



LAW OFFICES OF RAYMOND MARK DIGUISEPPE, PLLC*

Office Address: 2 N. Front Street, Fifth Floor, Wilmington, NC 28401

Mailing Address: P.O. Box 10790, Southport, North Carolina 28461

(tel.) 910-713-8804 / (fax) 910-672-7705 / (email) law.rmd@gmail.com

**Attorney DiGuiseppe is licensed to practice in North Carolina, California, and the District of Columbia*

May 23, 2018

VIA PERSONAL SERVICE

Attorney General Xavier Becerra
California Department of Justice
1300 "I" Street
Sacramento, CA 95814-2919

VIA OVERNIGHT MAIL

California Department of Justice
Bureau of Firearms
4949 Broadway
Sacramento, CA 95820

RE: Petition to the Department of Justice, Bureau of Firearms, Concerning Underground Regulation Illegally Prohibiting Eligible Handgun Purchase Transactions

To Whom It May Concern:

This petition is submitted pursuant to Government Code sections 11340.6 and 11340.7, on behalf of The Calguns Foundation ("CGF"), California Association of Federal Firearms Licensees ("CAL-FFL"), Firearms Policy Coalition ("FPC"), Firearms Policy Foundation ("FPF"), and their respective members and supporters in California, including law-abiding firearm owners, buyers, sellers, and training instructors (hereinafter "Petitioners"). A copy of this petition is also being submitted to the Office of Administrative Law ("OAL") to provide notification of the underground agency regulation at issue, pursuant to Government Code section 11340.5, subdivision (b). The responsibility of the California Department of Justice ("DOJ") in response to this petition is two-fold: (1) it must "notify the petitioner in writing of the receipt and shall within 30 days deny the petition indicating why the agency has reached its decision on the merits of the petition in writing or schedule the matter for public hearing in accordance with the notice and hearing requirements of [Article 5];" and (2) as to any decision denying or granting the petition in whole or in part, the DOJ must transmit that decision in writing to OAL "for publication in the California Regulatory Notice Register at the earliest practicable date." (Gov. Code, § 11340.7, subds. (a) & (d).)



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1. NAME AND CONTACT INFORMATION OF PETITIONERS

Names: California Association of Federal Firearms Licensees, The Calguns Foundation, Firearms Policy Coalition, Firearms Policy Foundation, and their respective members and supporters in California, by and through their counsel, Raymond Mark DiGuiseppe, of the Law Offices of Raymond Mark DiGuiseppe, PLLC.

Address: 2 North Front Street, Fifth Floor, Wilmington, NC 28401

Phone: (910) 713-8804

E-mail: law.rmd@gmail.com

2. AGENCY ENFORCING THE UNDERGROUND REGULATION

The California Department of Justice, by and through its Bureau of Firearms, is the agency unlawfully enforcing the underground regulation. The DOJ is headed by the Attorney General of the State of California, Mr. Xavier Becerra.

3. DESCRIPTION OF THE UNDERGROUND REGULATION AND EVIDENCE OF ENFORCEMENT OR ATTEMPTED ENFORCEMENT

The subject underground regulation, originally established in a May 8, 2014, letter from the DOJ to licensed California firearms dealers (attached as Exhibit A), prohibits “[a]ny person who is licensed as a collector pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto, and has a current certificate of eligibility issued by the Department of Justice pursuant to Article 1 (commencing with Section 26700) of Chapter 2,” from purchasing “more than one handgun within any 30-day period.” (Pen. Code, § 27535, subds. (a) & (b)(9).)

The DOJ’s current published “Frequently Asked Questions” (“FAQs”) on its website (<https://oag.ca.gov/firearms/pubfaqs#24>, last visited May 22, 2018) shows it is continuing to enforce or attempting to enforce this regulation, as FAQ 24 specifically provides (*italics added*):

24. I am a collector of firearms and I want to purchase a pair of consecutively-numbered pistols. Is there an exemption from the one-handgun-per-30-day restriction for curio or relic collectors?



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*Yes, but it applies only to the acquisition of curio & relic firearms
and you must have a valid federal Curio & Relic Collector's license
and a valid Certificate of Eligibility.*

(Pen. Code, § 27535.)

A copy of the DOJ's "FAQs" Web page is attached as Exhibit B.

**4. THIS RESTRICTION UPON HANGUN PURCHASES IS AN ILLEGAL
REGULATION IN DIRECT VIOLATION OF THE APA, STATUTORY LAW,
AND AN EXPRESS INJUNCTIVE ORDER IN EFFECT SINCE MAY 2, 2018**

It is axiomatic that "[n]o state agency shall issue, utilize, enforce, or attempt to enforce any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, which is a regulation as defined in Section 11342.600, unless the guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule has been adopted as a regulation and filed with the Secretary of State pursuant to this chapter." (Gov. Code, §11340.5, subd. (a).)

The term "regulation" is defined as "every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure." (Gov. Code, § 11342.6.) An "underground regulation" is "any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, including a rule governing a state agency procedure, that is a regulation as defined in Section 11342.600 of the Government Code, but has not been adopted as a regulation and filed with the Secretary of State pursuant to the APA and is not subject to an express statutory exemption from adoption pursuant to the APA." (1 CCR § 250(a).)

On May 20, 2014, plaintiffs Alvin Doe and Paul Gladden filed a complaint for declaratory and injunctive relief against then-Attorney General Kamala Harris and Stephen Lindley in his official capacity as Chief of the DOJ's Bureau of Firearms, in response to their promulgation and enforcement of the very same underground regulation that this petition concerns. A copy of the complaint in Sacramento Superior Court case no. 34-2014-00163821 is attached as Exhibit C.



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While the Superior Court initially ruled in favor of the defendants, the plaintiffs appealed, and on February 8, 2018, the California Court of Appeal for the Third District unanimously held in the published opinion *Alvin Doe, et al. v. Attorney General Becerra, et al.* (2018) 20 Cal.App.5th 330, that the subject rule is in fact an illegal regulation in violation of the APA and in conflict with the governing statutory law. The Court of Appeal remanded the matter to the Superior Court for further proceedings consistent with the opinion. A copy of the opinion is attached as Exhibit D.

On May 2, 2018, the Superior Court accordingly reversed its previous order and issued new orders declaring DOJ's interpretation of Penal Code section 27535 in its May 2014 letter as "void" because it was "inconsistent with the statute" and "not adopted in compliance with the Administrative Procedure[] Act." The court thus further ordered that the DOJ and the Attorney General were "permanently enjoined from enforcing the policy interpreting Penal Code section 27535 announced in its May 8, 2014 letter." A copy of the Order is attached as Exhibit E.

By continuing to publicly declare that the exemption under Penal Code section 27535, subdivision (b)(9), applies "only to the acquisition of curio & relic firearms," the DOJ is enforcing or attempting to enforce this same illegal underground regulation – now in direct contravention of the existing judicial injunctive order.

5. PROMPT ACTION TO REPEAL AND CEASE ANY ENFORCEMENT OF THIS ILLEGAL REGULATION IS A MATTER OF CONSIDERABLE PUBLIC IMPORTANCE GIVEN THE FUNDAMENTAL RIGHTS AT STAKE

DOJ has abused its authority and violated the crucial separation of powers doctrine in enacting and attempting to enforce a regulation that violates state law. Further, any implementation or enforcement of this underground regulation illegally interferes with the entire process of lawfully acquiring firearms in California and infringes upon the fundamental right of law-abiding Californians to keep and bear arms for lawful purposes as guaranteed by the Second Amendment, and applied to the states through the Fourteenth Amendment, of the United States Constitution.

This illegal and unconstitutional abuse of authority that jeopardizes the fundamental rights of countless law-abiding Californians also subjects firearms dealers to substantial burdens because any enforcement would bar countless lawful transactions that dealers would otherwise process. Accordingly, prompt action to repeal and cease any implementation or enforcement of this underground regulation is necessary and a matter of consideration public importance.



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6. CONCLUSION

Thank you for your time, attention, and assistance. Petitioners look forward to prompt and proper remedial action in accordance with the procedures specified in Government Code section 11340.7 and/or the certification process specified in Title 1, section 280, of the Code of Regulations. (1 CCR § 280, subd. (a) [“Any action of OAL or an agency pursuant to this chapter in connection with a petition shall be suspended if OAL receives a certification from the agency that it will not issue, use, enforce, or attempt to enforce the alleged underground regulation along with proof that the certification has been served on the petitioner.”].) Again, a copy of this petition is being submitted to OAL, which is empowered to cease implementation or enforcement of the underground regulation on its own accord. (Gov. Code, § 11340.5, subd. (b)); 1 CCR § 280.)

Sincerely,

/s/ Raymond Mark DiGuiseppe

Principal Attorney

Law Offices of Raymond Mark DiGuiseppe, PLLC

cc: Robert Wilson, Deputy Attorney General, DOJ Bureau of Firearms

Office of Administrative Law

(Notice pursuant to Gov. Code, § 11340.5(b))

Attention: Chapter 2 Compliance Unit

300 Capitol Mall, Suite 1250

Sacramento, CA 95814

staff@oal.ca.gov

File

EXHIBIT A



Bureau of Firearms
P.O. Box 160487
Sacramento, CA 95816-0487

May 8, 2014

California Firearms Dealer

Re: **Penal Code section 27535, Subdivision (a) – Proper Use**

Dear California Firearms Dealer:

The purpose of this information letter is to advise you regarding the proper use of a particular exemption from the one-handgun-every-thirty-days law as provided in Penal Code section 27535.

Penal Code section 27535, subdivision (a), states that "[n]o person shall make an application to purchase more than one handgun within any 30-day period." Subdivision (b)(9) of that section states as follows:

Subdivision (a) shall not apply to any of the following: ...

Any person who is licensed as a collector pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto, and has a current certificate of eligibility issued by the Department of Justice pursuant to Article 1 (commencing with Section 26700) of Chapter 2.

It has come to the attention of the California Department of Justice, Bureau of Firearms that dealers are selling handguns that are not defined as curio and relics under federal law to persons holding the license and certificate described in Penal Code section 27535, subdivision (b)(9) under this exemption. By doing so, these dealers are allowing the buyers to purchase multiple, non curio and relic handguns at one time, which violates both state and federal law. Specifically, the Code of Federal Regulations states as follows regarding the proper use of a curio and relic license:

Authorized operations by a licensed collector. The license issued to a collector of curios or relics under the provisions of this part shall cover only transactions by the licensed collector in curios and relics. The collector's license is of no force or effect and a licensed collector is of the same status under the Act and this part as a nonlicensee with respect to (a) any acquisition or disposition of firearms other than curios or relics, or any transportation, shipment, or receipt of firearms other than curios or relics in interstate or foreign commerce, and (b) any transaction with a nonlicensee involving any firearm other than a curio or relic. (See also §478.50.) A collectors license is not

California Firearms Dealers

May 8, 2014

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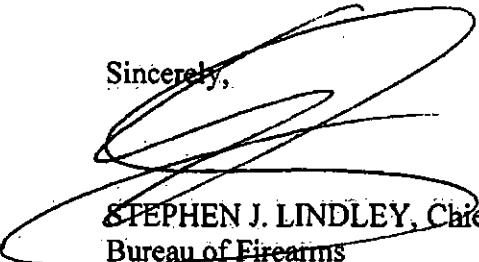
necessary to receive or dispose of ammunition, and a licensed collector is not precluded by law from receiving or disposing of armor piercing ammunition. However, a licensed collector may not dispose of any ammunition to a person prohibited from receiving or possessing ammunition (see §478.99(c)). Any licensed collector who disposes of armor piercing ammunition must record the disposition as required by §478.125 (a) and (b). (27 C.F.R. § 478.93) (emphasis added).

Based on this regulation, it is clear that federal law does not permit the licensee to use the curio and relic license in transactions other than those involving curio and relic firearms, nor grants them any other special status over a non-licensee when the transaction involves non-curio and relic firearms. These provisions of federal law are specifically referenced in Penal Code section 27535, subdivision (b)(9).

Therefore, the exemption provided in Penal Code section 27535, subdivision (b)(9), shall not be used for the sale of any handguns other than those defined as curio and relics under federal law, and any such transaction shall be discontinued immediately. Any transactions violating California or federal law that are not canceled by the dealer will be canceled by the California Department of Justice, Bureau of Firearms.

Should you have any questions, please contact the DROS Entry System Customer Support Center at 1-855-DOJ-DROS (1-855-365-3767).

Sincerely,



STEPHEN J. LINDLEY, Chief
Bureau of Firearms

For KAMALA D. HARRIS
Attorney General

EXHIBIT B

**XAVIER BECERRA***Attorney General*

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Frequently Asked Questions

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Public

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4. How can I obtain a Carry Concealed Weapon (CCW) license?
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6. Can I give a firearm to my spouse or registered domestic partner? Can he/she give it back to me later?

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24. I am a collector of firearms and I want to purchase a pair of consecutively-numbered pistols. Is there an exemption from the one-handgun-per-30-day restriction for curio or relic collectors?

25. I am moving into California and I own several firearms. What are the new-resident registration requirements?
26. How do I know if my firearms need to be registered?
27. Can I get a list of the firearms for which I am listed as the purchaser, transferee, or owner?
28. How is the waiting period for firearm purchases calculated?
29. I've been working in a firearms dealership for several years. My duties include showing various firearms to customers. My employer recently told me I have to get a Certificate of Eligibility (COE). Is it lawful for him to require a COE?
30. Who answers questions regarding the applicability of sales tax to the DROS fee?
31. My firearm is in the possession of a court or law enforcement agency. What do I need to do to get it back?

