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MAY 30 2018

FRESNO COUNTY SUPERIOR COURT

By \_\_\_\_\_ DEPT. 501

SUPERIOR COURT OF CALIFORNIA, COUNTY OF FRESNO

CENTRAL DIVISION

DANNY VILLANUEVA, ET AL., ) No. 17CECG03093  
Petitioners, )  
v. ) ORDER DENYING THE PETITION FOR  
XAVIER BECERRA, ET AL., ) WRIT OF MANDATE AND STATEMENT  
Respondents. ) OF DECISION  
Date: May 25, 2018  
Dept: 501

I. INTRODUCTION

The Plaintiff's First Amended Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief came on for hearing on May 25, 2018, in Department 501 of the Fresno County Superior Court, the Honorable Mark W. Snauffer, Judge, Presiding. Appearing for the Plaintiffs was Sean A. Brady of Michel & Associates, P.C. Appearing for Respondents and Defendants was P. Patty Li, Deputy Attorney General, Department of Justice, California Attorney General's Office.

Following argument, the Court took the matter under advisement. After reviewing the entire record, and considering

1 the arguments of counsel, the Court denies the petition for the  
2 reasons set forth below.

## 3 **II. BACKGROUND**

4 This case was originally a complaint for declaratory and  
5 injunctive relief; at the hearing on the demurrer and preliminary  
6 injunction, the Court found that Plaintiffs were challenging an  
7 administrative decision of the Department of Justice ("DOJ"), and  
8 so must seek writ relief. Plaintiffs then filed the first amended  
9 petition for writ of mandate and complaint for declaratory and  
10 injunctive relief, on March 21, 2018.

11 The basis of Plaintiffs' challenges is the manner in which  
12 Defendant DOJ promulgated regulations implementing a new  
13 registration process for "bullet-button assault weapons."  
14 Plaintiffs allege Defendant DOJ's Bureau of Firearms ("BOF") has  
15 promulgated and is enforcing regulations that go beyond the  
16 authority granted to it by the Legislature, without adhering to  
17 the state's Administrative Procedure Act ("APA"). Basically,  
18 Plaintiffs allege that the challenged regulations concern *what*  
19 must be registered, rather than (as allowed by an APA exemption)  
20 *how* to register, without the APA-required public input.

21 The Assault Weapons Control Act (Pen. Code §§ 30500, *et seq.*)  
22 restricts the possession, purchase, sale, manufacture, and  
23 distribution of "assault weapons." New assault weapons are  
24 prohibited by law from entering the market; however, previously  
25 owned assault weapons are "grandfathered" in as long as they are  
26 registered with the DOJ. (Pen. Code §§ 30660, 30675.)

27 Plaintiffs here challenge the expanded definition of "assault  
28 weapon." The new (revised) definition of "assault weapon"

1 includes those with a "bullet button" - a magazine release device  
2 on a firearm, requiring the use of a tool (which can be a bullet  
3 or ammunition cartridge) to remove the magazine from the firearm.  
4 This feature is also called a magazine lock. Prior to the new  
5 regulations, "bullet button" weapons did not have to be registered  
6 with DOJ because they were not within the old definition of  
7 "assault weapon," which was defined as a weapon that had "the  
8 capacity to accept a detachable magazine," as well as one or more  
9 of some other specified characteristics. (See former Pen. Code  
10 §30515.) As of January 17, 2017, a weapon that "does not have a  
11 fixed magazine" is an "assault weapon;" a "fixed magazine" is "an  
12 ammunition feeding device contained in, or permanently attached  
13 to, a firearm in such a manner that the device cannot be removed  
14 without disassembly of the firearm action." (Pen. Code §30515.)

15 Governor Brown signed SB 880 and AB 1135 in July 2016,  
16 broadening the state's assault weapons ban; the effective date was  
17 January 1, 2017. In December 2016, the DOJ submitted a first  
18 draft of the regulations, via the Office of Administrative Law's  
19 "file and print" process, which is used where the APA's public  
20 notice and comment requirements are inapplicable. This December  
21 attempt was withdrawn by the DOJ after opposition letters were  
22 submitted. Later, DOJ re-submitted the regulations, again via  
23 "file and print;" these were rejected by the Office of  
24 Administrative Law ("OAL") about a month after submission. The  
25 third time was the charm - the DOJ again submitted the regulations  
26 via "file and print" (this third version was allegedly nearly  
27 identical to the second version) and this version was approved by  
28

1 the OAL in July 2017. This is the description on the BOF's  
2 website of the new regulations:

3 Pursuant to Assembly Bill 1135 (Stats. 2016, ch. 40)  
4 and Senate Bill 880 (Stats. 2016, ch. 48) effective  
5 January 1, 2017, the definition of assault weapon is  
6 revised.

7 These bills require that any person who, from January  
8 1, 2001, to December 31, 2016, inclusive, lawfully  
9 possessed an assault weapon that does not have a fixed  
10 magazine, as defined in Penal Code section 30515,  
11 including those weapons with an ammunition feeding  
12 device that can be readily removed from the firearm  
13 with the use of a tool, shall register the firearm  
14 before January 1, 2018, but not before the effective  
15 date of the regulations adopted by the DOJ.  
16 ([https://oag.ca.gov/firearms.](https://oag.ca.gov/firearms))

17 [Note: the deadline to register has been extended to June 30,  
18 2018.]

19 The definition of "assault weapon" was thus changed from a  
20 firearm with a "detachable magazine" and certain features, to one  
21 that "that does not have a fixed magazine." In effect, this means  
22 that under the previous regulations, a weapon was not an "assault  
23 weapon" if the magazine could only be released with the use of a  
24 tool (which oftentimes is a bullet, hence "bullet button" - the  
25 release button is housed in a recessed area that can only be  
26 reached with the use of a tool); but under the new regulations, a  
27 firearm equipped with a bullet button will be considered an  
28 assault weapon, due to it not having a fixed magazine; a "fixed  
29 magazine" means that the magazine can only be removed by  
30 disassembling the entire firearm.

31 Registrations must be submitted via the internet; registrants  
32 must provide fairly specific information, including 4 or more  
33 photos of the firearm, proof of residency if submitting a joint  
34 application, serial number on the firearm, date and place of

1 acquisition, as well as personal identification information (name,  
2 address, email address, etc.).

3 The Office of Administrative Law (OAL) is charged with, among  
4 other functions, enforcing the requirement that administrative  
5 agencies adopt regulations according to APA procedures. (Gov.  
6 Code §§ 11340.2, 11340.5(b).) If the OAL is notified or learns  
7 that an administrative agency is implementing a regulation that  
8 was not properly adopted under the APA, the OAL must investigate,  
9 make a determination, and publish its conclusions. (Gov. Code  
10 §11340.5(c).)

