IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

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

Plaintiffs and Appellants,

v.

XAVIER BECERRA, in his official capacity as Attorney for the State of California; BRENT E. ORICK, in his official capacity as Acting Director of the California Department of Justice, Bureau of Firearms; CALIFORNIA DEPARTMENT OF JUSTICE; and DOES 1-10,

Defendants and Respondents.

Case No. F078062

Fresno County Superior Court, Case No. 17CECG03093
The Honorable Mark W. Snauffer, Judge

RESPONDENTS' BRIEF

XAVIER BECERRA
Attorney General of California
THOMAS S. PATTERSON
Senior Assistant Attorney General
PAUL STEIN
Supervising Deputy Attorney General
P. PATTY LI
Deputy Attorney General
State Bar No. 266937
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 510-3817
Fax: (415) 703-1234
E-mail: Patty.Li@doj.ca.gov
Attorneys for Defendants and Respondents Xavier Becerra, et al.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT

Case Name: *DANNY VILLANUEVA, et al. v. XAVIER BECERRA, et al.; and DOES 1-10*

Court of Appeal No.: F078062

CERTIFICATE OF INTERESTED PARTIES OR ENTITIES OR PERSONS
(Cal. Rules of Court, Rule 8.208)

(Check One) **INITIAL CERTIFICATE** [X] **SUPPLEMENTAL CERTIFICATE** [ ]

Please check the applicable box:

[X] There are no interested entities or persons to list in this Certificate per California Rules of Court, rule 8.208(d).

[ ] Interested entities or persons are listed below:

Full Name of Interested Entity or Party	Party *Check One*	Non-Party *Check One*	Nature of Interest *(Explain)*
	[ ]	[ ]	
	[ ]	[ ]	
	[ ]	[ ]	
	[ ]	[ ]	
	[ ]	[ ]	
	[ ]	[ ]	

The undersigned certifies that the above listed persons or entities (corporations, partnerships, firms or any other association, but not including government entities or their agencies), have either (i) an ownership interest of 10 percent or more in the party if an entity; or (ii) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Attorney Submitting Form

P. PATTY LI
Deputy Attorney General
State Bar No. 266937
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 510-3817
Fax: (415) 703-1234
E-mail: Patty.Li@doj.ca.gov

Party Represented

Attorneys for Defendants and Respondents

/s/ P. Patty Li
(Signature of Attorney Submitting Form)

August 9, 2019
(Date)

21575477.doc

TABLE OF CONTENTS

Page

TABLE OF CONTENTS
(continued)

Page

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES
(continued)

Page

TABLE OF AUTHORITIES
(continued)

Page

TABLE OF AUTHORITIES
(continued)

Page

TABLE OF AUTHORITIES
(continued)

Page

STATUTES

TABLE OF AUTHORITIES
(continued)

Page

REGULATIONS

TABLE OF AUTHORITIES
(continued)

Page

TABLE OF AUTHORITIES
(continued)

Page

OTHER AUTHORITIES

INTRODUCTION

In 2016, the Legislature added a new type of assault weapon—bullet-button assault weapons—to the weapons regulated by the Assault Weapons Control Act. The Legislature also gave Respondents[1] broad statutory authority to promulgate regulations for the purpose of registering such weapons, and also exempted these regulations from the requirements of the Administrative Procedure Act (APA).

This challenge to the resulting regulations fails in all respects. As a threshold matter, all claims have been mooted by the closing of the registration period and operation of other regulations prohibiting the possession of unregistered weapons. No effective relief is available concerning the completed process for registration that is challenged here, and Appellants have not shown that they were unable to register. But even if the Court were to consider the claims on the merits, this Court should affirm. The appeal of the trial court's decision to sustain the demurrer to the initial complaint has been largely waived, because Appellants amended eight out of the nine claims. The only unamended claim fails on both procedural and substantive grounds and was properly dismissed. As for the regulations challenged in the amended pleading (a petition for writ of mandate), they are all directly related to the registration process, consistent with the assault weapons law, and reasonably necessary to effectuate the purposes of the registration requirement and the assault weapons law.

[1] Brent E. Orick is now the Acting Director of the California Department of Justice, Bureau of Firearms. Respondents have submitted a motion to substitute parties, concurrently with this brief.

BACKGROUND

I. REGISTRATION OF BULLET-BUTTON ASSAULT WEAPONS

The Assault Weapons Control Act ("assault weapons law") (Pen. Code, §§ 30500, et seq.) generally restricts the possession, purchase, sale, manufacture, and distribution of assault weapons, excepting only those assault weapons acquired before the law took effect, so long as they were timely registered with the Department of Justice (DOJ). (*Id*., § 30900.) Under this grandfathering exception, owners of such weapons may lawfully possess and sell registered weapons, notwithstanding the general ban. (See, e.g., *id*., § 30675, subd. (b)(1).)

In 2016, the Legislature amended the assault weapons law to define a new class of assault weapons commonly known as "bullet-button" assault weapons, and established a new registration process for them. (Stats. 2016, ch. 40 (A.B. 1135), §§ 1, 3; Stats. 2016, ch. 48 (S.B. 880), §§ 1, 3.) As a result of these amendments, a banned assault weapon includes a semiautomatic weapon that "does not have a fixed magazine," and "fixed magazine" is defined 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." (Pen. Code, § 30515, subds. (a)(1), (a)(4), (b).) The firearm action is the mechanism by which a firearm is loaded, fired, and unloaded. (Cal. Code Regs., tit. 11, § 5471, subd. (b).) Disassembly of the firearm action requires interrupting the action such that it temporarily will not function in a semiautomatic fashion. (*Id*., subd. (n).) A firearm with a fixed magazine thus requires more time to change the magazine, as compared to a firearm without a fixed magazine. A bullet-button weapon does not have a fixed magazine. The magazine is easily removable with a tool, which can be a bullet or ammunition cartridge.

The legislative history for these amendments reflects a finding that unless the "bullet-button loophole" is closed, "the assault weapon ban is severely weakened, and these types of military-style firearms will continue to proliferate on our streets and in our neighborhoods." (Joint Appendix (JA) 1201, 1205, 1238.)

Although possession of this new class of assault weapons was prohibited as of January 1, 2017, there is an exception for bullet-button assault weapons that were lawfully possessed before January 1, 2017, if their owners registered them before July 1, 2018. (Pen. Code, § 30900, subd. (b)(1).) In enacting the bullet-button amendments, the Legislature also authorized DOJ to promulgate "regulations for the purpose of implementing" the new registration process, and such regulations "are exempt from the requirements of the [APA]."[2] (*Id*., subd. (b)(5).)

Pursuant to this exemption, DOJ submitted registration regulations to the Office of Administrative Law for publication in the California Code of Regulations. (JA 1279-1426; see Gov. Code, § 11343.8.) The Office of Administrative Law approved the request to publish these regulations on July 31, 2017. (JA 1428.) The regulations address the following topics: the weapons that may be registered and definitions of the statutory terms governing the types of firearms to be registered (Cal. Code Regs., tit. 11, §§ 5470-72);[3] the process for registering via DOJ's website and the

[2] The APA provides that, 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," including advance notice to the public and an opportunity for public comment." (*Morning Star Co. v. State Bd. of Equalization* (2006) 38 Cal.4th 324, 333, internal citations and quotation marks omitted; Gov. Code, § 11346.)

[3] Unless otherwise specified, all future references to a code section are to a section within title 11 of the California Code of Regulations.

information required to be provided (§§ 5473-74); joint registration requirements (§ 5474.1); serial number requirements for registering homebuilt weapons (§ 5474.2); the required registration fee (§ 5475); the deadlines for submitting registrations and complying with requests for additional information or documentation (§ 5476); the prohibition on illegal modifications to registered weapons (§ 5477); and the process for voluntary deregistration (§ 5478).

II. PROCEDURAL HISTORY

Appellants are six individuals and one association who allegedly own (or whose members allegedly own) weapons subject to the bullet-button registration requirement and DOJ's regulations. (Respondents' Appendix (RA) 5-9 [Initial Compl., ¶¶ 11-17; JA 1478-1482 [First Am. Verified Pet. for Writ of Mandate, ¶¶ 9-15].) Appellants originally filed this action as a complaint for declaratory and injunctive relief challenging nine sets of registration regulations, arguing that the regulations fell outside the scope of the APA exemption for registration regulations, and conflicted with the assault weapons law. (RA 3-64.) The trial court sustained Respondents' demurrer with leave to amend, finding that DOJ's decision to promulgate regulations for the registration period using the APA exemption in Penal Code section 30900, subdivision (b)(5), was an administrative decision that could only be challenged through a writ petition. (JA 1474.)