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1. **Where do I find laws regarding the possession of firearms?**

- The laws governing control of deadly weapons, including firearms, are found in Part 6 of the Penal Code, beginning at section 16000. These laws define the various types of dangerous weapons as well as restrictions and crimes related to their manufacture, sale, possession, and transportation. Of particular note, the laws relating to firearms are found in Title 4 of Part 6, beginning at section 23500, and the applicable definitions and general rules are found in Title 1 of Part 6, beginning at section 16000. Laws that pertain to both firearms and other types of deadly weapons are found in Title 2 of Part 6, beginning at section 17500.

2. I'm not sure whether I have a California record that would prevent me from owning/possessing a firearm. Is there a way to find out before I attempt to purchase one?

- Yes, you may request a California Personal Firearms Eligibility Check (PFEC) by submitting a (PFEC) application, pdf to the Department of Justice. For more information about how to request a PFEC, please refer to the PFEC FAQ. Applications are also available through your local firearms dealer. Please be advised that a PFEC does not include a Federal NICS check. Therefore, you may still be prohibited from owning or possessing a firearm even though you receive a PFEC response indicating you are eligible to own or possess firearms.

(Pen. Code, § 30105)

3. What is the process for purchasing a firearm in California?

- Generally, all firearms purchases and transfers, including private party transactions and sales at gun shows, must be made through a California licensed dealer under the Dealer's Record of Sale (DROS) process. California law imposes a 10-day waiting period before a firearm can be released to a purchaser or transferee. A person must be at least 18 years of age to purchase a rifle or shotgun. To purchase a handgun, a person must be at least 21 years of age. As part of the DROS process, the purchaser must present "clear evidence of identity and age" which is defined as a valid, non-expired California Driver's License or Identification Card issued by the Department of Motor Vehicles (DMV). A military identification accompanied by permanent duty station orders indicating a posting in California is also acceptable.

If the purchaser is not a U.S. Citizen, then he or she is required to demonstrate that he or she is legally within the United States by providing the firearms dealer with documentation containing his/her Alien Registration Number or I-94 Number.

Purchasers of handguns must provide proof of California residency, such as a utility bill, residential lease, property deed, or government-issued identification (other than a drivers license or other DMV-issued identification), and either (1) possess a Handgun Safety Certificate (HSC) plus successfully complete a safety demonstration with their recently purchased handgun or (2) qualify for an HSC exemption.

(Pen. Code, § § 26800-26850.)

4. How can I obtain a Carry Concealed Weapon (CCW) license?

- Contact your county sheriff's office or, if you are a resident of an incorporated city, your city police department, for information on obtaining a CCW license. They can answer your questions and provide you with a copy of their CCW license policy statement and the CCW license application. If you live within an incorporated city, you may apply to the police department or the county sheriff's office for a CCW license. However, only residents of a city may apply to a city police department for a CCW license.

(Pen. Code, §§ 26150-26225.)

5. Can I give a firearm to my adult child? Can he/she give it back to me later?

- Yes, as long as the adult child receiving the firearm is not in a prohibited category, pdf and the firearm is legal to possess (e.g., not an assault weapon). The transfer of a firearm between a parent and child or a grandparent and grandchild is exempt from the dealer transfer requirement. The exemption does not apply to step-children/step-parents, brothers, sisters, aunts, uncles, or cousins.

If the firearm is a handgun, the recipient must obtain a Handgun Safety Certificate prior to taking possession and must also submit a Report of Operation of Law or Intra-Familial Handgun Transaction and \$19 fee to the DOJ within 30 days after taking possession.

The same rules apply to the return of the firearm at a later date.

(Pen. Code, §§ 27870-27875, 30910-30915.)

6. Can I give a firearm to my spouse or registered domestic partner? Can he/she give it back to me later?

- Yes, as long as the person receiving the firearm is not in a prohibited category, pdf and the firearm is legal to possess (e.g., not an assault weapon), the transfer of a firearm between a husband and wife or registered domestic partners is exempt from the requirement to use a licensed dealer to perform the transfer.

If the firearm is a handgun, the recipient must obtain a Handgun Safety Certificate prior to taking possession and must also submit a Report of Operation of Law or Intra-Familial Handgun Transaction, pdf and \$19 fee to the DOJ within 30 days after taking possession.

The same rules apply to the return of the firearm at a later date.

(Pen. Code, §§ 16990, subd. (g), 27915, 27920, subd. (b).)

7. Is there a limit on the number of handguns that I can own or purchase?

- There is no limit to the number of handguns that you may own but you are generally limited to purchasing no more than one handgun in any 30-day period. Handgun transactions related to law enforcement, private party transfers, returns to owners, and certain other specific circumstances are exempt from the one-handgun-per-30-day purchase limit.

(Pen. Code, § 27535.)

8. Does California have a law regarding the storage of firearms?

- Yes. If you keep any loaded firearm within any premise which is under your custody or control and know or reasonably should know that a child (person under 18 years of age) is likely to gain access to the firearm, you may be guilty of a felony if a child gains access to that firearm and thereby causes death or injury to any person including themselves unless the firearm was in a secure locked container or locked with a locking device that rendered it inoperable.

(Pen. Code, §§ 25100, 25200.)

9. Are large-capacity magazines legal?

- Generally, it is illegal to buy, manufacture, import, keep for sale, expose for sale, give or lend any large-capacity magazine (able to accept more than 10 rounds) in California. However, continued possession of large-capacity magazines that you owned in California prior to January 1, 2000, is legal provided you are not otherwise prohibited. A person prohibited from possessing firearms is also prohibited from owning or possessing any magazines or ammunition.

(Pen. Code, §§ 16150, subd. (b), 30305, 32310.)

10. May I carry a concealed firearm in California?

- Generally you may not carry a concealed firearm on your person in public unless you have a valid Carry Concealed Weapon (CCW) license. CCW licenses are issued only by a California county sheriff to residents of the county, or the chief of police to residents of the city. California law does not honor or recognize CCW licenses issued outside this state.

(Pen. Code, §§ 25400-25700, 26150-26225.)

11. Who is prohibited from owning or possessing firearms?

- Any person who has a conviction for any misdemeanor listed in Penal Code section 29805 or for any felony, or is addicted to the use of any narcotic drug, or has been held involuntarily as a danger to self or others pursuant to Welfare and Institutions Code section 8103 is prohibited from buying, owning, or possessing firearms or ammunition. There are also prohibitions based on mental conditions, domestic restraining/protective orders, conditions of probation, and specific offenses committed as a juvenile. A list of prohibited categories is available on the Bureau of Firearms website.

(Pen. Code, §§ 29800, 29805, 29815, 29820, 29825, 29855, 29860, 29900, 29905, 30305; Welf. & Inst. Code, §§ 8100-8103; 18 U.S.C. § 922, subd. (g), 27 C.F.R. § 478.22.)

12. I live in another state and have a permit to carry a concealed handgun that was issued in my home state. Does my permit allow me to carry a concealed handgun while in California?

- No. CCW licenses/permits issued in other states are not valid in California.

(Pen. Code, §§ 25400-25700.)

13. **How much is the state fee when purchasing a firearm?**

- The total state fee is \$25. The DROS fee is \$19.00 which covers the costs of the background checks and transfer registry. There is also a \$1.00 Firearms Safety Act Fee and a \$5.00 Safety and Enforcement Fee. In the event of a private party transfer (PPT), the firearms dealer may charge an additional fee of up to \$10 per firearm.

If the transaction is not a PPT the dealer may impose other charges as long as this amount is not misrepresented as a state fee. When settling on the purchase price of a firearm, you should ask the dealer to disclose all applicable fees.

(Pen. Code, §§ 23690, 28055, 28225, 28230, 28300.)

14. **Can I sell a gun directly to another person (i.e. non-dealer)?**

- Generally, no. This type of transaction is referred to as a “private party transfer” and must be conducted with both parties, in person, through a fully licensed California firearms dealer. Failure to do so is a violation of California law. The purchaser (and seller if the purchaser is denied), must meet the normal firearm purchase and delivery requirements.

Firearms dealers are required to process private party transfers upon request but may charge a fee not to exceed \$10 per firearm for conducting the transfer. For example:

- a. For a private party transfer involving one or more handguns, the total allowable fees, including the DROS, safety, and dealer transfer fees, are not to exceed \$35.00 for the first handgun and \$31.00

for each additional handgun involved in the same transaction.

- b. For private party transfers involving one or more long guns, or a private party transfer involving one handgun, the total allowable fees, including the DROS, safety, and dealer transfer fees, are not to exceed \$35.00. The dealer may charge an additional dealer-service fee of up to \$10.00 for each additional firearm.

"Antique firearms," as defined in section 921(a)(16) of Title 18 of the United States Code, and curio or relic rifles/shotguns, defined in section 478.11 of Title 27 of the Code of Federal Regulations, that are over 50 years old, are exempt from this requirement. For additional exceptions, refer to Penal Code sections 27850 through 27966.

(Pen. Code, § 27545.)

15. My firearm purchase was denied by the DOJ and the dealer won't tell me why. How do I find out the reason for the denial?

- If your DROS application is denied, you will receive a letter from the DOJ Bureau of Firearms within two weeks. The letter will explain the reason and instructions on how to get a copy of the record that resulted in the denial of your application. There will also be instructions on how to dispute and correct information in your record you believe is wrong.

16. Can I use a temporary license as identification for firearm purchases?

- No. Neither temporary driver's licenses nor temporary identification cards are acceptable forms of proof of identity and age.

(Pen. Code, § 16400.)

17. Can my driving record prevent me from purchasing a firearm?

- Yes. If you have a conviction for a firearms-prohibiting offense, such as felony drunk driving, your driving record would affect your ability to purchase a firearm. Furthermore, your driver's license must be valid. A revocation, outstanding ticket, or fine may cause your license to be invalid.

18. Are there any exemptions from the waiting period?

- Yes, but they don't apply to the general public. For example, waiting period exemptions include the following:
 - a. Firearms dealers and persons who have obtained special weapons permits issued by the DOJ are exempt from the waiting period.
 - b. Persons with a Curio & Relic collector's licenses issued by the ATF and who have a valid Certificate of Eligibility issued by the DOJ are exempt from the waiting period when purchasing curio and relic firearms.
 - c. Peace officers with authorization from the head of his/her agency.

(Pen. Code, §§ 26950-26970, 27650-27670.)

19. Is the dealer required to give me a copy of the DROS information when I purchase a firearm?

- Yes, upon request, the dealer must provide you with a copy of the DROS application. In private party transactions, the seller is also entitled to a copy of the DROS application upon request.

(Pen. Code, § 28210.)

20. Is there a maximum time limit for me to pick up a firearm after the dealer submits the DROS information?

- Yes. If you do not take physical possession of the firearm within 30 days of submission of the DROS information, the dealer must cancel the sale. If you still want to take possession of the firearm, you must repeat the entire DROS process, including payment of DROS fees and new 10-day waiting period.

(Pen. Code, § 26835; 27 C.F.R. § 478.124, subd. (c).)

21. **What is the Firearm Safety Certificate (FSC) requirement?**

- Prior to the submission of DROS information for a firearm, the purchaser must present an FSC or provide the dealer with proof of exemption pursuant to California Penal Code section 31700.

(Pen. Code, §§ 26840, 31700.)

22. **How do I get an FSC?**

- To obtain an FSC you must score at least 75% (23 correct answers out of 30 questions) on the FSC Test covering firearm safety and basic firearms laws. The true/false and multiple choice test is administered by Instructors certified by the Department of Justice who are generally located at firearms dealerships.

(Pen. code, §§ 31610-31670.)

23. **If I lose my FSC, can I get it replaced?**

- Yes. A replacement FSC is available only through the DOJ Certified Instructor who issued your FSC. The FSC replacement cost is \$5. The replacement FSC will reflect the same expiration date as your original FSC.

(Pen. code, § 31660.)

24. I am a collector of firearms and I want to purchase a pair of consecutively-numbered pistols. Is there an exemption from the one-handgun-per-30-day restriction for curio or relic collectors?

- Yes, but it applies only to the acquisition of curio & relic firearms and you must have a valid federal Curio & Relic Collector's license and a valid Certificate of Eligibility.

(Pen. Code, § 27535.)

25. I am moving into California and I own several firearms. What are the new-resident registration requirements?

- You are considered a personal firearm importer as defined by California law. You may bring all of your California-legal firearms with you, but you must report them all to the California Department of Justice within 60 days as required utilizing the New Resident Firearm Ownership Report (BOF 4010A), pdf. You may not bring ammunition feeding devices with a capacity greater than ten rounds, machine guns, or assault weapons into California.

(Pen. code, §§ 17000, subd. (a), 27560.)

26. How do I know if my firearms need to be registered?

- There is no firearm registration requirement in California except for assault weapon owners and personal handgun importers. However, you must submit a Firearm Ownership Report (FOR) Application (BOF 4542A), pdf to the California Department of Justice (the Department) for any firearm you are seeking return where no other record is on file with the Department identifying you as the most recent owner/possessor. Having a FOR application on file with the Department will authorize the return of your firearm in the event it is subsequently lost or stolen. With very few and specific exceptions, all firearm

transactions must be conducted through a firearms dealer. If you purchased a handgun from a properly licensed California firearms dealer and underwent a background check via the state's Dealer's Record of Sale (DROS) process, a record of your handgun purchase is already on file with the Department. Therefore, it should not be necessary for you to submit a FOR application for handguns previously purchased in California. Unfortunately, this is not the case with regards to rifles or shotguns. Prior to January 1, 2014, the Department was prohibited by law from retaining DROS long gun information.

