. 8,10 (Cal. 1895)).

75 One contemporary and significant example of where federal standing objections have been raised in non-public law disputes is in the recent spate of public nuisance tort actions filed by various states, cities, and environmental groups against the half-dozen or so largest energy companies in America. These suits contend that the energy companies’ emissions contribute to the public nuisance of global warming, whose climatological effects injure the plaintiffs’ sovereign territories and private property. In all these cases, the energy companies have contended that the plaintiffs lack standing to pursue their tort claims in federal court, on the grounds that no global-warming-related injury is fairly traceable to any of the energy companies’ emissions, and that an injunction imposing a cap-and-reduction regime on the companies would not produce any measurable difference in climate change. The Supreme Court granted review in its 2010 Term to one of these cases, but ultimately avoided the standing issue by ruling that the Clean Air Act displaces the plaintiffs’ federal common law nuisance claims. See Am. Elec. Power Co. v. Connecticut, 131 S. Ct. 2527, 2540 (2010). For a review of the various standing objections, see Amicus Brief of Pacific Legal Foundation, Am. Elec. Power Co. v. Connecticut, available at http://plf.typepad.com/files/feb-2011-final-ac-brief.pdf (last visited Jan. 17, 2012).
Nevertheless, one can discern the inchoate elements of federal standing in the real party in interest doctrine. Federal standing emerged from a private law paradigm. As Cass Sunstein explains, “[i]f administrators intruded on interests protected at common law, judicial review was available to test the question whether there was statutory authorization for what would otherwise be a common-law wrong.” “At private law there is no need for a distinctive set of principles to govern standing,” because private law generally does not allow individuals to sue over a third party’s injury even where they are materially affected by that injury. One of the reasons for that result is the real party in interest doctrine. The doctrine achieves some of the goals of federal standing doctrine, such as encouraging adversarial presentation of issues and avoiding advisory opinions. It does so by ensuring that only those parties who have a

76 That is a fact born out, unfortunately, in the description of “real party in interest” concerns using federal standing terms. See, e.g., Pryor v. Pryor, 99 Cal. Rptr. 3d 853, 864 (Cal. Ct. App. 2009) (“Although the Elder Abuse Act has been amended almost annually, the Legislature has not chosen to give a third party standing to annul the marriage of a dependent adult on the ground of fraud.”) (footnote omitted).

77 Sunstein, supra n.11, at 1432 (“It is ironic that during the early period of administrative law, doctrines controlling regulatory agencies were built directly on common-law principles that administrative regulation was self-consciously designed to displace.”). Cf. Henry P. Monaghan, Third Party Standing, 84 COLUM. L. REV. 277, 279, 280 n.17 (1984).

78 Id. at 1434.

79 Id. at 1435.

80 See id. at 1434-35. See also 4-17 MOORE’S FEDERAL PRACTICE–CIVIL § 17.10[1] (“One who merely stands to benefit from the action, economically or otherwise, is not necessarily a real party.”) (citing Navarro Sav. Ass’n v. Lee, 446 U.S. 458, 464-465 (1980)).

81 That is an observation born out by the frequency with which California courts treat the two doctrines interchangeably. See, e.g., Branick v. Downey Sav. & Loan Ass’n, 138 P.3d 214, 219 (Cal. 2006) (“[C]ourts have permitted plaintiffs who have been determined to lack standing, or who have lost standing after the complaint was filed, to substitute as plaintiffs the true real
sufficiently substantial interest in the controversy are allowed to bring suit. The same purpose undergirds federal standing.

B. Third-Party Standing

The essence of third-party standing is the power of one party to invoke another’s rights to remedy her own injury, even though her rights may not have been violated by the impugned governmental action. Third-party standing is advanced in two distinct situations. First, there are “overbreadth” challenges, where the law allegedly regulates so much protected activity that it was void ab initio, regardless of the fact that the law may be applied constitutionally in at least parties in interest.”); Ridgewater Assocs. LLC v. Dublin San Ramon Serv., 108 Cal. Rptr. 3d 894, 898 (Cal. Ct. App. 2010) (“The standing doctrine derives from the statutory requirement that: ‘Every action must be prosecuted in the name of the real party in interest.’”) (quoting CAL. CODE CIV. PROC. § 367); City of Irvine v. Irvine Citizens Against Overdevelopment, 30 Cal. Rptr. 2d 797, 799 (Cal. Ct. App. 1994) (“It is of course basic that [e]very action must be prosecuted in the name of the real party in interest. Plaintiffs have standing to sue if they or someone they represent have either suffered or are threatened with an injury of sufficient magnitude to reasonably assure the relevant facts and issues will be adequately presented.”) (citations omitted).

82 City of Irvine, 30 Cal. Rptr. 2d at 799.


84 Although this section focuses on the public law aspects of third-party standing, the doctrine also operates in the private law sector, most prominently, under the guise of the third-party beneficiary doctrine. See CAL. CIV. CODE § 1559 (“A contract, made expressly for the benefit of a third person, may be enforced by him at any time before the parties thereto rescind it.”); Spector v. Nat’l Pictures Corp., 20 Cal. Rptr. 307, 311 (Cal. Ct. App. 1962) (“The effect of Civil Code section 1559 . . . is to exclude persons only remotely or incidentally benefited.”). It is interesting to note that the Supreme Court has recently referred to the doctrine as implicating a party’s “standing.” See Martinez v. Combs, 49 Cal. 4th 35, 77 (Cal. 2010) (discussing evidence “show[ing that] the parties to the contrast . . . intended to benefit plaintiffs” as going to the plaintiffs’ “standing”).

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some instances. Second, there are “pure” cases of third-party standing, where the plaintiff plainly seeks to vindicate the constitutional rights of third parties.

One prominent commentator has summarized third-party standing as either the “assert[ion of] a substantive due process right to interact with a third party right holder free from unjustifiable governmental interference,” or the acceptance of “a judicially licensed private attorney general.” In some respects, third-party standing closely parallels the real party in interest doctrine, while producing opposite results. That is, under the real party in interest doctrine, the presumption is that only the real party in interest has the right to bring suit; in contrast, the point of third-party standing is to justify allowing parties to bring suit to vindicate


86 For example, in Barrows v. Jackson, 346 U.S. 249 (1953), the Court allowed “a white vendor to raise a black vendee’s rights as a defense in a suit charging the vendor with breach of a racially restrictive covenant.” Monaghan, supra n.77, at 288. Another example is Craig v. Boren, 429 U.S. 190 (1976), where the Court, in overturning an Oklahoma statute imposing different legal drinking ages between men and women, allowed a vendor to raise the equal protection rights of its customers to invalidate the law. See Monaghan, supra n.77, at 289.

87 Monaghan, supra n.77, at 282.

88 See Jasmine Networks, Inc. v. Superior Court, 103 Cal. Rptr. 3d 426, 434 (Cal. Ct. App. 2009) (“The rule of [real party in interest] would indeed seem to be implicated by any true case of jus tertii . . . .”). A certain blending of such “real party in interest” concerns with the nomenclature of standing oftentimes appears in the criminal procedure context. See, e.g., People v. Badgett, 895 P.2d 877, 883 (Cal. 1995) (“In deciding whether defendants had standing to bring their motion, it is important to recall that defendants must allege a violation of their own rights in order to have standing to argue that testimony of a third party should be excluded because it is coerced.”).
the public rights of others not before the court.\textsuperscript{89} Thus, although it functions like a standing doctrine,\textsuperscript{90} its purpose is quite different. Whereas federal standing exists to weed out cases, third-party standing exists to keep cases in.\textsuperscript{91}

Another important distinction between third-party and federal standing is that the former is wholly a prudential rule.\textsuperscript{92} The rule is prudential, not constitutional, because it pertains to those parties who are in fact injured by governmental action, but whose injury derives from the violation of some other person’s constitutional rights.\textsuperscript{93}

\textsuperscript{89} Cf. Sedler, \textit{supra} n.85, at 1316 (“The crucial question here is not ‘Is this the proper party to challenge this law?’ Rather, it is ‘May this party strengthen his claim on the merits of the case by raising third parties’ rights?’”).

\textsuperscript{90} See Sedler, \textit{A Substantive Approach}, \textit{supra} n.85, at 1317 (“[D]espite the many differences between them, standing and jus tertii rules sometimes overlap.”). One significant difference, however, is that the doctrine may have a limiting effect on defendants, see \textit{Jasmine Networks}, 103 Cal. Rptr. 3d at 433-34, see Sedler, \textit{supra} n.85, at 1316 (“Defendants have no standing problems.”).

\textsuperscript{91} To be fair, that result is due to the peculiar phenomenon that, “[a]lthough the Court has exercised its discretion to articulate a general presumption against the assertion of third-party claims, the Court has allowed so many exceptions to its rule, particularly in recent years, that the rule seems honored only in the breach.” Note, \textit{Standing to Assert Constitutional Jus Tertii}, 88 HARV. L. REV. 423, 425 (1974). See also id. at 436 (“The Supreme Court has never adequately elaborated the reasons for its general rule against the assertion of jus tertii.”).


\textsuperscript{93} Cf. Note, \textit{Standing to Assert}, \textit{supra} n.91, at 429-30 (“[T]he Court appears never to have heard a case in which a litigant’s only assertion of harm was that the challenged action deprived third parties of their constitutional rights.”).
An interesting example of third-party standing in California is *Johnson v. Department of Social Services*,\(^94\) in which the operators of a licensed day care facility challenged the Department’s policy forbidding corporal punishment. The operators advanced a number of theories as to why the policy violated the constitutional rights of the *parents*, which violation in turn impinged upon the contractual rights of the operators.\(^95\) The court proceeded to address the issue of third-party standing *sua sponte*:

The general rule is appellants must allege they belong to the class of persons whose constitutional rights they assert. [A] charge of unconstitutional discrimination can only be raised in a case where this issue is involved in the determination of the action, and then only by the person or a member of the class of persons discriminated against. Appellants . . . vicariously assert the parents’ alleged constitutional right to permit corporal punishment. . . . [¶] In the case at bar parents of children attending appellants’ nursery arguably face a possible dilution of their constitutional rights by application of respondent’s regulation banning appellants from administering corporal punishment. We have some reservations about appellants’ standing in this action; however, we address the merits.\(^96\)

In reaching its conclusion, the court relied in part on the United States Supreme Court’s decision in *Craig v. Boren*,\(^97\) which allowed a liquor purveyor to challenge on equal protection grounds a law that imposed different minimum age requirements for male and female alcohol purchasers. Although *Johnson* cloaked its discussion in terms of federal standing, the case law supports the conclusion that in California, just as in the federal courts, third-party standing is a


\(^{95}\) See id. at 51.

\(^{96}\) Id. at 51-52 (footnote, citations, and quotation marks omitted).

\(^{97}\) 429 U.S. 190 (1976).
prudential doctrine.\textsuperscript{98} And, just as at the federal level, the California courts sometimes confuse, or at least allow to overlap,\textsuperscript{99} various aspects of federal and third-party standing.\textsuperscript{100}

\textsuperscript{98} See, e.g., Quong Ham Wah Co. v. Indus. Accident Comm’n, 192 P. 1021, 1023 (Cal. 1920) (“Thus, where no member of a class alleged to be unlawfully discriminated against by a statute is in a position to raise the constitutional question, then any person affected by the application of the statute can urge its unconstitutionality.”); Francis v. County of Stanislaus, 57 Cal. Rptr. 881, 885 (Cal. Ct. App. 1967) (“[I]f one would successfully assail a law as unconstitutional, he must show that the feature of the act complained of operates to deprive him of some constitutional right, or the enjoyment of some constitutional privilege, unless there is some reason why he should be excepted from the general rule.”) (quoting 11 CALIFORNIA JURISPRUDENCE § 69, at 396-98 (2d ed.)) (emphasis added). Cf. Midpeninsula Citizens for Fair Housing v. Westwood Investors, 271 Cal. Rptr. 99, 104 (Cal. Ct. App. 1990) (“Nor are we persuaded by the argument that California courts . . . have historically been more liberal in conferring standing upon a wider class of ‘persons aggrieved’ by discriminatory practices.”).

