

FILED

APR 16 2002

FRESNO COUNTY SUPERIOR COURT

By _____
98A-DEPUTY

8 SUPERIOR COURT OF CALIFORNIA, COUNTY OF FRESNO

9 CENTRAL DIVISION

11	EDWARD W. HUNT, in his official)	No. 01CECG03182	Dept. 98A
	capacity as District Attorney)		
12	of Fresno County, and in his)		
	personal capacity as a citizen)		
13	and taxpayer, et al.,)	ORDER DENYING REQUEST FOR	
)	PRELIMINARY INJUNCTION	
14	Plaintiff,)		
)		
15	v.)		
)		
16	STATE OF CALIFORNIA, et al.,)		
)		
17	Defendant.)		
)		

18
19 On April 10, 2002, plaintiff's Motion For Preliminary
20 Injunction came on regularly for hearing in Department 98A of the
21 above-entitled court. C. D. Michel and Don Kates appeared on
22 behalf of plaintiffs. Douglas Woods appeared on behalf of
23 defendants. The Court previously reviewed the papers filed in
24 support of and in opposition to the motion. The Court considered
25 oral argument and took the matter under submission.

26 This is an action for declaratory and injunctive relief
27 brought by plaintiffs against the State of California and the
28 California Department of Justice. Plaintiffs seek a declaration

1 from the court that certain existing California laws regarding the
2 regulation of assault weapons are not enforceable. Plaintiffs
3 claim that portions of the Assault Weapon Control Act (hereafter
4 AWCA) and regulations interpreting the Act contain vague and
5 uncertain terms such that injunctive and declaratory orders should
6 issue precluding prosecution under the AWCA. Plaintiffs note that
7 under the holding of *In Re Jorge M.* (2000) 23 Cal.4th 866,
8 defendants may only be held liable under the AWCA if they knew or
9 reasonably should have known that it regulates the firearm they
10 possess. Plaintiffs contend that the language of the regulations
11 are so vague that even police and prosecutors find it impossible
12 to identify which weapons fall under the Act. Therefore,
13 plaintiffs claim that the regulations violate the AWCA's mens rea
14 requirement as well as due process in certain specific provisions
15 of the Act.

16 Defendants oppose the motion on several grounds
17 including that plaintiffs have not complied with Government Code
18 section 11350 and because there is no actual present controversy.

19 Where the challenged statute imposes criminal penalties,
20 it is not always necessary that the plaintiffs prove an arrest or
21 prosecution in order to obtain declaratory relief. (See *Peoples'*
22 *Rights Organization v. City of Columbus* (6th Cir. 1998) 152 F.3d
23 522, 527.) However, "the plaintiff must demonstrate actual
24 present harm or a significant possibility of future harm to
25 justify pre-enforcement relief." (*Ibid.*)

26 Defendants point out that plaintiffs cannot seek
27 injunctive relief without relying on the requests for declaratory
28 relief since plaintiffs have not shown the existence of any actual

1 or imminent dispute which is ripe for adjudication. Plaintiffs
2 have not shown that there is a danger of imminent irreparable harm
3 to them since they have not introduced any evidence showing that
4 defendants have attempted to enforce the challenged statutes and
5 regulations against one or more of the plaintiffs. (*Korean*
6 *Philadelphia Presbyterian Church v. Cal. Presbytery* (2000) 77
7 *Cal.App.4th* 1069, 1084.) Nor can plaintiffs show that the balance
8 of equities weighs in their favor since they have not shown that
9 they would suffer greater harm from denial of the injunction than
10 defendants would suffer from its issuance. In fact plaintiffs
11 have failed to show they would suffer any immediate harm if the
12 Court denies the injunction. The challenged regulations have been
13 in effect since December of 2000. Plaintiffs did not file their
14 motion for injunction until the end of February 2002. This
15 chronology implies that plaintiffs are not facing immediate harm.
16 Since plaintiffs have not been harmed since December of 2000, the
17 Court is unable to accept plaintiff's contention that there is
18 imminent danger of their being prosecuted under the AWCA.

19 Government Code section 11350 provides:

20 Any interested person may obtain a judicial
21 declaration as to the validity of any
22 regulation or order of repeal by bringing an
23 action for declaratory relief in the superior
24 court in accordance with the Code of Civil
25 Procedure.

24 This section is the exclusive authority for challenging a
25 regulation by means of a claim for declaratory relief. (*Los*
26 *Angeles v. State Dept. of Public Health* (1958) 158 *Cal.App.2d* 425,
27 443.)

