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FRESNO COUNTY SUPERIOR COURT

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SUPERIOR COURT OF CALIFORNIA, COUNTY OF FRESNO
CENTRAL DIVISION

DANNY VILLANUEVA, ET AL.,)	No. 17CECG03093
)	
Petitioners,)	
)	ORDER DENYING THE PETITION FOR
v.)	WRIT OF MANDATE AND STATEMENT
)	OF DECISION
XAVIER BECERRA, ET AL.,)	
)	Date: May 25, 2018
Respondents.)	Dept: 501
)	

I. INTRODUCTION

The Plaintiff's First Amended Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief came on for hearing on May 25, 2018, in Department 501 of the Fresno County Superior Court, the Honorable Mark W. Snauffer, Judge, Presiding. Appearing for the Plaintiffs was Sean A. Brady of Michel & Associates, P.C. Appearing for Respondents and Defendants was P. Patty Li, Deputy Attorney General, Department of Justice, California Attorney General's Office.

Following argument, the Court took the matter under advisement. After reviewing the entire record, and considering

1 the arguments of counsel, the Court denies the petition for the
2 reasons set forth below.

3 **II. BACKGROUND**

4 This case was originally a complaint for declaratory and
5 injunctive relief; at the hearing on the demurrer and preliminary
6 injunction, the Court found that Plaintiffs were challenging an
7 administrative decision of the Department of Justice ("DOJ"), and
8 so must seek writ relief. Plaintiffs then filed the first amended
9 petition for writ of mandate and complaint for declaratory and
10 injunctive relief, on March 21, 2018.

11 The basis of Plaintiffs' challenges is the manner in which
12 Defendant DOJ promulgated regulations implementing a new
13 registration process for "bullet-button assault weapons."
14 Plaintiffs allege Defendant DOJ's Bureau of Firearms ("BOF") has
15 promulgated and is enforcing regulations that go beyond the
16 authority granted to it by the Legislature, without adhering to
17 the state's Administrative Procedure Act ("APA"). Basically,
18 Plaintiffs allege that the challenged regulations concern *what*
19 *must* be registered, rather than (as allowed by an APA exemption)
20 *how* to register, without the APA-required public input.

21 The Assault Weapons Control Act (Pen. Code §§ 30500, *et seq.*)
22 restricts the possession, purchase, sale, manufacture, and
23 distribution of "assault weapons." New assault weapons are
24 prohibited by law from entering the market; however, previously
25 owned assault weapons are "grandfathered" in as long as they are
26 registered with the DOJ. (Pen. Code §§ 30660, 30675.)

27 Plaintiffs here challenge the expanded definition of "assault
28 weapon." The new (revised) definition of "assault weapon"

1 includes those with a "bullet button" - a magazine release device
2 on a firearm, requiring the use of a tool (which can be a bullet
3 or ammunition cartridge) to remove the magazine from the firearm.
4 This feature is also called a magazine lock. Prior to the new
5 regulations, "bullet button" weapons did not have to be registered
6 with DOJ because they were not within the old definition of
7 "assault weapon," which was defined as a weapon that had "the
8 capacity to accept a detachable magazine," as well as one or more
9 of some other specified characteristics. (See former Pen. Code
10 §30515.) As of January 17, 2017, a weapon that "does not have a
11 fixed magazine" is an "assault weapon;" a "fixed magazine" is "an
12 ammunition feeding device contained in, or permanently attached
13 to, a firearm in such a manner that the device cannot be removed
14 without disassembly of the firearm action." (Pen. Code §30515.)

15 Governor Brown signed SB 880 and AB 1135 in July 2016,
16 broadening the state's assault weapons ban; the effective date was
17 January 1, 2017. In December 2016, the DOJ submitted a first
18 draft of the regulations, via the Office of Administrative Law's
19 "file and print" process, which is used where the APA's public
20 notice and comment requirements are inapplicable. This December
21 attempt was withdrawn by the DOJ after opposition letters were
22 submitted. Later, DOJ re-submitted the regulations, again via
23 "file and print;" these were rejected by the Office of
24 Administrative Law ("OAL") about a month after submission. The
25 third time was the charm - the DOJ again submitted the regulations
26 via "file and print" (this third version was allegedly nearly
27 identical to the second version) and this version was approved by
28

1 the OAL in July 2017. This is the description on the BOF's
2 website of the new regulations:

3 Pursuant to Assembly Bill 1135 (Stats. 2016, ch. 40)
4 and Senate Bill 880 (Stats. 2016, ch. 48) effective
5 January 1, 2017, the definition of assault weapon is
6 revised.

7 These bills require that any person who, from January
8 1, 2001, to December 31, 2016, inclusive, lawfully
9 possessed an assault weapon that does not have a fixed
10 magazine, as defined in Penal Code section 30515,
11 including those weapons with an ammunition feeding
12 device that can be readily removed from the firearm
13 with the use of a tool, shall register the firearm
14 before January 1, 2018, but not before the effective
15 date of the regulations adopted by the DOJ.
16 ([https://oag.ca.gov/firearms.](https://oag.ca.gov/firearms))

17 [Note: the deadline to register has been extended to June 30,
18 2018.]

19 The definition of "assault weapon" was thus changed from a
20 firearm with a "detachable magazine" and certain features, to one
21 that "that does not have a fixed magazine." In effect, this means
22 that under the previous regulations, a weapon was not an "assault
23 weapon" if the magazine could only be released with the use of a
24 tool (which oftentimes is a bullet, hence "bullet button" - the
25 release button is housed in a recessed area that can only be
26 reached with the use of a tool); but under the new regulations, a
27 firearm equipped with a bullet button will be considered an
28 assault weapon, due to it not having a fixed magazine; a "fixed
29 magazine" means that the magazine can only be removed by
30 disassembling the entire firearm.

31 Registrations must be submitted via the internet; registrants
32 must provide fairly specific information, including 4 or more
33 photos of the firearm, proof of residency if submitting a joint
34 application, serial number on the firearm, date and place of

1 acquisition, as well as personal identification information (name,
2 address, email address, etc.).