\textsuperscript{99} A recent example of such confusion can be found in Ralphs Grocery Store Co. v. United States Food & Commercial Workers Union, 120 Cal. Rptr. 3d 878 (Cal. Ct. App.), pet’n for review granted, depublished by, 123 Cal. Rptr. 3d 576 (Cal. 2011). The case concerned Ralph’s challenge to California’s Moscone Act and Labor Code Section 1138.1, which give striking workers the right to picket on their employers’ private property, as well as immunity from a trespass action. The majority opinion, authored by Justice Detjen, ruled that the Act violated the free speech provisions of the California Constitution because they privilege labor-related speech over all other speech, Ralphs Grocery Store Co., 120 Cal. Rptr. 3d at 885, but did not address the third-party standing issue raised by Ralphs’ invoking the free speech rights of others. Justice Kane, concurring, noted that Ralphs’ standing was obvious: its property rights were injured by the Union’s trespass. See id. at 886-87 (Kane, J., concurring). Yet somewhat curiously, Justice Kane’s explanation as to why Ralphs does have standing relies almost entirely on federal precedents. Although that may not be peculiar based on what we have already seen California courts do, it is here because Justice Detjen’s majority opinion had already made clear that the actual controversy requirement of California standing is less demanding than the federal standard. Id. at 883 (majority opinion). Justice Kane’s concurrence explained that, because Ralphs had raised the First Amendment argument only in reply to the Union’s defense to the trespass action, the usual concerns about third party invocation of constitutional rights were inapposite. See id. at 888 (Kane, J., concurring). The decision elicited a vigorous dissent from Justice Wiseman, who unfortunately exacerbated the confusion on standing by characterizing the issue as a jurisdictional one, id. at 888-89 (Wiseman, J., dissenting), and relying in part on federal precedents, id. at 889, yet without acknowledging that even at the federal level third-
IV
QUASI-STANDING REQUIREMENTS FOR
MANDAMUS ACTIONS

Traditionally understood, a writ of mandate (or mandamus) is a directive by a court of
superior jurisdiction to a public official, government agency, or inferior court commanding the
performance of an act required by law.\textsuperscript{101} California recognizes two types of writs of mandate.
The first, known as “traditional mandate,” is authorized under California Code of Civil
Procedure Section 1085. The second type of writ of mandate, authorized by California Code of
Civil Procedure Section 1094.5, is known as “administrative mandate.”\textsuperscript{102}

This section begins with a brief explanation of the differences between the two
mandamus causes of action recognized in California. Yet, only petitions brought for traditional
mandate raise standing concerns for California courts. Further, standing under traditional
mandate illuminates the California judiciary’s ongoing struggle with (quasi-) standing concepts.
California courts have developed one body of caselaw that treats traditional mandate according
to the quasi-standing requirements found in California Code of Civil Procedure Section 1086, but
the courts have also developed an entirely separate body of caselaw, a citizen suit, that

\footnotesize{party standing is a species of prudential standing which, as the label implies, can be dispensed
with in appropriate circumstances.}

\textsuperscript{100}See Stocks, 170 Cal. Rptr. at 730-34 (conflating aspects of third-party standing with the
redressability component of federal standing).

\textsuperscript{101}See BLACK’S LAW DICTIONARY 1113 (rev. 4th ed. 1968).

\textsuperscript{102}See generally HON. KATHLEEN M. BANKE, ET AL., CALIFORNIA WRIT PRACTICE § 3.18 (Hon.
and administrative writs of mandate); see also Conlan v. Bonta, 125 Cal. Rptr. 2d 788, 793-94
eviscerates the quasi-standing requirements of Section 1086. This break is well documented and remains relevant to understanding how California courts have reconciled mandamus standing with other quasi-standing requirements discussed in this article. Citizen suits merit particular attention because of their sweeping breadth. However, the courts have recognized the potential scope of a citizen suit and have reigned in its applicability.

A. Distinguishing Between Traditional and Administrative Mandate

Traditional mandate petitions track other states’ mandamus concepts, and “may be issued by any court to any inferior tribunal, corporation, board, or person, to compel the performance of an act which the law specially enjoins.” They have been brought to compel a wide variety of acts required by California law. For example, successful petitions for traditional writs of mandate have been brought to compel a duty to correctly calculate and distribute tax revenue, to compel a school district to notify a teacher of a job classification in a timely

103 See, e.g., People v. Nelson, 178 N.E. 485, 487 (Ill. 1931) (“The writ of mandamus is a summary writ issued from a court of competent jurisdiction commanding the officer to whom it is addressed to perform some specific duty which the relator is entitled of right to have performed and which the party owing the duty has failed to perform.”); State ex rel. Onion v. Supreme Temple Pythian Sisters, 54 S.W.2d 468, 469 (Mo. 1932) (“Mandamus is a legal, and not an equitable, remedy of necessity, it is a stern, harsh writ, and, when issued, is an unreasoning, inflexible, peremptory command to do a particular thing therein specified without condition.”); Lahiff v. St. Joseph’s Total Abstinence & Benevolent Soc’y, 57 A. 692, 693 (Conn. 1904) (“[The writ of Mandamus] lies to compel the performance of a public duty, or one imposed by public authority and for the nonperformance of which there is no other specific or adequate remedy at law . . . .”).

104 CAL. CODE CIV. PROC. § 1085.

105 City of Dinuba v. County of Tulare, 161 P.3d 1168, 1173 (Cal. 2007).
manner, and to compel the Director of the Department of Social Services to take action to ensure that funding for foster care would not be lost.

In contrast, administrative writ of mandate petitions do not follow traditional concepts. Administrative mandate is a relatively modern procedural mechanism created as a result of the growing authority delegated to California administrative agencies. Before an administrative writ of mandate petition can be brought, there must be a hearing required by law, where evidence is required to be taken, and where discretion was vested in an inferior decision maker. To

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106 Kavanaugh v. West Sonoma County Union High Sch. Dist., 62 P.3d 54, 64 (Cal. 2003).
108 Section 1094.5 of the California Code of Civil Procedure was enacted in 1945, 1945 Cal. Stat. ch. 868, § 1, several years before the federal Administrative Procedure Act, 5 U.S.C. §§ 701-706, which in some respects provides an analogous remedy as against federal agencies.
109 CAL. CODE CIV. PROC. § 1094.5(a). See also Keeler v. Superior Court, 297 P.2d 967, 969 (Cal. 1956) (administrative mandate “is applicable only when a hearing and the taking of evidence among other things are required.”); O.W.L. Found. v. City of Rohnert Park, 86 Cal. Rptr. 3d 1, 30 (Cal. Ct. App. 2008) (administrative mandate is improper where hearing is not required by law); Blue Cross v. State Dep’t of Health Servs., 62 Cal. Rptr. 3d 772, 777 (Cal. Ct. App. 2007) (same); BANKE, supra n.102, at § 3.4.
110 CAL. CODE CIV. PROC. § 1094.5(a). See also Taylor v. State Personnel Bd., 161 Cal. Rptr. 677 (Cal. Ct. App. 1980) (denying administrative mandate because “[w]hatever its label, . . . [it] is not a proceeding in which evidence is required to be taken”); Keeler, 297 P.2d at 969; BANKE, supra n.102, at § 3.5.
111 CAL. CODE CIV. PROC. § 1094.5(a). This is the cornerstone of administrative mandate review. The inquiry is directed to what type of role the decision maker plays. If a petitioner wants review of discretionary fact-finding determinations, administrative mandate is proper. But if the petitioner seeks review of an administrative decision that is required by law, the petitioner must proceed by way of traditional mandamus. See Ocean Park Assocs. v. Santa Monica Rent Control Bd., 8 Cal. Rptr. 3d 421, 430-31 (Cal. Ct. App. 2004) (discussing discretionary review requirement of administrative mandate); BANKE, supra n.102, at § 3.6.
be sure, a traditional mandate action can be brought against administrative agencies. For example, where a plaintiff challenges the failure of an administrative body to act as required by law, traditional mandate is her only recourse.\textsuperscript{113} It is perhaps best to think of an administrative mandate petition as a means to challenge a final adjudicatory decision of some administrate body, not unlike an action under the Administrative Procedure Act\textsuperscript{114} in federal court.\textsuperscript{115} As a result of the specific jurisdictional requirements for administrative mandate petitions, standing inquiries are almost non-existent.

\textbf{B. Traditional Mandate (Cal. Code Civ. Proc. § 1085)}

In contrast to administrative mandate, courts routinely inquire into a petitioner’s standing when a party seeks a traditional writ of mandate under California Code of Civil Procedure Section 1085. A writ of mandate sought under Section 1085 must, by statute, be brought by a party “beneficially interested.”\textsuperscript{116} Section 1086, which contains the beneficial interest requirement, was enacted in 1872, and has been amended only once since.\textsuperscript{117} Although the

\begin{itemize}
\item \textsuperscript{112} See Banke, supra n.102, at § 3.18.
\item \textsuperscript{113} See Conlan, 125 Cal. Rptr. 2d at 794 (“The petition in this case was properly framed as one for ordinary mandamus because petitioners allege that the agency has failed to act as required by law.”).
\item \textsuperscript{114} 5 U.S.C. §§ 701-706.
\item \textsuperscript{115} See Banke, supra n.102, at § 3.18.
\item \textsuperscript{116} Cal. Code Civ. Proc. § 1086.
\item \textsuperscript{117} Section 1086 currently reads in full: “The writ must be issued in all cases where there is not a plain, speedy, and adequate remedy, in the ordinary course of law. It must be issued upon the verified petition of the party beneficially interested.” In 1907, the words “the verified petition” were substituted for “affadavit [sic], on the application.” See 1907 Cal. Stat. ch. 244, § 1.
\end{itemize}
language of the statute has remained consistent, Section 1086 has a strange history in California law.\textsuperscript{118}

Early decisions from the California Supreme Court wrestled with the beneficial interest requirement.\textsuperscript{119} The court solved this problem in the late twentieth century by separating the Section 1085 mandamus standing doctrines into two separate tracks. Although the break between beneficial interest cases and citizen suits did not become explicit until the 1980s,\textsuperscript{120} the court laid the foundation for the break much earlier.\textsuperscript{121}

In \textit{Fritts v. Charles},\textsuperscript{122} the petitioner sought a writ of mandate compelling the justice of the peace to arrest a citizen for operating a slot machine.\textsuperscript{123} The court held that the petitioner lacked a beneficial interest, because the law already provides for a remedy for criminal acts, and the petitioner was not directly affected by operation of the slot machine.\textsuperscript{124} In this latter respect,

\textsuperscript{118} It should also be noted that Section 1086 has other jurisdictional elements not addressed in this Article. For example, the “plain, speedy, and adequate remedy” language has its own body of case law. \textit{See, e.g.}, McKannay v. Horton, 91 P. 598, 600 (Cal. 1907); Financial Indem. Co. v. Superior Court, 289 P.2d 233, 236 (Cal. 1955); Hutchison v. Reclamation Dist. No. 1619, 254 P. 606, 609 (Cal. Ct. App. 1927). Given that the California Supreme Court considers the “beneficial interest” component to be the only “standing” inquiry, these other jurisdictional elements are not addressed in this article.

\textsuperscript{119} \textit{See infra} Part IV.C.

\textsuperscript{120} \textit{See} Green v. Obedo, 624 P.2d 256 (Cal. 1981).

\textsuperscript{121} In Part IV.C. \textit{infra}, we explore decisions discussing citizen suits brought under Section 1086, but here we answer some of the questions \textit{vis-à-vis} beneficial interest cases.

\textsuperscript{122} 78 P. 1057 (Cal. 1904).

\textsuperscript{123} \textit{Id.} at 1058.

\textsuperscript{124} \textit{Id.}
Fritts typifies cases where the court denies beneficial interest standing. In Parker v. Bowron, the petitioner sought to compel Los Angeles city officials to affix a salary for all city employees. The petitioner, while alleging that he was treasurer of a labor union, could not demonstrate that he would obtain any benefit from having the court affix a wage. Thus, where the petitioner seeks to confer a government benefit for others, the court has held that petitioners do not have standing to maintain the petition.

More recently, the California Supreme Court denied beneficial interest standing to a board member of the state psychology examining committee who sought to have the licensing laws enforced, because she “neither [sought] a psychology license, nor [was] in danger of losing any license she possesse[d].” The court has also denied beneficial interest standing to the victim of a crime, because “a private citizen has no personal legal interest in the outcome of an individual criminal prosecution against another person.”