11 A regulation that is found to have been improperly adopted is  
12 sometimes called an "underground regulation," and may be  
13 determined by a court to be invalid because it was not adopted in  
14 substantial compliance with APA procedures. (*Patterson Flying*  
15 *Service v. Department of Pesticide Regulation* (2008) 161  
16 Cal.App.4th 411, 429; see Cal. Code Regs., tit. 1 §250.)

17 Plaintiffs argue the regulations illegally expand the scope  
18 of the statutes they purport to implement; the illegality is  
19 alleged to be Defendants' failure to follow the APA's requirement  
20 of public notice/comment, as Defendants proceeded via the "file  
21 and print" process, which bypasses public notice and comment.  
22 Plaintiffs state the result is that they are being forced to  
23 choose between giving up their rights to their property (guns now  
24 considered assault weapons) or place themselves in criminal  
25 jeopardy for owning an unregistered firearm that, Plaintiffs  
26 argue, is not an "assault weapon" under the statute, but has  
27 become one under the challenged regulations.

28 ///

1 Defendants submit that they were not required to abide by the  
2 APA in implementing the challenged regulations, because the  
3 regulations simply implement the statute (re: registration of  
4 assault weapons), meaning they are expressly exempt from the APA  
5 public input procedure.

6 Plaintiffs seek writ relief, as well as declaratory and  
7 injunctive relief. Defendants are in opposition.

### 8 **III. DISCUSSION**

#### 9 **A. Administrative Procedure Act ("APA")**

10 The APA was enacted to establish basic minimum procedural  
11 requirements for the adoption, amendment, or repeal of  
12 administrative regulations promulgated by administrative agencies.  
13 (Gov. Code §11346(a).) Accordingly, where "a rule constitutes a  
14 regulation within the meaning of the APA...it may not be adopted,  
15 amended, or repealed except in conformity with basic minimum  
16 procedural requirements that are exacting. The agency must give  
17 the public notice of its proposed regulatory action; issue a  
18 complete text of the proposed regulation with a statement of the  
19 reasons for it; give interested parties an opportunity to comment  
20 on the proposed regulation; respond in writing to public comments;  
21 and forward a file of all materials on which the agency relied in  
22 the regulatory process to the Office of Administrative Law, which  
23 reviews the regulation for consistency with the law, clarity, and  
24 necessity. Any regulation or order of repeal that substantially  
25 fails to comply with these requirements may be judicially declared  
26 invalid." (*Morning Star Co. v. State Bd. of Equalization* (2006)  
27 38 Cal.4th 324, 333, internal citations and quotation marks  
28 omitted; *Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14

1 Cal.4th 557, 568 [same]; see Gov. Code §§ 11346, 11346.2(a)-(b),  
2 11346.4, 11346.5, 11346.8, 11346.9, 11347.3(b).)

3 An administrative agency "is not limited to the exact  
4 provisions of a statute" in adopting regulations to enforce its  
5 mandate; an absence of specific statutory provisions regarding the  
6 regulation of an issue does not mean that such a regulation  
7 exceeds statutory authority. (*PaintCare v. Mortensen* (2015) 233  
8 Cal.App.4th 1292, 1307, and cases cited; *Lavin v. California Horse*  
9 *Racing Bd.* (1997) 57 Cal.App.4th 263, 268 [it is a "well-settled  
10 principle of administrative law that in the absence of an express  
11 statutory directive to the contrary, an administrative agency may  
12 exercise its discretion in selecting the methodology by which it  
13 will implement the authority granted to it."].) An agency is  
14 authorized to "fill up the details" of the statutory scheme.

15 (*Paintcare, supra*, 233 Cal.App.4th at p. 268, quoting *Ford Dealers*  
16 *Assn. v. Department of Motor Vehicles* (1982) 32 Cal.3d 347, 362,  
17 internal quotation marks omitted; see also *California School Bds.*  
18 *Assn. v. State Bd. of Education* (2011) 191 Cal.App.4th 530, 544;  
19 *Batt v. City and County of San Francisco* (2010) 184 Cal.App.4th  
20 163, 171, 174; *Masonite Corp. v. County of Mendocino Air Quality*  
21 *Management Dist.* (1996) 42 Cal.App.4th 436, 445-447.) In other  
22 words, the Legislature may, after declaring a policy and fixing a  
23 primary standard, confer upon an administrative officer the power  
24 to "fill up the details" by prescribing administrative rules and  
25 regulations to promote the purposes of the legislation and to  
26 carry it into effect. (*Coastside Fishing Club v. California*  
27 *Resources Agency* (2008) 158 Cal.App.4th 1183, 1205; see *People v.*  
28 *Wright* (1982) 30 Cal.3d 705, 713 [standards for administrative

1 application of statute need not be expressly set forth; may be  
2 implied by purpose of statute].)

3 "The interpretation of a regulatory statute is, in the first  
4 instance, the duty of an administrative agency charged with its  
5 enforcement. Although final responsibility for interpretation of  
6 the law rests with the courts, the construction of the law by an  
7 administrative agency charged with its enforcement is entitled to  
8 great weight." (*B. C. Cotton, Inc. v. Voss* (1995) 33 Cal.App.4th  
9 929, 951; *County of Sacramento v. State Water Resources Control*  
10 *Bd.* (2007) 153 Cal.App.4th 1579, 1587 [where regulation is  
11 ambiguous, is appropriate to consider agency's interpretation;  
12 "[i]ndeed, we defer to an agency's interpretation of a regulation  
13 involving its area of expertise," unless it "flies in the face of  
14 the clear language and purpose" of its interpretive provision];  
15 *Communities for a Better Environment v. State Water Resources*  
16 *Control Bd.* (2003) 109 Cal.App.4th 1089, 1104 [same].) As a  
17 general matter, courts "tend to interpret the meaning of statutes  
18 broadly so as to uphold regulations[.]" (California Practice  
19 Guide (TRG Dec. 2017 update): Administrative Law Ch. 17-B.)  
20 Moreover, the persuasiveness of the agency's interpretation  
21 "increases in proportion to the expertise and special competence  
22 that are reflected therein, including any evidence that the  
23 interpretation was carefully considered at the highest  
24 policymaking level of the agency." (*Alvarado v. Dart Container*  
25 *Corporation of California* (2018) 4 Cal.5th 542, 558.)