28 Under section 11350, a court may only consider certain

1 forms of evidence: the rulemaking file prepared under section
2 11347.3; a written statement prepared pursuant to section
3 11346.1(b); an item that is required to be included in the
4 rulemaking file, but is not included in that file for the sole
5 purpose of proving its omission; and any evidence "relevant to
6 whether regulation used by an agency is required to be adopted
7 under this chapter." (Gov. Code, § 11350(d).)

8 Plaintiff's request for declaratory relief in this case
9 does not rely on any of the permissible forms of evidence
10 specified in section 11350. Therefore, to the extent that
11 plaintiff's request for preliminary injunction is based on a
12 prayer for declaratory relief, the motion is denied.

13 Even if the Court were to reach the merits of
14 plaintiff's claims, there does not appear to be a reasonable
15 likelihood that plaintiffs will prevail at trial. First,
16 injunctive relief is normally not available to nullify legislation
17 except where the infirmity is constitutional. (*ALRB v. Superior*
18 *Court* (1976) 16 Cal.3d 392, 401.) Second, a challenge based on
19 vagueness is more appropriately made when the contention is that
20 the enactment is vague in all of its applications. (*Hoffman v.*
21 *Flipside* (1982) 455 U.S. 489, 495.) Third, administrative
22 rulemaking authority is entitled to some deference by the courts
23 because of the agency's presumed expertise and because of the
24 separation of powers doctrine. (*Ramirez v. Yosemite* (1999) 20
25 Cal.4th 785, 800-802; *Dabis v. San Francisco Redev. Agency* (1975)
26 50 Cal.App.3d 704, 706.)

27 Plaintiffs argue that because the statute at issue uses
28 a lower mens rea standard than most criminal statutes, the statute

1 is subject to stricter scrutiny for vagueness. However, the
2 primary cases cited by plaintiffs in support of this position,
3 *Peoples' Rights Organization v. City of Columbus, supra*, and
4 *Springfield Armory v. City of Columbus* (6th Cir. 1998) 152 F.3d
5 522, both dealt with ordinances where the courts found there was
6 no mens rea standard at all. The Court found the ordinances were
7 strict liability statutes and subjected them to stricter scrutiny
8 for vagueness. Here, on the other hand, the California Supreme
9 Court has already found that, although the AWCA does not contain
10 an express mens rea requirement, such a requirement is inferred.
11 (*In Re: Jorge M., supra*, at p. 887.) The court found the
12 applicable mens rea standard requires the prosecution to prove
13 that "the defendant knew or reasonably should have known the
14 firearm possessed the characteristics bringing it within the
15 AWCA." Thus, since there is a mens rea requirement that
16 prosecutors must satisfy before they can convict a defendant of
17 possessing an assault weapon, the strict scrutiny of *Peoples'*
18 *Rights* and *Springfield Armory* does not necessarily apply here.

19 The day may come when an actual criminal prosecution
20 will present a court with vagueness challenges to the
21 enforceability of the Act (or specified regulations on which the
22 prosecution depends) which the court will have to decide. However,
23 this is not that case.

24 The Motion for Preliminary Injunction is denied.

25 DATED this 16 day of April, 2002.

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STEPHEN J. KANE
JUDGE OF THE SUPERIOR COURT

CASE TITLE EDWARD W. HUNT VS STATE OF CALIFORNIA	CASE NUMBER: 01CECG03182
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CLERK'S CERTIFICATE OF MAILING

I certify that I am not a party to this cause and that a true copy of the **ORDER** was mailed first class, postage fully prepaid, in a sealed envelope addressed as shown below, and that the notice was mailed at **FRESNO**, California, on:

Date: April 16, 2002

Clerk, by *Susan Landa Lopez*, Deputy
S. L. YEPIZ

<input type="checkbox"/> C.D. MICHEL, ESQ. PORT OF LOS ANGELES 407 NORTH HARBOR BOULEVARD SAN PEDRO, CA. 90731	<input type="checkbox"/>	<input type="checkbox"/> STEPHEN P. HALBROOK, ESQ. 10560 MAIN STREET, STE. 404 FAIRFAX, VIRGINIA 22030	<input type="checkbox"/>
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<input type="checkbox"/> DON B. KATES, ESQ. 22608 NORTH EAST 269 TH AVENUE BATTLEGROUND, WASHINGTON 98604	<input type="checkbox"/>	<input type="checkbox"/> DOUGLAS J. WOODS, ESQ. 1300 "I" STREET, STE. 125 SACRAMENTO, CA. 94244-2550	<input type="checkbox"/>
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