3 The Office of Administrative Law (OAL) is charged with, among
4 other functions, enforcing the requirement that administrative
5 agencies adopt regulations according to APA procedures. (Gov.
6 Code §§ 11340.2, 11340.5(b).) If the OAL is notified or learns
7 that an administrative agency is implementing a regulation that
8 was not properly adopted under the APA, the OAL must investigate,
9 make a determination, and publish its conclusions. (Gov. Code
10 §11340.5(c).)

11 A regulation that is found to have been improperly adopted is
12 sometimes called an "underground regulation," and may be
13 determined by a court to be invalid because it was not adopted in
14 substantial compliance with APA procedures. (*Patterson Flying*
15 *Service v. Department of Pesticide Regulation* (2008) 161
16 Cal.App.4th 411, 429; see Cal. Code Regs., tit. 1 §250.)

17 Plaintiffs argue the regulations illegally expand the scope
18 of the statutes they purport to implement; the illegality is
19 alleged to be Defendants' failure to follow the APA's requirement
20 of public notice/comment, as Defendants proceeded via the "file
21 and print" process, which bypasses public notice and comment.
22 Plaintiffs state the result is that they are being forced to
23 choose between giving up their rights to their property (guns now
24 considered assault weapons) or place themselves in criminal
25 jeopardy for owning an unregistered firearm that, Plaintiffs
26 argue, is not an "assault weapon" under the statute, but has
27 become one under the challenged regulations.

28 ///

1 Defendants submit that they were not required to abide by the
2 APA in implementing the challenged regulations, because the
3 regulations simply implement the statute (re: registration of
4 assault weapons), meaning they are expressly exempt from the APA
5 public input procedure.

6 Plaintiffs seek writ relief, as well as declaratory and
7 injunctive relief. Defendants are in opposition.

8 **III. DISCUSSION**

9 **A. Administrative Procedure Act ("APA")**

10 The APA was enacted to establish basic minimum procedural
11 requirements for the adoption, amendment, or repeal of
12 administrative regulations promulgated by administrative agencies.
13 (Gov. Code §11346(a).) Accordingly, where "a rule constitutes a
14 regulation within the meaning of the APA...it may not be adopted,
15 amended, or repealed except in conformity with basic minimum
16 procedural requirements that are exacting. The agency must give
17 the public notice of its proposed regulatory action; issue a
18 complete text of the proposed regulation with a statement of the
19 reasons for it; give interested parties an opportunity to comment
20 on the proposed regulation; respond in writing to public comments;
21 and forward a file of all materials on which the agency relied in
22 the regulatory process to the Office of Administrative Law, which
23 reviews the regulation for consistency with the law, clarity, and
24 necessity. Any regulation or order of repeal that substantially
25 fails to comply with these requirements may be judicially declared
26 invalid." (*Morning Star Co. v. State Bd. of Equalization* (2006)
27 38 Cal.4th 324, 333, internal citations and quotation marks
28 omitted; *Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14

1 Cal.4th 557, 568 [same]; see Gov. Code §§ 11346, 11346.2(a)-(b),
2 11346.4, 11346.5, 11346.8, 11346.9, 11347.3(b).)

3 An administrative agency "is not limited to the exact
4 provisions of a statute" in adopting regulations to enforce its
5 mandate; an absence of specific statutory provisions regarding the
6 regulation of an issue does not mean that such a regulation
7 exceeds statutory authority. (*PaintCare v. Mortensen* (2015) 233
8 Cal.App.4th 1292, 1307, and cases cited; *Lavin v. California Horse*
9 *Racing Bd.* (1997) 57 Cal.App.4th 263, 268 [it is a "well-settled
10 principle of administrative law that in the absence of an express
11 statutory directive to the contrary, an administrative agency may
12 exercise its discretion in selecting the methodology by which it
13 will implement the authority granted to it."].) An agency is
14 authorized to "fill up the details" of the statutory scheme.

15 (*Paintcare, supra*, 233 Cal.App.4th at p. 268, quoting *Ford Dealers*
16 *Assn. v. Department of Motor Vehicles* (1982) 32 Cal.3d 347, 362,
17 internal quotation marks omitted; see also *California School Bds.*
18 *Assn. v. State Bd. of Education* (2011) 191 Cal.App.4th 530, 544;
19 *Batt v. City and County of San Francisco* (2010) 184 Cal.App.4th
20 163, 171, 174; *Masonite Corp. v. County of Mendocino Air Quality*
21 *Management Dist.* (1996) 42 Cal.App.4th 436, 445-447.) In other
22 words, the Legislature may, after declaring a policy and fixing a
23 primary standard, confer upon an administrative officer the power
24 to "fill up the details" by prescribing administrative rules and
25 regulations to promote the purposes of the legislation and to
26 carry it into effect. (*Coastside Fishing Club v. California*
27 *Resources Agency* (2008) 158 Cal.App.4th 1183, 1205; see *People v.*
28 *Wright* (1982) 30 Cal.3d 705, 713 [standards for administrative

1 application of statute need not be expressly set forth; may be
2 implied by purpose of statute].)

3 "The interpretation of a regulatory statute is, in the first
4 instance, the duty of an administrative agency charged with its
5 enforcement. Although final responsibility for interpretation of
6 the law rests with the courts, the construction of the law by an
7 administrative agency charged with its enforcement is entitled to
8 great weight." (*B. C. Cotton, Inc. v. Voss* (1995) 33 Cal.App.4th
9 929, 951; *County of Sacramento v. State Water Resources Control*
10 *Bd.* (2007) 153 Cal.App.4th 1579, 1587 [where regulation is
11 ambiguous, is appropriate to consider agency's interpretation;
12 "[i]ndeed, we defer to an agency's interpretation of a regulation
13 involving its area of expertise," unless it "flies in the face of
14 the clear language and purpose" of its interpretive provision];
15 *Communities for a Better Environment v. State Water Resources*
16 *Control Bd.* (2003) 109 Cal.App.4th 1089, 1104 [same].) As a
17 general matter, courts "tend to interpret the meaning of statutes
18 broadly so as to uphold regulations[.]" (California Practice
19 Guide (TRG Dec. 2017 update): Administrative Law Ch. 17-B.)
20 Moreover, the persuasiveness of the agency's interpretation
21 "increases in proportion to the expertise and special competence
22 that are reflected therein, including any evidence that the
23 interpretation was carefully considered at the highest
24 policymaking level of the agency." (*Alvarado v. Dart Container*
25 *Corporation of California* (2018) 4 Cal.5th 542, 558.)