27. Can I get a list of the firearms for which I am listed as the purchaser, transferee, or owner?

- Yes. To obtain a list of firearms listed in your name, complete and submit an Automated Firearms System Records Request, pdf to the Automated Firearms Unit, P.O. Box 820200, Sacramento, CA 94203-0200. The request must be signed, notarized, and include a photocopy of your photo ID card (i.e., driver's license or DMV ID).

28. How is the waiting period for firearm purchases calculated?

- The waiting period for the purchase or transfer of a firearm is ten (10) 24-hour periods from the date and time the DROS information is submitted to the DOJ.

29. I've been working in a firearms dealership for several years. My duties include showing various firearms to customers. My employer recently told me I have to get a Certificate of Eligibility (COE). Is it lawful for him to require a COE?

- Yes. Licensed firearms dealers may require their employees who handle, deliver, or sell firearms to obtain a Certificate of Eligibility from the DOJ. Upon application, a firearms eligibility check will be conducted to determine whether the applicant is eligible to lawfully possess firearms. If so, the applicant

is issued a COE. A copy of the COE must be provided to the employer by the employee/applicant, and must be renewed annually, as required by the licensed dealer. For more information, please see the Firearm Dealer FAQs. .

30. Who answers questions regarding the applicability of sales tax to the DROS fee?

Questions regarding sales tax should be directed to the California Board of Equalization. Their website address is www.boe.ca.gov.

31. My firearm is in the possession of a court or law enforcement agency. What do I need to do to get it back?

- Once the court or law enforcement agency in possession of your firearm notifies you the firearm is available for return, you must submit a completed Law Enforcement Gun Release (LEGR) application, pdf with the appropriate processing fee to the California Department of Justice (the Department). The processing fee for an LEGR application is \$20.00 for the first firearm and \$3.00 for each additional firearm listed on the application.

If the court or agency in possession of your firearm determines that the firearm was reported stolen, the fee for the stolen firearm will be waived. You must send documentation from the court or agency confirming the firearm was reported stolen along with the LEGR application to qualify for the fee waiver.

Once the Department receives your LEGR application, a firearms eligibility check will be conducted to determine if you are lawfully eligible to possess firearms. DOJ will also confirm the firearm is recorded in the Department's Automated Firearms System (AFS) as being owned by or loaned to the individual

seeking its return. If you have not previously reported your firearm to the Department, you must also submit a Firearms Ownership Report (FOR) application (BOF 4542A) along with the appropriate fees to the Department. If the firearm you are seeking return is a rifle/shotgun, the prior completion of a Dealer's Record of Sale (DROS) background check does not satisfy the aforementioned firearm reporting requirement. However, if the rifle/shotgun was registered as an assault weapon or 50 BMG rifle, the reporting requirement has been satisfied.

You will receive a notice of the results. If this notice states that you are eligible to possess firearms and the firearm is recorded to in your name, you should then take the notice to the court or law enforcement agency in possession of your firearm to claim it. The notice must be presented to the court or law enforcement agency within thirty (30) days of the date listed on the notice. Failure to do so will result in the need to submit a new application and fees and undergo another firearms eligibility background check.

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OFFICE OF THE ATTORNEY GENERAL**

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EXHIBIT C

1 BENBROOK LAW GROUP, PC
2 BRADLEY A. BENBROOK (SBN 177786)
3 STEPHEN M. DUVERNAY (SBN 250957)
4 400 Capitol Mall, Suite 1610
5 Sacramento, CA 95814
6 Telephone: (916) 447-4900
7 Facsimile: (916) 447-4904

8 Attorney for Plaintiffs,
9 ALVIN DOE and PAUL A. GLADDEN

FILED
Superior Court Of California,
Sacramento
05/20/2014
tsmith
By _____, Deputy
Case Number:
34-2014-00163821

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

ALVIN DOE and PAUL A. GLADDEN,

Plaintiffs,

v.

KAMALA D. HARRIS, in her official capacity
as Attorney General of California; and
STEPHEN J. LINDLEY, in his official capacity
as Chief of the California Department of Justice
Bureau of Firearms,

Defendants.

Case No.:

**VERIFIED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

1 Plaintiffs Alvin Doe and Paul A. Gladden complain of Defendants and allege:

2 **INTRODUCTION**

3 1. California Penal Code section 27535 ("Section 27535") generally prohibits a person
4 from applying to purchase multiple handguns in any thirty-day period. Cal. Penal Code §
5 27535(a). The statute exempts several types of organizations and classes of people from the one-
6 handgun-per-thirty-day limit, however. The exemption at the heart of this lawsuit provides that
7 Section 27535's prohibition does not apply to any person who is both (a) licensed under federal
8 law as a collector of curios and relics and (b) possesses a current certificate of eligibility to possess
9 and purchase firearms issued by the California Department of Justice ("DOJ"). *Id.*, § 27535(b)(9).

10 2. The DOJ Bureau of Firearms recently notified the state's firearms dealers that it had
11 adopted an enforcement policy interpreting the licensed collectors' exemption to apply only to
12 purchases involving curios or relics. The Department directed dealers to cancel and refuse to
13 process any transactions in which persons falling within the Section 27535(b)(9) exemption
14 proposed to purchase a handgun *other than* a curio or relic. It also notified dealers that it would
15 cancel transactions that did not conform to this new policy.

16 3. The DOJ's new restriction is contrary to the plain text of the statute, which places
17 no restriction on the scope of the exemption. Licensed collectors are exempt from the one-
18 handgun-per-thirty-day prohibition regardless of the type of handgun purchased. Because the
19 Department does not have the authority to alter or amend a statute, or enlarge or impair its scope,
20 its new policy is void. It is this Court's obligation to strike it down. *Morris v. Williams*, 67 Cal.2d
21 733, 748 (1967).

22 4. Moreover, DOJ's enforcement policy must be struck down because it is an invalid
23 underground regulation. The policy creates a rule of general application concerning the
24 interpretation and enforcement of Section 27535, thereby making it a "regulation" under the
25 Administrative Procedure Act. But DOJ did not provide the "basic minimum procedural
26 requirements" (public notice, comment, and review by the state Office of Administrative Law)
27 before its adoption. The enforcement policy is therefore invalid and unenforceable. *Morning Star*
28 *Co. v. State Bd. of Equalization*, 38 Cal.4th 324, 332-36 (2006); Gov. Code § 11342.2.

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770, 790 (2011) (citations omitted). This Court has jurisdiction to enter injunctive relief pursuant to Code of Civil Procedure sections 526 and 527, et seq.

GENERAL ALLEGATIONS

10. Section 27535(a) of the Penal Code provides that “[n]o person shall make an application to purchase more than one handgun within any 30-day period.” Plaintiffs are informed and believe that California is one of only three states in the Country that imposes such a limitation, and Federal law imposes no similar prohibition. The first two violations of Section 27535 are infractions punishable by fines of \$50 and \$100; subsequent violations constitute misdemeanors. Penal Code § 27590(e).

11. Subdivision (b) of the statute lists thirteen exemptions from the one-handgun-per-thirty-day limit. As relevant here, it states that “[s]ubdivision (a) shall not apply to” “[a]ny person who is licensed as a collector pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code² and the regulations issued pursuant thereto, and has a current certificate of eligibility issued by the Department of Justice.” Penal Code § 27535(b)(9). A certificate of eligibility (“COE”) issued by the DOJ confirms a person’s eligibility to lawfully possess and/or purchase firearms under state law.

12. A federal collector’s license allows the licensee to purchase, transport, and transfer curios and relics in interstate commerce; a license, standing alone, does not affect a person’s ability to possess, purchase, or transfer a firearm, which is generally controlled by state law. *See* 47 C.F.R. § 478.41(c), (d); 27 C.F.R. § 478.93. Federal collector licensees are vetted by the Bureau of Alcohol, Tobacco, Firearms and Explosives, and are subject to reporting, recordkeeping, and inventory inspection requirements. 18 U.S.C. § 923.

² 18 U.S.C. § 921 *et seq.*, the Gun Control Act of 1968, defines “collector” as “any person who acquires, holds, or disposes of firearms as curios or relics, as the Attorney General shall by regulation define.” Federal regulations define “[c]urios or relics” as “[f]irearms which are of special interest to collectors by reason of some quality other than is associated with firearms intended for sporting use or as offensive or defensive weapons.” 27 C.F.R. § 478.11. This includes “[f]irearms which were manufactured at least 50 years prior to the current date,” “[f]irearms which are certified by the curator of a municipal, State, or Federal museum which exhibits firearms to be curios or relics of museum interest,” and “[a]ny other firearms which derive a substantial part of their monetary value from the fact that they are novel, rare, bizarre, or because of their association with some historical figure, period, or event.” *Id.*

1 13. On or about May 8, 2014 Defendant Lindley, on behalf of the DOJ's Bureau of
2 Firearms, sent a letter notifying licensed firearms dealers in the state of a new enforcement policy
3 interpreting Section 27535(b)(9)'s licensed collectors' exemption to apply only if the purchaser
4 applies to purchase a handgun that is a curio or relic:

5 It has come to the attention of the California Department of Justice, Bureau of
6 Firearms that dealers are selling handguns that are not defined as curio and relics
7 under federal law to persons holding the license and certificate described in Penal
8 Code section 27535, subdivision (b)(9) under this exemption. By doing so, these
dealers are allowing the buyers to purchase multiple, non curio and relic handguns
at one time, which violates both state and federal law.

9 The letter concluded:

10 [T]he exemption provided in Penal Code section 27535, subdivision (b)(9), shall
11 not be used for the sale of any handguns other than those defined as curio and relics
12 under federal law, and any such transaction shall be discontinued immediately.
13 Any transactions violating California or federal law that are not canceled by the
dealer will be canceled by the California Department of Justice, Bureau of
Firearms.

14 A copy of the DOJ's May 8 letter is attached as Exhibit A.

15 14. Plaintiffs are licensed collectors of curios and relics and have current certificates of
16 eligibility issued by the DOJ. They are therefore exempt from the one-handgun-per-thirty-day
17 limit imposed by Section 27535. However, the DOJ has enforced, and threatens to enforce, its
18 interpretation of Section 27535 in a manner that prevents Plaintiffs from lawfully purchasing
19 firearms under the licensed collectors' exemption provided by Section 27535(b)(9).

20 15. On prior occasions, Plaintiff Alvin Doe applied to purchase multiple non-curio or
21 relic handguns within a thirty-day period and has been allowed to complete those purchases based
22 on the statutory exemption in Section 27535(b)(9). On April 24, 2014, Plaintiff Alvin Doe applied
23 to purchase multiple non-curio or relic handguns from a licensed firearms dealer in Orange
24 County. On or about May 1, 2014, the DOJ cancelled all but one of the applications based on its
25 new enforcement policy. But for the fear of prosecution, Plaintiff Alvin Doe would submit
26 additional applications to purchase non-curio or relic handguns that would violate the DOJ's new
27 policy.

28 ///

1 16. On prior occasions, Plaintiff Gladden applied to purchase multiple non-curio or
2 relic handguns within a thirty-day period and has been allowed to complete those purchases based
3 on the statutory exemption in Section 27535(b)(9). But for the fear of prosecution, Plaintiff
4 Gladden would submit additional applications to purchase non-curio or relic handguns that would
5 violate the Department of Justice's new policy.

6 **The DOJ's New Enforcement Policy Illegally Blocks Collectors**

7 **From Using The Section 27535(b)(9) Exemption**

8 17. The DOJ's new enforcement policy is contrary to the plain language of Section
9 27535(b)(9)'s exemption, which takes eligible collectors outside of Section 27535(a)'s prohibition
10 on the purchase of more than one handgun of *any* type in a 30-day period. Subsection (b)(9) does
11 not restrict the licensed collectors' exemption to transactions involving curios or relics. Because
12 "there is no ambiguity in the language of the statute," "the Legislature is presumed to have meant
13 what it said, and the plain meaning of the language governs." *Lennane v. Franchise Tax Bd.*, 9
14 Cal.4th 263, 268 (1994).

15 18. Indeed, the firearms industry has generally understood the statute to mean what it
16 says since the enactment of the prohibition and the exemption. Plaintiffs are informed and believe
17 that licensed collectors such as themselves who possess COEs have routinely purchased non-curio
18 or relic handguns in a manner that would violate Section 27535(a) were it not for Section
19 27535(b)(9)'s exemption.

20 19. Even though resort to extrinsic aids is unnecessary given the unambiguous language
21 of the statute, the legislative history of Section 27535 confirms that a licensed collector is exempt
22 from the one-handgun limit without respect to whether the collector is purchasing a new handgun
23 or a curio or relic.

24 20. Section 27535 was enacted by the Legislature in 1999 as part of Assembly Bill 202.
25 The committee analyses of AB 202 state that licensed collectors are exempt without limitation.
26 Assem. Comm. on Public Safety, Analysis of Assem. Bill 202 (1999-2000 Reg. Sess.) as amended
27 March 10, 1999, at 3 ("exempt institutions, persons and situations include" "[a]ny licensed
28 collector"); Sen. Comm. on Public Safety, Analysis of Assem. Bill 202 (1999-2000 Reg. Sess.) as

1 amended April 6, 1999, at 2 (“Exempts . . . licensed collectors”); Assem. Comm. on
2 Appropriations, Analysis of Assem. Bill 202 (1999-2000 Reg. Sess.) as amended March 10, 1999,
3 at 1 (“The bill also provides specified exemptions for law enforcement, licensed collectors, etc.”).
4 *See also* Office of Criminal Justice Planning, Enrolled Bill Report, Assem. Bill. 202 (1999-2000
5 Reg. Sess.) as amended April 6, 1999, at 3 (“This bill will exempt . . . licensed collectors”).