Perhaps more informative on the contours of beneficial interest standing are the cases where the California Supreme Court has allowed petitioners to proceed. The court has

\footnotesize{
125 254 P.2d 6 (Cal. 1953).
126 Id. at 7.
127 Id. at 10.
128 Id. at 13.
131 At first blush, this area of California standing law may seem quite simple to explain, as the California Supreme Court has established a simple test that petitioners must meet in order to succeed on a petition claiming a beneficial interest. Namely, “(1) A clear, present and usually ministerial duty upon the part of the respondent; and (2) a clear, present and beneficial right in
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recognized three types of cases as sufficient to confer a beneficial interest on the petitioner: (1) a private petitioner seeking to be the direct recipient of a government-created benefit; (2) a governmental decision maker petitioning to have laws declared legal and binding; and (3) a private petitioner challenging an administrative decision that directly affects him. Of these three, only the first two remain relevant, as administrative decisions are now covered by the administrative mandate petition procedure discussed above.132

A petitioner is beneficially interested when she not only seeks to have a benefit conferred, but also stands as the direct beneficiary. In Johnson v. Langdon,133 a stockholder petitioner sought to inspect the books of the corporation for which he owned shares.134 A stockholder’s right to inspect the books of a corporation was, at that time, a constitutionally recognized right in California.135 And because the petitioner sought to obtain that benefit for

the petitioner to the performance of that duty.” People ex rel. Younger v. County of El Dorado, 487 P.2d 1193, 1199 (Cal. 1971) (citations omitted). But this test does not relate to standing (or even a quasi-standing inquiry), i.e., something prescinding from the merits of the writ petition. Rather, a petitioner that fulfills this test has demonstrated that she is entitled to a writ. Although the courts sometimes begin the analysis with this merits test, we shall see that there are quasi-standing principles that can be deduced for determining beneficial interest standing.

132 See supra text accompanying notes 108-115, discussing administrative mandate under Section 1094.5. For those cases finding a beneficial interest for petitioners seeking to overturn an administrative decision see, e.g., Bodinson Mfg. Co. v. California Employment Comm’n, 109 P.2d 935, 940-42 (Cal. 1941) (petitioner beneficially interested in having administrative decision of the California Employment Commission overturned); Covert v. State Bd. of Equalization, 173 P.2d 545, 547-48 (Cal. 1946) (petitioner beneficially interested in having administrative decision of the State Board of Equalization overturned).

133 67 P. 1050 (Cal. 1902).

134 Id. at 1050-51.

135 Id. at 1051.
himself *qua* stockholder, he was beneficially interested within the meaning of Section 1086.\textsuperscript{136} Similarly, a contractor who was awarded a contract for public improvement had a beneficial interest in petitioning the court to issue a writ of mandate compelling the city to certify the contract.\textsuperscript{137} Recently, the California Supreme Court held that a contracting company that was precluded from bidding on airport contracts had a beneficial interest in seeking to have those exclusionary requirements stricken.\textsuperscript{138}

Although mandamus generally lies only to compel government *action*, the California Supreme Court has held that government *actors* may also have a beneficial interest in securing a writ of mandate. For example, the court has held that the California Secretary of State is beneficially interested in obtaining a writ of mandate against a superior court that has declared a statute unconstitutional.\textsuperscript{139} The court reasoned that:

> [h]is beneficial interest is amply demonstrated by a showing that he bears overall responsibility for administering the disclosure laws the constitutionality of which is now challenged. The uncertainty engendered by the respondent court’s order of dismissal requires final resolution in order that the Secretary of State may be properly and fully informed with respect to these public responsibilities.\textsuperscript{140}

More recently, the Director of the California Department of Conservation successfully petitioned for a writ of mandate against a county that approved reclamation plans contravening the

\textsuperscript{136} *Id.* at 1051-52.

\textsuperscript{137} *See* Flora Crane Service, Inc. v. Ross, 390 P.2d 193, 195-96 (Cal. 1964).

\textsuperscript{138} *See* Associated Builders & Contractors, Inc. v. San Francisco Airport Comm’n, 981 P.2d 499, 504-05 (Cal. 1999).

\textsuperscript{139} Brown v. Superior Court, 5 Cal. 3d 509, 514 (Cal. 1971).

\textsuperscript{140} *Id.*
Director’s comments about their inadequacy. The court found that the Director’s “broad enforcement powers” with respect to the reclamation act in question provided a sufficiently beneficial interest to proceed in mandate.

The cases cited above provide a detailed overview of the circumstances where a court will find that a petitioner has beneficial interest standing to proceed under Section 1085 (as well as those cases where a court will not so find). But only recently has the California Supreme Court attempted to articulate a definition for “beneficial interest.” In two recent cases, the court has analogized a “beneficial interest” to the federal “injury-in-fact” test. Whether that analogy will withstand future scrutiny remains to be seen, as it appears that the court only adopted the analogy at the urging of the respondents in a particular case. Moreover, in both cases, the court relied principally on its own rich “beneficial interest” case law, and did not rely heavily on federal injury-in-fact precedent.

141 See People ex rel. Dep’t of Conservation v. El Dorado County, 116 P.3d 567, 571-78 (Cal. 2005).
142 Id. at 575.
143 See Associated Builders & Contractors, Inc., 981 P.2d at 504; People ex rel. Dep’t of Conservation, 116 P.3d at 572.
144 See Associated Builders & Contractors, Inc., 981 P.2d at 504 (“This standard, as the Commission points out, is equivalent to the federal ‘injury in fact’ test.”) (emphasis added).
145 See Associated Builders & Contractors, Inc., 981 P.2d at 504; People ex rel. Dep’t of Conservation, 116 P.3d at 572.

C. A Special Case: Citizen Suits

In the year Section 1085 was enacted, the California Supreme Court held in *Linden v. Board of Supervisors* that a beneficial interest “necessarily means that in an application made by a private party his interest must be of a nature which is distinguishable from that of the mass of the community.” Thus, a citizen *qua* citizen did not possess the requisite interest to proceed in mandate. In the following 30 years, however, the court would reverse itself a number of times.

First, seven years after *Linden*, the California Supreme Court held that a writ of certiorari was available to a beneficially interested “citizen and tax payer.” But, in another five years, the court reversed itself and denied a citizen or taxpayer standing, because “[a]ny

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146 *Linden* dealt with the predecessor to Section 1086. Nevertheless, the language is identical and *Linden* has since been used as precedent for Section 1086. *See* Marini v. Graham, 7 P. 442, 444 (Cal. 1885); Eby v. Bd. of Sch. Trustees, 25 P. 240, 243 (Cal. 1890); Frederick v. San Luis Obispo, 50 P. 661, 661 (Cal. 1897).

147 45 Cal. 6 (1872).

148 *Id.* at 7.

149 *Id.*

150 A writ of certiorari is different from a writ of mandate, but both writs have a “beneficial interest” requirement. *Compare* CAL. CODE CIV. PROC. § 1069 with *id.* § 1086. Moreover, the California Supreme Court has used the two beneficial interest requirements interchangeably. *See* Eby, 25 P. at 243 (“The language of section 1069 as to the ‘beneficial interest’ of the applicant for a writ of review is identical with that of section 1086, relating to the interest of the applicant for a writ of mandate, and no reason is perceived why it has not the same meaning in both sections.”). *See also* Ashe v. Bd. of Supervisors, 71 Cal. 236, 238 (Cal. 1886) (citing *Linden* as precedent for a Section 1069 action).

151 Maxwell v. Bd. of Supervisors, 53 Cal. 389, 392-93 (1879). The following year the California Supreme Court allowed a taxpayer to proceed in mandamus as well. *See* Hyatt v. Allen, 54 Cal. 353 (1880).
injury or annoyance which he suffered from . . . is not different in kind from that sustained by the public; therefore, he receives from it no special injury for which he is entitled in law.”152 Yet, by the 1890s, the court explicitly overruled these earlier cases that denied citizen taxpayers beneficial interest standing.153 Then, in 1904, the court again reversed, holding that, “a private individual can apply for this remedy only in those cases where he has some private or particular interest to be subserved, or some particular right to be preserved or protected by the aid of this process, independent of that which he holds with the public at large.”154 It is obviously difficult to discern a principle that can be used to distinguish the cases finding that a citizen has a beneficial interest from those cases where the citizen was found to have no such interest. In later years, the California Supreme Court would hold that “citizen standing” is an exception to beneficial interest standing, and is available in cases where the public need is “weighty.”155

As Section 1086 creates the statutory mechanism for bringing a writ of mandate, a party must have a “beneficial interest” in the subject matter of the litigation. In early California

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152 Marini v. Graham, 7 P. 442, 443-44 (Cal. 1885). The following year, the California Supreme Court again denied a citizen’s right to proceed in mandamus for failing to fulfill the beneficial interest requirement of Section 1086, although the court did note that citizens may come within the purview of the law “in certain cases.” Colnon v. Orr, 11 P. 814, 815 (Cal. 1886). That year, the court also held that a citizen/taxpayer was not beneficially interested in obtaining a writ of certiorari. Ashe, 71 Cal. at 238. The beneficial interest requirements in writs for mandamus and certiorari are identical. See supra n.150.

153 See Eby, 25 P. at 243 (“But the principle announced in Linden v. Alameda County, 45 Cal. 7, has been disregarded, and, in effect, that case has been overruled by later cases.”); Frederick v. San Luis Obispo, 50 P. 661 (Cal. 1897) (“[I]t is sufficient, at least in a case like the one at bar, to aver that the petitioner is a property owner and taxpayer.”).

154 Fritts v. Charles, 78 P. 1057, 1058 (Cal. 1904).

mandamus cases, therefore, courts prevented mandamus cases from proceeding where a citizen had “only the general interest that every citizen has in the proper discharge of public duties confided by law to public officers.” Yet, as explained below with respect to “taxpayer standing,” during this period of early California law the courts relaxed these standing requirements in cases seeking injunctive or declaratory relief (as opposed to cases proceeding via mandamus) under a taxpayer standing theory. Persons with interests no greater than that of a taxpayer at large could petition the court to force the government to restrain or prevent illegal expenditures.

Thus, California had a de facto two-tier system: a general taxpayer could seek an injunction to prevent illegal governmental activity, but that same taxpayer could not proceed in mandamus to compel governmental action. Perhaps as a result, California courts soon recognized that a party’s status as a taxpayer was a sufficient “beneficial interest” to proceed in mandamus. Therefore, in actions challenging illegal government action where the public fisc was implicated, the “beneficial interest” requirement of Section 1086 was satisfied by nothing

156 Linden v. Bd. of Supervisors of Alameda County, 45 Cal. 6, 7 (1872).

157 See infra Part V (discussing taxpayer standing).

158 See, e.g., Schumacker v. Toberman, 56 Cal. 508, 512 (1880) (“Every tax payer [sic] is interested, and may properly commence a proceeding to enjoin the city council from doing an act which may result in an addition to the burdens of taxation”); Gibson v. Bd. of Supervisors of Trinity County, 22 P. 225, 227 (Cal. 1889) (“[A]s a property owner and tax-payer, he is sufficiently a party interested.”); Barry v. Goad, 26 P. 785 (Cal. 1891).

159 See Hyatt v. Allen, 54 Cal. 353, 360 (1880) (“We think that the petitioner, who is a taxpayer [sic] within the district of which the respondent is Assessor, is ‘a party beneficially interested’ in having all the taxable property in the district assessed, and is therefore a proper party to make the affidavit for the issuance of the writ in this case.”).
more than a petitioner averring that she was a taxpayer. Soon thereafter, the beneficial interest requirement was held to be satisfied even in cases not necessarily implicating the public fisc. A taxpayer met the mandamus beneficial interest requirement by demonstrating that “the requirements and purpose of the law have been disregarded and defeated by the very officers entrusted with the performance of a public duty that was clearly obligatory.” It should be noted, however, that throughout these early mandamus cases, California courts were not carving out an “exception” to the beneficial interest requirement of Section 1086. Rather, the courts viewed citizen status as a sufficient “beneficial interest” under Section 1086 to proceed to the merits of a writ petition.

Although petitioners still had to demonstrate a beneficial interest under Section 1086, California courts began to shift the focus of this inquiry. For example, in San Diego v. Capps, the City of San Diego sought a writ to compel the mayor to appoint a chief of police. Because a city is, in the main, a legislative body, San Diego was not a party that could normally be considered “beneficially interested” in having a police chief appointed. Nevertheless, the court issued the writ because,

[w]here officers of a city charged with the performance of ministerial duties, neglect or refuse to follow the direction of the law under which they have

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160 See Frederick v. San Luis Obispo, 50 P. 661, 661 (Cal. 1897) (“[I]t is sufficient, at least in a case like the one at bar, to aver that the petitioner is a property owner and taxpayer.”).

161 Conn v. City Council of Richmond, 121 P. 714 (Cal. Ct. App. 1911).

162 Id. at 719.


164 Id. at 235.
assumed office, . . . [the City] should be permitted in [mandamus] to compel such officers to fulfill the obligation which their oath has imposed upon them.  

San Diego, by demonstrating that the law imposed a duty on a public official, and that the duty would affect the public at large, had established to the court’s satisfaction that it was entitled to a writ of mandate.  

Clearly, San Diego, a taxing body, had an interest unlike a taxpayer’s. Yet, because the City was entitled to proceed in mandamus without either a “beneficial interest” or the interest of a taxpayer, San Diego v. Capps demonstrates how California courts began shifting the focus in mandamus cases from the interest of the petitioner to the duty of the government or its officials.  

