

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**

DATE: 08/31/17

DEPT. 82

HONORABLE MARY H. STROBEL

JUDGE

N. DIGIAMBATTISTA

DEPUTY CLERK

HONORABLE  
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JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

B. HALL C/A

Deputy Sheriff

J HOLLIFIELD/CSR 12564

Reporter

1:30 pm

BS163796

Plaintiff SEAN A. BRADY (X)  
Counsel JAMES M. RENE (X)

MARTIN LLANOS ET AL  
VS  
KAMALA HARRIS ET AL

Defendant  
Counsel BENJAMIN M. GLICKMAN (X)

170.6 HOGUE - PETITIONER

**NATURE OF PROCEEDINGS:**

HEARING ON PETITION FOR WRIT OF MANDATE

Matter comes on for hearing and is argued.

The court adopts its tentative ruling as the order of the court and is set forth in this minute order.

Plaintiffs and Petitioners Martin Llanos and the California Reserve Peace Officers Association ("CRPOA") (collectively "Petitioners") seek a judicial declaration that peace officers meeting the definition of "reserve officers" under Penal Code section 830.6 are eligible for the exemption from the Assault Weapons Control Act ("AWCA") in Penal Code section 30630(b). Petitioners also seek a writ of traditional mandate compelling Defendants and Respondents Xavier Becerra, in his official capacity as California Attorney General, and Stephen Lindley, in his official capacity as Director of the California Department of Justice, Bureau of Firearms ("BOF") (collectively "Respondents") to register Petitioner Llanos' assault weapon and that of any other reserve officer who meets the requirements of Penal Code section 30630(b).

Statement of the Case

The Assault Weapons Control Act

MINUTES ENTERED 08/31/17 COUNTY CLERK
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The sale and possession of assault weapons in California is governed by the AWCA. (Penal Code § 30500 et seq.) The AWCA was enacted in 1989 during an extraordinary legislative session called in response to a mass shooting that killed five children and wounded one teacher and 29 children at an elementary school in Stockton. (See *Silveira v. Lockyer* (9th Cir. 2002) 312 F.3d 1052, 1057.) In enacting the AWCA, the Legislature expressly found and declared that "the proliferation and use of assault weapons poses a threat to the health, safety, and security of all citizens of this state." (§ 30505(a).) The Legislature restricted the sale, possession, and use of specified assault weapons "based upon finding that each firearm has such a high rate of fire and capacity for firepower that its function as a legitimate sports or recreational firearm is substantially outweighed by the danger that it can be used to kill and injure human beings." (Ibid.) In 2004, the Legislature expanded the AWCA to prohibit .50 Caliber BMG rifles. (Id., subd. (b).)

The AWCA, as amended, generally makes distribution and possession of assault weapons and .50 BMG rifles a criminal offense, subject to certain exceptions. As relevant in this case, Penal Code sections 30625 and 30630 provide exceptions for law enforcement agencies and sworn peace officers, respectively. Section 30625 exempts law enforcement agencies,

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including, as applicable here, "police departments," from the assault weapons prohibitions, permitting such agencies to purchase and possess assault weapons "for use in the discharge of their official duties." (§ 30625.)

Section 30630(a) authorizes "the possession or use of assault weapons or a .50 BMG rifle by sworn peace officer members of those agencies specified in Section 30625 for law enforcement purposes, whether on or off duty."

The exception relevant to this petition is contained in section 30630(b). Subdivision (b)(1) provides in full:

(b)(1) Sections 30600, 30605, and 30610 shall not prohibit the sale, delivery, or transfer of an assault weapon or a .50 BMG rifle to, or the possession of an assault weapon or a .50 BMG rifle by, a sworn peace officer member of an agency specified in Section 30625 if the peace officer is authorized by the officer's employer to possess or receive the assault weapon or the .50 BMG rifle. Required authorization is defined as verifiable written certification from the head of the agency, identifying the recipient or possessor of the assault weapon as a peace officer and authorizing that person

<p align="center"><b>MINUTES ENTERED</b> 08/31/17 COUNTY CLERK</p>
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to receive or possess the specific assault weapon.

Subdivisions (b)(2) and (3) discuss the registration requirements that apply to sworn peace officers possessing or receiving an assault weapon and who fall under the exception.

**Reserve Peace Officers**

The Penal Code (Part 2, Title 3, Chapter 4.5) identifies those persons who are "peace officers" in California. Reserve officers are deemed "peace officers" if they meet specified criteria. (§ 830.6)

Specifically, section 830.6(a)(1) provides in relevant part: "Whenever any qualified person is deputized or appointed by the proper authority as a reserve or auxiliary sheriff or city police officer, ... and is assigned specific police functions by that authority, the person is a peace officer, if the person qualifies as set forth in Section 832.6. The authority of a person designated as a peace officer pursuant to this paragraph extends only for the duration of the person's specific assignment." 1

Section 832.6 outlines three levels of reserve officers, their required training, and their peace officer authority:

<p align="center">MINUTES ENTERED 08/31/17 COUNTY CLERK</p>
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170.6 HOGUE - PETITIONER

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(a) Every person deputized or appointed, as described in subdivision (a) of Section 830.6, shall have the powers of a peace officer only when the person is any of the following:

(1) A level I reserve officer deputized or appointed pursuant to paragraph (1) or (2) of subdivision (a) or subdivision (b) of Section 830.6 and assigned to the prevention and detection of crime and the general enforcement of the laws of this state, whether or not working alone, and the person has completed the basic training course for deputy sheriffs and police officers prescribed by the Commission on Peace Officer Standards and Training....