6 21. That the licensed collectors’ exemption is not limited to purchases of curios or
7 relics is further confirmed by the legislative history of a predecessor bill introduced the previous
8 session by the same author. Assembly Bill 532 (1997-1998 Reg. Sess.) contained a one-handgun-
9 per-month scheme virtually identical to the one adopted in AB 202. The initial draft of AB 532
10 did not include an exemption for licensed collectors. When the Assembly Committee on Public
11 Safety considered the proposed amendment adding language identical to the exemption in Section
12 27535(b)(9), it observed that “[a]s drafted and proposed to be amended, the bill does not affect”
13 “[t]he 400 some odd California federally licensed collectors *as to any firearm acquisition*.”
14 Assem. Comm. on Public Safety, Analysis of Assem. Bill 532 for April 8, 1997 hearing (1997-
15 1998 Reg. Sess.), at 5 (emphasis added).

16 22. To that same end, the author’s notes for the hearing on the proposed amendment
17 explain that the collectors’ exemption applies to purchases of new handguns:

18 What effect does exempting collectors of curios and relics licensed under federal
19 [law] have?

20 It permits serious collectors of *new handguns* [to] go through the federal
21 licensing process – including undergoing scrutiny of a background check
and payment of a \$30 fee – to qualify as an exempt party under AB 532.

22 Author’s file, Assem. Bill 532 (1997-1998 Reg. Sess.), Notes re: April 8, 1997 Hearing of Assem.
23 Comm. on Public Safety, at 2 (emphasis added).

24 23. Finally, the enforcement policy relies on an erroneous interpretation of federal law.
25 Specifically, it states that “dealers are allowing [licensed collectors] to purchase multiple, non
26 curio and relic handguns at one time, which violates both statute and federal law.” Ex. A at 1. Not
27 so. Federal law does not prohibit responsible, law-abiding citizens—whether or not they possess a
28

collectors' license—from purchasing multiple handguns, and citizens are free to do so in the 47 states that do not impose monthly limits.

24. In sum, there is not a shred of evidence to support the DOJ's claim that the licensed collectors' exemption only applies to purchases of curios or relics. The enforcement policy is void because it enlarges the scope of Section 27535(a)'s prohibition by preventing eligible citizens from qualifying under Section 27535(b)(9)'s exemption. "[A]n agency does not have discretion to promulgate regulations that are inconsistent with the governing statute, alter or amend the statute, or enlarge its scope." *Cal. Sch. Bds. Assn.*, 191 Cal.App.4th at 544. And "[w]here regulations are void because of inconsistency or conflict with the governing statute, a court has a duty to strike them down." *Id.*

25. The DOJ's enforcement policy purports to interpret Penal Code section 27535 and is a rule of general application that applies to any transaction involving collectors who are otherwise eligible under Section 27535(b)(9) to purchase more than one handgun in a 30-day period. It therefore qualifies as a "regulation" under the Administrative Procedure Act, and cannot be adopted without "basic minimum procedural requirements," that is, "public notice, opportunity for comment, agency response to comment, and review by the state Office of Administrative Law." *Clovis Unified Sch. Dist. v. Chang*, 188 Cal.App.4th 794, 799-800 (2010); *accord Morning Star Co.*, 38 Cal.4th at 333. The DOJ adopted its enforcement policy without these basic minimum procedural requirements. The policy is therefore invalid as an underground regulation. Gov. Code §§ 11342.1, .2.

26. If DOJ's enforcement policy is not enjoined, Plaintiffs will continue to face the threat of criminal sanctions for engaging in lawful activity or otherwise be prevented from lawfully purchasing firearms under the exemption provided in Section 27535(b)(9). Plaintiffs do not have a plain, speedy, and adequate remedy in the ordinary course of law.

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4. Plaintiffs respectfully request costs of suit, including reasonable attorneys' fees available pursuant to applicable law, and all further relief to which Plaintiffs may be justly entitled.

Dated: May 20, 2014

BENBROOK LAW GROUP, PC

By

Brad Bull

BRADLEY A. BENBROOK

Attorneys for Plaintiffs

ALVIN DOE and PAUL A. GLADDEN

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Verification of Complaint

I certify under penalty of perjury under the laws of the State of California that the factual statements concerning myself, my activities, and my intentions are true and correct.

Dated: 5/20/14

Alvin Doe

Alvin Doe

Verification of Complaint

I certify under penalty of perjury under the laws of the State of California that the factual statements concerning myself, my activities, and my intentions are true and correct.

Dated: 5-20-14



Paul A. Gladden



Bureau of Firearms
P.O. Box 160487
Sacramento, CA 95816-0487

May 8, 2014

California Firearms Dealer

Re: Penal Code section 27535, Subdivision (a) – Proper Use

Dear California Firearms Dealer:

The purpose of this information letter is to advise you regarding the proper use of a particular exemption from the one-handgun-every-thirty-days law as provided in Penal Code section 27535.

Penal Code section 27535, subdivision (a), states that “[n]o person shall make an application to purchase more than one handgun within any 30-day period.” Subdivision (b)(9) of that section states as follows:

Subdivision (a) shall not apply to any of the following: ...

Any person who is licensed as a collector pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto, and has a current certificate of eligibility issued by the Department of Justice pursuant to Article 1 (commencing with Section 26700) of Chapter 2.

It has come to the attention of the California Department of Justice, Bureau of Firearms that dealers are selling handguns that are not defined as curio and relics under federal law to persons holding the license and certificate described in Penal Code section 27535, subdivision (b)(9) under this exemption. By doing so, these dealers are allowing the buyers to purchase multiple, non curio and relic handguns at one time, which violates both state and federal law. Specifically, the Code of Federal Regulations states as follows regarding the proper use of a curio and relic license:

Authorized operations by a licensed collector. The license issued to a collector of curios or relics under the provisions of this part shall cover only transactions by the licensed collector in curios and relics. The collector's license is of no force or effect and a licensed collector is of the same status under the Act and this part as a nonlicensee with respect to (a) any acquisition or disposition of firearms other than curios or relics, or any transportation, shipment, or receipt of firearms other than curios or relics in interstate or foreign commerce, and (b) any transaction with a nonlicensee involving any firearm other than a curio or relic. (See also §478.50.) A collectors license is not

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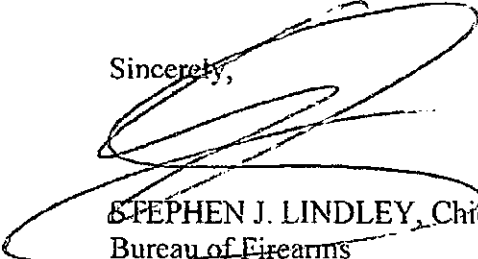
necessary to receive or dispose of ammunition, and a licensed collector is not precluded by law from receiving or disposing of armor piercing ammunition. However, a licensed collector may not dispose of any ammunition to a person prohibited from receiving or possessing ammunition (see §478.99(c)). Any licensed collector who disposes of armor piercing ammunition must record the disposition as required by §478.125 (a) and (b). (27 C.F.R. § 478.93) (emphasis added).

Based on this regulation, it is clear that federal law does not permit the licensee to use the curio and relic license in transactions other than those involving curio and relic firearms, nor grants them any other special status over a non licensee when the transaction involves non curio and relic firearms. These provisions of federal law are specifically referenced in Penal Code section 27535, subdivision (b)(9).

Therefore, the exemption provided in Penal Code section 27535, subdivision (b)(9), shall not be used for the sale of any handguns other than those defined as curio and relics under federal law, and any such transaction shall be discontinued immediately. Any transactions violating California or federal law that are not canceled by the dealer will be canceled by the California Department of Justice, Bureau of Firearms.

Should you have any questions, please contact the DROS Entry System Customer Support Center at 1-855-DOJ-DROS (1-855-365-3767).

Sincerely,



STEPHEN J. LINDLEY, Chief
Bureau of Firearms

For KAMALA D. HARRIS
Attorney General

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GOSSC COURTHOUSE
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

EXHIBIT D

Doe v. Becerra

Court of Appeal of California, Third Appellate District

February 8, 2018, Opinion Filed

C081994

Reporter

20 Cal. App. 5th 330 *; 229 Cal. Rptr. 3d 43 **; 2018 Cal. App. LEXIS 109 ***; 2018 WL 774073

ALVIN DOE et al., Plaintiffs and Appellants, v. XAVIER BECERRA, as Attorney General, etc., et al., Defendants and Respondents.

Prior History: [***1] APPEAL from a judgment of the Superior Court of Sacramento County, No. 34201400163821CUCOGDS, David I. Brown, Judge.

Disposition: Reversed with directions.

Counsel: [*333] Benbrook Law Group, Bradley A. Benbrook and Stephen M. Duvernay for Plaintiffs and Appellants.

Xavier Becerra, Attorney General, Marc A. LeForestier, Acting Assistant Attorney General, Stepan A. Haytayan and Jeffrey A. Rich, Deputy Attorneys General, for Defendants and Respondents.

Judges: Opinion by Renner, J., with Hull, Acting P. J., and Duarte, J., concurring.

Opinion by: Renner, J.

Opinion

[**46] **RENNER, J.**—This case involves a challenge to the California Department of Justice's (DOJ) policy that individuals who possess a federal license to collect “curio and relic” firearms cannot, by virtue of possessing that license, purchase more than one noncurio or relic handgun in a 30-day period. DOJ's position is based on an interpretation of [Penal Code section 27535](#),¹ which both limits the number of handguns that can be purchased in a 30-day period and exempts individuals with the federal collector's license (and a certificate of eligibility from DOJ) from that limit. DOJ announced the disputed position in a 2014 letter to California firearms

dealers.

DOJ's position was challenged by two licensed firearms [***2] collectors, who alleged DOJ failed to comply with the Administrative Procedure Act (APA) ([Gov. Code, § 11340 et seq.](#)) in adopting this policy, and also sought a declaration of rights. The trial court granted defendants and respondents Attorney General Xavier Becerra and Chief of the Bureau of Firearms Stephen J. Lindley's motion for summary judgment and denied plaintiffs and appellants Alvin Doe and Paul A. Gladden's cross-motion for summary judgment on plaintiffs' complaint for declaratory relief. The trial court ruled that DOJ's position embodied the only legally tenable interpretation of [section 27535](#).

On appeal, plaintiffs argue the interpretation DOJ announced in 2014 is void because (1) it is inconsistent with [section 27535](#) and (2) it was not adopted in compliance with the APA. We agree with plaintiffs and address their arguments in reverse order. Regarding their second argument, we conclude DOJ's policy is not exempt from being promulgated under the APA because it does not embody “the only legally tenable interpretation” of the statute. ([Gov. Code, § 11340.9, subd. \(f\).](#)) Having decided that DOJ's 2014 interpretation of [section 27535](#) is void for failure to comply with the APA, we resolve any ambiguity regarding the proper construction of the statute and [*334] construe it as allowing [***3] individuals with the designated federal license, and certificate of eligibility, to purchase more than one handgun within 30 days regardless of the type of handgun being purchased. In doing so, we agree with plaintiffs' first argument as well. We reverse and remand for further proceedings consistent with this opinion.

I. BACKGROUND

[Section 27535](#) contains both a limitation on the number of handguns that can be purchased in a 30-day period and several exceptions from that limit. The statute

¹ Undesignated statutory references are to the Penal Code.

provides, in relevant part:

“(a) No person shall make an application to purchase more than one handgun within any 30-day period.

“(b) [Subdivision \(a\)](#) shall not apply to any of the following: [¶] ... [¶]

“(9) Any person who is licensed as a collector pursuant to Chapter 44 (commencing with *Section 921*) of *Title 18 of the United States Code* and the regulations issued pursuant thereto, and has a current certificate of eligibility issued by the Department of Justice pursuant to Article 1 (commencing with [Section 26700](#)) of Chapter 2.” As we discuss in more detail below, a person who is licensed as a collector under title 18 *United States Code* section 921 and the regulations issued [**47] pursuant thereto holds the aforementioned federal license to collect “curio and relic” firearms. [***4]

In 2005, the deputy attorney general who was representing what was then called the firearms division, responded by e-mail to an inquiry from a licensed collector regarding an earlier version of [section 27535, subdivision \(b\)\(9\)](#). The deputy attorney general explained, “I have been advised that it is our long-standing policy for DOJ to exempt all firearms purchases by [curio and relic] licensees from the provisions of [former [section 12072, subdivision\(a\)\(9\)\(A\)](#)] [the ‘one gun per month’ limit], even if the firearms are not curios and relics.”

On May 8, 2014, Chief Lindley sent a letter to California firearms dealers regarding the licensed collector exemption that took a decidedly different position.² The letter relied on federal regulations referenced by the statutory exemption and explained, “[I]t is clear that federal law does not permit the licensee to use the curio and relic license in transactions other than those [**335] involving curio and relic firearms, nor grants them any other special status over a non-licensee when the transaction involves non-curio and relic firearms. These provisions of federal law are specifically referenced in ... [section 27535, subdivision \(b\)\(9\)](#). [¶] Therefore, the exemption provided in ... [section 27535, subdivision \(b\)\(9\)](#), shall not be used for the sale of any

handguns [***5] other than those defined as curio and relics under federal law, and any such transaction shall be discontinued immediately. Any transactions violating California or federal law that are not canceled by the dealer will be canceled by the California Department of Justice, Bureau of Firearms.” Prior to announcing this policy, DOJ did not follow the rulemaking procedures set forth in the APA.

