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ENDORSED  
FILED  
San Francisco County Superior Court

JAN 25 2006

GORDON PARK-LI, Clerk  
BY: CAROLYN BALISTRERI  
Deputy Clerk

8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 IN AND FOR THE COUNTY OF SAN FRANCISCO  
10 UNLIMITED JURISDICTION  
11

12 PAULA FISCAL, et al.,  
13 Plaintiffs and Petitioners,  
14 vs.  
15 CITY AND COUNTY OF SAN  
FRANCISCO, et al.,  
16 Defendants and Respondents.  
17

Case No. CPF-05-505960

**AMICUS LCAV'S REQUEST FOR  
JUDICIAL NOTICE; SUPPORTING  
DECLARATION OF RODERICK M.  
THOMPSON**

Hearing Date: February 15, 2006  
Time: 9:30 a.m.  
Department: 301  
Judge: Honorable James L. Warren

Date Action Filed: December 29, 2005  
Trial Date: None scheduled

18 Pursuant to California Rules of Court 22 and 41 and California Evidence Code sections  
19 452, 453 and 459, Amicus Curiae Legal Community Against Violence ("LCAV") respectfully  
20 requests that the Court take judicial notice of the following:  
21

- 22 1. The full text of Proposition H, as well as the full texts of statements by the  
23 sponsors and opponents that were placed on the ballot before the voters of San Francisco;
- 24 2. The Third Reading analysis of Assembly Bill 92 dated May 31, 1995, prepared by  
25 the Assembly Office of the Floor Coordinator;

26 These documents are attached as Exhibits A and B respectively to the Declaration of  
27 Roderick M. Thompson accompanying this Request.  
28

RECOPY

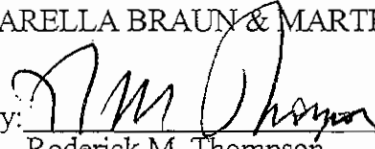
1 The full text of Proposition H plus the sponsoring and opposing commentaries are at the  
2 heart of this proceeding, and are necessary for this Court's proper consideration of the issues.  
3 Judicial notice of the arguments presented to the voters with ballot materials is proper. *Robert L.*  
4 *v. Superior Court*, 30 Cal. 4th 894, 903 (2004) .

5 It is well settled that legislative history materials can aid a court in construing a statute,  
6 especially if the language is capable of more than one interpretation. *See, e.g., Kavanaugh v.*  
7 *West Sonoma County Union High School Dist*, 29 Cal. 4th 911, 920 (2003) ("In order to ascertain  
8 a statute's most reasonable meaning, we often examine its legislative history.") A court may  
9 properly take judicial notice of an analysis of a bill by Assembly staff. *Clemente v. Amundsen*,  
10 60 Cal. App. 4th 1094, 1107 (1998); *Kauffman & Broad Communities, Inc. v. Performance*  
11 *Plastering, Inc.*, 133 Cal. App. 4th 26, 34 (2005).

12 The legislative analysis of which we ask the Court to take judicial notice is significant, in  
13 that—as discussed in the LCAV brief—it tends to refute the Petitioner's reading of the purpose of  
14 the 1995 amendments to Penal Code § 12026.

15 For the foregoing reasons, the LCAV respectfully requests that this Court take judicial  
16 notice of these materials.

17 DATED: January 24, 2006

18 FARELLA BRAUN & MARTEL LLP  
19 By:   
Roderick M. Thompson  
20 Attorneys for Amicus Curiae  
21 Legal Community Against Violence  
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**EXHIBIT A**

**TO**

**AMICUS LCAV'S REQUEST FOR JUDICIAL  
NOTICE; SUPPORTING DECLARATION OF  
RODERICK M. THOMPSON**



# Firearm Ban

## PROPONENT'S ARGUMENT IN FAVOR OF PROPOSITION H

How Many More?

Yes on H to Limit Handguns

How many more? On November 27, 1978 Dan White assassinated Mayor George Moscone and Supervisor Harvey Milk. On May 9, 2005 a disgruntled ex-employee walked into a South of Market nonprofit and killed a hardworking father of two with a handgun. Every day, neighbors live in fear that someone they love could be murdered. By December 2004, 56 of 87 San Francisco homicides that year involved handguns.

Easy access to handguns can transform heated exchanges or emotional moments into lifelong injury or death. The New England Journal of Medicine found that a handgun in the home makes it 43 times more likely that a friend, family member or acquaintance will be killed than an intruder. In addition, suicide mortality increases fivefold with a handgun.

