Case No. C081994

COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT

ALVIN DOE AND PAUL A. GLADDEN,

Plaintiffs and Appellants,

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 and Respondents.

Appeal from the Superior Court for the County of Sacramento
Case No. 34-2014-00163821
Hon. David I. Brown

APPELLANTS' REPLY BRIEF

Benbrook Law Group, PC
Bradley A. Benbrook (177786)
Stephen M. Duvernay (250957)
400 Capitol Mall, Ste. 2530
Sacramento, CA 95814
Telephone: (916) 447-4900
Facsimile: (916) 447-4904
steve@benbrooklawgroup.com

Attorneys for Appellants
Alvin Doe and Paul A. Gladden

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TABLE OF CONTENTS

REPLY BRIEF 5

1. The Bureau Makes Contradictory Arguments Regarding The Need For Rules Of "Construction" Here. 6

2. Even If Rules Of Construction Apply Here, They Strongly Support Appellants. 11

    a. The Bureau Repeats The Same Argument In The Guise Of Consulting Legislative History. 14

    b. The Legislature Understands The Difference Between Regulating The Activities Of Federal Collectors And Regulating The Purchase Of Curio And Relic Firearms. 18

3. The 2005 Merrilees E-Mail Is Relevant Because It Accurately Set Forth The Bureau's Prior "Longstanding" Interpretation Of The FLC Exemption. 20

4. If The FLC Exemption Is Susceptible To The Bureau's Interpretation, It Is Plainly Not The Only Legally Tenable Interpretation, So The APA Applies. 22

CONCLUSION 24

TABLE OF AUTHORITIES

Cases

Abramski v. United States,
134 S. Ct. 2259 (2014)........15

Comm. for Green Foothills v. Santa Clara Cty. Bd. of Supervisors,
48 Cal. 4th 32 (2010)........23

Copley Press, Inc. v. Super. Ct.,
39 Cal. 4th 1272 (2006)........6, 7

Dyna-Med, Inc. v. Fair Emp't & Hous. Comm'n,
43 Cal. 3d 1379 (1987)).........16, 18

Flannery v. Prentice,
26 Cal. 4th 572 (2001)........12

Fluor Corp. v. Super. Ct.,
61 Cal. 4th 1175 (2015)........7

J.M. v. Huntington Beach Union High Sch. Dist.,
2 Cal. 5th 648 (2017)........5

Lolley v. Campbell,
28 Cal. 4th 367 (2002)........17

Marina Point, Ltd. v. Wolfson,
30 Cal. 3d 721 (1982) 16

Morning Star Co. v. State Bd. of Equalization,
38 Cal. 4th 324 (2006)........23, 24

Sacramento Newspaper Guild v. Sacramento Cty. Bd. Of Supervisors,
263 Cal. App. 2d 41 (1968) 16

Shirk v. Vista Unified Sch. Dist.,
42 Cal. 4th 201 (2007)........7, 11

Statutes

11 Cal. Code Regs. § 4031 10

18 U.S.C. § 922 15

Evid. Code § 412 21

Evid. Code. § 413 21

Cal. Gov. Code § 11340.9 22

Cal. Penal Code § 2697 18

Cal. Penal Code § 27590 15

Cal. Penal Code § 27535 .... 5, 8

Other Authorities

3 Witkin, Cal. Evid.
(5th ed. 2012), § 129 21

REPLY BRIEF

This case is about enforcing the limitations on the administrative branch of government when it decides it isn't bound by the laws passed by the Legislature and signed by the Governor. Here, the Bureau of Firearms (the "Bureau"), through its May 2014 "Information Letter," flouts two such laws: (1) the Federally-Licensed Collector exemption in Penal Code 27535(b)(9) (the "FLC Exemption"), which the Bureau had interpreted according to its text for 15 years, until it decided in 2014 that such an interpretation was a "loophole" that could lead to bad policy results, and (2) the Administrative Procedure Act, which requires administrative agencies hoping to enact a new regulation to, among other things, justify their interpretation of the law in an open, public process.

