IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
IN AND FOR THE 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 General for the State of California; STEPHEN LINDLEY, in his official capacity as Chief of the California Department of Justice, Bureau of Firearms; CALIFORNIA DEPARTMENT OF JUSTICE; and DOES 1-10, Defendants and Respondents.	Case No. F078062

APPELLANTS' OPENING BRIEF

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

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TO BE FILED IN THE COURT OF APPEAL

APP-008

COURT OF APPEAL FIFTH APPELLATE DISTRICT, DIVISION	COURT OF APPEAL CASE NUMBER: F078062
ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NUMBER: 268728 NAME: Anna M. Barvir FIRM NAME: Michel & Associates, P.C. STREET ADDRESS: 180 East Ocean Blvd., Suite 200 CITY: Long Beach STATE: CA ZIP CODE: 90802 TELEPHONE NO.: (562) 216-4444 FAX NO.: (562) 216-4445 E-MAIL ADDRESS: sbrady@michellawyers.com ATTORNEY FOR (*name*): Plaintiffs/Appellants Danny Villanueva, et al.	SUPERIOR COURT CASE NUMBER: 17CECG03093
APPELLANT/ PETITIONER: Danny Villanueva, et al. RESPONDENT/ REAL PARTY IN INTEREST: Xavier Becerra, et al.	

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INTRODUCTION

This appeal arises out of the lower court's refusal to declare invalid and enjoin various regulations adopted by the California Department of Justice (DOJ) for either flouting the Administrative Procedure Act (APA) or for illegally altering the scope of statutes. While undeniably exempt from the APA in making regulations specific to implementing the "bullet-button assault weapon" registration process, DOJ wrongly interpreted that very narrow APA exemption as an invitation to bypass formal rulemaking to adopt a slew of regulations having tenuous, if any, connections to that process. In any event, DOJ never has authority to adopt regulations that alter the scope of statutes, as it has done here.

In upholding the challenged regulations, the trial court gave undue deference to DOJ's interpretation of the relevant APA exemption's scope and ignored Appellants' arguments that DOJ's regulations unlawfully alter statutes. Not only is the trial court's ruling contrary to law, but by endorsing DOJ's actions it sends the perverse message to the state's many regulatory bodies that the legal tools designed to provide "security against bureaucratic tyranny" when making regulations, like the APA, can be ignored with impunity. (*Cal. Advocates for Nursing Home Reform v. Bonta* (2003) 106 Cal.App.4th 498, 507-508, as modified (Mar. 6, 2003).)

The trial court's earlier ruling erroneously sustaining DOJ's demurrer is similarly problematic. Government Code § 11350, subdivision (a) confers a statutory right to bring a declaratory relief action challenging the validity or the repeal of any regulation. Even so, the trial court rejected Appellants' action seeking declaratory relief

from DOJ's regulations, construing it as a challenge to DOJ's "administrative decision" to interpret the scope of its regulatory authority under the APA exemption rather than to the validity of the regulations themselves. In doing so, the trial court effectively nullified Government Code section 11350, subdivision (a). For every challenge to a regulation would be a challenge to the agency's "administrative decision" to adopt it.

Appellants thus implore this Court to correct the trial court's error by reversing the order sustaining DOJ's demurrer denying Appellants their statutory right to seek declaratory relief and the ruling on Appellants' writ of mandate upholding the challenged regulations.

STATEMENT OF THE ISSUES

(1) Interested individuals are entitled to challenge the validity of any regulation through an action for declaratory relief. Mandamus is only required when challenging an agency's discretionary "administrative decision." Appellants brought a declaratory relief action to challenge several regulations adopted to implement the Assault Weapons Control Act (AWCA). Did the trial court err when it held that Appellants needed to bring a writ of mandate and not a declaratory relief action?

(2) The APA requires DOJ to adhere to strict requirements to adopt regulations, unless compliance is clearly exempted. If it flouts APA procedures and lacks a clear exemption, the regulations are invalid. Relying on a narrow exemption for regulations implementing the "bullet-button assault weapon" registration process, DOJ adopted a slate of regulations aimed at implementing unrelated sections of the

AWCA. Did the trial court err in upholding those regulations because they were exempt from APA procedures?

(3) Alternatively, did the trial court err in holding that none of the regulations at issue unlawfully altered any statute?

STATEMENT OF APPEALABILITY

This appeal is from the final judgment of the County of Fresno Superior Court denying the Appellant's petition for writ of mandate, and for declaratory and injunctive relief. It is expressly authorized by California Code of Civil Procedure, section 904.1, subdivision (a)(1).

STATEMENT OF THE FACTS AND CASE

I. FACTUAL BACKGROUND

A. Relevant Statutory Law

1. Administrative Procedure Act (APA)

The APA was enacted in response to an "unprecedented growth" in the number of administrative regulations, many of which were "unclear and unnecessarily complex, even when the complicated and technical nature of the subject matter is taken into account." (Gov. Code, § 11340.) The APA provides a detailed statutory scheme for state agencies to follow when proposing and adopting regulations. (See Gov. Code, § 11340, et seq.) Specifically, the APA requires that for any regulation to be effective, it must "be within the scope of authority conferred and in accordance with standards prescribed by other provisions of law." (Gov. Code, § 11342.1.) To have appropriate "authority," a regulation must be supported by a provision of law that permits or obligates the agency to adopt, amend, or repeal the regulation. (Gov. Code, § 11349, subd. (b).)

If a rule constitutes a "regulation," and there is no statutory provision expressly excusing the agency from complying with the APA, the rule is invalid and cannot be enforced unless it is enacted in accordance with the APA's procedural requirements. (See Gov. Code, § 11346.) "Any interested person may obtain a judicial declaration as to the validity of any regulation . . . by bringing an action for declaratory relief in the superior court in accordance with the Code of Civil Procedure." (Gov. Code, § 11350, subd. (a).)

2. The Assault Weapon Control Act (AWCA)

The AWCA makes it illegal to manufacture or cause to be manufactured, distribute, transport, or import into the state for sale, keep for sale, offer or expose for sale, or give, or lend an "assault weapon." (Pen. Code, § 30600, subd. (a).) A violation is punishable as a felony by imprisonment for four, six, or eight years. (*Ibid.*) The law also generally prohibits the possession of any "assault weapon." (Pen. Code, § 30605, subd. (a).) Violation of the possession restriction is punishable as either a misdemeanor or felony. (*Ibid.*)

As described below, the class of firearms that California considers "assault weapons" has changed (and expanded) many times since the Legislature first enacted the AWCA in 1989.

a. Category 1 and Category 2 "Assault Weapons"

As originally written, the AWCA declared some 55 firearms, listed by make and model, to be "assault weapons" under Penal Code section 30520 (former section 12276.5).[1] In 1991, the legislature

[1] In 2010, the legislature reorganized, without substantive change, all Penal Code sections relating to "deadly weapons," including those relating to "assault weapons." (See Sen. Bill No. 1080

amended the AWCA to add several new firearms to that list. (Sen. Bill No. 263 (1991-1992 Reg. Sess.) § 2 [codified at Pen. Code, § 30510 (former § 12276)].) At that time, the legislature also adopted section 30520, subdivision (c) (former § 12276.5), conferring on DOJ the authority "to adopt those rules and regulations that may be necessary or proper to carry out the purposes and intent of [the AWCA]." (*Id.*, § 3.) The originally listed firearms, as well as the 1991 additions, are commonly known as "Category 1 assault weapons."

In 2000, the California Supreme Court clarified the requirements necessary for DOJ to add a firearm to the list of "assault weapons." (*Kasler v. Lockyer* (2000) 23 Cal.4th 472.) Immediately afterward, DOJ added more than 60 firearms to the list. (See Cal. Code Regs., tit. 11, § 5499.) These firearms became known as "Category 2 assault weapons." In 2006, the legislature repealed DOJ's authority to add firearms to the list of "assault weapons." (Assem. Bill No. 2728 (2005-2006 Reg. Sess.).) The lists of Category 1 and 2 "assault weapons" thus became static.

Persons in possession of either Category 1 or Category 2 "assault weapons" before their classification as such had to register the firearms with DOJ before a date certain. (Pen. Code, § 30960, subd. (a) (former § 12285, subd. (f)).) To register a "Category 1 assault weapon," individuals completed a registration form under penalty of perjury and provided a thumbprint, a $20 fee, and specific information about their firearm, including the serial number, make, model, and caliber.[2] Category 2 registration was largely the same.

(2009-2010 Reg. Sess.).)

[2] See Ingram, *Registering of 300,000 Assault Guns Begins:*

(See former Cal. Code Regs., tit. 11, §§ 978.30–978.31 [renumbered as §§ 5470 and 5471 in 2006].) The respective dates for registering these firearms have long since passed and, with the exception of peace officer, it is no longer possible to register Category 1 or 2 "assault weapons." Individuals who still possess such firearms may do so only if they properly registered them before the deadline.

b. Category 3 "Assault Weapons"

In 1999, the legislature again amended the AWCA to expand the definition of an "assault weapon." Unlike Category 1 and 2 "assault weapons," which are listed by make and model, the legislature crafted a new definition—identifying firearms based on their features and configuration. (Sen. Bill No. 23 (1999-2000 Reg. Sess.) [codified at Pen. Code, § 30515 (former § 12276.1)].) Firearms meeting this definition became known as "Category 3 assault weapons." They included semiautomatic rifles, pistols, and shotguns with **"*the capacity to accept a detachable magazine*"** and at least one of several "features," like a pistol grip, thumbhole stock, folding or telescoping stock, grenade or flare launcher, flash suppressor, or a forward pistol grip. (*Id.*, § 30515, subd. (a), bold and italics added; see also Appx. at p. 47 [for the full text of section 30515, subdivision (a) (1999)].) As with Category 1 and 2 "assault weapons," persons in possession of Category 3 firearms before their classification as "assault weapons" had to register them with DOJ.[3] The period for

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Weapons: Tough First-In-Nation Law Controls the Manufacture, Sale, Possession and Ownership of High-Powered Military-Style Guns, L.A. Times (Jan. 4, 1990) <http://articles.latimes.com/1990-01-04/news/mn-315_1_assault-gun>.

[3] DOJ maintained a website to register Category 3 "assault weapons." That website, www.regagun.org (which is no longer

registering Category 3 "assault weapons" closed on December 31, 2001. So individuals who still possess such firearms may do so only if they properly registered them before the deadline.

