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CITY AND COUNTY OF SAN FRANCISCO, et al.

9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SAN FRANCISCO
12 UNLIMITED JURISDICTION

13 PAULA FISCAL, LARRY P.
BARSETTI, REBECCA KIDDER,
14 DANA DRENKOWSKI, JOHN
CANDIDO, ALAN BYARD, ANDREW
15 SIRKIS, NATIONAL RIFLE
ASSOCIATION, SECOND
16 AMENDMENT FOUNDATION,
CALIFORNIA ASSOCIATION OF
17 FIREARMS RETAILERS, LAW
ENFORCEMENT ALLIANCE OF
18 AMERICA, and SAN FRANCISCO
VETERAN POLICE OFFICERS
ASSOCIATION,

19 Plaintiffs and Petitioners,

20 vs.

21 CITY AND COUNTY OF SAN
22 FRANCISCO, SAN FRANCISCO
POLICE CHIEF HEATHER FONG in her
23 official capacity and SAN FRANCISCO
24 POLICE DEPARTMENT, and Does 1-25,

25 Defendants and Respondents.

Case No. CPF-05-505960

**DEFENDANTS AND RESPONDENTS'
ANSWER TO PETITION AND
COMPLAINT**

Date Action Filed: Dec. 28, 2005
Trial Date: None Set

Attached Documents: None



1 On behalf of themselves and no other persons or entities, defendants and respondents City
2 and County of San Francisco ("the City"), San Francisco Police Chief Heather Fong, in her official
3 capacity, and the San Francisco Police Department ("SFPD"; collectively "respondents") hereby
4 answer the "Petition for Writ of Mandate and/or Prohibition or Other Appropriate Relief; Complaint
5 for Declaratory and Injunctive Relief" filed on or about December 28, 2005 ("the petition") by
6 plaintiffs and petitioners Paula Fiscal, Larry Barsetti, Rebecca Kidder, Dana Drenkowski, John
7 Candido, Alan Byard, Andrew Sirkis, National Rifle Association, Second Amendment Foundation,
8 California Association of Firearms Retailers, Law Enforcement Alliance of America, and San
9 Francisco Veteran Police Officers Association (collectively "petitioners"), as follows:

10 1. Answering the allegations contained in paragraph 1, respondents admit that on
11 November 8, 2005, the voters of San Francisco adopted an initiative ordinance denominated
12 Proposition H, the terms of which speak for themselves. Respondents further allege that they lack
13 information sufficient to form a belief as to the truth of the allegations contained in the second
14 sentence of paragraph 1, and deny the same on that basis. Respondents further admit that the
15 contents of the newspaper articles referred to in paragraph 1 speak for themselves, and also admit
16 that those newspaper articles and any opinions expressed in them are legally irrelevant to this
17 action. Except as expressly admitted, respondents deny each and every remaining allegation
18 contained in paragraph 1.

19 2. Answering the allegations contained in paragraph 2, respondents admit that
20 petitioners ask the Court to invalidate Proposition H. Except as expressly admitted, respondents
21 deny each and every remaining allegation contained in paragraph 2.

22 3. Answering the allegations contained in paragraph 3, respondents admit that
23 Proposition H reflects policy choices made by the voters of San Francisco acting as local legislators
24 in the exercise of their Constitutionally-guaranteed right of initiative. Respondents further admit
25 that the contents of California state gun laws and of Proposition H, respectively, speak for
26 themselves. Except as expressly admitted, respondents deny each and every remaining allegation
27 contained in paragraph 3.

1 4. Answering the allegations contained in paragraph 4, respondents deny the allegations
2 contained in the first two sentences of that paragraph. Respondents lack information sufficient to
3 form a belief as to the truth of the remaining allegations contained in paragraph 4, and deny each
4 and every such allegation on that basis.

5 5. Respondents lack information sufficient to form a belief as to the truth of the
6 allegations contained in paragraph 5, and deny each and every such allegation on that basis.

7 6. Answering the allegations contained in paragraph 6, respondents admit that they
8 have stipulated with petitioners to defer enforcement of the prohibition against sales and transfers of
9 firearms and ammunition contained in Section 2 of Proposition H until March 1, 2006. With
10 respect to Proposition H's effective date, and with respect to its requirements as to relinquishment
11 of handguns, respondents admit that Proposition H's terms speak for themselves. Except as
12 expressly admitted, respondents deny each and every remaining allegation contained in paragraph 6.