The Bureau acknowledges that Appellants' reading of the text of FLC Exemption is literally correct. Resp. Br. at 16. Because the FLC Exemption is not ambiguous, the Bureau's plea for application of rules of "construction" are misplaced. When, as here, the law is not ambiguous, rules of construction simply do not apply. *J.M. v. Huntington Beach Union High Sch. Dist.*, 2 Cal. 5th 648, 654 (2017).

The entire gist of the Bureau's argument remains as follows: The literal reading of the FLC Exemption could lead to bad policy results,

which we all know the Legislature would not like, so why go to the trouble of having the Legislature change the law when a policy advisory can do the same thing? Moreover, the Bureau claims, we need not worry about following the Administrative Procedure Act because this new policy-enlightened "interpretation" of the FLC Exemption is the "only legally tenable" interpretation of the law. Never mind that the very same Bureau that issued the new policy advisory had applied the literal reading of the FLC Exemption for years.

Thus the need for this lawsuit. If the Legislature agrees with the Bureau's policy worries, it can change the law. Until that time, the Bureau must operate within the boundaries of California law. Because the new regulation imposed in the Bureau's May 2014 "Information Letter" alters the scope of the FLC Exemption, it is void.

1. The Bureau Makes Contradictory Arguments Regarding The Need For Rules Of "Construction" Here.

The Bureau's argument is confusing. The Respondents' Brief first appears to embrace the need for statutory construction by asking the Court to intervene and "select [a] <u>construction</u> [of the law] that comports most closely with the Legislature's apparent intent" and "general purpose" for the law to avoid "unreasonable" results. Resp. Br. at 15 (quoting *Copley Press, Inc. v. Super. Ct.*, 39 Cal. 4th 1272, 1291

(2006)) (emphasis added). Later, however, the Bureau claims that "[r]ules of statutory construction . . . are only applicable, unlike here, in the event of statutory ambiguity or uncertainty." Resp. Br. at 18.

Indeed, rules of "construction" do not apply when the plain meaning of a statute is unambiguous. Courts "begin with the statutory language because it is generally the most reliable indication of legislative intent. If the statutory language is unambiguous, [courts] presume the Legislature meant what it said, and the plain meaning of the statute controls." *Shirk v. Vista Unified Sch. Dist.*, 42 Cal. 4th 201, 211 (2007) (citations omitted); *see also Fluor Corp. v. Super. Ct.*, 61 Cal. 4th 1175, 1198 (2015) ("The plain meaning controls if there is no ambiguity in the statutory language.") (citation omitted). Thus, in *Copley*, which the Bureau cites, the California Supreme Court only looked beyond the plain language of the statute after determining that the statutory language was not clear. 39 Cal.4th at 1291 (considering broader policy implications because the "examination of the statutory language leaves uncertainty," and "more than one statutory construction is arguably possible"); *id.* at 1299 n.22 (responding to dissent, and explaining that it adopted a "reasonable construction" of the statute after finding ambiguities in the statutory language).

There is no ambiguity here, so rules of construction do not apply. The Opening Brief showed in detail that the exemption to the 1-in-30 rule applies to a "person" holding a federal collectors license and a state-issued Certificate of Eligibility ("COE"), and that the exemption does not limit the types of handguns such a "person" can purchase. Opening Br. at 20–32.

Before conceding that Appellants' reading of the statute is actually correct, the Bureau makes a half-hearted attempt at showing that the plain meaning of the text supports the result urged in the May 2014 Information Letter. The Bureau claims that the FLC Exemption "*incorporate*[*s*] the federal law *concerning* the licensing of the acquisition, holding and disposition of curio and relic firearms," so therefore the FLC Exemption should be limited to cover only the purchase of curio and relic firearms. Resp. Br. at 13 (emphasis added).

But Section 27535(b)(9)'s exemption does no such thing. It states plainly that the basic prohibition "shall not apply to" "any person who is licensed as a collector . . . and has a current certificate of eligibility issued by the [California] Department of Justice." Penal. Code § 27535(b)(9). The statute thus references the federal law to define the type of "persons" who are exempt from the general prohibition on the purchase of one handgun of any type in 30 days: those holding the

federal collectors license and a state-issued certificate of eligibility. And the statute nowhere purports to "incorporate" any federal rules as a separate limitation on the scope of the exemption. The exemption in subdivision (b)(9), like every other exemption in (b)(1) through (13), says nothing about limiting the type of handguns that may be purchased.[1]

The Bureau eventually concedes that Appellants' "literal interpretation" of the statute is correct. Resp. Br. at 16. But it argues that the Court should nevertheless depart from the statute's plain meaning because, in the Bureau's view, the statutory text is actually inconsistent with the Legislature's intent in enacting the 1-in-30 restriction and could lead to dangerous and "absurd" results. Resp. Br. at 14–16. Despite many years of following that "literal interpretation" of the law, the Bureau decided that was too "hyper technical" and should be rejected due to its new policy fears of what might happen.