Interestingly, because the law identifies Category 3 firearms by their features, DOJ adopted APA-compliant regulations defining several terms used to identify these "assault weapons" under Penal Code section 30520, subdivision (c)(1), its general authority to adopt AWCA regulations. (See Cal. Code Regs., tit. 11, § 978.20 (2000) [renumbered to section 5469 in 2006; repealed and replaced in 2017]; see also J.A. II 287-291.) DOJ reasoned that the regulations were "necessary to promote a clear understanding" of the new laws. (Cal. Dept. of Justice, Initial Statement of Reasons <https://www.oag.ca.gov/sites/all/files/agweb/pdfs/firearms/regs/isor.pdf>.)

c. "Bullet-button Assault Weapons"

Because "Category 3 assault weapons" must have "the capacity to accept a detachable magazine," owners of semiautomatic firearms who preferred to keep safety and accuracy-enhancing features like pistol grips, thumbhole stocks, flash suppressors, or adjustable stocks could keep their firearms with these features from being classified as an "assault weapon" by disabling their capacity to accept a detachable magazine. To do so, they typically retrofitted their firearms with an aftermarket product called a "magazine lock."

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functional) included a statement that Category 2 "assault weapons" possessed before August 16, 2000 must be registered on or before January 23, 2001." But there was no registration form specific to such firearms. An archived version of DOJ's website is available at <https://web.archive.org/web/20010119105200/http://www.regagun.org:80/>.

While the standard release for a "detachable magazine" operates with the push of a finger, the typical "magazine lock" replaces the one-piece magazine release with a two-piece assembly requiring the use of a "tool" to access the magazine release button. One of the most common of the "magazine locks" was the "bullet button." So named because the firearm operator could push the magazine release button using a bullet, once expressly considered a "tool" by California law. (See Cal. Code Regs., tit. 11, § 978.20 (repealed); see also J.A. II 288; J.A. IV 2307.) Because the "bullet button" required a tool to release the magazine, and because California did not consider a magazine "detachable" if a tool was so required (J.A. IV 1207), firearms equipped with a "bullet button" did not have "the capacity to accept a detachable magazine" (Pen. Code, § 30515, subd. (a) (1999)). And thus, they did not qualify as Category 3 "assault weapons" subject to the AWCA. (*Ibid.*)

In 2016, however, the legislature introduced Assembly Bill 1135 and Senate Bill 880, which once again amended the definition of an "assault weapon," *but only as to rifles and pistols*. (Assem. Bill No. 1135 (2015-2016 Reg. Sess.) § 1; Sen. Bill No. 880 (2015-2016 Reg. Sess.) § 1; see also Pen. Code, § 30515 (2016); see also Appx. at pp. 48-49 [for full text of section 30515, subdivisions (a)-(b) (2016)].)[4] Both bills left the "assault weapon" definitions for shotguns unchanged. (Assem. Bill No. 1135 (2015-2016 Reg. Sess.) § 1; Sen. Bill No. 880

[4] As stated in SB 880's legislative history, the bill revised the definition of an "assault weapon" to mean "a semiautomatic centerfire ***rifle***, or semiautomatic ***pistol*** that does not have a fixed magazine" but has any one of several specified features. (J.A. I 43, bold and italics added.)

(2015-2016 Reg. Sess.) § 1.) The bills' purpose was to make equipping a rifle or pistol with a "magazine lock," including a "bullet button," an insufficient alteration to exempt that firearm from the AWCA. Firearms now classified as "assault weapons" under AB 1135 and SB 880 are called "bullet-button assault weapons."

The law has prohibited sale, transfer, and manufacture of these firearms since January 1, 2017. (Pen. Code, § 30600.) But because prior "assault weapon" registration periods have long been closed, the legislature also enacted Penal Code section 30900, subdivision (b), opening a new registration window for "bullet-button assault weapons" so that existing owners could continue to possess them lawfully. This new subdivision lays out several express requirements for the registration of "bullet-button assault weapons," but also directed DOJ to "adopt regulations *for the purpose of implementing this subdivision*." (Pen. Code, § 30900, subd. (b) ("Subdivision (b)"), italics added.) AB 1135 and SB 880 made clear that Subdivision (b) "assault weapon" registration regulations are exempt from the APA. (*Id.*, § 30900, subd. (b)(5).) But they left unchanged section 30520, subdivision (c), the provision conferring regulatory authority on DOJ to implement the broader provisions of the AWCA under the APA rulemaking procedures.

Individuals who currently possess a "bullet-button assault weapon" can only legally do so if they lawfully acquired and possessed it before January 1, 2017, and properly registered it by July 1, 2018. With the registration period for these firearms now closed, it is illegal to possess an unregistered "bullet-button assault weapon," even if it were lawfully acquired. (Pen. Code, §§ 30605, 30680.)

B. DOJ's AWCA Regulatory Activity

1. The Original AWCA Regulations

In 2000, DOJ went through the APA process, including holding public hearings and a public comment period, to adopt implementing regulations for the then-recently amended AWCA. That process resulted in significant amendments to most of the provisions that DOJ originally proposed. (See J.A. II 287-291.) And, ultimately, DOJ adopted a regulation defining the following "assault weapon" terms: "detachable magazine," "flash suppressor," "forward pistol grip," "pistol grip that protrudes conspicuously beneath the action of the weapon," and "thumbhole stock." (See Cal. Code Regs., tit. 11, § 978.20 (repealed); see also J.A. II 287-291.) Each of those definitional regulations was expressly and exclusively adopted to "identif[y] . . . assault weapons pursuant to Penal Code section 30515." (Cal. Code Regs., tit. 11 § 978.20 (repealed).)

2. The Challenged AWCA Regulations

DOJ first submitted a package of proposed regulations to the Office of Administrative Law (OAL) to implement Subdivision (b) in December 2016. It submitted that package per the "File and Print" procedure, meaning the DOJ determined that the package was exempt from the APA and would not be subject to public comment or any of the APA requirements meant to ensure regulatory accountability and transparency. (J.A. IV 1492.)

The proposed package included several provisions that did qualify for Subdivision (b)'s APA exemption. Appellants do not challenge those regulations here. But many of its provisions have no connection to Subdivision (b), for they have nothing to do with

registration *procedures*. (See Pen. Code, § 30900, subd. (b)(1)-(4).) And they illegally alter various statutory provisions. The objectionable provisions at the heart of this case (the "Challenged Regulations") are as follows:[5]

(1) **Cal. Code Regs, tit. 11, § 5469**: Repealing and replacing existing regulations defining terms for "assault weapons" under Penal Code section 30515, which were lawfully adopted according to APA rulemaking requirements (see J.A. IV 1496);

(2) **Cal. Code Regs, tit. 11, § 5470, subd. (d):** Requiring "bullet button" shotguns to be registered, despite not falling under any definition of "assault weapon" (see Pen. Code, § 30515, subd. (a)(6)-(7));

(3) **Cal. Code Regs, tit. 11, § 5471**: Creating over 40 new definitions for terms—the majority of which are not related to the terms amended under AB 1135 or SB 880, and several of which expand the scope of the AWCA, including subdivisions (a) and (pp), which define terms relating to magazine systems that cause certain shotguns to be required to be registered, despite not being "assault weapons"—and subdivisions (d) and (x)—defining terms relating to "barrel length" and "overall length" that do not apply to "assault weapons" affected by AB 1135 and SB 880;

(4) **Cal. Code Regs, tit. 11, §§ 5472, subds. (f)-(g), and 5474.2:** Requiring that firearms lacking a manufacturer's

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[5] The full text of the Challenged Regulations are attached to this brief at Appendix, pages 49-58.

serial number have a DOJ-approved serial number inscribed on them as a condition of registration;

(5) **Cal. Code Regs, tit. 11, § 5473, subd. (b)(1)**: Requiring that registrants agree to hold DOJ harmless "for any indirect, incidental, special, or consequential damages" suffered as a result of registering a firearm;

(6) **Cal. Code Regs, tit. 11, §§ 5474, subds. (a) & (c) and 5478, subd. (a)(2):** Requiring registrants to provide U.S. citizenship status, place of birth, country of citizenship, alien registration number or I-94, and "clear digital photographs" of the firearms to be registered;

(7) **Cal. Code Regs, tit. 11, § 5474.1, subds. (b)-(c):** Restricting the statutory definition of the term "family members" who qualify for joint-registration under Penal Code section 30955 and requiring documentation from a joint registrant to prove a common address; and

(8) **Cal. Code Regs, tit. 11, § 5477:** Prohibiting removal of the "release mechanism for an ammunition feeding device on an assault weapon pursuant to Penal Code section 30900(b)(1) . . . after the assault weapon is registered."

Only after DOJ voluntarily withdrew the first package and the OAL rejected a second (nearly identical) package, did OAL finally approve DOJ's third "File and Print" submission of the proposed regulations. (J.A. IV 1494-1495.)[6] The adopted package was nearly

[6] Counsel for Appellant CRPA submitted letters to DOJ and OAL with each submission of the regulatory package explaining why these regulations are invalid. (J.A. IV 1493-1494.)

identical to DOJ's original proposal. The only substantive changes were: (1) an extension of the registration deadline from January 1 to July 1, 2018 (Cal. Code Regs., tit. 11, § 5469); and (2) a clarification that the proposed definitions applied only Section 30900, subdivision (b) registration and not to section 30515 generally (Cal. Code Regs, tit. 11, § 5471).

But this limitation did not stop DOJ from ultimately expanding the application of their definitions. Unable to use their limited APA exemption under Subsection (b) to adopt regulations for broader AWCA purposes, DOJ proposed another regulation in November 2017 that simply read: "The definitions of terms in section 5471 of this chapter shall apply to the identification of assault weapons pursuant to Penal Code section 30515." (Cal. Code Regs., tit. 11, § 5460.) Read together with section 5471, this new regulation effectively nullified the requirement, under section 30520, that AWCA regulations are generally subject to the APA. For the public had no meaningful opportunity to comment on the proposed definitions because DOJ earlier adopted them through the "File and Print" procedure. The OAL approved the regulation anyway. (*Ibid.*)

II. CASE BACKGROUND

A. Procedural History

Appellants filed a complaint in Fresno Superior Court seeking declaratory and injunctive relief under Government Code section 11350, subdivision (a). They asked the court to declare the Challenged Regulations invalid and enjoin their enforcement because they (1) had to be, but were not, adopted in compliance with the APA; and (2) improperly altered the scope of statutory law.