(2) A level II reserve officer assigned to the prevention and detection of crime and the general enforcement of the laws of this state while under the immediate supervision of a peace officer who has completed the basic training course for deputy sheriffs and police officers prescribed by the Commission on Peace Officer Standards and Training, and the level II reserve officer has completed the course required by Section 832 and any other training prescribed by the commission.... [¶]

09/06/2017

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170.6 HOGUE - PETITIONER

**NATURE OF PROCEEDINGS:**

(3) Level III reserve officers may be deployed and are authorized only to carry out limited support duties not requiring general law enforcement powers in their routine performance. Those limited duties shall include traffic control, security at parades and sporting events, report taking, evidence transportation, parking enforcement, and other duties that are not likely to result in physical arrests. Level III reserve officers while assigned these duties shall be supervised in the accessible vicinity by a level I reserve officer or a full-time, regular peace officer employed by a law enforcement agency authorized to have reserve officers. Level III reserve officers may transport prisoners without immediate supervision. Those persons shall have completed the training required under Section 832 and any other training prescribed by the commission for those persons.

Denial of Petitioner Llanos's Peace Officer Assault Weapon Registration Application

Petitioner Llanos is a reserve police officer employed by the San Bernardino Police Department ("SBPD"). (Llanos Decl. ¶¶ 2-4.) It is undisputed that Petitioner Llanos is not a "designated reserve officer" pursuant to section 832.6(a)(2) because the

<p align="center"><b>MINUTES ENTERED</b> 08/31/17 <b>COUNTY CLERK</b></p>
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170.6 HOGUE - PETITIONER

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City of San Bernardino has not passed an ordinance or resolution designating its Level I reserve peace officers. (Petitioners' Opening Brief (OB) 14.) It is also undisputed that Petitioner Llanos has been deputized as a Level I reserve officer by SBPD pursuant to section 832.6(a)(1). (Llanos Decl. ¶¶ 2-7; Oppo. 11.) Therefore, Petitioner Llanos is a "peace officer" under California law. He does not have law enforcement authority while off duty. (See Rene Decl. ¶ 4.)

On February 11, 2016, following a terrorist incident in San Bernardino, SBPD authorized Petitioner to purchase an assault weapon for use in his patrol duties. (Llanos Decl. ¶ 8; Exh. B.) The authorization states that Petitioner Llanos "will use the requested firearm(s) for use in performing official duties," and that Petitioner "is eligible to receive the firearm ... for use in performing official duties." (Id. Exh. B.)

Within 90 days of purchasing the assault weapon, Petitioner Llanos submitted to BOF a "Peace Officer Assault Weapon Registration Application," a check for \$20, and the SBPD's authorization letter. (Llanos Decl. ¶ 13.) On April 29, 2016, BOF rejected Petitioner Llanos' registration, stating:

Penal Code section 30625 allows for assault weapons to be used and purchased by

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**NATURE OF PROCEEDINGS:**

sworn peace officers and nothing precludes you from using an agency issued assault weapon. However, we have found no clear statutory authority to support the proposition that a reserve officer may purchase one for his or her own use....

You must immediately do one or more of the following:

Render the weapon permanently inoperable  
Surrender the weapon to a law enforcement agency. (Llanos Decl. ¶ 14, Exh. D.)

Preceding BOF's denial of Petitioner Llanos's registration, counsel for CRPOA had been engaged in communications with BOF representatives disputing the denial of other reserve officers' registrations of assault weapons. (Brady Decl. ¶ 1.) After this litigation was filed, BOF informed Petitioners' counsel of BOF's determination that "reserve officers are legally permitted to reimburse their employing agencies for the cost of agency-purchased assault weapons the officers' use for law enforcement purposes pursuant to Penal Code, section 30630(a), but that reserve officers lack law enforcement powers when off duty and therefore may not possess or use agency-purchased assault weapons at such times." (Lindley Decl. ¶ 3; see also Glickman Decl. ¶ 3.)

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Procedural History

On August 3, 2016, Petitioners filed a petition for writ of traditional mandate and a complaint for declaratory and injunctive relief. Respondents filed an answer on September 7, 2016. The court has received Petitioners' opening brief, Respondents' opposition, and Petitioners' reply.

Standard of Review

The petition is brought pursuant to Code of Civil Procedure section 1085. There are two essential requirements to the issuance of an ordinary writ of mandate under Code of Civil Procedure section 1085: (1) a clear, present and ministerial duty on the part of the respondent, and (2) a clear, present and beneficial right on the part of the petitioner to the performance of that duty. (California Ass'n for Health Services at Home v. Department of Health Services (2007) 148 Cal.App.4th 696, 704.) "An action in ordinary mandamus is proper where ... the claim is that an agency has failed to act as required by law." (Id. at 705.) "[T]he inquiry is limited to whether the decision was arbitrary, capricious, or entirely lacking in evidentiary support." (Bunnett v. Regents of University of California (1995) 35 Cal.App.4th 843, 849.)

Interpretation of a statute presents a question of

09/06/2017

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**NATURE OF PROCEEDINGS:**

law that the court reviews de novo. (Woodland Park Management, LLC v. City of East Palo Alto Rent Stabilization Bd. (2010) 181 Cal.App.4th 915, 919.) With respect to "the interpretation of a statute an administrative agency is responsible for enforcing, we exercise our independent judgment, 'taking into account and respecting the agency's interpretation of its meaning.'" (Housing Partners I, Inc. v. Duncan (2012) 206 Cal.App.4th 1335, 1343; see also Yamaha Corp. of America v. State Bd. Of Equalization (1998) 19 Cal.4th 1, 11.)

"The rules governing statutory construction are well settled. We begin with the fundamental premise that the objective of statutory interpretation is to ascertain and effectuate legislative intent. [Citations.] To determine legislative intent, we turn first to the words of the statute, giving them their usual and ordinary meaning. [Citations.] When the language of a statute is clear, we need go no further. However, when the language is susceptible of more than one reasonable interpretation, we look to a variety of extrinsic aids, including the ostensible objects to be achieved, the evils to be remedied, the legislative history, public policy, contemporaneous administrative construction, and the statutory scheme of which the statute is a part." (Nolan v. City of Anaheim (2004) 33 Cal.4th 335, 340.)