On this score, it is surely worth noting that the Bureau cites no example of a single licensed collector eligible to use the exemption actually engaging in any of the sort of behavior it fears. After all, it

[1] The Bureau does not respond to Appellants' argument that both the Information Letter and the Superior Court misinterpreted federal law. *See* Opening Br. at 26 n.8.

decides whether individuals are eligible to exercise the exemption in the first instance by issuing a COE to a federally-licensed collector after conducting a background check. *See* 11 Cal. Code Regs. § 4031(g). Indeed, during discovery, Appellants specifically asked the Bureau to provide evidence supporting its claim that the FLC Exemption was being used to facilitate straw purchases, including evidence supporting its assertion that the FLC Exemption was being used to "acquire mass quantities of modern handguns for resale." CT 319–46. The Bureau refused to provide any substantive response and otherwise failed to identify any evidence supporting these claims. CT 319–22, 347–82.

Moreover, the Bureau confirmed in its May 2014 Information Letter that it would cancel any future transactions involving purchases it deemed in violation of its new interpretation of the FLC Exemption. CT 15. That the Bureau has the ability to monitor and cancel such transactions through its real-time reporting system of firearms purchases[2] is likewise noteworthy: Despite having all the information

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[2] The Bureau regulates firearm sales and transfers through the Dealer's Record of Sale ("DROS") system, a computerized, point-of-sale application system firearms dealers use to submit applications to purchase firearms to the Bureau. California law requires that "any sale, loan, or transfer of a firearm" be made through a licensed dealer; these transactions are all processed through the DROS entry system. *See* Penal Code §§ 27545, 28050(a); *see also* 11 Cal. Regs. § 4200, et seq.

of such purchases at its fingertips, the Bureau conspicuously fails to disclose how often the exemption has been used in the past. It prefers instead to make the incongruous claim that the very same collectors that the Bureau and BATFE check, approve, and monitor are probably inclined to engage in the independent crime of committing "straw purchases." *See also infra.*

In any event, while the Legislature surely "meant what it said" when it drafted the FLC Exemption, *Shirk*, 42 Cal. 4th at 211, appellants nevertheless address the Attorney General's argument that statutory construction is appropriate here.

2. Even If Rules Of Construction Apply Here, They Strongly Support Appellants.

The Bureau's primary attempt at a "construction" argument is wrong. The Bureau argues that Appellants' plain-language interpretation is "contrary" to the Legislature's "apparent intent." Resp. Br. at 15. Why? Because the broad goal of the 1-in-30 statute is limiting access to handguns and limiting "straw purchases" in particular, and if a person with a "mere" federal collector license and a state-issued COE were not limited by the 1-in-30 prohibition, they could buy a lot of handguns. Resp. Br. at 15. The Bureau's use of the value-laden term "mere" perfectly encapsulates this dispute: the Bureau thinks as a

matter of policy that the exempt status the Legislature actually chose—a person holding a federal license and a state-issued COE, "mere" or otherwise—should not be an exemption at all.

The Bureau loses the forest for the trees. The very point of an exemption in this context is to remove the 1-in-30 limitation that would otherwise apply. By definition, an exemption runs counter to the overriding "purpose" of the law. Thus, Appellants agree with the Bureau's observation that "courts do not construe particular provisions in isolation without regard to their context within the statutory scheme," Resp. Br. at 13 (citing *Flannery v. Prentice*, 26 Cal. 4th 572, 578 (2001)).

The "context" here is an exemption. Under the Bureau's logic, it could ignore every other exemption to the 1-in-30 requirement because it is "contrary to the apparent intent" of the statute. There is nothing "absurd" about letting an exemption take effect.