Plaintiffs, who are licensed collectors under federal law and have current certificates of eligibility issued by DOJ, subsequently filed a complaint stating two causes of action for declaratory relief. The first cause of action alleges a controversy between plaintiffs and defendants regarding the interpretation of [section 27535](#) and whether it only exempts purchases involving curios or relics.³ The second cause of action seeks a judicial declaration that DOJ's enforcement policy regarding [section 27535](#) is invalid because it was adopted without complying with the APA.

The parties filed cross-motions for summary judgment on plaintiffs' complaint and stipulated to the relevant facts. The trial court granted defendants' motion and denied plaintiffs' motion.

The trial court held the plain meaning of [section 27535, subdivision \(b\)\(9\)](#) “recognizes that [curio and relic] [***6] licenses relate to the purchase of curios and relics” and the exemption therefore “extends only to curios and relics.” The trial court determined the legislative history of a prior unpassed bill, that suggested a different conclusion, had no bearing on the interpretation of [section 27535](#), and the legislative history of [section 27535](#) itself “simply indicate[s] that ‘licensed collectors’ are exempt from the rule, but in no way indicate[s] that they are exempt from the rule for [**48] anything other than curios and relics.” The trial court emphasized [section 27535](#) “was enacted to curtail the illegal gun market, disarm criminals and save lives by preventing multiple purchases of handguns, **even through legitimate channels**. [Citation.] Such history does not reflect a goal of permitting collectors of curios and relics to purchase an unlimited number of modern handguns.”

The 2005 e-mail did not alter the trial court's decision: “[T]here is no showing how [the deputy attorney general]

² In keeping with the language of the statute, we refer to the exception set forth in [section 27535, subdivision \(b\)\(9\)](#) as the licensed collector exemption. To define it as a “curio and relic exemption,” as defendants do and the trial court did is to presuppose the answer to the question before us.

³ In their briefing, plaintiffs assert the first cause of action alleges that the policy is void because it is inconsistent with [section 27535](#).

was 'advised' of any such policy. [*336] There simply is no showing that the DOJ has reversed course on a long standing policy such that the position set forth in the 2014 [letter] is not entitled to deference." The court determined the letter was entitled to significant deference because DOJ [***7] has expertise in enforcement of firearms laws, but the deference accorded in this situation "is at most a minor issue given the Court has found that the ... [e]xemption in [\[section\] 27535](#) can only be interpreted in the manner urged by Defendants." Indeed, the court held DOJ was not required to comply with the APA because its construction of [section 27535, subdivision \(b\)\(9\)](#) was the only "legally tenable" interpretation: "[T]he Court finds that the ... [e]xemption 'can reasonably be read only one way[,] that is to apply only to curios and relics."

The trial court entered judgment accordingly, and plaintiffs timely appealed.

II. DISCUSSION

A. Standard of Review

The trial court's resolution of the cross-motions for summary judgment and the underlying statutory construction issue is subject to our de novo review because it raises pure questions of law. ([Regents of University of California v. Superior Court \(1999\) 20 Cal.4th 509, 531 \[85 Cal. Rptr. 2d 257, 976 P.2d 808\]](#).)

B. Compliance with the APA

(1) The APA sets forth procedures for the adoption of an administrative regulation and provides that a failure to follow them voids the agency action. ([Gov. Code, § 11340.5, subd. \(a\)](#); [Tidewater Marine Western, Inc. v. Bradshaw \(1996\) 14 Cal.4th 557, 572 \[59 Cal. Rptr. 2d 186, 927 P.2d 296\]](#).) The APA defines "regulation" broadly to include "every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to [***8] implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure." ([Gov. Code, § 11342.600](#).)

(2) Defendants contend the APA's procedural requirements do not apply because their policy "embodies the only legally tenable interpretation of a provision of law." ([Gov. Code, § 11340.9, subd. \(f\)](#).) "This exception codifies the principle that '[i]f certain policies and procedures ... are ... "essentially [] a

reiteration of the extensive statutory scheme which the Legislature has established" ... then there is obviously no duty ... to enact regulations to cover such reiterations, since the sixth commandment of "nonduplication" [*337] prescribes "that a regulation does not serve the same purpose as a state ... statute" [Citation.] But to the extent any of the contents of the [statement of policy or procedure] depart from, or embellish upon, express statutory authorization and language, the [agency] will need to promulgate regulations." ([Morning Star Co. v. State Bd. of Equalization \(2006\) 38 Cal.4th 324, 336 \[42 Cal. Rptr. 3d 47, 132 P.3d 249\]](#) (*Morning Star*).) "[T]he exception for the lone 'legally tenable' reading of the law applies only in situations where the law [***49] 'can reasonably be read only one way' [citation], such that the agency's actions or decisions in applying the law are essentially rote, ministerial, [***9] or otherwise patently compelled by, or repetitive of, the statute's plain language." (*Id.* at pp. 336–337.)

"To evaluate this argument, we consider, as with conventional statutory interpretation, the language and purpose of the relevant statutes in order to discern the Legislature's intent." ([Morning Star, supra, 38 Cal.4th at p. 336](#).) "[W]hether the Department has adopted the sole 'legally tenable' reading of the statutes represents a different question than whether its interpretation is ultimately correct." (*Ibid.*)⁴

As set forth above, the relevant statutory provision provides an exemption from the prohibition on purchasing more than one handgun in a 30-day period for "[a]ny person who is licensed as a collector pursuant to Chapter 44 (commencing with *Section 921*) of *Title 18 of the United States Code* and the regulations issued pursuant thereto, and has a current certificate of eligibility issued by the Department of Justice." ([§ 27535, subd. \(b\)\(9\)](#).) The federal statute referenced by the exemption, *title 18 United States Code section 921*, authorizes the United States Attorney General to promulgate regulations defining who is a licensed collector: "The term 'collector' means any person who acquires, holds, or disposes of firearms as curios or relics, as the Attorney General shall by regulation

⁴We agree with the trial court that whether the letter's interpretation of the licensed collector exemption is the only "legally tenable" one is a separate question from whether the Bureau of Firearms has always adhered to it. It is not impossible to imagine that an agency would apply (or not apply) a statute in a way that was contrary to its only legally tenable interpretation.

define, and the term ‘licensed [***10] collector’ means any such person licensed under the provisions of this chapter.” (18 U.S.C. § 921(a)(13).) Generally, curios and relics are “[f]irearms which are of special interest to collectors by reason of some quality other than is associated with firearms intended for sporting use or as offensive or defensive weapons.” (27 C.F.R. § 478.11 (2017).)⁵ Federal regulations also state, “[t]he collector license provided by this part shall apply only to transactions related to a collector’s activity in acquiring, holding or disposing of curios and relics.” (27 C.F.R. § 478.41(d) (2017).) Defendants contend the meaning of [***338] the licensed collector exemption can be ascertained from its plain language and the plain language of the referenced federal laws. Even if the correct interpretation can be ascertained in this manner, it “hardly represents the sort of rote or ministerial application of a statute that we believe the Legislature had in mind when enacting an APA exception for the sole ‘legally tenable’ interpretation of the law.” (*Morning Star, supra*, 38 Cal.4th at pp. 338–339 [describing the complicated tasks of tracing each of the statutory cross-references].)

The letter from Chief Lindley concludes that a prospective purchaser does not qualify for the licensed collector exemption if his or her license does not apply to [***11] the transaction in question. But *section 27535, subdivision (b)(9)*, is easily susceptible to the interpretation that it applies whenever a purchaser is properly licensed under federal law and eligible under state law as a general matter. In fact, the literal interpretation of the licensed collector exemption when read in conjunction with the [***50] applicable federal law appears to be that despite the limited utility of the collector’s license during the purchase of a regular handgun, the purchaser remains “licensed” as a collector under federal law. Stated differently, while the license does not apply to a transaction that does not involve a curio or relic, the license is not invalidated by such a transaction. (27 C.F.R. § 478.41(d) (2017).) Defendants acknowledge that it is possible to read the licensed collector exemption to apply to the purchase of any handgun when they state “it appears that a literal interpretation of [the] statute may lead to absurd results.”

Defendants rely upon the following description of the law’s intent taken from the Assembly Committee on

Public Safety’s analysis of the bill that originally codified the licensed collector exception to support their interpretation (Assembly Bill No. 202 (1999–2000 Reg. Sess.) (Assembly Bill 202)).⁶

[***12] “1) *Author’s Statement*. According to the author, ‘There is no limit on the number of handguns that may be purchased from a dealer. This makes it easy for straw purchasers to acquire guns for another person or for street dealers to acquire guns legitimately. Handguns make up an overwhelming share of crime guns and a significant number are traceable to dealer transactions. AB [***339] 202 will curtail the illegal gun market, disarm criminals, and save lives by preventing multiple purchases of handguns through legitimate channels. Preventing multiple purchases takes the profit out of black market sales and puts gun traffickers and straw purchasers out of business.’

“2) *Limiting Bulk Purchases to Cut Down on Straw Transactions*. The goal of this bill is to stop one gun purchaser from buying several firearms and transferring a firearm to another person who does not have the legal ability to buy a gun him/herself. Such a transfer is referred to as a ‘straw transaction.’ Typically, straw transactions involve a third party who is under 21 years of age, has a disqualifying prior conviction, has a mental disorder, or is not a resident.” (Assem. Com. on Public Safety, Analysis of Assem. Bill. No. 202 (1999–2000 [***13] Reg. Sess.) as amended Mar. 10, 1999, pp. 3–4.)

While this description of legislative intent is potentially useful in interpreting the statute, “these materials simply do not categorically rule out alternative interpretations of the pertinent law.” (*Morning Star, supra*, 38 Cal.4th at p. 339.) “[N]o legislation pursues its purposes at all costs.

⁶ As enacted, Assembly Bill 202 amended former *section 12072 to add subdivision (a)(9)(A)*, which provided that “[n]o person shall make an application to purchase more than one pistol, revolver, or other firearm capable of being concealed upon the person within any 30-day period.” (Stats. 1999, ch. 128, § 2, p. 1767.) Assembly Bill 202 also added former *section 12072, subdivision (a)(9)(B)(x)*, to exempt “[a]ny person who is licensed as a collector pursuant to Chapter 44 (commencing with **Section 921**) of Title 18 of the United States Code and the regulations issued pursuant thereto and who has a current certificate of eligibility issued to him or her by the Department of Justice pursuant to *Section 12071*.” (Stats. 1999, ch. 128, § 2, p. 1767.) As the result of statutory reorganization, this portion of former *section 12072* is now codified at *section 27535*. (Stats. 2010, ch. 711, § 6.)

⁵ For a firearm to be recognized as a curio or relic, additional requirements apply. (27 C.F.R. § 478.11 (2017).)

Deciding what competing values will or will not be sacrificed to the achievement of a particular objective is the very essence of legislative choice—and it frustrates rather than effectuates legislative intent simplistically to assume that *whatever* furthers the statute's primary objective must be the law.” (*Rodriguez v. United States* (1987) 480 U.S. 522, 525–526 [94 L.Ed.2d 533, 107 S.Ct. 1391] (per curiam); accord, *County of Sonoma v. Cohen* (2015) 235 Cal.App.4th 42, 48 [184 Cal. Rptr. 3d 911].) In fact, [section 27535](#) contains 13 different exceptions to the general purpose of preventing the purchase of multiple handguns. These exemptions [**51] cover persons ranging from law enforcement agencies to entertainment production companies. (§ 27535, subd. (b).) Interestingly, the legislative history defendants cite also discusses whether these exemptions effectively gut the bill.⁷ (Assem. Com. on Public Safety, Analysis of Assem. Bill. No. 202 (1999–2000 Reg. Sess.) as amended Mar. 10, 1999, pp. 4–5.) And as plaintiffs note, the exemption at issue in this case is described in the legislative history [***14] as applying to collectors without any indication of a further limitation on the type of handguns that may be purchased: “Those exempt institutions, persons and situations include: [¶] ... [¶] j) Any licensed collector.” (*Ibid.*) Defendants have “not established that [their] interpretation follows directly and inescapably from the pertinent provisions of law.” (*Morning Star, supra, at p. 340.*) As such, the exception to the rulemaking [***340] provisions of the APA set forth in [Government Code section 11340.9, subdivision \(f\)](#), governing statutes with only one possible interpretation, does not apply and the policy reflected in the 2014 letter from Chief Lindley is invalid. (*Morning Star, supra, at p. 340.*)

C. Application of the Licensed Collector Exemption

(3) “[A]lthough the court must void an interpretive regulation that does not comply with the APA procedures, it may resolve the ambiguity that gave rise to the agency interpretation if it is not required to defer to the agency construction.” (*Capen v. Shewry* (2007)

⁷ This legislative analysis concludes the exemptions do not gut the bill because they “are salutary because they encourage a person who may be involved lawfully in multi-gun exchanges to go to a licensed dealer, or to the local sheriff, in order to facilitate the exchange.” (Assem. Com. on Public Safety, Analysis of Assem. Bill. No. 202 (1999–2000 Reg. Sess.) as amended Mar. 10, 1999, p. 4.) And “[d]espite the exemptions, the bill still hinders bulk purchase straw transactions by limiting applications for concealable firearms to one application per 30-day period.” (*Id.* at p. 5.)