Citing two grounds, DOJ demurred. First, DOJ argued that a declaratory relief action was improper because Appellants were not challenging regulations but DOJ's "administrative decision" to adopt those regulations, which can be reviewed only by a writ of mandate. (J.A. I 18, 20-21.) Second, DOJ argued that Appellants' claims failed because its regulations were valid because they "are within the scope of the authority delegated by the legislature and are reasonably necessary to implement the registration." (J.A. I 18, 22-32.) Appellants filed a timely opposition.[7]

After a hearing, the lower court sustained the demurrer, holding only that Appellants needed to fashion their challenge as a writ of mandate rather than a declaratory relief action. (J.A. IV 1473-1474.)[8] The trial court granted Appellants leave to amend. And Appellants promptly amended their complaint, fashioning it as a petition for writ of mandate per the court's order, as well as a complaint for declaratory relief to preserve the issue. (J.A. IV 1476.)

The district court received full briefing on the merits of Appellants' writ petition and held a hearing. After taking the matter under submission, the court ruled May 30, 2018, denying Appellants' petition in its entirety. (J.A. V 1904-1934.) The court entered final judgment denying the petition on June 21, 2018. (J.A. V 1935.)

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[7] Appellants also moved for preliminary injunction to prevent DOJ from placing thousands of Californians in the untenable position of having to decide whether to relinquish their rights and property or expose themselves to criminal liability. (J.A. II 280-814.)

[8] The court also denied Appellant's motion for preliminary injunction as moot. (J.A. IV 1474.) That decision is not on appeal.

Appellants filed notice of entry of judgment, then timely appealed. (J.A. V 1972, 2012.)

B. The Orders on Appeal

At issue on appeal are both the order granting DOJ's demurrer and the order denying Appellants' writ petition.

Again, in granting the DOJ's demurrer on, the court reasoned that Appellants were challenging DOJ's "administrative decision" to interpret Subdivision (b) as exempting the Challenged Regulations from the APA. (J.A. IV 1473-1474.) Such decisions, the court held, must be reviewed through a writ, not declaratory relief. (*Ibid.*)

As for the order denying Appellant's writ, the lower court held that Appellants had failed to show that DOJ abused its discretion because its interpretation of Subdivision (b) as exempting the Challenged Regulations from the APA was reasonable. (J.A. V 1927.) Noting that it is to give "great weight" to DOJ's interpretation of Subdivision (b), the trial court gave two reasons it believed DOJ's interpretation did "not appear contrary to law." (J.A. V 1933.)

First, the court held that the Challenged Regulations simply " 'fill up the details' of the authorizing statute." (J.A. V 1933.) The court reasoned that because the "challenged regulations ensure that eligible weapons are registered, by eligible applicants, through an understandable registration process," they "appear to" implement "the authorizing statute" "such that the APA exemption would apply." (*Ibid.*) Second, the court held that because ensuring that "firearms with enhanced firepower from a bullet button" are registered is "in line with the intent of the AWCA" and "appears to carry out the Legislature's intent for section 30900, subdivision (b) (1)," (J.A. V

1927), "the challenged regulations appear to carry out the intention of the Legislature." (J.A. V 1933.)

The trial court did *not* review any of the Challenged Regulations individually. In fact, it never even mentioned one of them—the requirement that the "bullet button" remain on the firearm post-registration (Cal. Code Regs., tit. 11, § 5477)—at all. (J.A. V 1924.) The trial court did note that the APA exemption "would *appear* to include the power to define terms to enable the public to understand and comply with the registration process." (*Ibid*.) But it went no further. It did not explain *how* the DOJ's definitions in section 5471 meet that standard or whether those definitions alter statutory law. Nor did it explain how DOJ has authority to repeal regulatory definitions adopted to implement section 30515, *not Subdivision (b) of 30900*. As for the regulation requiring registration of "bullet-button" shotguns, the trial court simply describes the positions of both sides and then simply defers to DOJ's interpretation as a reasonable one, without engaging in any meaningful analysis of the statute.

ARGUMENT

I. THE TRIAL COURT WRONGLY SUSTAINED DOJ'S DEMURRER

A. Applicable Legal Standard

The Court reviews orders sustaining a demurrer de novo. (*Filet Menu, Inc. v. Cheng* (1999) 71 Cal.App.4th 1276, 1279 (*Filet Menu*).) " 'Because a demurrer both tests the legal sufficiency of the complaint and involves the trial court's discretion, an appellate court employs two separate standards of review on appeal." (*Cantu v. Resolution Trust Corp.* (1992) 4 Cal.App.4th 857, 879.) First, it reviews the complaint to determine whether it "alleges facts sufficient to state a

cause of action under any legal theory." (*Ibid.*) Then, if the lower court sustained a demurrer without leave to amend, the reviewing court considers "whether plaintiff could amend to state a cause of action." (*Filet Menu*, *supra*, 71 Cal.App.4th at pp. 1279-1280.) Because the trial court granted Appellants leave to amend, only the first issue is before this Court.

B. The Trial Court Erred When It Sustained DOJ's Demurrer Because Appellants Are Entitled to Fashion Their Challenge as a Declaratory Relief Action Under Government Code Section 11350

Under the APA, an interested person has the right to "obtain a judicial declaration as to the validity of any rule, regulation, order or standard of general application adopted by any State agency to implement, interpret or make specific, any law enforced or administered by it or to govern its procedure." (*Bess v. Park* (1955) 132 Cal.App.2d 49, 53; see also Gov. Code, § 11350.) Even so, the trial court agreed with DOJ that Appellants must "establish that the regulations should have been promulgated under the APA, through a writ petition challenging DOJ's administrative decision to use an APA exempt process." (J.A. I 21; J.A. IV 1473-1474.) That decision was in error.

Appellants are not challenging an "administrative decision." They are challenging DOJ's adoption and enforcement of illegal regulations. It matters not that DOJ first made a "decision" that it was exempt from the APA rulemaking requirements in adopting them. For those day-to-day decisions, even by administrative agencies, are not the sort of decisions that case law contemplates as requiring writ relief. Indeed, not one case the trial court cites involved

a challenge to the validity of a *regulation*.[9] And for good reason. Government Code section 11350 entitles interested parties to bring declaratory relief to challenge the validity of *any* regulation. To hold otherwise would effectively nullify the law. For the initial step in adopting any regulation is to interpret the underlying statute as conferring the authority on the agency to do so.

But even if the Court were to construe Appellants' claim that DOJ acted outside the scope of its APA exemption as a challenge to an "administrative decision," declaratory relief is still appropriate here. Indeed, declaratory relief is proper where the lawsuit has a more fundamental purpose that challenges violations that are "symptomatic of the much broader problem the action is designed to relieve." (*Venice Town Council, Inc. v. City of Los Angeles* (1996) 47 Cal.App.4th 1547, 1565 (*Venice Town Council*), citing *Bess v. Park* (1955) 132 Cal.App.2d 49, 52 (*Bess*) [finding declaratory relief appropriate to address a "recurring problem . . . involving the interpretation of a statute"].) Or when challenging "an overarching, quasi-legislative policy set by an administrative agency," not merely a "discretionary, specific agency decision[]." (*Californians for Native*

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[9] See J.A. IV 1473, citing *Common Cause v. Bd. of Supers.* (1989) 49 Cal.3d 432 [holding that mandamus will not lie when the agency's act is "quasi-legislative" because it is "not subject to the broader review of administrative acts"]; *State of California v. Superior Court* (1974) 12 Cal.3d 237 [challenging denial of California Coastal Commission permit denial]; *Tejon Real Estate, LLC v. City of Los Angeles* (2014) 223 Cal.App.4th 149, as modified on denial of reh'g (Feb. 14, 2014) [seeking clarification of a Department of Water and Power Rule]; *Palmer v. Fox* (1953) 118 Cal.App.2d 53 [challenging denial of building permit because of racist deed restrictions on the land].).

Salmon & Steelhead Assn. v. Dept. of Forestry (1990) 221 Cal.App.3d 1419, 1429, citing *Bess*, *supra*, 123 Cal.App.2d at pp. 52-54.)

Here, again, the trial court focused on DOJ's decision to interpret Subdivision (b) as exempting the Challenged Regulations from the APA. (J.A. IV 1473-1474.) Even if that were the proper focus, Appellants are challenging not a "discretionary, specific agency decision," but DOJ's "overarching, quasi-legislative policy" of exempting itself from the APA in the adoption of uniform regulations of general applicability. What's more, the interpretation of a statute is a judicial function—not an administrative one. (*Bess*, *supra*, l32 Cal.App.2d at p. 53.) Because the APA exemption that DOJ seeks to rely on is a statutory creation, whether that statute shields DOJ's regulations is a question of statutory interpretation properly reviewed in a declaratory relief action. (*Ibid.*)

Ultimately, DOJ cannot insulate its regulations from a declaratory relief action by simply labeling its circumvention of the APA an "administrative decision." Because Appellants were entitled to fashion their challenge to DOJ's regulatory action as a declaratory relief action, the trial court erred in sustaining DOJ's demurrer. And because, as discussed in Part II.B below, the Challenged Regulations are invalid because DOJ did not comply with the APA procedures and because the regulations improperly exceed the scope of the DOJ's rulemaking authority, Appellants are entitled to declaratory and injunctive relief.

II. THE TRIAL COURT ALSO ERRED WHEN IT DENIED APPELLANTS' PETITION FOR WRIT OF MANDATE

Again, the trial court ordered Appellants to fashion their challenge as petition for writ of mandate. (J.A. IV 1473-1474.) And though Appellants could have chosen to take that route, they disagree that a writ of mandate is the *mandatory* procedural vehicle for seeking review of the Challenged Regulations. But should this Court find that it is, Appellants have satisfied the requirements for one to issue. The Court should reverse the

A. Applicable Legal Standard

"The courts may rely upon mandamus under Code of Civil Procedure section 1085 to review the validity of a quasi-legislative action" like adopting regulations. (*Clean Air Constituency v. Cal. State Air Res. Bd.* (1974) 11 Cal.3d 801, 808-809, citing Cal. Civil Writs (Cont.Ed.Bar 1970) § 5.37, p. 89 and *Acton v. Henderson* (1957) 150 Cal.App.2d 1, 7.) Mandate lies when: (1) the respondent has a ministerial duty to act, and (2) the petitioner has a beneficial right to performance of that duty. (*People ex rel. Younger v. Cnty. of El Dorado* (1971) 5 Cal.3d 480, 491.) Code of Civil Procedure § 1086 provides that when a verified petition is submitted by a party "beneficially interested," a writ "must be issued in all cases where there is not a plain, speedy, and adequate remedy, in the ordinary course of law."

