

**In the Supreme Court of the State of California**

**NATIONAL SHOOTING SPORTS  
FOUNDATION, INC., et al.,**

**Plaintiffs and Appellants,**

**v.**

**STATE OF CALIFORNIA,**

**Defendant and Respondent.**

Case No. S239397

Fifth Appellate District, Case No. F072310  
Fresno County Superior Court, Case No. 14CECG00068  
The Honorable Donald S. Black, Judge

**REQUEST FOR JUDICIAL NOTICE**

**SUPREME COURT  
FILED**

**JUN 21 2017**

**Jorge Navarrete Clerk**

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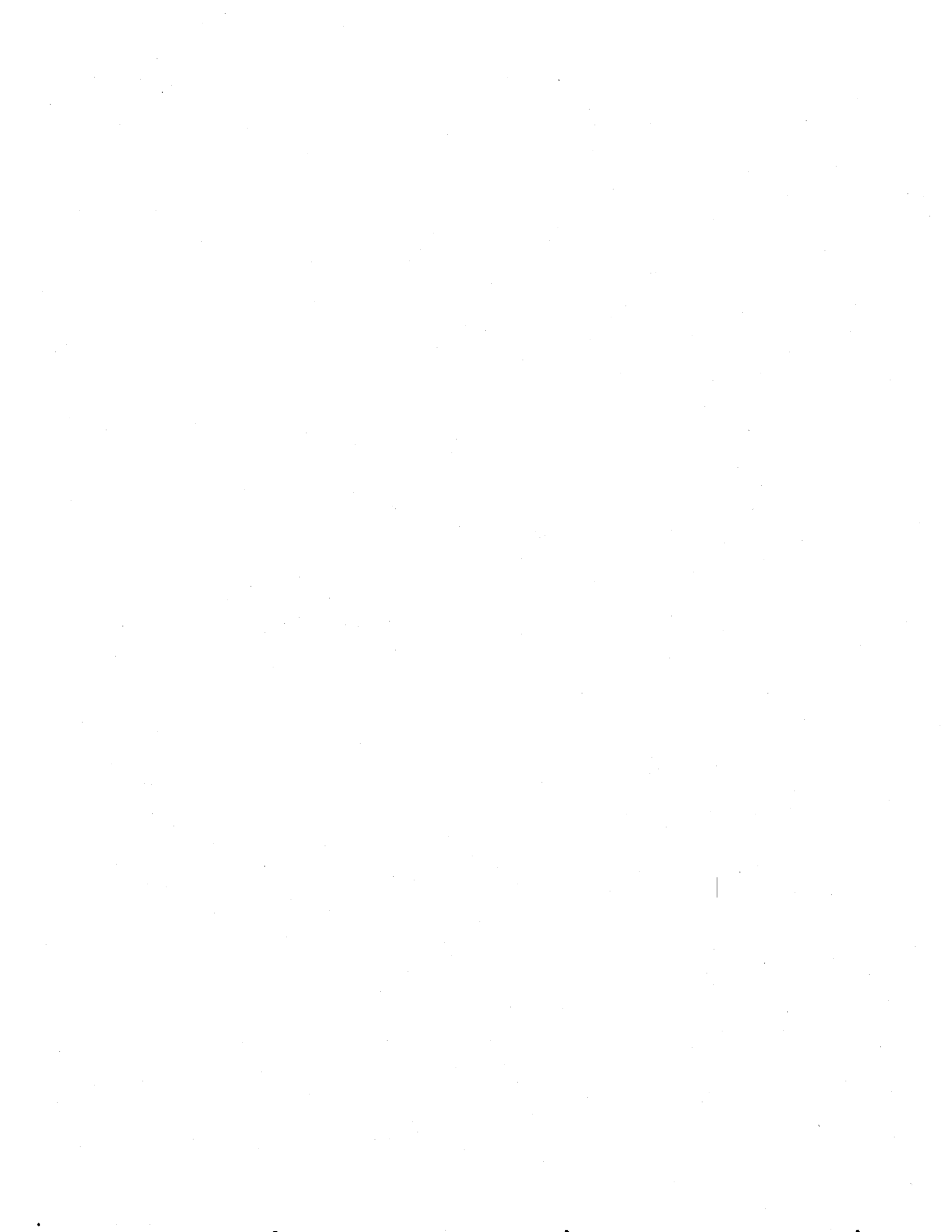


## REQUEST FOR JUDICIAL NOTICE

Pursuant to Evidence Code sections 452 and 459, and California Rules of Court, rules 8.252(a) and 8.520(g), respondent the State of California hereby requests that this Court take judicial notice of the transcript of the oral argument held on November 11, 2016 in the Fifth District Court of Appeal in *National Shooting Sports Foundation, Inc., et al. v. State of California*, Case No. F072310. A true and correct copy of this transcript is attached hereto as **Exhibit A**.