26 Notwithstanding the foregoing, an agency is restricted to
27 "only as much rulemaking power" as is invested in it by the
28 authorizing statute. (*Carmel Valley Fire Protection Dist. v.*

1 *State of California* (2001) 25 Cal.4th 287, 299, and cases cited.)
2 Where the APA applies, administrative policies that are not
3 adopted in accordance with its requirements are void regulations
4 and are not entitled to any deference. (*Alvarado v. Dart*
5 *Container Corporation of California* (2018) 4 Cal.5th 542, 556; see
6 *PaintCare, supra*, 233 Cal.App.4th at p. 1306 [regulations that are
7 inconsistent with, alter, amend, enlarge or impair scope of,
8 authorizing statute are void].) "But 'void,' in this context,
9 does not necessarily mean wrong. If the policy in question is
10 interpretive of some governing statute or regulation, a court
11 should not necessarily reject the agency's interpretation just
12 because the agency failed to follow the APA in adopting that
13 interpretation; rather, the court must consider independently how
14 the governing statute or regulation should be interpreted. 'If,
15 when we agreed with an agency's application of a controlling law,
16 we nevertheless rejected that application simply because the
17 agency failed to comply with the APA, then we would undermine the
18 legal force of the controlling law. Under such a rule, an agency
19 could effectively repeal a controlling law simply by reiterating
20 all its substantive provisions in improperly adopted
21 regulations[.]'" (*Alvarado, supra*, 4 Cal.4th at pp. 556-557.) If
22 there is doubt regarding the applicability of the APA's
23 requirements, it should be resolved in favor of the APA. (*Morales*
24 *v. California Dept. of Corrections and Rehabilitation* (2008) 168
25 Cal.App.4th 729, 736; see Gov. Code §11346; *United Systems of*
26 *Arkansas, Inc. v. Stamison* (1998) 63 Cal.App.4th 1001, 1010 [when
27 Legislature has intended to exempt regulations from APA, "it has
28 done so by clear, unequivocal language."]; see also *Aleman v.*

1 *AirTouch Cellular* (2012) 209 Cal.App.4th 556, 573 [regulations
2 promulgated without adhering to APA, when required, sometimes
3 called "underground regulations," which are void and
4 unenforceable]; *Clovis Unified School Dist. v. Chiang* (2010) 188
5 Cal.App.4th 794, 800 [same].)

6 Legislative history may be examined to resolve ambiguities or
7 uncertainties regarding the purpose or meaning of a statute; as
8 reports of legislative committees and commissions are part of a
9 statute's legislative history, they are proper subjects of
10 judicial notice, as official acts of the Legislature. (*Arce v.*
11 *Kaiser Foundation Health Plan, Inc.* (2010) 181 Cal.App.4th 471,
12 484; see Evid. Code §§ 452(c), 453; *Martin v. Szeto* (2004) 32
13 Cal.4th 445, 452, fn 9 [judicial notice taken of Assembly Bill];
14 *Home Depot U.S.A., Inc. v. Superior Court* (2010) 191 Cal.App.4th
15 210, 223 [judicial notice taken of portions of legislative
16 history]; *Benson v. Workers' Compensation Appeals Bd.* (2009) 170
17 Cal.App.4th 1535, 1554, fn 16 [documents may be proper subjects of
18 judicial notice if is indicated that Legislature considered them
19 in passing statute]; *Hogen v. Valley Hospital* (1983) 147
20 Cal.App.3d 119, 125 [records/files of administrative board proper
21 subjects of judicial notice].) The court may consider the impact
22 of an interpretation of a statute may have on public policy, and
23 where there is uncertainty, " 'consideration should be given to
24 the consequences that will flow from a particular interpretation.'
25 [Citation.]" (*Mejia v. Reed* (2003) 31 Cal.4th 657, 663.)

26 **B. Writ of Mandate**

27 Where a party challenges a regulation on the ground that it
28 is in conflict with the governing statute or exceeds the lawmaking

1 authority delegated by the Legislature, the issue of statutory
2 construction is a question of law on which a court exercises
3 independent judgment. (*PaintCare, supra*, 233 Cal.App.4th 1292,
4 1303; see Gov. Code §11342.2.) Though mandamus will not lie to
5 control discretion exercised by a public agency, it will lie to
6 correct an abuse of discretion by a public agency. (*County of Los*
7 *Angeles v. City of Los Angeles* (2013) 214 Cal.App.4th 643, 654;
8 *Palmer v. Fox* (1953) 118 Cal.App.2d 453, 457.) Specifically,
9 mandamus may issue to compel a governmental entity to exercise its
10 discretion under a proper interpretation of the applicable law.
11 (*Common Cause v. Board of Supervisors* (1989) 49 Cal.3d 432, 442;
12 see Code Civ. Proc. §1085.)

13 "In determining whether a public agency has abused its
14 discretion, the court may not substitute its judgment for that of
15 the agency, and if reasonable minds may disagree as to the wisdom
16 of the agency's action, its determination must be upheld. A court
17 must ask whether the public agency's action was arbitrary,
18 capricious, or entirely lacking in evidentiary support, or whether
19 the agency failed to follow the procedure and give the notices the
20 law requires. [¶] In applying this extremely deferential test, a
21 court must ensure that an agency has adequately considered all
22 relevant factors, and has demonstrated a rational connection
23 between those factors, the choice made, and the purposes of the
24 enabling statute." (*County of Los Angeles, supra*, 214 Cal.App.4th
25 at p. 654, internal citations and quotation marks omitted.)

26 Quasi-legislative rules represent "an authentic form of
27 substantive lawmaking" in which the Legislature has delegated to
28 the agency a portion of its lawmaking power. (*Association of*

1 *California Insurance Companies v. Jones* (2017) 2 Cal.5th 376, 396-
2 397.) Accordingly, "such rules have the dignity of statutes,
3 [and] a court's review of their validity is narrow: [i]f satisfied
4 that the rule in question lay within the lawmaking authority
5 delegated by the Legislature, and that it is reasonably necessary
6 to implement the purpose of the statute, judicial review is at an
7 end." (*Ibid*, internal citations and quotation marks omitted; 20th
8 *Century Ins. Co. v. Garamendi* (1994) 8 Cal.4th 216, 275; see
9 *Dominey v. Department of Personnel Administration* (1988) 205
10 Cal.App.3d 729, 737 [legislative act establishes rule regulating
11 and governing matters or transactions occurring after its passage;
12 determines what the law is, and what parties' rights are].) Where
13 an administrative agency has exercised quasi-legislative powers,
14 judicial review is made under traditional mandamus. (*City of*
15 *Santa Cruz v. Local Agency Formation Com.* (1978) 76 Cal.App.3d
16 381, 390; see CCP §1085(a).) Any agency action comes to the court
17 with a presumption of validity. (*Association of California*
18 *Insurance Companies v. Jones* (2017) 2 Cal.5th 376, 389.)