All the more so when considering the evidence of the Legislature's understanding of the breadth of the FLC Exemption. Whereas the Bureau tries to create the impression that applying the plain meaning of the FLC Exemption poses grave risks of widespread abuse, the Assembly Committee on Public Safety understood that the number of people holding federal collector's licenses in California was

very small. In 1997, when considering the original version of a 1-in-30 limitation with an identical exemption for federal collectors, the committee noted that the 1-in-30 rule would not affect "[t]he 400 some odd California federally licensed collectors . . . ." CT 201, Assem. Comm. on Public Safety, Analysis of Assem. Bill 532 for April 8, 1997 hearing (1997–1998 Reg. Sess.), at 5. The Legislature thus understood that there simply were not that many collectors.[3] Considering the extensive background check and ongoing vetting required to maintain a federal collector's license, not to mention the Bureau's own ongoing oversight of these same people through issuance and maintenance of a COE, *see* Opening Br. at 11–14, it is hardly "absurd" to allow the legislative grant of an exemption to take effect.

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[3] Appellants do not, in this respect, rely on the AB 532 committee report as "legislative history" for the meaning of the FLC Exemption, *see* Resp. Br. at 18–19 (arguing that "unpassed bills, as evidence of legislative intent, have little value"). Rather, it is evidence that allowing the exemption to take effect would hardly be "absurd." The Attorney General cannot argue that literal application of the FLC Exemption would lead to "absurd" risks while at the same time trying to prevent the Court from considering evidence of just how limited the exemption really is.

a. The Bureau Repeats The Same Argument In The Guise Of Consulting Legislative History.

Repeating the same theme, the Bureau argues that legislative intent should be consulted "[w]hen it appears that a literal interpretation of a statute may lead to absurd results." Resp. Br. at 16. Again, the Bureau argues that legislative history shows the 1-in-30 rule was enacted to reduce straw purchases of handguns, so allowing licensed collectors to rely on the FLC Exemption when purchasing modern handguns is inconsistent with that goal. Resp. Br. at 16–17. But the Bureau points to no legislative history whatsoever suggesting that the FLC Exemption was intended to accomplish this "straw purchase reduction" goal by applying only to curio and relic purchases. To the contrary, as shown in the Opening Brief, the language points in the opposite direction. *See* Opening Br. at 28–30. The legislative history shows that the Legislature understood that the FLC Exemption would exempt a "person" from the 1-in-30 law based on their status as a licensed collector, not based on the type of firearm they were purchasing. *See id.* (reviewing legislative history of AB 202). And legislative history of a related bill leaves no doubt that the Legislature specifically understood that the FLC exemption would apply to "any firearm acquisition." Opening Br. at 29–30; *see also* Opening Br. at 30,

CT 205 (author's notes explaining that the exemption would "permit[] serious collectors of new handguns [to] go through the federal licensing process . . . to qualify as an exempt party").

The Bureau goes so far as to argue that, if the "literal interpretation" prevails, "there would be nothing to prevent licensed curio and relic firearms collectors from acting as 'straw purchasers' because they would be able to purchase unlimited amounts of modern handguns." Resp. Br. at 17 (emphasis added). In its hyperbole, the Bureau overlooks that a separate provision of the Penal Code criminalizes straw purchases, and some violations may be punished as a felony. *See* Penal Code §§ 27590, 27515, 27520. Federal law likewise imposes several prohibitions targeting straw purchases. *E.g.*, 18 U.S.C. § 922(a)(6) (unlawful to make false or fictitious statements on an application to purchase a firearm); *id.*, subd. (d) (unlawful to transfer a firearm to a person prohibited from possessing or purchasing them); *see* *Abramski v. United States*, 134 S. Ct. 2259 (2014) (upholding straw purchase conviction under 18 U.S.C. § 922(a)(6)). That is something dissuading those eligible to use the FLC Exemption from engaging in straw purchase transactions. Indeed, the Bureau likewise overlooks that the class of people eligible for this exemption have, by definition and law, already been vetted by the BATFE in order to obtain and

maintain a federal collector license and by the Bureau itself in the issuance of a COE. It is thus not surprising that the Bureau cannot cite a single instance of a federal collector engaging in a "straw transaction."