The Court should take judicial notice of this transcript pursuant to Evidence Code sections 452 and 459. Section 452(d) provides that judicial notice may be taken of “[r]ecords of ... any court of this state,” and section 459 provides that a “reviewing court may take judicial notice of any matter specified in Section 452.” This Court has previously taken judicial notice of transcripts of California court proceedings. (See, e.g. *People v. Lawley* (2002) 27 Cal.4th 102, 116, fn. 2; *In re Pipinos* (1982) 33 Cal.3d 189, 204.) This transcript is relevant because it demonstrates that plaintiffs National Shooting Sports Foundation, Inc. and Sports Arms and Ammunition Manufacturers’ Institute, Inc. are not challenging the law at issue in this case on constitutional grounds. (See Respondent’s Opening Brief on the Merits p. 19; Evid. Code, § 350 [“No evidence is admissible except relevant evidence”]; see also Cal. Rules of Court, rule 8.252(a)(2)(A).)

This transcript was not presented to the trial court. (Cal. Rules of Court, rule 8.252(a)(2)(B).) The transcript relates to proceedings occurring after the trial court entered judgment, but before the Court of Appeal filed its opinion reversing the trial court’s decision. (*Id.*, rule 8.252(a)(2)(D).)



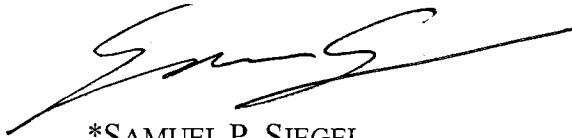
**CONCLUSION**

The State respectfully requests that this Court grant its request for judicial notice.

Dated: June 21, 2017

Respectfully submitted,

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# **EXHIBIT A**





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

NATIONAL SHOOTING SPORTS )  
FOUNDATION, INC., et )  
al., ) F072310  
)  
Plaintiffs and ) (Super. Ct. No. 14CECG00068)  
Appellants, )  
)  
v. )  
)  
STATE OF CALIFORNIA, )  
)  
Defendant and )  
Respondent. )  
)

November 16, 2016

2424 Ventura Street  
Fresno, CA 93721

The above-entitled matter came on for hearing  
pursuant to notice at 9:00 a.m.

BEFORE: Acting Presiding Justice Levy  
Justice Gomes  
Justice Franson

Official Transcriber: Rosalie DeLeonardis

A P P E A R A N C E S

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I N D E XWITNESSESPageFor the Plaintiffs and Appellants

NONE

For the Defendant and Respondent

NONE

Adjournment	53
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E X H I B I T S

IDENTIFIED    RECEIVED

For the Plaintiffs and Appellants:

NONE

For the Defendant and Respondent:

NONE

P R O C E E D I N G S

NOVEMBER 16, 2016

FRESNO, CALIFORNIA

9:00 A.M.

1  
2  
3  
4           **JUSTICE:** And at this time the Court will call Case  
5 Number F072310, *National Shooting Sports Foundation, et al.*  
6 *v. State of California.*

7           And, counsel, if you can please state your  
8 appearances for the record.

9           **MR. SELFRIDGE:** Good morning, your Honors. Lance  
10 Selfridge, appearing on behalf of the Appellants, National  
11 Shooting Sports Foundation, Incorporated, and Shooting Sports  
12 and Ammunition Manufacturers' Institute, Incorporated.

13           **MR. KEANE:** Lawrence Keane for the Appellants.

14           **JUSTICE:** Thank you. And is Mr. Selfridge going to  
15 be arguing solo here?

16           **MR. SELFRIDGE:** Yes, your Honor, I will be arguing  
17 solo.

18           **JUSTICE:** Okay. Thank you. Counsel?

19           **MR. RICHARDS:** Good morning. Nelson Richards for  
20 Respondent, State of California.