09/06/2017

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When interpreting a statute, the court must construe the statute, if possible to achieve harmony among its parts. (People v. Hall (1991) 1 Cal. 4th 266, 272; Legacy Group v. City of Wasco (2003) 106 Cal.App. 4th 1305, 1313). "When the legislature has carefully employed a term in one place and has excluded it in another, it should not be implied where excluded." (Wasatch Property Management v. Degrade (2005) 35 Cal.4th 1111.) "When interpreting statutory language, we may neither insert language which has been omitted nor ignore language which has been inserted." (See People v. National Auto. and Cas. Ins. Co. (2002) 98 Cal.App.4th 277, 282.)

**Analysis**

Statutory Interpretation of Section 30630(b) (1)

Plain Language of Section 30630(b) (1) and Related Statutes within AWCA

Section 30630(b) (1) exempts the "sale, delivery, or transfer of an assault weapon or a .50 BMG rifle to, or the possession of an assault weapon or a .50 BMG rifle by, a sworn peace officer member of an agency specified in Section 30625 if the peace officer is authorized by the officer's employer to possess or receive the assault weapon or the .50 BMG rifle."

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There is no dispute that reserve officers that satisfy the requirements of sections 830.6 and 832.6, such as Petitioner Llanos, are sworn "peace officers." There is also no dispute that these reserve officers would be considered "members" of their employing agencies. As long as the employer authorization is obtained, section 30630(b)(1) does not by its plain language place any restrictions on the categories of peace officers that fall within the exemption, or limit the exemption to peace officers that have law enforcement authority while off duty.

In the opening brief, Petitioners argue that the Court of Appeal's decision in Stanislaus County Deputy Sheriff's Association v. County of Stanislaus (2016) 2 Cal.App.5th 368, which interpreted a peace officer exemption in California's concealed firearms statutes, is instructive if not dispositive. (OB 19-21.) The exemption at issue in Stanislaus declares, in relevant part, as follows: "Section 25400 does not apply to, or affect, any of the following: (a) Any peace officer, listed in Section 830.1 or 830.2, or subdivision (a) of Section 830.33, whether active or honorably retired. (b) Any other duly appointed peace officer." (Penal Code § 25450(a), (b).) Interpreting this language, and that of section 830.1, the Court of Appeal concluded that the exemption for custodial deputies under section 830.1 was categorical and applied whether

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such peace officers were on or off duty. (Id. at 376-382.) The Court of Appeal reasoned that "there is no indication in the wording of section 25450, subdivision (a) itself-which plainly confers the exemption on broad categories of listed peace officers and retired officers-that the exemption was meant to turn on and off like a light switch depending on the individual's particular activities, location or circumstances in a given moment." (Id. at 377-378.) The Court also noted that "nothing in section 830.1, subdivision (c), purports to address, much less limit, the carrying of firearms by the peace officers described therein, whether on or off duty." (Id. at 380.)

In opposition, Respondents argue that Stanislaus is distinguishable because the concealed carry statutory scheme, unlike sections 30625 and 30630(a), is not expressly limited to use in the discharge of an officer's official duties or for law enforcement purposes. (Oppo. 20-22.) Petitioners primarily seek a judicial declaration with respect to section 30630(b)(1), a different provision in the AWCA. While there are important distinctions in the statutory schemes at issue here and in Stanislaus, the process of statutory interpretation in that case is instructive here with respect to sections 30630(b)(1), 830.6, and 832.6.

However, the court agrees with Respondents that

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section 30630(b)(1) must be interpreted in light of the larger statutory scheme, including sections 30625 and 30630(a). When interpreting a statute, the court must construe the statute, if possible to achieve harmony among its parts. (People v. Hall (1991) 1 Cal. 4th 266, 272.) Section 30625 permits law enforcement agencies to purchase, import, or possess assault weapons "for use in the discharge of their official duties." Section 30630(a) permits the "possession or use" of assault weapons by "sworn peace officer members of those agencies specified in Section 30625 for law enforcement purposes, whether on or off duty." Neither of these provisions authorize peace officers to purchase their own assault weapons for use on the job. As Respondents indicate, section 30630(b)(1) fills that gap and allows peace officers to purchase the assault weapons if they obtain employer authorization to possess or receive the assault weapons, and if the weapons are properly registered with BOF. (Oppo. 15.)

Respondents argue that "Petitioners apparently contend that this exemption permits a peace officer to purchase an assault weapon for any purpose." (Oppo. 15-16, citing OB 15, 17 [emphasis in original].) It is not entirely clear from Petitioners' legal briefs whether or not Petitioners contend that section 30630(b)(1) permits reserve officers to purchase assault weapons for any purpose, as long as employer authorization is

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obtained. Primarily, Petitioners appear to seek to register the assault weapons for use in their official duties as reserve officers. (See Reply 2-3.) For instance, Petitioner Llanos relies on a letter from SBPD certifying that Petitioner "will use the requested firearm(s) for use in performing official duties." (Llanos Decl. Exh. B.) Furthermore, Petitioners seek a writ of mandate and declaratory relief that reserve officers may register assault weapons if they meet the requirements of section 30630(b)(1), which requires employer authorization.

Respondents argue that Petitioners' interpretation of section 30630(b)(1) to apply to reserve officers would lead to the absurd result that individual peace officers would have more rights under AWCA than the employing agencies that confer their "peace officer" status. (Oppo. 16.) Reading the statutory scheme as a whole, the court agrees that there is a reasonable interpretation that the employing agency may only give authorization for a peace officer to purchase or possess an assault weapon if the weapon will be used for law enforcement purposes. (§ 30625; § 30630(a).)