Appellants then filed an amended pleading, in the form of a petition for writ of mandate and complaint for declaratory and injunctive relief. (JA 1476.) The petition asserted sixteen causes of action: eight writ of mandate causes of action challenging eight regulatory requirements, and eight corresponding declaratory and injunctive relief causes of action. (*Id.* 1496-1524.) All causes of action asserted that the regulations fell outside the scope of the APA exemption for registration regulations, and conflicted with the assault weapons law. (*Ibid.*)

The trial court denied the writ petition, concluding that "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.'" (JA 1901-02, quoting Pen. Code, §30505, subd. (a).) The trial court also found no abuse of discretion, and that "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." (*Ibid*.)

The trial court entered judgment on June 21, 2018 (JA 1935), and the notice of entry of judgment was filed on July 7, 2018 (*id*. 972). Appellants filed a notice of appeal on August 28, 2018. (*Id*. 2012.)

STANDARD OF REVIEW

In reviewing a demurrer, a trial court considers the properly pleaded material facts and those matters that may be judicially noticed and tests their legal sufficiency. (*California Alliance for Utility etc. Education v. City of San Diego* (1997) 56 Cal.App.4th 1024, 1028.) The court determines whether the complaint sufficiently states a cause of action, assuming the truth of the facts set forth by the pleading. (*Picton v. Anderson Union High School Dist*. (1996) 50 Cal.App.4th 726, 733.) An appellate court's review of a trial court's order sustaining a demurrer for failure to state a claim is de novo. The appellate court conducts the same review as the trial court in determining whether the complaint states a cause of action, treating the demurrer as "admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law." (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318, internal quotation marks and citation omitted.) An appellate court will not make factual findings or take

evidence that was not before the trial court, absent exceptional circumstances. (*Bombardier Recreational Products, Inc. v. Dow Chemical Canada ULC* (2013) 216 Cal.App. 4th 591, 605; *In re Zeth S.* (2003) 31 Cal.4th 396, 405.)

An appellate court applies the substantial evidence standard of review to a trial court's findings of fact in support of its decision on a petition for writ of mandate, but reviews de novo any questions of statutory interpretation. (*Witt Home Ranch, Inc. v. County of Sonoma* (2008) 165 Cal.App.4th 543, 551.) Appellate review of the agency decision itself is the same as the trial court's: a writ of mandate under Code of Civil Procedure section 1085 may only be issued to correct an abuse of discretion that exceeds an agency's legal powers. (*Saleeby v. State Bar of Cal.* (1985) 39 Cal.3d 547, 562.) "In determining whether an 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." (*Helena F. v. West Contra Costa Unified School Dist.* (1996) 49 Cal.App.4th 1793, 1799, citation omitted.) Abuse of discretion is a "highly deferential" standard, as it must be when a court is asked to intervene after a governmental body has exercised discretion. (*Carrancho v. Cal. Air Resources Bd.* (2003) 111 Cal.App.4th 1255, 1265.)

When an agency's action depends only on the correct interpretation of a statute, it is a question of law upon which the court exercises independent judgment. (*Cal. Correctional Peace Officers' Ass'n. v. State* (2010) 181 Cal.App.4th 1454, 1460.) In doing so, courts nonetheless "are guided by the principle that an administrative agency's interpretation of controlling statutes will be accorded great respect by the courts and will be followed if not clearly erroneous." (*Ibid.*, citations and internal punctuation omitted.)

SUMMARY OF ARGUMENT

This appeal is moot and should be dismissed. The registration process for bullet-button assault weapons has been closed since July 1, 2018, and the statutory registration requirement has not been challenged here. Moreover, a separate regulation, promulgated pursuant to APA notice-and-comment procedures, prohibits the possession of the very same weapons covered by the registration definitions—unless they were properly registered. Thus, any decision invalidating the regulations used to effectuate the registration process would provide Appellants with no effectual relief.

If the Court nevertheless considers this appeal on the merits, it should affirm the judgment in all respects. Appellants' challenge to the trial court's ruling sustaining the demurrer to the initial complaint with leave to amend is largely waived. Appellants amended eight out of the nine claims in their initial complaint, and cannot appeal the trial court's ruling on demurrer as to those eight claims. The only claim that Appellants did not amend —challenging the requirement that all registrants undergo a check of their eligibility to possess a firearm—was properly dismissed with leave to amend. The trial court correctly determined that this claim for declaratory and injunctive relief under Government Code section 11350 (as well as all other claims in the initial complaint) had to be filed as a petition for writ of mandate challenging Respondents' administrative decision to use the APA exemption to promulgate the regulation.

Even if not, the claim would still fail as a matter of law. The Penal Code explicitly provides that persons who are prohibited from possessing firearms may not register assault weapons. A regulation requiring an eligibility check as a condition of registration is thus directly related to and reasonably necessary to implement the registration process.

Appellants' challenge to the trial court's denial of writ relief under the amended pleading also fails. The regulations set forth the basic requirements for registration—including definitions of the weapons that must be registered, the information that must be supplied, the procedures that must be followed, and the conditions that must be satisfied—and so are directly related and reasonably necessary to the registration process. Appellants have offered no authority for their contention that it was beyond DOJ's rulemaking power to enact regulations on these topics, which are critically important to the registration process it was tasked with implementing.

As the trial court found, none of the regulations conflict with the assault weapons law. Courts have long recognized that agencies are authorized to promulgate regulations that "fill up the details" of the statutory schemes they are tasked with administering, and DOJ's determination to cover these topics in its regulations is entitled to deference. The challenged regulations are all reasonably necessary to effectuate the purpose of the registration requirement, which is central to the assault weapons law.

For all of these reasons, this appeal should be dismissed as moot or, if not, the trial court's judgment should be affirmed in full.

ARGUMENT

I. THIS APPEAL IS MOOT BECAUSE THE REGISTRATION PERIOD HAS CLOSED.

The last day to register bullet-button assault weapons was June 30, 2018. (Pen. Code, § 30900, subd. (b)(1).) Appellants were required to register (and presumably did register) by this date. Appellants have no need or opportunity to register bullet-button assault weapons at any time past June 30, 2018. Thus, this challenge to DOJ's regulations governing

the registration process is academic, and the Court should dismiss this appeal as moot.

A. Reversing the Trial Court's Judgment Would Not Afford Appellants Any Practical Relief Because, If They Have Not Already Registered Their Weapons, It Is Too Late To Do So Now.

"California courts will decide only justiciable controversies." (*Wilson & Wilson v. City Council of Redwood City* (2011) 191 Cal.App.4th 1559, 1573, citations omitted (*Wilson*).) Courts "will not render opinions on moot questions or abstract propositions, or declare principles of law which cannot affect the matter at issue on appeal." (*Daily Journal Corp. v. County of Los Angeles* (2009) 172 Cal.App.4th 1550, 1557). A case becomes moot when "the question addressed was at one time a live issue in the case," but is no longer live "because of events occurring after the judicial process was initiated." (*Younger v. Superior Court* (1978) 21 Cal.3d 102, 120; see also *Lincoln Place Tenants Assn. v. City of Los Angeles* (2007) 155 Cal.App.4th 425, 454 ["a case becomes moot when a court ruling can have no practical effect or cannot provide the parties with effective relief"].)

"The pivotal question in determining if a case is moot is therefore whether the court can grant the plaintiff any effectual relief." (*Wilson*, *supra*, 191 Cal.App.4th at p. 1574.) If the "facts upon which [a] judgment was rendered are no longer are operative," continuing with an appeal of that judgment "would be to engage impermissibly in a purely academic exercise." (*City of Los Angeles v. County of Los Angeles* (1983) 147 Cal.App.3d 952, 959 [challenge to county's allocation of property taxes rendered moot by passage of Proposition 13].)

Appellants sought the following relief in their amended pleading:

- a writ of mandate "vacating and annulling DOJ's decision to interpret Penal Code section 30900(b) as giving DOJ authority to adopt" the challenged regulations "without adhering to the APA";
- a writ of mandate "vacating and annulling DOJ's decision to promulgate" the challenged regulations "in a manner that unlawfully alters or amends statutory law";
- an order that Respondents "cease enforcement" of the challenged regulations;
- a judicial declaration that the challenged regulations are invalid; and
- a "preliminary and permanent prohibitory injunction forbidding Respondents . . . from enforcing" the challenged regulations.

(JA 1524-1529.)