21           **MR. ESBENSHADE:** Morning. Andrew Esbenshade on  
22 behalf of the Office of the Los Angeles City Attorney as  
23 Amicus Curiae.

24           **JUSTICE:** Great. Thank you all very much. It's a  
25 very interesting case and the Court has spent a significant

1 amount of time on this case, and we appreciate your excellent  
2 briefing and the arguments.

3 And at this time, Mr. Selfridge, you may proceed.  
4 And if you'd like me to tell you when you have a certain  
5 amount of time left, I'd be happy to do so. There is a clock  
6 there on the podium.

7 **MR. SELFRIDGE:** Your Honor, I do plan to reserve ten  
8 minutes of my time for rebuttal, so when I hit the 20-minute  
9 mark, I would appreciate the Court's courtesy in letting me  
10 know?

11 **JUSTICE:** Very well.

12 **MR. SELFRIDGE:** This clock is going to count down  
13 correctly --

14 **JUSTICE:** Yes.

15 **MR. SELFRIDGE:** -- correct? Good morning, and may it  
16 please the Court, appellants seek by this case to enjoin the  
17 enforcement of Penal Code Section 31910, subdivision  
18 (b)(7)(A). That statute requires that all semiautomatic  
19 pistols be imprinted in two or more places with a microscopic  
20 array of characters that identify the make, model, and serial  
21 number of the pistol, and that must transfer upon firing.  
22 For shorthand, I'll call that process dual placement  
23 microstamping from now on.

24 By its very nature as a firearms case, this case is a  
25 matter of public importance, but the case presents itself to

1 this Court now in a much more limited mundane fashion. The  
2 case arrives here on appeal from a judgment of dismissal  
3 following an order of the trial court granting respondent's  
4 motion for judgment on the pleadings without relief to amend.

5 The issue to be decided now is not whether  
6 respondent's policy for semiautomatic pistols is wise, or  
7 even whether appellants will be able to prove the allegations  
8 of their complaint. The issue to be decided now is simply  
9 whether appellants have alleged a cause of action for  
10 declaratory relief. The trial court thought not.  
11 Appellants' respectfully disagree.

12 Appellants allege that is not possible for  
13 manufacturers of semiautomatic pistols to comply with a dual  
14 placement microstamping requirements that the statute  
15 imposes. Specifically, appellants allege that while it is  
16 sometimes possible to imprint a microstamp on the tip of a  
17 pistols firing pin that will transfer upon firing, it is not  
18 possible under the current state of micro engraving  
19 technology to imprint a microstamp on any other surface or  
20 part of a semiautomatic pistol that will transfer upon  
21 firing.

22 **JUSTICE:** Mr. Selfridge, has any manufacturer  
23 attempted to comply with a dual microstamping requirement?

24 **MR. SELFRIDGE:** No manufacturer has submitted a  
25 semiautomatic pistol for certification under the State's

1 program for the reason that they cannot possibly microstamp a  
2 pistol in the dual placement manner that the statute  
3 requires.

4 Civil Code Section 3531 declares unequivocally that  
5 the law never requires impossibilities. Never. Based on  
6 Section 3531, the Court in *Board of Supervisors vs. McMahon*,  
7 which is cited at length in all of the briefs, declared  
8 justice unequivocally that the law recognizes exceptions to  
9 statutory requirements for impossible performance.

10 But the *McMahon* court did not just give lip service  
11 to the defense of impossible performance. It also conducted  
12 a detailed impossibility analysis before holding against the  
13 County of Butte, precisely because the county had not shown  
14 that the statute it -- it contested required impossible  
15 performance. The *McMahon* court recognized that impossibility  
16 of performance is a valid defense to statutory enforcement,  
17 and no published decision has ever contradicted *McMahon* in  
18 doing so.

19 Despite that, the trial court ignored *McMahon's*  
20 holding when it granted respondent's motion for judgment on  
21 the pleadings, and instead relied on *McMahon's* dissenting  
22 opinion, which of course is not the law.

23 **JUSTICE:** Are you just simply asking to go back and  
24 have your day in court for a factual determination by a trier  
25 of fact?



1           **MR. SELFRIDGE:** Your Honor, that is exactly what we  
2 are asking.