The Court of Appeal ordinarily decides whether the denial of a writ petition was "supported by substantial evidence, *but legal questions*, including the ultimate determination of whether administrative proceedings were fundamentally fair, *are reviewed de novo*." (1 Cal. Civil Writ Practice (Cont.Ed.Bar 4th ed. 2019 supp.)

Challenging the Superior Court's Decision, § 11.16, pp. 11-10–11-11, italics added.)

B. The Trial Court Erred When It Upheld the Validity of the Challenged Regulations; Because the Regulations Are *Not* Valid, DOJ Has a Ministerial Duty *Not* to Enforce Them

A ministerial duty is one that a government actor must perform without the exercise of independent judgment or opinion. (*Ellena v. Dept. of Ins.* (2014) 230 Cal.App.4th 198, 205; *County of San Diego v. State* (2008) 164 Cal.App.4th 580, 593.) An agency *must* comply with the APA in promulgating regulations, unless a statute expressly exempts that agency from the APA's mandates in doing so. (Gov. Code § 11340.5, subd. (a); *Winzler & Kelly v. Dept. of Indus. Rels.* (1981) 121 Cal.App.3d 120, 126-127.) Any such exemption must be expressly provided for in statute. (Gov. Code § 11346.) And "any doubt as to the applicability of the APA's requirements should be resolved in favor of the APA." (*Cal. Sch. Bds. Assn. v. State Bd. of Educ.* (2010) 186 Cal.App.4th 1298, 1328 (*Cal. School Bds. Assn.*).)

But no matter if it is adopted in compliance with APA procedures or through an exemption from them, "no regulation adopted is valid or effective unless consistent and not in conflict with the statute." (*Agnew v. State Bd. of Equalization* (1999) 21 Cal.4th 310, 321.) For no agency may adopt and enforce regulations "inconsistent with the governing statute, [that] alter or amend the statute, or enlarge its scope." (*Slocum v. State Bd. of Equalization* (2005) 134 Cal.App.4th 969, 974.) Agencies have no discretion to enforce invalid regulations; instead, they have a ministerial duty *not*

to enforce them. (See Gov. Code, § 11342.1; see also *Terhune v. Superior Court* (1998) 65 Cal.App.4th 864.)

Here, the Challenged Regulations are invalid for two reasons. First, DOJ failed to abide the strict requirements of the APA when it adopted them, wrongly claiming that they qualified for Subdivision (b)'s APA exemption. Second, the regulations illegally alter the scope of the statutes they purport to implement—making substantive changes to what firearms can or must be registered, who can register them, and the conditions of registration. The trial court, affording DOJ such extreme deference as to have provided no meaningful judicial review of DOJ's action, erred when it upheld the validity of the Challenged Regulations and, on that basis, denied Appellants' petition for writ of mandate.

1. The Trial Court Gave Undue Deference to DOJ's Interpretation of Subdivision (b)'s APA Exemption

"Where a party challenges a regulation on the ground that it is in conflict with the governing statute or exceeds the lawmaking authority delegated by the Legislature, the issue of statutory construction is a question of law on which a court exercises independent judgment." (*PaintCare v. Mortensen* (2015) 233 Cal.App.4th 1292, 1303 (*PaintCare*), citing Gov. Code, § 11342.2; see also *Assn. of Cal. Ins. Cos. v. Jones* (2017) 2 Cal.5th 376, 389-390 (*Jones*) ["These contentions [that a regulation falls outside the lawmaking authority delegated by the legislature] implicate interpretation of the relevant statutes, which is a question of law on which this court exercises independent judgment."].) The courts should not simply "defer to an agency's view when deciding whether a

regulation lies within the scope of the authority delegated by the Legislature." (*Yamaha Corp. of Am. v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 11, fn. 4 (*Yamaha*); see also *PaintCare*, *supra*, 233 Cal.App.4th at pp. 1303-1304 ["The question of an agency's interpretation of a statute is different from the issue here of whether regulations fall within the scope of the agency's authority, for which the Supreme Court in *Yamaha* found the court does not defer to the agency's view."].)

Put another way, courts are not bound by an agency's own interpretation of the authorizing statute; for "the courts are the ultimate arbiters of the construction of a statute." (*Littoral Devel. Co. v. S.F. Bay Conserv.* (1994) 24 Cal.App.4th 1050, 1058, as modified on denial of reh'g (May 26, 1994), quoting *Cal. Assn. of Psych. Providers v. Rank* (1990) 51 Cal.3d 1, 11; see also *Grimes v. State Dept. of Soc. Servs.* (1999) 70 Cal.App.4th 1065, 1073 ["[w]hatever the force of administrative construction, . . . final responsibility for the interpretation of the law rests with the courts."].) Indeed, if it were otherwise, the APA would cease to have much meaning. For the decision of whether the APA applies to an agency's action, would ultimately rest in the hands of the very agencies that would otherwise be bound by the strict requirements of the APA. That result is an affront to public policy and the intent of the APA—that our (unelected) government officials should be transparent and accountable when passing quasi-legislative enactments.

The trial court, relying only on the notion that courts owe "great weight" to the decisions of administrative bodies and ignoring its own role as the final arbiter of the law's interpretation (J.A. V 1933),

conflates the standard for judicial review of regulatory action, generally, with the standard for reviewing an agency's interpretation that its action is exempt from the APA, specifically. While the trial court was correct that agencies generally enjoy some leeway to "fill up the details" of a statutory scheme with regulations based on its construction of the relevant authorizing statute (*ibid.*), no such deference is due when there is a question about whether the agency had to comply with APA procedures in the first place. To the contrary, if there is doubt over APA's application, courts must give deference not t0 the agency's claim of exemption, but to application of the APA procedures. (*Cal. Sch. Bds. Assn.*, *supra*, 186 Cal.App.4th at p. 1328.)[10]

And even though "great weight and respect" should generally be afforded to an administrative agency's construction, "how *much* weight to accord . . . depends on the context, a term encompassing both the nature of the statutory issues and characteristics of the agency." (*Jones*, *supra*, 2 Cal.5th at p. 390, citing *Am. Coatings Assn. v. S. Coast Air. Q. Mgmt. Dist.* (2012) 54 Cal.4th 446, 461.) "Among the factors bearing on the value of the administrative interpretation, two broad categories emerge: factors relating to the agency's *technical knowledge and expertise*, which tend to suggest the agency has a comparative interpretive advantage over a court; and factors relating to the *care with which the interpretation was promulgated*, which tend

[10] Neither DOJ nor the trial court cited any authority showing that agencies have the sort of leeway in adopting regulations when bypassing the APA that they have when complying with it.

to suggest the agency's interpretation is likely to be correct." (*Ibid.*, citing *Yamaha*, *supra*, 19 Cal.4th at p. 13, italics added.)

Here, neither factor counsels in favor of deferring to the interpretation at issue. For interpreting Subdivision (b)'s APA exemption requires no technical knowledge related to the DOJ Bureau of Firearms' areas of expertise. It is unrelated to firearms, "assault weapons," registration procedures, or any other "technical, obscure, complex, open-ended, or entwined issues of fact, policy, [or] discretion" (*Yamaha*, *supra*, 19 Cal.4th at p. 12) that would give DOJ a "comparative advantage over a court" (*Jones*, *supra*, 2 Cal.5th at p. 390). Instead, the interpretation of a general statute to determine the proper scope of an APA exemption—the very question raised here—is a question of law best left to the courts' independent judgment.

As for the "care" DOJ took in interpreting the Subdivision (b) exemption, courts look to several factors to determine whether an agency's interpretation is "likely to be correct," including evidence of careful consideration by senior officials, public participation in the adoption process, consistency with long-standing statutory interpretation, and whether the agency adopted the interpretation contemporaneously with the authorizing statute. (*Yamaha*, *supra*, 19 Cal.4th at pp. 12-13.) Nothing in the record suggests that any high-ranking DOJ official carefully considered or provided a well-reasoned analysis of DOJ's interpretation of the Subdivision (b) exemption at issue. (See *Sheet Metal Workers Internat. Assn., Local 104 v. Duncan* (2014) 229 Cal.App.4th 192, 207 [agency determination given deference because it was "plainly the product of careful consideration by senior members of the administrative agency"].) Similarly, there is

no evidence that DOJ Bureau of Firearms staff were in any way involved in the drafting of Subdivision (b)'s exemption. (See *Sara M. v. Superior Ct.* (*Tuolumne Cnty. Dept. Soc. Servs.*) (2005) 36 Cal.4th 998, 1014 [giving an agency's statutory interpretation greater weight if the agency was involved in drafting the statute].) DOJ undisputedly did *not* invite the public to participate in the consideration and adoption of the Challenged Regulations. And the existence of both the Subdivision (b) exemption and DOJ's interpretation of it are by no means longstanding. Thus, whatever "weight" is due DOJ's interpretation of the APA exemption at issue, it is not substantial.

With that level of deference in mind, we consider the propriety of DOJ's interpretation and application of Subdivision (b)'s APA exemption. Here, none of the Challenged Regulations bears a reasonable relation to the registration procedures contemplated by Subdivision (b). The trial court erroneously found that the "challenged regulations ensure that eligible weapons are registered, by eligible applicants, through an understandable registration process." (J.A. V 1933.) But they do far more than that. Each 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. (See Argument, Part II.B, infra.) One even restricts purely *post*-registration activity. (Cal. Code Regs., tit. 11, § 5477.) Those are all matters beyond the scope of Subdivision (b)'s APA exemption. At best for DOJ, there is doubt over whether they are. And because *any* doubt about whether the APA applies requires its application (*Cal. Sch. Bds. Assn.*, *supra*, 186 Cal.App.4th at p. 1328), the trial court should have invalidated the Challenged Regulations.

What's more, Penal Code section 30520, subdivision (c) confers on DOJ the authority "to adopt those rules and regulations that may be necessary or proper to carry out the purposes and intent of [the AWCA]." Section 30520, subdivision (c) predates the adoption of SB 880 and AB 1135, and neither bill altered it. Because section 30520's grant of authority contains no APA exemption, DOJ must generally adhere to the APA when promulgating regulations implementing the AWCA. So Subdivision (b) cannot apply to just any regulation furthering the broader purposes of the AWCA, as the trial court suggests. (J.A. V 1933-1944.) It must be (*and expressly is*) limited to implementing the registration of "bullet-button assault weapons." (Pen. Code, § 30900, subd. (b)(5).) Interpreting the Subdivision (b) otherwise would nullify Section 30520, subdivision (c). There is no indication whatsoever that the legislature intended such a result.