[155 Cal.App.4th 378, 391 \[65 Cal. Rptr. 3d 890\]](#).) We conclude we are in as good a position as DOJ to interpret the statutory language and, accordingly, we exercise our authority to address the proper construction of [section 27535](#) in order to resolve plaintiffs' claim that DOJ's interpretation is inconsistent with statute. (See *Capen v. Shewry, supra, at p. 383.*)

While the trial court correctly observed that DOJ [***15] has expertise in the enforcement of firearms laws, the interpretation of [section 27535, subdivision \(b\)\(9\)](#) does not call upon this administrative expertise. The question in this case is whether a person “is licensed” if they have a valid federal license, but that license cannot be used for the transaction in question. As to this particular question of statutory interpretation there is no reason to believe the Bureau of Firearms has “a comparative interpretive advantage over the courts.” (*Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 12 [78 Cal. Rptr. 2d 1, 960 P.2d 1031].)⁸ For this reason, we resolve the question of how to properly interpret [section 27535](#) without deferring to DOJ's administrative interpretation.

(4) [**52] Where, as here, “the words of the statute themselves provide no definitive answer, it is appropriate to refer to extrinsic sources for evidence of legislative intent.” (*Long Beach Police Officers Assn. v. City of Long Beach* (1988) 46 Cal.3d 736, 743 [250 Cal. Rptr. 869, 759 P.2d 504].) We look to the legislative history and well-settled principles of statutory construction. (*Id.* at [***341] p. 746.) “The words of a statute must be construed in context, keeping in mind the statutory purpose, and statutes or statutory sections relating to the same subject must, to the extent possible,

⁸ “[E]vidence that the agency ‘has consistently maintained the interpretation in question, especially if [it] is long-standing’ ... , and indications that the agency's interpretation was contemporaneous with legislative enactment of the statute being interpreted,” are factors to consider in determining whether an agency's interpretation is probably correct. (*Yamaha Corp. of America v. State Bd. of Equalization, supra, 19 Cal.4th at p. 13*, citation omitted.) Thus, contrary to the trial court's suggestion, the 2005 e-mail is relevant to those factors because it suggests the interpretation in the 2014 letter from Chief Lindley was neither long standing nor contemporaneous with the enactment of Assembly Bill 202. But, in this case, the argument that the letter's interpretation is entitled to deference fails at the threshold because the Bureau of Firearms does not have an interpretive advantage over the court. (*Yamaha Corp. of America v. State Bd. of Equalization, supra, at pp. 12–13* [explaining the two categories of factors].)

be harmonized, both internally and with each other.” (*Ibid.*)

(5) Plaintiffs note that, in other statutes, the Legislature has specified that exemptions relating [***16] to licensed collectors only apply to transactions involving a firearm that is a curio or relic under [27 Code of Federal Regulations part 478.11](#) (2017). Plaintiffs specifically identify [sections 26970, 27966, and 31700](#) as examples. They use these statutes to invoke the “well recognized principle of statutory construction that when the Legislature has carefully employed a term in one place and has excluded it in another, it should not be implied where excluded.” (*Brown v. Kelly Broadcasting Co.* (1989) 48 Cal.3d 711, 725 [257 Cal. Rptr. 708, 771 P.2d 406].)⁹ Plaintiffs effectively argue that the Legislature knows how to limit an exception to transactions involving firearms that are curios or relics when that is the Legislature's intent. The principle of statutory construction that supports this interpretation “applies only when the Legislature has intentionally changed or excluded a term by design [citation], and it is only when different terms are used in parts of the same statutory scheme that they are presumed to have different meanings.” (*Smith v. Rae-Venter Law Group* (2002) 29 Cal.4th 345, 364 [127 Cal. Rptr. 2d 516, 58 P.3d 367], superseded by statute on other grounds.) At least one of the statutes identified by plaintiffs meets these criteria. [Section 26970](#), has origins predating Assembly Bill 202 and provides an exception that is similar to the licensed collector exemption other than the fact [section 26970](#) states explicitly that it only applies when the firearm involved [***17] is a curio or relic. ([§ 26970, subd. \(a\).](#))¹⁰ [Sections 26970](#) and [27535](#) embrace similar

subject matter and demonstrate the Legislature's awareness of how to exempt only [***53] transactions involving curios and relics. (6) (See [In re Khalid H.](#) (1992) 6 Cal.App.4th 733, 736 [8 Cal. Rptr. 2d 414] [“When a [***342] statute omits a provision which another statute embracing a similar subject includes, a different legislative intent for each statute is indicated”]; accord, [Hennigan v. United Pacific Ins. Co.](#) (1975) 53 Cal.App.3d 1, 8 [125 Cal. Rptr. 408].) We therefore conclude the Legislature's drafting of the licensed collector exemption in [section 27535, subdivision \(b\)\(9\)](#), with no reference to the type of handgun purchased, suggests an intent to exempt purchases of any type of handgun.

(7) In support of this interpretation, plaintiffs also rely on the legislative history of Assembly Bill No. 532 (1997–1998 Reg. Sess.) (Assembly Bill 532), an unsuccessful earlier version of Assembly Bill 202, which explained the bill would not affect, “The 400 some odd California federally licensed collectors as to any firearm acquisition.”¹¹ (Assem. Com. on Public Safety, Analysis of Assem. Bill No. 532 (1997–1998 Reg. Sess.) Apr. 8, 1997, p. 5 [proposed amendment].) “As a general rule, unpassed legislation provides “very limited guidance” when interpreting existing legislation. [Citation.] However, in some circumstances it may be a reliable indicator of existing legislative [***18] intent.” ([Joannou v. City of Rancho Palos Verdes](#) (2013) 219 Cal.App.4th 746, 761 [162 Cal. Rptr. 3d 158]; see also [Cuevas v. Contra Costa County](#) (2017) 11 Cal.App.5th 163, 177 [217 Cal. Rptr. 3d 519] [“here the predecessor bills are instructive”].) For instance, this court has previously relied on legislative history of a predecessor bill that had been vetoed by the Governor and was “virtually identical” to the legislation at issue. (*City of Richmond v. Commission on State Mandates* (1998) 64 Cal.App.4th 1190, 1199 [75 Cal. Rptr. 2d 754].) Another appellate court has deemed an expressed relationship between predecessor bills and the statute to be interpreted

⁹ “[T]he principle always is subordinate to legislative intent.” (*Silverbrand v. County of Los Angeles* (2009) 46 Cal.4th 106, 126 [92 Cal. Rptr. 3d 595, 205 P.3d 1047].) Defendants argue the statute is not ambiguous and there is a discernible and contrary legislative intent. But, as set forth above, the statute is at least susceptible to plaintiffs' interpretation and we reject the notion that there is a discernible and contrary legislative intent.

¹⁰ [Section 26970, subdivision \(a\)](#), sets forth an exception to the 10-day waiting period for purchasing a firearm where: “(1) The firearm is a curio or relic, as defined in [Section 478.11 of Title 27 of the Code of Federal Regulations](#), or its successor. [¶] ... [¶] (3) The sale, delivery, loan, or transfer is made to a person who is licensed as a collector pursuant to Chapter 44 (commencing with **Section 921**) of Title 18 of the United States Code and the regulations issued pursuant thereto. [¶] (4) The licensed collector has a current certificate of eligibility

issued by the Department of Justice pursuant to [Section 26710](#).” This exception was originally signed into law in 1996 and codified in former [section 12078, subdivision \(t\)\(1\)](#). (Stats. 1996, ch. 668, § 1, p. 3700; see Stats. 2010, ch. 711, § 6 [statutory reorganization].)

¹¹ Plaintiffs also cite to notes relating to Assembly Bill 532 from the files of the author of both bills. “[T]he statements of an individual legislator, including the author of a bill, are generally not considered in construing a statute, as the court's task is to ascertain the intent of the Legislature as a whole in adopting a piece of legislation.” ([Quintano v. Mercury Casualty Co.](#) (1995) 11 Cal.4th 1049, 1062 [48 Cal. Rptr. 2d 1, 906 P.2d 1057].)

sufficient to make the legislative history surrounding the unpassed predecessor bills instructive. (See [Cuevas v. Contra Costa County](#), *supra*, at p. 177 [concluding unpassed predecessor bills were instructive “because the Assembly Committee on Judiciary acknowledged the relationship between Assembly Bill 1 and its predecessor bills, stating that Assembly Bill 1 ‘incorporates the concepts or language of the following assembly bills introduced during the regular or special session,’ referencing [predecessor bills]”].) We therefore take the view that the legislative history of unpassed bills can, depending on the circumstances, provide some guidance.

[*343]

Accordingly, we approach the legislative history of Assembly Bill 532 with caution because the bill died on the Assembly floor and was not considered by the Senate. But at the time of the relevant committee hearing, the Assembly **[***19]** Committee on Public Safety was considering a proposed amendment that added language identical to the licensed collector exemption eventually enacted by Assembly Bill 202. (Assem. Amend. to Assem. Bill No. 532 (1997–1998 Reg. Sess.) Apr. 15, 1997, § 2.) Further, the legislative history of Assembly Bill 202 explains that it is “substantially similar” to Assembly Bill 532. (Assem. Com. on Public Safety, Analysis of Assem. Bill. No. 202 (1999–2000 Reg. Sess.) as amended Mar. 10, 1999, p. 5.) Under these circumstances, we conclude there is some value to the legislative history of Assembly Bill 532, and it reinforces **[**54]** our conclusion that the exemption applies to licensed collectors regardless of the type of handgun purchased.

The general purpose of [section 27535](#) to prevent straw transactions does not persuade us otherwise. As plaintiffs observe, other statutes prohibit straw transactions directly. ([§§ 27515, 27520, 27590, subd. \(c\)\(1\)](#).) In fact, these prohibitions predate Assembly Bill 202, and Assembly Bill 202 was originally added to the same statute (former [§ 12072](#)) that prohibited straw transactions generally. (Stats. 1999, ch. 128, § 2, p. 1767.) While prohibiting the purchase of more than one handgun in 30 days may further impede straw transactions, we cannot conclude that exempting individuals who have gone through **[***20]** the federal licensing process and obtained a certificate of eligibility from DOJ is absurd or necessarily contrary to the Legislature's intent. This is, perhaps, especially true given the range of other exceptions the Legislature chose to include in [section 27535](#). We express no opinion on whether the interpretation advanced by DOJ

is a wise policy choice. Our analysis is limited to whether DOJ's interpretation is allowed by the statute that was enacted by the Legislature.

(8) The language of [section 27535](#), its context, and the relevant legislative history together evince an intent to exempt all transactions involving licensed collectors who have a certificate of eligibility from DOJ despite the statute's general goal of preventing straw transactions. We conclude [section 27535, subdivision \(b\)\(9\)](#) must be interpreted accordingly.

III. DISPOSITION

The judgment is reversed and the cause is remanded to the trial court for further proceedings consistent with the views stated herein. Plaintiffs Alvin **[*344]** Doe and Paul A. Gladden shall recover their costs on appeal. ([Cal. Rules of Court, rule 8.278\(a\)\(1\) & \(2\)](#).)

Hull, Acting P. J., and Duarte, J., concurred.

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EXHIBIT E

File by Fax

1 BENBROOK LAW GROUP, PC
2 BRADLEY A. BENBROOK (SBN 177786)
3 STEPHEN M. DUVERNAY (SBN 250957)
4 400 Capitol Mall, Suite 1610
5 Sacramento, CA 95814
6 Telephone: (916) 447-4900
7 Facsimile: (916) 447-4904

8 Attorney for Plaintiffs,
9 ALVIN DOE and PAUL A. GLADDEN

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

ALVIN DOE and PAUL A. GLADDEN,
Plaintiffs,

v.

XAVIER BECERRA, in his official capacity as
Attorney General of California, and MARTHA
SUPERNOR, in her official capacity as Acting
Chief of the California Department of Justice
Bureau of Firearms,

Defendants.

Case No.: 34-2014-00163821

**[PROPOSED] ORDER ON REMAND AND
JUDGMENT**

Action Filed: May 20, 2014

FILED
ENDORSED

2018 MAY -2 AM 10:22

LAW AND MOTION DEPT. 53/54
SUPERIOR COURT
OF CALIFORNIA
SACRAMENTO COUNTY



1 On February 19, 2016, the Court issued an order granting Defendants' motion for summary
2 judgment or summary adjudication; and denying Plaintiffs' motion for summary judgment or, in
3 the alternative, summary adjudication. On March 2, 2016, the Court entered a judgment of
4 dismissal in favor of Defendants.

5 On February 8, 2018, the Court of Appeal, Third Appellate District reversed the Court's
6 judgment. *Doe v. Becerra*, 20 Cal.App.5th 330 (2018). A true and correct copy of the appellate
7 court's opinion is attached hereto and incorporated by reference.

8 For the reasons set forth in the Court of Appeal's opinion, the February 19, 2016 order on
9 the parties' cross-motions for summary judgment or adjudication is hereby VACATED. The
10 Court hereby GRANTS Plaintiffs' motion for summary judgment or, in the alternative, summary
11 adjudication. Defendants' motion for summary judgment or summary adjudication is DENIED.

12 Consistent with and for the reasons set forth in the Court of Appeal's opinion in this matter,
13 it is further ORDERED, ADJUDGED, AND DECREED that:


14 Defendants' interpretation of Penal Code section 27535, as announced in its May 8, 2014
15 Information Letter, is void because it is inconsistent with the statute;

16 Defendants' interpretation of Penal Code section 27535, as announced in its May 8, 2014
17 Information Letter, is void because it was not adopted in compliance with the Administrative
18 Procedures Act; and

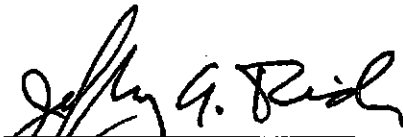
19 Defendants are permanently enjoined from enforcing the policy interpreting Penal Code
20 section 27535 announced in its May 8, 2014 Information Letter.