3           **JUSTICE:** From what I understand from reading the  
4 record, there were cross motions for summary judgment pending  
5 when this court order came down.

6           **MR. SELFRIDGE:** That is correct. They remain pending  
7 and in limbo at this moment.

8           **JUSTICE:** If it went back down to the trial court,  
9 would those motions be reactivated, that determination be  
10 made or not made based upon --

11           **MR. SELFRIDGE:** I would think so, your Honor. I  
12 would expect the trial court to schedule a case management  
13 conference, and to be apprised of the fact that these motions  
14 remain pending, and then to put them on the court's calendar  
15 for (inaudible).

16           And at that point then they would be opposed, replies  
17 would be written, hearing would be held, and at that point a  
18 factual record of some nature would be generated. The  
19 motions would either be granted or not. If they were not  
20 granted, then it would proceed to trial and a further  
21 factual -- (overlapping) --

22           **JUSTICE:** Would some difference have to be given to  
23 the Department of Justice's certification of the fact that  
24 compliance could be made by the manufacturers?

25           **MR. SELFRIDGE:** No, that's not actually what was

1 certified, your Honor. I'm looking for the statute, so --  
2 here it is. What the Department of Justice certified is that  
3 the technology is available to more than one manufacturer,  
4 unencumbered by any patented restrictions.

5 **JUSTICE:** Right.

6 **MR. SELFRIDGE:** It was primarily a patent concern  
7 that the Department of Justice was concerned with. They did  
8 not want to have a sole source technology.

9 **JUSTICE:** Thank you.

10 **MR. SELFRIDGE:** Thank you for the question.

11 A cause of action for declaratory relief requires  
12 only that an actual controversy exist between the parties  
13 relating to their respective legal rights and duties. Here  
14 respondent insists on compliance with dual placement  
15 microstamping requirements that appellants contend cannot  
16 possibly can be -- cannot possibly be complied with, and thus  
17 need not be complied with under *McMahon*.

18 Respondent has underscored its insistence on  
19 compliance by codifying the dual placement microstamping  
20 requirements in the penal code, the violation of which would,  
21 of course, subject manufacturers of semiautomatic pistols to  
22 criminal sanctions.

23 There could not be a clearer case of an actual  
24 controversy relating to the parties' respective legal rights  
25 and duties. For that reason, appellants have alleged that

1 proper cause of action for declaratory relief by satisfying  
2 the elements of that cause of action.

3           But in its motion for judgment on the pleadings,  
4 respondents -- respondents challenged appellants' declaratory  
5 relief action on the ground that it violates the separation  
6 of powers doctrine. According to that doctrine, as  
7 interpreted by the controlling case of *City and County of*  
8 *San Francisco v. Cooper*, which is also cited at length in the  
9 briefs, the judiciary has no authority to invalidate dually  
10 enactable legislation unless the legislation is subject to  
11 constitutional, statutory, or charter proscription.

12           Respondent inserts that the separation of powers  
13 doctrine applies here because appellants admit that they do  
14 not raise a constitutional challenge to Penal Code Section  
15 31910, subdivision (b)(7)(A). But constitutional statutory  
16 and charter proscriptions all have equal dignity for purposes  
17 of the separation of powers doctrine.

18           Thus, Civil Code Section 3531, which declares  
19 absolutely that the law never requires impossibilities is a  
20 statutory proscription to the enforcement of Penal Code  
21 Section 31910, subdivision (b)(7)(A) as the appellants  
22 allege.

23           It is the same statute upon which the *McMahon* court  
24 based its impossibility analysis, and the *McMahon* court  
25 certainly did not consider it self-constrained by the

1 separation of powers doctrine from performing that analysis.

2           Moreover, there is nothing new or novel about this,  
3 about a court's reliance upon a codified maxim to invalidate  
4 the stature. Appellant cited several such cases in their  
5 briefs where, of course, relied on codified maxims to  
6 invalidate statutes.

7           **JUSTICE:** Counsel, is the impossibility required  
8 here, just alleged, but is impossibility would be required  
9 under current technology and limitations, or for all times?

10           **MR. SELFRIDGE:** Under current technology and  
11 limitations, your Honor. Let me simply provide an example.  
12 500 years ago, Leonardo DaVinci developed a design for a  
13 helicopter. It is the same design and theory upon which  
14 helicopters operate today. Obviously, that is a possible  
15 technology today.