This shift in viewing mandamus petitions was consistent with other states that allowed mandamus actions. By the middle of the twentieth century, it was hornbook law that mandamus could be used to compel the performance of a public duty by a citizen at large. And in Board of Social Welfare v. City of Los Angeles, the California Supreme Court adopted the rule that,  

where the question is one of public right and the object of the mandamus is to procure the enforcement of a public duty, the relator need not show that he has any legal or special interest in the result, since it is sufficient that he is interested as a citizen in having the laws executed and the duty in question enforced.  

165 Id.  
166 Id.  
167 Id.; see also Platnauer v. Bd. of Supervisors of Sacramento County, 225 P. 12, 14 (Cal. Ct. App. 1924) (court issued writ to Sacramento taxpayer directing the Board of Supervisors of Sacramento County to appoint a justice of the peace).  
168 See Bd. of Social Welfare v. City of Los Angeles, 162 P.2d 627, 628 (Cal. 1945) (citing 35 AM. JUR. 73, § 320).  
169 162 P.2d 627 (Cal. 1945).  
170 Id. at 628-29.
The shift of focus from injury to duty is logical where courts recognize citizen standing, which is based not on an injury unique to the petitioner but rather on her widely shared citizen’s interest in having the laws properly executed.

Thus, the rule from *Board of Social Welfare* blended the beneficial interest requirement with the requirement that mandamus can only compel an unfulfilled duty of a government official. Indeed, the “beneficial interest” was deemed to include a citizen’s interest in, and benefits from, enforcing the rule of law. The court viewed “citizen status” as a consistent, albeit broad, interpretation of the statutory requirement of a beneficial interest.\(^{171}\)

Three years later the California Supreme Court backed away from relying on the “beneficial interest” language when determining standing in mandamus cases.\(^{172}\) Instead, it simply cited the rule from *Board of Social Welfare* that there was no “merit to the contention that petitioner is not a properly interested party” by virtue of the petitioner’s citizen status.\(^{173}\) In 1962, the court held in *Pitts v. Perluss*\(^{174}\) that a “citizen with a substantial interest in the enforcement of [a] . . . public duty” had standing to maintain an action in mandamus.\(^{175}\)

The difference is not in the rule itself, but how the California Supreme Court characterized that rule in relation to the statute. Instead of reasoning that the rule was consistent

\(^{171}\) *Id.* at 628 (“nevertheless the board is a ‘party beneficially interested’ in the issuance of such warrant”).

\(^{172}\) Hollman v. Warren, 196 P.2d 562 (Cal. 1948).

\(^{173}\) *Id.* at 566.

\(^{174}\) 377 P.2d 83 (Cal. 1962).

\(^{175}\) *Id.* at 86 (emphasis added).
with the statute, the court now held that the rule was essentially independent of the statute. In other words, the court adopted the “citizen standing” rule exception from Board of Social Welfare, but did not hold that the rule came from Section 1086’s “beneficial interest.” Seizing on the language from Board of Social Welfare, Hollman, and Pitts, lower California courts openly declared “citizen standing” an exception to Section 1086’s beneficial interest requirement.\footnote{See, e.g., Fuller v. San Bernardino Valley Mun. Water Dist., 51 Cal. Rptr. 120, 124 (Cal. Ct. App. 1966) (“An exception to the foregoing general rule is recognized where the question is one of public right and the object of the writ is to procure performance of a public duty.”); Kappadahl v. Alcan Pac. Co., 35 Cal. Rptr. 354, 365 (Cal. Ct. App. 1963) (calling the beneficial interest requirement “modified” where “public duties are enforced”); Am. Friends Serv. Comm. v. Procunier, 109 Cal. Rptr. 22, 24 (Cal. Ct. App. 1973) (saying the standing rule is “relaxed” where “the question is one of public, as opposed to private, interest, and petitioner seeks performance of a public duty”).}

Then, in 1981, the California Supreme Court squarely held in Green v. Obledo\footnote{624 P.2d 256 (Cal. 1981).} that there was a “‘public right/public duty’ exception to the beneficial interest requirement for traditional writs of mandate.”\footnote{Id. at 257 (emphasis added).} Green remains the court’s most thorough discussion of what has since become informally known as “citizen standing.”\footnote{See Connerly v. State Personnel Bd., 112 Cal. Rptr. 2d 5, 29 (Cal. Ct. App. 2001).} The decision explained that “[t]he exception promotes the policy of guaranteeing citizens the opportunity to ensure that no governmental body impairs or defeats the purpose of legislation establishing a public right.”\footnote{Green, 624 P.2d at 266.}
Thus, the writ petitioners, by establishing that they were “certainly citizens seeking to procure the enforcement of a public duty,” were entitled to proceed to the merits of their claim.\(^{181}\)

**D. Limits on Maintaining Citizen Suits**

The California Supreme Court has broadly defined the requirements for maintaining citizen suits to promote the goals of “guaranteeing citizens the opportunity to ensure that no governmental body impairs or defeats the purpose of legislation.”\(^{182}\) But the court has also fashioned practical rules to limit the availability of citizen suits in certain actions. In *Carsten v. Psychology Examining Committee of the Board of Medical Quality Assurance*,\(^{183}\) the petitioner sought a writ of mandate compelling the Psychology Examining Committee, *on which she sat*, to follow certain laws with respect to the licensing of psychologists.\(^{184}\) The court refused to allow the petitioner to proceed under a citizen theory, “because of the inevitable damage such lawsuits will inflict upon the administrative process.”\(^{185}\) The court noted several problems with affording the petitioner citizen status to pursue her claim. First, she was seeking an advisory opinion in that she could not demonstrate that a “judgment . . . would affect [any] person either favorably or detrimentally.”\(^{186}\) Second, because she was suing the board on which she sat, she was “in effect suing herself,” and “courts should [not] encourage or permit this type of narcissistic

\(^{181}\) *Id.* at 267.

\(^{182}\) *Id.* at 266.

\(^{183}\) 614 P.2d 276 (Cal. 1980).

\(^{184}\) *Id.* at 277-78.

\(^{185}\) *Id.* at 279.

\(^{186}\) *Id.*
litigation."\textsuperscript{187} Third, allowing claims by disgruntled administrative board members to go forward against their own board would “be disruptive to the administrative process and antithetical to its underlying purpose of providing expeditious disposition of problems in a specialized field without recourse to the judiciary.”\textsuperscript{188}

The California Supreme Court reached a similar conclusion in \textit{Dix v. Superior Court}.\textsuperscript{189} There, a crime victim sought a writ of mandate compelling the court to order the perpetrator back to prison.\textsuperscript{190} The court refused to allow a citizen suit to proceed on those grounds. As a threshold matter, the court noted that the petitioner was not alleging a “public duty,” because “[t]he public prosecutor has no enforceable ‘duty’ to conduct criminal proceedings in a particular fashion.”\textsuperscript{191} Moreover, “recognition of citizen standing to intervene in criminal prosecutions . . . would undermine the People’s status as exclusive party plaintiff in criminal actions, interfere with the prosecutor’s broad discretion in criminal matters, and disrupt the orderly administration of justice.”\textsuperscript{192}

The California Supreme Court also refused to allow a municipal court to pursue a mandamus action under a citizen theory against the superior court in which it sat.\textsuperscript{193} The

\begin{flushleft}
\textsuperscript{187} Id.
\textsuperscript{188} Id.
\textsuperscript{189} 807 P.2d 1063 (Cal. 1991).
\textsuperscript{190} Id. at 1065-66.
\textsuperscript{191} Id. at 1068.
\textsuperscript{192} Id.
\textsuperscript{193} Municipal Court v. Superior Court, 857 P.2d 325, 328 (Cal. 1993).
\end{flushleft}
municipal court sought a writ of mandate to set aside the superior court’s determination that the municipal court could not have commissioners make probable cause determinations within 48 hours of a detainee’s arrest.\textsuperscript{194} The court refused to grant citizen status to the municipal court primarily because “[t]here is no public duty to use court commissioners to make probable cause determinations. No public right would be enforced should the Municipal Court prevail in the mandamus proceeding.”\textsuperscript{195} Additionally, the court noted that, because “the underlying issue can be raised by interested parties in another action, there is no reason to address it here.”\textsuperscript{196}

Although not decided by the California Supreme Court, one additional potential limitation on citizen suits should be mentioned. In \textit{Waste Management of Alameda County, Inc. v. County of Alameda},\textsuperscript{197} a California court of appeal placed a substantial limitation on noncitizens’ ability to bring citizen suits. While the \textit{Waste Management} court correctly summarized the policy behind citizen suits, it held that the petitioner there could not maintain a suit primarily because it was not a \textit{de jure} citizen.\textsuperscript{198} Indeed, the crux of that court’s analysis on the question of citizen suits centers around whether the petitioner-corporation could be considered a “citizen” under a variety of (noncitizen suit related) legal theories.\textsuperscript{199}

\begin{footnotes}
\footnotetext{194}{\textit{Id.} at 326.}
\footnotetext{195}{\textit{Id.} at 328.}
\footnotetext{196}{\textit{Id.}}
\footnotetext{197}{94 Cal. Rptr. 2d 740 (Cal. Ct. App. 2000).}
\footnotetext{198}{\textit{Id.} at 749-51.}
\footnotetext{199}{\textit{See id.} at 750-51 (citing cases dealing with a corporation’s status as “citizens” in the context of diversity of citizenship, privacy, political contributions, etc.).}
\end{footnotes}
But the Waste Management court read “citizen” suits too literally. As noted above, the “citizen suit” language is merely a (newly adopted) term of art that describes the right being asserted, not the status of the person or entity enforcing that right.\textsuperscript{200} The Waste Management issue finally came to a head last year when the California Supreme Court accepted review in Save the Plastic Bag Coalition v. City of Manhattan Beach.\textsuperscript{201} There, the lower court properly found that the petitioner had standing,\textsuperscript{202} but the respondent successfully petitioned the California Supreme Court to hear its Waste Management objection to the petitioner nonprofit corporation’s reliance on citizen standing.\textsuperscript{203} The California Supreme Court explicitly overruled the Waste Management decision insofar as it held corporations to a higher standard on demonstrating citizen standing.\textsuperscript{204} The Court reasoned that “[t]he term ‘citizen’ in this context is descriptive, not prescriptive. It reflects an understanding that the action is undertaken to further the public interest and is not limited to the plaintiff’s private concerns.”\textsuperscript{205}

V

TAXPAYER STANDING IN CALIFORNIA

\textsuperscript{200} See Bd. of Social Welfare v. City of Los Angeles, 162 P.2d 627, 628-29 (Cal. 1945).

\textsuperscript{201} 229 P.3d 984 (Cal. 2010).

\textsuperscript{202} Save the Plastic Bag Coalition v. City of Manhattan Beach, 105 Cal. Rptr. 3d 41 (Cal. Ct. App. 2010), review granted, depublished by, 229 P.3d 984.

\textsuperscript{203} See California Appellate Court, Supreme Court, Case Summary, Supreme Court Case: S180720, available at http://appellatecases.courtinfo.ca.gov/search/case/mainCaseScreen.cfm?ist=0&doc_id=1936040&doc_no=S180720 (listing issues raised in the petition).

\textsuperscript{204} Save the Plastic Bag Coalition v. City of Manhattan Beach, 254 P.3d 1005, 1014 (Cal. 2011) (“We disapprove Waste Management . . . to the extent it held that corporate parties are routinely subject to heightened scrutiny when they assert public interest standing.”).

\textsuperscript{205} Id. at 1013.
Taxpayer standing is understood by most as a limited exception to federal standing requirements. Taxpayer standing in California courts, however, bears little resemblance to its federal counterpart. This section begins with an explanation of taxpayer standing in California, before detailing its evolution from a right found in California common law to a statutory cause of action. Questions concerning a plaintiff's ability to bring a taxpayer suit, while often discussed as standing inquiries, are better seen as judicially imposed limitations on the cause of action itself. These quasi-standing limitations make up the remainder of the discussion of taxpayer standing in California.

A. The Origins of Taxpayer Standing

In Part I, the requirements for standing at the federal level were set out. For challenges brought pursuant to the Establishment Clause of the First Amendment, there exists a narrow “taxpayer” exception to these federal standing requirements. The federal concept of taxpayer standing, however, is substantially different from the California doctrine.

As explained above, questions of standing generally only arise in the context of suits against the government or its officials. Broadly speaking, in order to sue the government, standing in federal court requires plaintiffs to demonstrate injury, causation, and redressability.