Ultimately, there is at least some doubt that the DOJ's expansive view of Subdivision (b)'s APA exemption is what the legislature intended. Indeed, the trial court itself repeatedly acknowledges as much in its ruling, holding that DOJ's interpretation of Subdivision (b) "does not *appear* contrary to law" because the challenged regulations "*appear to*" implement "the authorizing statute" and "*appear to* carry out the intention of the Legislature." (J.A. V 1933-1944, italics added.) The word "appear," as the trial court uses it at each level of its analysis, undeniably connotes uncertainty—that it harbored some doubt that the APA should not apply. Thus, Appellants should have prevailed. But the trial court did the opposite of what the law commands. Apparently, because it found DOJ's reading of Subdivision (b) reasonable and the Challenge Regulations

in line with the legislature's general intent for the AWCA, the trial court held that DOJ was entitled to great deference when it exempted itself from the APA. (J.A. V 1933-1944.) Because that deference should have instead been given to APA application, the trial court erred.

2. The Challenged Regulations Are Invalid Both Because They Failed to Comply with the APA and They Unlawfully Alter Statutes

Again, none of the Challenged Regulations fall within Subdivision (b)'s APA exemption. For they 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. But even setting aside the APA compliance issue and assuming the Challenged Regulations do relate only to registration under Subdivision (b), virtually every one of the Challenged Regulations *illegally* altered the scope of the statutes they purport to implement. The trial court ignored that reality. Rather than individually evaluating each of Appellants' complaints about that aspect of the Challenged Regulations, the trial court instead seems to have simply, and wrongly, deferred to the DOJ's interpretation of those statutes.

a. Deletion of Lawfully Enacted Definitions

California Code of Regulations, title 11, section 5469 deletes existing regulations the DOJ lawfully adopted over 18 years ago in compliance with the APA, some of which underwent extensive revisions before being adopted. (See J.A. II 287-291 [summarizing the rulemaking process for each definition].) Each of those repealed regulatory provisions *exclusively* applied to the "identification of

assault weapons pursuant to Penal Code section 30515." (Cal. Code Regs., tit. 11, § 5469 (repealed and replaced).) Yet, DOJ repealed them without adhering to the APA, relying on the APA exemption in Subdivision (b), which only applies to its own implementation. In other words, the repealed regulatory provisions implemented a completely different statute than the one Subdivision (b) appears in. As a result, they are beyond the scope of DOJ's narrow APA exemption.

Had the Legislature intended to allow DOJ to alter such long-standing definitions implementing a separate statute, it almost certainly *would have* been clearer in affording DOJ the authority to make such changes. In any event, to allow DOJ to do so without adhering to the APA, the Legislature *had to* be clearer. (See *Cal. Sch. Bds. Assn.*, *supra*, 186 Cal.App.4th at p. 1328.) Because it was not, DOJ's failure to comply with the APA voids section 5469.

b. Requirement that "Bullet-button Shotguns" Be Registered

Perhaps the clearest violation of DOJ's authority to regulate here is California Code of Regulations, title 11, section 5470, subdivision (a). That subdivision reads: "A semiautomatic shotgun with an ammunition feeding device that can be readily removed from the firearm with the use of a tool, commonly referred to as a bullet-button weapon, is included in the category of firearms that must be registered" under Subdivision (b). But shotguns falling under section 5470 are not "assault weapons" under the AWCA.

Recall, before the legislature enacted the "bullet button" restriction in 2016, semiautomatic rifles, pistols, and shotguns equipped with a "magazine lock," like a "bullet button," were perfectly

legal (regardless of their features) because they did not have "the capacity to accept a detachable magazine." With the adoption of SB 880 and AB 1135, the legislature amended *only* Penal Code section 30515, subdivision (a)(1) and (4)—the subdivisions dealing with semiautomatic pistols and rifles. (Sen. Bill No. 880 (2015-2016 Reg. Sess.) § 1]; Assem. Bill No. 1135 (2015-2016 Reg. Sess.) § 1; see also Appx. at pp. 47-49 [highlighting the 2016 amendments].) It left the definition of "assault weapon" for shotguns completely untouched. That necessarily means that whichever shotguns were *not* "assault weapons" before the legislature passed SB 880 and AB 1135 were *not* "assault weapons" after.

Such shotguns, therefore, simply do not fall within the category of firearms that must be registered under Subdivision (b), which only requires registration for "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." (Pen. Code, § 30900, subd. (b)(1), italics added.) By requiring registration of shotguns that are not "assault weapons" under section 30515, the challenged regulation illegally expands the scope of Subdivision (b). Worse yet, it potentially alters the scope of the entire AWCA. For a firearm registered under Subdivision (b) would presumably be treated as an "assault weapon" for all purposes.

What's more, Subdivision (b)'s APA exemption is limited to regulations about the "procedures" for registering—that is, *how* one must register. (Pen. Code, § 30900, subd. (b)(1).) It does not extend to regulations about *what* firearms must be registered. Because section

5470, subdivision (a) purports to do just that, it does not qualify for Subdivision (b)'s APA exemption and it exceeds the scope of DOJ's authority to enact it. Section 5470 is thus invalid, and the lower court erred in holding otherwise.

c. Adoption of New Definitions

California Code of Regulations, title 11, section 5471 creates new definitions for forty-four terms. But neither Subdivision (b) nor the statute in which it appears, Section 30900, is a definitional statute. In fact, Subdivision (b) expressly acknowledges that individuals need only register firearms "***as defined*** in Section 30515." As explained, DOJ's APA exemption is confined to regulations implementing Subdivision (b), the provisions of which exclusively concern the registration *process*. DOJ's definitions thus affect the implementation and scope of Section 30515, not Subdivision (b). Section 5471's definitions are thus beyond the scope of DOJ's narrow APA exemption.

Except for the term "fixed magazine" (now *statutorily* defined, Pen. Code, § 30515, subd. (b)), neither AB 1135 nor SB 880 changed any of the definitions for terms within the AWCA. In fact, the definitions of terms in the AWCA have remained unchanged and in use for nearly twenty years. And some of the Challenged Regulations' definitional changes affecting firearms that have been possessed for years could potentially change the legal status of those firearms retroactively without statutory basis. For example, DOJ has now defined the term "barrel length" to only now specifically require muzzle devices to be "permanently attached" in a specified manner. (Cal. Code Regs., tit. 11, § 5471, subd. (d).) Any firearm owned before

the enactment of section 5471 that does not satisfy its requirements would thus potentially violate California's overall length and short-barreled restrictions. (See Pen. Code, §§ 30515, subd. (a)(3), 33210.) Likewise, DOJ has adopted a new definition for the term "flash suppressor" to include several other muzzle devices not previously identified as flash suppressors, potentially classifying any firearm equipped with such a device an "assault weapon" under California law and so illegal to possess or transfer. (Cal. Code Regs., tit. 11, § 5471(r); see also Pen. Code, § 30515, subd. (a)(1)(E).)

What's more, many of those definitions are irrelevant to the newly classified "assault weapons" that must be registered under Subdivision (b). For example, DOJ's definition of the term "barrel length" has no impact on whether Penal Code section 30515, subdivisions (a)(1) and (4) currently classify a firearm as an "assault weapon." And, section 5471, subdivision (a)'s definition for the term "[a]bility to accept a detachable magazine" as "with respect to a semiautomatic shotgun, it does not have a fixed magazine," adds shotguns to the list of firearms that must be registered, expanding the statute in violation of DOJ's regulatory authority.

In sum, if the Legislature intended to allow DOJ free rein to amend every possible term relating to "assault weapons," especially those longstanding ones unaffected by AB 1135 and SB 880, it would have expressly stated as much. It did not and, as a result, DOJ cannot shoehorn these definitions into Subdivision (b)'s APA exemption—particularly as they expand the statutory definition of "assault weapon."

d. Serialization Requirements

California Code of Regulations, title 11, section 5472, subdivision (f) prohibits registration of any firearm lacking an engraved serial number. And section 5472, subdivision (g) prohibits registration of a home-built firearm (a "Firearm Manufactured By Unlicensed Subject" or "FMBUS") that does "not have a serial number assigned by the Department and applied by the owner or agent pursuant to [CCR]section 5474.2." Section 5474.2 requires a "person seeking assault weapon registration" for a FMBUS to "seek a Department issued serial number . . . prior to initiating the assault weapon registration process." Taken together, these regulations prohibit individuals from registering lawfully acquired, home-built firearms as "assault weapons" unless first obtaining a DOJ-approved serial number.

First, this is a gross expansion of statutory law. Neither California nor federal law currently requires owners of a FMBUS to affix a DOJ-approved, or any, serial number.[11] California recently enacted a law imposing such requirements, but it did not take effect until January 1, 2019—a full six months *after* the period to register an "assault weapon" would end. (See Pen. Code § 29180, subd. (c).) *That law also required DOJ to create regulations implementing its provisions that are* ***not*** *afforded an APA exemption*. (See Pen. Code § 29182, subd. (f).) With section 5472, subdivisions (f) and (g), and

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[11] Serial numbers on all firearms produced by licensed manufacturers were required only after enactment of the Gun Control Act of 1968. (Pub.L. No. 90-618 (Oct. 22, 1968) 82 Stat. 1213, 1223.) Federal law has never required serial numbers on firearms made by persons other than licensed manufacturers and importers engaged in the business of firearms.

section 5474.2, DOJ has, therefore, expanded Penal Code section 29182, subdivision (f) by advancing its deadline six months earlier. And it did so without having complied with the APA, despite Penal Code section 29182 providing no APA exemption for its implementing regulations.

Second, section 5472, subdivisions (f) and (g), and section 5474.2 also unlawfully expand the scope of Penal Code section 30900, subdivision (b)(3)'s requirement that registrants simply describe the firearm, "including all identification marks." For, those regulations require ***creation*** of information, not just ***a description*** of existing information, as the underlying statute calls for. Nothing in Subdivision (b) requires a firearm to have a serial number to be registered, let alone that a registrant have one made and "pre-approved" by DOJ. So not only do those provisions unlawfully expand statutory law, but they are also beyond the scope of Subdivision (b)'s APA exemption, as they have nothing to do with the registration processes. Instead, they control *what* firearms can be registered.

e. Compelled Non-liability Clause

California Code of Regulations, title 11, section 5473, subdivision (b)(1) requires registrants to agree to hold DOJ harmless for "any hardware, software, information, or other items" as a condition of registering their firearms. This provision is unrelated to implementing registration procedures in Subdivision (b) and thus does not qualify for its APA exemption.