16           But 500 years ago, during the Italian renaissance, it  
17 was impossible to manufacture an engine that produced enough  
18 force to create a downdraft sufficient to elevate a  
19 helicopter. In 1400 or 1500 A.D., that technology was  
20 impossible, and no one would have said otherwise. That's the  
21 situation that we have now.

22           At some time in the future, based upon some  
23 technology not yet imagined by some creative mind, perhaps  
24 somebody will figure out how to -- how to manufacture a  
25 semiautomatic pistol employing dual placement microstamping,

1 but it cannot be done today.

2           And -- and I should mention too, your Honor, this is  
3 a pleading motion that this appeal arises from, but we have  
4 to keep in mind that due to the unusual posture of this case  
5 where the motion for summary -- sorry, the motion for  
6 judgment on the pleadings was brought late after a motion for  
7 preliminary injunction had been heard.

8           There is something of a record already. And in that  
9 record, is the declaration of one Frederick Tolenhurst  
10 (phonetic), who once worked in two of -- matter of fact, once  
11 managed two of respondent's laboratories, who has testified  
12 in his declarations, under oath of course, that it is not  
13 possible to do that. That is uncontradicted.

14           Nowhere in the trial court was a contrary declaration  
15 submitted, nor has there been any indication in any of the  
16 briefs filed by respondent or amicus curiae that it is  
17 possible to microstamp a -- a -- a pistol using the process  
18 of dual placement microstamp.

19           **JUSTICE:** I have just one comment. My rudimentary  
20 understanding of helicopters is that it's not the downdraft  
21 that makes it works. It's the lift.

22           **MR. SELFRIDGE:** Well, it's a good thing I'm not  
23 piloting one. I think I belong here and not behind the  
24 stick.

25           Let's return to *McMahon* for a moment. *McMahon's*

1 footnote 11 states that because of the court's decision, the  
2 court need not reach any separation of powers issues.  
3 Respondent and the trial court rely on that footnote, but  
4 they do so without any good reason.

5 All that the *McMahon* court was saying in footnote 11  
6 is that after performing its impossibility analysis, and  
7 having found no factual basis to enjoin the statute at issue  
8 because it did not require impossible compliance, there was  
9 no reason to consider the separation of powers doctrine  
10 because only the issuance of an injunction might possibly  
11 have violated that doctrine.

12 If conversely the *McMahon* court had issued an -- an  
13 injunction upon the finding impossibility, then the *Cooper*  
14 case would have required a finding that Civil Code Section  
15 3531 operated as a statutory proscription of the separation  
16 of powers doctrine. In that event the *McMahon* case, in  
17 effect, would have become this case.

18 While the *McMahon* court did not actually invalidate  
19 the statute at issue because the county failed the  
20 impossibility test that the court performed, other cases from  
21 across the nation have invalidated statutes on the ground that  
22 they did require impossible compliance. A number of those  
23 cases are cited in the appellants' briefs. In particular, I  
24 would direct the Court to pages 28 and 29 of appellants'  
25 opening brief.

1           The important point to note from *McMahon's* treatment  
2 of the impossibility issue, and from the treatment of the  
3 impossibility issued by the cases from California's sister  
4 jurisdictions, is that impossibility presents a factual issue  
5 which must be decided by the trier of fact, not a legal issue  
6 that can be determined on a pleading motion.

7           The impossibility of compliance that appellants have  
8 alleged is thus the ultimate fact that supports appellants  
9 cause of action for declaratory relief.

10           Respondent's own counsel forthrightly acknowledged  
11 the factual nature of the impossibility defense to statutory  
12 compliance while arguing in support of respondent's motion  
13 for judgment on the pleadings in the trial court. Because  
14 impossibility presents a factual issue, it cannot be resolved  
15 on a pleading motion such as that, which has generated this  
16 appeal.

17           By properly alleging the actual controversy between  
18 the parties as to whether Penal Code Section 31910,  
19 subdivision (b)(7)(A), requires impossible compliance,  
20 appellants have done all that they need to do under their  
21 cause of action for declaratory relief to advance to trial,  
22 or at least to the cross motion for summary judgment that  
23 were pending when respondent's motion for judgment on the  
24 pleadings was mistakenly granted.