206 See supra text accompanying notes 8-16.

207 U.S. Const. amend I.


209 See supra nn.13-14. Cf. n.75 (discussing standing objections in suits concerning only private parties).

Standing in federal courts also requires satisfying an additional prudential component.\textsuperscript{211} Although taxpayer standing in California presupposes the existence of a governmental taxing entity being sued, the similarities between the two standing doctrines end there.

Taxpayer suits are brought on behalf of taxpayers within a given district “[w]hen a public official or public body performs illegal or unauthorized acts.”\textsuperscript{212} Taxpayer suits first arose in England in the early nineteenth century,\textsuperscript{213} but arose independently in the United States shortly thereafter.\textsuperscript{214} In the United States they have been used to challenge a wide array of governmental activity, from the legality of state contracts, to unconstitutional government conduct, to tax levies.\textsuperscript{215} At present, all 50 states allow taxpayer suits in some form,\textsuperscript{216} although each state has its own peculiarities.\textsuperscript{217}


\textsuperscript{212} Varu Chilakamarri, Comment, Taxpayer Standing: A Step Toward Animal-Centric Litigation, 10 ANIMAL L. 251, 254 (2004).

\textsuperscript{213} Comment, Taxpayers’ Suits: A Survey and Summary, 69 YALE L.J. 895, 898 (1960) [hereinafter “Taxpayers suits”] (citing Bromley v. Smith, 1 Sim. 8, 57 Eng. Rep. 482 (Ch. 1826)).

\textsuperscript{214} Id. (citing Adriance v. Mayor of New York, 1 Barb. 19 (N.Y. Sup. Ct. 1847)).

\textsuperscript{215} See Susan L. Parsons, Comment, Taxpayers’ Suits: Standing Barriers and Pecuniary Restraints, 59 TEMP. L. Q. 951, 952 (1986), and cases cited therein.

\textsuperscript{216} See id. at 952-53, and notes therein.

\textsuperscript{217} See Chilakamarri, supra n.212, at 271-81 (listing the differences between each state’s taxpayer standing doctrines).
The ability of California taxpayers to bring suits predates the current state constitution.\textsuperscript{218} In the earliest California cases (apparently\textsuperscript{219}) brought under a taxpayer theory, the right of taxpayers to bring suit was not disputed.\textsuperscript{220} Taxpayers were generally filing suit to prevent a governmental entity from issuing money to someone who was not entitled to it. For example, in \textit{Foster v. Coleman},\textsuperscript{221} a taxpayer obtained an injunction preventing the County of Los Angeles from overpaying a county assessor for his work.\textsuperscript{222} Similarly, in \textit{Soule v. McKibben},\textsuperscript{223} a taxpayer attempted to prevent the City of San Francisco from paying the salary of a city employee.\textsuperscript{224} These first taxpayer cases demonstrate that where the purported loss to the taxpayer was direct, \textit{i.e.}, the suits were maintained precisely to prevent the issuance of governmental tax dollars to some alleged undeserving entity, a taxpayer’s claim could proceed.

\textsuperscript{218} The current California Constitution was adopted by voters on May 7, 1879. See \textit{Golden Gateway Ctr. v. Golden Gateway Tenants Ass’n}, 29 P.3d 797, 826 (Cal. 2001); \textit{Strauss v. Horton}, 207 P.3d 48, 82-83 (Cal. 2009). Many of the taxpayers cases cited here predate the constitution’s adoption by more than 20 years.

\textsuperscript{219} With early California decisions it is sometimes difficult to ascertain how the litigants are challenging the illegal governmental conduct. In some of the cases cited in this section, there is no readily identifiable basis for determining how the plaintiffs are invoking the power of the court. Nevertheless, all the cases cited herein mention the plaintiffs’ status as a taxpayer. Moreover, numerous cases cited herein are used by later courts when ruling on taxpayer standing issues.

\textsuperscript{220} See, \textit{e.g.}, \textit{People ex rel. Raun and Plant v. Bd. of Supervisors of El Dorado County}, 11 Cal. 170 (1858); \textit{Upham v. Supervisors of Sutter Cty.}, 8 Cal. 378 (1857); \textit{People v. Supervisors of El Dorado County}, 8 Cal. 58 (1857).

\textsuperscript{221} 10 Cal. 278 (1858).

\textsuperscript{222} \textit{Id.} at 281.

\textsuperscript{223} 6 Cal. 142 (1856).

\textsuperscript{224} \textit{Id.} at 142-43.
In the years that followed, the California Supreme Court decided a number of cases brought by taxpayers seeking to enjoin the direct expenditure of taxpayer monies.\textsuperscript{225} However, the court also heard challenges from taxpayers where the illegal expenditure of tax dollars was a step removed. In these cases, taxpayers alleged that their government was engaging in an act that was either unconstitutional,\textsuperscript{226} or in some manner \textit{ultra vires}.\textsuperscript{227} These acts, the taxpayer plaintiffs argued, would (or did) increase the burden of taxation.

While the taxpayer plaintiffs were not always successful in these actions, in only one instance did the California Supreme Court reject the claim because the plaintiff was a taxpayer. The court’s reasoning in the case rejecting a taxpayer’s ability to maintain his suit, \textit{People ex rel. Smith v. Myers},\textsuperscript{228} is noteworthy. In \textit{Myers}, taxpayer plaintiffs attempted to bring suit \textit{on behalf of} Stanislaus County to void a contract made by Stanislaus County.\textsuperscript{229} The court rejected this procedural vehicle, noting that “[t]he people of the county are not a corporation, nor are they

\begin{itemize}
\item \textsuperscript{225} See Smith v. Sacramento City, 13 Cal. 531 (1859) (taxpayers seeking to prevent governments from paying an attorney’s fees).
\item \textsuperscript{226} See, \textit{e.g.}, French v. Teschemaker, 24 Cal. 518 (1864) (taxpayer action arguing that City and County of San Francisco was acting unconstitutionally by becoming stockholders in railroad companies); Robinson v. Bidwell, 22 Cal. 379 (1863) (taxpayer action arguing that Sacramento County was acting unconstitutionally in the purchase of railroad bonds).
\item \textsuperscript{227} See, \textit{e.g.}, Douglass v. Placerville, 18 Cal. 643 (1861) (taxpayer action arguing that tax levied to pay for railroad route was not authorized under the city charter); Hobart v. Supervisors of Butte County, 17 Cal. 23 (1860) (taxpayer action arguing that the legislature improperly delegated its powers).
\item \textsuperscript{228} 15 Cal. 33 (1860).
\item \textsuperscript{229} \textit{Id.} at 34.
\end{itemize}
recognized in law as capable of suing or being sued.”

Thus, the court made “it a rule not to decide cases in the absence of the parties who are beneficially and really interested.”

At the same time, however, the court noted that “one or more of the taxpayers . . . [could] invoke the remedial powers of a Court of equity, to prevent irreparable injury,” when “officers of the county exceed their powers.”

The court declined to authorize the county (on behalf of taxpayers) to sue itself, but the court had no objection to taxpayers *qua* taxpayers suing the county.

By the end of the nineteenth century, the issue of whether taxpayers could maintain suits against government actors was squarely brought before the California Supreme Court in a series of cases. In *Maxwell v. Board of Supervisors*, Stanislaus County argued that the suit could not be maintained because the plaintiff was not a beneficially interested party.

The court rejected this argument, holding that “[w]hen . . . a public board or officer has exceeded the limited powers conferred by law, and the direct consequence of such excessive use of authority must be to add to the burden of local taxation . . . each taxpayer must suffer injury.”

Soon thereafter, the rule came down that, “[e]very taxpayer is interested, and may properly commence a proceeding to enjoin the city council from doing an act which may result in an addition to the

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230 Id.

231 Id.

232 Id.

233 Id.

234 53. Cal. 389 (1879).

235 Id. at 392.

236 Id.
burdens of taxation.” Thus, by the turn of the century, a plaintiff with no greater interest than that of a taxpayer had clear authority to bring suits against government actors. Moreover, this ability evolved from simply challenging illegal governmental payments, to a broader right that could challenge any illegal governmental action.

B. **California Code of Civil Procedure Section 526a**

In the beginning of the twentieth century, the right of taxpayers to bring suit was codified in the California Code of Civil Procedure. Since its enactment, California Code of Civil Procedure Section 526a has only been amended twice. The operative provision has never been altered. The Section currently reads:

An action to obtain a judgment, restraining and preventing any illegal expenditure of, waste of, or injury to, the estate, funds, or other property of a county, town, city or city and county of the state, may be maintained against any officer thereof, or any agent, or other person, acting in its behalf, either by a citizen resident

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237 Schumacker v. Toberman, 56 Cal. 508, 512 (1880); see also Gibson v. Bd. of Supervisors, 80 Cal. 359, 366 (1889) (“That is, a tax-payer can, beyond doubt, restrain any illegal action which would increase the burden of taxation.”); Barry v. Goad, 89 Cal. 215, 217 (1891) (“A tax-payer may restrain any illegal action which would increase the burden of taxation.”).

238 CAL. CODE CIV. PROC. § 526a was added in 1909. See 1909 Cal. Stat. ch 348, § 1.


240 The 1911 amendment added the following proviso: “This section does not affect any right of action in favor of a county, city, town, or city and county, or any public officer; provided, that no injunction shall be granted restraining the offering for sale, sale, or issuance of any municipal bonds for public improvements or public utilities.” 1911 Cal. Stat. ch 71, § 1. The 1967 amendment added a paragraph regarding court calendaring of taxpayer suits: “An action brought pursuant to this section to enjoin a public improvement project shall take special precedence over all civil matters on the calendar of the court except those matters to which equal precedence on the calendar is granted by law.” 1967 Cal. Stat. ch 706, § 1. See also Ontario v. Superior Court of San Bernardino County, 466 P.2d 693, 700 n.5 (Cal. 1970). Neither amendment is pertinent to our discussion here.
therein, or by a corporation, who is assessed for and is liable to pay, or, within one year before the commencement of the action, has paid, a tax therein.\textsuperscript{241}

With Section 526a the legislature attempted to codify the existing caselaw on taxpayer suits.\textsuperscript{242} Accordingly the California courts did not treat taxpayer suits any differently after Section 526a was enacted than they had before it was added to the Code.\textsuperscript{243} Section 526a’s enactment also coincides with the time when the courts began explicitly treating taxpayer status as a standing inquiry.\textsuperscript{244}

By best count, Section 526a has only been cited in 49 California Supreme Court cases since its enactment in 1909.\textsuperscript{245} In approximately half of those 49, the court merely mentioned Section 526a as the procedural vehicle used by the plaintiff to bring suit.\textsuperscript{246} In the remaining cases, the court answered a number of interesting questions which have defined the contours of taxpayer standing in California. The remainder of this section addresses three issues that have come up repeatedly in taxpayer actions: (1) residency; (2) equitable relief; and (3) remedies at law.

\textsuperscript{241} \textsc{Cal. Code Civ. Proc.} \textsection{} 526a.

\textsuperscript{242} Crowe v. Boyle, 193 P. 111, 125 (Cal. 1920).

\textsuperscript{243} Osburn v. Stone, 150 P. 367, 368 (Cal. 1915).

\textsuperscript{244} \textit{See} Clouse v. City of San Diego, 114 P. 573, 575 (Cal. 1911).

\textsuperscript{245} \textit{See} Anne Abramowitz, Comment, \textit{A Remedy for Every Right: What Federal Courts Can Learn from California’s Taxpayer Standing}, 98 \textsc{Cal. L. Rev.} 1595, 1609 (2010).

\textsuperscript{246} \textit{See}, \textit{e.g.}, Vasquez v. California, 195 P. 3d 1049, 1052 (Cal. 2008); O’Connell v. City of Stockton, 162 P. 3d 583, 585 (Cal. 2007); Associated Builders & Contractors, Inc. v. San Francisco Airports Comm’n, 981 P. 2d 499, 505 (Cal. 1999); Loder v. City of Glendale, 927 P. 2d 1200, 1205 (Cal. 1997); Lundberg v. Cty of Alameda, 298 P.2d 1, 2 (Cal. 1956).
C. Where Must a Taxpayer Reside To Challenge Illegal Government Action?