The court interprets the interplay between section 30630(a) and 30630(b) in light of the statutory scheme as a whole, including the legislature's declared intent found in section 30505. As a

08/06/2017

<p align="center"><b>MINUTES ENTERED</b> 08/31/17 COUNTY CLERK</p>
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**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**

DATE: 08/31/17

DEPT. 82

HONORABLE MARY H. STROBEL

JUDGE

N. DIGIAMBATTISTA

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B. HALL C/A

Deputy Sheriff

J HOLLIFIELD/CSR 12564

Reporter

1:30 pm

BS163796

Plaintiff SEAN A. BRADY (X)  
Counsel JAMES M. RENE (x)

MARTIN LLANOS ET AL  
VS  
KAMALA HARRIS ET AL

Defendant  
Counsel BENJAMIN M. GLICKMAN (X)

170.6 HOGUE - PETITIONER

**NATURE OF PROCEEDINGS:**

preliminary matter, subsections (a) and (b) of section 30630 use different language and regulate different activities. Subsection (a) allows possession or use of an assault weapon by sworn peace officers only for "law enforcement purposes." By contrast, subsection (b) regulates sale, delivery, or transfer of an assault weapon, and possession of an assault weapon by sworn peace officers. Subdivision (b) does not authorize use of the assault weapon. These two subsections can be harmonized by an interpretation that the use restrictions of subsection (a) are effective independently from the possession and registration requirements set forth in subsection (b). In other words, a sworn peace officer meeting the requirements of subsection (b) to possession an assault weapon (authorization by employer and registration) is still subject to the use regulations set forth in subsection (a). The sworn peace officer registering the assault weapon could use it only for "law enforcement purposes."

This interpretation is consistent with the stated intent of ACWA. Section 30505 states: "It is the intent of the Legislature in enacting this chapter to place restrictions on the use of assault weapons and to establish a registration and permit procedure for their lawful sale and possession." (Cal Pen Code § 30505 (emphasis added).) Thus, the use restriction of subsection (a) independently operates

09/06/2017

<p align="center"><b>MINUTES ENTERED</b> 08/31/17 COUNTY CLERK</p>
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170.6 HOGUE - PETITIONER

**NATURE OF PROCEEDINGS:**

even where a sworn peace officer has otherwise qualified to possess the assault weapon under subsection (b).

The structure of the statute generally supports Petitioners' interpretation that reserve officer, as sworn peace officers, may be authorized by their employer to possess an assault weapon. The statutory scheme provides checks on the possession and use of assault weapons by peace officers. As stated, section 30630(a) only exempts the possession or use of assault weapons by peace officers "for law enforcement purposes, whether on or off duty." Under section 30630(b)(1), the employing agency has discretion whether or not to not give authorization to a peace officer to acquire an assault weapon.

It is also reasonable to infer that the legislature would have been explicit, and easily could have been explicit, if it intended to exclude reserve officers from the exemption in section 30630(b)(1). As argued by Petitioners, the legislature could have easily limited the exemption to "full time paid peace officers" or specific groups of peace officers as specified in Penal Code section 830, et seq. (OB 20; Reply 3; see, e.g., Penal Code §§ 27650 and 26950 [limitations that apply only to "full-time paid peace officers"].)

Respondents make two important concessions

MINUTES ENTERED 08/31/17 COUNTY CLERK
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09/06/2017

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**

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DEPT. 82

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170.6 HOGUE - PETITIONER

**NATURE OF PROCEEDINGS:**

about section 30630(b)(1) that support Petitioners' interpretation of the statute. Respondents concede that Designated Level I Reserve Officers (see § 830.6(a)(2)) have the identical authority to take law enforcement action when off duty as full-time peace officers. (Oppo. 11:17-18, 14:25-27; see Reply 2, fn. 2.) Respondents also concede that, pursuant to section 30630(a), "reserve peace officers may possess and use assault weapons provided by their employing agency when on duty." (Oppo. 6; see also 11, fn. 2 and 12-13.) Respondents' interpretation would lead to identical terms have different meanings within the same statute. Respondents apparently contend that the "sworn peace officer members" in section 30630(a) include all reserve officers, including Petitioner Llanos. However, they apparently contend that the "sworn peace officer members" in section 30630(b)(1) only include Designated Level I Reserve Officers. "A term appearing in several places in a statutory text is generally read the same way each time it appears." (Ratzlaf v. U.S. (1994) 510 U.S. 135, 143.)

Respondents assert that "most reserve peace officers may not exercise any law enforcement authority while off duty." (See Oppo. 13.) Respondents appear to be making an argument, similar to the one made by the respondents in Stanislaus, that pursuant to sections 830.6(a)(1) and 832.6, reserve officers are peace officers with limited

09/06/2017

<p align="center"><b>MINUTES ENTERED</b> 08/31/17 COUNTY CLERK</p>
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**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**

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170.6 HOGUE - PETITIONER

**NATURE OF PROCEEDINGS:**

authority that "cease to have peace officer status or authority outside of their particular ... assignments" and that, as a result, such reserve officers are not exempt under the ACWA. (See Stanislaus, supra at 371.)

Sections 830.6 and 832.6 are similar to other provisions of chapter 4.5 in that they identify certain persons as peace officers, and define the nature of the authority such persons have as peace officers. (See Stanislaus, supra at 380.) As noted by the Court of Appeal, there are a number of other provisions in chapter 4.5, such as sections 830.5, 830.31, and 830.33, that expressly limit the carrying of firearms by the peace officers described therein. (Ibid.) Sections 830.6(a)(1) and 832.6 do not include such express limitations on the carrying of firearms with respect to reserve officers of city or sheriff agencies such as Petitioner Llanos. 2

"When interpreting statutory language, we may neither insert language which has been omitted nor ignore language which has been inserted." (See People v. National Auto. and Cas. Ins. Co. (2002) 98 Cal.App.4th 277, 282.) With respect to reserve officers such as Petitioner Llanos, Respondents' interpretation of the plain language of section 30630(b)(1) implies limitations that are not expressly stated either in that statute or in the definitions of reserve officers. Respondents wish to

09/06/2017

<p align="center">MINUTES ENTERED 08/31/17 COUNTY CLERK</p>
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**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**

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170.6 HOGUE - PETITIONER

**NATURE OF PROCEEDINGS:**

ignore plain language that suggests subdivision (b) (1) exempts the "sale" or "transfer" to reserve peace officers if employer authorization is obtained.

The plain language of the statute supports Petitioners' interpretation that the AWCA exempts the sale or transfer of assault weapons to reserve officers, as defined in sections 830.6 and 832.6, who have obtained authorization from their employing law enforcement agency. However, to the extent there is any ambiguity in the statute created by the fact that some reserve officers do not have law enforcement authority while off duty, the court considers extrinsic aids to interpretation.