25           Both respondent and amicus curiae argue in their

1 respective briefs that there are ways for the manufacturers  
2 of semiautomatic pistols to comply partially with the  
3 statutes dual placement microstamping requirements.  
4 Initially that would violate the statute.

5 Dual placement microstamping is dual placement  
6 microstamping. You either put it in two places or you don't.  
7 And if you don't, you haven't complied. But it's not  
8 necessary to consider any issue of partial compliance now  
9 because impossibility, as we've been discussing, is a factual  
10 issue, and no sufficient factual record has yet been  
11 developed with respect to respondent's motion for judgment on  
12 the pleadings.

13 So while it does not matter for purposes of  
14 determining the pleading motion that -- underlying this  
15 appeal, nevertheless, both methods of partial compliance that  
16 respondents and amicus curiae suggest are illusory.

17 First they suggest that manufacturers could comply by  
18 imprinting microstamps on the firing pins of semiautomatic  
19 pistols, but -- I should say by imprinting both microstamps  
20 on the firing pins of semiautomatic pistols -- but any such  
21 purported compliance would not meet the requirement that  
22 semiautomatic pistols be microstamped in two places. In  
23 other words, it would violate the statute.

24 The legislative history uniformly states that the  
25 second place to be microstamped must be some surface or part



1 of a semiautomatic pistol other than the firing pin.

2 Respondent has never been able to rebut appellants'  
3 contention that the legislative history can be interpreted --  
4 can only be interpreted in this way, and thus Penal Code  
5 Section 31910, subdivision (b)(7)(A), has never reflected the  
6 legislature's intent.

7 Second, respondent and amicus curiae suggest that  
8 manufacturers could comply with these statutes, dual placement  
9 microstamping requirements, by the simple expedient of just  
10 not shipping any semiautomatic pistols into California for  
11 sale. That is not statutory compliance, your Honors. That  
12 is statutory avoidance.

13 It would deny appellants' manufacturing members of  
14 the right to engage in commerce that would be lawful, but for  
15 the impossible dual placement microstamping requirements with  
16 which they cannot possibly comply.

17 That suggestion would also prevent the courts of this  
18 state from ever invalidating any statute requiring impossible  
19 compliance regardless of how properly arbitrary the  
20 requirements of the statute were.

21 The partial compliant arguments that respondents and  
22 amicus curiae make are simply counterintuitive. Prior to the  
23 certification of Penal Code Section 31910, subdivision  
24 (b)(7)(A), the annual market for semiautomatic pistols in  
25 California was worth approximately \$183 million. That is not

1 surprising because California is the largest statewide market  
2 in the nation.

3 And no industry in the exercise of rational business  
4 sense with would sacrifice so much valuable business by  
5 refusing to comply with statutory requirements with which it  
6 had the ability to comply.

7 And, hence, back to the Court's question, that is why  
8 no pistols have been submitted for certification to one of  
9 the state's laboratories.

10 The point strenuously advanced by respondent that no  
11 manufacturer has submitted a single microstamp pistol for  
12 certification by a state sanctioned laboratory proves only  
13 that it is not possible to microstamp a pistol in such a way  
14 as to make the pistol compliant with the statues dual  
15 placement microstamping requirements.

16 But in the final analysis, your Honors, this appeal  
17 presents a simple pleading issue. Appellants' contend that  
18 they have properly alleged their cause of action for  
19 declaratory relief, and that they should have the opportunity  
20 to prove, either at trial or through the pending motions for  
21 summary judgment, that it is indeed impossible to comply with  
22 the dual placement microstamping requirements of Penal Code  
23 Section 31910, subdivision (b)(7)(A), as they allege.

24 To proceed through a determination of this case on  
25 its merits, appellants need only allege the ultimate fact of

1 impossible compliance, and they have plainly done that. They  
2 have satisfied the element of the cause of action for  
3 declaratory relief that they assert.

4 If appellants are successful at trial or upon summary  
5 judgment, then California law will allow the trial court to  
6 enjoin the enforcement of that statute.

7 And if there are no further questions from the Court  
8 at this point, I will yield the floor.

9 **JUSTICE:** Thank you, Mr. Selfridge.

10 **MR. SELFRIDGE:** Thank you, your Honors.

11 **JUSTICE:** Mr. Richards?