But even if DOJ sought to adopt such a requirement in compliance with the APA, it could not. For such a provision directly conflicts with Article 1 of the California Constitution and the

Information Practices Act. Both specifically protect an individual's right to privacy, limit DOJ's ability to disclose personal information, and provide statutory remedies for violations. (See Cal. Const., art. I, § 1; Civ. Code, § 1798, et seq.) DOJ simply cannot unilaterally grant itself an exception to statutory restrictions imposed on it.

f. Excessive Registration Information Requirement

Penal Code section 30900, subd. (b)(3) is specific as to exactly what personal information is required for registration. Registrants must provide their "full name, address, telephone number, date of birth, sex, height, weight, eye color, hair color, and California driver's license number or California identification card number." California Code of Regulations, title 11, section 5474, subdivision (a), however, adds to the information required from an applicant, demanding: *military ID number, U.S. citizenship status, place of birth, country of citizenship, and alien registration number*. Section 5474, subdivision (a) thus unlawfully expands the scope of Subdivision (b). Moreover, a regulation concerning *what* information must be provided in a registration is not the same as one concerning *how* information is to be provided in a registration. The latter is entitled to Subdivision (b)'s APA exemption. The former, which section 5474, subdivision (a) falls under, is not.

Section 5474, subdivision (c) makes a prerequisite to "assault weapon" registration access to fairly expensive equipment, by requiring "clear digital photographs" of any firearm sought to be registered. But Subdivision (b) merely requires that the registration contain a "description" of the firearm, not an *actual depiction* of it. Such an expansion of Subdivision (b) is unlawful. Tellingly, identical

language to Subdivision (b)'s can be found elsewhere in California statutory law regarding firearm registration without requiring such photographs. For example, Penal Code section 27560, subdivision (a)(1) requires anyone moving into California with a firearm to report their ownership to DOJ on a form that contains "a description of the firearm in question." That form—which has been used by DOJ for years—does not require individuals to provide photographs of the firearm to be registered. (See Cal. Dept. of Justice, Bureau of Firearms, *New Resident Report of Firearm Ownership* (rev. July 2017) <https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/forms/ab991frm.pdf>.)

g. Joint-registration Restrictions

Penal Code section 30955 requires DOJ to accept joint registrations for any "assault weapon" owned by "family members residing in the same household." California Code of Regulations, title 11, section 5474.1, subdivision (b), however, impermissibly limits the scope of that statute by narrowly defining the term "family members" to include only: (1) Spouses; (2) Parent to Child; (3) Child to Parent; (4) Grandparent to Grandchild; (5) Grandchild to Grandparent; (6) Domestic Partner; and (7) Siblings. Penal Code section 30955 makes no such limitations on the definition of "family members." Nor does its legislative history indicate any intent to do so.

What's more, DOJ's APA exemption applies only to implementing Subdivision (b), and section 5474.1, subdivision (b) implements a different statute, Penal Code section 30955. Thus, that regulation does not qualify for the APA exemption, and DOJ must have adopted it in compliance with the APA. Interestingly DOJ has

been accepting joint registrations since 1989, and yet in every past instance in which individuals had to register "assault weapons," DOJ has never so limited that term's scope. If DOJ wishes to limit the term now, it ***may*** be able to do so through APA rulemaking procedures. In fact, DOJ tried to do just that in 2000, but after receiving public comments, admitted that had the legislature intended to so limit the scope of the term, it "should have been statutorily stated in a much clearer manner." (J.A. II 291-292.) In any event, DOJ cannot, as it has done, limit the scope of the term without following the typical APA rulemaking procedures. For Subdivision (b)'s APA exemption applies to *how* to register, not *who* can register.

h. Removal of "Bullet button" Restriction

California Code of Regulations, title 11, section 5477 expressly states that "[t]he release mechanism for an ammunition feeding device on an assault weapon registered pursuant to Penal Code section 30900, subdivision (b)(1) shall not be changed ***after*** the assault weapon is registered." In its ruling, the trial court did not even mention section 5477, let alone explain why it was denying Appellants' challenge to it. Admittedly, this may be a result of Appellants omitting argument about that specific challenge from their memorandum of points and authorities in support of their writ petition and DOJ's contention that this omission means Appellants waived the challenge.

But, as explained in the court below, Appellants have not waived their challenge to Section 5477. Both Appellants' writ and memorandum of points and authorities in support expressly state that it is being challenged. (See J.A. IV 1554-1555, 1564.) The reason

section 5477 is invalid is so obvious that it needs no significant analysis. Even DOJ concedes that its APA exemption is limited to implementing the registration process under Penal Code section 30900, subdivision (b)(1) (J.A. III 1163.) While the scope of what that process entails may be open to debate, what happens *after* that process is complete is, by definition, not part of it. Because section 5477 regulates purely post-registration activity, it has nothing to do with the registration process and does not qualify for Subdivision (b)'s APA exemption.

Even if section 5477 did relate to the registration process, it unlawfully expands the AWCA, which says nothing about whether a "bullet button" can ever be removed post-registration. By declaring that they cannot be, section 5477 unlawfully expands the scope of the APA and is thus void.

C. Neither DOJ Nor the Trial Court Dispute that Appellants Meet the Remaining Elements for a Writ of Mandate to Issue

While they contend that the Challenged Regulations are valid, DOJ did not dispute: (1) that Appellants have a clear, present, and beneficial interest in the outcome of this proceeding; or (2) that they have no plain, speedy, or adequate remedy from the ongoing harm caused by any of the Challenged Regulations this Court may find invalid. Thus, if the Court agrees with Appellants that any of the Challenged Regulations was unlawfully adopted, this Court should reverse the lower court and invalidate each such regulation and enjoin DOJ from enforcing it.

CONCLUSION

Based on the foregoing, Appellants ask this Court to reverse the order sustaining DOJ's demurrer denying Appellants their statutory right to seek declaratory relief and the ruling on Appellants' writ of mandate upholding the challenged regulations.

Date: March 21, 2019 **MICHEL & ASSOCIATES, P.C.**

s/ Anna M. Barvir
Anna M. Barvir
Counsel for Plaintiffs-Appellants

CERTIFICATE OF WORD COUNT

Pursuant to Rule 8.204, subdivision (c)(1), of the California Rules of Court, I hereby certify that the attached Appellants' Opening Brief is 1 ½-spaced, typed in a proportionally spaced, 13-point font, and the brief contains 9,520 words of text, including footnotes, as counted by the word-count feature of the word-processing program used to prepare the brief.

Date: March 21, 2019 **MICHEL & ASSOCIATES, P.C.**

s/ Anna M. Barvir
Anna M. Barvir
Counsel for Plaintiffs-Appellants

APPENDIX

APPENDIX

TEXT OF RELEVANT STATUTES & REGULATIONS

Pen. Code, § 30515, subd. (a) (1999))*

(a) Notwithstanding Section 30510, "assault weapon" also means any of the following:

(1) A semiautomatic, centerfire rifle ***that has the capacity to accept a detachable magazine and any one of the following***:

(A) A pistol grip that protrudes conspicuously beneath the action of the weapon.

(B) A thumbhole stock.

(C) A folding or telescoping stock.

(D) A grenade launcher or flare launcher.

(E) A flash suppressor.

(F) A forward pistol grip.

(2) A semiautomatic, centerfire rifle that has a fixed magazine with the capacity to accept more than 10 rounds.

(3) A semiautomatic, centerfire rifle that has an overall length of less than 30 inches.

(4) A semiautomatic pistol that ***has the capacity to accept a detachable magazine and any one of the following***:

(A) A threaded barrel, capable of accepting a flash suppressor, forward handgrip, or silencer.

(B) A second handgrip.

(C) A shroud that is attached to, or partially or completely encircles, the barrel that allows the bearer to fire the weapon without burning the bearer's hand, except a slide that encloses the barrel.

(D) The capacity to accept a detachable magazine at some location outside of the pistol grip.

(5) A semiautomatic pistol with a fixed magazine that has the capacity to accept more than 10 rounds.

(6) A semiautomatic shotgun that has both of the following:

(A) A folding or telescoping stock.

(B) A pistol grip that protrudes conspicuously beneath the action of the weapon, thumbhole stock, or vertical handgrip.

(7) A semiautomatic shotgun that has the ability to accept a detachable magazine.

(8) Any shotgun with a revolving cylinder.

* Italics and bold added to highlight those sections modified by the recent change in California law.

Pen. Code, § 30515, subds. (a)-(b) (2016)

(a) Notwithstanding Section 30510, "assault weapon" also means any of the following:

(1) A semiautomatic, centerfire rifle ***that does not have a fixed magazine but has any one of the following***:

(A) A pistol grip that protrudes conspicuously beneath the action of the weapon.

(B) A thumbhole stock.

(C) A folding or telescoping stock.

(D) A grenade launcher or flare launcher.

(E) A flash suppressor.

(F) A forward pistol grip.

(2) A semiautomatic, centerfire rifle that has a fixed magazine with the capacity to accept more than 10 rounds.

(3) A semiautomatic, centerfire rifle that has an overall length of less than 30 inches.

(4) A semiautomatic pistol ***that does not have a fixed magazine but has any one of the following***:

(A) A threaded barrel, capable of accepting a flash suppressor, forward handgrip, or silencer.

(B) A second handgrip.

(C) A shroud that is attached to, or partially or completely encircles, the barrel that allows the bearer to fire the weapon without burning the bearer's hand, except a slide that encloses the barrel.

(D) The capacity to accept a detachable magazine at some location outside of the pistol grip.

(5) A semiautomatic pistol with a fixed magazine that has the capacity to accept more than 10 rounds.

(6) A semiautomatic shotgun that has both of the following:

(A) A folding or telescoping stock.

(B) A pistol grip that protrudes conspicuously beneath the action of the weapon, thumbhole stock, or vertical handgrip.

(7) A semiautomatic shotgun that has the ability to accept a detachable magazine.

(8) Any shotgun with a revolving cylinder.

(b) ***For purposes of this section, "fixed magazine" means 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, § 30900, subd. (b) (2016)

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

(2) Registrations shall be submitted electronically via the Internet utilizing a public-facing application made available by the department.