Proposition H takes two meaningful steps to reduce handguns in San Francisco. It limits handgun possession to those who protect us, and ends firearms sales. Proposition H is substantially different from the measure signed by Mayor Dianne Feinstein in the 1980s that was defeated in court.

For years the National Rifle Association and its front groups have spent millions to spread misinformation and rig the political process. When the NRA can't buy politicians, then try legal challenges, scare tactics, and even blacklisting ([www.nrablacklist.com](http://www.nrablacklist.com)). Proposition H is San Francisco's chance to speak up.

No single strategy will solve San Francisco's epidemic of violence. We need new investments in education, community development and jobs as well as meaningful gun reform. Fewer handguns in the flow of commerce will make it more difficult to obtain one.

Please join us in voting Yes on H!

*Supervisor Chris Daly*

*Committee to Ban Handgun Violence*

## REBUTTAL TO PROPONENT'S ARGUMENT IN FAVOR OF PROPOSITION H

Proposition H denies you choice.

You may feel you don't need a gun to defend yourself now. But that could change.

Proposition H denies people protection.

You may never need a gun to defend yourself, but someone else will: a woman alone in her apartment during a break-in, a gay man surrounded by attackers, a battered wife pursued by a stalker.

Proposition H encourages criminals.

Robbers, rapists and home invaders can be sure that their next victim will be helpless. Imprisoned felons say they fear a homeowner's firearm more than the police.

Proposition H will not reduce crime.

Washington DC banned handguns in 1976. Now their murder rate is 60% higher.

The United Kingdom banned and confiscated handguns in 1997. Gun crime in England and Wales nearly doubled from 1998 to 2003, and home invasions are an epidemic.

Chicago banned handguns in 1982. In 2003 the murder rate in Chicago was 38% higher than before the ban.

Gun prohibition has been tried, and always failed. A 2002 CDC task force found that there is no evidence that gun control reduces crime or violence.

San Francisco is a city where you should be safe, proud and free. Today you have the right to defend yourself against violent crime. Your sister, your cousin, your neighbor have the same right. Keep those rights.

Vote No on Proposition H.

*Coalition Against Prohibition*

Arguments printed on this page are the opinion of the authors and have not been checked for accuracy by any official agency.





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## OPPONENT'S ARGUMENT AGAINST PROPOSITION H

Prohibiting pistols would make San Francisco a magnet for violent crime. If this law passes, criminals will laugh, but won't turn in their guns. Most criminals get their guns illegally, so they are already committing a crime by owning them.

This law will leave law abiding men and women with no defense against robbers, rapists, stalkers or home invaders. Violent criminals will know this and flock here seeking easy victims.

The sponsors of this flop have not done their homework. A long-standing California preemption statute prohibits cities from passing a patchwork of conflicting gun laws. If Prop H passes, we will have to pay for a costly lawsuit that San Francisco will lose.

San Franciscans should reject this unfair, unconstitutional and unworkable scheme.

Banning guns is not a progressive cause. Organizations including the San Francisco Pink Pistols oppose this ordinance because it denies gays the means to defend themselves against hate crimes.

*Coalition Against Prohibition*

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## REBUTTAL TO OPPONENT'S ARGUMENT AGAINST PROPOSITION H

**Yes on H. Stop the NRA Lies.**

Just like the National Rifle Association, opponents will say anything to confuse and scare voters. First, opponents say they'll be many bad results. Then they say the measure is illegal and won't go into effect. While they're at it, they invoke the images of anti-LGBT violence to support their cause. Here's the truth:

**Handgun violence isn't just about criminals.** The legal handgun owner is often involved in suicides, domestic disturbances and workplace violence. The criminals often get their guns illegally by robbing law abiding gun owners.

**Let a court decide its legality.** If opponents really thought Proposition H was illegal, why would they fight so hard to defeat it? The NRA's lawyer threatened to sue to get it off the ballot earlier this year. That didn't happen. Now, they're threatening junk lawsuits to scare San Franciscans, while working in Washington to deny gun violence victims the right to sue gunmakers. Go figure.

**Three of three LGBT murders involved firearms.** According to the National Center of Anti-Violence Programs and Community United Against Violence, in 2003, all three San Francisco bias-related murders involved firearms, including two gay men and a transgender woman gunned down during Pride Weekend. Since many hate crimes happen in public, a concealed carry permit – of which there are fewer than 12 – is needed. Don't be misled.

Join us. Send a message to the NRA. Vote Yes on H!