The Opening Brief cited AB 532, a 1977 predecessor to the 1999 enactment of AB 202's 1-in-30 legislation. When the Assembly Committee on Public Safety considered adding language identical to the FLC Exemption, it observed that "[a]s drafted and proposed to be amended, the bill does not affect" "[t]he 400 some odd California federally licensed collectors as to any firearm acquisition." CT 201.

The Bureau argues that this observation of the Assembly Committee should be ignored because "unpassed bills, as evidence of legislative intent, have little value." Resp. Br. at 19 (citing *Dyna-Med, Inc. v. Fair Emp't & Hous. Comm'n*, 43 Cal. 3d 1379, 1396 (1987)). This is a correct but inapplicable statement of the rule, which appears to only arise when a litigant argues that the Legislature failed to change the content of the law after its enactment. *See*, *e.g.*, *Dyna-Med,* 43 Cal.3d at 1396 (1987) (rejecting argument based on legislative history of failed attempts to amend statute or modify existing statutory scheme); *Marina Point, Ltd. v. Wolfson*, 30 Cal. 3d 721, 735 & n.7 (1982) (rejecting argument that Legislature's attempted amendment of

Unruh Act bore on meaning of prior enactment); *Sacramento Newspaper Guild v. Sacramento Cty. Bd. Of Supervisors*, 263 Cal. App. 2d 41, 58 (1968) ("The unpassed bills of later legislative sessions evoke conflicting inferences. . . . The light shed by such unadopted proposals is too dim to pierce statutory obscurities."). Indeed, the Bureau elaborates on the rule by saying "[c]ourts can rarely determine from the failure of the Legislature to pass a particular bill what the intent of the Legislature is with respect to existing law." Resp. Br. at 19 (citing *Lolley v. Campbell*, 28 Cal. 4th 367, 378–79 (2002) (rejecting legislative history argument based on language deleted from proposed amendment to existing statutory scheme)).

The Assembly Committee Report is obviously not an "unpassed bill" purporting to address the meaning of the FLC Exemption after it was passed. Appellants simply cite the Assembly Committee report as evidence of what the Legislature understood the FLC Exemption to mean before it passed the very same FLC Exemption two years later.

In short, the pertinent legislative history demonstrates that the Legislature knew full well that licensed collectors would not be limited to purchasing only curios and relics under the exemption. The Bureau cannot change the law because it thinks it is bad policy.

b. The Legislature Understands The Difference Between Regulating The Activities Of Federal Collectors And Regulating The Purchase Of Curio And Relic Firearms.

Appellants showed in the Opening Brief that the Legislature has demonstrated that when it intends to regulate the transfer and sale of curios and relics, it does so expressly. Opening Br. at 27–28 (citing Penal Code §§ 26970, 31700, and 27966). In all of these cases, the Legislature specifically limited the statutes' reach to a "firearm" that "is a curio or relic." Indeed, *Dyna-Med*, a case on which the Bureau relies, recognizes this principle of statutory construction. 43 Cal. 3d at 1395 (rejecting state agency's statutory interpretation argument, and explaining that "[a] review of the relevant statutes discloses that when the Legislature intends to authorize an agency to award damages for discrimination, it does so expressly . . . .").

Rather than address the argument head-on, the Bureau reverses course and says this rule of construction shouldn't apply because the FLC Exemption is not ambiguous and therefore not subject to rules of construction. Resp. Br. at 18. Again, Appellants agree that the FLC Exemption is not ambiguous. If, however, the Bureau's initial resort to rules of construction is to be indulged, the Court should consider all applicable rules of construction.