**Legislative History**

Petitioners do not cite the court to any legislative history to support their interpretation of section 30630(b) (1). Respondents cite to statements of the sponsor of Senate Bill 626, which added section 30630(b) to the AWCA in 2001. (Oppo. 17.) The sponsor of the bill stated:

One change particularly important to PORAC [Peace Officers Research Association of California] relates to an omission that prohibited peace officers from purchasing assault weapons for use at work, even though the purchase is through and with the

08/06/2017

<p align="center"><b>MINUTES ENTERED</b> 08/31/17 COUNTY CLERK</p>
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**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**

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DEPT. 82

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170.6 HOGUE - PETITIONER

**NATURE OF PROCEEDINGS:**

permission of their agency. This change reinstates that concept. (Glickman Decl. Exh. 1 at p. 6.)

Respondents argue that this legislative history shows that, consistent with the other peace officer exceptions in the AWCA, section 30630(b) was intended to permit peace officers to purchase assault weapons only for use in the discharge of their official duties "for law enforcement purposes." Respondents contend that because reserve officers "generally" have no official duties or law enforcement purpose when off duty, BOF correctly determined that they are not authorized to register personal assault weapons. (Oppo. 17.)

Respondents' arguments are misplaced. Under the court's interpretation of section 30630, the limitation on use of an assault weapon by a sworn peace officer only for law enforcement purposes under subsection (a) remains, whether or not the sworn peace officer is given the weapon by his or her employer, or has purchased and registered the weapon pursuant to subsection (b). Purchase of the weapon pursuant to authorization of the employing agency, and registration of the weapon pursuant to the statute does not give the reserve officer any authorization to use the weapon for other than law enforcement purposes.

09/06/2017

<p align="center"><b>MINUTES ENTERED</b> 08/31/17 COUNTY CLERK</p>
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**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**

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DEPT. 82

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170.6 HOGUE - PETITIONER

**NATURE OF PROCEEDINGS:**

While the legislative history shows intent for peace officers to purchase assault weapons only "for use at work," that intent does justify adding a restriction against possession and registration by authorized reserve officers that does not exist in the statute. If a reserve officer does not have law enforcement authority while off duty, he or she will have no "law enforcement purposes" for use of the weapon during that time. Moreover, Designated Level I Reserve Officers have the identical authority to take law enforcement action when off duty as full-time peace officers. Respondents read section 30630(b)(1) as excluding some reserve officers but not others, but the cited legislative history does not support differentiating between reserve officers in this fashion. Moreover, even full-time paid peace officers do not have blanket authority to take law enforcement action when off duty. (See Penal Code § 830.1.) It is inconsistent for Respondents to read the statute and legislative history as implying limitations on the application of section 30630(b)(1) as to some reserve officers, but not others.

The legislative history cited by the parties generally supports Petitioners' interpretation of the statute, as it suggests section 30630(b)(1) was intended to allow the sale or transfer of assault weapons to all sworn peace officers who otherwise qualify under 30630(b).

MINUTES ENTERED 08/31/17 COUNTY CLERK
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09/06/2017

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**

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DEPT. 82

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170.6 HOGUE - PETITIONER

**NATURE OF PROCEEDINGS:**

Public Policy

Petitioners' public policy arguments appear to be that reserve officers face many of the same duties and dangers as full-time officers, not all law enforcement agencies can afford to purchase assault weapons for reserve officers, and that therefore reserve officers should be permitted to acquire and register their own assault weapons. 3 (See OB 6-7, 21-22.)

Respondents public policy arguments appear to be that most reserve officers may not exercise any law enforcement authority while off duty, and that permitting such reserve officers to acquire and register assault weapons would contravene the legislative purpose of restricting the proliferation and use of such weapons. (Oppo. 13-14.)

Respondents concede that the purpose of the peace officer exemptions from the AWCA is "to promote public safety by ensuring peace officers have access to assault weapons for use in the discharge of their official duties." (Oppo. 14.) There is evidence that reserve officers, such as Petitioner Llanos, would not be able to obtain access to assault weapons to use for patrol duties due to budgetary constraints unless they acquire the weapons with their own funds. (Llanos Decl. ¶¶

09/06/2017

<p align="center">MINUTES ENTERED 08/31/17 COUNTY CLERK</p>
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**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**

DATE: 08/31/17

DEPT. 82

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DEPUTY CLERK

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10

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170.6 HOGUE - PETITIONER

**NATURE OF PROCEEDINGS:**

6-10.) Therefore, Respondents' interpretation of section 30630(b)(1) to exclude such reserve officers would cut against the public policy Respondents cite.

**Administrative Construction**

On April 29, 2016, BOF rejected Petitioner Llanos' registration, stating: "Penal Code section 30625 allows for assault weapons to be used and purchased by sworn peace officers and nothing precludes you from using an agency issued assault weapon. However, we have found no clear statutory authority to support the proposition that a reserve officer may purchase one for his or her own use...." (Llanos Decl. ¶ 14, Exh. D.) Generally, BOF's interpretation of AWCA would be entitled to significant deference, as BOF is responsible for enforcing the AWCA. (See Yamaha Corp. of America v. State Bd. Of Equalization (1998) 19 Cal.4th 1, 11.) However, the April 29, 2016 letter to Petitioner Llanos does not provide any specific analysis of section 30630(b)(1) in support of the decision to reject the registration. Thus, the court finds it deserves little deference. 4

After this litigation was filed, BOF informed Petitioners' counsel of BOF's determination that "reserve officers are legally permitted to reimburse their employing agencies for the cost of

MINUTES ENTERED 08/31/17 COUNTY CLERK
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09/06/2017

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**

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DEPT. 82

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170.6 HOGUE - PETITIONER

**NATURE OF PROCEEDINGS:**

agency-purchased assault weapons the officers' use for law enforcement purposes pursuant to Penal Code, section 30630(a), but that reserve officers lack law enforcement powers when off duty and therefore may not possess or use agency-purchased assault weapons at such times." (Lindley Decl. ¶ 3; see also Glickman Decl. ¶ 3.) To the extent this communication is an administrative construction of the statute, it does not provide persuasive analysis of the language of section 30630(b)(1). Even though reserve officers are not permitted to use assault weapons for non-law enforcement purposes, it does not follow that the legislature intended to exclude such officers from owning such weapons pursuant to section 30630(b)(1) for use during their official duties. The statute allows the sale or transfer to sworn peace officers; it does not state that sworn peace officers may reimburse the law enforcement agency for the purchase of such weapons. Finally, reserve officers arguably could be required by their law enforcement agencies to make their assault weapons inoperable while off duty, or they make arrangements for storage of the firearms while off duty or at the conclusion of their assignment. (See Oppo. 20, fn. 4.) However, that issue is not properly before the court in this Petition, which addresses the ability of reserve officers to qualify for possession and registration of assault weapons under section 30630(b).

