

SEVERABILITY, ADMINISTRATIVE CONTINUITY, AND A PILOT-BASED TIER 4-B FRAMEWORK

Implementing Judicial Relief Through Controlled Licensing Pathways

Executive Summary

California's firearms regulatory framework faces recurring instability when courts enjoin or invalidate discrete prohibitions while leaving the broader regulatory system intact. The resulting compliance uncertainty creates operational risk for the Department of Justice, licensed dealers, and regulated individuals. This paper addresses severability in that context and proposes a time-limited Tier 4-B pilot program designed to implement judicial relief in a narrow, auditable, and reversible manner.

Tier 4-B is not a ban and does not expand general market access. It is a three-year pilot, authorizing one duty-configured firearm per approved licensee, permitting lawfully acquired Freedom Week magazines, and using discretionary approval grounded in moral character references, including those already evaluated for concealed carry licenses. The pilot is structured so that if courts strike down magazine capacity limits and assault-weapon prohibitions, duty rifle configurations are automatically routed to Tier 4, preventing uncontrolled diffusion while preserving administrative continuity.

I. Severability in Complex Administrative Systems

Traditional severability analysis asks whether a legislature would have enacted a statute absent an invalid provision. In modern regulatory systems supported by interdependent information technology, courts also consider whether partial invalidation would destabilize enforcement beyond the scope of the constitutional defect.

California's firearms laws are administered through centralized systems that the Department of Justice has acknowledged are fragile and difficult to modify rapidly. When courts alter the legality of specific firearm classes, immediate retail diffusion and inconsistent dealer interpretations create unequal enforcement and litigation risk. A severability-aware framework must therefore provide procedural containment that allows judicial relief to be implemented without emergency rulemaking or system redesign.

II. Person-Centric Eligibility as a Severable Foundation

California already operates person-centric eligibility through continuous monitoring systems that determine whether an individual may participate in firearms transactions. These systems function independently of weapon classification. Eligibility remains operable regardless of whether a particular prohibition is upheld, enjoined, or invalidated.

Accordingly, eligibility determination is severable from weapon-specific restrictions. Courts may modify the latter without impairing the former, preserving the core regulatory infrastructure.

III. Tiered Licensing as Containment, Not Prohibition

Tiered licensing does not declare firearms unlawful and does not criminalize possession. It regulates how lawful firearms enter circulation by conditioning acquisition pathways on defined criteria. This process-based regulation is distinct from bans and has long been used in California across multiple domains.

Because tiers operate independently of any specific prohibition, they are structurally severable. A tier remains operable even as the scope of firearms eligible within that tier changes due to judicial action.

IV. Tier 4-B: Three-Year Pilot for Judicial Variance Containment

A. Purpose

Tier 4-B exists solely to manage judicial variance during periods when courts enjoin or invalidate magazine capacity limits and/or assault-weapon prohibitions. It does not concede the merits of litigation outcomes. Its purpose is to ensure that judicial relief is implemented narrowly and consistently, avoiding uncontrolled retail proliferation and administrative whiplash.

B. Pilot Duration and Sunset

- Duration: Three (3) years from program commencement.
- Sunset: Automatic expiration unless reauthorized by the Legislature following formal evaluation.
- Reporting: Annual public reporting on approvals, denials, compliance, and enforcement impacts.

The pilot structure signals restraint, allows data-driven evaluation, and reduces long-term policy risk.

C. Eligibility and Discretionary Approval

Tier 4-B is discretionary and approval-based. Applicants must satisfy heightened eligibility predicates and submit moral character references.

- **Moral Character References:**
References may include those already evaluated and accepted for issuance of a concealed carry license. No new moral character standard is created; the pilot leverages existing evaluative frameworks to avoid inconsistency.
- **Review Standard:**
Discretionary review is individualized, documented, and reviewable, mitigating arbitrary enforcement risk.

This approach aligns with California's historical use of discretionary licensing for higher-risk privileges while remaining administratively familiar.

D. Quantitative and Configuration Limits (Non-Negotiable Constraints)

To ensure compatibility with California's regulatory posture, Tier 4-B includes explicit hard limits:

1. **Quantity Limit**
Authorization is limited to one (1) firearm per approved licensee.
2. **Duty Configuration Requirement**
The authorized firearm must be maintained in a single duty configuration, defined as a fixed, functional setup suitable for defensive or professional use.
 - No multiple variants or duplicates
 - No collector or accumulation privileges
 - No in-state resale during the pilot
 - The serial number of the firearm in this configuration will be defined in CFARS

These limits are essential to ensure Tier 4-B functions as containment, not expansion.

E. Magazine Treatment (Freedom Week)

- Lawfully Acquired Magazines:
Magazines lawfully acquired during periods recognized by California courts as lawful (“Freedom Week”) are permitted for use with the Tier 4-B authorized firearm.
- No New Authorization:
Tier 4-B does not authorize new acquisition of magazines beyond what courts have already deemed lawful. It merely recognizes existing lawful possession.

This approach avoids re-litigation of magazine issues while maintaining fidelity to judicial rulings.

F. Automatic Court-Indexed Routing to Tier 4

Tier 4-B is court-indexed:

- Trigger:
If a controlling court order enjoins or invalidates magazine capacity limits and assault-weapon prohibitions, duty rifle configurations automatically route to Tier 4 eligibility pathways.
- Scope:
The Department of Justice does not interpret or expand judicial orders. The tier mirrors the outer boundary expressly permitted by the court.

This automatic routing prevents ad hoc dealer interpretation and preserves uniformity statewide.

G. Automatic Compliance Restoration

Upon dissolution, stay, or reversal of judicial relief:

- Tier 4-B authorization automatically reverts to prior lawful scope.
- No emergency regulation or discretionary delay is required.

This reversibility reassures courts and legislators that no permanent policy change occurs by inertia.

V. Why Tier 4-B Is Not a Ban

Tier 4-B does not prohibit possession of firearms deemed lawful by a court. It does not

criminalize ownership, mandate forfeiture, or impose categorical exclusions. It governs the administrative pathway of acquisition during judicial variance.

In operation:

- Lawfulness is set by the court
- Eligibility is determined by existing person-centric systems
- Tier 4-B narrowly controls *how* lawfulness is implemented

That is regulation of process, not prohibition.

VI. Severability Advantages

Tier 4-B enhances severability by:

1. Containing Judicial Shock
Preventing uncontrolled diffusion of newly lawful configurations.
2. Preserving Administrative Stability
Avoiding emergency guidance and system rewrites.
3. Maintaining Remedial Neutrality
Implementing judicial relief without expanding it and restoring prior enforcement automatically when relief ends.

Because Tier 4-B is independently operable and time-limited, courts may strike or uphold specific prohibitions without destabilizing the broader system.

Conclusion

A three-year, discretionary Tier 4-B pilot... limited to one duty-configured firearm, recognizing lawfully acquired Freedom Week magazines, and automatically routing duty rifle configurations to Tier 4 when courts strike magazine and assault-weapon bans... provides California with a defensible, conservative mechanism to implement judicial relief without bans, proliferation, or administrative chaos.

This framework does not expand access.

It does not concede constitutional defeat.

It contains change, preserves governance, and strengthens severability.