Recent legislative activity only confirms the Legislature's ability to spell out, when it means to, the very sort of limitation urged here. The Legislature recently passed a bill that confirms its decision to exempt licensed collectors as a class was not a mistake. While this case was pending, the Legislature passed a bill extending the the 1-in-30 rule to long guns (that is, rifles and shotguns). Assem. Bill 1674 (2015-2016 Reg. Sess.).[4] Although Governor Brown ultimately vetoed the bill, it left the FLC Exemption intact and the committee reports universally explained that "existing law" "[e]xempts from the above 30-day prohibition" "[a]ny person who is a licensed collector and has a current certificate of eligibility issued by the Department of Justice (DOJ)." S. Rules Comm., June 24, 2016 Floor Analysis of Assem. Bill 1674 for Third Reading, Assem. Bill 1674 (2015-2016 Reg. Sess.), at 2; June 30, 2016 Assem. Floor Analysis, Assem. Bill 1674 (2015-2016 Reg. Sess.),

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[4] To this same end, Proposition 63, which enacted a statutory scheme that generally requires all ammunition purchases and transfers to be conducted through a licensed firearms dealer, added several substantively identical exemptions for licensed collectors—again, without limiting the scope of the exemption to purchases or transfers of ammunition for curios or relics. Penal Code §§ 30312(c)(6) (exempting "[a] person who is" a federally licensed collector with a current COE from requirement that "the sale of ammunition by any party shall be conducted by or processed through a licensed ammunition vendor"); 30314(b)(5) (exempting "[a] person who is" a federally licensed collector with a current COE from prohibition against transporting into California ammunition obtained out of state).

at 1. A pending bill holds this same line. *See* Assem. Comm. on Public Safety, Analysis of S. Bill 497 for June 27, 2017 hearing, S. Bill 497 (2017-2018 Reg. Sess.), at 2 ("Existing law exempts from the above 30-day prohibition" "[a]ny person who is a licensed collector and has a current certificate of eligibility . . . .").

3. The 2005 Merrilees E-Mail Is Relevant Because It Accurately Set Forth The Bureau's Prior "Longstanding" Interpretation Of The FLC Exemption.

The Bureau next argues that the Court should disregard the Merrilees e-mail, claiming that it is "irrelevant" to the interpretation of the FLC Exemption. But the Bureau has never addressed the critical and fundamental issue behind the e-mail: That it accurately stated the Bureau's "longstanding" interpretation of the exemption. In the trial court, the Bureau refused to engage in discovery on the subject, and did not directly confront the issue in the course of summary judgment. CT 425–26, 430–32, 470–74. Rather, it cagily avoided addressing whether Merrilees accurately described its former policy, and argued instead that Appellants had not "established" that her statement "constituted BOF's official policy." CT 305, DOJ Opp. Br. at 8 n.6. But the Bureau did not challenge Merrilees' authority to state BOF's policy at that time; when she wrote the e-mail, Merrilees served as legal counsel for the Firearms Division (later reorganized as the Bureau), responsible for

providing legal advice on the Bureau's behalf regarding the interpretation of state firearm laws. *See* CT 433–448, Dec. 17, 2007 Declaration of Alison Merrilees, *Hunt v. State of California*, Fresno Cnty. Super. Ct. Case No. 01CECG03182, at ¶ 2; RJN Ex. 9, March 5, 2010 Declaration of Alison Merrilees, *Zacharia v. City of Madera*, E.D. Cal. Case no. 1:06-CV-00892 AWI/SMS, at ¶ 1–2. And the Bureau has presented no evidence or argument to show that Merrilees was incorrect. Appellants sought discovery into the Bureau's prior policy, but it stonewalled—claiming that the interpretation of the statute presented "pure issues of law." CT 449–475.

The Bureau's failure to explain its policy or confront the evidence has consequences. The only inference that should be drawn from the Bureau's silence is that the September 2005 Merrilees e-mail accurately stated the Bureau's official policy at that time. Evid. Code. § 413 (trier of fact may consider a "party's failure to explain or to deny by his testimony such evidence or facts in the case against him"); *see also* Evid. Code § 412 ("If weaker and less satisfactory evidence is offered when it was within the power of the party to produce stronger and more satisfactory evidence, the evidence offered should be viewed with distrust."). "The nonproduction of evidence that would naturally have been produced by an honest and therefore fearless claimant permits the

inference that its tenor is unfavorable to the party's cause." 3 Witkin, Cal. Evid. (5th ed. 2012), § 129, p. 192.

4. If The FLC Exemption Is Susceptible To The Bureau's Interpretation, It Is Plainly Not The Only Legally Tenable Interpretation, So The APA Applies.