13 7. Answering the allegations contained in paragraph 7, respondents allege that because
14 the petition as served on them lacks any attached exhibits, respondents lack information sufficient to
15 form a belief as to the truth of the allegations contained in paragraph 7, and deny the same on that
16 basis.

17 8. Answering the allegations contained in paragraph 8, respondents deny the allegations
18 contained in the last sentence of paragraph 8. Respondents lack information sufficient to form a
19 belief as to the truth of the remaining allegations contained in paragraph 8, and deny the same on
20 that basis.

21 9. Answering the allegations contained in paragraph 9, respondents admit that City
22 residents who have been issued permits pursuant to California Penal Code Section 12027 are not, by
23 virtue of such permits, authorized to possess handguns within the City. Respondents lack
24 information sufficient to form a belief as to the truth of the remaining allegations contained in
25 paragraph 9, and deny the same on that basis.

26 10. Answering the allegations contained in paragraph 10, respondents deny the
27 allegations contained in the last sentence of paragraph 10. Respondents lack information sufficient
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1 to form a belief as to the truth of the remaining allegations contained in paragraph 10, and deny the
2 same on that basis.

3 11. Answering the allegations contained in paragraph 11, respondents admit that the
4 terms of Proposition H speak for themselves. Respondents lack information sufficient to form a
5 belief as to the truth of the remaining allegations contained in paragraph 11, and deny the same on
6 that basis.

7 12. Respondents lack information sufficient to form a belief as to the truth of the
8 allegations contained in paragraph 12, and deny the same on that basis.

9 13. Respondents lack information sufficient to form a belief as to the truth of the
10 allegations contained in paragraph 13, and deny the same on that basis.

11 14. Answering the allegations contained in paragraph 14, respondents deny the
12 allegations contained in the last sentence of that paragraph. Respondents lack information sufficient
13 to form a belief as to the truth of the remaining allegations contained in paragraph 14, and deny the
14 same on that basis.

15 15. Respondents lack information sufficient to form a belief as to the truth of the
16 allegations contained in paragraph 15, and deny the same on that basis.

17 16. Respondents lack information sufficient to form a belief as to the truth of the
18 allegations contained in paragraph 16, and deny the same on that basis.

19 17. Answering the allegations contained in paragraph 17, respondents deny that the
20 Second Amendment or any other provision of the United States or California Constitutions creates a
21 right to privately own and possess firearms. Respondents lack information sufficient to form a
22 belief as to the truth of the remaining allegations contained in paragraph 17, and deny the same on
23 that basis.

24 18. Respondents lack information sufficient to form a belief as to the truth of the
25 allegations contained in paragraph 18, and deny the same on that basis.

26 19. Respondents lack information sufficient to form a belief as to the truth of the
27 allegations contained in paragraph 19, and deny the same on that basis.
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1 20. Respondents lack information sufficient to form a belief as to the truth of the
2 allegations contained in paragraph 20, and deny the same on that basis.

3 21. Respondents lack information sufficient to form a belief as to the truth of the
4 allegations contained in paragraph 21, and deny the same on that basis.

5 22. Answering the allegations contained in paragraph 22, respondents admit that the City
6 and County of San Francisco is a charter city and county formed pursuant to and exercising the
7 powers granted under the California Constitution. Respondents further admit that Proposition H,
8 adopted by the City's voters as an initiative ordinance, is a legislative enactment of the City.
9 Respondents deny any remaining allegations contained in paragraph 22.

10 23. Answering the allegations contained in paragraph 23, respondents admit that Heather
11 Fong is the Chief of the San Francisco Police Department. With respect to enforcement of
12 Proposition H, respondents admit that the initiative's terms speak for themselves. Except as
13 expressly admitted, respondents deny each remaining allegation contained in paragraph 23.

14 24. Respondents lack information sufficient to form a belief as to the truth of the
15 allegations contained in paragraph 24, and deny the same on that basis.

16 25. Respondents admit the allegations contained in paragraph 25.

17 26. Answering the allegations contained in paragraph 26, respondents admit the
18 allegations contained in paragraph 26's first sentence, and further admit that petitioners' claims,
19 while not meritorious, arise in San Francisco. Respondents lack information sufficient to form a
20 belief as to the truth of the remaining allegations contained in paragraph 26, and deny the same on
21 that basis.

22 27. Answering the allegations contained in paragraph 27, respondents admit that on or
23 about June 28, 1982, the City adopted an ordinance regulating the possession of handguns within
24 the City. Respondents further admit the allegations contained in the second sentence of paragraph
25 27. Except as expressly admitted, respondents deny each remaining allegation contained in
26 paragraph 27.

