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May 18, 2017

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Jacqueline Dosch
Department of Justice
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VIA E-MAIL AND U.S. MAIL

**Re: "BULLET-BUTTON ASSAULT WEAPONS" REGULATIONS
PUBLIC RECORDS ACT VIOLATIONS**

Dear California Department of Justice (DOJ) and Office of Administrative Law (OAL):

On behalf of my clients Firearms Policy Coalition, Inc., Firearms Policy Foundation, Inc., The Calguns Foundation, Inc., and California Association of Federal Firearms Licensees, Inc., I write you today regarding the proposed "Bullet-Button Assault Weapons" regulations listed on OAL's Web site for submitted regulations (OAL Deadline 6/26/2017; OAL File # 2017-0512-02; "File and Print Only (FP)") (the "submitted regulations").

Currently, both the DOJ and OAL are infringing the constitutional right of access to the conduct of the people's government and denying review of the text of these submitted regulations, as they have through their various agents and representatives requested both copies of the proposed "Bullet-Button Assault Weapons" regulations and the ability to physically inspect the proposed regulations in person – and been denied. The submitted regulations—submitted with the "file & print" designation—will affect millions of law-abiding Californians and the rulemaking process should not be conducted in secret. The submitted regulations should be made public and subject to scrutiny; to do otherwise is un-democratic.

Access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state. Cal. Gov. Code § 6250.

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The people have the right of access to information concerning the conduct of the people's business, and, therefore . . . agencies shall be open to public scrutiny. Cal. Const., Art. I, § 3, subd. (b)(1).

Unless one of the exceptions stated in the Act applies, the public is entitled to access to “any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency.” (§ 6252, subd. (e); see § 6253, subd. (a).)

Section 6253 of the California Public Records Act provides, in part:

[. . .] (b) [e]xcept with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person upon payment of fees covering direct costs of duplication, or a statutory fee if applicable. Upon request, an exact copy shall be provided unless impracticable to do so.

POET, LLC v. State Air Resources Bd. (2013) 218 Cal.App. 4th 681 held:

The Administrative Procedures Act (APA; Gov. Code, § 11340 et seq.) requires state agencies to maintain a record of the rulemaking proceeding (Gov. Code, § 11347.3, subd. (a)). That record is referred to as the rulemaking file. Rulemaking file requirements are outlined in § 11347.3, subdivision (b). The rulemaking file is used by the state agency and must be made available to others—namely, the public, the Office of Administrative Law, and the courts (§ 11347.3, subs. (c), (d)). The public-availability requirement is in effect throughout the rulemaking proceedings (§ 11347.3, subs. (a), (d)). No later than the date that the notice of the proposed action is published in the California Regulatory Notice Register, and during all subsequent periods of time that the file is in the agency's possession, the agency must make the file available to the public for inspection and copying during regular business hours (§ 11347.3, subd. (a)).

While Penal Code section 30900(b)(5) states that “The department shall adopt regulations for the purpose of implementing this subdivision. These regulations are exempt from the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code),” the provision does not exempt it from the Public Records Act.

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More significantly, the legislative exemption to the procedural aspects of doing the people's business did not—and cannot—override the Constitutional right to access to information concerning the people's business provided in Art. I, § 3, subd. (b)(1).

Though the exemption provided in Penal Code section 30900(b)(5) may have altered what is required to be in the rulemaking records, the records themselves are still subject to inspection and copying by the public.

Additionally, the DOJ and OAL's actions of establishing secret policies through the "file & print" rulemaking process is improper for all regulations relating to "assault weapons" except those necessary for *implementing* the registration system. Specifically, California Penal Code Section 30900(b)(5) states that the DOJ "shall adopt regulations for the purpose of implementing this subdivision," and that those "regulations are exempt from the Administrative Procedure Act" (the "APA").

It is only those regulations necessary for implementing subdivision (b) that are exempt from the APA rulemaking process. No other regulations are exempt from the APA rulemaking process. Thus, only those regulations necessary for the following to be implemented are exempt from the APA:

- The fulfillment of the duty to register specified, law-fully possessed "assault weapons". ("Any person who, from January 1, 2001, to December 31, 2016, inclusive, lawfully possessed an assault weapon that does not have a fixed magazine, as defined in Section 30515, including those weapons with an ammunition feeding device that can be readily removed from the firearm with the use of a tool, shall register the firearm before January 1, 2018, but not before the effective date of the regulations adopted pursuant to paragraph (5), with the department pursuant to those procedures that the department may establish by regulation pursuant to paragraph (5). Penal Code § 30900(b).)
- The creation of an electronic, Internet-based registration system for "assault weapons". ("Registrations shall be submitted electronically via the Internet utilizing a public-facing application made available by the department." Penal Code § 30900(b)(2).)
- The collection of specific, statutorily-defined information within the electronic, Internet-based registration system. ("The registration shall contain a description of the firearm that identifies it uniquely, including all identification marks, the date the firearm was acquired, the name and address of the individual from whom, or business from which, the firearm was acquired, as well as the registrant's full name, address, telephone number, date of birth, sex, height, weight, eye color, hair color, and California driver's license number or California identification card number." Penal Code § 30900(b)(3).)
- The collection of allowable fees for processing registrations within the electronic, Internet-based registration system. ("The department may charge a fee in an amount of up

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to fifteen dollars (\$15) per person but not to exceed the reasonable processing costs of the department. The fee shall be paid by debit or credit card at the time that the electronic registration is submitted to the department. The fee shall be deposited in the Dealers' Record of Sale Special Account to be used for purposes of this section." Penal Code §30900(b)(4).)

As such, the Office of Administrative Law should reject any and all improperly submitted regulations.

Further, we demand that the proposed regulations cited herein be made available for public inspection immediately by both the Department of Justice and the Office of Administrative Law. We recommend that the Department of Justice: (1) withdraw the submitted regulations submitted in secrecy; (2) seek sufficient public and stakeholder input through the normal Administrative Procedures Act rulemaking process; and, (3) craft appropriate, legally sound regulations.

If you have any questions or concerns, do not hesitate to contact me at the number above.

Sincerely,

THE DAVIS LAW FIRM

s/ Jason Davis

JASON DAVIS