

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT

**ALVIN DOE and PAUL A. GLADDEN,**

Plaintiffs and Appellants,

v.

**XAVIER BECERRA, etc., et al.,**

Defendants and Respondents.

Case No. C081994

Sacramento County Superior Court, Case No. 34-2014-00163821  
The Honorable David I. Brown, Judge

**RESPONDENTS' BRIEF**

XAVIER BECERRA  
Attorney General of California  
MARC A. LEFORESTIER  
Acting Senior Assistant Attorney General  
STEPAN A. HAYTAYAN  
Supervising Deputy Attorney General  
JEFFREY A. RICH  
Deputy Attorney General  
State Bar No. 108589  
1300 I Street, Suite 125  
P.O. Box 944255  
Sacramento, CA 94244-2550  
Telephone: (916) 324-5154  
Fax: (916) 324-8835  
E-mail: Jeffrey.Rich@doj.ca.gov  
*Attorneys for Respondents*

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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
COUNTY OF SACRAMENTO**

Case Name: *ALVIN DOE and PAUL A. GLADDEN 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* Court of Appeal No.: C081994

**CERTIFICATE OF INTERESTED PARTIES OR ENTITIES OR PERSONS**

(Cal. Rules of Court, Rule 8.208)

(Check One) **INITIAL CERTIFICATE**  **SUPPLEMENTAL CERTIFICATE**

Please check the applicable box:

- There are no interested entities or persons to list in this Certificate per California Rules of Court, rule 8.208(d).
- Interested entities or persons are listed below:

Full Name of Interested Entity or Party	Party Check One	Non-Party	Nature of Interest (Explain)
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_____	[ ]	[ ]	_____
_____	[ ]	[ ]	_____

**The undersigned certifies that the above listed persons or entities (corporations, partnerships, firms or any other association, but not including government entities or their agencies), have either (i) an ownership interest of 10 percent or more in the party if an entity; or (ii) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).**

Attorney Submitting Form

JEFFRY A. RICH  
Deputy Attorney General  
State Bar No. 108589  
1300 I Street, Suite 125  
P.O. Box 944255  
Sacramento, CA 94244-2550  
Telephone: (916) 324-5154  
Fax: (916) 324-8835  
E-mail: Jeffrey.Rich@doj.ca.gov

Party Represented

Attorneys for Respondents

## INTRODUCTION

Under California law, Penal Code section 27535, subdivision (a), individuals may only purchase one handgun in a 30-day period. The 1-in-30 rule prevents individuals from amassing large arsenals of weapons in a short period of time, and prevents the diversion of weapons to the black market by “straw transactions.” Straw transactions involve eligible gun purchasers—straw purchasers—who buy several firearms and transfer them to other persons who do not have the legal ability to buy firearms. The proliferation of mass shootings, and the use of guns in the commission of crimes, is common knowledge and demonstrates that this restriction is important to public safety.

However, that statute provides a modest exemption to the “1-in-30 Rule” for purchases of curio and relic firearms (“C&R Exemption”). In this case, appellants challenge respondents’<sup>1</sup> interpretation of the C&R Exemption that it applies only to curio and relic firearms. They do this by advancing a construction of the Penal Code, divorced from the federal law incorporated therein and the statute’s purpose—to prevent straw transactions. Appellants’ interpretation is a hyper-technical, and counterintuitive reading of the C&R Exemption, that would result in absurd consequences. If appellants’ interpretation is adopted by this Court, the C&R Exemption would become a vast loophole that would swallow the 1-in-30 Rule, and negate the Legislature’s intent to prevent straw transactions. At bottom, appellants’ interpretation would allow (1) unlimited purchases of modern deadly handguns, (2) the quick

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<sup>1</sup> Attorney General Xavier Becerra respectfully requests that he be substituted as a respondent in this matter in place of his predecessor, former Attorney General Kamala D. Harris. (See *Weadon v. Shahen* (1942) 50 Cal.App.2d 254, 259-260 [no formal substitution required when there is a change in office for a public official sued in his or her official capacity].)

accumulation of personal arsenals of such weapons, and (3) the diversion of arms into the black market through the use of straw transactions.