None of this presents a live controversy. The Legislature required that persons wishing to register their bullet-button assault weapons do so before July 1, 2018. Thus, even if this Court were to reverse the trial court's judgment, the closing of the registration period means that such a decision would not provide Appellants with any practical relief. The completion of a process or project moots any legal challenge to procedures or rules governing that process or project. (See *Santa Monica Baykeeper v. City of Malibu* (2011) 193 Cal.App.4th 1538, 1550 [claim regarding construction-phase impact was mooted by completion of construction phase]; *Wilson, supra,* 191 Cal.App.4th at p. 1575 ["California law has long recognized that the completion of a public works project moots challenges to the validity of the contracts under which the project was carried out"].)

Here, Appellants' challenge to the regulations used to carry out the registration process has been mooted by the close of that registration process. The Legislature established the registration requirement and the deadline to register in Penal Code 30900, subdivision (b)(1). A writ of

mandate prohibiting DOJ from enforcing the registration regulations cannot change this.[4] Appellants did not challenge the statutory requirement to register bullet-button assault weapons by a certain date, and did not ask the trial court for any relief with respect to the statutory registration requirement or registration deadline. Moreover, Appellants did not allege that they were somehow prevented from registering as a result of the claimed defects in DOJ's regulations. (Cf. *Keane v. Mihaly* (1970) 11 Cal.App.3d 1037, 1041 [finding exception to the 53-day statutory voter registration deadline where plaintiffs' claim was that they had been wrongfully denied the opportunity to register].) Indeed, Appellants have presumably already registered their bullet-button assault weapons, as possession of those weapons without registration is now prohibited. (Pen. Code, §§ 30605, 30680.) Thus, even if Appellants were to prevail in this litigation, they would not receive any practical relief.

[4] As set forth below, the challenge to DOJ's use of the APA exemption to promulgate the registration regulations was required to be brought as a writ petition, and declaratory relief cannot be joined with a writ of mandate. (See *post*, Argument II.B.) But even if declaratory relief were available, the closing of the registration period still renders any such relief moot. Because "[d]eclaratory relief generally operates prospectively to declare future rights, rather than to redress past wrongs," a plaintiff must present a justiciable question relating to his rights or obligations. (See *Jolly v. Chase Home Finance LLC* (2013) 213 Cal.App.4th 872, 909.) Thus, "[i]t would be an idle action on the part of a trial court to make a declaration of the rights and duties of the parties where the controversy is or has become moot and no actual controversy exists relating to their legal rights and duties." (*Pettinger v. Home Savings and Loan Association of Los Angeles* (1958) 166 Cal.App.2d 32, 36.)

B. Appellants Cannot Obtain a Ruling that Certain Weapons Covered by the Challenged Regulations Need Not Have Been Registered at All.

There is also no basis for maintaining this appeal on the theory that Appellants could obtain a ruling that certain weapons need not have been registered at all.

Appellants challenge the regulations defining statutory terms used to determine whether particular types of weapons were required to be registered before July 1, 2018. (§ 5471 (hereafter "Section 5471"). According to Appellants, those definitions were overbroad and inconsistent with the assault weapons law. However, those same definitions, which DOJ promulgated under the APA exemption, were subsequently adopted through formal, notice-and-comment rulemaking under the APA. As of January 8, 2019, a separate regulation—the validity of which is not at issue in this appeal—expressly incorporates by reference the definitions set out in Section 5471. (See § 5460 ["[t]he definitions of terms in section 5471 of this chapter shall apply to the identification of assault weapons pursuant to Penal Code section 30515"]) (hereafter "Section 5460"). The effect of Section 5460 is that possession of any weapons falling within the definitions provided in Section 5471 is prohibited, unless those weapons were registered before July 1, 2019.

DOJ was required to go through regular APA notice-and-comment rulemaking to promulgate the prohibition on possession effectuated through Section 5460. This necessarily included an opportunity for public comment on all forty-four definitions in Section 5471 that were proposed to be incorporated by reference.[5] Moreover, the Office of Administrative Law

[5] Respondents do not concede the truth of Appellants' unsupported assertion that "the public had no meaningful opportunity to comment on the proposed definitions" of Section 5471 that were incorporated by reference (continued…)

found no inconsistency between Section 5460 and the assault weapons law or other DOJ regulations. (Gov. Code, §§ 11349, subd. (d); 11349.1, subd. (a)(4).) Thus, even if this appeal were to result in Section 5471 being invalidated in whole or in part, Section 5460 would still prohibit the possession of any weapons that meet the definitions set forth therein. A decision by this Court that the registration definitions in Section 5471 were invalid would not, in and of itself, invalidate a separately promulgated, later adopted regulation, and so would not permit Appellants to lawfully possess the weapons covered by those definitions. Under Section 5460, those weapons may still only be possessed if they were registered in accordance with the assault weapons law.[6] This renders the appeal moot.

C. Mootness Exceptions Do Not Apply.

California courts recognize "three discretionary exceptions to the rules regarding mootness allowing a court to review the merits of an issue: (1) when the case presents an issue of broad public interest that is likely to recur; (2) when there may be a recurrence of the controversy between the parties; and (3) when a material question remains for the court's determination." (*Santa Monica Baykeeper*, *supra*, 193 Cal.App.4th at p.

(…continued)
into Section 5460. (AOB, p. 23.) Although the validity of Section 5460 is not before this Court, it is apparent from publicly available rulemaking documents, as well as two lengthy comment letters that counsel for Appellants submitted to DOJ, that the rulemaking process for Section 5460 provided ample opportunity for public comment on the forty-four definitions contained in Section 5471.

[6] As set forth below, other claims regarding the alleged "repeal" of certain definitions (former § 5469) and the requirement to obtain and apply a serial number to registered homebuilt weapons (§§ 5472, subd. (g), 5474.2), are also moot based on regulations or statutory requirements that took effect after the trial court's decision denying the writ petition. (See *post*, Argument III.B.1, III.B. 4.)

1548, internal quotation marks and citation omitted.) None of these exceptions applies here.

The regulations concern a one-time registration period, and a statutory APA exemption that applies only to that registration period. Whether these particular regulations fall within this specific APA exemption is not an issue of broad public interest that is likely to recur. Nor is the applicability of this particular APA exemption likely to become the focus of a future dispute between the parties, for the same reasons discussed above—the registration period has ended and the APA exemption can only be used for regulations governing that registration period. Finally, no material question remains for the Court's determination. Because the registration period has closed, Appellants should have already registered any covered weapons in compliance with the challenged regulations. And, possession of un-registered weapons is currently prohibited, and would remain so regardless of the outcome of this litigation. (See *Santa Monica Baykeeper*, *supra*, 193 Cal.App.4th at p. 1551 [plaintiff "has not explained how there are recurring [construction-impact] issues now that construction has been complete for months"].) There is therefore no basis for discretionary review of these mooted claims.

II. THE APPEAL OF THE TRIAL COURT'S ORDER SUSTAINING RESPONDENTS' DEMURRER FAILS.

A. The Trial Court's Order Sustaining the Demurrer Is Not Appealable as to Causes of Action that Were Subsequently Amended.

"When a demurrer is sustained with leave to amend," and "the plaintiff chooses to amend, any error in the sustaining of the demurrer is ordinarily waived." (*County of Santa Clara v. Atlantic Richfield Co.* (2006) 137 Cal.App.4th 292, 312, citations omitted.) "If a plaintiff chooses not to amend one cause of action but files an amended complaint containing the

remaining causes of action or amended versions of the remaining causes of action, no waiver occurs and the plaintiff may challenge the intermediate ruling on the demurrer on an appeal from a subsequent judgment." (*Ibid*.) Thus, "[i]t is only where the plaintiff amends the cause of action to which the demurrer was sustained that any error is waived." (*Ibid*., citing Code Civ. Proc., § 472c, subd. (b).)

After the trial court sustained Respondents' demurrer in its entirety, with leave to amend, Appellants filed an amended pleading, reasserting eight of the initial complaint's nine causes of action for declaratory and injunctive relief as causes of action for a writ of mandate. (Compare RA 23-39, 42-44 [First through Seventh, Ninth Causes of Action], with JA 1496-1523 [First, Third, Fifth, Seventh, Ninth, Eleventh, Thirteenth, and Fifteenth Causes of Action].) Appellants also reasserted those same eight causes of action for declaratory and injunctive relief in their amended pleading. (JA 1498-1524 [Second, Fourth, Sixth, Eighth, Tenth, Twelfth, Fourteenth, and Sixteenth Causes of Action]). Appellants have thereby waived any appeal of the trial court's decision to sustain the demurrer as to eight of the nine causes of action raised in the initial complaint. (*County of Santa Clara*, *supra*, 137 Cal.App.4th at p. 312.)