21 IT IS SO ORDERED.

22 DATED: MAY - 2 2018


JUDGE OF THE SUPERIOR COURT
DAVID I. BROWN

24 APPROVED AS TO FORM:

25
26 
27 Attorneys for Defendants
28

Filed 2/8/18

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Sacramento)

ALVIN DOE et al.,

Plaintiffs and Appellants,

v.

XAVIER BECERRA, as Attorney General, etc., et al.,

Defendants and Respondents.

C081994

(Super. Ct. No.
34201400163821CUCOGDS)

APPEAL from a judgment of the Superior Court of Sacramento County, David I. Brown, Judge. Reversed with directions.

Benbrook Law Group, Bradley A. Benbrook and Stephen M. Duvernay for
Plaintiffs and Appellants.

Xavier Becerra, Attorney General, Marc A. LeForestier, Acting Senior Assistant
Attorney General, Stepan A. Haytayan and Jeffrey A. Rich, Deputy Attorneys General,
for Defendants and Respondents.

This case involves a challenge to the California Department of Justice's (DOJ) policy that individuals who possess a federal license to collect "curio and relic" firearms cannot, by virtue of possessing that license, purchase more than one non-curio or relic handgun in a 30-day period. DOJ's position is based on an interpretation of Penal Code section 27535,¹ which both limits the number of handguns that can be purchased in a 30-day period and exempts individuals with the federal collector's license (and a certificate of eligibility from DOJ) from that limit. DOJ announced the disputed position in a 2014 letter to California firearms dealers.

DOJ's position was challenged by two licensed firearms collectors, who alleged DOJ failed to comply with the Administrative Procedures Act (APA) (Gov. Code, § 11340 et seq.) in adopting this policy, and also sought a declaration of rights. The trial court granted defendants and respondents Attorney General Xavier Becerra and Chief of the Bureau of Firearms Stephen J. Lindley's motion for summary judgment and denied plaintiffs and appellants Alvin Doe and Paul A. Gladden's cross-motion for summary judgment on plaintiffs' complaint for declaratory relief. The trial court ruled that DOJ's position embodied the only legally tenable interpretation of section 27535.

On appeal, plaintiffs argue the interpretation DOJ announced in 2014 is void because (1) it is inconsistent with section 27535 and (2) it was not adopted in compliance with the APA. We agree with plaintiffs and address their arguments in reverse order. Regarding their second argument, we conclude DOJ's policy is not exempt from being promulgated under the APA because it does not embody "the only legally tenable interpretation" of the statute. (Gov. Code, § 11340.9, subd. (f).) Having decided that DOJ's 2014 interpretation of section 27535 is void for failure to comply with the APA, we resolve any ambiguity regarding the proper construction of the statute and construe it

¹ Undesignated statutory references are to the Penal Code.

as allowing individuals with the designated federal license, and certificate of eligibility, to purchase more than one handgun within 30 days regardless of the type of handgun being purchased. In doing so, we agree with plaintiffs' first argument as well. We reverse and remand for further proceedings consistent with this opinion.

I. BACKGROUND

Section 27535 contains both a limitation on the number of handguns that can be purchased in a 30-day period and several exceptions from that limit. The statute provides, in relevant part:

“(a) No person shall make an application to purchase more than one handgun within any 30-day period.

“(b) Subdivision (a) shall not apply to any of the following:

“[¶] . . . [¶]

“(9) Any person who is licensed as a collector pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto, and has a current certificate of eligibility issued by the Department of Justice pursuant to Article 1 (commencing with Section 26700) of Chapter 2.” As we discuss in more detail below, a person who is licensed as a collector under title 18 United States Code section 921 and the regulations issued pursuant thereto holds the aforementioned federal license to collect “curio and relic” firearms.

In 2005, the deputy attorney general who was representing what was then called the Firearms Division, responded by email to an inquiry from a licensed collector regarding an earlier version of section 27535, subdivision (b)(9). The deputy attorney general explained, “I have been advised that it is our long-standing policy for DOJ to exempt all firearms purchases by [curio and relic] licensees from the provisions of [former section] 12072[, subdivision](a)(9)(A) [the ‘one gun per month’ limit], even if the firearms are not curios and relics.”

On May 8, 2014, Chief Lindley sent a letter to California firearms dealers regarding the licensed collector exemption that took a decidedly different position.² The letter relied on federal regulations referenced by the statutory exemption and explained, “it is clear that federal law does not permit the licensee to use the curio and relic license in transactions other than those involving curio and relic firearms, nor grants them any other special status over a non-licensee when the transaction involves non-curio and relic firearms. These provisions of federal law are specifically referenced in . . . section 27535, subdivision (b)(9). [¶] Therefore, the exemption provided in . . . section 27535, subdivision (b)(9), shall not be used for the sale of any handguns other than those defined as curio and relics under federal law, and any such transaction shall be discontinued immediately. Any transactions violating California or federal law that are not canceled by the dealer will be canceled by the California Department of Justice, Bureau of Firearms.” Prior to announcing this policy, DOJ did not follow the rulemaking procedures set forth in the APA.

Plaintiffs, who are licensed collectors under federal law and have current certificates of eligibility issued by DOJ, subsequently filed a complaint stating two causes of action for declaratory relief. The first cause of action alleges a controversy between plaintiffs and defendants regarding the interpretation of section 27535 and whether it only exempts purchases involving curios or relics.³ The second cause of action seeks a judicial declaration that DOJ’s enforcement policy regarding section 27535 is invalid because it was adopted without complying with the APA.

² In keeping with the language of the statute, we refer to the exception set forth in section 27535, subdivision (b)(9) as the licensed collector exemption. To define it as a “curio and relic exemption,” as defendants do and the trial court did is to presuppose the answer to the question before us.

³ In their briefing, plaintiffs assert the first cause of action alleges that the policy is void because it is inconsistent with section 27535.

The parties filed cross-motions for summary judgment on plaintiffs' complaint and stipulated to the relevant facts. The trial court granted defendants' motion and denied plaintiffs' motion.

The trial court held the plain meaning of section 27535, subdivision (b)(9) "recognizes that [curio and relic] licenses relate to the purchase of curios and relics" and the exemption therefore "extends only to curios and relics." The trial court determined the legislative history of a prior unpassed bill, that suggested a different conclusion, had no bearing on the interpretation of section 27535, and the legislative history of section 27535 itself "simply indicate[s] that 'licensed collectors' are exempt from the rule, but in no way indicate[s] that they are exempt from the rule for anything other than curios and relics." The trial court emphasized section 27535 "was enacted to curtail the illegal gun market, disarm criminals and save lives by preventing multiple purchases of handguns, **even through legitimate channels.** [Citation.] Such history does not reflect a goal of permitting collectors of curios and relics to purchase an unlimited number of modern handguns."

The 2005 email did not alter the trial court's decision: "[T]here is no showing how [the deputy attorney general] was 'advised' of any such policy. There simply is no showing that the DOJ has reversed course on a long standing policy such that the position set forth in the 2014 [letter] is not entitled to deference." The court determined the letter was entitled to significant deference because DOJ has expertise in enforcement of firearms laws, but the deference accorded in this situation "is at most a minor issue given the Court has found that the . . . [e]xemption in [section] 27535 can only be interpreted in the manner urged by Defendants." Indeed, the court held DOJ was not required to comply with the APA because its construction of section 27535, subdivision (b)(9) was the only "legally tenable" interpretation: "[T]he Court finds that the . . . [e]xemption 'can reasonably be read only one way[,] that is to apply only to curios and relics.'"

The trial court entered judgment accordingly, and plaintiffs timely appealed.

II. DISCUSSION

A. *Standard of Review*

The trial court's resolution of the cross-motions for summary judgment and the underlying statutory construction issue is subject to our de novo review because it raises pure questions of law. (*Regents of University of California v. Superior Court* (1999) 20 Cal.4th 509, 531.)

B. *Compliance with the APA*

The APA sets forth procedures for the adoption of an administrative regulation and provides that a failure to follow them voids the agency action. (Gov. Code, § 11340.5, subd. (a); *Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal.4th 557, 572.) The APA defines "regulation" broadly to include "every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure." (Gov. Code, § 11342.600.)

Defendants contend the APA's procedural requirements do not apply because their policy "embodies the only legally tenable interpretation of a provision of law." (Gov. Code, § 11340.9, subd. (f).) "This exception codifies the principle that '[i]f certain policies and procedures . . . are . . . "essentially [] a reiteration of the extensive statutory scheme which the Legislature has established" . . . then there is obviously no duty . . . to enact regulations to cover such reiterations, since the sixth commandment of "nonduplication" prescribes "that a regulation does not serve the same purpose as a state . . . statute. . . ." [Citation.] But to the extent any of the contents of the [statement of policy or procedure] depart from, or embellish upon, express statutory authorization and language, the [agency] will need to promulgate regulations.' " (*Morning Star Co. v. State Bd. of Equalization* (2006) 38 Cal.4th 324, 336 (*Morning Star*).) "[T]he exception for the lone 'legally tenable' reading of the law applies only in situations where the law 'can

reasonably be read only one way' [citation], such that the agency's actions or decisions in applying the law are essentially rote, ministerial, or otherwise patently compelled by, or repetitive of, the statute's plain language." (*Id.* at pp. 336-337.)

"To evaluate this argument, we consider, as with conventional statutory interpretation, the language and purpose of the relevant statutes in order to discern the Legislature's intent." (*Morning Star, supra*, 38 Cal.4th at p. 336.) "[W]hether the Department has adopted the sole 'legally tenable' reading of the statutes represents a different question than whether its interpretation is ultimately correct." (*Ibid.*)⁴

As set forth above, the relevant statutory provision provides an exemption from the prohibition on purchasing more than one handgun in a 30-day period for "[a]ny person who is licensed as a collector pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto, and has a current certificate of eligibility issued by the Department of Justice." (§ 27535, subd. (b)(9).) The federal statute referenced by the exemption, title 18 United States Code section 921, authorizes the United States Attorney General to promulgate regulations defining who is a licensed collector: "The term 'collector' means any person who acquires, holds, or disposes of firearms as curios or relics, as the Attorney General shall by regulation define, and the term 'licensed collector' means any such person licensed under the provisions of this chapter." (18 U.S.C. § 921(a)(13).) Generally, curios and relics are "[f]irearms which are of special interest to collectors by reason of some quality other than is associated with firearms intended for sporting use or as

⁴ We agree with the trial court that whether the letter's interpretation of the licensed collector exemption is the only "legally tenable" one is a separate question from whether the Bureau of Firearms has always adhered to it. It is not impossible to imagine that an agency would apply (or not apply) a statute in a way that was contrary to its only legally tenable interpretation.

offensive or defensive weapons.” (27 C.F.R. § 478.11.)⁵ Federal regulations also state, “[t]he collector license provided by this part shall apply only to transactions related to a collector’s activity in acquiring, holding or disposing of curios and relics.” (27 C.F.R. § 478.41(d).) Defendants contend the meaning of the licensed collector exemption can be ascertained from its plain language and the plain language of the referenced federal laws. Even if the correct interpretation can be ascertained in this manner, it “hardly represents the sort of rote or ministerial application of a statute that we believe the Legislature had in mind when enacting an APA exception for the sole ‘legally tenable’ interpretation of the law.” (*Morning Star, supra*, 38 Cal.4th at pp. 338-339 [describing the complicated tasks of tracing each of the statutory cross-references].)

The letter from Chief Lindley concludes that a prospective purchaser does not qualify for the licensed collector exemption if his or her license does not apply to the transaction in question. But section 27535, subdivision (b)(9), is easily susceptible to the interpretation that it applies whenever a purchaser is properly licensed under federal law and eligible under state law as a general matter. In fact, the literal interpretation of the licensed collector exemption when read in conjunction with the applicable federal law appears to be that despite the limited utility of the collector’s license during the purchase of a regular handgun, the purchaser remains “licensed” as a collector under federal law. Stated differently, while the license does not apply to a transaction that does not involve a curio or relic, the license is not invalidated by such a transaction. (27 C.F.R. § 478.41(d).) Defendants acknowledge that it is possible to read the licensed collector exemption to apply to the purchase of any handgun when they state “it appears that a literal interpretation of [the] statute may lead to absurd results.”

⁵ For a firearm to be recognized as a curio or relic, additional requirements apply. (27 C.F.R. § 478.11.)

Defendants rely upon the following description of the law's intent taken from the Assembly Committee on Public Safety's analysis of the bill that originally codified the licensed collector exception to support their interpretation (Assembly Bill No. 202 (1999-2000 Reg. Sess.) (AB 202)).⁶

"1) Author's Statement. According to the author, 'There is no limit on the number of handguns that may be purchased from a dealer. This makes it easy for straw purchasers to acquire guns for another person or for street dealers to acquire guns legitimately. Handguns make up an overwhelming share of crime guns and a significant number are traceable to dealer transactions. AB 202 will curtail the illegal gun market, disarm criminals, and save lives by preventing multiple purchases of handguns through legitimate channels. Preventing multiple purchases takes the profit out of black market sales and puts gun traffickers and straw purchasers out of business.'