Appellants' challenge targets respondents' interpretation of the C&R Exemption, as set forth in a May 8, 2014, letter from Bureau of Firearms Chief Stephen Lindley to California Firearms Dealers, which advised that the C&R Exemption applies only to purchases of curio and relic firearms. Respondents' construction of the statute is the only reasonable interpretation. Respondents' interpretation of the C&R Exemption reflects the Legislature's intent in enacting the 1-in-30 Rule to prevent straw transactions, that is, to prevent unlimited quantities of handguns being resold to the illegal handgun market. The Legislature provided only a minor exemption from the rule for curio and relic firearms, which pose a far lesser threat to public safety than mass-produced modern handgun arsenals.

The trial court appropriately rejected appellants' construction, holding that it was incompatible with the rules of statutory interpretation as it would result in absurd consequences.

It also follows that the May 8, 2014, letter is not a "regulation" under the Administrative Procedure Act because respondents' interpretation of the C&R Exemption represents the only legally tenable interpretation of a provision of law.

### **STATEMENT OF FACTS**

There is a restriction on handgun purchases set forth in Penal Code section 27535, subdivision (a): "No person shall make an application to purchase more than one handgun within any 30-day period"—the "1-in-30 Rule"—and exemptions from that rule set forth in subdivision (b), including the exemption at issue here, in paragraph (9)—the C&R Exemption. The C&R Exemption, which incorporates federal law, exempts the purchase of curio and relic handguns from the 1-in-30 Rule.

The C&R Exemption applies to: “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.” (Pen. Code, § 27535, subd. (b)(9).)<sup>2</sup> Under Chapter 44, “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” Chapter 44. (18 U.S.C. § 921(a)(13).) Under the Chapter 44 regulations, “curios and relics” are “[f]irearms which are of special interest to collectors by reason of some quality other than is

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<sup>2</sup> Penal Code section 27535 is derived from former Penal Code section 12072, subdivision (a)(9)(A) enacted in 1999. (Stats. 1999, ch. 128, § 2 (AB 202).) Former Penal Code section 12072, subdivision (a)(9)(A) as added by AB 202 provided:

(9)(A) No 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.

AB 202 included the C&R Exemption in former Penal Code section 12072, subdivision (a)(9)(A)(x) which provided:

(x) 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 who has a current certificate of eligibility issued by the Department of Justice pursuant to Section 12071.

Former Penal Code section 12072, including subdivision (a)(9), was reorganized in 2010 resulting in new Penal Code section 27535. (See Stats. 2010, ch. 711, § 6.)

associated with firearms intended for sporting use or as offensive or defensive weapons.” (27 C.F.R. § 478.11.)

The Legislature’s intent in enacting Penal Code section 27535 was to curtail the illegal gun market, disarm criminals, and save lives by preventing multiple purchases of handguns through legitimate channels. This intent is expressly stated by the Assembly Committee on Public Safety’s report on AB 202 which states in pertinent part:

1) Author’s Statement. According to the author, “[t]here 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 AB 202 (2009-2010 Reg. Sess.), Mar. 10, 1999, italics added.) (Clerk’s Transcript [“CT”] 259-266.)<sup>3</sup>

On May 8, 2014, respondent Lindley, on behalf of DOJ’s Bureau of Firearms, sent a letter to licensed firearms dealers in the state (“Information Letter”).<sup>4</sup> (CT 218-220.) The Information Letter stated in part:

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<sup>3</sup> Respondents requested the trial court to take judicial notice of the Assembly Committee on Public Safety’s report on AB 202 under Evidence code section 452, subdivision (c). (CT 290-291.) The trial court granted that request. (CT 491.)

Based on [27 C.F.R § 478.94], 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.

(CT 223-224.)

### **SUPERIOR COURT PROCEEDINGS**

Appellants brought their action against respondents on May 20, 2014, seeking declaratory relief regarding the proper interpretation of the C&R Exemption. Specifically, respondents alleged that they are persons described under the C&R Exemption, and as such, may buy an unlimited number of handguns in a 30-day period—whether or not the handguns are

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<sup>4</sup> The stated reason for the Information Letter was to “advise [California firearms dealers] regarding the proper use of a particular exemption from the [1-in-30 Rule] as provided in Penal Code section 27535.” (CT 223.) Further, the Information Letter explains the need for the subject matter of that letter. Specifically, it had “come to the attention of the California Department of Justice, Bureau of Firearms that dealers [were] selling handguns that [were] 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 [that] exemption. By doing so, these dealers [were] allowing the buyers to purchase multiple, non curio and relic handguns at one time, which violate[d] both state and federal law.” (CT 223.)

curios or relics. Appellants also sought declaratory relief under Government Code section 11350, seeking to invalidate the Information Letter because, as they allege, it was not adopted as a formal regulation under the requirements of the Administrative Procedure Act. (CT 1-15.)