19 Where the claim implicates the interpretation of the relevant
20 statute, a question of law is presented, and the court exercises
21 independent judgment; in so doing, however, "great weight and
22 respect" is accorded to the administrative agency's construction.
23 (*Association of California Insurance Companies*, *supra*, 2 Cal.5th
24 at pp. 389-390; *California Correctional Peace Officers' Assn. v.*
25 *State* (2010) 181 Cal.App.4th 1454, 1459 [same].) In sum, where
26 the legislature delegates to an administrative agency the
27 responsibility to implement a statutory scheme through rules and
28 regulations, the courts will interfere "only where the agency has

1 clearly overstepped its statutory authority or violated a
2 constitutional mandate." (*Ford Dealers Assn. v. Department of*
3 *Motor Vehicles* (1982) 32 Cal.3d 347, 356; see *County of Los*
4 *Angeles, supra*, 214 Cal.App.4th at p. 654 [deferential review of
5 quasi-legislative activity minimizes judicial interference in
6 interest of separation of powers doctrine].) In the end, the
7 "ultimate interpretation of a statute is an exercise of the
8 judicial power." (*Bodinson Mfg. Co. v. California Employment*
9 *Commission* (1941) 17 Cal.2d 321, 326.)

10 "When an administrative agency promulgates a regulation in
11 its enforcement of a statute, the regulation will not be disturbed
12 by the courts, unless it is an impermissible exercise of
13 administrative discretion in carrying out the intent of the
14 Legislature, which can be characterized as arbitrary, capricious,
15 or patently unreasonable. Ordinarily, a reviewing court gives
16 great weight to the interpretation of a statute by the
17 administrative agency empowered to promulgate regulations to
18 advance its purpose unless the interpretation is clearly
19 erroneous." (*General Business Systems, Inc. v. State Bd. of*
20 *Equalization* (1984) 162 Cal.App.3d 50, 54-55, internal citations,
21 quotation marks, and brackets omitted; see *Kasler v. Lockyer*
22 (2000) 23 Cal.4th 472, 503 [in usual writ of mandate proceedings,
23 burden is on party challenging the regulation to prove abuse of
24 discretion].) As summarized by the California Supreme Court:

25 An agency interpretation of the meaning and legal
26 effect of a statute is entitled to consideration and
27 respect by the courts; however, unlike quasi-
28 legislative regulations adopted by an agency to which
the Legislature has confided the power to "make law,"
and which, if authorized by the enabling legislation,
bind this and other courts as firmly as statutes

1 themselves, the binding power of an agency's
2 interpretation of a statute or regulation is
3 contextual: Its power to persuade is both
4 circumstantial and dependent on the presence or
5 absence of factors that support the merit of the
6 interpretation. [...] The appropriate degree of judicial
7 scrutiny in any particular case is perhaps not
8 susceptible of precise formulation, but lies somewhere
9 along a continuum with nonreviewability at one end and
10 independent judgment at the other. Quasi-legislative
11 administrative decisions are properly placed at that
12 point of the continuum at which judicial review is
13 more deferential; ministerial and informal actions do
14 not merit such deference, and therefore lie toward the
15 opposite end of the continuum.

16 Courts must, in short, independently judge the text of
17 the statute, taking into account and respecting the
18 agency's interpretation of its meaning, of course,
19 whether embodied in a formal rule or less formal
20 representation. Where the meaning and legal effect of
21 a statute is the issue, an agency's interpretation is
22 one among several tools available to the court.
23 Depending on the context, it may be helpful,
24 enlightening, even convincing. It may sometimes be of
25 little worth. Considered alone and apart from the
26 context and circumstances that produce them, agency
27 interpretations are not binding or necessarily even
28 authoritative. To quote the statement of the Law
Revision Commission in a recent report, "The standard
for judicial review of agency interpretation of law is
the *independent judgment* of the court, giving
deference to the determination of the agency
appropriate to the circumstances of the agency
action." (Judicial Review of Agency Action (Feb.1997)
27 Cal. Law Revision Com. Rep. (1997) p. 81, italics
added.)

20 (*Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19
21 Cal.4th 1, 7-8, internal citations and quotation marks omitted,
22 except last sentence.)

23 "Mandamus may issue to correct the exercise of discretionary
24 legislative power, *but only* if the action taken is so palpably
25 unreasonable and arbitrary as to show an abuse of discretion as a
26 matter of law. This is a highly deferential test." (*Carrancho v.*
27 *California Air Resources Bd.* (2003) 111 Cal.App.4th 1255, 1265,
28 italics in original; *Yamaha Corp. of America v. State Bd. of*

1 *Equalization* (1998) 19 Cal.4th 1 [judicial review of quasi-
2 legislative administrative decisions is "more deferential"]; see
3 also *Pitts v. Perluss* (1962) 58 Cal.2d 824, 832 [general rule is
4 that court should not substitute its judgment for that of
5 administrative agency which acts in quasi-legislative capacity];
6 *Faulkner v. California Toll Bridge Authority* (1953) 40 Cal.2d 317,
7 329 ["as a general principle, gleaned from the cases... '[t]he courts
8 have nothing to do with the wisdom or expediency of the measures
9 adopted by an administrative agency to which the formulation and
10 execution of state policy have been entrusted, and will not
11 substitute their judgment or notions of expediency,
12 reasonableness, or wisdom for those which have guided the agency.'
13 [Citations.]"]; *Rible v. Hughes* (1944) 24 Cal.2d 437, 445 ["If
14 reasonable minds may well be divided as to the wisdom of an
15 administrative board's action, its action is conclusive. Or,
16 stated another way, if there appears to be some reasonable basis
17 for the classification, a court will not substitute its judgment
18 for that of the administrative body."].)