26 Notwithstanding the foregoing, an agency is restricted to  
27 "only as much rulemaking power" as is invested in it by the  
28 authorizing statute. (*Carmel Valley Fire Protection Dist. v.*



1 *State of California* (2001) 25 Cal.4th 287, 299, and cases cited.)  
2 Where the APA applies, administrative policies that are not  
3 adopted in accordance with its requirements are void regulations  
4 and are not entitled to any deference. (*Alvarado v. Dart*  
5 *Container Corporation of California* (2018) 4 Cal.5th 542, 556; see  
6 *PaintCare, supra*, 233 Cal.App.4th at p. 1306 [regulations that are  
7 inconsistent with, alter, amend, enlarge or impair scope of,  
8 authorizing statute are void].) "But 'void,' in this context,  
9 does not necessarily mean wrong. If the policy in question is  
10 interpretive of some governing statute or regulation, a court  
11 should not necessarily reject the agency's interpretation just  
12 because the agency failed to follow the APA in adopting that  
13 interpretation; rather, the court must consider independently how  
14 the governing statute or regulation should be interpreted. 'If,  
15 when we agreed with an agency's application of a controlling law,  
16 we nevertheless rejected that application simply because the  
17 agency failed to comply with the APA, then we would undermine the  
18 legal force of the controlling law. Under such a rule, an agency  
19 could effectively repeal a controlling law simply by reiterating  
20 all its substantive provisions in improperly adopted  
21 regulations[.]'" (*Alvarado, supra*, 4 Cal.4th at pp. 556-557.) If  
22 there is doubt regarding the applicability of the APA's  
23 requirements, it should be resolved in favor of the APA. (*Morales*  
24 *v. California Dept. of Corrections and Rehabilitation* (2008) 168  
25 Cal.App.4th 729, 736; see Gov. Code §11346; *United Systems of*  
26 *Arkansas, Inc. v. Stamison* (1998) 63 Cal.App.4th 1001, 1010 [when  
27 Legislature has intended to exempt regulations from APA, "it has  
28 done so by clear, unequivocal language."]; see also *Aleman v.*

1 *AirTouch Cellular* (2012) 209 Cal.App.4th 556, 573 [regulations  
2 promulgated without adhering to APA, when required, sometimes  
3 called "underground regulations," which are void and  
4 unenforceable]; *Clovis Unified School Dist. v. Chiang* (2010) 188  
5 Cal.App.4th 794, 800 [same].)

6 Legislative history may be examined to resolve ambiguities or  
7 uncertainties regarding the purpose or meaning of a statute; as  
8 reports of legislative committees and commissions are part of a  
9 statute's legislative history, they are proper subjects of  
10 judicial notice, as official acts of the Legislature. (*Arce v.*  
11 *Kaiser Foundation Health Plan, Inc.* (2010) 181 Cal.App.4th 471,  
12 484; see Evid. Code §§ 452(c), 453; *Martin v. Szeto* (2004) 32  
13 Cal.4th 445, 452, fn 9 [judicial notice taken of Assembly Bill];  
14 *Home Depot U.S.A., Inc. v. Superior Court* (2010) 191 Cal.App.4th  
15 210, 223 [judicial notice taken of portions of legislative  
16 history]; *Benson v. Workers' Compensation Appeals Bd.* (2009) 170  
17 Cal.App.4th 1535, 1554, fn 16 [documents may be proper subjects of  
18 judicial notice if is indicated that Legislature considered them  
19 in passing statute]; *Hogen v. Valley Hospital* (1983) 147  
20 Cal.App.3d 119, 125 [records/files of administrative board proper  
21 subjects of judicial notice].) The court may consider the impact  
22 of an interpretation of a statute may have on public policy, and  
23 where there is uncertainty, " 'consideration should be given to  
24 the consequences that will flow from a particular interpretation.'  
25 [Citation.]" (*Mejia v. Reed* (2003) 31 Cal.4th 657, 663.)

26 **B. Writ of Mandate**

27 Where a party challenges a regulation on the ground that it  
28 is in conflict with the governing statute or exceeds the lawmaking

1 authority delegated by the Legislature, the issue of statutory  
2 construction is a question of law on which a court exercises  
3 independent judgment. (*PaintCare, supra*, 233 Cal.App.4th 1292,  
4 1303; see Gov. Code §11342.2.) Though mandamus will not lie to  
5 control discretion exercised by a public agency, it will lie to  
6 correct an abuse of discretion by a public agency. (*County of Los*  
7 *Angeles v. City of Los Angeles* (2013) 214 Cal.App.4th 643, 654;  
8 *Palmer v. Fox* (1953) 118 Cal.App.2d 453, 457.) Specifically,  
9 mandamus may issue to compel a governmental entity to exercise its  
10 discretion under a proper interpretation of the applicable law.  
11 (*Common Cause v. Board of Supervisors* (1989) 49 Cal.3d 432, 442;  
12 see Code Civ. Proc. §1085.)

13 "In determining whether a public agency has abused its  
14 discretion, the court may not substitute its judgment for that of  
15 the agency, and if reasonable minds may disagree as to the wisdom  
16 of the agency's action, its determination must be upheld. A court  
17 must ask whether the public agency's action was arbitrary,  
18 capricious, or entirely lacking in evidentiary support, or whether  
19 the agency failed to follow the procedure and give the notices the  
20 law requires. [¶] In applying this extremely deferential test, a  
21 court must ensure that an agency has adequately considered all  
22 relevant factors, and has demonstrated a rational connection  
23 between those factors, the choice made, and the purposes of the  
24 enabling statute." (*County of Los Angeles, supra*, 214 Cal.App.4th  
25 at p. 654, internal citations and quotation marks omitted.)

26 Quasi-legislative rules represent "an authentic form of  
27 substantive lawmaking" in which the Legislature has delegated to  
28 the agency a portion of its lawmaking power. (*Association of*

1 *California Insurance Companies v. Jones* (2017) 2 Cal.5th 376, 396-  
2 397.) Accordingly, "such rules have the dignity of statutes,  
3 [and] a court's review of their validity is narrow: [i]f satisfied  
4 that the rule in question lay within the lawmaking authority  
5 delegated by the Legislature, and that it is reasonably necessary  
6 to implement the purpose of the statute, judicial review is at an  
7 end." (*Ibid*, internal citations and quotation marks omitted; 20th  
8 *Century Ins. Co. v. Garamendi* (1994) 8 Cal.4th 216, 275; see  
9 *Dominey v. Department of Personnel Administration* (1988) 205  
10 Cal.App.3d 729, 737 [legislative act establishes rule regulating  
11 and governing matters or transactions occurring after its passage;  
12 determines what the law is, and what parties' rights are].) Where  
13 an administrative agency has exercised quasi-legislative powers,  
14 judicial review is made under traditional mandamus. (*City of*  
15 *Santa Cruz v. Local Agency Formation Com.* (1978) 76 Cal.App.3d  
16 381, 390; see CCP §1085(a).) Any agency action comes to the court  
17 with a presumption of validity. (*Association of California*  
18 *Insurance Companies v. Jones* (2017) 2 Cal.5th 376, 389.)