On June 9, 2014, appellants moved for a preliminary injunction against respondents enjoining them from enforcing the Notice Letter. (CT 21-69.) Respondents opposed the preliminary injunction motion (CT 73-108) and the trial court denied the motion. (CT 131-138.)

Subsequently, the parties agreed to adjudicate appellants' action by filing cross summary judgment motions based upon stipulated undisputed material facts. (See CT 149-150, 218-220.) On January 11, 2016, the parties filed cross-motions for summary judgment or summary adjudication. (See CT 153-293.)

On February 19, 2016, the trial court issued its order granting respondents' motion and denying appellants' motion. (CT 517-525.) On March 2, 2016, the trial court entered the judgment of dismissal. (CT 526-528.) Appellants filed their notice of appeal on May 4, 2016, appealing from the judgment. (CT 534-535.)

### **ISSUES ON APPEAL**

The overarching issue on appeal is whether the Information Letter is void. This issue will be decided by resolution of the following underlying issues:

- (1) Whether the C&R Exemption applies only to curio and relic firearms, as set forth in the Information Letter (“Respondents’ Interpretation”); and if so,
- (2) Does Respondents’ Interpretation represent the only legally tenable interpretation of the C&R Exemption?

## STANDARD OF REVIEW

The Court's determination of the above issues involves the resolution of pure questions of law. As such, the standard of review for this appeal is de novo. (*Regents of University of California v. Superior Court* (1999) 20 Cal.4th 509, 531.)

## ARGUMENT

### **I. RESPONDENTS CORRECTLY INTERPRETED THE C&R EXEMPTION AS BEING LIMITED TO THE PURCHASE OF CURIO OR RELIC FIREARMS**

#### **A. The Plain Meaning of the C&R Exemption Limits Its Application to Purchases of Curio or Relic Firearms**

The fundamental task in interpreting a statute is to determine the Legislature's intent so as to effectuate the law's purpose." (*Coalition of Concerned Communities, Inc. v. City of Los Angeles* (2004) 34 Cal.4th 733, 737.) The Legislature's chosen language is typically the most reliable indicator of its intent because "it is the language of the statute itself that has successfully braved the legislative gauntlet." (*California School Employees Assn. v. Governing Board* (1994) 8 Cal.4th 333, 338.) But courts do not construe particular provisions in isolation and without regard to their context within the statutory scheme. (*Flannery v. Prentice* (2001) 26 Cal.4th 572, 578.)

Here, the C&R Exemption explicitly references federal law ("Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto"), which requires consideration of 18 U.S.C. § 921 and 27 C.F.R. § 478.41. The Legislature's incorporation of federal law concerning the licensing of the acquisition, holding and disposition of curio and relic firearms evidences its intent to limit the C&R Exemption to the purchase of curio and relic firearms. (See 18 U.S.C. § 921(a)(13) [defining the term "collector" as any person who

acquires, holds, or disposes of firearms as curios or relics”]; 27 C.F.R. § 478.41(d) [providing that a collector license applies only to “transactions related to a collector’s activity in acquiring, holding or disposing of curios and relics”].) Under the Chapter 44 regulations, “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, italics added.) As such, curio and relic firearms are manifestly not the type of weapons used by persons to commit crimes. Also, it is beyond dispute that true curio and relic firearms pose less of a threat to public safety in part because of their limited availability. Indeed, under the federal regulations, to be recognized as curios or relics, firearms must fall within one of the following categories: (1) antique firearms manufactured at least 50 years ago; (2) firearms worthy of display in a firearm museum; and (3) any other firearms that have monetary value substantially due to the fact that they are novel, rare, bizarre, or of historical interest. (27 C.F.R. § 478.11.)

Based upon the plain language of the C&R Exemption, including the federal law incorporated therein, it is apparent the Legislature intended that the scope of the C&R Exemption be defined by types of firearms—curios and relics—rather than, as appellants contend, an individual’s mere status as a licensed collector.

