ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar number, and address)*:
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FOR COURT USE ONLY

E-FILED
7/6/2018 5:28 PM
FRESNO COUNTY SUPERIOR COURT
By: L. Whipple, Deputy

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Fresno
STREET ADDRESS: 1130 O Street
MAILING ADDRESS: Same as street address.
CITY AND ZIP CODE: Fresno, 93721-2220
BRANCH NAME: B. F. Sisk Courthouse

PLAINTIFF/PETITIONER: Danny Villanueva, et al.
DEFENDANT/RESPONDENT: Becerra, et al.

NOTICE OF ENTRY OF JUDGMENT OR ORDER

CASE NUMBER: 17CECG03093

(Check one): ☑ **UNLIMITED CASE** (Amount demanded exceeded $25,000) ☐ **LIMITED CASE** (Amount demanded was $25,000 or less)

TO ALL PARTIES :

1. A judgment, decree, or order was entered in this action on *(date)*: June 21, 2018

2. A copy of the judgment, decree, or order is attached to this notice.

Date: July 6, 2018

Anna M. Barvir
(TYPE OR PRINT NAME OF ☑ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

(SIGNATURE)

Form Approved for Optional Use
Judicial Council of California
CIV-130 [New January 1, 2010]

PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	CASE NUMBER:

PROOF OF SERVICE BY FIRST-CLASS MAIL
NOTICE OF ENTRY OF JUDGMENT OR ORDER

(NOTE: You cannot serve the* Notice of Entry of Judgment or Order *if you are a party in the action. The person who served the notice must complete this proof of service.)

1. I am at least 18 years old and **not a party to this action.** I am a resident of or employed in the county where the mailing took place, and my residence or business address is *(specify):*

2. I served a copy of the *Notice of Entry of Judgment or Order* by enclosing it in a sealed envelope with postage fully prepaid and *(check one):*
   a. ☐ deposited the sealed envelope with the United States Postal Service.
   b. ☐ placed the sealed envelope for collection and processing for mailing, following this business's usual practices, with which I am readily familiar. On the same day correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service.

3. The *Notice of Entry of Judgment or Order* was mailed:
   a. on *(date):*
   b. from *(city and state):*

4. The envelope was addressed and mailed as follows:
   a. Name of person served:
      Street address:
      City:
      State and zip code:
   c. Name of person served:
      Street address:
      City:
      State and zip code:
   b. Name of person served:
      Street address:
      City:
      State and zip code:
   d. Name of person served:
      Street address:
      City:
      State and zip code:

   ☐ Names and addresses of additional persons served are attached. *(You may use form POS-030(P).)*

5. Number of pages attached _____.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME OF DECLARANT)

▶ (SIGNATURE OF DECLARANT)

PROOF OF SERVICE

STATE OF CALIFORNIA
COUNTY OF FRESNO

I, Laura Palmerin, am employed in the City of Long Beach, Los Angeles County, California. I am over the age eighteen (18) years and am not a party to the within action. My business address is 180 East Ocean Boulevard, Suite 200, Long Beach, California 90802.

On July 6, 2018, I served the foregoing document(s) described as:

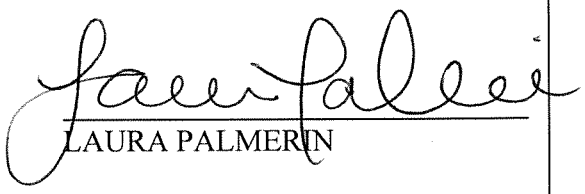
NOTICE OF ENTRY OF JUDGMENT OR ORDER

on the interested parties in this action by placing
[ ] the original
[X] a true and correct copy
thereof by the following means, addressed as follows:

P. Patty Li — *Attorneys for Defendants*
patty.li@doj.ca.gov
Deputy Attorney General
California Department of Justice
Office of the Attorney General
455 Golden Gate Ave., Suite 11000
San Francisco, CA 94102

X (BY ELECTRONIC MAIL) As follows: I served a true and correct copy by electronic transmission through OneLegal. Said transmission was reported and completed without error.
Executed on July 6, 2018, at Long Beach, California.

X (STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.



LAURA PALMERIN

XAVIER BECERRA
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Attorneys for Respondents and Defendants Xavier Becerra, Stephen Lindley, and the California Department of Justice

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF FRESNO

DANNY VILLANUEVA, NIALL STALLARD, RUBEN BARRIOS, CHARLIE COX, MARK STROH, ANTHONY MENDOZA, AND CALIFORNIA RIFLE & PISTOL ASSOCIATION, INCORPORATED,

Petitioners and Plaintiffs,

v.

XAVIER BECERRA, in his official capacity as Attorney for the State of California; STEPHEN LINDLEY, in his official capacity as Chief of the California Department of Justice, Bureau of Firearms; CALIFORNIA DEPARTMENT OF JUSTICE; and DOES 1-10,

Respondents and Defendants.