Can a San Francisco resident challenge an illegal action by the City of Los Angeles? On its face, Section 526a appears to prevent such a challenge, because it grants standing only to citizens who are residents “therein.”247 The defendant city officials, in Mines v. Del Valle,248 using Section 526a’s plain language, argued that the plaintiff taxpayer’s complaint was defective because it failed to allege that the taxpayer was a resident of Los Angeles.249 Yet, the California Supreme Court disagreed with this plain language argument. Although the taxpayer plaintiff’s lack of residency was a matter of first impression, the court nevertheless held that it had already “expressly ruled” that a residency requirement was not required by taxpayer plaintiffs.250

The Mines court’s improper reading of previous cases came to the forefront forty years later in Irwin v. City of Manhattan Beach.251 There, a non-Manhattan Beach resident brought a taxpayer action against the City of Manhattan Beach.252 The city argued that the court should overrule Mines, because it ran contrary to the express language of the statute and, moreover, when the case was decided it constituted a misreading of previous court holdings.253 The court

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247 CAL. CODE CIV. PROC. § 526a.
248 257 P. 530 (Cal. 1927).
249 Id. at 533.
250 Id. (citing Osburn v. Stone, 150 P. 367, 368 (Cal. 1915); Crowe v. Boyle, 193 P. 111, 125 (Cal. 1920)).
251 415 P.2d 769 (Cal. 1966).
252 Id. at 770.
253 Id. at 772.
agreed, finding these arguments “eminently persuasive.” Nevertheless, the court declined to read back into the statute a residency requirement, because doing so would violate the Equal Protection Clause.

*Irwin* remains the last time that the California Supreme Court spoke on the residency requirement in taxpayer actions. But the California Court of Appeal in *Cornelius v. Los Angeles County Metropolitan Transportation Authority* has managed to resurrect it. In *Irwin*, the plaintiff was not a resident of Manhattan Beach although she had paid property taxes there. In *Cornelius*, the plaintiff was neither a resident of nor a taxpayer in the defendant city. The plaintiff argued that his payment of state income taxes was sufficient to confer taxpayer standing. Although the court agreed that the defendant did receive some funding in the form of state income taxes, it held such taxes insufficient to grant the plaintiff standing under Section 526a. The court offered three reasons for so holding: (1) the tangential relationship between income taxes and the alleged illegal conduct; (2) opening the floodgates of litigation to state

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254 Id.

255 Id. at 772-73. The California Supreme Court noted that there lacked a correlating residency requirement for corporations in Section 526a. The court could find no rational basis for treating natural persons differently from corporations in taxpayer actions with respect to the residency requirement.

256 Id. at 770.


258 Id. at 628.

259 Id. at 628-29.
taxpayers unaffected by local government programs; and (3) the ability of local taxpayers to challenge the illegal conduct issue.260

None of the court of appeal’s reasons is particularly compelling. The California Supreme Court has never found that taxes need be spent on the alleged illegal conduct. Indeed, the high court has even held that a taxpayer can maintain an action where the alleged illegal conduct saves taxpayer dollars.261 Second, the purpose of Section 526a is to open litigation avenues to plaintiffs who otherwise have suffered no direct injury, and the statute should be construed “liberally to achieve this remedial purpose.”262 The high court has also produced “[n]umerous decisions [which] have affirmed a taxpayer’s standing to sue despite the existence of potential plaintiffs who might also have had standing to challenge the subject actions or statutes.”263 Although the reasoning of the Cornelius court of appeal seems contrary to controlling law, the California Supreme Court declined to take up the case.264 Cornelius remains good law in California’s second district.

260 Id.
261 See Wirin v. Parker, 313 P.2d 844, 846 (Cal. 1957) (immaterial that the amount of the illegal expenditures is small or that the illegal procedures actually permit a saving of tax funds”).
D. What Equitable Remedies Are Available to the Taxpayer?

The earliest taxpayer suits all sought equitable relief, usually in the form of an injunction.\textsuperscript{265} By the late nineteenth century, it was beyond dispute that taxpayers could sue to enjoin illegal governmental actions.\textsuperscript{266} Not long thereafter the California Supreme Court held that taxpayers could also have a “true declaration made” that would prevent future illegal government conduct.\textsuperscript{267}

With the adoption of Section 526a, a taxpayer’s right to maintain an action for injunctive relief was clearly established in law.\textsuperscript{268} Accordingly, taxpayer suits continued to seek injunctive relief without objection.\textsuperscript{269} The argument for maintaining taxpayer actions for declaratory relief, however, became less clear. Fortunately for taxpayer plaintiffs, numerous cases allowed declaratory relief actions to go forward before a government body ever attempted to limit Section

\textsuperscript{265} See, e.g., Soule v. McKibben, 6 Cal. 142 (1956); People ex rel. Raun and Plant v. Bd. of Supervisors of El Dorado Cty., 11 Cal. 170 (1858); People v. Supervisors of El Dorado County, 8 Cal. 58 (1857); Schumacker v. Toberman, 56 Cal. 508 (1880).

\textsuperscript{266} See Gibson v. Board of Supervisors, 22 P. 225, 227 (Cal. 1889) (“[A] tax-payer can, beyond doubt, restrain any illegal action which would increase the burden of taxation.”).

\textsuperscript{267} Id. See Mock v. Santa Rosa, 58 P. 826, 831-32 (Cal. 1899) (court declaring contract null and void in suit brought by resident taxpayer).

\textsuperscript{268} Section 526a speaks of a taxpayer’s right to \textit{restrain} and \textit{prevent} an illegal expenditure of taxpayer funds. See Van Atta v. Scott, 613 P.2d 210, 224 (Cal. 1980).

\textsuperscript{269} See Crowe v. Boyle, 193 P. 111, 112 (Cal. 1920) (taxpayers seeking injunctive relief); Clouse v. City of San Diego, 114 P. 573, 575 (Cal. 1911) (same); Blair v. Pitchess, 5 Cal. 3d 258, 286 (1971) (same); White v. Davis, 533 P.2d 222, 225 (Cal. 1975) (“As a taxpayer, plaintiff has standing under section 526a of the Code of Civil Procedure to seek an injunction against defendant's expenditure of public funds.”).

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526a to injunctive relief actions. When the issue came squarely before the California Supreme Court in *Van Atta v. Scott*, it had no trouble dismissing the issue given such a large body of decisional history supporting a taxpayer’s right to sue for declaratory relief. Although the court provided little analysis other than repeating the oft quoted line that Section 526a should be construed liberally, the rich case law permitting such suits was sufficient to reject the government’s defense. Moreover, despite the existence of a specific declaratory relief statute requiring an “actual controversy” between the parties, the court held, without explanation, that Section 526a suits were cases and controversies.

E. Can Government Officials Be Required To Repay Illegally Spent Taxpayer Dollars?

Although the ability of taxpayers to maintain suits in equity for injunctive or declaratory relief appears settled, the issue of whether taxpayers can maintain actions at law for monetary

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270 See, e.g., Stanson v. Mott, 551 P.2d 1, 3-4 (Cal. 1976) (“If [a taxpayer] plaintiff proves the allegations of his complaint at trial, he will be entitled to at least a declaratory judgment that such expenditure of public funds was improper.”); Gogerty v. Coachella Valley Junior College Dist., 371 P.2d 582, 583 (Cal. 1962) (taxpayer suit for declaratory relief); Serrano v. Priest, 487 P.2d 1241, 1265 (Cal. 1971) (same).

271 See *Van Atta v. Scott*, 613 P.2d 210, 224 (Cal. 1980) (“[S]ection 526a authorizes this suit for declaratory relief.”).

272 *Id.*

273 See CAL. CODE CIV. PROC. § 1060.

274 *Van Atta*, 613 P.2d at 224 n.28.

275 One Supreme Court case summarized the distinction between taxpayer suits for injunctive versus declaratory relief: “If plaintiff can establish these allegations at trial, he will have demonstrated that defendant did indeed authorize the improper expenditure of public funds, and plaintiff will be entitled, at least, to a declaratory judgment to that effect; if he establishes that
relief is less clear. Instinctively, one might assume that, because taxpayer actions presuppose no particular damage to any individual taxpayer (but rather to the public fisc generally), suits for damages would be contrary to the authority for taxpayer suits. The case law, however, does not support that conclusion. In Osburn v. Stone,\textsuperscript{276} the California Supreme Court affirmed that a taxpayer can recover monetary relief for the city under Section 526a.\textsuperscript{277} The court only noted that a city would have to be impleaded to survive a general demurrer.\textsuperscript{278} This right of taxpayers has been subsequently recognized in a number of California Supreme Court decisions.\textsuperscript{279}

Despite this early decisional history holding public officials strictly liable for illegally spending taxpayer funds, the high court found the rule problematic in practice. In Stanson v. Mott,\textsuperscript{280} the court was faced with government officials who, although acting illegally, exercised due care in the appropriation of public funds. The court there held that the legality of the similar expenses are threatened in the future, he will also be entitled to injunctive relief.” Stanson v. Mott, 551 P.2d 1, 12-13 (Cal. 1976).

\textsuperscript{276} 150 P. 367 (Cal. 1915).

\textsuperscript{277} \textit{Id.} at 368 (“Yet to us it seems quite plain that the necessity to a municipality, whose affairs are in the hands of hostile trustees or councilmen, to recover for illegal expenditures, through the medium of such an action, is quite as great and as imperative as it is in the case of private corporations, and as a stockholder of the latter would have on behalf of his corporation, upon the refusal of its directors to act, the right to maintain such an action, so we think should a taxpayer in the case of a municipality be accorded the same right and power.”).

\textsuperscript{278} \textit{Id.}

\textsuperscript{279} \textit{See, e.g.}, Mines v. Del Valle, 257 P. 530 (Cal. 1927) (taxpayer suit to recover funds illegally spent for election materials and propaganda); Miller v. McKinnon, 124 P.2d 34 (Cal. 1942) (taxpayer suit to recover money for illegal construction).

\textsuperscript{280} 551 P.2d 1 (Cal. 1976).
expenditures was not “readily ascertainable.” Thus, the court specifically overruled earlier decisions, and held that taxpayers could only recover monetary compensation against government officials who failed to exercise “due care, i.e., reasonable diligence, in authorizing the expenditure of public funds.” Strictly speaking, the “due care” requirement is not a condition for maintaining a taxpayer action, as it only determines the availability of a legal remedy, not the ability to bring the action in the first instance. Nevertheless, a taxpayer plaintiff would be wise to plead violation of this standard of care if she only seeks legal relief.

VI

STATUTE-SPECIFIC STANDING

This section reviews several California statutory schemes that, while authorizing judicial review pursuant to either traditional or administrative mandate, impose additional requirements on parties to advance a cognizable injury.

A. The California Coastal Act

One such prominent law is the California Coastal Act, which regulates land use throughout the “coastal zone.” The Act is administered by the California Coastal

281 Id. at 13-16.

282 Id. at 15 (“[W]e have concluded that the Mines decision should be overruled insofar as it holds a public official strictly liable for any expenditure of public funds which is later determined to be unauthorized.”).

283 Id. at 15.

284 See Harman v. City and County of San Francisco, 496 P.2d 1248, 1254 (Cal. 1972) (“Accordingly, plaintiff’s interest as a taxpayer in the outcome of the instant case establishes her standing to seek both equitable and legal relief against the city’s allegedly wrongful disposition of its assets.”).

285 CAL. PUB. RES. CODE §§ 30000-30900.
Commission, a state agency. The Act requires, at the pain of significant penalties, that anyone wishing to commence a “development” first obtain a “coastal development permit” from either the Commission or the appropriate local government. The Act provides that “[a]ny aggrieved person” shall have the right to judicial review, pursuant to a petition for administrative mandate, “of any decision or action of the commission.” The Act defines an “aggrieved person” as one who informed the Commission at a public hearing of the nature of his objection, or had good cause not to do so. The Act also defines certain classes of persons to be, ipso facto, aggrieved: the permit applicant and, in some circumstances, a local government.

As we have already observed, a party who seeks a writ of mandate must be beneficially interested, or must wish to restrain the illegal expenditure of taxpayers funds, or, as a citizen, must wish to vindicate the public interest in the faithful execution of the laws. These varied

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286 Id. § 30103.
287 See id. § 30300.
288 See id. § 30820 (authorizing civil penalties of up to $15,000 per day per violation).
289 Id. § 30106.
290 Id. § 30101.5.
291 See id. § 30600.
292 Id. § 30801. The Act also provides a similar right to judicial review for local governments actions under the Act that are not appealable to the Commission. See id. § 30802.
293 Id. § 30801.
294 See id.
295 See supra Parts IV-V.
requirements for quasi-standing are attempts to limit, to some degree, the cognizable injuries that will support the exercise of a court’s jurisdiction. The Coastal Act’s judicial review provision is no different in intent; but what is of interest for our present inquiry is that, arguably, Section 30801 expands the set of cognizable legal injuries beyond that normally permissible for those who seek a writ of administrative mandate. To obtain review of any Commission decision or action, the only “injury” a party need have is that the alleged illegality have been pointed out to the Commission prior to its decision or action, and that the resulting decision or action be inconsistent with the party’s understanding of the Coastal Act’s legal requirements.296 “There is no requirement that [parties] be injured in the sense of a loss of contract or property rights before they may be deemed ‘aggrieved’ parties.”297

At first glance, Section 30801 appears to grant a form of citizen standing equivalent to that enjoyed under Code of Civil Procedure Section 1085.298 But there is no textual requirement that the Coastal Act petitioner meet any of the limitations judicially crafted for general citizen

296 In fact, Section 30801’s grant of standing is even broader, in that its aggrieved party requirement may be excused on a finding of good cause. The good cause requirement can be fairly lax, and seems to approach a variant of the doctrine of exhaustion of administrative remedies. See Frisco Land & Mining Co. v. State of California, 141 Cal. Rptr. 820, 824 (Cal. Ct. App. 1977) (a developer alleging that the Coastal Act on its face effected a taking of its property need not appear before the Commission to state its views); Pillsbury v. S. Coast Regional Comm’n, 139 Cal. Rptr. 760, 765 (Cal. Ct. App. 1977) (tenants of a neighborhood who objected to a permit for home construction demonstrated good cause where they failed to receive notice of the hearing).