However, appellants contend that the C&R Exemption “applies to the ‘person’ who satisfies the particular status (possession of a federally-issued license and a state-issued COE).”<sup>5</sup> (AOB at p. 24.) Appellants argue that

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<sup>5</sup> “COE” refers to a certificate of eligibility which is a requirement for the C&R exemption. (See Pen. Code, § 27535, subd. (b)(9) [“(A)nd has a current certificate of eligibility issued by the Department of Justice pursuant to Article 1 (commencing with Section 26700) of Chapter 2”].) A COE indicates that a prospective firearm purchaser is not prohibited from

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the “plain meaning” rule favors their interpretation by focusing solely on the Penal Code, while ignoring the federal law referenced there. However, in interpreting a statutory provision, the courts’ “task is to select the construction that comports most closely with the Legislature’s *apparent intent*, with a view to promoting rather than defeating the statutes’ general purpose, and to avoid a construction that would lead to unreasonable, impractical, or arbitrary results.” (*Copley Press, Inc. v. Superior Court* (2006) 39 Cal.4th 1272, 1291, italics added.) Appellants’ interpretation is contrary to the apparent intent of the statute, and leads to absurd consequences. Specifically, appellants urge an interpretation of the C&R Exemption that elevates a mere curio and relic license when combined with a certificate of eligibility, into a license to buy any handgun, even the most lethal, in unlimited quantities and with unlimited frequency. Specifically, appellants’ interpretation leads to the absurd result that C&R license holders could quickly access large quantities of high-threat weapons based on a license granted for lower-threat weapons. This the Legislature did not intend.

This Court should reject appellants’ interpretation of the C&R Exemption because it leads to absurd and unreasonable results and is contrary to the apparent intent of the C&R Exemption, that is, a limited exemption—not a loophole—from the 1-in-30 Rule.

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(...continued)  
possessing firearms under state or federal law. (Pen. Code, § 26710, subd. (c).)

**B. The Legislative History of AB 202 Confirms That Respondents' Interpretation of the C&R Exemption Is Correct**

When it appears that a literal interpretation of a statute may lead to absurd results, as here, a review of the statute's legislative history is proper. (*San Diegans for Open Government v. City of San Diego* (2015) 242 Cal.App.4th 416, 429.) "Statements of legislative committees pertaining to the purpose of legislation are presumed to express the legislative intent of statutes as enacted." (*Altaville Drug Store, Inc. v. Employment Development Department* (1988) 44 Cal.3d 231, 238.)

The Legislative history confirms that the C&R Exemption applies only to curios and relics, not modern handguns. The Legislature's intent in enacting Penal Code section 27535 was to curtail the illegal gun market, disarm criminals, and save lives by preventing multiple purchases of handguns through legitimate channels is evidenced by the Assembly Committee on Public Safety's report on AB 202. In the report, the Legislature acknowledged that handguns make up an overwhelming share of crime guns, a significant number of which, are traceable to dealer transactions. According to the report, "[p]reventing multiple purchases takes the profit out of black market sales and puts gun traffickers and straw purchasers out of business." (Assem. Com. on Public Safety, Analysis of AB 202 (2009-2010 Reg. Sess.), Mar. 10, 1999.) (Clerk's Transcript ["CT"] 259-266.) More precisely, according to the report, "[t]he goal of [AB 202 was] to stop one gun purchaser[s] from buying several firearms and transferring a firearm to another person who does not have the legal ability to buy a gun him/herself." (*Ibid.*) The report refers to this type of transfer 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.” Straw transaction purchasers are referred to in the report as “straw purchasers.” (*Ibid.*)

Under appellants’ interpretation—the C&R Exemption would apply to persons without regard to the types of firearms they purchase—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. Indeed, appellants’ interpretation is squarely contradicted by the Legislature’s express goal of stopping “straw transactions” by the 1-in-30 Rule. On the other hand, Respondents’ Interpretation—the C&R Exemption does not apply to modern handguns—is entirely consistent with the Legislature’s stated goal.

What is more, contrary to appellants’ assertion (AOB at pp. 28-29), mere references in AB 202 committee analyses that the C&R Exemption applies to licensed collectors, without more, fails to evidence the Legislature’s intent that the exemption applies to purchases of modern handguns. As the trial court correctly noted, “[t]he statements simply indicate that ‘licensed collectors’ are exempt from the rule, but in no way indicate that they are exempt from the rule for anything other than curios and relics.” (CT 494.)

AB 202 legislative history demonstrates that Respondents’ Interpretation is consistent with the Legislature’s stated goal of preventing modern handgun straw transactions.