19       Where the claim implicates the interpretation of the relevant  
20 statute, a question of law is presented, and the court exercises  
21 independent judgment; in so doing, however, "great weight and  
22 respect" is accorded to the administrative agency's construction.  
23 (*Association of California Insurance Companies*, *supra*, 2 Cal.5th  
24 at pp. 389-390; *California Correctional Peace Officers' Assn. v.*  
25 *State* (2010) 181 Cal.App.4th 1454, 1459 [same].) In sum, where  
26 the legislature delegates to an administrative agency the  
27 responsibility to implement a statutory scheme through rules and  
28 regulations, the courts will interfere "only where the agency has

1 clearly overstepped its statutory authority or violated a  
2 constitutional mandate." (*Ford Dealers Assn. v. Department of*  
3 *Motor Vehicles* (1982) 32 Cal.3d 347, 356; see *County of Los*  
4 *Angeles, supra*, 214 Cal.App.4th at p. 654 [deferential review of  
5 quasi-legislative activity minimizes judicial interference in  
6 interest of separation of powers doctrine].) In the end, the  
7 "ultimate interpretation of a statute is an exercise of the  
8 judicial power." (*Bodinson Mfg. Co. v. California Employment*  
9 *Commission* (1941) 17 Cal.2d 321, 326.)

10 "When an administrative agency promulgates a regulation in  
11 its enforcement of a statute, the regulation will not be disturbed  
12 by the courts, unless it is an impermissible exercise of  
13 administrative discretion in carrying out the intent of the  
14 Legislature, which can be characterized as arbitrary, capricious,  
15 or patently unreasonable. Ordinarily, a reviewing court gives  
16 great weight to the interpretation of a statute by the  
17 administrative agency empowered to promulgate regulations to  
18 advance its purpose unless the interpretation is clearly  
19 erroneous." (*General Business Systems, Inc. v. State Bd. of*  
20 *Equalization* (1984) 162 Cal.App.3d 50, 54-55, internal citations,  
21 quotation marks, and brackets omitted; see *Kasler v. Lockyer*  
22 (2000) 23 Cal.4th 472, 503 [in usual writ of mandate proceedings,  
23 burden is on party challenging the regulation to prove abuse of  
24 discretion].) As summarized by the California Supreme Court:

25 An agency interpretation of the meaning and legal  
26 effect of a statute is entitled to consideration and  
27 respect by the courts; however, unlike quasi-  
28 legislative regulations adopted by an agency to which  
the Legislature has confided the power to "make law,"  
and which, if authorized by the enabling legislation,  
bind this and other courts as firmly as statutes

1 themselves, the binding power of an agency's  
2 interpretation of a statute or regulation is  
3 contextual: Its power to persuade is both  
4 circumstantial and dependent on the presence or  
5 absence of factors that support the merit of the  
6 interpretation. [...] The appropriate degree of judicial  
7 scrutiny in any particular case is perhaps not  
8 susceptible of precise formulation, but lies somewhere  
9 along a continuum with nonreviewability at one end and  
10 independent judgment at the other. Quasi-legislative  
11 administrative decisions are properly placed at that  
12 point of the continuum at which judicial review is  
13 more deferential; ministerial and informal actions do  
14 not merit such deference, and therefore lie toward the  
15 opposite end of the continuum.

16 Courts must, in short, independently judge the text of  
17 the statute, taking into account and respecting the  
18 agency's interpretation of its meaning, of course,  
19 whether embodied in a formal rule or less formal  
20 representation. Where the meaning and legal effect of  
21 a statute is the issue, an agency's interpretation is  
22 one among several tools available to the court.  
23 Depending on the context, it may be helpful,  
24 enlightening, even convincing. It may sometimes be of  
25 little worth. Considered alone and apart from the  
26 context and circumstances that produce them, agency  
27 interpretations are not binding or necessarily even  
28 authoritative. To quote the statement of the Law  
Revision Commission in a recent report, "The standard  
for judicial review of agency interpretation of law is  
the *independent judgment* of the court, giving  
deference to the determination of the agency  
appropriate to the circumstances of the agency  
action." (Judicial Review of Agency Action (Feb.1997)  
27 Cal. Law Revision Com. Rep. (1997) p. 81, italics  
added.)

20 (*Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19  
21 Cal.4th 1, 7-8, internal citations and quotation marks omitted,  
22 except last sentence.)

23 "Mandamus may issue to correct the exercise of discretionary  
24 legislative power, *but only* if the action taken is so palpably  
25 unreasonable and arbitrary as to show an abuse of discretion as a  
26 matter of law. This is a highly deferential test." (*Carrancho v.*  
27 *California Air Resources Bd.* (2003) 111 Cal.App.4th 1255, 1265,  
28 italics in original; *Yamaha Corp. of America v. State Bd. of*

1 *Equalization* (1998) 19 Cal.4th 1 [judicial review of quasi-  
2 legislative administrative decisions is "more deferential"]; see  
3 also *Pitts v. Perluss* (1962) 58 Cal.2d 824, 832 [general rule is  
4 that court should not substitute its judgment for that of  
5 administrative agency which acts in quasi-legislative capacity];  
6 *Faulkner v. California Toll Bridge Authority* (1953) 40 Cal.2d 317,  
7 329 ["as a general principle, gleaned from the cases... '[t]he courts  
8 have nothing to do with the wisdom or expediency of the measures  
9 adopted by an administrative agency to which the formulation and  
10 execution of state policy have been entrusted, and will not  
11 substitute their judgment or notions of expediency,  
12 reasonableness, or wisdom for those which have guided the agency.'  
13 [Citations.]"]; *Rible v. Hughes* (1944) 24 Cal.2d 437, 445 ["If  
14 reasonable minds may well be divided as to the wisdom of an  
15 administrative board's action, its action is conclusive. Or,  
16 stated another way, if there appears to be some reasonable basis  
17 for the classification, a court will not substitute its judgment  
18 for that of the administrative body."].)

19 **C. Assault Weapons Control Act ("AWCA") - Penal Code §§**  
20 **30500, et seq.**

21 The Legislature may choose to grant an administrative agency  
22 broad authority to apply its expertise in determining whether and  
23 how to address a problem without identifying specific examples of  
24 the problem or articulating possible solutions. (*Association of*  
25 *California Insurance Companies*, supra, 2 Cal.5th at p. 399.)

26 The Legislature has found and declared that the proliferation  
27 and use of assault weapons poses a threat to the health, safety,  
28 and security of the citizens of California. (Pen. Code §30505(a);

1 see *Kasler, supra*, 23 Cal.4th at p. 482-488 [reviewing "crisis  
2 created by the proliferation and use of assault weapons" that gave  
3 rise to AWCA].) Controlling assault weapons in the state has  
4 turned out to be no easy feat, however "...the Legislature was not  
5 constitutionally compelled to throw up its hands just because a  
6 perfectly comprehensive regulatory scheme was not politically  
7 achievable. The problems of government are practical ones and may  
8 justify, if they do not require, rough accommodations - illogical,  
9 it may be, and unscientific." (*Kasler, supra*, 23 Cal.4th at p.  
10 487, internal citations and quotation marks omitted.) As a  
11 result, there have been revisions to the original AWCA, where the  
12 Legislature has attempted to deal with the various companies that  
13 design around the newest regulations. Prior to SB 880/ AB1135's  
14 passage, there were three categories of assault weapons under  
15 California law:

- 16 1. Category one: firearms specified on the original  
17 Roberti-Roos assault weapons list. (Pen. Code §30510(a)-  
(c));
- 18 2. Category two: firearms specified on the AK and AR-15  
19 series weapons listing (Id. at (e)-(f)); and
- 20 3. Category three:
  - 21 a. firearms defined as assault weapons based on  
22 specific generic characteristics, often called "SB  
23 23 assault weapons." (Pen. Code §30515); and
  - 24 b. firearms that do not have a fixed magazine, as  
25 defined in Penal Code §30515, including those  
26 weapons with an ammunition feeding device that can  
27 be readily removed from the firearm with the use of  
28 a tool (a/k/a "bullet button" - small recessed  
release button that cannot be pressed without the  
use of a tool; a bullet is often used as the tool)  
(Pen. Code §30900(b)(1); see Assembly Bill 1135 /  
Senate Bill 880).