19 **C. Assault Weapons Control Act ("AWCA") - Penal Code §§**
20 **30500, et seq.**

21 The Legislature may choose to grant an administrative agency
22 broad authority to apply its expertise in determining whether and
23 how to address a problem without identifying specific examples of
24 the problem or articulating possible solutions. (*Association of*
25 *California Insurance Companies*, supra, 2 Cal.5th at p. 399.)

26 The Legislature has found and declared that the proliferation
27 and use of assault weapons poses a threat to the health, safety,
28 and security of the citizens of California. (Pen. Code §30505(a);

1 see *Kasler, supra*, 23 Cal.4th at p. 482-488 [reviewing "crisis
2 created by the proliferation and use of assault weapons" that gave
3 rise to AWCA].) Controlling assault weapons in the state has
4 turned out to be no easy feat, however "...the Legislature was not
5 constitutionally compelled to throw up its hands just because a
6 perfectly comprehensive regulatory scheme was not politically
7 achievable. The problems of government are practical ones and may
8 justify, if they do not require, rough accommodations - illogical,
9 it may be, and unscientific." (*Kasler, supra*, 23 Cal.4th at p.
10 487, internal citations and quotation marks omitted.) As a
11 result, there have been revisions to the original AWCA, where the
12 Legislature has attempted to deal with the various companies that
13 design around the newest regulations. Prior to SB 880/ AB1135's
14 passage, there were three categories of assault weapons under
15 California law:

- 16 1. Category one: firearms specified on the original
17 Roberti-Roos assault weapons list. (Pen. Code §30510(a)-
(c));
- 18 2. Category two: firearms specified on the AK and AR-15
19 series weapons listing (Id. at (e)-(f)); and
- 20 3. Category three:
 - 21 a. firearms defined as assault weapons based on
22 specific generic characteristics, often called "SB
23 23 assault weapons." (Pen. Code §30515); and
 - 24 b. firearms that do not have a fixed magazine, as
25 defined in Penal Code §30515, including those
26 weapons with an ammunition feeding device that can
27 be readily removed from the firearm with the use of
28 a tool (a/k/a "bullet button" - small recessed
release button that cannot be pressed without the
use of a tool; a bullet is often used as the tool)
(Pen. Code §30900(b)(1); see Assembly Bill 1135 /
Senate Bill 880).

26 The new legislation creates a fourth category: an "assault
27 weapon that does not have a fixed magazine, as defined in Section
28 30515, those weapons with an ammunition feeding device that can be

1 readily moved from the firearm with the use of a tool." (Pen. Code
2 §30900.)

3 "It is the intent of the Legislature in enacting [Ch. 2
4 Assault Weapons and .50 BMG Rifles] to place restrictions on the
5 use of assault weapons and to establish a registration and permit
6 procedure for their lawful sale and possession." (Pen. Code
7 §30505(a); see *Harrott v. County of Kings* (2001) 25 Cal.4th 1138,
8 1154 [in determining statute's meaning, courts look to statutory
9 language, as well as "design of the statute as a whole and to its
10 object and policy."].)

11 Penal Code section 30900 provides:

12 Any person who, from January 1, 2001, to December 31,
13 2016, inclusive, **lawfully possessed an assault weapon**
14 **that does not have a fixed magazine, as defined in**
15 **Section 30515, including those weapons with an**
16 **ammunition feeding device that can be readily removed**
17 **from the firearm with the use of a tool, shall**
18 register the firearm before July 1, 2018, but not
19 before the effective date of the regulations adopted
20 pursuant to paragraph (5), with the department
21 pursuant to those procedures that the department may
22 establish by regulation pursuant to paragraph (5).
(Subd. (b)(1), bold added.)

18 and

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

23 Penal Code section 30515 provides that "[n]otwithstanding
24 section 30510, 'assault weapon' also means any of the following:"
25 wherein it then lists (1) a semiautomatic, centerfire rifle that
26 does not have a fixed magazine but has any one of the following,
27 with a list of six features; (2) a semiautomatic, centerfire rifle
28 that has a fixed magazine with the capacity to accept more than 10

1 rounds; (3) a semiautomatic, centerfire rifle that has an overall
2 length of less than 30 inches; (4) a semiautomatic pistol that
3 does not have a fixed magazine but has any one of the following[,]
4 with a list of four features; (5) A semiautomatic pistol with a
5 fixed magazine that has the capacity to accept more than 10
6 rounds; (6) a semiautomatic shotgun that has both of the
7 following, with a list of two features; (7) a semiautomatic
8 shotgun that has the ability to accept a detachable magazine; and
9 (8) any shotgun with a revolving cylinder (which apparently is
10 extremely rare).

11 There are only two published cases addressing Penal Code
12 section 30515: *Haynie v. Harris* (9th Cir. 2016) 658 Fed. Appx.
13 834; and *In re Jorge M.* (2000) 23 Cal.4th 866. *In re Jorge*
14 concerned the knowledge element with regard to what is an "assault
15 weapon" under the law. *Haynie* involved a wrongful arrest after
16 peace officers mistakenly believed plaintiff's firearms were
17 illegal "assault weapons" pursuant to the AWCA. The *Haynie* court
18 seems to agree with Defendants' stance here, that any weapon with
19 a bullet button is an "assault weapon":

20 "[O]n July 1, 2016, Governor Jerry Brown signed into
21 law Assembly Bill 1135 and Senate Bill 880. See AB
22 1135 & SB 880, §§ 1 (amending Cal. Penal Code §30515).
23 **These bills changed the law by including weapons**
24 **equipped with a bullet button within the statutory**
25 **definition of an assault weapon.** Rather than defining
26 an assault weapon as a firearm with the 'capacity to
27 accept a detachable magazine' as before, the amended
28 legislation now defines an assault weapon as one that
"does not have a fixed magazine." *Id.* The amendment
further defines a 'fixed magazine' as 'an ammunition
feeding device contained in, or permanently attached
to, a firearm in such a manner that the device cannot
be removed without disassembly of the firearm action.'
Id."

28 (*Haynie v. Harris* (9th Cir. 2016) 658 Fed. Appx. 834, 837,

1 bold added.)