**C. Appellants’ Reliance Upon the Statutory Construction  
*Maxim Expressio Unius Est Exclusio Alterius* Is  
Misplaced**

Appellants argue that “[i]f the Legislature had intended to limit the scope of the Federally-Licensed Collector Exemption to the purchase of only curio and relic firearms, it could have easily done so. Instead, it chose to apply the exemption to the ‘person’ holding the license.” (AOB at

p. 27.) Appellants offer three Penal Code sections—26970, 27966 and 31700—as examples where “the Legislature has expressly limited the scope of licensed-collector exemptions to transactions involving only curios and relics.” (*Ibid.*) Appellants then argue that “[i]t is a 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,” citing *Brown v. Kelly Broadcasting Co.* (1989) 48 Cal.3d 711, 725. (AOB at pp. 27-28.) This rule is a variation of the statutory construction maxim, *expressio unius est exclusio alterius*. (See 2A Singer & Singer, Sutherland Statutory Construction (7th ed. 2007) § 47.23 [courts have expressed the essential idea of *expressio unius* in different ways, finding, for example where a legislature includes particular language in one section of a statute but omits it in another section of the same act, it is generally presumed the legislature acts intentionally and purposely in the disparate inclusion or exclusion].)

The application of *expressio unius* is inappropriate here because its operation would contradict a discernible and contrary legislative intent. (*Lopez v. Sony Electronics, Inc.* (2016) 247 Cal.App.4th 444, 455.) Rules of statutory construction, including *expressio unius*, are only applicable, unlike here, in the event of statutory ambiguity or uncertainty. (*Williams v. Los Angeles Metropolitan Transit Authority* (1968) 68 Cal.2d 599, 603.)

Accordingly, *Brown v. Kelly Broadcasting Co.*, *supra*, 48 Cal.3d at p. 725 is inapposite. *Expressio unius* does not assist appellants.

**D. Legislative History of AB 532, a Failed Bill, Is Not Cognizable Evidence of Legislative Intent Under California Law**

Appellants also erroneously rely upon the legislative history of a prior unpassed bill, Assembly Bill No. 532 (1997-1998 Reg. Sess.) and federal case law as support for their broad C&R Exemption interpretation. (AOB

at pp. 29-30.) Appellants' reliance upon the legislative history of AB 532 is inappropriate.

Under California law, unpassed bills, as evidence of legislative intent, have little value. (*Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1396.) Courts 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. (*Lolley v. Campbell* (2002) 28 Cal.4th 367, 378-379.) Also, under California law, AB 532's author's notes are not cognizable evidence of legislative intent. "[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.)

Relying improperly on federal court authorities, appellants argue, "Legislative history of an unpassed bill is relevant and entitled to weight when considering a subsequent bill with identical language." (AOB at p. 29, fn. 9) But appellants fail to cite any authority for the proposition that federal rules of statutory construction override these California rules when construing a California statute. (Cf. *County of Los Angeles v. Smith* (1999) 74 Cal.App.4th 500, 505 [rules of statutory construction enunciated by the United States Supreme Court would apply to construction of a *federal* statute].)

As an unpassed bill, AB 532 and its legislative history should be ignored by this Court because such extrinsic matters are irrelevant for determining the Legislature's intent.

**E. The Merrilees Email Is Irrelevant to Whether Respondents' Interpretation Is Proper**

Appellants have not shown that former Bureau of Firearms staff counsel Alison Merriless was authorized to speak on behalf of respondents concerning their interpretation of the C&R Exemption. As the trial court correctly reasoned, “[appellants’] citation to a September 2005 email from Alison Merriless . . . in response to an email inquiry regarding the C&R Exemption stating that she “ha[d] been advised that it is our long-standing policy for DOJ to exempt all firearms purchases by C&R licensees from the [one gun per month limit] even if the firearms are not curios and relics” does not change the result. The fact that Ms. Merriless may have “been advised” of such policy does not in any way demonstrate that the C&R exemption should be interpreted in the manner proffered by [appellants], or that [respondents’] current policy is based on an inappropriate interpretation.” (CT 494.)<sup>6</sup>

The Merrilees email should be disregarded by this Court.