"2) Limiting Bulk Purchases to Cut Down on Straw Transactions. The goal of this bill is to stop one gun purchaser from buying several firearms and transferring a firearm to another person who does not have the legal ability to buy a gun him/herself. Such a transfer is referred to as a 'straw transaction.' Typically, straw transactions involve a third party who is under 21 years of age, has a disqualifying prior conviction, has a mental disorder, or is not a resident." (Assem. Com. on Public Safety, Analysis of Assem. Bill. No. 202 (1999-2000 Reg. Sess.) as amended Mar. 10, 1999, pp. 3-4.)

⁶ As enacted, AB 202 amended former section 12072 to add subdivision (a)(9)(A), which provided that "[n]o person shall make an application to purchase more than one pistol, revolver, or other firearm capable of being concealed upon the person within any 30-day period." (Stats. 1999, ch. 128, § 2.) AB 202 also added former section 12072, subdivision (a)(9)(B)(x), to exempt "[a]ny person who is licensed as a collector pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto and who has a current certificate of eligibility issued to him or her by the Department of Justice pursuant to Section 12071." (Stats. 1999, ch. 128, § 2.) As the result of statutory reorganization, this portion of former section 12072 is now codified at section 27535. (Stats. 2010, ch. 711, § 6.)

While this description of legislative intent is potentially useful in interpreting the statute, “these materials simply do not categorically rule out alternative interpretations of the pertinent law.” (*Morning Star, supra*, 38 Cal.4th at p. 339.) “[N]o legislation pursues its purposes at all costs. Deciding what competing values will or will not be sacrificed to the achievement of a particular objective is the very essence of legislative choice—and it frustrates rather than effectuates legislative intent simplistically to assume that *whatever* furthers the statute’s primary objective must be the law.” (*Rodriguez v. United States* (1987) 480 U.S. 522, 525-526 (*per curiam*); accord *County of Sonoma v. Cohen* (2015) 235 Cal.App.4th 42, 48.) In fact, section 27535 contains 13 different exceptions to the general purpose of preventing the purchase of multiple handguns. These exemptions cover persons ranging from law enforcement agencies to entertainment production companies. (§ 27535, subd. (b).) Interestingly, the legislative history defendants cite also discusses whether these exemptions effectively gut the bill.⁷ (Assem. Com. on Public Safety, Analysis of Assem. Bill. No. 202 (1999-2000 Reg. Sess.) as amended Mar. 10, 1999, pp. 4-5.) And as plaintiffs note, the exemption at issue in this case is described in the legislative history as applying to collectors without any indication of a further limitation on the type of handguns that may be purchased: “Those exempt institutions, persons and situations include: [¶] . . . [¶] j) Any licensed collector.” (*Ibid.*) Defendants have “not established that [their] interpretation follows directly and inescapably from the pertinent provisions of law.” (*Morning Star, supra*, at p. 340.) As such, the exception to the rulemaking provisions of the APA set forth in Government Code section 11340.9,

⁷ This legislative analysis concludes the exemptions do not gut the bill because they “are salutary because they encourage a person who may be involved lawfully in multi-gun exchanges to go to a licensed dealer, or to the local sheriff, in order to facilitate the exchange.” (Assem. Com. on Public Safety, Analysis of Assem. Bill. No. 202 (1999-2000 Reg. Sess.) as amended Mar. 10, 1999, p. 4.) And “[d]espite the exemptions, the bill still hinders bulk purchase straw transactions by limiting applications for concealable firearms to one application per 30-day period.” (*Ibid.*)

subdivision (f), governing statutes with only one possible interpretation, does not apply and the policy reflected in the 2014 letter from Chief Lindley is invalid. (*Morning Star*, *supra*, at p. 340.)

C. *Application of the Licensed Collector Exemption*

“[A]lthough the court must void an interpretive regulation that does not comply with the APA procedures, it may resolve the ambiguity that gave rise to the agency interpretation if it is not required to defer to the agency construction.” (*Capen v. Shewry* (2007) 155 Cal.App.4th 378, 391.) We conclude we are in as good a position as DOJ to interpret the statutory language and, accordingly, we exercise our authority to address the proper construction of section 27535 in order to resolve plaintiffs’ claim that DOJ’s interpretation is inconsistent with statute. (See *Capen v. Shewry*, *supra*, at p. 383.)

While the trial court correctly observed that DOJ has expertise in the enforcement of firearms laws, the interpretation of section 27535, subdivision (b)(9) does not call upon this administrative expertise. The question in this case is whether a person “is licensed” if they have a valid federal license, but that license cannot be used for the transaction in question. As to this particular question of statutory interpretation there is no reason to believe the Bureau of Firearms has “ ‘a comparative interpretive advantage over the courts.’ ” (*Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 12.)⁸ For this reason, we resolve the question of how to properly interpret section 27535 without deferring to DOJ’s administrative interpretation.

⁸ “[E]vidence that the agency ‘has consistently maintained the interpretation in question, especially if [it] is long-standing’ . . . , and indications that the agency’s interpretation was contemporaneous with legislative enactment of the statute being interpreted,” are factors to consider in determining whether an agency’s interpretation is probably correct. (*Yamaha Corp. of America v. State Bd. of Equalization*, *supra*, 19 Cal.4th at p. 13.) Thus, contrary to the trial court’s suggestion, the 2005 email is relevant to those factors because it suggests the interpretation in the 2014 letter from Chief Lindley was neither long-standing nor contemporaneous with the enactment of AB 202. But, in this case, the

Where, as here, “the words of the statute themselves provide no definitive answer, it is appropriate to refer to extrinsic sources for evidence of legislative intent.” (*Long Beach Police Officers Assn. v. City of Long Beach* (1988) 46 Cal.3d 736, 743.) We look to the legislative history and well-settled principles of statutory construction. (*Id.* at p. 746.) “The words of a statute must be construed in context, keeping in mind the statutory purpose, and statutes or statutory sections relating to the same subject must, to the extent possible, be harmonized, both internally and with each other.” (*Ibid.*)

Plaintiffs note that, in other statutes, the Legislature has specified that exemptions relating to licensed collectors only apply to transactions involving a firearm that is a curio or relic under 27 Code of Federal Regulations part 478.11. Plaintiffs specifically identify sections 26970, 27966, and 31700 as examples. They use these statutes to invoke the “ ‘well recognized principle of statutory construction that when the Legislature has carefully employed a term in one place and has excluded it in another, it should not be implied where excluded.’ ” (*Brown v. Kelly Broadcasting Co.* (1989) 48 Cal.3d 711, 725.)⁹ Plaintiffs effectively argue that the Legislature knows how to limit an exception to transactions involving firearms that are curios or relics when that is the Legislature’s intent. The principle of statutory construction that supports this interpretation “applies only when the Legislature has intentionally changed or excluded a term by design [citation], and it is only when different terms are used in parts of the *same* statutory scheme that they are presumed to have different meanings.” (*Smith v. Rae-Venter Law*

argument that the letter’s interpretation is entitled to deference fails at the threshold because the Bureau of Firearms does not have an interpretive advantage over the court. (*Id.* at pp. 12-13 [explaining the two categories of factors].)

⁹ “[T]he principle always is subordinate to legislative intent.” (*Silverbrand v. County of Los Angeles* (2009) 46 Cal.4th 106, 126.) Defendants argue the statute is not ambiguous and there is a discernible and contrary legislative intent. But, as set forth above, the statute is at least susceptible to plaintiffs’ interpretation and we reject the notion that there is a discernible and contrary legislative intent.

Group (2002) 29 Cal.4th 345, 364, superseded by statute on other grounds.) At least one of the statutes identified by plaintiffs meets these criteria. Section 26970, has origins pre-dating AB 202 and provides an exception that is similar to the licensed collector exemption other than the fact section 26970 states explicitly that it only applies when the firearm involved is a curio or relic. (§ 26970, subd. (a).)¹⁰ Sections 26970 and 27535 embrace similar subject matter and demonstrate the Legislature's awareness of how to exempt only transactions involving curios and relics. (See *In re Khalid H.* (1992) 6 Cal.App.4th 733, 736 ["When a statute omits a provision which another statute embracing a similar subject includes, a different legislative intent for each statute is indicated"]; accord *Hennigan v. United Pacific Ins. Co.* (1975) 53 Cal.App.3d 1, 8.) We therefore conclude the Legislature's drafting of the licensed collector exemption in section 27535, subdivision (b)(9), with no reference to the type of handgun purchased, suggests an intent to exempt purchases of any type of handgun.

In support of this interpretation, plaintiffs also rely on the legislative history of Assembly Bill No. 532 (1997-1998 Reg. Sess.) (AB 532), an unsuccessful earlier version of AB 202, which explained the bill would not affect, "The 400 some odd California federally licensed collectors as to any firearm acquisition."¹¹ (Assem. Com. on Public

¹⁰ Section 26970, subdivision (a), sets forth an exception to the 10-day waiting period for purchasing a firearm where: "(1) The firearm is a curio or relic, as defined in Section 478.11 of Title 27 of the Code of Federal Regulations, or its successor. [¶] . . . [¶] (3) The sale, delivery, loan, or transfer is made to a person who is licensed as a collector pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto. [¶] (4) The licensed collector has a current certificate of eligibility issued by the Department of Justice pursuant to Section 26710." This exception was originally signed into law in 1996 and codified in former section 12078, subdivision (t)(1). (Stats. 1996, ch. 668, § 1; see Stats. 2010, ch. 711, § 6 [statutory reorganization].)

¹¹ Plaintiffs also cite to notes relating to AB 532 from the files of the author of both bills. "[T]he statements of an individual legislator, including the author of a bill, are generally

Safety, Analysis of Assem. Bill No. 532 (1997-1998 Reg. Sess.) Apr. 8, 1997 [proposed amendment], p. 5.) “As a general rule, unpassed legislation provides ‘ “very limited guidance” ’ when interpreting existing legislation. [Citation.] However, in some circumstances it may be a reliable indicator of existing legislative intent.” (*Joannou v. City of Rancho Palos Verdes* (2013) 219 Cal.App.4th 746, 761; see also *Cuevas v. Contra Costa County* (2017) 11 Cal.App.5th 163, 177 [“here the predecessor bills are instructive”].) For instance, this court has previously relied on legislative history of a predecessor bill that had been vetoed by the Governor and was “virtually identical” to the legislation at issue. (*City of Richmond v. Commission on State Mandates* (1998) 64 Cal.App.4th 1190, 1199.) Another appellate court has deemed an expressed relationship between predecessor bills and the statute to be interpreted sufficient to make the legislative history surrounding the unpassed predecessor bills instructive. (See *Cuevas v. Contra Costa County, supra*, at p. 177 [concluding unpassed predecessor bills were instructive “because the Assembly Committee on Judiciary acknowledged the relationship between Assem. Bill 1 and its predecessor bills, stating that Assem. Bill 1 ‘incorporates the concepts or language of the following assembly bills introduced during the regular or special session,’ referencing [predecessor bills]”].) We therefore take the view that the legislative history of unpassed bills can, depending on the circumstances, provide some guidance.

Accordingly, we approach the legislative history of AB 532 with caution because the bill died on the Assembly floor and was not considered by the Senate. But at the time of the relevant committee hearing, the Assembly Committee on Public Safety was considering a proposed amendment that added language identical to the licensed collector exemption eventually enacted by AB 202. (Assem. Amend. to Assem. Bill No. 532

not considered in construing a statute, as the court’s task is to ascertain the intent of the Legislature as a whole in adopting a piece of legislation.” (*Quintano v. Mercury Casualty Co.* (1995) 11 Cal.4th 1049, 1062.)

(1997-1998 Reg. Sess.) April 15, 1997, § 2.) Further, the legislative history of AB 202 explains that it is “substantially similar” to AB 532. (Assem. Com. on Public Safety, Analysis of Assem. Bill. No. 202 (1999-2000 Reg. Sess.) as amended Mar. 10, 1999, p. 5.) Under these circumstances, we conclude there is some value to the legislative history of AB 532, and it reinforces our conclusion that the exemption applies to licensed collectors regardless of the type of handgun purchased.

The general purpose of section 27535 to prevent straw transactions does not persuade us otherwise. As plaintiffs observe, other statutes prohibit straw transactions directly. (§§ 27515, 27520, 27590, subd. (c)(1).) In fact, these prohibitions pre-date AB 202, and AB 202 was originally added to the same statute (former section 12072) that prohibited straw transactions generally. (Stats. 1999, ch. 128, § 2.) While prohibiting the purchase of more than one handgun in 30 days may further impede straw transactions, we cannot conclude that exempting individuals who have gone through the federal licensing process and obtained a certificate of eligibility from DOJ is absurd or necessarily contrary to the Legislature’s intent. This is, perhaps, especially true given the range of other exceptions the Legislature chose to include in section 27535. We express no opinion on whether the interpretation advanced by DOJ is a wise policy choice. Our analysis is limited to whether DOJ’s interpretation is allowed by the statute that was enacted by the Legislature.

The language of section 27535, its context, and the relevant legislative history together evince an intent to exempt all transactions involving licensed collectors who have a certificate of eligibility from DOJ despite the statute’s general goal of preventing straw transactions. We conclude section 27535, subdivision (b)(9) must be interpreted accordingly.

III. DISPOSITION

The judgment is reversed and the cause is remanded to the trial court for further proceedings consistent with the views stated herein. Plaintiffs Alvin Doe and Paul A. Gladden shall recover their costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1) & (2).)

/S/

RENNER, J.

We concur:

/S/

HULL, Acting P. J.

/S/

DUARTE, J.