26 The new legislation creates a fourth category: an "assault  
27 weapon that does not have a fixed magazine, as defined in Section  
28 30515, those weapons with an ammunition feeding device that can be



1 readily moved from the firearm with the use of a tool." (Pen. Code  
2 §30900.)

3 "It is the intent of the Legislature in enacting [Ch. 2  
4 Assault Weapons and .50 BMG Rifles] to place restrictions on the  
5 use of assault weapons and to establish a registration and permit  
6 procedure for their lawful sale and possession." (Pen. Code  
7 §30505(a); see *Harrott v. County of Kings* (2001) 25 Cal.4th 1138,  
8 1154 [in determining statute's meaning, courts look to statutory  
9 language, as well as "design of the statute as a whole and to its  
10 object and policy."].)

11 Penal Code section 30900 provides:

12 Any person who, from January 1, 2001, to December 31,  
13 2016, inclusive, **lawfully possessed an assault weapon**  
14 **that does not have a fixed magazine, as defined in**  
15 **Section 30515, including those weapons with an**  
16 **ammunition feeding device that can be readily removed**  
17 **from the firearm with the use of a tool, shall**  
18 register the firearm before July 1, 2018, but not  
19 before the effective date of the regulations adopted  
20 pursuant to paragraph (5), with the department  
21 pursuant to those procedures that the department may  
22 establish by regulation pursuant to paragraph (5).  
(Subd. (b)(1), bold added.)

18 and

19 The department shall adopt regulations for the purpose  
20 of implementing this subdivision. These regulations  
21 are exempt from the Administrative Procedure Act  
22 (Chapter 3.5 (commencing with Section 11340) of Part 1  
23 of Division 3 of Title 2 of the Government Code).  
(Subd. (b)(5).)

23 Penal Code section 30515 provides that "[n]otwithstanding  
24 section 30510, 'assault weapon' also means any of the following:"  
25 wherein it then lists (1) a semiautomatic, centerfire rifle that  
26 does not have a fixed magazine but has any one of the following,  
27 with a list of six features; (2) a semiautomatic, centerfire rifle  
28 that has a fixed magazine with the capacity to accept more than 10

1 rounds; (3) a semiautomatic, centerfire rifle that has an overall  
2 length of less than 30 inches; (4) a semiautomatic pistol that  
3 does not have a fixed magazine but has any one of the following[,]  
4 with a list of four features; (5) A semiautomatic pistol with a  
5 fixed magazine that has the capacity to accept more than 10  
6 rounds; (6) a semiautomatic shotgun that has both of the  
7 following, with a list of two features; (7) a semiautomatic  
8 shotgun that has the ability to accept a detachable magazine; and  
9 (8) any shotgun with a revolving cylinder (which apparently is  
10 extremely rare).

11 There are only two published cases addressing Penal Code  
12 section 30515: *Haynie v. Harris* (9th Cir. 2016) 658 Fed. Appx.  
13 834; and *In re Jorge M.* (2000) 23 Cal.4th 866. *In re Jorge*  
14 concerned the knowledge element with regard to what is an "assault  
15 weapon" under the law. *Haynie* involved a wrongful arrest after  
16 peace officers mistakenly believed plaintiff's firearms were  
17 illegal "assault weapons" pursuant to the AWCA. The *Haynie* court  
18 seems to agree with Defendants' stance here, that any weapon with  
19 a bullet button is an "assault weapon":

20 "[O]n July 1, 2016, Governor Jerry Brown signed into  
21 law Assembly Bill 1135 and Senate Bill 880. See AB  
22 1135 & SB 880, §§ 1 (amending Cal. Penal Code §30515).  
23 **These bills changed the law by including weapons**  
24 **equipped with a bullet button within the statutory**  
25 **definition of an assault weapon.** Rather than defining  
26 an assault weapon as a firearm with the 'capacity to  
27 accept a detachable magazine' as before, the amended  
28 legislation now defines an assault weapon as one that  
"does not have a fixed magazine." *Id.* The amendment  
further defines a 'fixed magazine' as 'an ammunition  
feeding device contained in, or permanently attached  
to, a firearm in such a manner that the device cannot  
be removed without disassembly of the firearm action.'  
*Id.*"

28 (*Haynie v. Harris* (9th Cir. 2016) 658 Fed. Appx. 834, 837,

1 bold added.)

2 The Senate Committee on Public Safety's bill analysis states,  
3 "This bill clarifies the definition of assault weapons and  
4 provides the [DOJ] the authority to bring existing regulations  
5 into conformity with the original intent of California's Assault  
6 Weapon Ban[;]" (Def.'s RJN, Exh. 5, p. 6, ¶2) and "[t]he purpose  
7 of this change is to clarify that equipping a weapon with a  
8 'bullet button' magazine release does not take that weapon outside  
9 the definition of an assault weapon[]" (Id. at p. 10, ¶4).

10 **IV. ANALYSIS**

11 Plaintiffs argue that (1) Defendants exceeded the scope of  
12 the APA-exemption with regard to promulgating regulations that  
13 implement Penal Code section 30900, and (2) the resulting  
14 regulations are invalid, as a result of Defendants' failure to go  
15 through the APA notice and comment procedure, choosing instead to  
16 use the "file and print" method, which does not require public  
17 input. Plaintiffs summarize their argument as: Defendants were  
18 exempt from the APA in promulgating regulations directing how to  
19 register firearms, but instead promulgated regulations that  
20 provide *what* to register, illegally enlarging the definition of  
21 "assault weapon."

22 Plaintiffs argue that Defendants' interpretation of section  
23 30900(b)(1), namely, that it includes bullet button shotguns, is  
24 erroneous, because there is no statute providing that bullet  
25 button shotguns are "assault weapons."