2 The Senate Committee on Public Safety's bill analysis states,
3 "This bill clarifies the definition of assault weapons and
4 provides the [DOJ] the authority to bring existing regulations
5 into conformity with the original intent of California's Assault
6 Weapon Ban[;]" (Def.'s RJN, Exh. 5, p. 6, ¶2) and "[t]he purpose
7 of this change is to clarify that equipping a weapon with a
8 'bullet button' magazine release does not take that weapon outside
9 the definition of an assault weapon[]" (Id. at p. 10, ¶4).

10 **IV. ANALYSIS**

11 Plaintiffs argue that (1) Defendants exceeded the scope of
12 the APA-exemption with regard to promulgating regulations that
13 implement Penal Code section 30900, and (2) the resulting
14 regulations are invalid, as a result of Defendants' failure to go
15 through the APA notice and comment procedure, choosing instead to
16 use the "file and print" method, which does not require public
17 input. Plaintiffs summarize their argument as: Defendants were
18 exempt from the APA in promulgating regulations directing *how* to
19 register firearms, but instead promulgated regulations that
20 provide *what* to register, illegally enlarging the definition of
21 "assault weapon."

22 Plaintiffs argue that Defendants' interpretation of section
23 30900(b)(1), namely, that it includes bullet button shotguns, is
24 erroneous, because there is no statute providing that bullet
25 button shotguns are "assault weapons."

26 In response, Defendants argue that the new amendments to the
27 AWCA established "a new registration process for 'bullet-button'
28 assault weapons" (Opp. 6:17-18); and that as of January 1, 2017,

1 "an assault weapon may now include a weapon that 'does not have a
2 fixed magazine" (*Id.* at lines 20-21). Defendants then refer to
3 the Legislative history. The documents submitted include language
4 such as:

- 5 • SB880 will make our communities safer and upholds our
6 commitment to reduce gun violence in California **by closing**
7 **the bullet button loophole** in California's Assault Weapons
8 Ban. (RJN, Exh. 1 at 3; exh. 2 at 3; exh. 5 at 6, bold
9 added.)
- 10 • **This bill seeks to address the issue regarding the**
11 **definition of an assault weapon as it pertains to what**
12 **constitutes a "detachable magazine."** Regulations
13 promulgated after the enactment of SB 23 define a
14 detachable magazine as, "any ammunition feeding device
15 that can be removed readily from the firearm with neither
16 disassembly of the firearm action nor use of a tool being
17 required. A bullet or ammunition cartridge is considered
18 a tool." (11 CFR § 5469(a)) In response to this
19 definition, features such as the "bullet button" have been
20 developed by firearms manufacturers that enable easy
21 detachment of a magazine with the use of a "tool" and are
22 thus not classified as a "detachable magazine." **As a**
23 **result, firearms with features such as the "bullet button"**
24 **do not fall within the current definition of an assault**
25 **weapon.** (RJN, Exh. 3 at 2, emphasis added.)
- 26 • High-capacity detachable ammunition magazines allow
27 shooters to expel large amounts of ammunition quickly and
28 have no sporting purpose. (*Id.* at Exh. 2, p. 5.)

19 The "bullet button" feature is a bone of contention between
20 the parties - it appears that Defendants' position is that any
21 firearm with a bullet button is an "assault weapon;" whereas
22 Plaintiffs argue that only certain firearms, i.e., those listed in
23 Penal Code sections 30510 and 30520, constitute "assault weapons."

24 As stated above, an administrative agency is not limited to
25 the exact statutory provisions, and is allowed to "fill up the
26 details" of the statutory scheme. (*Paintcare, supra*, 233
27 Cal.App.4th at p. 1307.) DOJ, then, is authorized to promulgate
28 regulations that carry out the *intent* of Penal Code section 30900.

1 Defendants argue that "the same dangers posed by bullet-button
2 equipped rifles and pistols are also posed by bullet-button
3 equipped shotguns[,] " thus, DOJ's regulations including bullet
4 button shotguns properly carries out the Legislative intent.
5 (Opp., 15:17-18.)

6 The legislative findings and declarations state that the
7 Legislature intended to restrict assault weapons (as defined in
8 section 30510, which is a list of designated semiautomatic
9 firearms), and not to restrict the use of weapons that are
10 primarily designed for hunting, target practice, or "other
11 legitimate sports or recreational activities." (Pen. Code
12 §3505(a).) Defendants argue that the five definitions Plaintiffs
13 allege were repealed were, in fact, simply moved; and that this
14 consolidation of terms is reasonably necessary for the
15 registration process because it prevents confusion that would
16 otherwise stem from applying two separate sets of definitions.
17 Defendants state preventing such confusion is within DOJ's
18 authority pursuant to section 30900, to make rules implementing
19 the registration process. Arguably, the Legislature chose to
20 leave some details to DOJ to "fill in," relying on DOJ's
21 experience; moreover, the addition of a bullet button does seem to
22 bring a firearm within the Legislature's intent to restrict
23 weapons that go beyond general recreational activities. The APA
24 exemption granted by the Legislature would appear to include the
25 power to define terms to enable the public to understand and
26 comply with the registration process; Defendants argue the
27 definitions are reasonably necessary to the registration process,
28 to which the APA exemption applies, as a reflection of DOJ's

1 judgment that such information will assist firearm owners in
2 understanding and navigating the registration process and allow
3 DOJ to carry out the registration process efficiently.

4 The language of Penal Code section 30900 is being interpreted
5 differently by the parties is this:

6 Any person who...lawfully possessed an assault weapon
7 that does not have a fixed magazine, as defined in
8 Section 30515, **including those weapons with an**
9 **ammunition feeding device that can be readily removed**
10 **from the firearm with the use of a tool**, shall
11 register the firearm before July 1, 2018...

12 Defendants argue the bolded language here means *any weapon*
13 that has a bullet button, therefore all bullet button weapons, not
14 just bullet button "assault weapons" (as defined in §§ 30510 and
15 30515), are included and must be registered. In other words,
16 Defendants' position is that the bolded language above adds
17 firearms to the AWCA. Plaintiffs argue the "included" here simply
18 modifies the phrase "assault weapon that does not have a fixed
19 magazine," i.e., it only clarifies what weapons are included in
20 that phrase, it does not add more to it.