Case No. 17CECG03093

~~[PROPOSED]~~ **JUDGMENT DENYING PETITION FOR WRIT OF MANDATE AND DISMISSING COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

Dept: 501
Judge: The Honorable Mark W. Snauffer

Action Filed: September 7, 2017

The First Amended Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief filed by Petitioners and Plaintiffs Danny Villanueva, Niall Stallard, Ruben Barrios, Charlie Cox, Mark Stroh, Anthony Mendoza, and the California Rifle & Pistol

Association, Incorporated, came on for hearing on May 25, 2018 in Department 501 of the above-entitled Court, the Honorable Mark W. Snauffer presiding. Sean A. Brady appeared for Petitioners and Plaintiffs, and P. Patty Li appeared for Respondents and Defendants Xavier Becerra, Stephen Lindley, and the California Department of Justice.

Having reviewed the argument and papers submitted by the parties; the cause having been argued and submitted for decision; and having issued on May 30, 2018 an Order Denying the Petition for Writ of Mandate and Statement of Decision, a copy of which is attached as Exhibit A and incorporated into this Judgment;

IT IS ORDERED, ADJUDGED, AND DECREED that:

1. The petition for writ of mandate is DENIED.

2. Each of Petitioners and Plaintiffs' other causes of action for declaratory or injunctive relief is DISMISSED;

3. Judgment on the First Amended Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief is entered against Petitioners and Plaintiffs and in favor of Respondents and Defendants;

4. Petitioners and Plaintiffs shall take nothing from Respondents and Defendants; and

5. Pursuant to Government Code section 6103.5, Respondents and Defendants shall recover their costs of suit in the amount of _____.

Dated: June 21, 2018

The Honorable Mark W. Snauffer
Judge of the Superior Court

APPROVED AS TO FORM:

Dated: 6/18/18

Sean A. Brady
MICHEL & ASSOCIATES, P.C.
Attorneys for Petitioners and Plaintiffs

Exhibit A

SUPERIOR COURT OF CALIFORNIA - COUNTY OF FRESNO Civil Department - Non-Limited	Entered by:
TITLE OF CASE: **Danny Villanueva vs Xavier Becerra**	
LAW AND MOTION MINUTE ORDER	Case Number: **17CECG03093**

Hearing Date: **May 30, 2018** Hearing Type: **Writ of Mandate/ From Chambers**
Department: **501** Judge/Temp. Judge: **Snauffer, Mark**
Court Clerk: **Whipple, Layla** Reporter/Tape: **N/R**

Appearing Parties:

Plaintiff: Defendant:

Counsel: Counsel:

[ ] Off Calendar

[ ] Continued to [ ] Set for __ at __ Dept. __ for __

[ ] Submitted on points and authorities with/without argument. [ ] Matter is argued and submitted.

[ ] Upon filing of points and authorities.

[ ] Motion is granted [ ] in part and denied in part. [ ] Motion is denied [ ] with/without prejudice.

[X] Taken out from under advisement.

[ ] Demurrer [ ] overruled [ ] sustained with __ days to [ ] answer [ ] amend

[ ] Tentative ruling becomes the order of the court. No further order is necessary.

[ ] Pursuant to CRC 3.1312(a) and CCP section 1019.5(a), no further order is necessary. The minute order adopting the tentative ruling serves as the order of the court.

[ ] Service by the clerk will constitute notice of the order.

[X] See attached copy of the Order Denying The Petition For Writ of Mandate and Statement of Decision.

[ ] Judgment debtor __ sworn and examined.

[ ] Judgment debtor __ failed to appear.
Bench warrant issued in the amount of $ __

JUDGMENT:
[ ] Money damages [ ] Default [ ] Other __ entered in the amount of:
Principal $__ Interest $__ Costs $__ Attorney fees $__ Total $__
[ ] Claim of exemption [ ] granted [ ] denied. Court orders withholdings modified to $__ per __

FURTHER, COURT ORDERS:
[ ] Monies held by levying officer to be [ ] released to judgment creditor. [ ] returned to judgment debtor.
[ ] $__ to be released to judgment creditor and balance returned to judgment debtor.
[ ] Levying Officer, County of __, notified. [ ] Writ to issue
[ ] Notice to be filed within 15 days. [ ] Restitution of Premises
[ ] Other: __

SUPERIOR COURT OF CALIFORNIA, COUNTY OF FRESNO

CENTRAL DIVISION

DANNY VILLANUEVA, ET AL., Petitioners, v. **XAVIER BECERRA, ET AL.,** Respondents.	**No. 17CECG03093** **ORDER DENYING THE PETITION FOR WRIT OF MANDATE AND STATEMENT 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

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

II. BACKGROUND

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

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

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

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

includes those with a "bullet button" - a magazine release device on a firearm, requiring the use of a tool (which can be a bullet or ammunition cartridge) to remove the magazine from the firearm. This feature is also called a magazine lock. Prior to the new regulations, "bullet button" weapons did not have to be registered with DOJ because they were not within the old definition of "assault weapon," which was defined as a weapon that had "the capacity to accept a detachable magazine," as well as one or more of some other specified characteristics. (See former Pen. Code §30515.) As of January 17, 2017, a weapon that "does not have a fixed magazine" is an "assault weapon;" a "fixed magazine" is "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." (Pen. Code §30515.)