The only cause of action Appellants did not amend was the initial complaint's Seventh Cause of Action (RA 37-39 [Initial Compl. ¶¶ 157-166]), which challenged regulations providing that applicants registering their assault weapons must undergo a "firearms eligibility check," and that those who successfully complete this check will receive "an assault weapon registration disposition letter." (§ 5476, subds. (d), (e).) Thus, the appeal of the trial court's decision to sustain the demurrer can *only* extend to the originally pleaded Seventh Cause of Action, challenging the eligibility check regulations. (*National Union Fire Ins. Co. of Pittsburgh, PA v. Cambridge Integrated Services Group, Inc.* (2009) 171 Cal.App.4th 35, 44

["When a demurrer to a cause of action is sustained with leave to amend, the plaintiff may elect not to amend the cause of action. The order sustaining the demurrer is treated as an intermediate order with respect to that cause of action, appealable at the time of a final judgment . . ."].) The appeal of the decision to sustain the demurrer as to all other causes of action has been waived.

B. All Nine Causes of Action in the Initial Complaint, Not Just the Seventh, Were Properly Dismissed With Leave to Amend.

All causes of action in the initial complaint sought declaratory and injunctive relief under Government Code section 11350. (RA 23-44 [Initial Compl. ¶¶ 75-198; *id*., ¶ 10].) However, all of the causes of action—including the seventh—either directly allege or seek as relief a declaration that the challenged regulations "[are] beyond the scope of the APA exemption in Penal Code section 30900(b)(5)." (RA 23-24, 26-27, 31, 38, 40, 42-43, 44-47 [Initial Compl. ¶¶ 77-78, 95-96, 117, 160, 169-171, 186-189 and Prayer for Relief ¶¶ 1, 4, 8, 11, 15, 17, 20, 23, 26, 29, 32, 36].) As the trial court correctly determined, Appellants' challenge to DOJ's decision to invoke the APA exemption in promulgating these regulations was required to be filed as a writ petition. (JA 1474.)

Administrative determinations can only be challenged in a writ proceeding; "[i]t is settled that an action for declaratory relief is not appropriate to review an administrative decision." (*State v. Superior Court* (1974) 12 Cal.3d 237, 249.) "Declaratory relief also cannot be joined with a writ of mandate reviewing an administrative determination." (*City of Pasadena, supra*, 228 Cal.App.4th at p. 1467.) A court may sustain a demurrer solely on the ground that the complaint attempts to obtain review of an agency action via declaratory relief, instead of mandamus review.

(See *Tejon Real Estate, LLC v. City of Los Angeles* (2014) 223 Cal.App.4th 149, 155.)

Appellants contend they are not challenging any particular administrative decision, but rather "DOJ's 'overarching, quasi-legislative policy' of exempting itself from the APA in the adoption of uniform regulations of general applicability." (AOB, p. 29.) But allegations to this effect are nowhere to be found in the initial or amended pleadings. Appellants did not allege any other instance in which DOJ has used a statutory APA exemption to promulgate generally applicable regulations—let alone the existence of a general, over-arching policy to follow that course in all cases. Appellants are not challenging an overarching policy, only DOJ's use of the statutory APA exemption to promulgate bullet-button assault weapon registration regulations.

The administrative decision at issue here concerns DOJ's adoption of regulations implementing a program with a fixed end date. This is not an "overarching, quasi-legislative policy set by an administrative agency" of the kind discussed in *Californians for Native Salmon etc. Assn. v. Department of Forestry* (1990) 221 Cal.App.3d 1419, 1423-1425, 1429. There, the agency had allegedly repeatedly failed to comply with requirements governing responses to public comments and cumulative impact assessments concerning proposed timber harvest plans. In contrast, here Appellants are challenging DOJ's one-time use of a statutory APA exemption that, by its terms, is limited to regulations "for the purpose of implementing" a one-time registration process. (Cal. Pen. Code, § 30900, subd. (b)(5).) This is precisely the type of administrative decision that must be reviewed in a traditional mandamus action, rather than an action for declaratory and injunctive relief.

Regardless, all causes of action as originally alleged—including the seventh—also fail as a matter of law to state a cause of action for violation

of Government Code section 11350, which permits challenges to regulations based on a failure to comply with the APA. (See, e.g., *Sims v. Department of Corrections and Rehabilitation* (2013) 216 Cal.App.4th 1059, 1083 [affirming trial court's invalidation of regulations under Gov. Code § 11350 for substantial failure to comply with APA].) As confirmed by the plain language of the statute, Government Code section 11350 assumes the applicability of the APA, and cannot be used to challenge regulations promulgated through use of an APA exemption.

In setting forth specific standards under the APA that must be considered in determining the validity of a regulation, the statute assumes that APA standards apply to any regulations challenged thereunder. Although section 11350 provides that declaratory relief may be available "as to the validity of any regulation," the "grounds for declaration of invalidity" set forth in the statute all hinge on whether a violation of the APA has occurred. (Gov. Code, § 11350.) A regulation may be declared invalid based on: "a substantial failure to comply with" the APA (*id.*, subd. (a)); a lack of substantial evidence "that the regulation is reasonably necessary to effectuate the purpose of the statute, court decision, or other provision of law that is being implemented, interpreted, or made specific by the regulation, or a conflict with substantial evidence in the record" (*id.*, subd. (b)(1)); or a conflict between "substantial evidence in the record" and the agency's "determination that the [regulation] will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states" (*id.*, subd. (b)(2), citing Gov. Code, § 11346.5, subd. (a)(8)). These are references to procedures and findings required under the APA; there is no rulemaking record or requirement for substantial evidence when an agency acts pursuant to an APA *exemption*.

Consistent with this, the Supreme Court has observed that Government Code section 11350 does not apply to regulations that are exempt from the APA: "Section 11350 has no application to the guidelines . . . because the Legislature specifically exempted the guidelines from the provisions of the California Administrative Procedure Act." (*Pacific Legal Foundation v. California Coastal Com.* (1982) 33 Cal.3d 158, 169 fn.4. (*Pacific Legal*).)[7]

The trial court properly determined that the seventh cause of action (and all other causes of action) presented a challenge to DOJ's administrative decision to invoke the APA exemption when promulgating the registration regulations, and that such a challenge to an administrative determination can only be brought as a writ of mandate. And, as a matter of law, Government Code section 11350 cannot be used to challenge that decision because it assumes that the APA applies in the first instance. This Court should affirm the decision sustaining the demurrer as to that cause of action, and as to all other causes of action raised in the initial complaint.

C. The Challenge to the Trial Court's Decision to Sustain the Demurrer as to the Initial Complaint's Seventh Cause of Action Fails on the Merits.

Appellants did not renew their challenge to the eligibility check provisions in their amended pleading, and do not address the claim at all in their opening brief, which does not even cite the relevant regulation

[7] Although *Pacific Legal* itself involved an action for declaratory relief, the interpretive guidelines at issue there represented "the formulation of a general policy intended to govern future [Coastal Act] permit decisions," which "adopt a flexible approach" allowing access conditions to be imposed "on a case-by-case basis." (33 Cal.3d at pp. 168, 174). The decision at issue here—DOJ's use of the statutory APA exemption to promulgate registration regulations—is not a "general policy," but rather a discrete administrative determination that is properly required to be reviewed through a writ of mandate.

(§ 5476). This Court may nevertheless determine as a matter of law that even if this claim could have proceeded under Government Code section 11350, it still fails as a matter of law for the reasons in Respondents' demurrer. (See *Carman v. Alvord* (1982) 31 Cal.3d 318, 324 [review of judgment sustaining demurrer may be affirmed "on any grounds stated in the demurrer, whether or not the [lower] court acted on that ground"].)

As set forth in Respondents' demurrer (JA 30), the regulations requiring a firearms eligibility check of all potential bullet-button assault weapon registrants are well within DOJ's rulemaking authority because the assault weapons law requires DOJ to perform an eligibility check before accepting a registration for an assault weapon. Penal Code section 30950 provides, "No person who is under the age of 18 years, and no person who is prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm, may register or possess an assault weapon or .50 BMG rifle." DOJ must confirm that applicants are not prohibited from registering an assault weapon. DOJ's decision to promulgate a registration regulation is entitled to deference (see *post*, Argument III.A), and its decision to require an eligibility check to ensure that prohibited persons do not register bullet-button assault weapons is well within the scope of its statutory authority, and is reasonably necessary to effectuate the purposes of the registration requirement and the assault weapons law (see *post*, Argument III.B).