12 **MR. RICHARDS:** Good morning. May it please the  
13 Court. Appellants asked this Court to invalidate  
14 California's commonsense and gun microstamping law in all its  
15 applications, and enjoin state officials from enforcing that  
16 law. They do this --

17 **JUSTICE:** Well, is that what they're asking? Is that  
18 what they're really asking? They're asking, are they not,  
19 that because this was a judgment on the pleadings, we must  
20 accept as true their claim that it's impossible to microstamp  
21 a semiautomatic pistol in a place other than the firing pin,  
22 and ask for fact -- factual finding regarding that issue,  
23 which may or may not be able to be proved?

24 **MR. RICHARDS:** And the -- the ultimate endpoint of  
25 that inquiry would be to invalidate the law and all of its

1 application.

2 **JUSTICE:** If they prevail.

3 **MR. RICHARDS:** If they prevail, that is correct. And  
4 so we can look to that endpoint and see that that endpoint is  
5 -- the request is essentially a request to have the -- the  
6 statute invalidated in all its application to enjoin the  
7 state from enforcing the law, which is tantamount to a repeal  
8 of the law.

9 **JUSTICE:** But that's not the question before us.  
10 That's not our job. Isn't our job to decide if they made a  
11 proper allegation in their pleading?

12 **MR. RICHARDS:** Yes.

13 **JUSTICE:** And if they have, send it back down for  
14 factual evidentiary determination?

15 **MR. RICHARDS:** Your -- your job is to assess the --  
16 the pleadings, and -- and the state's position is, that as a  
17 matter of law, the pleadings are defective. This is not a  
18 factual --

19 **JUSTICE:** How are they defective?

20 **MR. RICHARDS:** Because they are challenging the  
21 legislatures policy determination that microstamping is  
22 possible. That is inherent in the -- in the statute itself.

23 The statute mandates that for all new semiautomatic  
24 pistols sold in the state, they comply with the microstamping  
25 requirement.

1           **JUSTICE:** And they said it's an impossibility, and we  
2 have to accept it for purposes of our hearing today that's  
3 true. Right?

4           **MR. RICHARDS:** And -- and what that does is that  
5 puts -- accepting that factual allegation is true, what's --  
6 what's the -- what's their alleg -- what's their complaint  
7 and their allegations in -- in contrast or in conflict with a  
8 legislatures determination that this technology is possible  
9 and is required.

10           **JUSTICE:** Well, if it's physically impossible to  
11 comply with the statute, how can the law be considered other  
12 than arbitrary or irrational?

13           **MR. RICHARDS:** That -- that is a possible theory on  
14 which they could have attacked the law. Arbitrary and  
15 irrational is a due process challenge to the law. And the --  
16 and the appellants' here have disavowed any constitutional  
17 challenge to the law.

18           They've had ample opportunity over the course of this  
19 case, in the complaint, in the various brief in the trial  
20 court, and their brief in -- brief in this case to -- to  
21 point out a constitutional problem, a second amendment --

22           **JUSTICE:** No, I --

23           **MR. RICHARDS:** -- challenge --

24           **JUSTICE:** -- understand. We --

25           **MR. RICHARDS:** -- or due process issue.

1           **JUSTICE:** -- (overlapping) constitutional challenge  
2 here?

3           **MR. RICHARDS:** Yes.

4           **JUSTICE:** But is it your position that the doctrine  
5 of impossibility does not apply to any statute passed by the  
6 legislature and signed by the governor?

7           **MR. RICHARDS:** It's the same position that the --  
8 that the doctrine impossibility cannot be used by courts to  
9 invalidate a statute in all its applications, which as I said  
10 earlier, would be tantamount to repealing that statute  
11 because that would encroach upon the legislatures authority  
12 under the constitution under Article III, Section 3 of the  
13 California Constitution.

14           **JUSTICE:** Clearly if -- if the legislature passes and  
15 the governor signs a statute that the judiciary ultimately  
16 finds unconstitutional, that's appropriate under the  
17 separation of powers, correct?

18           **MR. RICHARDS:** That is correct, that is the -- the  
19 concept, the principle of judicial review, which is limited  
20 to the review of statues for constitutional violations.

21           **JUSTICE:** So if the legislature passes and the  
22 governor signs a statute that it is ultimately found  
23 impossible to comply with, is it your position that the  
24 judicial branch does not have the authority to make that  
25 determination relating to impossibility?