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

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

> Pursuant to Assembly Bill 1135 (Stats. 2016, ch. 40) and Senate Bill 880 (Stats. 2016, ch. 48) effective January 1, 2017, the definition of assault weapon is revised.
>
> These bills require that any person who, from January 1, 2001, to December 31, 2016, inclusive, lawfully possessed an assault weapon that does not have a fixed magazine, as defined in Penal Code section 30515, including those weapons with an ammunition feeding device that can be readily removed from the firearm with the use of a tool, shall register the firearm before January 1, 2018, but not before the effective date of the regulations adopted by the DOJ. (https://oag.ca.gov/firearms.)

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

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

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

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

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

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

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

///

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

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

III. DISCUSSION

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

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

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

An administrative agency "is not limited to the exact provisions of a statute" in adopting regulations to enforce its mandate; an absence of specific statutory provisions regarding the regulation of an issue does not mean that such a regulation exceeds statutory authority. (*PaintCare v. Mortensen* (2015) 233 Cal.App.4th 1292, 1307, and cases cited; *Lavin v. California Horse Racing Bd.* (1997) 57 Cal.App.4th 263, 268 [it is a "well-settled principle of administrative law that in the absence of an express statutory directive to the contrary, an administrative agency may exercise its discretion in selecting the methodology by which it will implement the authority granted to it."].) An agency is authorized to "fill up the details" of the statutory scheme. (*Paintcare*, supra, 233 Cal.App.4th at p. 268, quoting *Ford Dealers Assn. v. Department of Motor Vehicles* (1982) 32 Cal.3d 347, 362, internal quotation marks omitted; see also *California School Bds. Assn. v. State Bd. of Education* (2011) 191 Cal.App.4th 530, 544; *Batt v. City and County of San Francisco* (2010) 184 Cal.App.4th 163, 171, 174; *Masonite Corp. v. County of Mendocino Air Quality Management Dist.* (1996) 42 Cal.App.4th 436, 445-447.) In other words, the Legislature may, after declaring a policy and fixing a primary standard, confer upon an administrative officer the power to "fill up the details" by prescribing administrative rules and regulations to promote the purposes of the legislation and to carry it into effect. (*Coastside Fishing Club v. California Resources Agency* (2008) 158 Cal.App.4th 1183, 1205; see *People v. Wright* (1982) 30 Cal.3d 705, 713 [standards for administrative

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

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

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

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

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

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

B. *Writ of Mandate*

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

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

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

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

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

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

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

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

> An agency interpretation of the meaning and legal effect of a statute is entitled to consideration and respect by the courts; however, unlike quasi-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

> themselves, the binding power of an agency's interpretation of a statute or regulation is contextual: Its power to persuade is both circumstantial and dependent on the presence or absence of factors that support the merit of the interpretation. [...] The appropriate degree of judicial scrutiny in any particular case is perhaps not susceptible of precise formulation, but lies somewhere along a continuum with nonreviewability at one end and independent judgment at the other. Quasi-legislative administrative decisions are properly placed at that point of the continuum at which judicial review is more deferential; ministerial and informal actions do not merit such deference, and therefore lie toward the opposite end of the continuum.
>
> Courts must, in short, independently judge the text of the statute, taking into account and respecting the agency's interpretation of its meaning, of course, whether embodied in a formal rule or less formal representation. Where the meaning and legal effect of a statute is the issue, an agency's interpretation is one among several tools available to the court. Depending on the context, it may be helpful, enlightening, even convincing. It may sometimes be of little worth. Considered alone and apart from the context and circumstances that produce them, agency interpretations are not binding or necessarily even 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.)

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

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

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

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

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

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

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

1. Category one: firearms specified on the original Roberti-Roos assault weapons list. (Pen. Code §30510(a)-(c));
2. Category two: firearms specified on the AK and AR-15 series weapons listing (Id. at (e)-(f)); and
3. Category three:
   a. firearms defined as assault weapons based on specific generic characteristics, often called "SB 23 assault weapons." (Pen. Code §30515); and
   b. firearms that do not have a fixed magazine, as defined in Penal Code §30515, including those weapons with an ammunition feeding device that can be readily removed from the firearm with the use of 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).