III. THE CHALLENGED REGULATIONS ARE WITHIN DOJ'S STATUTORY RULEMAKING AUTHORITY AND REASONABLY NECESSARY FOR THE BULLET-BUTTON REGISTRATION PROCESS.

The trial court properly denied the writ petition filed after the demurrer to the initial complaint was sustained. All of the regulations challenged in the writ petition are directly related to the registration process, consistent with the assault weapons law, and reasonably necessary

to effectuate the purposes of the registration requirement and the assault weapons law.

A. Review of the Challenged Regulations Requires Deference to DOJ's Interpretation of the Assault Weapons Law.

DOJ promulgated all of the challenged regulations in accordance with Penal Code section 30900, subdivision (b)(5), which states: "The department shall adopt regulations for the purpose of implementing this subdivision. These regulations are exempt from the Administrative Procedure Act . . . ." Subdivision (b) of section 30900 describes, in paragraphs (1) through (4), the requirement to register bullet-button assault weapons by a certain date, "via the Internet," by providing information about the firearm and the registrant, and with payment of a fee. Thus, subdivision (b)(5) gives DOJ broad authority to adopt regulations "for the purpose of implementing" the registration process. (See, e.g., Gov. Code, § 11342.600 [APA, defining "regulation" as a rule of "general application" adopted to "implement, interpret, or make certain or specific the law enforced or administered by it"]; see also *Western States Petroleum Assn. v. Bd. of Equalization* (2013) 57 Cal.4th 401, 414 (*Western States*); *Ford Dealers Assn. v. Department of Motor Vehicles* (1982) 32 Cal.3d 347, 347 (*Ford Dealers*).)

Judicial review of regulations adopted in accordance with this type of broad grant of rulemaking authority requires deference to the agency's interpretation of the statute it is implementing. Although courts retain the ultimate responsibility to construe statutes granting rulemaking authority, they accord appropriate "respect to the administrative construction." (*American Coatings Assn., Inc. v. South Coast Air Quality Dist*. (2012) 54 Cal.4th 446, 461; see also *Western States*, *supra*, 57 Cal.4th at p. 415 ["[i]n determining whether an agency has incorrectly interpreted the statute it

purports to implement, a court gives weight to the agency's construction"]; *Larkin v. W.C.A.B.* (2015) 62 Cal.4th 152, 158 [adjudicatory determinations by expert agency charged with implementing statute entitled to "great weight"].) "Where the Legislature has delegated 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*, *supra*, 32 Cal.3d at p. 356.)

Thus, "[w]here an agency's action is 'quasi-legislative' or 'the substantive product of a delegated *legislative* power conferred on the agency,' the scope of [the court's] review is 'limited to determining whether the regulation (1) is within the scope of the authority conferred and (2) is reasonably necessary to effectuate the purpose of the statute.'" (*Christensen v. Lightbourne* (Cal., July 8, 2019, No. S245395) 2019 WL 2911068, at *4, quoting *Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 8, 11 (*Yamaha Corp.*), internal quotation marks and citations omitted.)

B. All of the Challenged Regulations Fall Within the APA Exemption, and Are Reasonably Necessary to Effectuate the Purpose of the Assault Weapons Law and the Registration Requirement.

As set forth more fully below regarding each challenged regulation, all of the regulations are directly related to implementation of the registration requirement, and are reasonably necessary to effectuate the purpose of the assault weapons law and the registration requirement. Appellants' objection is that the regulations "concern themselves not with *how* to register 'bullet-button assault weapons,' but instead with *what* may be registered, *who* may register, or the conditions for registration." (AOB, p. 38.) But Appellants do not explain why regulations implementing a registration process should not address these key topics.

When considering whether a challenged regulation is "within the scope of the authority conferred," courts review "for consistency with controlling law." (*California Assn of Medical Products Suppliers v. Maxwell-Jolly* (2011) 199 Cal.App.4th 286, 312, citations omitted) (*Maxwell-Jolly*).) Here, the APA exemption broadly authorizes DOJ to "adopt regulations for the purpose of implementing" the registration process, which includes the authority to do whatever is necessary to administer the statutory scheme being implemented. (Pen. Code, § 30900, subd. (b)(5); *Association of California Insurance Companies v. Jones* (2017) 2 Cal.5th 376, 391 (*Jones*) [grant of regulatory authority to "administer" the authorizing statute is equivalent to authority to "carry out" or "implement" the statute].)

As Appellants acknowledge, the challenged regulations "affect what is an eligible weapon, who is an eligible applicant for registration, or what statutory conditions must be met to even engage in the registration process." (AOB, p. 36.) To administer the registration process, DOJ found it necessary to promulgate regulations that make it possible to: determine the types of firearms that can be registered (registration definitions); register weapons that the Legislature has required to be registered (registration of bullet-button shotguns); obtain information necessary to uniquely identify each registered weapon (serial number and digital photo requirements) or confirm an applicant's eligibility to register a firearm (registration information requirements); prevent abuse of the joint registration option ("family member" definition and proof-of-address requirements); establish parameters for the electronic registration process required by law (terms of use); and prohibit subsequent modification of registered weapons into weapons that first became prohibited almost twenty years ago, and have been unlawful to acquire since then (modification prohibition). As set forth below, these regulations ensure that only eligible

weapons are registered, only by eligible applicants, through a transparent, reliable process.

All challenged regulations also satisfy the second inquiry, which is whether they are "reasonably necessary to effectuate the purpose of the statute." (*Yamaha Corp., supra*, 19 Cal.4th at p. 11.) To find that a challenged regulation is *not* reasonably necessary to effectuate the purpose of the statute, the Court must determine that the agency's action was arbitrary, capricious, or without reasonable or rational basis. (*Maxwell-Jolly, supra*, 199 Cal.App.4th at p. 315, citations omitted.) There is a "strong presumption of regularity" for an agency's determination that a regulation is reasonably necessary (*Yamaha Corp., supra*, 19 Cal.4th at p. 11), "out of deference to the separation of powers between the Legislature and the judiciary, to the legislative delegation of administrative authority to the agency, and to the presumed expertise of the agency within its scope of authority." (*San Francisco Fire Fighters Local 798 v. City & County of San Francisco* (2006) 38 Cal.4th 653, 667).

The statutory rulemaking authority conferred on DOJ is broad, and not limited to what is already specifically provided by the assault weapons law itself. Here, as is generally the case, "an administrative agency is not limited to the exact provisions of a statute in adopting regulations to enforce its mandate," and the "absence of any specific statutory provisions regarding the regulation of an issue does not mean that such a regulation exceeds statutory authority," because the agency is "authorized to 'fill up the details' of the statutory scheme." (*PaintCare v. Mortensen* (2015) 233 Cal.App.4th 1292, 1298-99, 1307-08 [regulations requiring information not required by statute did not conflict with authorizing statute], brackets omitted, quoting *Ford Dealers, supra*, 32 Cal.3d at p. 362; see also *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"]; *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.)

This view of DOJ's rulemaking power is also consistent with the purpose of the assault weapons law, which is to protect the public from "the proliferation and use of assault weapons" that the Legislature found to "pose[] a threat to the health, safety, and security of all citizens of this state." (Pen. Code, § 30505, subd. (a).) Registration is a key component of the Legislature's regulation of weapons "designed only to facilitate the maximum destruction of human life." (See, e.g., JA 1201, 1205, 1238.) It makes no sense to construe DOJ's rulemaking authority so narrowly as to prevent DOJ from running an efficient registration process with clearly defined requirements and procedures. Rather, consistent with numerous precedents on agency rulemaking, the registration regulations are well within DOJ's rulemaking authority, and they directly serve the important public safety goals of the registration process and the assault weapons law.

1. Consolidation of Definitions Applicable to the Bullet-Button Registration Process

Appellants contend that DOJ improperly used the APA exemption to "repeal" five definitions originally promulgated in 2000, which applied to the "identification of assault weapons pursuant to Penal Code section 30515." (AOB, pp. 38-39 [citing former § 5469].) However, two of these definitions ("Forward pistol grip" and "Thumbhole stock") were moved to Section 5471 without change. (§ 5471, subds. (t), (qq).) The remaining three ("Detachable magazine," "Flash suppressor," and "Pistol grip that

protrudes conspicuously beneath the action of the weapon") were moved to Section 5471, and specific qualifying examples were added. (§ 5471, subds. (m), (r), (z).)

Thus, the definitions were not "repealed." As part of Section 5471, they still govern interpretation of Penal Code section 30515. The definitions were consolidated into the registration definitions, to reduce confusion during the registration process. Preventing such confusion is well within DOJ's authority to make rules implementing the bullet-button registration process, because "[t]o conclude that . . . the Legislature [must] define in advance every problem it expects an agency to address is to suggest that the Legislature had little need for agencies in the first place." (*Jones*, *supra*, 2 Cal.5th at p. 398.)