09/06/2017

<p align="center">MINUTES ENTERED 08/31/17 COUNTY CLERK</p>
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# SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

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DEPT. 82

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170.6 HOGUE - PETITIONER

**NATURE OF PROCEEDINGS:**

Petitioners cite to BOF's longstanding interpretations of similar exemptions regarding large-capacity magazines to challenge BOF's decision to exclude reserve officers from the scope of section 30630(b)(1). (OB 21-22.) The most relevant exception, section 32405, provides in full:

Section 32310 does not apply to the sale to, lending to, transfer to, purchase by, receipt of, possession of, or importation into this state of, a large-capacity magazine by a sworn peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, or sworn federal law enforcement officer, who is authorized to carry a firearm in the course and scope of that officer's duties. 5

In 2009, BOF issued an interpretation of former section 12020(b)(20), which was continued in section 32405 without substantive change. BOF wrote that section 12020(b)(20) is "largely self-explanatory" and applies to "a person who is properly identified as a reserve peace officer" and who is authorized to lawfully carry a firearm in the course and scope of his or her duties. (Brady Decl. Exh. E.)

Respondents argue that section 32405 is not comparable to section 30630(b)(1) because the scope of the former is not limited to use in the discharge

<b>MINUTES ENTERED</b> 08/31/17 COUNTY CLERK
--

08/06/2017

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**

DATE: 08/31/17

DEPT. 82

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DEPUTY CLERK

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170.6 HOGUE - PETITIONER

**NATURE OF PROCEEDINGS:**

or official duties or for law enforcement purposes. (Oppo. 22.) Section 32405 does include a limitation to officers who are authorized to carry a firearm in the course and scope of the officer's duties. Other than the requirement of employer authorization, the exception in Section 32630(b)(1) otherwise has no express limitations in that subdivision. The limitation in section 30630(a) applies generally to all peace officers, including full-time peace officers and reserve officers that may have law enforcement authority while off duty.

Importantly, both section 32405 and 30630(b)(1) use the term "sworn peace officer." BOF's 2009 interpretation of that phrase to refer generally to reserve peace officers contradicts its current position that only certain reserve officers, if any, fall within the scope of section 30630(b)(1).  
Constitutional Issues

Respondents argue that their interpretation of section 30630(b)(1) avoids a constitutional question in light of *Silveira v. Lockyer* (9th Cir. 2002) 312 F.3d 1052, a Ninth Circuit decision voiding an exemption to the AWCA that allowed retired peace officers to acquire and possess "assault weapons." (Oppo. 17-20.)

As a preliminary matter, neither Petitioners nor Respondents have pleaded a constitutional

09/06/2017

<p align="center"><b>MINUTES ENTERED</b> 08/31/17 COUNTY CLERK</p>
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**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**

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BS163796

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VS  
KAMALA HARRIS ET AL

Defendant  
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170.6 HOGUE - PETITIONER

**NATURE OF PROCEEDINGS:**

challenge to section 30630(b)(1). Respondents agree that a court will generally "not reach constitutional questions unless absolutely required to do so to dispose of the matter" before it. (People v. Duarte (2000) 24 Cal.4th 603, 610.) Moreover, a "court must, whenever possible, construe a statute so as to preserve its constitutional validity." (Case v. Lazben Financial Co. (2002) 99 Cal.App.4th 172, 188.)

In *Silveira*, the Ninth Circuit addressed the plaintiffs' challenge under the Equal Protection Clause to two provisions of the AWCA: the exception for off-duty officers to possess and use assault weapons for "law enforcement purposes," and an exception that permitted the sale or transfer of assault weapons to sworn peace officers upon their retirement. The Ninth Circuit easily concluded that there was a rational basis for the off-duty officer exception since "off-duty officers may find themselves compelled to perform law enforcement functions in various circumstances, and that in addition it may be necessary that they have their weapons readily available." (Id. at 1089.) The Ninth Circuit found that the exception for retired officers lacked any rational basis. The Court reasoned that "any exception to the AWCA unrelated to effective law enforcement is directly contrary to the act's basic purpose of eliminating the availability of high-powered, military-style weapons

09/06/2017

<p align="center">MINUTES ENTERED 08/31/17 COUNTY CLERK</p>
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170.6 HOGUE - PETITIONER

**NATURE OF PROCEEDINGS:**

'and thereby protecting the people of California from the scourge of gun violence." (Id. at 1090.)

The Ninth Circuit rejected the state's argument that the retired officer exception was justified because "some peace officers receive more extensive training regarding the use of firearms than do members of the public." The Court reasoned that "the object of the statute is not to ensure that assault weapons are owned by those most skilled in their use; rather, it is to eliminate the availability of the weapons generally." (Id. at 1091.)

The Ninth Circuit also rejected a hypothetical justification under which retired peace officers were required to participate as reserves in the event of an emergency. The Court reasoned: "However, there is no such requirement in California. Moreover, even if there were such a requirement, a statute that permitted retired peace officers-at their discretion-to obtain assault weapons and use them for unlimited purposes, and in an unregulated manner, would not reasonably advance the objective of establishing a reserve force of retired officers prepared to act in emergencies." (Id. at 1091.)