*Supervisor Chris Daly*

*Committee to Ban Handgun Violence*





# Firearm Ban

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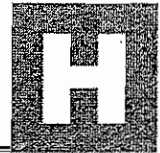
PAID ARGUMENTS IN FAVOR OF PROPOSITION H

**NO PAID ARGUMENTS IN FAVOR OF PROPOSITION H WERE SUBMITTED**

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Arguments printed on this page are the opinion of the authors and have not been checked for accuracy by any official agency.





## PAID ARGUMENTS AGAINST PROPOSITION H

NO on H.

We have a bridge to sell to anyone who believes criminals will turn in their handguns.

*REPUBLICANS UNITED FOR SAN FRANCISCO*

*Mike DeNunzio  
Howard Epstein  
Sue C. Woods  
Dana Walsh*

The true source of funds used for the printing fee of this argument is Republicans United for San Francisco.

The three largest contributors to the true source recipient committee are: 1. Michael DeNunzio 2. Howard Epstein 3. William Lowenberg.

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### "Pink Pistols" Opposes Proposition H

Lesbian, Gay, Bisexual and Transgendered people have come a long way since our rebellion at Stonewall in 1969. Now, members of the LGBT community are comfortable being employed as police, firefighters, EMTs, and soldiers.

But police are not enough. There are lessons learned in our struggle over these decades:

- To count on our brothers and sisters in the community,
- To have a proud, self-sufficient community,
- To love ourselves enough to say, "Yes, we are worth saving."

We have a different vision for San Francisco than Chris Daly. We want a San Francisco where sexual minorities are proud, independent and secure. A San Francisco where we can find refuge, sanctuary and protection in our own home, or the home of a friend, when hatred rears its head. Daly would have us cower in our living rooms and bedrooms, helpless to stop attackers from hurting our friends and families.

The LGBT community has a well-deserved reputation for being gentle and nonviolent. We know that deadly force must not be resorted to lightly, but even thinkers such as the Dalai Lama and Mahatma Gandhi saw that using force may be a moral necessity.

Let's fix what's broken in the world, but stand strong together. Remember the lessons of history. Vote No on Proposition H.

*San Francisco Pink Pistols*

The true source of funds used for the printing fee of this argument is the SF Pink Pistols.

ABSURD

Guns and cars do not kill people. Drunks, criminals, wild kids and foolish adults are the problem. If guns were 43 times more likely to kill their owners, hunters and NRA members would be stacked up like cordwood in America's hospitals!

Japan strictly prohibits pistol ownership and has *double our rate of suicide*. Heavy drinking is a much better predictor of violence and suicide than pistols, but America tried *Alcohol Prohibition* in the 1920s and wound up with Bootleggers, Rumrunners, Highjackers, and Al Capone's Mobsters shooting up Chicago.

Murderous Drug Dealers and Gang Bangers are unchecked by the *failed Supervisors* who are pushing Prop H. **Your guns are their Scape-goat!** *Legal guns* discourage Home Invasions, reduce death and injury from Rapists and Burglars, and *are a civil right!*

*The Coalition Against Prohibition* ([www.sfcap.org](http://www.sfcap.org)) says: **Vote NO on Prop H.**

The true source of funds used for the printing fee of this argument is the Coalition Against Prohibition.

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Remember Deborah Hollis? Probably not. You won't hear about Deborah from supporters of Proposition H.

Deborah was the Muni driver whose ex-husband stalked her, beat her, threatened to kidnap her children, boarded her bus to attack her.

Deborah did everything right. She got a restraining order. But Floyd Hollis repeatedly violated that order to stalk and attack her.

On February 11, 1999, Floyd Hollis advanced on Deborah screaming threats. Deborah shot him, saving herself and her children. Even the San Francisco District Attorney ruled she acted in self-defense.

Proposition H would take away Deborah's right to protect herself and her children. Don't leave women without a way to defend themselves. Vote NO on Proposition H.

*Julie Burns  
David Burns*

The true sources of funds used for the printing fee of this argument are Julie and David Burns.







# Firearm Ban

## PAID ARGUMENTS AGAINST PROPOSITION H

NO on H.

One of the first laws enacted by the National Socialist German Workers' Party (Nazis) was to ban the private ownership of guns. Proposition I would do the same.

A similar measure was tried before in San Francisco and declared in violation of California state law. Proposition H will be contested in the Courts at great cost to San Francisco taxpayers. Does any reasonable voter believe criminals will turn in their handguns, if Proposition H passes?