21 Defendants submit various analyses prepared for Senate Bill
22 880 and Assembly Bill 1135; these tend generally to lend support
23 to Defendants' argument that the problem the Legislature was
24 attempting to address was bullet buttons on firearms generally,
25 however there is also language in the legislative history
26 submitted by Defendants indicating "assault weapon" is meant to
27 include those firearms that meet two requirements: (1) does not
28 have a fixed magazine (i.e., does have a bullet button); and (2)
has one of several specified military-style features (see Pen.
Code §30515(a)(1), (b)). (See RJN, Exhs. 1-9.)

1 Plaintiffs also argue that the level of deference the Court
2 is to apply to Defendant DOJ's decisions is significantly lower
3 than that urged by Defendants. Plaintiffs state that because this
4 is an issue of statutory interpretation, not a situation where the
5 agency is interpreting one of its own regulations, judicial
6 deference to DOJ's decision is much lower and the Court should
7 independently review the text of the authorizing statute.
8 Plaintiffs' ask the Court to find that the challenged regulations
9 are not of a subject matter that fits within the APA exemption of
10 section 30900; the regulations illegally alter the scope of the
11 statute and are therefore void; DOJ effectively repealed five
12 definitions previously found in section 5469 (of Title 11 of
13 Calif. Code of Regulations) by moving them from a section that
14 expressly stated the definitions applied to terms used in the
15 identification of "assault weapons" (pursuant to Pen. Code
16 §30515), to a section that applies for purposes of section 30900,
17 i.e., registration (rather than identification); that bullet
18 button shotguns do not meet the statutory definition of "assault
19 weapons" and therefore do not need to be registered; that DOJ may
20 not require applicants to create a serial number for their
21 firearms without adopting a regulation pursuant to the APA,
22 because section 5474.2 (Title 11 of CCR) is not part of the
23 registration process, as it limits *what* firearms can be
24 registered, rather than *how* to register them; and that DOJ's self-
25 exemption from liability, and the photo, citizenship and joint
26 registration restriction provisions must be promulgated pursuant
27 to the APA, as each is outside the exemption granted by the
28 Legislature.

1 In the Court's opinion, Defendants' interpretation of the
2 authorizing statute is reasonable; Plaintiffs fail to show that
3 Defendants abused their discretion in the interpretation of the
4 authorizing statute. It appears that the Legislature's intent was
5 to cast a wider net so far as registering weapons fitted with a
6 bullet button, and to permit Defendant DOJ to promulgate
7 regulations that carry out this intent, without going through the
8 APA notice and comment procedures. The documents submitted by
9 Defendants (see RJN, filed 4/6/2018) contain repeated references
10 to the "bullet button loophole," and the desire to curtail the
11 proliferation of weapons that are able to fire large numbers of
12 rounds in a short period of time. Registration of firearms with
13 enhanced firepower from a bullet button, i.e., weapons that go
14 beyond the needs of "hunting, target practice, or other legitimate
15 sports or recreational activities[]" (Pen. Code §30505(a)), is in
16 line with the intent of the AWCA (see *ibid.*), and appears to carry
17 out the Legislature's intent for section 30900, subdivision
18 (b) (1).

19 **V. STATEMENT OF DECISION**

20 **A. Standard of Review**

21 "When an administrative agency promulgates a regulation in
22 its enforcement of a statute, the regulation will not be disturbed
23 by the courts, unless it is an impermissible exercise of
24 administrative discretion in carrying out the intent of the
25 Legislature, which can be characterized as arbitrary, capricious,
26 or patently unreasonable. Ordinarily, a reviewing court gives
27 great weight to the interpretation of a statute by the
28 administrative agency empowered to promulgate regulations to

1 advance its purpose unless the interpretation is clearly
2 erroneous." (*General Business Systems, Inc. v. State Bd. of*
3 *Equalization* (1984) 162 Cal.App.3d 50, 54-55, internal citations,
4 quotation marks, and brackets omitted; see *Kasler v. Lockyer*
5 (2000) 23 Cal.4th 472, 503.)

6 "Mandamus may issue to correct the exercise of discretionary
7 legislative power, *but only* if the action taken is so palpably
8 unreasonable and arbitrary as to show an abuse of discretion as a
9 matter of law. This is a highly deferential test." (*Carrancho v.*
10 *California Air Resources Bd.* (2003) 111 Cal.App.4th 1255, 1265,
11 italics in original; *Yamaha Corp. of America v. State Bd. of*
12 *Equalization* (1998) 19 Cal.4th 1 [judicial review of quasi-
13 legislative administrative decisions is "more deferential"]; see
14 also *Pitts v. Perluss* (1962) 58 Cal.2d 824, 832 [general rule is
15 that court should not substitute its judgment for that of
16 administrative agency which acts in quasi-legislative capacity];
17 *Faulkner v. California Toll Bridge Authority* (1953) 40 Cal.2d 317,
18 329 ["as a general principle, gleaned from the cases... '[t]he courts
19 have nothing to do with the wisdom or expediency of the measures
20 adopted by an administrative agency to which the formulation and
21 execution of state policy have been entrusted, and will not
22 substitute their judgment or notions of expediency,
23 reasonableness, or wisdom for those which have guided the agency.'
24 [Citations.]"]; *Rible v. Hughes* (1944) 24 Cal.2d 437, 445 ["If
25 reasonable minds may well be divided as to the wisdom of an
26 administrative board's action, its action is conclusive."].) Put
27 another way, where an agency's interpretation of an authorizing
28 statute is at issue, the court, in exercising its independent

1 judgment, accords "great weight and respect" to the agency's
2 construction. (*Association of California Insurance Companies v.*
3 *Jones* (2017) 2 Cal.5th 376, 389-390; *County of Los Angeles v. City*
4 *of Los Angeles* (2013) 214 Cal.App.4th 643, 654.)