Here, the court has not been presented with a constitutional challenge to the exception in section 30630(b)(1). Moreover, the court's interpretation of

09/06/2017

<p align="center"><b>MINUTES ENTERED</b> 08/31/17 COUNTY CLERK</p>
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**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**

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Counsel JAMES M. RENE (x)

MARTIN LLANOS ET AL  
VS  
KAMALA HARRIS ET AL

Defendant  
Counsel BENJAMIN M. GLICKMAN (X)

170.6 HOGUE - PETITIONER

**NATURE OF PROCEEDINGS:**

the statute, as set forth above, would not lead to authorization for a reserve officer to use an assault weapon "for unlimited purposes," but recognizes the use restriction for law enforcement purposes only.

Moreover, the retired peace officer exception in Silveira is readily distinguishable from section 30630(b)(1) as applied to reserve peace officers. 6 First, most notably, reserve officers cannot obtain assault weapons "at their discretion." Rather, they must obtain authorization from their employing law enforcement agency which, in turn, is only exempted from the AWCA for use of assault weapons in the discharge of official duties. (§ 30625.) Second, the retired officer exception did "not require that the transfer be for law enforcement purposes, and the possession and use of the weapons [was] not so limited." (Silveira, supra at 1090.) Here, in contrast, as discussed above, the exception that permits peace officers to purchase assault weapons may be read in light of the limitation in section 30630(a) that such officers only possess or use assault weapons "for law enforcement purposes, whether on or off duty."

Summary - Statutory Interpretation

The plain language of section 30630(b)(1) and related statutes supports Petitioners'

09/06/2017

<p align="center"><b>MINUTES ENTERED</b> 08/31/17 COUNTY CLERK</p>
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**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**

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DEPT. 82

HONORABLE MARY H. STROBEL

JUDGE

N. DIGIAMBATTISTA

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B. HALL C/A

Deputy Sheriff

J HOLLIFIELD/CSR 12564

Reporter

1:30 pm

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interpretation that the AWCA exempts the sale and transfer of assault weapons to all reserve officers, as defined in sections 830.6 and 832.6, who have obtained authorization from their employing law enforcement agency and otherwise meet the requirements of section 30630(b). Respondents assert some public policy reasons why Respondents believe that the legislature should have excluded from section 30630(b)(1) those reserve officers that do not have law enforcement authority while off duty. However, the court must interpret the statute as written. In balance, the legislative history of the statute, public policy, administrative interpretations, and constitutional issues also support Petitioners' interpretation. Accordingly, the court will grant the petition as stated below.

**Requested Relief**

In the petition, Petitioners request the following relief:

1. A declaration that reserve peace officers are among the "sworn peace officer members" contemplated by Penal Code section 30630 who are eligible for an exception to the general restrictions on transferring and possessing "assault weapons;"
2. That a peremptory writ of mandate issue commanding Respondents to register Petitioner

09/06/2017

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170.6 HOGUE - PETITIONER

**NATURE OF PROCEEDINGS:**

Llanos's "assault weapon" pursuant to his "Peace Officer Assault Weapon Registration Application" and the "assault weapon" of any other reserve peace officer member of CRPOA who has met the requirements of Penal Code section 30630 and requested registration thereof by DOJ;

3. Issuance of a preliminary and permanent injunction prohibiting Defendants/Respondents from denying reserve peace officers registration of their "assault weapons" made pursuant to Penal Code section 30630 merely because they are reserve peace officers.... (Pet. pp. 11-12.)

Writ of Mandate - Petitioner Llanos

Here, based on the discussion above, BOF has a clear, present, and ministerial duty to register the assault weapon of Petitioner Llanos. The undisputed evidence establishes that Petitioner Llanos obtained the employer authorization required by section 30630(b)(1); that he has been deputized as a Level I reserve officer by SBPD pursuant to section 832.6(a)(1); and that his registration application was in proper form. (Llanos Decl. ¶¶ 2-14; Exh. B, C.) Other than the fact that Petitioner Llanos is a reserve peace officer, Respondents submit no challenge to the request for a writ of mandate as to Petitioner Llanos. Petitioners' request for a writ

09/06/2017

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170.6 HOGUE - PETITIONER

**NATURE OF PROCEEDINGS:**

of mandate as to Petitioner Llanos's registration is GRANTED.

Writ of Mandate - Other Reserve Officers of CRPOA

Although Petitioners request a writ of mandate as to other members of CRPOA, the court has not been presented evidence of the contents of specific registration applications of any reserve officers other than Petitioner Llanos, including whether the required employer authorizations were obtained. On this record, the court is unable to conclude that BOF has a clear, present, and ministerial duty to issue a registration for an assault weapon as to any specific member of CRPOA other than Petitioner Llanos. Accordingly, the court declines to issue the writ as to "any other reserve peace officer member of CRPOA who has met the requirements of Penal Code section 30630 and requested registration thereof by DOJ." Petitioners' request for a writ of mandate as to other reserve officers of CRPOA is DENIED. The court does, however, issue limited injunctive relief on this issue, as discussed further below.

**Declaratory Relief**

"Declaratory relief has been held to be the proper remedy when it is alleged an agency has a policy of ignoring or violating applicable laws." (Venice Town Council, Inc. v. City of Los Angeles (1996) 47

<b>MINUTES ENTERED</b> 08/31/17 COUNTY CLERK
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09/06/2017

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170.6 HOGUE - PETITIONER

**NATURE OF PROCEEDINGS:**

Cal.App.4th 1547, 1566.) "The purpose of a declaratory judgment is to serve some practical end in quieting or stabilizing an uncertain or disputed jural relation.... Another purpose is to liquidate doubts with respect to uncertainties or controversies which might otherwise result in subsequent litigation." (Ibid., quoting Bess v. Park (1955) 132 Cal.App.2d 49, 52.) "Judicial economy strongly favors the use of declaratory relief to avoid a multiplicity of actions to challenge the [agency's] statutory interpretation or alleged policies." (Venice Town Council, supra at 1566.)

