



December 14, 2020

VIA TRUEFILING

Honorable Brian A. Cotta
Clerk/Executive Officer, Court of Appeal, Fifth Appellate District
2424 Ventura Street
Fresno, CA 93721

RE: *Villanueva v. Becerra*, Court of Appeal, Fifth Appellate District, Case No. F078062

Dear Mr. Cotta:

Defendants and Respondents Xavier Becerra, Luis Lopez, and the California Department of Justice ("DOJ") submit this supplemental letter brief in accordance with the Court's December 1, 2020 order. As set forth below, the Assault Weapons Control Act ("AWCA"), as recently amended, defines semiautomatic bullet-button shotguns as prohibited assault weapons that should have been registered by June 30, 2018. The amendment was a clarification of preexisting law, not a change. Accordingly, the amendment confirms that bullet-button shotguns were always subject to the AWCA's registration requirement. Although Appellants' challenge to the regulatory requirement that such weapons be registered was already moot before this amendment took effect,¹ the amendment makes clear that no live controversy remains with respect to the challenged regulation.

On August 6, 2020, various amendments to the AWCA definition of "assault weapon" took effect. (Stats. 2020, ch. 29 (Senate Bill 118), § 38.) As relates to this appeal, subdivision (a)(7) of Penal Code section 30515 now provides that an "assault weapon" includes "[a] semiautomatic shotgun that does not have a fixed magazine." This provision formerly defined "assault weapon" to include "[a] semiautomatic shotgun that has the ability to accept a detachable magazine." Appellants argue that the prior version of subdivision (a)(7) did not encompass bullet-button shotguns, and that DOJ's regulation requiring bullet-button shotguns to be registered thereby exceeded DOJ's rulemaking authority. (AOB 18, 21, 26, 39-42; Reply Br. 12-13, 22, 28-37.); Cal. Code Regs., tit. 11, § 5470, subd. (d).)

¹ Appellants challenge virtually every regulation governing the registration of bullet-button assault weapons. All of these challenges were rendered moot by the closing of the registration period on June 30, 2018, and because possession of unregistered bullet-button assault weapons is prohibited. (Resp. Br. 20-23; Pen. Code, §§ 30605, 30680.)

The amendment now confirms that Penal Code section 30515 subdivision (a)(7) does encompass bullet-button shotguns. “A semiautomatic shotgun that does not have a fixed magazine” is a shotgun with a bullet button, per the AWCA’s definition of “does not have a fixed magazine.”² Bullet-button shotguns are thus prohibited assault weapons, and always have been.

Because bullet-button shotguns are defined as assault weapons, they were required to be registered by June 30, 2018, the deadline for registering all bullet-button assault weapons. (Pen. Code, § 30900, subd. (b)(1).) The amendment properly applies to events predating its enactment, including during the registration period. “A statute that merely clarifies, rather than changes, existing law is properly applied to transactions predating its enactment.” (*Carter v. California Dept. of Veterans Affairs* (2006) 38 Cal.4th 914, 922, citing *Western Security Bank v. Superior Court* (1997) 15 Cal.4th 232, 243 (*Western Security Bank*).) In *Carter*, the Supreme Court determined that an amendment that “expressly imposes liability on employers when nonemployees sexually harass employees” was a clarification of existing law, such that it could be applied to conduct that occurred before its enactment. (*Id.*, at pp. 922, 931.) Thus, a statutory amendment “is not deemed to apply retroactively merely because it is applied to events predating its enactment. Rather, an impermissible retroactive application occurs only if the amendment is applied to conduct predating its enactment *and* that application ‘substantially changes the legal consequences’ of the earlier conduct.” (*In re J.C.* (2016) 246 Cal.App.4th 1462, 1478, quoting *Western Security Bank, supra*, 15 Cal.4th at pp. 238, 243, italics in original.)

Here, the Legislature clarified, and did not substantially change, existing law. The Legislature promptly responded to Appellants’ argument in this litigation by removing any doubt that the AWCA prohibits possession of bullet-button shotguns. Under these circumstances, “it is logical to regard the amendment as a legislative interpretation of the original act—a formal change—rebutting the presumption of substantial change.” (*Western Security, supra*, 15 Cal.4th at p. 243, internal quotation marks and citation omitted). The Legislature clarifies, rather than substantially changes, a law “when the Legislature promptly reacts to the emergence of a novel question of statutory interpretation.” (*Ibid.*)

Nor does the amendment change the legal consequences of conduct during the registration period. DOJ regulations implementing the registration process—and in effect since the beginning of the registration period in 2017—explicitly required that bullet-button shotguns

² The AWCA defines “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.” (Pen. Code, § 30515, subsd. (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.

be registered. (Cal. Code Regs., tit. 11, §§ 5470, subd. (d), 5471, subd (a).) And, DOJ regulations containing definitions that “apply to the identification of assault weapons pursuant to Penal Code section 30515,” in effect since January 2019, independently establish that bullet-button shotguns are prohibited assault weapons under the prior and current versions of Penal Code section 30515(a)(7). (*Id.*, §§ 5460, 5471, subd. (a).)

Finally, the amendment is a clarification, rather than a substantial change, because the original provision could “have been properly construed in the manner of the purportedly clarifying legislation.” (*In re J.C.*, *supra*, 246 Cal.App.4th at pp. 1476-77, internal quotation marks and citation omitted.) In *Carter*, the Supreme Court found an amendment to be a clarification when the original statutory language was “ambiguously worded” and both parties “made credible arguments in favor of their positions.” (*Carter*, *supra*, 38 Cal.4th at p. 926.) Here, shotguns with bullet buttons fell within the plain language of the original provision: shotguns with the “ability to accept a detachable magazine.” (See Resp. Br. 40-41.) In addition, the registration requirement refers to “weapons with an ammunition feeding device that can be readily removed from the firearm with the use of a tool” (Pen. Code, § 30900, subd. (b)(i)); that is, “weapons” with a bullet button, including shotguns with bullet buttons. (See Resp. Br. 39-40.)

Because the amendment is a clarification of, and not a substantial change to, existing law, it properly applies to events during the registration period, thus mooted the challenge to the regulation requiring bullet-button shotguns to be registered. The challenge to the regulation was based upon an alleged conflict between the regulation and the statutory provision to be implemented by that regulation. Because there is no way for the Court to conclude that the regulation requiring registration of bullet-button shotguns conflicts with a statutory provision defining bullet-button shotguns as prohibited assault weapons, this Court can no longer “grant the plaintiff any effectual relief.” (*Wilson & Wilson v. City Council of Redwood City* (2011) 191 Cal.App.4th 1559, 1574.) The challenge to this regulation is therefore moot.

Respectfully submitted,

/s/ P. Patty Li

P. PATTY LI

Deputy Attorney General

For XAVIER BECERRA
 Attorney General

DECLARATION OF SERVICE

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

Case 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 December 14, 2020, I electronically served the attached


- **LETTER 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 December 14, 2020, 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:

Fresno County Superior Court
Court Clerk
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 December 14, 2020, at San Francisco, California.

M. Mendiola
Declarant


Signature