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

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

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

Penal Code section 30900 provides:

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

and

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

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

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

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

> "[O]n July 1, 2016, Governor Jerry Brown signed into law Assembly Bill 1135 and Senate Bill 880. See AB 1135 & SB 880, §§ 1 (amending Cal. Penal Code §30515). **These bills changed the law by including weapons equipped with a bullet button within the statutory definition of an assault weapon.** Rather than defining an assault weapon as a firearm with the 'capacity to accept a detachable magazine' as before, the amended 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.*"

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

bold added.)

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

IV. ANALYSIS

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

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

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

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

- SB880 will make our communities safer and upholds our commitment to reduce gun violence in California **by closing the bullet button loophole** in California's Assault Weapons Ban. (RJN, Exh. 1 at 3; exh. 2 at 3; exh. 5 at 6, bold added.)

- **This bill seeks to address the issue regarding the definition of an assault weapon as it pertains to what constitutes a "detachable magazine."** Regulations promulgated after the enactment of SB 23 define a detachable magazine as, "any ammunition feeding device that can be removed readily from the firearm with neither disassembly of the firearm action nor use of a tool being required. A bullet or ammunition cartridge is considered a tool." (11 CFR § 5469(a)) In response to this definition, features such as the "bullet button" have been developed by firearms manufacturers that enable easy detachment of a magazine with the use of a "tool" and are thus not classified as a "detachable magazine." **As a result, firearms with features such as the "bullet button" do not fall within the current definition of an assault weapon.** (RJN, Exh. 3 at 2, emphasis added.)

- High-capacity detachable ammunition magazines allow shooters to expel large amounts of ammunition quickly and have no sporting purpose. (*Id.* at Exh. 2, p. 5.)

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

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

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

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

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

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

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

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

Defendants submit various analyses prepared for Senate Bill 880 and Assembly Bill 1135; these tend generally to lend support to Defendants' argument that the problem the Legislature was attempting to address was bullet buttons on firearms generally, however there is also language in the legislative history submitted by Defendants indicating "assault weapon" is meant to include those firearms that meet two requirements: (1) does not 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.)

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

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

V. STATEMENT OF DECISION

A. Standard of Review

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Penal Code section 30900 provides:

> (b)(1) Any person who, from January 1, 2001, to December 31, 2016, inclusive, lawfully possessed an assault weapon that does not have a fixed magazine, as defined in Section 30515, *including those weapons with an ammunition feeding device that can be readily removed from the firearm with the use of a tool*, shall register the firearm before July 1, 2018, but not before the effective date of the regulations adopted pursuant to paragraph (5), with the department pursuant to those procedures that the department may establish by regulation pursuant to paragraph (5). (Subd. (b)(1), italics added.)
>
> [...]
>
> The department shall adopt regulations for the purpose of implementing this subdivision. These regulations are exempt from the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). (Subd. (b)(5).)

Plaintiffs here allege that Defendant Department of Justice ("DOJ") exceeded the scope of its APA exemption when it promulgated the challenged regulations via the "file and print" 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;

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

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

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

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

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

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

C. Disposition

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

Dated this 30th day of May, 2018.

MARK W. SNAUFFER
JUDGE OF THE SUPERIOR COURT

SUPERIOR COURT OF CALIFORNIA - COUNTY OF FRESNO Civil Department, Central Division 1130 "O" Street Fresno, California 93724-0002 (559) 457-2000	*FOR COURT USE ONLY*
TITLE OF CASE: **Danny Villanueva vs Xavier Becerra**	
CLERK'S CERTIFICATE OF MAILING	CASE NUMBER: **17CECG03093**

I certify that I am not a party to this cause and that a true copy of the:

[Order Denying the Petition for Writ of Mandate and Statement of Decision]

was placed in a sealed envelope and placed for collection and mailing on the date and at the place shown below following our ordinary business practice. I am readily familiar with this court's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service with postage fully prepaid.

Place of mailing: **Fresno, California 93724-0002**

On Date: **05/31/2018** Clerk, by _____, Deputy

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☐ Clerk's Certificate of Mailing Additional Address Page Attached

DECLARATION OF SERVICE BY E-MAIL

Case Name: ***Villanueva, Danny, et al. v. Xavier Becerra, et al.***

No.: **17CECG03093**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney Genera.

On June 19, 2018, I served the attached **[PROPOSED] JUDGMENT AND EXHIBIT A** by transmitting a true copy via electronic mail through Odyssey EfileCA, addressed as follows:

Sean A. Brady, Esq.
Michel & Associates, P.C.
180 E. Ocean Boulevard, Suite 200
Long Beach, CA 90802
E-mail Address: sbrady@michellawyers.com

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on June 19, 2018, at San Francisco, California.

Susan Chiang
Declarant

Signature

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