5 **B. Petitioners Have Not Shown that Defendants Exceeded the**
6 **Scope of the APA Exemption Found in Penal Code Section 30900.**

7 An administrative agency "is not limited to the exact
8 provisions of a statute" in adopting regulations to enforce its
9 mandate; an absence of specific statutory provisions regarding the
10 regulation of an issue does not mean that such a regulation
11 exceeds statutory authority, as the agency is authorized to "fill
12 up the details" of the statutory scheme. (*PaintCare v. Mortensen*
13 (2015) 233 Cal.App.4th 1292, 1307, and cases cited; see also
14 *California School Bds. Assn. v. State Bd. of Education* (2011) 191
15 Cal.App.4th 530, 544; *Batt v. City and County of San Francisco*
16 (2010) 184 Cal.App.4th 163, 171, 174; *Masonite Corp. v. County of*
17 *Mendocino Air Quality Management Dist.* (1996) 42 Cal.App.4th 436,
18 445-447.) In other words, the Legislature may, after declaring a
19 policy and fixing a primary standard, confer upon an
20 administrative officer the power to "fill up the details" by
21 prescribing administrative rules and regulations to promote the
22 purposes of the legislation and carry it into effect. (*Coastside*
23 *Fishing Club v. California Resources Agency* (2008) 158 Cal.App.4th
24 1183, 1205; see *People v. Wright* (1982) 30 Cal.3d 705, 713
25 [standards for administrative application of statute need not be
26 expressly set forth; may be implied by purpose of statute].)

27 The interpretation of a regulatory statute is the duty of the
28 administrative agency charged with its enforcement; though final

1 responsibility for interpreting the law belongs to the courts, an
2 administrative agency's construction is "entitled to great
3 weight." (*B. C. Cotton, Inc. v. Voss* (1995) 33 Cal.App.4th 929,
4 951; *County of Sacramento v. State Water Resources Control Bd.*
5 (2007) 153 Cal.App.4th 1579, 1587 [where regulation is ambiguous,
6 is appropriate to consider agency's interpretation; "[i]ndeed, we
7 defer to an agency's interpretation of a regulation involving its
8 area of expertise," unless it "flies in the face of the clear
9 language and purpose" of its interpretive provision]; *Communities*
10 *for a Better Environment v. State Water Resources Control Bd.*
11 (2003) 109 Cal.App.4th 1089, 1104 [same].) Moreover, the
12 persuasiveness of the agency's interpretation "increases in
13 proportion to the expertise and special competence that are
14 reflected therein, including any evidence that the interpretation
15 was carefully considered at the highest policymaking level of the
16 agency." (*Alvarado v. Dart Container Corporation of California*
17 (2018) 4 Cal.5th 542, 558.)

18 Legislative history may be examined to resolve ambiguities or
19 uncertainties regarding the purpose or meaning of a statute.

20 (*Arce v. Kaiser Foundation Health Plan, Inc.* (2010) 181
21 Cal.App.4th 471, 484; see *Benson v. Workers' Compensation Appeals*
22 *Bd.* (2009) 170 Cal.App.4th 1535, 1554, fn 16 [documents may be
23 proper subjects of judicial notice if is indicated that
24 Legislature considered them in passing statute].) The court may
25 consider the impact an interpretation of a statute may have on
26 public policy, and where there is uncertainty, " 'consideration
27 should be given to the consequences that will flow from a
28

1 particular interpretation.' [Citation.]" (*Mejia v. Reed* (2003) 31
2 Cal.4th 657, 663.)

3 The Legislature has found and declared that the proliferation
4 and use of assault weapons poses a threat to the health, safety,
5 and security of the citizenry of California. (Pen. Code,
6 §30505(a); see *Kasler, supra*, 23 Cal.4th at p. 482-488 [reviewing
7 "crisis created by the proliferation and use of assault weapons"
8 that gave rise to Assault Weapon Control Act].) Though creating
9 an effective statutory scheme has proved challenging, "...the
10 Legislature was not constitutionally compelled to throw up its
11 hands just because a perfectly comprehensive regulatory scheme was
12 not politically achievable. The problems of government are
13 practical ones and may justify, if they do not require, rough
14 accommodations[.]" (*Id.* at p. 487, internal citations and
15 quotation marks omitted; see *Harrott v. County of Kings* (2001) 25
16 Cal.4th 1138, 1154 [in determining statute's meaning, courts look
17 to "design of the statute as a whole and to its object and
18 policy[,]" in addition to statutory language].)

19 Accordingly, "on July 1, 2016, Governor Jerry Brown signed
20 into law Assembly Bill 1135 and Senate Bill 880. See AB 1135 & SB
21 880, §§ 1 (amending Cal. Penal Code §30515). These bills changed
22 the law by including weapons equipped with a bullet button within
23 the statutory definition of an assault weapon." (*Haynie v. Harris*
24 (9th Cir. 2016) 658 Fed. Appx. 834, 837.)

25 The Senate Committee on Public Safety's bill analysis states,
26 "This bill clarifies the definition of assault weapons and
27 provides the [DOJ] the authority to bring existing regulations
28 into conformity with the original intent of California's Assault

1 Weapon Ban" (Def's RJN, exh. 5, pg. 6); "[t]he purpose of this
2 change is to clarify that equipping a weapon with a 'bullet
3 button' magazine release does not take that weapon outside the
4 definition of an assault weapon[]" (*Id.* at p. 10).

5 Penal Code section 30900 provides:

6 (b)(1) Any person who, from January 1, 2001, to
7 December 31, 2016, inclusive, lawfully possessed an
8 assault weapon that does not have a fixed magazine, as
9 defined in Section 30515, *including those weapons with*
10 *an ammunition feeding device that can be readily*
11 *removed from the firearm with the use of a tool*, shall
12 register the firearm before July 1, 2018, but not
13 before the effective date of the regulations adopted
14 pursuant to paragraph (5), with the department
15 pursuant to those procedures that the department may
16 establish by regulation pursuant to paragraph (5).
(Subd. (b)(1), italics added.)

17 [...]

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

24 Plaintiffs here allege that Defendant Department of Justice
25 ("DOJ") exceeded the scope of its APA exemption when it
26 promulgated the challenged regulations via the "file and print"
27 process, rather than adhering to the notice and comment procedure
28 set forth in the APA. Specifically, Plaintiffs allege that DOJ's
exemption applied to promulgating regulations that addressed *how*
to register, not *what* to register; that the DOJ improperly
expanded the definition of "assault weapon;" that "bullet button
shotguns" do not meet the statutory definition of "assault weapon"
and therefore should not have to be registered; that DOJ cannot
require applicants to create a serial number for a firearm; that
the non-liability clause is unrelated to the registration process;