Moreover, the five definitions that now appear in Section 5471, along with the rest of the section 5471 definitions, now also apply "to the identification of assault weapons pursuant to Penal Code section 30515." (§ 5460.) As explained above, Section 5460 was promulgated with full APA notice-and-comment rulemaking procedures, and is not at issue in this litigation. Its promulgation does moot this claim, however. Even if Appellants were to prevail on this issue, DOJ has already gone through full APA rulemaking to generally apply the five definitions at issue here to the identification of assault weapons.

2. Bullet-Button Shotgun Registration

Appellants have not identified *any* statutory provision in conflict with the regulation requiring registration of semiautomatic bullet-button shotguns. (§ 5470, subd. (d).)[8] Their argument that semiautomatic, bullet-

[8] The AOB cites this regulation as section 5470, subdivision (a), but the language quoted in the brief is from section 5470, subdivision (d). (AOB, p. 39.)

button shotguns are not "assault weapons" under the assault weapons law (AOB, p. 39) fails on several grounds.

First, the plain language of the statutory registration requirement provides for the registration of bullet-button shotguns:

> 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[.]

(Pen. Code, § 30900, subd. (b)(1), emphasis added.) Thus, the weapons required to be registered are not limited to assault weapons as specifically enumerated in statute, but also include those that fall under the broader description of "weapons with an ammunition feeding device that can be readily removed from the firearm with the use of a tool," that is, "weapons" with a bullet button. As commonly understood and as used in the assault weapons law, the term "weapons" encompasses shotguns.[9] The phrase "including those weapons" indicates that the registration requirement applies to weapons equipped with a bullet button, including but not limited to bullet-button shotguns. (See *Ornelas v. Randolph* (1993) 4 Cal.4th 1095, 1101 [the word "includes" is ordinarily a term of enlargement]; see also *People v. Arnold* (2006) 145 Cal.App.4th 1408, 1413-1414 [interpreting the phrase "the term 'firearm' *includes* the frame or receiver of the weapon" to

[9] Part of the law provides that "'assault weapon' means the following designated semiautomatic firearms," and then lists various rifles, pistols, and shotguns. (Pen. Code, § 30510, subds. (a)-(c).) The law also describes "assault weapons" as comprising certain rifles, pistols, and shotguns. (*Id.*, § 30515, subds. (a)(1)-(8).) And, various other references in the Penal Code indicate that a shotgun is a type of weapon. (See, e.g., *id*., § 17190 ["'shotgun' means a weapon…intended to be fired from the shoulder"]; § 16590, subd. (t) ["generally prohibited weapon" includes "short-barreled shotgun"].)

mean that a "frame or receiver" is sufficient to constitute a firearm, regardless of whether a "frame or receiver" would satisfy the definition of "firearm" provided in another statutory provision].)

The assault weapons law must be interpreted to "giv[e] significance to every word, phrase, sentence, and part of an act in pursuance of the legislative purpose." (*Sierra Club v. Superior Court* (2013) 57 Cal.4th 157, 166, citation omitted.) Semiautomatic bullet-button shotguns are "weapons with an ammunition feeding device that can be readily removed from the firearm with the use of a tool," and are thus required to be registered. (Pen. Code, § 30900, subd. (b)(1).)

Second, semiautomatic bullet-button shotguns fall within the statutory definition of an assault weapon. Penal Code section 30515, subdivision (a)(7), defines as an assault weapon, "[a] semiautomatic shotgun that has the ability to accept a detachable magazine." (Pen. Code, § 30515, subd. (a)(7).) This encompasses semiautomatic shotguns equipped with a bullet button. A bullet-button shotgun has the "ability to accept a detachable magazine," because the bullet button allows the magazine to be easily removed without disassembling key components of the weapon. The registration regulation defining "ability to accept a detachable magazine" to mean, "with respect to a semiautomatic shotgun, it does not have a fixed magazine" (§ 5471, subd. (a)), makes this explicit, not just for the registration of bullet-button assault weapons, but also for "the identification of assault weapons pursuant to Penal Code section 30515." (§ 5460.)[10]

[10] As explained above (*ante*, Argument, I.B.), DOJ undertook regular APA notice-and-comment rulemaking to allow the registration definitions to apply when identifying assault weapons described in Penal Code section 30515. Thus, even if Appellants were to prevail on the challenge to the regulation requiring registration of bullet-button shotguns, (continued…)

DOJ may by regulation specify the weapons that are within the categories of assault weapons established by the Legislature. The Legislature has defined specific weapons as assault weapons (Pen. Code, § 30510), but it has also defined assault weapons by characteristic (*id.*, § 30515), and delegated to DOJ general rulemaking authority to administer registration of the newest class of these weapons (*id.*, § 30900, subd. (b)(5)). DOJ thus has the authority to define statutory terms relevant to the registration process, including those terms relating to assault weapons defined by characteristic. (See *Jones*, *supra*, at pp. 393, 398 [where statute defined specific activities as "unfair or deceptive acts or practices," regulation defining additional activity as such was within agency's rulemaking authority].) The bullet-button shotgun registration requirement is consistent with the Legislature's intent, because the same dangers posed by bullet-button equipped semiautomatic rifles and pistols are also posed by bullet-button equipped semiautomatic shotguns.

There is no basis for concluding, as Appellants urge, that prior to the recent bullet-button amendments, the Legislature affirmatively excluded semiautomatic bullet-button shotguns from the definition of assault weapon in Penal Code section 30515, subdivision (a)(7), and thus intended to continue this exclusion when it "left the definition of 'assault weapon' for shotguns completely untouched." (AOB, p. 40.) Under the *regulatory* definition of "detachable magazine" promulgated by DOJ in 2000, bullet-button weapons were deemed to lack the ability or capacity to accept a "detachable magazine," as described in various subdivisions of former

---

(…continued)
those weapons would still be defined as prohibited assault weapons that cannot be possessed unless they were validly registered before July 1, 2018.

Penal Code section 30515.[11] Such weapons thereby fell outside the definition of "assault weapon." However, the Legislature itself never defined the term "detachable magazine" in statute or in any way that excluded bullet-button shotguns from the definition of an assault weapon. And, unlike the term "fixed magazine," the Legislature did not choose to provide a statutory definition for "detachable magazine" in the most recent amendments. It most certainly did not enact DOJ's former definition of detachable magazine as part of the assault weapons law. By leaving the term undefined in the statute, the Legislature left the task of defining the term to DOJ, through rulemaking. Nor has the Legislature clarified that bullet-button shotguns were not intended to be defined as assault weapons, even though this issue was first raised by Appellants' counsel at the end of 2016, and the Legislature has subsequently amended the assault weapons law for other reasons.[12]

Given the lack of legislative effort to define the term "detachable magazine," the fact that the term was *not* changed with respect to shotguns in the recent amendments cannot reflect a legislative intent to exclude semiautomatic shotguns from the new category of assault weapons that also includes rifles and pistols. In determining a statute's meaning, courts look to the "design of the statute as a whole and to its object and policy[,]" in addition to the plain statutory language. (*Harrott v. County of Kings* (2001)

---

[11] The regulation promulgated in 2000 defined 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." (Former Cal. Code Regs., tit. 11, § 5469, subd. (a) (2016), emphasis added.) The regulation also specified that "[a] bullet or ammunition cartridge is considered a tool." (*Ibid*.) Bullet-button weapons entered the market in California in response to this regulation.

[12] In June 2017, the Legislature extended the registration period by six months. (Stats. 2017, c. 17 (A.B.103), § 49.)

25 Cal.4th 1138, 1154.) As the trial court found, the legislative history for the bullet-button amendments states that the legislation "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," and that "[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[.]" (JA 1899-1900, citing JA 1238, 1242.) The trial court thus concluded that DOJ's interpretation of Penal Code section 30900, subdivision (b)(1), to include semiautomatic bullet-button shotguns was not an abuse of discretion, and "indicates consideration of the purpose of the enabling statute [and the] legislative intent behind the Assault Weapons Control Act . . . ." (*Id.* 1902.)

In addition, if the statutory text here is deemed unclear, public policy impacts would weigh in favor of finding that semiautomatic bullet-button shotguns are required to be registered. "When the plain meaning of the statutory text is insufficient to resolve the question of its interpretation . . . the court may consider the impact of an interpretation on public policy[.]" (*Mejia v. Reed* (2003) 31 Cal.4th 657, 663.) To interpret Penal Code section 30515 as excluding semiautomatic bullet-button shotguns would leave open part of the "bullet-button" loophole the Legislature sought to close to an entire category of weapons. (JA 1201, 1205, 1238.)