298 See Klitgaard & Jones, Inc. v. San Diego Coast Regional Comm’n, 121 Cal. Rptr. 650, 656 (Cal. Ct. App. 1975) (“It cannot be denied that the Act’s intent encompasses a liberal concept of standing.”).
standing, viz., the issue be of sufficient public import, or the petitioner not be financially interested in the outcome. Rather, the only quasi-standing requirements are that the petitioner be a “person” who made known his view of the law to the Commission prior to the Commission taking action, and the ensuing action is inconsistent with that view. 299 Section 30801 on its face goes beyond citizen standing to approach a system whereby the courts are invited to give legal opinions on academic questions. 300

It is unsurprising that the few courts to have addressed the outer limits of Section 30801’s minimal standing requirements have blinked before the abyss, and imported into Section 30801 the usual quasi-standing requirements of an administrative mandate petition. 301 These courts have taken their cue from other provisions of the Act that authorize “[a]ny person” to maintain an action for declaratory or equitable relief to restrain a violation of the Act, 302 or to maintain an action for civil penalties. 303 If “any person” may bring one of these actions, then presumably an “aggrieved person” must be, as one court has put it, something more than “some self-proclaimed ami du peuple to take up the cudgels.” 304 Thus, Section 30801 has been interpreted to allow suit

299 Indeed, as we have already discussed, see supra text accompanying notes 201-205, a plaintiff need not be a natural person to invoke citizen standing.

300 See supra n.296. For that reason, Section 30801’s quasi-standing requirements seem more akin to the requirement that a party exhaust administrative remedies. For the rule of exhaustion of administrative remedies, see generally Abelleira v. District Court of Appeal, 109 P.2d 942, 949-51 (Cal. 1941).

301 Klitgaard & Jones, 121 Cal. Rptr. at 656; Pillsbury, 139 Cal. Rptr. at 765.

302 CAL. PUB. RES. CODE § 30803.

303 Id. § 30805.

304 Klitgaard & Jones, 121 Cal. Rptr. at 656.
by persons whose injuries derive from their status as a resident or citizen of California, or from a
beneficial interest in the outcome of a permit hearing. Although not affording as broad a
quasi-standing as its text warrants, Section 30801, as judicially construed, nevertheless goes
beyond even standard citizen standing by eliminating any requirement that the issue raised be of
significant public importance.

B. The California Administrative Procedure Act

Another statute-specific example of quasi-standing can be found in the California
Administrative Procedure Act (APA). The California APA sets forth a number of
requirements for state agency rulemaking, perhaps most important among them that a regulation
be both necessary and nonduplicative of other regulation. Before a regulation may go into
effect or be repealed, the Office of Administrative Law (OAL) must review the proposal to
determine whether it is consistent with the APA’s requirements. Generally speaking, OAL
approval is necessary for a regulation to go into effect. If OAL disapproves a regulation, the
proposing agency may seek review of OAL’s decision by filing a request for review with the

305 See id.; Pillsbury, 139 Cal. Rptr. at 765.
306 CAL. GOV’T CODE §§ 11340-11365.
307 See id. §§ 11349(a), (f), 11349.1.
308 See id. § 11340.2.
309 See id. § 11349.1(a).
310 See id. § 11349.3.
Governor’s Legal Affairs Secretary.\textsuperscript{311} The Governor then has ultimate authority to overturn OAL’s disapproval and to direct that the regulation take effect.\textsuperscript{312}

The APA provides two judicial review provisions, one for review of regulations that have gone into effect,\textsuperscript{313} a second for review of OAL decisions disapproving a regulation or ordering a regulation’s repeal.\textsuperscript{314} Although the standard of review varies, both judicial review provisions provide for the right of review pursuant to an action for declaratory relief under the Civil Code. The quasi-standing implications of California’s declaratory relief action are addressed in the next section.\textsuperscript{315} For present purposes, it is enough to know that a declaratory relief action requires the existence of (1) a “person interested” and (2) an “actual controversy,”\textsuperscript{316} which the courts have construed to mean something approaching the usual “case or controversy” requirements of

\textsuperscript{311} Id. § 11349.5(a).

\textsuperscript{312} See id. § 11349.5(e).

\textsuperscript{313} Id. § 11350.

\textsuperscript{314} Id. § 11350.3.

\textsuperscript{315} See infra Part VII.

\textsuperscript{316} CAL. CODE CIV. PROC. § 1060.
federal standing. In contrast, the APA’s judicial review provisions afford the right of review to “[a]ny interested person” without reference to an actual controversy requirement.

The purpose of the APA judicial review provision was to allow parties to seek declaratory relief of regulations without having to run the risk of fines and penalties by violating the regulation and inviting agency enforcement. A party who would meet the “normal” requirements for declaratory relief would also qualify as an interested party for purposes of the APA. Whether the APA affords a right of review that otherwise would not be available under a straight declaratory relief action depends on how one reads the cases interpreting what constitutes an “interested person” under the APA. The case law provides that a party is an interested person if it or one of its members “is or may well be impacted by a challenged

317 See In re Marriage Cases, 183 P.3d 384, 406 (Cal. 2008) (“[S]trong ideological disagreement with the City’s views regarding the scope or constitutionality of Proposition 22 is not sufficient to afford standing . . . to maintain a lawsuit to obtain a declaratory judgment regarding these legal issues.”); Wilson v. Trans. Auth. of Sacramento, 19 Cal. Rptr. 59, 65 (Cal. Ct. App. 1962) (“Even under the most liberal interpretation of ‘justiciability’ there must be presented something more than a hypothetical question which, when resolved, would not be binding upon the parties, and which either party at its option would be free to reject.”); Monahan v. Dep’t of Water & Power, 120 P.2d 730, 732 (Cal. Ct. App. 1941) (“[W]e may well observe that not only must the controversy be a justiciable controversy, as distinguished from a difference or dispute of a hypothetical or abstract character; from one that is academic or moot, but it must be definite and concrete, touching the legal relations of the parties having adverse legal interests.”) (internal quotation marks omitted).

318 See CAL. GOV’T CODE §§ 11350(a), 11350.3.


320 See id. at 914.
regulation.” How close the relationship must be between the challenged regulation and the “impact” or injury suffered by the party in order for that party to be deemed “interested” is not entirely clear. At least one appellate court decision expressly eschews federal standing requirements for APA actions, even though such requirements are in practice incorporated into the “substantial controversy” predicate for declaratory relief. But to say that one is entitled to judicial review because one is “impacted” by a regulation merely begs the question, for standing is, after all, about discriminating between noncognizable “impacts” and cognizable “injuries.”

A representative case is Environmental Protection Information Center v. Department of Forestry and Fire Protection, in which the plaintiff sought a declaratory judgment that the Department’s regulation exempting certain timber harvesting operations from environmental relief was illegal. The court affirmed the plaintiff’s standing to sue under the APA on the grounds that the plaintiff and its members were “beneficially interested in the aesthetic enjoyment and continued productivity of the land, in the preservation of wildlife species at self-perpetuating population levels, and in environmental protection,” interests which the

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321 Envtl. Protection Info. Ctr. v. Dep’t of Forestry & Fire Protection, 50 Cal. Rptr. 2d 892, 896 (Cal. Ct. App. 1996). See also Pac. Legal Found. v. Unemployment Ins. Appeals Bd., 141 Cal. Rptr. 474, 477 (Cal. Ct. App. 1977) (“We acknowledge the fundamental principle that when a regulation . . . is challenged, the person asserting the challenge must be a person or organization who is subject to the regulation or affected by it.”).

322 See Envtl. Protection Info. Ctr., 50 Cal. Rptr. 2d at 897-98.

323 See infra Part VII.


325 Envtl. Protection Info. Ctr., 50 Cal. Rptr. 2d at 897.
Department’s exemption regulation would undercut.326 Thus, the court held that the plaintiff had what amounted to federal standing. The court specifically declined to determine whether the plaintiff’s APA standing could be affirmed on a broader theory, such as citizen standing.327

C. The Unfair Competition Law

The Unfair Competition Law (UCL) makes illegal “any unlawful, unfair or fraudulent business act or practice.”328 “Before 2004, the unfair competition law allowed ‘any person acting for the interests of itself, its members or the general public’ to seek restitution or injunctive relief against unfair acts or practices.”329 Case law interpreting the pre-2004 UCL authorized what amounted to citizen standing,330 which was unusual in that UCL claims cannot be brought against the state.331

But this regime changed in 2004 when California voters approved Proposition 64. “In the preamble to that measure the voters declared that the broad standing permitted by the unfair

326 Id.


328 CAL. BUS. & PROF. CODE § 17200.


330 Stop Youth Addiction, Inc. v. Lucky Stores, Inc., 950 P.2d 1086, 1091 (Cal. 1998) (“[P]ursuant to section 17200 as construed by this court and the Courts of Appeal, a private plaintiff who has himself suffered no injury at all may sue to obtain relief for others.”) (internal quotation marks omitted).

331 See CAL. BUS. & PROF. CODE § 17201; Vernon v. California, 10 Cal. Rptr. 3d 121, 136 (Cal. Ct. App. 2004).
competition law had been abused . . . . Proposition 64 amended the unfair competition law to allow private representative claims for relief to be brought only by . . . . a ‘person who has suffered injury in fact and has lost money or property as a result of the unfair competition.’” 332 That requirement has been interpreted to import into the UCL claim analysis the federal standing requirement of “injury in fact.” 333

To be sure, one might argue that a taxpayer or citizen has been injured in fact, even though his injuries are not cognizable under federal standing doctrine. The UCL’s “injury in fact” requirement mirrors federal standing because the UCL’s cognizable injuries are limited to those accompanied by the loss of “money or property,” 334 which in themselves would satisfy federal standing’s “injury in fact” requirement. 335

California’s recent shift in the requirements for UCL standing is particularly interesting for purposes of this Article because it highlights the utility of conceiving of standing as the identification of cognizable injuries, without so much emphasis placed on the other requirements of federal standing, i.e., fair traceability and redressability. Within the UCL’s context, the California Supreme Court has rejected both “fair traceability” and proximate causation as

332 Amalgamated Transit Union, 209 P.3d at 941-42 (citations omitted) (quoting CAL. BUS. & PROF. CODE § 17204).

333 See id. at 944-45.

334 See CAL. BUS. & PROF. CODE § 17204.

335 See, e.g., San Diego County Gun Rights Comm. v. Reno, 98 F.3d 1121, 1130 (9th Cir. 1996) (“Economic injury is clearly a sufficient basis for standing.”); Troyk v. Farmers Group, Inc., 90 Cal. Rptr. 3d 589, 623 (Cal. Ct. App. 2009) (“An injury to a tangible property interest, such as money, generally satisfies the ‘injury in fact’ element for standing.”). For an interesting example of an apparent collapsing of federal and quasi-standing principles at the federal level, see Ruiz v. Gap, Inc., 380 Fed. Appx. 689, 692 (9th Cir. 2010).
theories of causation to prove, for a UCL claim based on fraudulent advertising, that the plaintiff’s injuries in fact were “the result of” the defendant’s allegedly illegal activity. \(^{336}\) Instead, the Court has interpreted the UCL, after Proposition 64, to require a showing of actual reliance for such claims (largely on the theory that actual reliance is already an element of fraud claims). \(^{337}\) And one court of appeal has expressly held that the other elements of federal standing are not incorporated into the UCL. \(^{338}\)

VII

DECLARATORY RELIEF

In California, declaratory relief is an equitable proceeding \(^{339}\) in which a plaintiff seeks a final judgment from the court over her rights or duties vis-à-vis a contract, \(^{340}\) will, \(^{341}\) statute, \(^{342}\) or

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\(^{337}\) See id. at 39.

\(^{338}\) Troyk, 90 Cal. Rptr. 3d at 623. Whether and to what extent those elements appear in any form in quasi-standing we discuss in Part VIII.