27 28. Answering the allegations contained in paragraph 28, respondents admit that on
28 November 8, 2005, the voters of San Francisco adopted an initiative ordinance denominated

1 Proposition H, the terms of which speak for themselves. Except as expressly admitted, respondents
2 deny each remaining allegation contained in paragraph 28.

3 29. Respondents admit the allegations contained in paragraph 29.

4 30. Respondents admit the allegations contained in paragraph 30.

5 31. Answering the allegations contained in paragraph 31, respondents admit that the
6 terms of Proposition H speak for themselves. Respondents deny each remaining allegation
7 contained in paragraph 31.

8 32. Answering the allegations contained in paragraph 32, respondents admit that the
9 terms of Proposition H speak for themselves. Respondents deny each remaining allegation
10 contained in paragraph 32.

11 33. Answering the allegations contained in paragraph 33, respondents admit that the
12 terms of Proposition H speak for themselves. Respondents deny each remaining allegation
13 contained in paragraph 33.

14 34. Answering the allegations contained in paragraph 34, respondents admit that the
15 terms of Proposition H speak for themselves. Respondents deny each remaining allegation
16 contained in paragraph 34.

17 35. Answering the allegations contained in paragraph 35, respondents admit that the
18 terms of Proposition H speak for themselves. Respondents deny each remaining allegation
19 contained in paragraph 35.

20 36. Answering the allegations contained in paragraph 36, respondents admit that whether
21 or not a penalty scheme has been enacted, (a) depending on the particular facts and circumstances,
22 City residents in possession of handguns may be subject to having those handguns confiscated by
23 the SFPD or SFSD as of January 1, 2006; (b) petitioners who own firearms will not be able to sell
24 them within the City once the City commences enforcement of Section 2's sales prohibition; and (d)
25 business enterprises that sell firearms in violation of Proposition H will be subject to having their
26 business licenses voided and to other administrative penalties once the City commences
27 enforcement of Section 2's sales prohibition. Respondents lack information sufficient to form a
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1 belief as to the truth of the remaining allegations contained in paragraph 36, and deny the same on
2 that basis.

3 37. Respondents deny the allegations contained in paragraph 37.

4 38. Respondents reallege all prior paragraphs and incorporate them herein.

5 39. Respondents admit the allegations contained in paragraph 39's first two sentences.

6 Responding to the allegations contained in its last sentence, respondents admit that they have
7 stipulated with petitioners to defer enforcement of the prohibition against sales and transfers of
8 firearms and ammunition contained in Section 2 of Proposition H until March 1, 2006, and further
9 admit that they have indicated their intention to enforce Proposition H consistent with the foregoing.
10 Except as expressly admitted, respondents deny any remaining allegations contained in paragraph
11 39.

12 40. Respondents admit the allegations contained in paragraph 40.

13 41. Answering the allegations contained in paragraph 41, respondents admit that
14 petitioners seek declaratory relief. Respondents deny that petitioners are entitled to a judicial
15 declaration in their favor, and deny each and every remaining allegation contained in paragraph 41.

16 42. Respondents reallege all prior paragraphs and incorporate them herein.

17 43. Answering the allegations contained in paragraph 43, respondents admit that the
18 terms of Proposition H, and of the state statutes cited in paragraph 43, speak for themselves.
19 Respondents further admit that the allegations contained in the first sentence of paragraph 43 will be
20 accurate in at least some circumstances. Respondents deny each and every remaining allegation
21 contained in paragraph 43.

22 44. Respondents deny the allegations contained in paragraph 44.

23 45. Respondents reallege all prior paragraphs and incorporate them herein.

24 46. Respondents deny the allegations contained in paragraph 46.

25 47. Respondents reallege all prior paragraphs and incorporate them herein.

26 48. Answering the allegations contained in paragraph 48, respondents admit that
27 Proposition H's terms speak for themselves. Respondents deny each and every remaining allegation
28 contained in paragraph 48.

1 49. Respondents reallege all prior paragraphs and incorporate them herein.

2 50. Respondents deny the allegations contained in paragraph 50.

3 51. Respondents reallege all prior paragraphs and incorporate them herein.

4 52. Answering the allegations contained in paragraph 52, respondents admit that
5 Proposition H, and the state laws that concern carrying of concealed or loaded handguns by peace
6 officers, speak for themselves. Except as expressly admitted, respondents deny the remaining
7 allegations contained in paragraph 52.