(3) The registration shall contain a description of the firearm that identifies it uniquely, including all identification marks, the date the firearm was acquired, the name and address of the individual from whom, or business from which, the firearm was acquired, as well as the registrant's full name, address, telephone number, date of birth, sex, height, weight, eye color, hair color, and California driver's license number or California identification card number.

(4) The department may charge a fee in an amount of up to fifteen dollars ($15) per person but not to exceed the reasonable processing costs of the department. The fee shall be paid by debit or credit card at the time that the electronic registration is submitted to the department. The fee shall be deposited in the Dealers' Record of Sale Special Account to be used for purposes of this section.

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

Cal. Code Regs, tit. 11, § 5469

Any person who, from January 1, 2001, to December 31, 2016, inclusive, lawfully possessed an assault weapon that does not have a fixed magazine, as defined in Penal Code section 30515, including those weapons with an ammunition feeding device that can be readily removed from the firearm with the use of a tool (commonly referred to as a bullet-button weapon) must register the firearm before July 1, 2018.

Cal. Code Regs, tit. 11, § 5470, subd. (d)

(d) A semiautomatic, centerfire or rimfire pistol with an ammunition feeding device that can be readily removed from the firearm with the use of a tool, commonly referred to as a bullet-button weapon, that has one or more specified features identified in Penal Code section 30515 is included in the category of firearms that must be registered.

Cal. Code Regs, tit. 11, § 5471

For purposes of Penal Code section 30900 and Articles 2 and 3 of this Chapter the following definitions shall apply:

(a) "Ability to accept a detachable magazine" means with respect to a semiautomatic shotgun, it does not have a fixed magazine.

(b) "Action" means the working mechanism of a semiautomatic firearm, which is the combination of the receiver or frame and breech bolt together with the other parts of the mechanism by which a firearm is loaded, fired, and unloaded.

(c) "Barrel" means the tube, usually metal and cylindrical, through which a projectile or shot charge is fired. Barrels may have a rifled or smooth bore.

(d) "Barrel length" means the length of the barrel measured as follows: Without consideration of any extensions or protrusions rearward of the closed bolt or breech-face the approved procedure for measuring barrel length is to measure from the closed bolt (or breech-face) to the furthermost end of the barrel or permanently attached muzzle device. Permanent methods of attachment include full-fusion gas or electric steel-seam welding, high-temperature (1100° F) silver soldering, or blind pinning with the pin head welded over. Barrels are measured by inserting a dowel rod into the barrel until the rod stops against the closed bolt or breech-face. The rod is then marked at the furthermost end of the barrel or permanently attached muzzle device, withdrawn from the barrel, and measured.

(e) "Bullet" means the projectile expelled from a gun. It is not synonymous with a cartridge. Bullets can be of many materials, shapes, weights, and constructions such as solid lead, lead with a jacket of harder metal, round-nosed, flat-nosed, hollow-pointed, et cetera.

(f) "Bullet-button" means a product requiring a tool to remove an ammunition feeding device or magazine by depressing a recessed button or lever shielded by a magazine lock. A bullet-button equipped fully functional semiautomatic firearm does not meet the fixed magazine definition under Penal Code section 30515(b).

(g) "Bore" means the interior of a firearm's barrel excluding the chamber.

(h) "Caliber" means the nominal diameter of a projectile of a rifled firearm or the diameter between lands in a rifled barrel. In the United States, caliber is usually expressed in hundreds of an inch; in Great Britain in thousandths of an inch; in Europe and elsewhere in millimeters.

(i) "Cartridge" means a complete round of ammunition that consists of a primer, a case, propellant powder and one or more projectiles.

(j) "Centerfire" means a cartridge with its primer located in the center of the base of the case.

(k) "Contained in" means that the magazine cannot be released

from the firearm while the action is assembled. For AR-15 style firearms this means the magazine cannot be released from the firearm while the upper receiver and lower receiver are joined together.

(*l*) "Department" means the California Department of Justice.

(m) "Detachable magazine" means any ammunition feeding device that can be removed readily from the firearm without disassembly of the firearm action or use of a tool. A bullet or ammunition cartridge is considered a tool. An ammunition feeding device includes any belted or linked ammunition, but does not include clips, en bloc clips, or stripper clips that load cartridges into the magazine.

An AR-15 style firearm that has a bullet-button style magazine release with a magnet left on the bullet-button constitutes a detachable magazine. An AR-15 style firearm lacking a magazine catch assembly (magazine catch, magazine catch spring and magazine release button) constitutes a detachable magazine. An AK-47 style firearm lacking a magazine catch assembly (magazine catch, spring and rivet/pin) constitutes a detachable magazine.

(n) "Disassembly of the firearm action" means the fire control assembly is detached from the action in such a way that the action has been interrupted and will not function. For example, disassembling the action on a two part receiver, like that on an AR-15 style firearm, would require the rear take down pin to be removed, the upper receiver lifted upwards and away from the lower receiver using the front pivot pin as the fulcrum, before the magazine may be removed.

(o) "Featureless" means a semiautomatic firearm (rifle, pistol, or shotgun) lacking the characteristics associated with that weapon, as listed in Penal Code section 30515.

(p) "Fixed magazine" means 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.

(q) "Flare launcher" means a device used to launch signal flares.

(r) "Flash suppressor" means any device attached to the end of the barrel, that is designed, intended, or functions to perceptibly reduce or redirect muzzle flash from the shooter's field of vision. A hybrid device that has either advertised flash suppressing properties or functionally has flash suppressing properties would be deemed a flash suppressor. A device labeled or identified by its manufacturer as a flash hider would be deemed a flash suppressor.

(s) "FMBUS" means a Firearm Manufactured By Unlicensed Subject.

(t) "Forward pistol grip" means a grip that allows for a pistol style grasp forward of the trigger.

(u) "Frame" means the receiver of a pistol.

(v) "Grenade launcher" means a device capable of launching a grenade.

(w) "Permanently attached to" means the magazine is welded, epoxied, or riveted into the magazine well. A firearm with a magazine housed in a sealed magazine well and then welded, epoxied, or riveted into the sealed magazine well meets the definition of "permanently attached to".

(x) "Overall length of less than 30 inches" with respect to a centerfire rifle means the rifle has been measured in the shortest possible configuration that the weapon will function/fire and the measurement is less than 30 inches. Folding and telescoping stocks shall be collapsed prior to measurement. The approved method for measuring the length of the rifle is to measure the firearm from the end of the barrel, or permanently attached muzzle device, if so equipped, to that part of the stock that is furthest from the end of the barrel, or permanently attached muzzle device. (Prior to taking a measurement the owner must also check any muzzle devices for how they are attached to the barrel.)

(y) "Pistol" means any device designed to be used as a weapon, from which a projectile is expelled by the force of any explosion, or other form of combustion, and that has a barrel less than 16 inches in length. This definition includes AR-15 style pistols with pistol buffer tubes attached. Pistol buffer tubes typically have smooth metal with no guide on the bottom for rifle stocks to be attached, and they sometimes have a foam pad on the end of the tube farthest from the receiver.

(z) "Pistol grip that protrudes conspicuously beneath the action of the weapon" means a grip that allows for a pistol style grasp in which the web of the trigger hand (between the thumb and index finger) can be placed beneath or below the top of the exposed portion of the trigger while firing. This definition includes pistol grips on bullpup firearm designs.

(aa) "Receiver" means the basic unit of a firearm which houses the firing and breech mechanisms and to which the barrel and stock are assembled.

(bb) "Receiver, lower" means the lower part of a two part receiver.

(cc) "Receiver, unfinished" means a precursor part to a firearm that is not yet legally a firearm. Unfinished receivers may be found in various levels of completion. As more finishing work is completed the precursor part gradually becomes a firearm. Some just have the shape of an AR-15 lower receiver for example, but are solid metal. Some have been worked on and the magazine well has been machined open. Firearms Manufactured by Unlicensed Subjects (FMBUS) began as unfinished receivers.

(dd) "Receiver, upper" means the top portion of a two part receiver.

(ee) "Rifle" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger.

(ff) "Rimfire" means a rimmed or flanged cartridge with the priming mixture located in the rim of the case.

(gg) "Second handgrip" means a grip that allows the shooter to grip

the pistol with their non-trigger hand. The second hand grip often has a grip texture to assist the shooter in weapon control.

(hh) "Semiautomatic" means a firearm functionally able to fire a single cartridge, eject the empty case, and reload the chamber each time the trigger is pulled and released. Further, certain necessary mechanical parts that will allow a firearm to function in a semiautomatic nature must be present for a weapon to be deemed semiautomatic. A weapon clearly designed to be semiautomatic but lacking a firing pin, bolt carrier, gas tube, or some other crucial part of the firearm is not semiautomatic for purposes of Penal Code sections 30515, 30600, 30605(a), and 30900.

(1) A mechanically whole semiautomatic firearm merely lacking ammunition and a proper magazine is a semiautomatic firearm.

(2) A mechanically whole semiautomatic firearm disabled by a gun lock or other firearm safety device is a semiautomatic firearm. (All necessary parts are present, once the gun lock or firearm safety device is removed, and weapon can be loaded with a magazine and proper ammunition.)

(3) With regards to an AR-15 style firearm, if a complete upper receiver and a complete lower receiver are completely detached from one another, but still in the possession or under the custody or control of the same person, the firearm is not a semiautomatic firearm.

(4) A stripped AR-15 lower receiver, when sold at a California gun store, is not a semiautomatic firearm. (The action type, among other things, is undetermined.)

(ii) "Shotgun with a revolving cylinder" means a shotgun that holds its ammunition in a cylinder that acts as a chamber much like a revolver. To meet this definition the shotgun's cylinder must mechanically revolve or rotate each time the weapon is fired. A cylinder that must be manually rotated by the shooter does not qualify as a revolving cylinder.

(jj) "Shroud" means a heat shield that is attached to, or partially or completely encircles the barrel, allowing the shooter to fire the weapon with one hand and grasp the firearm over the barrel with the other hand without burning the shooter's hand. A slide that encloses the barrel is not a shroud.

(kk) "Spigot" means a muzzle device on some firearms that are intended to fire grenades. The spigot is what the grenade is attached to prior to the launching of a grenade.

(*ll*) "Stock" means the part of a rifle, carbine, or shotgun to which the receiver is attached and which provides a means for holding the weapon to the shoulder. A stock may be fixed, folding, or telescoping.