Appellants' argument is that the new regulation imposed in the May 2014 "Information Letter" is void because it alters the scope of the FLC Exemption. If, however, the Court concludes that the statute is susceptible to the Bureau's interpretation, the Bureau should have complied with the APA. On this point, the Bureau makes a brief, passing argument that it was not required to comply with the APA because its new position represents "the only legally tenable interpretation" of the FLC Exemption. Resp. Br. at 21–22 (relying on Gov. Code § 11340.9(f) (exempting from the APA "[a] regulation that embodies the only legally tenable interpretation of a provision of law")).[5] The Bureau offers no argument, other than to repeat the trial court's ruling.

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[5] Here, the State misunderstands how the APA works, claiming incorrectly that the interpretation is "not a 'regulation'"—and chiding Appellants for claiming that the State did not dispute that the change in policy constitutes a "regulation" under the APA. Resp. Br. at 22 & *id.* at 21 n.7. What the State means to argue is that even though the new policy is a "regulation" as defined by the APA, it is exempt from the APA's rulemaking requirements because it represents the only legally tenable interpretation of Section 27535(b)(9).

This is plainly wrong. The California Supreme Court has made clear that the exemption in Government Code § 11340.9(f) "applies only in situations where the law 'can reasonably be read only one way', 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." *Morning Star Co. v. State Bd. of Equalization*, 38 Cal. 4th 324, 336–37 (2006) (citations omitted). "[I]t cannot be the case that *any* construction, if ultimately deemed meritorious after a close and searching review of the applicable statutes, falls within the exception provided for the sole 'legally tenable' understanding of the law. Were this the case, the exception would swallow the rule." *Id.* at 336.

Even if the Court disagrees with the showing above and in the Opening Brief that the Bureau's new interpretation of the FLC Exemption is incompatible with the statute's express terms, it should be obvious that the new interpretation is not "patently compelled by, or repetitive of, the statute's plain language." First, the very fact that the Bureau urges the Court to use rules of "construction" here (even if in hot-and-cold fashion) is an admission that there is not a single "tenable" interpretation. Courts "consider extrinsic aids, such as legislative history, only if the statutory language is reasonably subject

to multiple interpretations." *Comm. for Green Foothills v. Santa Clara Cty. Bd. of Supervisors*, 48 Cal. 4th 32, 45 (2010).

Second, it took the trial court several pages of statutory analysis (even if it is incorrect) to rule in favor of the Bureau. That would be completely unnecessary if the Bureau's new position "in applying the law [was] essentially rote, ministerial, or otherwise patently compelled by" the statute. *Morning Star*, 38 Cal. 4th at 336–37.

And finally, the fact that the Bureau held the opposite position for several years is the icing on the cake.

This is plainly a regulation. If it is subject to the Bureau's interpretation of the FLC Exemption, the Bureau should have complied with the APA.

CONCLUSION

For the reasons set forth above and in the opening brief, this Court should reverse the judgment of the trial court.

Respectfully submitted,

Dated: August 7, 2017

By: s/ *Stephen M. Duvernay*
Stephen M. Duvernay

Attorneys for Appellants
Alvin Doe and Paul A. Gladden

CERTIFICATE REQUIRED BY RULE 8.204(c)(1)

The text of this brief is comprised of 4,429 words as counted by the Microsoft Word® software program used to prepare this brief.

Respectfully submitted,

Dated: August 7, 2017

By: s/ *Stephen M. Duvernay*
Stephen M. Duvernay

Attorneys for Appellants
Alvin Doe and Paul A. Gladden

PROOF OF SERVICE AND DELIVERY

I, Kelly Rosenbery, declare that:

I am an employee of the law firm of Benbrook Law Group, PC, 400 Capitol Mall, Suite 2530, Sacramento, California. I am over 18 years of age and am not a party to the within action.

On August 7, 2017, I submitted an electronic copy of Appellants' Reply Brief, to the Third District Court of Appeal through the Court's TrueFiling system.

On August 7, 2017, I served a copy of Appellants' Reply Brief on the interested parties to this action by mailing a copy of the original by U.S. mail as follows:

Hon. David I. Brown Gordon D. Schaber Sacramento County Courthouse 720 9th Street Sacramento, CA 95814	

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

s/ Kelly Rosenbery
Kelly Rosenbery