In sum, the requirement to register semiautomatic bullet-button shotguns is consistent with the plain language of both the registration provision and with the statutory definition of assault weapons required to be registered, and is reasonably necessary to effectuate the Legislature's intent to register semiautomatic bullet-button assault weapons.

3. Definitions Applicable to the Bullet-Button Registration Process

The use of rulemaking authority to define a statutory term is a classic and widely recognized exercise of the legislative power delegated to administrative agencies. (See *Jones*, *supra*, at pp. 393, 398 [regulation defining specific activities as "unfair or deceptive acts or practices," as used in statute, was within agency's rulemaking authority].) All of the regulatory definitions challenged here are reasonably necessary to administer the bullet-button registration process, and are consistent with the assault weapons law.

The forty-four terms defined in Section 5471 appear either in the statutory provisions that were amended to include bullet-button weapons[13] or elsewhere in the registration regulations. Some help define the type of weapons that may be registered. For example, the regulations define "Detachable magazine" (§ 5471, subd. (m)) because the assault weapons law uses that term to describe the weapons that should be registered. (See, e.g., Pen. Code, § 30515, subd. (a)(4)(D) ["the capacity to accept a detachable magazine at a location outside of the pistol grip"].) Several definitions are for terms referenced by other definitions. For example, "Bullet" is part of the term "Bullet-button," and is defined differently from "Cartridge," which helps to distinguish bullets and cartridges when that information is requested as part of the registration process.[14] (§ 5471, subds. (e), (f), (i).)

---

[13] Pen. Code, § 30515, subds. (a)(1)(A)-(F), (a)(4)(A)-(D), (b).

[14] Another defined term that does not appear in the assault weapons law is "Spigot." (§ 5471, subd. (kk).) This definition informs applicants that some muzzle devices are also spigots, which can be used to fire grenades. A firearm with a spigot is likely to have a grenade launcher, which may qualify it as an assault weapon. (Pen. Code, § 30515, subd.

(continued…)

Other definitions allow for the collection of information required for the registration process. The definitions of "Barrel length" and "Overall length of less than 30 inches" provide instructions for measuring a weapon's length. (§ 5471, subds. (d), (x).) "Barrel length" is a basic piece of identifying information collected for every weapon reported to or registered with DOJ, much like information about a weapon's manufacturer or model, and the statute requires that the registry "shall consist of" specified information, including barrel length of the firearm. (Pen. Code, § 11106, subd. (b)(2)(D).) The definition of "Overall length of less than 30 inches" pertains to the statutory definition of an assault weapon as "[a] semiautomatic, centerfire rifle that has an overall length of less than 30 inches." (*Id*., § 30515, subd. (a)(3).) Lawfully possessed weapons meeting this definition, with or without a bullet-button, should have already been registered and DOJ will reject any attempt to register those weapons now.

As explained above, Appellants' challenge to the definitions has been rendered moot by the closing of the registration period, and by DOJ's adoption of a regulation (after regular APA notice-and-comment rulemaking) that defines all weapons covered by the registration definitions as prohibited weapons that cannot be possessed unless they are validly registered. (See *ante*, Argument, I.A & I.B.) But even if the Court could consider this challenge, Appellants have failed to demonstrate that the regulations exceed DOJ's statutory authority.

(…continued)
(a)(1)(D).) The regulations also define "Receiver, unfinished" because that is the initial form of a Firearm Manufactured By Unlicensed Subject ("FMBUS"), which is a type of potentially registrable weapon. (§ 5471, subds. (cc), (s).) A "Receiver" is defined as "the basic unit of a firearm which houses the firing and breech mechanisms and to which the barrel and stock are assembled." (*Id*., subd. (aa).)

Appellants challenge all of the definitions, arguing that some were previously defined by regulation, and that none of the defined terms were changed by the statutory bullet-button amendments. Neither of these arguments provides an adequate basis for invalidating the regulations. DOJ's APA-exempt rulemaking authority includes the power to define all terms necessary to understand and comply with the bullet-button registration process, including those terms that predated the amendments. As set forth in the regulations, these definitions apply "[f]or purposes of Penal Code section 30900," which governs registration of assault weapons; and for purposes of "Articles 2 and 3 of this Chapter," which refers to the portions of the California Code of Regulations governing registration of assault weapons. (§ 5471.) All of the definitions fall within DOJ's rulemaking authority because they are reasonably necessary to the registration process.

There is no merit to the suggestion that because the weapons subject to registration are found in one statutory provision, and the registration requirement in another, DOJ lacks authority to define terms governing the weapons eligible for registration. (See AOB, p. 41.) Implementation of the bullet-button registration process must take into account the entire statutory scheme of which it is a part, and identify the weapons that may be registered. The amendments providing for bullet-button assault weapon registration refer to assault weapons "as defined in Section 30515." It is thus reasonably necessary for implementing regulations to define the terms used in that section, all but one of which are otherwise undefined.[15] It is also reasonably necessary for the implementing regulations to define terms

[15] The definition of "fixed magazine" in Section 5471 simply duplicates the statutory definition. (Cf., Pen. Code, § 30515, subd. (b), and Cal. Code Regs., tit. 11, § 5471, subd. (p).)

describing weapons that are ineligible for this new bullet-button registration process. (See, e.g., Pen. Code, § 30515, subd. (a)(3).)

These definitions reflect DOJ's judgment that this information was necessary to assist firearm owners in navigating the registration process, and to allow DOJ to carry out the registration process efficiently. Courts defer to the agency's expertise and apply a "strong presumption of regularity" to the agency's determination that a regulation is reasonably necessary. (*Yamaha Corp., supra,* 19 Cal.4th at p. 11.) Deference to DOJ's expertise is warranted here, because DOJ has maintained a registry of grandfathered assault weapons since at least 1991.[16]

4. Serial Number Requirement for Registered Homebuilt Weapons

The challenge to the regulation requiring owners of homebuilt bullet-button assault weapons to obtain and apply a DOJ-issued serial number as a condition of registration (§§ 5472, subd. (g), 5474.2) is now moot, not only because the registration period has been closed for over a year (see *ante* Argument, I.A), but also because a separate statutory requirement to obtain and apply a DOJ-issued serial number to homebuilt firearms (bullet-button or not) is now in effect. Penal Code section 29180 requires DOJ-issued serial numbers (1) prior to the manufacture of homemade firearms, as of July 1, 2018, and (2) for all pre-existing homemade firearms, by January 1, 2019. DOJ complied with all APA notice-and-comment rulemaking requirements for its regulations regarding the issuance of serial numbers under Penal Code section 29180, and those regulations took effect on July 1, 2018. (See §§ 5505-5522.)

[16] Former Pen. Code, § 12285, subd. (a) (1990) (requiring assault weapon registration by January 1, 1991).

Even if Appellants' challenge to the serial number registration requirement were not moot, it would still fail because the requirement is reasonably necessary for the registration process.[17] The serial number requirement as set forth in the registration regulations—which applies only to registration of homebuilt bullet-button assault weapons, not to all homebuilt weapons or all weapons without a serial number—stems from the statutory directive that registered weapons be identified uniquely. (Pen. Code, § 30900, subd. (b)(3).) DOJ-issued serial numbers for registered homebuilt weapons will allow law enforcement to positively identify such weapons if it they are encountered in the field, are used in a crime, or need to be confiscated from persons prohibited from possessing firearms. Owner-selected serial numbers (e.g., the initials of the person who built the weapon and the date it was built) would not ensure a unique identifier, because unlike serial numbers applied by federally licensed manufacturers, another owner may assign another weapon the same identifier.

Appellants contend that because another statute requires serial numbers for homebuilt weapons, and took effect after the bullet-button registration period closed, DOJ could not impose such a requirement in the bullet-button registration process. But DOJ's authority to promulgate regulations for the bullet-button registration process is not limited by

[17] The challenge to Section 5472, subdivision (f) also fails for lack of standing. This regulation requires that a registered weapon "have a serial number applied pursuant to federal law," and thus affects persons wanting to register bullet-button assault weapons that were manufactured before the enactment of federal serialization requirements 1968. None of the Appellants are alleged to possess such a weapon. (See *League of California Cities v. Superior Court* (2015) 241 Cal.App.4th 976, 985 ["Writ relief is not available if the petitioner gains no direct benefit from the writ's issuance, or suffers no direct detriment from its denial."].) Respondents raised this below when opposing the writ petition, and Appellants' opening brief does not address this issue.

authority given in another statute. (See *Ralphs Grocery Co. v. Reimel* (1968) 69 Cal.2d 172, 182-183 [upholding agency's regulation of quantity discounts for beer even though separate statute governed quantity discounts on milk and wine].) Rather, DOJ has authority to promulgate any and all regulations that do not conflict with the authorizing statute, and that are reasonably necessary to effectuate the statutory purpose. (*Jones*, *supra*, 2 Cal.5th at p. 398.) The serial number regulations satisfy both requirements.