26 In response, Defendants argue that the new amendments to the  
27 AWCA established "a new registration process for 'bullet-button'  
28 assault weapons" (Opp. 6:17-18); and that as of January 1, 2017,

1 "an assault weapon may now include a weapon that 'does not have a  
2 fixed magazine" (*Id.* at lines 20-21). Defendants then refer to  
3 the Legislative history. The documents submitted include language  
4 such as:

- 5 • SB880 will make our communities safer and upholds our  
6 commitment to reduce gun violence in California **by closing**  
7 **the bullet button loophole** in California's Assault Weapons  
8 Ban. (RJN, Exh. 1 at 3; exh. 2 at 3; exh. 5 at 6, bold  
9 added.)
- 10 • **This bill seeks to address the issue regarding the**  
11 **definition of an assault weapon as it pertains to what**  
12 **constitutes a "detachable magazine."** Regulations  
13 promulgated after the enactment of SB 23 define a  
14 detachable magazine as, "any ammunition feeding device  
15 that can be removed readily from the firearm with neither  
16 disassembly of the firearm action nor use of a tool being  
17 required. A bullet or ammunition cartridge is considered  
18 a tool." (11 CFR § 5469(a)) In response to this  
19 definition, features such as the "bullet button" have been  
20 developed by firearms manufacturers that enable easy  
21 detachment of a magazine with the use of a "tool" and are  
22 thus not classified as a "detachable magazine." **As a**  
23 **result, firearms with features such as the "bullet button"**  
24 **do not fall within the current definition of an assault**  
25 **weapon.** (RJN, Exh. 3 at 2, emphasis added.)
- 26 • High-capacity detachable ammunition magazines allow  
27 shooters to expel large amounts of ammunition quickly and  
28 have no sporting purpose. (*Id.* at Exh. 2, p. 5.)

19 The "bullet button" feature is a bone of contention between  
20 the parties - it appears that Defendants' position is that any  
21 firearm with a bullet button is an "assault weapon;" whereas  
22 Plaintiffs argue that only certain firearms, i.e., those listed in  
23 Penal Code sections 30510 and 30520, constitute "assault weapons."

24 As stated above, an administrative agency is not limited to  
25 the exact statutory provisions, and is allowed to "fill up the  
26 details" of the statutory scheme. (*Paintcare, supra*, 233  
27 Cal.App.4th at p. 1307.) DOJ, then, is authorized to promulgate  
28 regulations that carry out the intent of Penal Code section 30900.

1 Defendants argue that "the same dangers posed by bullet-button  
2 equipped rifles and pistols are also posed by bullet-button  
3 equipped shotguns[,] " thus, DOJ's regulations including bullet  
4 button shotguns properly carries out the Legislative intent.  
5 (Opp., 15:17-18.)

6 The legislative findings and declarations state that the  
7 Legislature intended to restrict assault weapons (as defined in  
8 section 30510, which is a list of designated semiautomatic  
9 firearms), and not to restrict the use of weapons that are  
10 primarily designed for hunting, target practice, or "other  
11 legitimate sports or recreational activities." (Pen. Code  
12 §3505(a).) Defendants argue that the five definitions Plaintiffs  
13 allege were repealed were, in fact, simply moved; and that this  
14 consolidation of terms is reasonably necessary for the  
15 registration process because it prevents confusion that would  
16 otherwise stem from applying two separate sets of definitions.  
17 Defendants state preventing such confusion is within DOJ's  
18 authority pursuant to section 30900, to make rules implementing  
19 the registration process. Arguably, the Legislature chose to  
20 leave some details to DOJ to "fill in," relying on DOJ's  
21 experience; moreover, the addition of a bullet button does seem to  
22 bring a firearm within the Legislature's intent to restrict  
23 weapons that go beyond general recreational activities. The APA  
24 exemption granted by the Legislature would appear to include the  
25 power to define terms to enable the public to understand and  
26 comply with the registration process; Defendants argue the  
27 definitions are reasonably necessary to the registration process,  
28 to which the APA exemption applies, as a reflection of DOJ's

1 judgment that such information will assist firearm owners in  
2 understanding and navigating the registration process and allow  
3 DOJ to carry out the registration process efficiently.

4 The language of Penal Code section 30900 is being interpreted  
5 differently by the parties is this:

6 Any person who...lawfully possessed an assault weapon  
7 that does not have a fixed magazine, as defined in  
8 Section 30515, **including those weapons with an**  
9 **ammunition feeding device that can be readily removed**  
10 **from the firearm with the use of a tool,** shall  
11 register the firearm before July 1, 2018...

12 Defendants argue the bolded language here means *any weapon*  
13 that has a bullet button, therefore all bullet button weapons, not  
14 just bullet button "assault weapons" (as defined in §§ 30510 and  
15 30515), are included and must be registered. In other words,  
16 Defendants' position is that the bolded language above adds  
17 firearms to the AWCA. Plaintiffs argue the "included" here simply  
18 modifies the phrase "assault weapon that does not have a fixed  
19 magazine," i.e., it only clarifies what weapons are included in  
20 that phrase, it does not add more to it.

21 Defendants submit various analyses prepared for Senate Bill  
22 880 and Assembly Bill 1135; these tend generally to lend support  
23 to Defendants' argument that the problem the Legislature was  
24 attempting to address was bullet buttons on firearms generally,  
25 however there is also language in the legislative history  
26 submitted by Defendants indicating "assault weapon" is meant to  
27 include those firearms that meet two requirements: (1) does not  
28 have a fixed magazine (i.e., does have a bullet button); and (2)  
has one of several specified military-style features (see Pen.  
Code §30515(a)(1), (b)). (See RJN, Exhs. 1-9.)

1 Plaintiffs also argue that the level of deference the Court  
2 is to apply to Defendant DOJ's decisions is significantly lower  
3 than that urged by Defendants. Plaintiffs state that because this  
4 is an issue of statutory interpretation, not a situation where the  
5 agency is interpreting one of its own regulations, judicial  
6 deference to DOJ's decision is much lower and the Court should  
7 independently review the text of the authorizing statute.  
8 Plaintiffs' ask the Court to find that the challenged regulations  
9 are not of a subject matter that fits within the APA exemption of  
10 section 30900; the regulations illegally alter the scope of the  
11 statute and are therefore void; DOJ effectively repealed five  
12 definitions previously found in section 5469 (of Title 11 of  
13 Calif. Code of Regulations) by moving them from a section that  
14 expressly stated the definitions applied to terms used in the  
15 identification of "assault weapons" (pursuant to Pen. Code  
16 §30515), to a section that applies for purposes of section 30900,  
17 i.e., registration (rather than identification); that bullet  
18 button shotguns do not meet the statutory definition of "assault  
19 weapons" and therefore do not need to be registered; that DOJ may  
20 not require applicants to create a serial number for their  
21 firearms without adopting a regulation pursuant to the APA,  
22 because section 5474.2 (Title 11 of CCR) is not part of the  
23 registration process, as it limits *what* firearms can be  
24 registered, rather than *how* to register them; and that DOJ's self-  
25 exemption from liability, and the photo, citizenship and joint  
26 registration restriction provisions must be promulgated pursuant  
27 to the APA, as each is outside the exemption granted by the  
28 Legislature.