\(^{339}\) See, e.g., Adams v. Cook, 101 P.2d 484, 489 (Cal. 1940); Los Angeles v. Glendale, 142 P.2d 289, 297 (Cal. 1943).


\(^{341}\) See, e.g., In re Estate of Norrish, 26 P.2d 530, 531 (Cal. Ct. App. 1933); Colden v. Costello, 50 Cal. App. 2d 363, 368 (1942).

other legally binding document.\textsuperscript{343} By its express terms the Californian statute governing declaratory relief, California Code of Civil Procedure Section 1060, applies to actions between private parties as well as actions against governmental entities.\textsuperscript{344} The statute does not differentiate between the requirements a plaintiff must prove to maintain her cause of action against a private party, and those she must show to have “standing” in a declaratory relief action against the government.\textsuperscript{345} California’s tendency to conflate elements relating to maintaining a cause of action with elements of “standing” are therefore particularly important with respect to declaratory relief actions, given that federal standing inquiries are generally only relevant with respect to actions against the government or its officials.\textsuperscript{346}


\textsuperscript{344} Section 1060 provides:

\begin{quote}
Any person interested under a written instrument, excluding a will or a trust, or under a contract, or who desires a declaration of his or her rights or duties with respect to another, or in respect to, in, over or upon property, or with respect to the location of the natural channel of a watercourse, may, in cases of actual controversy relating to the legal rights and duties of the respective parties, bring an original action or cross-complaint in the superior court for a declaration of his or her rights and duties in the premises, including a determination of any question of construction or validity arising under the instrument or contract. He or she may ask for a declaration of rights or duties, either alone or with other relief; and the court may make a binding declaration of these rights or duties, whether or not further relief is or could be claimed at the time. The declaration may be either affirmative or negative in form and effect, and the declaration shall have the force of a final judgment. The declaration may be had before there has been any breach of the obligation in respect to which said declaration is sought.
\end{quote}

\textsuperscript{345} See CAL. CODE CIV. PROC. § 1060.

\textsuperscript{346} See supra text accompanying notes 8-16.
The validity and construction of legislation is a proper subject for declaratory relief. Indeed, as already demonstrated, many California taxpayer suits involve plaintiffs seeking declaratory relief against some government body. Yet, in taxpayer suits seeking declaratory relief, the courts treat the taxpayer component as the sole standing issue presented. For example, in *Van Atta v. Scott*, the taxpayer plaintiff sought declaratory relief under Section 1060, but the California Supreme Court found that the plaintiff’s standing hinged on California Civil Procedure Code Section 526a (the statute authorizing taxpayer suits). The court noted that by satisfying Section 526a’s standing requirements, plaintiffs also satisfy Section 1060’s “case or controversy requirements.” Nevertheless, California courts have fashioned standing specific requirements for “pure” declaratory relief actions against the government.

California courts equate the “actual controversy” language of Section 1060 with a standing inquiry, and taxpayer suits *ipso facto* meet this requirement. Yet, not all declaratory relief actions against the government can be brought as taxpayer actions; thus, not all such plaintiffs have standing to maintain them. In *Winter v. Gnaizda*, a physician submitted a bill for $760 to the Medi-Cal Assistance Program for services rendered in treating an underprivileged patient.

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347 *See City of Cotati v. Cashman, 52 P.3d 695, 702 (Cal. 2002).*

348 *See supra Part V, and cases cited therein.*

349 613 P.2d 210 (Cal. 1980).

350 *Id.* at 223.

351 *Id.* at 224 n.28.

automobile accident victim.\textsuperscript{353} Medi-Cal, however, would only reimburse for $503, and when the victim subsequently obtained a judgment in his favor on his personal injury suit, the physician sought to recover the remainder of his bill.\textsuperscript{354} When the victim would not pay the difference, the physician brought a declaratory relief action against the Director of the California State Department of Health arguing that he was entitled to the difference.\textsuperscript{355} The court held that the true controversy existed between the physician and the patient, and any declaration regarding the Medi-Cal program would amount to a prohibited advisory opinion.\textsuperscript{356}

The Winter case highlights the important distinction California courts draw when determining if a plaintiff has standing to maintain a declaratory relief action. Merely asserting a difference of opinion as to the interpretation of a statute or regulation, even where the statute has broad significance, does not grant a plaintiff standing to maintain a declaratory relief action.\textsuperscript{357} Instead, a plaintiff must prove that a public body or official has an affirmative duty to act, and the government refuses to do the act required of it.\textsuperscript{358} When this proof is made, “justiciability in a jurisdictional sense exists, [and] the ripeness and standing concepts are metamorphosed in a

\textsuperscript{353} Id. at 702.
\textsuperscript{354} Id.
\textsuperscript{355} Id. at 701-02.
\textsuperscript{356} Id. at 703-04. \textit{But see supra} Part II.B.1. (discussing California’s lax “advisory opinion” jurisprudence).
\textsuperscript{357} Winter, 152 Cal. Rptr. at 704. \textit{See also} Wilson v. Transit Auth. of Sacramento, 19 Cal. Rptr. 59, 65 (Cal. Ct. App. 1962) (rejecting declaratory relief action brought by union seeking to establish a right to collective bargaining).
declaratory relief action into guides for the exercise of judicial discretion in granting or withholding that remedy.”

This distinction, while subtle, is essential to determining whether a plaintiff has standing to seek declaratory relief. The distinction is perhaps best highlighted in the oft-cited case of Zetterberg v. State Department of Public Health. There, the citizen plaintiffs asked the court of appeal to declare that the State Department of Health had the authority and duty to act against air pollution. In other words, the Zetterberg plaintiffs were attempting to have the court mandate the policy that the Department of Health had to enact. The court made clear, however, that “[a] citizen’s mere dissatisfaction with the performance of either the legislative or executive branches, or disagreement with their policies does not constitute a justiciable controversy.” For declaratory relief, “[t]he plaintiff must establish facts which give rise as a matter of law to an existing or imminent invasion of his rights by the defendant which would result in injury to him . . . . [Courts] can only restrict conduct that can be tested against legal standards.”


361 Id. at 102.

362 Id. at 103-04.

363 Id. at 104.

364 Id. (citing Angell v. Schram, 109 F.2d 380 (6th Cir. 1940); Aetna Life Ins. Co. of Hartford, Conn. v. Haworth, 300 U.S. 227 (1937)).
Determining standing to maintain declaratory relief actions against the government often requires analysis of a number of the other topics we have addressed in this article, e.g., taxpayer standing, the real party in interest doctrine, and administrative mandate. Nevertheless, declaratory relief does contain its own standing component under California law, and whether a plaintiff has standing to maintain a declaratory relief action against the government turns on whether the plaintiff has satisfied the “actual controversy” component of Section 1060.

365 See Van Atta v. Scott, 613 P.2d 210 (Cal. 1980) (discussing taxpayer standing in suit seeking declaratory relief); supra Part V.

366 See Fladeboe v. Am. Isuzu Motors Inc., 58 Cal. Rptr. 3d 225 (Cal. Ct. App. 2007) (discussing real party in interest doctrines in declaratory relief action); supra Part III.B.

VIII

OTHER REQUIREMENTS FOR QUASI-STANDING

This article has demonstrated that California’s doctrine of quasi-standing is based upon a legislative or judicial determination that certain classes of injury are cognizable for the purposes of maintaining a cause of action.\(^{368}\) The principal distinction between federal standing and California quasi-standing is that the former is defined by the exclusion of certain classes of injury which quasi-standing admits, \textit{vìz.}, the injury of the taxpayer whose money is illegally spent, or the injury of the citizen whose government acts illegally.\(^{369}\) It remains now to determine whether the other elements of federal standing—fair traceability and redressability—have some place in California’s jurisprudence. As already discussed,\(^{370}\) in public law litigation in California there are three broad categories of interests the impairment of which will produce cognizable legal injuries: (1) a private, beneficial interest (usually financial); (2) the taxpayer’s interest in seeing contributions to the public fisc legally spent; and (3) the citizen’s interest in seeing the laws obeyed and executed. Because these three sets of interests are so broad, the California courts have not produced a jurisprudence of fair traceability and redressability. There are several reasons for this result.

First, as a preliminary matter, the fair traceability and redressability prongs of federal standing basically require the same inquiry, and usually end up the same way\(^{371}\): if Agency X

\(^{368}\) See supra Parts III-VII.

\(^{369}\) See supra Part V.

\(^{370}\) See supra Parts IV-V.

\(^{371}\) See, \textit{e.g.}, Kardules v. City of Columbus, 95 F.3d 1335, 1352 (6th Cir. 1996) (“Causation and redressability are related elements of standing that frequently have been treated as one.”); Public
caused the injury, then it is almost always the case that a court with jurisdiction over Agency X can offer redress. Hence, if the courts entertaining federal standing concepts have not developed a fair traceability analysis much distinct from a redressability analysis, then one would expect the California courts to have done even less.

Second, in private law disputes the existence of a cognizable injury, or its traceability to the defendant, bears upon whether the plaintiff has a cause of action. For example, the California Supreme Court has held that recovery under the Workers Compensation Act “will be granted for injuries due to assaults by fellow-employees where the same are fairly traceable to an incident of the employment and will be denied where they are the result of personal grievances unconnected in any way with the employment.”372 (There is a similar approach with cases interpreting the UCL.373). Here, the fair traceability analysis is treated not as a standing doctrine but rather as a merits-related causation requirement.

Third, federal standing’s fair traceability prong only becomes a problem where the plaintiff is forced to “create” a beneficial interest to substitute for the more natural taxpayer or citizen interest that federal standing does not recognize. For that reason, the beneficial interest typically advanced is contrived, and thus it is likely that the causal link between that interest and the allegedly illegal governmental action will be attenuated. As the California Court of Appeal has explained: “A petitioner seeking a writ of mandate . . . is required to show the existence of

Interest Research Group v. Powell Duffryn Terminals, 913 F.2d 64, 73 (3d Cir. 1990) (observing that redressability “is closely related to the ‘fairly traceable’ element”). Cf. Steel, 523 U.S. at 106 n.7 (rejecting the proposition that “redressability always exists when the defendant has directly injured the plaintiff”) (emphasis added).


373 See supra Part VI.C.
two elements: a clear, present and usually ministerial duty upon the part of the respondent, and a clear, present and beneficial right belonging to the petitioner in the performance of that duty.”

The second part of this formulation makes the point: under citizen standing principles, the petitioner by definition has a “right” to the performance of the “ministerial duty” inhering in the respondent. Or, put differently, if there is no ministerial duty, then perforce there is no interest and no injury to the petitioner. The cognizable injury of the citizen petitioner provides both the requisite injury as well as the causal link to the allegedly illegal activity. Reversal of that activity by the writ would also, necessarily, remedy the injury. Thus, the fair traceability and redressability requirements are entirely superfluous for a doctrine like quasi-standing, and it is not surprising that California has not developed a jurisprudence addressing either in public law litigation.

IX

CONCLUSION

The review of the case law has proved that there is, properly speaking, no doctrine of standing in California. The most that can be said is that the state’s courts have developed a somewhat analogous doctrine of quasi-standing, which dispenses with the second and third prongs of the federal standing test and which has radically altered the content of the first prong. This change is radical because the California judiciary has expanded the concept of “cognizable injury” to include those injuries the noncognizability of which forms the very basis of federal standing. One might ask, then, why there is any utility in California courts maintaining the lingo of standing if the doctrine they call standing is really standing’s antithesis.

If indeed California had adopted a full and vigorous citizen standing, then there would be no reason to maintain any semblance of a standing doctrine. But the state has not gone that far. For example, citizen standing is limited to those cases presenting a particularly significant issue of public controversy; and some cases even hint that a party whose most natural injury would fall under the beneficial interest category of cognizable injuries cannot, as a back-up measure, advocate its interest as a citizen. In light of these decisions, California’s doctrine of quasi-standing retains some utility, by categorizing the different types of cognizable injuries and assigning different bars of justiciability to each.

Thus, although there remains some justification for maintaining the doctrine of quasi-standing, the doctrine should be recognized as such; that it is not a parallel to federal standing, in fact not even a closely related cousin; that it is only a tool for identifying cognizable injuries, and even in that process it is by and large a prudential or statutory notion, lacking the heavy constitutional overtones of federal standing. Most of all, the absence of a cause of action should not be confused with the absence of standing, especially given the courts’ treatment of the existence of a cognizable injury as part of the assessment of the merits of a cause of action: if the plaintiff has not been injured by *this* defendant, or if the court cannot redress her injuries, it would best to say that she loses because she has no right to relief, not because she lacks standing. Hopefully, the counsels in this article will provide guidance to California courts and practitioners.