8 53. Respondents reallege all prior paragraphs and incorporate them herein.

9 54. Answering the allegations contained in paragraph 54, respondents admit that
10 petitioners seek the specified relief. Respondents deny that petitioners are entitled to such relief, or
11 to any relief whatsoever. Respondents deny each and every remaining allegation contained in
12 paragraph 54.

13 55. Respondents deny the allegations contained in paragraph 55.

14 56. Answering the allegations contained in paragraph 56, respondents admit that
15 petitioners seek the specified relief. Respondents deny that petitioners are entitled to such relief, or
16 to any relief whatsoever, and deny any remaining allegations deemed to be contained within
17 paragraph 56.

18 57. Respondents reallege all prior paragraphs and incorporate them herein.

19 58. Answering the allegations contained in paragraph 58, respondents admit that
20 petitioners make the specified allegations. Respondents further admit that the terms of Proposition
21 H speak for themselves, and also admit that they have stipulated with petitioners to defer
22 enforcement of the prohibition against sales and transfers of firearms and ammunition contained in
23 Section 2 of Proposition H until March 1, 2006. Respondents further admit that they intend to
24 enforce Proposition H consistent with the foregoing. Except as expressly admitted, respondents
25 deny the remaining allegations contained in paragraph 58.

26 59. Respondents deny the allegations contained in paragraph 59.

27 60. Answering the allegations contained in paragraph 60, respondents admit that
28 petitioners seek the specified relief. Respondents deny that petitioners are entitled to such relief, or

1 to any other relief whatsoever, and deny any remaining allegations deemed to be contained within
2 paragraph 60.

3 **AFFIRMATIVE DEFENSES**

4 1. Petitioners' claims, and each of them, fail to state a cause of action under applicable
5 law.

6 2. Petitioners, and each of them, lack standing to bring their petition and each claim
7 contained in it.

8 3. Petitioners' claims, and each of them, are unripe and/or premature.

9 4. At all times and in all matters alleged in the petition, respondents acted without
10 malice and with a good faith belief in the propriety of their conduct.

11 5. Respondents' conduct with respect to all matters alleged in the petition was at all
12 times material herein privileged and/or justified under applicable law.

13 6. Petitioners' relief requests are barred, in whole or in part, by the Constitutional
14 doctrine of separation of powers.

15 WHEREFORE, respondents pray for judgment as follows:

16 1. That petitioners take nothing by their petition.

17 2. That the petition be dismissed with prejudice and judgment entered in favor of
18 respondents.

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- 1 3. That respondents be awarded their costs incurred in the defense of this action.
2 4. For such other and further relief as the Court may deem just.

3
4 Dated: January 30, 2006

Respectfully submitted,

5 DENNIS J. HERRERA
6 City Attorney
7 WAYNE SNODGRASS
8 VINCE CHHABRIA
9 Deputy City Attorneys

10 By: 

11 WAYNE SNODGRASS
12 Attorneys for Defendants and Respondents
13 CITY AND COUNTY OF SAN FRANCISCO,
14 HEATHER FONG, and SAN FRANCISCO POLICE
15 DEPARTMENT

PROOF OF SERVICE

I, MONICA QUATTRIN, declare as follows:

I am a citizen of the United States, over the age of eighteen years and not a party to the above-entitled action. I am employed at the City Attorney's Office of San Francisco, Fox Plaza Building, 1390 Market Street, Fifth Floor, San Francisco, CA 94102.

On January 30, 2006, I served the following document(s):

**DEFENDANTS AND RESPONDENTS' ANSWER TO PETITION
AND COMPLAINT**

on the following persons at the locations specified:

C.D. Michel
Don B. Kates
Thomas E. Maciejewski
TRUTANICH MICHEL, LLP
180 East Ocean Blvd., Suite 200
Long Beach, CA 90802
Telephone: (562) 216-4444

in the manner indicated below:

- BY UNITED STATES MAIL:** Following ordinary business practices, I sealed true and correct copies of the above documents in addressed envelope(s) and placed them at my workplace for collection and mailing with the United States Postal Service. I am readily familiar with the practices of the San Francisco City Attorney's Office for collecting and processing mail. In the ordinary course of business, the sealed envelope(s) that I placed for collection would be deposited, postage prepaid, with the United States Postal Service that same day.

I declare under penalty of perjury that the foregoing is true and correct.

Executed January 30, 2006, at San Francisco, California.



MONICA QUATTRIN