1 In the Court's opinion, Defendants' interpretation of the  
2 authorizing statute is reasonable; Plaintiffs fail to show that  
3 Defendants abused their discretion in the interpretation of the  
4 authorizing statute. It appears that the Legislature's intent was  
5 to cast a wider net so far as registering weapons fitted with a  
6 bullet button, and to permit Defendant DOJ to promulgate  
7 regulations that carry out this intent, without going through the  
8 APA notice and comment procedures. The documents submitted by  
9 Defendants (see RJN, filed 4/6/2018) contain repeated references  
10 to the "bullet button loophole," and the desire to curtail the  
11 proliferation of weapons that are able to fire large numbers of  
12 rounds in a short period of time. Registration of firearms with  
13 enhanced firepower from a bullet button, i.e., weapons that go  
14 beyond the needs of "hunting, target practice, or other legitimate  
15 sports or recreational activities[]" (Pen. Code §30505(a)), is in  
16 line with the intent of the AWCA (see *ibid.*), and appears to carry  
17 out the Legislature's intent for section 30900, subdivision  
18 (b)(1).

## 19 **V. STATEMENT OF DECISION**

### 20 **A. Standard of Review**

21 "When an administrative agency promulgates a regulation in  
22 its enforcement of a statute, the regulation will not be disturbed  
23 by the courts, unless it is an impermissible exercise of  
24 administrative discretion in carrying out the intent of the  
25 Legislature, which can be characterized as arbitrary, capricious,  
26 or patently unreasonable. Ordinarily, a reviewing court gives  
27 great weight to the interpretation of a statute by the  
28 administrative agency empowered to promulgate regulations to



1 advance its purpose unless the interpretation is clearly  
2 erroneous." (*General Business Systems, Inc. v. State Bd. of*  
3 *Equalization* (1984) 162 Cal.App.3d 50, 54-55, internal citations,  
4 quotation marks, and brackets omitted; see *Kasler v. Lockyer*  
5 (2000) 23 Cal.4th 472, 503.)

6 "Mandamus may issue to correct the exercise of discretionary  
7 legislative power, *but only* if the action taken is so palpably  
8 unreasonable and arbitrary as to show an abuse of discretion as a  
9 matter of law. This is a highly deferential test." (*Carrancho v.*  
10 *California Air Resources Bd.* (2003) 111 Cal.App.4th 1255, 1265,  
11 italics in original; *Yamaha Corp. of America v. State Bd. of*  
12 *Equalization* (1998) 19 Cal.4th 1 [judicial review of quasi-  
13 legislative administrative decisions is "more deferential"]; see  
14 also *Pitts v. Perluss* (1962) 58 Cal.2d 824, 832 [general rule is  
15 that court should not substitute its judgment for that of  
16 administrative agency which acts in quasi-legislative capacity];  
17 *Faulkner v. California Toll Bridge Authority* (1953) 40 Cal.2d 317,  
18 329 ["as a general principle, gleaned from the cases... '[t]he courts  
19 have nothing to do with the wisdom or expediency of the measures  
20 adopted by an administrative agency to which the formulation and  
21 execution of state policy have been entrusted, and will not  
22 substitute their judgment or notions of expediency,  
23 reasonableness, or wisdom for those which have guided the agency.'  
24 [Citations.]"]; *Rible v. Hughes* (1944) 24 Cal.2d 437, 445 ["If  
25 reasonable minds may well be divided as to the wisdom of an  
26 administrative board's action, its action is conclusive."].) Put  
27 another way, where an agency's interpretation of an authorizing  
28 statute is at issue, the court, in exercising its independent

1 judgment, accords "great weight and respect" to the agency's  
2 construction. (*Association of California Insurance Companies v.*  
3 *Jones* (2017) 2 Cal.5th 376, 389-390; *County of Los Angeles v. City*  
4 *of Los Angeles* (2013) 214 Cal.App.4th 643, 654.)

5 **B. Petitioners Have Not Shown that Defendants Exceeded the**  
6 **Scope of the APA Exemption Found in Penal Code Section 30900.**

7 An administrative agency "is not limited to the exact  
8 provisions of a statute" in adopting regulations to enforce its  
9 mandate; an absence of specific statutory provisions regarding the  
10 regulation of an issue does not mean that such a regulation  
11 exceeds statutory authority, as the agency is authorized to "fill  
12 up the details" of the statutory scheme. (*PaintCare v. Mortensen*  
13 (2015) 233 Cal.App.4th 1292, 1307, and cases cited; see also  
14 *California School Bds. Assn. v. State Bd. of Education* (2011) 191  
15 Cal.App.4th 530, 544; *Batt v. City and County of San Francisco*  
16 (2010) 184 Cal.App.4th 163, 171, 174; *Masonite Corp. v. County of*  
17 *Mendocino Air Quality Management Dist.* (1996) 42 Cal.App.4th 436,  
18 445-447.) In other words, the Legislature may, after declaring a  
19 policy and fixing a primary standard, confer upon an  
20 administrative officer the power to "fill up the details" by  
21 prescribing administrative rules and regulations to promote the  
22 purposes of the legislation and carry it into effect. (*Coastside*  
23 *Fishing Club v. California Resources Agency* (2008) 158 Cal.App.4th  
24 1183, 1205; see *People v. Wright* (1982) 30 Cal.3d 705, 713  
25 [standards for administrative application of statute need not be  
26 expressly set forth; may be implied by purpose of statute].)

27 The interpretation of a regulatory statute is the duty of the  
28 administrative agency charged with its enforcement; though final

1 responsibility for interpreting the law belongs to the courts, an  
2 administrative agency's construction is "entitled to great  
3 weight." (*B. C. Cotton, Inc. v. Voss* (1995) 33 Cal.App.4th 929,  
4 951; *County of Sacramento v. State Water Resources Control Bd.*  
5 (2007) 153 Cal.App.4th 1579, 1587 [where regulation is ambiguous,  
6 is appropriate to consider agency's interpretation; "[i]ndeed, we  
7 defer to an agency's interpretation of a regulation involving its  
8 area of expertise," unless it "flies in the face of the clear  
9 language and purpose" of its interpretive provision]; *Communities*  
10 *for a Better Environment v. State Water Resources Control Bd.*  
11 (2003) 109 Cal.App.4th 1089, 1104 [same].) Moreover, the  
12 persuasiveness of the agency's interpretation "increases in  
13 proportion to the expertise and special competence that are  
14 reflected therein, including any evidence that the interpretation  
15 was carefully considered at the highest policymaking level of the  
16 agency." (*Alvarado v. Dart Container Corporation of California*  
17 (2018) 4 Cal.5th 542, 558.)