### *SAN FRANCISCO REPUBLICAN PARTY*

*Mike DeNunzio, Chairman  
Howard Epstein, VC – Communications  
Timothy Alan Simon, VC – Political Affairs  
Barbara Kiley, VC – Finance*

Members, 12<sup>th</sup> Assembly District  
*Michael Antonini, D.D.S.  
Harold M. Hoogasian  
Stephanie Jeong  
Roger Schulke*

Members, 13<sup>th</sup> Assembly District  
*Christopher L. Bowman  
John Brunello  
Jim Fuller  
Steven Jin Lee  
Dana Walsh  
Sue C. Woods*

The true source of funds used for the printing fee of this argument is the San Francisco Republican Party.

The three largest contributors to the true source recipient committee are: 1. Michael DeNunzio 2. Michael Antonini 3. Sue C. Woods.

*Absentee voters! Warning! Stop the madness! Stop Supervisor Chris Daly.*

Think! Daly's Proposition H will:

- Take the rights of residents to defend themselves.
- Leave small business owners vulnerable to criminals.
- Give police the right to search your home.
- Cost the taxpayer money to litigate
- Safer, for thugs to assault you.

Think, Supervisor Daly's Proposition H is wrong, Join Davy Jones, Housing Rights Association, a tenants group; Senior Citizen Alliance, **NO on Proposition H.**

*Davy Jones, Chairman,  
Committee Oppose Handgun Ban (PAC)  
www.opposegunban.com*

The true source of funds used for the printing fee of this argument is the Committee Oppose Handgun Ban (PAC).

The three largest contributors to the true source recipient committee are: 1. Allan Levite 2. Jason Walters 3. Ed Yee.



## LEGAL TEXT OF PROPOSITION H

**Initiative ordinance prohibiting the sale, manufacture and distribution of firearms in the City and County of San Francisco, and limiting the possession of handguns in the City and County of San Francisco.**

Be it ordained by the People of the City and County of San Francisco:

### Section 1. Findings

The people of the City and County of San Francisco hereby find and declare:

1. Handgun violence is a serious problem in San Francisco. According to a San Francisco Department of Public Health report published in 2002, 176 handgun incidents in San Francisco affected 213 victims in 1999, the last year for which data is available. Only 26.8% of firearms were recovered. Of all firearms used to cause injury or death, 67% were handguns.
2. San Franciscans have a right to live in a safe and secure City. The presence of handguns poses a significant threat to the safety of San Franciscans.
3. It is not the intent of the people of the City and County of San Francisco to affect any resident of other jurisdictions with regard to handgun possession, including those who may temporarily be within the boundaries of the City and County.
4. Article XI of the California Constitution provides Charter created counties with the "home rule" power. This power allows counties to enact laws that exclusively apply to residents within their borders, even when such a law conflicts with state law or when state law is silent. San Francisco adopted its most recent comprehensive Charter revision in 1996.
5. Since it is not the intent of the people of the City and County of San Francisco to impose an undue burden on inter-county commerce and transit, the provisions of Section 3 apply exclusively to residents of the City and County of San Francisco.

### Section 2. Ban on Sale, Manufacture, Transfer or Distribution of Firearms in the City and County of San Francisco

Within the limits of the City and County of San Francisco, the sale, distribution, transfer and manufacture of all firearms and ammunition shall be prohibited.

### Section 3. Limiting Handgun

### Possession in the City and County of San Francisco

Within the limits of the City and County of San Francisco, no resident of the City and County of San Francisco shall possess any handgun unless required for professional purposes, as enumerated herein. Specifically, any City, state or federal employee carrying out the functions of his or her government employment, including but not limited to peace officers as defined by California Penal Code Section 830 et seq. and animal control officers may possess a handgun. Active members of the United States armed forces or the National Guard and security guards, regularly employed and compensated by a person engaged in any lawful business, while actually employed and engaged in protecting and preserving property or life within the scope of his or her employment, may also possess handguns. Within 90 days from the effective date of this section, any resident of the City and County of San Francisco may surrender his or her handgun at any district station of the San Francisco Police Department, or to the San Francisco Sheriff's Department without penalty under this section.

### Section 4. Effective Date

This ordinance shall become effective January 1, 2006.

### Section 5. Penalties

Within 90 days of the effective date of this section, the Board of Supervisors shall enact penalties for violations of this ordinance. The Mayor, after consultation with the District Attorney, Sheriff and Chief of Police shall, within 30 days from the effective date, provide recommendations about penalties to the Board.

### Section 6. State Law

Nothing in this ordinance is designed to duplicate or conflict with California state law. Accordingly, any person currently denied the privilege of possessing a handgun under state law shall not be covered by this ordinance, but shall be covered by the California state law which denies that privilege. Nothing in this ordinance shall be construed to create or require any local license or registration for any firearm, or create an additional class of citizens who must seek licensing or registration.