**F. Respondents' Interpretation as Set Forth in the Information Letter Is Valid Because It Is Consistent with the C&R Exemption**

As demonstrated above, Respondents' Interpretation is based upon a proper interpretation of the C&R Exemption. As such, Respondents' Interpretation is consistent with, and does not exceed or impair the scope of, the C&R Exemption. *Morris v. Williams* (1967) 67 Cal.2d 733, 748 is therefore inapposite.

Appellants' first cause of action fails as a matter of law.

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<sup>6</sup> Respondents objected to the Merrilees email on relevancy grounds. (CT 316.) However, the trial court overruled all of respondents' evidentiary objections. (CT 496.)

## **II. RESPONDENTS' INTERPRETATION REPRESENTS THE ONLY LEGALLY TENABLE INTERPRETATION OF THE C&R EXEMPTION**

The Administrative Procedure Act's (Gov. Code, § 11340 et seq.) procedural requirements do not apply where, as here, an agency's interpretation of a statute represents "the only legally tenable interpretation of a provision of law." (Gov. Code, § 11340.9, subd. (f).)<sup>7</sup> As demonstrated above, based upon the plain language of the C&R Exemption, respondents have correctly interpreted it to extend only to curio and relic firearms. As discussed above, "[b]y virtue of the C&R Exemption's explicit reference to federal law ("Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto"), the entire substance of the C&R Exemption is ascertained from the plain language of 18 U.S.C. § 921 and 27 C.F.R. § 478.41, in addition to Penal Code section 27535, subdivision (b)(9)."

Whether Respondents' Interpretation as set forth in the Information Letter is the only legally tenable interpretation of a provision of law was addressed by the trial court: "[T]he Court agrees the policy which applies the C&R Exemption to only to curios and relics is in fact the 'only legally tenable interpretation' of § 27535. [Appellants] are of course correct that the fact that the interpretation adopted by the agency is ultimately correct is a separate issue than whether that interpretation is the only 'legally tenable' one. [Citation.] However, the Court finds that the interpretation set forth in the policy is the only 'legally tenable' one as the Court finds that the C&R

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<sup>7</sup> Respondents argued this very point below. (CT 256-257.) Accordingly, appellants' contention that respondents did not dispute that the Information Letter is not a "regulation" subject to the requirements of the APA (AOB at p. 35) is demonstrably false.

Exemption ‘can reasonably be read only one way’, that is to apply only to curios and relics. [Citation.]” (CT 495.)

Because Respondents’ Interpretation as set forth in the Information Letter is not a “regulation” under the APA, respondents were not required to comply with the APA’s procedural requirements. Appellants’ second cause of action fails as a matter of law.

### CONCLUSION

For the reasons set forth above, respondents respectfully request that this Court affirm the trial court’s judgment of dismissal.

Dated: June 16, 2017

Respectfully submitted,

XAVIER BECERRA  
Attorney General of California  
MARC A. LEFORESTIER  
Acting Senior Assistant Attorney General  
STEPAN A. HAYTAYAN  
Supervising Deputy Attorney General

          /s/ Jeffrey A. Rich            
JEFFREY A. RICH  
Deputy Attorney General  
*Attorneys for Respondents*

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**DECLARATION OF ELECTRONIC SERVICE AND SERVICE BY U.S. MAIL**

Case Name: **Doe, Alvin et al. v. Kamala D. Harris, et al. (APPEAL)**  
No.: **C081994**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collecting and processing electronic and physical correspondence. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business. Correspondence that is submitted electronically is transmitted using the TrueFiling electronic filing system. Participants who are registered with TrueFiling will be served electronically. Participants in this case who are not registered with TrueFiling will receive hard copies of said correspondence through the mail via the United States Postal Service or a commercial carrier.

On June 16, 2017, I electronically served the attached **RESPONDENTS' BRIEF** by transmitting a true copy via this Court's TrueFiling system. Because one or more of the participants in this case have not registered with the Court's TrueFiling system or are unable to receive electronic correspondence, on June 16, 2017, I placed a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550, addressed as follows:

Steve M. Duvernay  
Attorney at Law  
Benbrook Law Group, PC  
400 Capitol Mall, Suite 1610  
Sacramento, CA 95814-2248  
*Attorneys for Plaintiffs and Appellants*

Superior Court of California  
County of Sacramento  
720 Ninth Street  
Sacramento, CA 95814  
*(Courtesy Copy)*

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on June 16, 2017, at Sacramento, California.

Eileen A. Ennis  
Declarant

  
Signature