18 Legislative history may be examined to resolve ambiguities or  
19 uncertainties regarding the purpose or meaning of a statute.  
20 (*Arce v. Kaiser Foundation Health Plan, Inc.* (2010) 181  
21 Cal.App.4th 471, 484; see *Benson v. Workers' Compensation Appeals*  
22 *Bd.* (2009) 170 Cal.App.4th 1535, 1554, fn 16 [documents may be  
23 proper subjects of judicial notice if is indicated that  
24 Legislature considered them in passing statute].) The court may  
25 consider the impact an interpretation of a statute may have on  
26 public policy, and where there is uncertainty, " 'consideration  
27 should be given to the consequences that will flow from a  
28

1 particular interpretation.' [Citation.]" (*Mejia v. Reed* (2003) 31  
2 Cal.4th 657, 663.)

3 The Legislature has found and declared that the proliferation  
4 and use of assault weapons poses a threat to the health, safety,  
5 and security of the citizenry of California. (Pen. Code,  
6 §30505(a); see *Kasler, supra*, 23 Cal.4th at p. 482-488 [reviewing  
7 "crisis created by the proliferation and use of assault weapons"  
8 that gave rise to Assault Weapon Control Act].) Though creating  
9 an effective statutory scheme has proved challenging, "...the  
10 Legislature was not constitutionally compelled to throw up its  
11 hands just because a perfectly comprehensive regulatory scheme was  
12 not politically achievable. The problems of government are  
13 practical ones and may justify, if they do not require, rough  
14 accommodations[.]" (*Id.* at p. 487, internal citations and  
15 quotation marks omitted; see *Harrott v. County of Kings* (2001) 25  
16 Cal.4th 1138, 1154 [in determining statute's meaning, courts look  
17 to "design of the statute as a whole and to its object and  
18 policy[,]" in addition to statutory language].)

19 Accordingly, "on July 1, 2016, Governor Jerry Brown signed  
20 into law Assembly Bill 1135 and Senate Bill 880. See AB 1135 & SB  
21 880, §§ 1 (amending Cal. Penal Code §30515). These bills changed  
22 the law by including weapons equipped with a bullet button within  
23 the statutory definition of an assault weapon." (*Haynie v. Harris*  
24 (9th Cir. 2016) 658 Fed. Appx. 834, 837.)

25 The Senate Committee on Public Safety's bill analysis states,  
26 "This bill clarifies the definition of assault weapons and  
27 provides the [DOJ] the authority to bring existing regulations  
28 into conformity with the original intent of California's Assault

1 Weapon Ban" (Def's RJN, exh. 5, pg. 6); "[t]he purpose of this  
2 change is to clarify that equipping a weapon with a 'bullet  
3 button' magazine release does not take that weapon outside the  
4 definition of an assault weapon[]" (*Id.* at p. 10).

5 Penal Code section 30900 provides:

6 (b)(1) Any person who, from January 1, 2001, to  
7 December 31, 2016, inclusive, lawfully possessed an  
8 assault weapon that does not have a fixed magazine, as  
9 defined in Section 30515, *including those weapons with*  
10 *an ammunition feeding device that can be readily*  
11 *removed from the firearm with the use of a tool*, shall  
12 register the firearm before July 1, 2018, but not  
13 before the effective date of the regulations adopted  
14 pursuant to paragraph (5), with the department  
15 pursuant to those procedures that the department may  
16 establish by regulation pursuant to paragraph (5).  
17 (Subd. (b)(1), italics added.)

18 [...]

19 The department shall adopt regulations for the purpose  
20 of implementing this subdivision. These regulations  
21 are exempt from the Administrative Procedure Act  
22 (Chapter 3.5 (commencing with Section 11340) of Part 1  
23 of Division 3 of Title 2 of the Government Code).  
24 (Subd. (b)(5).)

25 Plaintiffs here allege that Defendant Department of Justice  
26 ("DOJ") exceeded the scope of its APA exemption when it  
27 promulgated the challenged regulations via the "file and print"  
28 process, rather than adhering to the notice and comment procedure  
set forth in the APA. Specifically, Plaintiffs allege that DOJ's  
exemption applied to promulgating regulations that addressed *how*  
to register, not *what* to register; that the DOJ improperly  
expanded the definition of "assault weapon;" that "bullet button  
shotguns" do not meet the statutory definition of "assault weapon"  
and therefore should not have to be registered; that DOJ cannot  
require applicants to create a serial number for a firearm; that  
the non-liability clause is unrelated to the registration process;

1 that DOJ cannot require applicants to create information, i.e.,  
2 digital photos of firearms; that the joint registration  
3 restrictions are improper; and that the post-registration  
4 restrictions are excessive.

5 This Court is to give "great weight" to DOJ's interpretation  
6 of the authorizing statute. (See, e.g., *Association of California*  
7 *Insurance Companies, supra*, 2 Cal.5th at p. 390.) Defendant DOJ's  
8 interpretation of the exemption from the APA requirements does not  
9 appear to be contrary to law.

10 First, each of the regulations at issue "fill up the details"  
11 of the authorizing statute. (*PaintCare, supra*, 233 Cal.App.4th at  
12 p. 1311.) Defendant DOJ is authorized to "adopt regulations for  
13 the purpose of implementing" the authorizing statute. (Pen. Code  
14 §30900(b)(5).) The regulations at issue here each appear to do  
15 just that, such that the APA exemption would apply. The  
16 challenged regulations ensure that eligible weapons are  
17 registered, by eligible applicants, through an understandable  
18 registration process.

19 Second, the challenged regulations appear to carry out the  
20 intention of the Legislature, i.e., to require registration of  
21 "bullet button" firearms, based on the "finding that each firearm  
22 has such a high rate of fire and capacity for firepower that its  
23 function as a legitimate sports or recreational firearm is  
24 substantially outweighed by the danger that it can be used to kill  
25 and injure human beings." (Pen. Code §30505(a).) Penal Code  
26 section 30900 provides that "an assault weapon that does not have  
27 a fixed magazine, as defined in Section 30515, including those  
28 weapons with an ammunition feeding device that can be readily


1 removed from the firearm with the use of a tool, shall register  
2 the firearm before July 1, 2018[.]” DOJ’s interpretation of the  
3 italicized portion of the statute does not appear to be an abuse  
4 of discretion; moreover, DOJ’s interpretation indicates  
5 consideration of the purpose of the enabling statute, legislative  
6 intent behind the Assault Weapons Control Act, and the reality of  
7 devising an efficient and understandable registration process.

8 The Court finds that the weight of the evidence supports  
9 Defendants’ position that the regulations as promulgated are  
10 within the APA exemption provided by Penal Code section 30900,  
11 subdivision (b)(5).

12 **C. Disposition**

13 Accordingly, the petition writ of mandate, and declaratory  
14 and injunctive relief, is denied.

15 Dated this 30<sup>th</sup> day of May, 2018.

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17  
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19   
20 **MARK W. SNAUFFER**  
21 **JUDGE OF THE SUPERIOR COURT**  
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