5. Non-Liability Clause for Terms of Use

Appellants challenge the regulation establishing a non-liability clause as part of the terms of use for the mandatory electronic registration system (§ 5473, subd. (b)(1)), arguing that it is unrelated to registration and in conflict with the California Constitution and the Information Practices Act. But Appellants fail to acknowledge that the non-liability clause applies "[e]xcept as may be required by law," which means that it applies only to the extent possible under other applicable laws. The regulation allows DOJ to provide public access to the statutorily mandated electronic registration system without undue legal risk. It is therefore reasonably necessary for the registration process.

6. Required Registration Information

The challenge to the requirement that applicants provide "U.S. citizenship status, place of birth, country of citizenship, and alien registration number" (§ 5474, subd. (a)) fails because there is no merit to the contention that regulations may only repeat the authorizing statute, or that registration regulations cannot specify the information required to be provided during the registration process. (See *Jones*, *supra*, 2 Cal.5th at p. 398.) DOJ must confirm that applicants are not prohibited from possessing a firearm, prior to registration. (Pen. Code, § 30950.) Citizenship is relevant to whether an applicant is eligible to possess a firearm in

accordance with federal law. (18 U.S.C. § 922(g).) The regulation is thus reasonably necessary to carry out the registration in accordance with the assault weapons law.

Appellants also challenge the requirement for "clear digital photographs"[18] (§ 5474, subd. (c)) based on a statutory reference to a "description" rather than a "depiction" of the firearm (Pen. Code, § 30900, subd. (b)). But "[a]n administrative agency is not limited to the exact provisions of a statute in adopting regulations to enforce its mandate." (*PaintCare v. Mortensen*, *supra*, 233 Cal.App.4th at pp. 1298-1299.) Clear digital photos help to uniquely identify the weapon, as required by statute, and allow DOJ to confirm that the weapon was accurately described in the application and is eligible for registration (e.g., whether it has a bullet button).[19] The regulation is thus reasonably necessary for the registration process.

7. Joint Registration Requirements

Penal Code section 30955 provides for joint registration of assault weapons "owned by family members residing in the same household." Appellants challenge the regulation setting forth the family relationships that qualify for joint registration (§ 5474.1, subd. (b)), complaining that

---

[18] Appellants have not provided substantive briefing on, and have thus waived, their challenge to a similar requirement that a person seeking to de-register a weapon submit "one or more photographs clearly depicting the firearm." (§ 5478, subd. (a)(2); see JA 1513-1516 [First Am. Verified Pet. for Writ of Mandate, Causes of Action 11 & 12].) This challenge also would fail on the merits for the same reasons that the challenge to section 5474, subdivision (c) fails.

[19] The fact that DOJ does not have a similar requirement in place for its New Resident Report of Firearm Ownership (AOB, p. 46) has no bearing on whether DOJ has statutory authority to require digital photos as part of the bullet-button assault weapon registration process.

DOJ does not permit joint registration based on every conceivable family relationship. But nothing in the assault weapons law requires DOJ to recognize certain or all family relationships for joint registration, and it is well within DOJ's delegated rulemaking authority to define "family members" for the purposes of this registration process.[20] Indeed, other state agencies have promulgated various definitions of "family member" in various contexts.[21]

Appellants also contend that because the assault weapons law provides for joint registration in another statute (Pen. Code, § 30955) separate from the registration requirement (*id*. § 30900, subd. (b)(1)), DOJ has no authority to promulgate the joint registration regulation, but this argument proves too much. The regulation applies to joint registration only in the context of the bullet-button registration process. DOJ has the authority to issue rules preventing the statutorily required joint registration option from being misused during this registration process, as part of its authority to administer the registration process. (See *Jones*, *supra*, 2 Cal.5th at p. 391.)

Appellants have not briefed the challenge to the proof-of-address regulation (§ 5474.1, subd. (c)) raised in the Thirteenth Cause of Action in their amended pleading (JA 1518-1519), thus waiving that challenge. In

---

[20] Appellants claim that DOJ previously attempted to limit the scope of joint registration. (AOB, p. 47.) This refers to rulemaking for a prior registration cycle, in 2000, which has no relevance to this rulemaking.

[21] See Cal. Code Regs., tit. 22, § 10005 [Department of Health Services definition applicable to "Displaced Homemakers Program"]; Cal. Code Regs., tit. 23, § 2814.20 [State Water Resources Control Board definition applicable to "Underground Storage Tank Petroleum Contamination Orphan Site Cleanup Fund"]; Cal. Code Regs., tit. 25, § 12002, subd. (o) [California Housing Finance Agency definition in the context of "Restrictions on Agency Public Benefits to Aliens"].

any event, that challenge is similarly unfounded. DOJ is not precluded from requiring proof-of-address, even if that requirement does not appear in the statute. "[T]he 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." (*Jones*, *supra*, 2 Cal.5th at p. 399, citation omitted.) A regulation specifying sufficient forms of proof of address is reasonably necessary to prevent abuse of the joint registration option by persons who do not actually reside at the same address.

8. Prohibition on Modification of the Registered Weapons

The challenge to the regulation prohibiting post-registration modification of the magazine release device on registered weapons (§ 5477) is without merit. The regulation helps to prevent the registration process from being used to circumvent longstanding restrictions on the sale, possession, and manufacture of weapons that have previously been classified as assault weapons. Registration of an assault weapon provides an exception to the general prohibition on possession of assault weapons. (Pen. Code, §§ 30605, 30680.) But removal of the bullet button creates a registered weapon that should not have been registered. It also transforms the weapon into a true quick-release weapon, with "the capacity to accept a detachable magazine," as previously defined under the assault weapons law, placing it into the category of assault weapons originally subject to restrictions on sale and possession as of January 1, 2000.[22] It cannot be that

[22] Such weapons were required to be registered by January 1, 2001. (See former Penal Code §§ 12276.1 (2000) [introduction of feature-based definitions of assault weapon, effective January 1, 2000], 12285, subd. (a) (2000) [requiring registration of assault weapons as defined under former Penal Code section 12276.1 within one year].)

the Legislature intended to allow the bullet-button assault weapon registration process to be used as a means of manufacturing previously prohibited assault weapons. DOJ's authority to implement the registration process necessarily includes authority for regulations securing the registration process against this type of abuse, which would undermine assault weapons restrictions that have been on the books for decades. The regulation is thus related to and reasonably necessary for the registration process.

CONCLUSION

For the reasons discussed above, the appeal should be dismissed as moot, or the trial court's judgment should be affirmed in full.

Dated: August 9, 2019

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
THOMAS S. PATTERSON
Senior Assistant Attorney General
PAUL STEIN
Supervising Deputy Attorney General

/s/ P. Patty Li

P. PATTY LI
Deputy Attorney General
Attorneys for Defendants and Respondents Xavier Becerra, et al.

CERTIFICATE OF COMPLIANCE

I certify that the attached RESPONDENTS' BRIEF uses a 13 point Times New Roman font and contains 11,903 words.

Dated: August 9, 2019

XAVIER BECERRA
Attorney General of California

/s/ P. Patty Li

P. PATTY LI
Deputy Attorney General
Attorneys for Defendants and Respondents Xavier Becerra, et al.

DECLARATION OF SERVICE

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

No.: **F078062**

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 General for collecting and processing electronic and physical correspondence.

On August 9, 2019, I electronically served the attached **RESPONDENTS' BRIEF** by transmitting a true copy via this Court's TrueFiling system. Because one or more of the participants in this case have not registered with the Court's TrueFiling system or are unable to receive electronic correspondence, on August 9, 2019, I placed a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, addressed as follows:

Anna Barvir
Michel & Associates, P.C.
180 East Ocean Blvd., Suite 200
Long Beach CA 90802-4079
ABarvir@michellawyers.com

Attorney for Appellants

The Honorable Mark W. Snauffer
Fresno County Superior Court
Civil Division
1130 O Street
Fresno, CA 93721-2220

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 August 9, 2019, at San Francisco, California.

Susan Chiang
Declarant

/s/ Susan Chiang
Signature

SA2018102745
21575384.docx