The evidentiary record supports a reasonable inference that BOF has a policy to deny registration applications of reserve peace officers that lack law enforcement powers when off duty, even if the required employer authorization has been obtained and the applications are in proper form. (See Lindley Decl. ¶ 3; Brady Decl. ¶¶ 1-4; Llanos Decl. Exh. D.) In this context, a judicial declaration as to this specific legal issue could avoid a multiplicity of actions to challenge BOF's interpretation of section 30630(b)(1).

Respondents argue that declaratory relief is not appropriate because Petitioners seek review of an administrative determination. (See Oppo. 12.) The court agrees that a writ of traditional mandate is the appropriate remedy as to Petitioner Llanos,

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09/06/2017

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170.6 HOGUE - PETITIONER

**NATURE OF PROCEEDINGS:**

and that declaratory relief would be unnecessary if this action were limited to Petitioner Llanos. However, as discussed, there is an ongoing, actual controversy between BOF and CRPOA as to how section 30630(b)(1) should be interpreted generally as to reserve peace officers. In that context, declaratory relief is appropriate.

In a footnote, Respondents argue that, should the court grant the writ or declaratory relief, it should "be limited to permitting reserve officers to possess and use assault weapons only for use in the discharge of their official duties for law enforcement purposes, and all reserve officers should be required to make arrangements for the storage of their firearms at any time when they lack law enforcement powers." (Oppo. 20, fn. 4.) As discussed above, the court agrees that the exception in section 30630(b)(1) should be read in light of sections 30625 and 30630(a), which limit the use and possession of assault weapons by all peace officers "for law enforcement purposes, whether on or off duty." (§ 30630(a).) This restriction on use, contained in subsection (a), is key to a reasonable and constitutional interpretation of subsection (b). The court therefore declares that reserve peace officers are among the "sworn peace officer members" contemplated by Penal Code section 30630 who are eligible for an exception to the general restrictions on transferring and possessing "assault

<p align="center"><b>MINUTES ENTERED</b> 08/31/17 <b>COUNTY CLERK</b></p>
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170.6 HOGUE - PETITIONER

**NATURE OF PROCEEDINGS:**

weapons;" but that use of the assault weapon is limited to "law enforcement purposes."

Petitioners' request for declaratory relief is GRANTED.

**Injunctive Relief**

For the reasons stated above, Petitioners are entitled to a narrow permanent injunction prohibiting Respondents from "denying reserve peace officers registration of their 'assault weapons' made pursuant to Penal Code section 30630 merely because they are reserve peace officers." (Pet. p. 12 [emphasis added].) Respondents would not be prohibited from denying registrations for other legitimate reasons, including absence of proper employer authorization.

Petitioners' request for injunctive relief is GRANTED.

**Conclusion**

The petition for writ of mandate and complaint for declaratory and injunctive relief are GRANTED IN PART as stated above.

1- A separate provision, Section 830.6(a)(2), specifies that if a reserve

09/06/2017

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170.6 HOGUE - PETITIONER

**NATURE OF PROCEEDINGS:**

officer is "so designated by local ordinance ... and is assigned to the prevention and detection of crime and the general enforcement of the laws of this state by that authority, the person is a peace officer, if the person qualifies as set forth in paragraph (1) of subdivision (a) of Section 832.6." "The authority of a person designated as a peace officer pursuant to this paragraph includes the full powers and duties of a peace officer as provided by Section 830.1." (Ibid.) Petitioners concede Officer Llanos is not a "designated" peace officer under this section, as there is no San Bernardino ordinance so providing. (Opening Brief, p. 14).

2- Section 830.6(a)(1) does provide the following limitation, not applicable to Petitioner Llanos: "A reserve park ranger or a transit, harbor, or port district reserve officer may carry firearms only if authorized by, and under those terms and conditions as are specified by, his or her employing agency."

3- It is not entirely clear from Petitioners' briefs whether they believe reserve officers should be permitted to use the assault weapons only for law enforcement purposes. (See Reply 2-3.)

4- Section 30630(b) was enacted in 2001. In reply, Petitioners suggest that BOF's current

<p align="center"><b>MINUTES ENTERED</b> 08/31/17 COUNTY CLERK</p>
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**NATURE OF PROCEEDINGS:**

interpretation of section 30630(b) is a change in practice. (Reply 6-7.) While Petitioners do not cite evidence in support, the court notes that the BOF peace officer assault weapon registration application, which was apparently revised in 2012, does not state that reserve officers do not qualify for the exemption under section 30630(b)(1). (Llanos Decl. Exh. A.)

5- Other relevant exceptions are contained in sections 32400 and 32406. Section 32400 provides: "Section 32310 does not apply to the sale of, giving of, lending of, possession of, importation into this state of, or purchase of, any large-capacity magazine to or by any federal, state, county, city and county, or city agency that is charged with the enforcement of any law, for use by agency employees in the discharge of their official duties, whether on or off duty, and where the use is authorized by the agency and is within the course and scope of their duties."

Section 32406 provides in part: "Subdivisions (b) and (c) of Section 32310 do not apply to the following: (a) An individual who honorably retired from being a sworn peace officer..., who was authorized to carry a firearm in the course and scope of that officer's duties."

6- The retired peace officer exception provided that "the sale or transfer of assault weapons by an entity to a person, upon

<p align="center"><b>MINUTES ENTERED</b> 08/31/17 <b>COUNTY CLERK</b></p>
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09/06/2017

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**NATURE OF PROCEEDINGS:**

retirement, who retired as a sworn officer from that entity' is permissible, and that the general restrictions on possession and use of assault weapons do not apply to a retired peace officer who receives the weapon upon retirement from his official duties." (Silveira, supra at 1059.)

7- As discussed, Respondents apparently concede that section 30630(b)(1) should apply to those designated reserve officers that have the identical authority to take law enforcement action when off duty as full-time peace officers. (Penal Code § 830.6(a)(2).)

Counsel for petitioner is to give notice and to prepare, serve and lodge the proposed judgment and proposed writ by September 15, 2017, after first submitting it to opposing counsel for approval as to form and content. If counsel for respondent does not approve, the court will hold the proposed documents ten days for objections.

09/06/2017

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