### Section 7. Severability

If any provision of this ordinance or the application thereof to any person or circumstances is held invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications of this ordinance which can be given effect without the invalid or unconstitutional provision or

application. To this end, the provisions of this ordinance shall be deemed severable.

### Section 8. Amendment

By a two-thirds vote and upon making findings, the Board of Supervisors may amend this ordinance in the furtherance of reducing handgun violence.



**EXHIBIT B**

**TO**

**AMICUS LCAV'S REQUEST FOR JUDICIAL  
NOTICE; SUPPORTING DECLARATION OF  
RODERICK M. THOMPSON**

## ASSEMBLY THIRD READING

AB 92 (Hauser) - As Amended: May 31, 1995

## ASSEMBLY ACTIONS:

COMMITTEE \_\_\_\_\_ PUB. S: \_\_\_\_\_ VOTE 8-0 COMMITTEE \_\_\_\_\_ APPR. \_\_\_\_\_ VOTE 14-2

Ayes: Pringle, V. Brown, Aguiar,  
Bordonaro, Brewer, Katz,  
Bustamante, Goldsmith, Martinez,  
K. Murray, Poochigian, Rogan,  
Takasugi, Villaraigosa

Nays: Bates, Lee

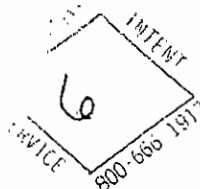
DIGESTExisting law:

- 1) Every person who carries a loaded firearm with the intent to commit a felony is guilty of an "armed criminal action." The penalty is one year in county jail, or 16 months, two or three years in the state prison.
- 2) Sections 12026 and 12026.1 of the Penal Code grant exemptions from the concealed weapon crimes of Penal Code Section 12025 for those who wish to keep a firearm in their home or business. Penal Code Sections 12026 and 12026.1 fail to mention the fact that mentally unstable persons, addressed by Welfare and Institutions Code 8100 and 8103, do not enjoy the same exemptions provided to other citizens by Penal Code Sections 12026 and 12026.1, and thus may not keep a firearm in their home or business.
- 3) Section 12026 of the Penal Code provides for a pre-emption of the concealed weapons permit requirement to United States citizens under certain conditions (possession of firearm at place of residence, business, etc.). It also provides for an exemption from the concealed weapon permit requirements that might otherwise be imposed on United States citizens under the same conditions (place of residence, business etc.).
- 4) Although there is currently no specific exemption to concealed weapons permit requirements for those who are transporting guns to a voluntary government gun buy program, those persons are probably included within other exemptions.

This bill:

- 1) Divides the crime of armed criminal action into two degrees. Those who carried loaded firearms or any firearm capable of being concealed with the requisite intent would be guilty of an armed criminal action in the first degree, punishable by two, three, or four years in the state prison. Those who carried other unloaded firearms with the requisite intent would be guilty of an armed criminal action in the second degree, punishable by one year in the county jail or in the state prison.

- continued -



- 2) Rearranges the language found in Section 12026 to create two distinct subdivisions. One subdivision would address the pre-emption preventing concealed weapons permits from being required of citizens who possess firearms in their homes and businesses. The other subdivision would address the exemption of concealed weapons laws provided to citizens who wish to possess a firearm in their homes and businesses. This technical change in language would have no substantive effect.
- 3) Adds mentally unstable persons and violent felons to the list of persons not covered in Penal Code Sections 12026 and 12026.1. It would not make any substantive change in the law.
- 4) Adds to the list of persons exempted from concealed weapons permit requirements, those who are transporting guns to a voluntary government buy program.

#### FISCAL EFFECT

According to the Assembly Appropriations Committee analysis, the Department of Justice (DOJ) estimates the report required in this bill results in first year General Fund costs of \$658,000 to develop a program to track individuals charged with a specific offense. Ongoing costs would be \$241,000. DOJ currently monitors arrests and convictions of individuals, but not "charged" with an offense.

Unknown, minor or no local government costs for enforcement; no crimes and infractions disclaimer is necessary as this does not add to a crime which will result in increased local incarceration.

#### COMMENTS

According to the author:

The changes made by this bill to the armed criminal action statute are designed to enact a first-time alternate felony/misdemeanor (wobbler) violation for a specific sub-category of concealed weapons carrying violations without impacting otherwise law-abiding citizens.

The purpose of this bill is to clean-up the language and add the proper cross references to Sections 12026 and 12026.1 of the Penal Code.

The author intends to clarify the exemption to section 12025 for those persons transporting guns to a government gun buy program that was arguably addressed by Penal Code Section 12026.2.

FN 016044