

FORUM

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A Ban That Will Backfire

W. Hollywood's Symbolic Stance Will Cost Real Tax Dollars

By Chuck Michel

There has been considerable debate about West Hollywood's ordinance banning the sale of so-called Saturday night specials (see Letters to the Editor, opposite page; "Gun Battle Pits Cities Vs. State," Forum, March 19). But no one is discussing the real issue: The threshold issue in West Hollywood isn't gun control, it's the appropriate role of a local government in regulating this area, and whether this ordinance is preempted by state law.

West Hollywood, and other cities considering similar laws, have ignored whether passing this type of law is their business in the first place. It isn't. Before drafting legislation that would turn some taxpaying gun dealers into criminals, the city should have determined whether a law regulating the sale of firearms is preempted by state law. It is.

California Government Code Section 53071 says: "It is the intention of the [state] Legislature to occupy ... the whole field of the regulation of the registration or licensing of ... firearms ... exclusive of all local regulations relating to registration or licensing ..."

West Hollywood's lawyers disingenuously claim that completely prohibiting the sale of some firearms is different from regulating the "registration or licensing" of firearms. Courts rejected that argument in 1982, when the city of San Francisco tried to enact a ban on handgun sales and possession.

San Francisco argued that Section 53071 didn't apply to an outright ban on sales or possession, only to registration or licensing. In the court's published decision, it said that "it strains reason to suggest that the state Legislature would prohibit licenses and permits but allow a ban on possession."

Likewise with West Hollywood's proposed ban on sales. Both the California attorney general's office and the California Legislative Council have extensively analyzed the issue and both have published opinions saying that what West Hollywood is doing is illegal. Tellingly, a recent Los Angeles County Bar Association CEB seminar, "Gun Control at the Local Level," was put on by West Hollywood's law firm and Handgun Control Inc. The panel didn't give those opinions to the city attorneys in attendance.

Proponents of the Saturday night special ordinance make the emotionally compelling claim that the proposed ordinance will save lives because criminals won't be able to get these "bad" guns. But emotion makes bad law. It's impossible to define a "Saturday night special" so it has always been impossible to separate the "good" from "bad" guns.

West Hollywood is learning that now. The city has stayed the implementation of the ordinance indefinitely while city staffers frantically try to compile a legitimate list of "Saturday night specials" to ban. Experts at the Los Angeles County sheriff's department, knowing the

task is impossible, have refused to help them.

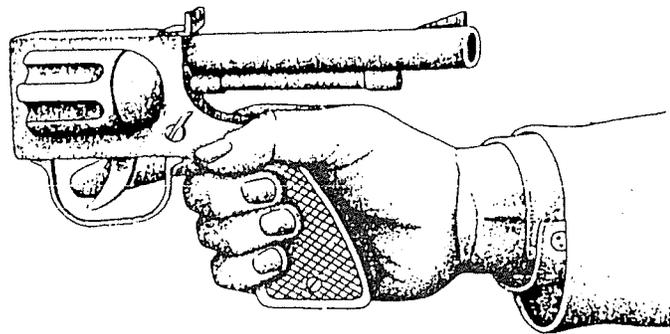
Definition problems aside, today's gun-savvy criminals have no interest in cheap guns. If price is the determinative criterion, merchants can raise their prices so that targeted guns are no longer "cheap." Those few criminals who might ordinarily use "cheap" handguns will simply steal the money to buy more expensive (and more deadly) guns. The ordinance will prevent poor residents from being able to afford the most effective means to defend themselves. And any manufacturer that makes a handgun that is really as unsafe for its intended purpose as these politicians claim will quickly be sued out of business through product liability claims.

These issues, ignored by local publicity-seeking politicians with personal agendas, explain why the state Legislature twice considered and rejected a "Saturday night special" bill introduced in Sacramento just last year. While uninformed local politicians were quick to pass this feel-good law, the state Assembly drew on the expertise of the firearms specialists at the Department of Justice, the California Rifle and Pistol Association (which has sued West Hollywood over the Sat-

urday night special ordinance) and elsewhere when considering the issue and rejecting the bills.

The ordinance, and the concealed-weapons bill (which would make it easier for certain citizens to get a permit to carry a concealed weapon) that recently passed the Assembly, present the classic issues in the gun control debate — "we have to start somewhere" vs. the rights of citizens to possess the means to defend themselves in a violent society where the overwhelmed police can't do the job.

Emotions, misleading statistics and often bogus studies dominate the debate. People choose sides. Politicians should research and consider the facts and then craft laws that will make a difference, not simply pander to one side or the other.



Chuck Michel is an attorney representing the California Rifle and Pistol Association in its lawsuit against West Hollywood. He was formerly a criminal prosecutor and counsel for the Christopher Commission investigating the Los Angeles Police Department.