(mm) "Stock, fixed" means a stock that does not move, fold, or telescope.

(nn) "Stock, folding" means a stock which is hinged in some fashion to the receiver to allow the stock to be folded next to the receiver to reduce the overall length of the firearm. This definition

includes under folding and over folding stocks.

(oo) "Stock, telescoping" means a stock which is shortened or lengthened by allowing one section to telescope into another portion. On AR-15 style firearms, the buffer tube or receiver extension acts as the fixed part of the stock on which the telescoping butt stock slides or telescopes.

(pp) "Those weapons with an ammunition feeding device that can be readily removed from the firearm with the use of a tool" includes functional semiautomatic rifles, pistols, and shotguns with bullet-button style magazine releases. These weapons do not have a fixed magazine.

(qq) "Thumbhole stock" means a stock with a hole that allows the thumb of the trigger hand to penetrate into or through the stock while firing.

(rr) "Threaded barrel, capable of accepting a flash suppressor, forward handgrip, or silencer" means a threaded barrel able to accept a flash suppressor, forward handgrip, or silencer, and includes a threaded barrel with any one of those features already mounted on it. Some firearms have "lugs" in lieu of threads on the end of the barrel. These lugs are used to attach some versions of silencers. For purposes of this definition a lugged barrel is the same as a threaded barrel.

Cal. Code Regs, tit. 11, § 5472, subds. (f)-(g)

(f) The Department will not register as an assault weapon a firearm manufactured by a federally-licensed manufacturer if the firearm does not have a serial number applied pursuant to federal law.

(g) The Department will not register as an assault weapon a FMBUS if the firearm does not have a serial number assigned by the Department and applied by the owner or agent pursuant to section 5474.2.

Cal. Code Regs, tit. 11, § 5473, subd. (b)(1)

(b) A CFARS account must be created to use the electronic registration system. To create a CFARS account, assault weapon registrants will be required to agree to the following conditions of use:

(1) Non-Liability: The Department is not responsible for and will have no liability for any hardware, software, information, or other items or any services provided by any persons other than the Department. Except as may be required by law, in no event shall either party be liable to the other or any third party, under any theory of liability, including, but not limited to, any contract or tort claim for any cause whatsoever, for any indirect, incidental, special, or consequential damages, including loss of revenue or profits, even if aware of the possibility thereof.

Cal. Code Regs, tit. 11, § 5474, subds (a) & (c)

Once a CFARS account has been created, registrants must provide the following information:

(a) The registrant's full name, address, telephone number, date of birth, sex, height, weight, eye color, hair color, military identification number (if applicable), California Driver License number or California Identification Card number, U.S. citizenship status, place of birth, country of citizenship, and alien registration number or I-94, if applicable.

(c) Clear digital photos of firearms listed on the application. One photo shall depict the bullet-button style magazine release installed on the firearm. One photo shall depict the firearm from the end of the barrel to the end of the stock if it is a long gun or the point furthest from the end of the barrel if it is a pistol. The other two photos shall show the left side of the receiver/frame and right side of the receiver/frame. These locations are typically where firearms are marked when manufacturing is complete. At the discretion of the Department the last two photos shall be substituted for photos of identification markings at some other locations on the firearm.

Cal. Code Regs, tit. 11, § 5474.1, subds (b)-(c)

(b) All joint registrants must be 18 years of age by June 30, 2018. Joint registrations are only authorized for the following family relationships:

(1) Spouses

(2) Parent to Child

(3) Child to Parent

(4) Grandparent to Grandchild

(5) Grandchild to Grandparent

(6) Domestic Partners

(7) Siblings

(c) Proof of address for each joint registrant shall be provided at the time of electronic submission. Acceptable forms of proof of address are as follows:

(1) Carry Concealed Weapon (CCW) Permit

(2) Curio and Relic (C & R) Federal firearm license with name and address

(3) Utility Bill: Cable, electricity, garbage, gas, pipeline, propane, alarm/security, or water bill with purchaser's name on it and dated within three months of application for registration.

(4) Military permanent duty station orders indicating assignment within California; (active duty military spouse ID is not acceptable).

(5) Property Deed: Valid deed or deed of trust for the

individual's property or a certificate of title

(6) Resident Hunting License

(7) Signed and dated rental agreement/contract or residential lease

(8) Trailer certification of title

(9) DMV Vehicle Registration

(10) Certificate of Eligibility, as defined in section 4031, subdivision (g) of Chapter 3.

Cal. Code Regs., tit. 11, § 5474.2

A person seeking assault weapon registration for this type of firearm shall seek a Department issued serial number at: dojserialnumber@doj.ca.gov, prior to initiating the assault weapon registration process.

(a) A Department-provided serial number shall be issued and applied as follows:

(1) The Department shall issue a unique serial number to the applicant. The serial number issuance is a separate process and must be done before the assault weapon application will be accepted by the Department. Applicants seeking a FMBUS related serial number shall complete a New Serial Number Application, Form BOF 1008, (Rev. 07/2017) hereby incorporated by reference, and submit it to the Department prior to the initiation of the registration of this type of firearm.

(2) Once the applicant has received a Department issued serial number, the applicant may contact a Federal Firearms Licensed Manufacturer (type 07) to have the serial number applied in a manner consistent with this section and federal law. However, a Federal Firearms Licensee is under no obligation to perform this work. Persons who have manufactured their own firearm may also use non-licensed parties to apply the serial number and other required markings; however, the owner of the weapon must not leave the firearm unattended with an unlicensed party in violation of firearms transfer and/or lending laws. Proof of the serial number being applied to the firearm shall be given to the Department in the form of one or more digital photographs of the newly serialized firearm being submitted in accordance with the photo requirement noted in section 5474 (c).

(3) An unlicensed manufacturer of firearms must legibly and uniquely identify each firearm manufactured as follows:

(A) By engraving, casting, stamping (impressing), or otherwise conspicuously placing or causing to be engraved, cast, stamped (impressed) or placed on the frame or receiver thereof an individual serial number. The serial number must be placed in a manner not susceptible of being readily obliterated, altered, or removed, and must not duplicate any

serial number placed by the unlicensed manufacturer on any other firearm. The engraving, casting, or stamping (impressing) of the serial number must be to a minimum depth of .003 inch and in a print size no smaller than 1/16 inch; and

(B) By engraving, casting, stamping (impressing), or otherwise conspicuously placing or causing to be engraved, cast, stamped (impressed) or placed on the frame, receiver, or barrel thereof certain additional information. This information must be placed in a manner not susceptible of being readily obliterated, altered, or removed. The additional information must include:

(i) The model of the firearm, if such designation has been made;

(ii) The caliber or gauge of the firearm;

(iii) The manufacturer's first and last name as provided to the Department for registration purposes, when applicable; and

(iv) The city and state (or recognized abbreviation thereof) where the manufacturer made the firearm.

(4) Measurement of height and depth of markings. The depth of all markings required by this section will be measured from the flat surface of the metal and not the peaks or ridges. The height of serial numbers required by paragraph (a)(3)(A) of this section will be measured as the distance between the latitudinal ends of the character impression bottoms (bases).

(5) The Department shall deny assault weapon registration applications if it determines the above described marking requirements have not been met.

Cal. Code Regs, tit. 11, § 5477

(a) The release mechanism for an ammunition feeding device on an assault weapon registered pursuant to Penal Code section 30900, subdivision (b)(1) shall not be changed after the assault weapon is registered. A weapon's eligibility for registration pursuant to Penal Code section 30900, subdivision (b)(1) depends, in part, on its release mechanism. Any alteration to the release mechanism converts the assault weapon into a different weapon from the one that was registered.

(b) The prohibition in subdivision (a) does not extend to the repair or like-kind replacement of the mechanism.

(c) This prohibition in subdivision (a) does not extend to a firearm that is undergoing the deregistration process pursuant to section 5478. Written confirmation from the Department that acknowledges the owner's intent to deregister his or her assault weapon pursuant to section 5478 shall be proof the deregistration process has been initiated.

Cal. Code Regs., tit. 11, § 5478, subd. (a)(2)

(a) The Department will accept voluntary deregistration requests for assault weapons that are no longer possessed by the registrant, in the form of a completed Form BOF 4546, "Notice of No Longer in Possession," (Rev. 07/2017) hereby incorporated by reference. Deregistration requests will also be accepted for assault weapons, as defined in Penal Code section 30515, that have been modified or reconfigured to no longer meet that definition. Deregistration requests must be in writing, signed, dated, and provide the following information:

. . . .

(2) If the firearm has been modified or reconfigured to no longer meet the definition of assault weapon, one or more photographs clearly depicting the firearm in its current configuration shall be attached to the written deregistration request. Additional information, photographs, or inspection may be requested by the Department before determining eligibility for deregistration.

PROOF OF ELECTRONIC SERVICE (Court of Appeal)	
Notice: This form may be used to provide proof that a document has been served in a proceeding in the Court of Appeal. Please read *Information Sheet for Proof of Service (Court of Appeal)* (form APP-009-INFO) before completing this form.	
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1. At the time of service I was at least 18 years of age.
2. a. My ☐ residence ☒ business address is *(specify)*: 180 E. Ocean Blvd., Suite 200 Long Beach, CA 90802

   b. My electronic service address is *(specify)*: lpalmerin@michellawyers.com
3. I electronically served the following documents *(exact titles)*:

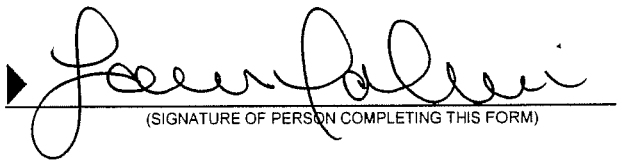
   Appellants' Opening Brief
4. I electronically served the documents listed in 3. as follows:
   a. Name of person served: P. Patty Li
      On behalf of *(name or names of parties represented, if person served is an attorney)*:
      Defendants/Respondents Xavier Becerra, in his official capacity as Attorney General for the State of California, Stephen Lindley, in his official capacity as Chief of the California Department of Justice, Bureau of Firearms, and California Department of Justice
   b. Electronic service address of person served: patty.li@doj.ca.gov
   c. On *(date)*: March 21, 2019

   ☐ The documents listed in 3. were served electronically on the persons and in the manner described in an attachment *(write "APP-009E, Item 4" at the top of the page)*.

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

Date: March 21, 2019

Laura Palmerin
(TYPE OR PRINT NAME OF PERSON COMPLETING THIS FORM)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