

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT, DIVISION FOUR

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

Plaintiffs/Respondents,

vs.

CITY AND COUNTY OF SAN
FRANCISCO, SAN FRANCISCO
POLICE CHIEF HEATHER FONG,
and SAN FRANCISCO POLICE
DEPARTMENT, and Does 1-25,

Defendants/Appellants.

Case No. A115018

(San Francisco Superior Court
No. 505960)

FILED

JUL - 9 2007

Court of Appeal - First App. Dist.
By **DIANA HERBERT**
DEPUTY

**APPELLANTS' OPPOSITION TO APPLICATIONS
OF CALIFORNIA SPORTSMAN'S LOBBY,
OUTDOOR SPORTSMEN'S COALITION OF
CALIFORNIA, AND PINK PISTOLS FOR LEAVE
TO FILE AMICUS BRIEFS**

The Honorable Paul H. Alvarado

DENNIS J. HERRERA, State Bar #139669
City Attorney
WAYNE SNODGRASS, State Bar #148137
Deputy City Attorney
#1 Dr. Carlton B. Goodlett Place
City Hall, Room 234
San Francisco, California 94102-4682
Telephone: (415) 554-4675
Facsimile: (415) 554-4699
E-Mail: wayne.snodgrass@sfgov.org

Attorneys for Defendants and Appellants

 **COPY**

APPELLANTS' OPP. TO APPS.
CASE NO. A115018

The California Sportsman's Lobby and the Outdoor Sportsmen's Coalition of California (collectively "Sportsmen") and the Pink Pistols have applied for leave to file amicus curiae briefs in support of respondents. Appellants oppose Sportsmen's and the Pink Pistols' applications for two reasons.

First, the amicus briefs that Sportsmen and the Pink Pistols seek leave to file consist entirely of arguments and issues that were not presented to the trial court, and that the parties have not raised in this Court. An amicus curiae is not permitted to assert new legal theories or issues that the parties themselves have not raised. As explained in *California Ass'n for Safety Education v. Brown* (1994) 30 Cal.App.4th 1264,

California courts refuse to consider arguments raised by amicus curiae when those arguments are not presented in the trial court, and are not urged by the parties on appeal. Amicus curiae must accept the issues made and propositions urged by the appealing parties, and any additional questions presented in a brief filed by an amicus curie will not be considered.

(*Id.*, 30 Cal.App.4th at p. 1275 [internal quotes omitted].) In short, "[a]micus curiae must take the case as he or she finds it." (*Neilson v. City of California City* (2005) 133 Cal.App.4th 1296, 1310 fn. 5.)

Sportsmen and the Pink Pistols ignore this settled rule. Neither proposed amicus brief discusses the issues that were briefed and argued in the trial court and that the parties have raised in this court, most notably whether Proposition H is preempted by Penal Code Sections 12026 or 12131(a) or by Government Code Section 53071. Instead, Sportsmen's proposed amicus brief consists solely of an argument that Proposition H "contradicts and is inimical to state hunting law and policy" – an issue that, as Sportsmen acknowledge, was "not considered [by] the parties." (Sportsmen's Application at 3.) The Pink Pistols' proposed amicus brief, similarly, consists entirely of an extended argument that gun control laws

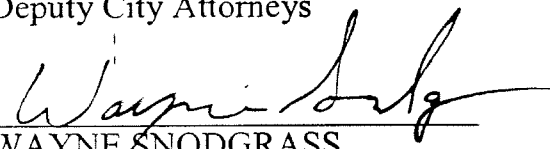
do not reduce violent crime rates, even though neither appellants nor respondents have briefed that factual issue to this Court or to the court below.

Second, the Pink Pistol's proposed amicus brief improperly asks this Court to invade the province of the City's voters by adjudicating this action on grounds of public policy, not law. By challenging only the wisdom or efficacy of Proposition H, the Pink Pistols invite the Court "to pass judgment on the propriety or soundness" of that initiative – which is not the courts' function (*Brosnahan v. Brown* (1982) 32 Cal.3d 236, 248), and which courts in firearms control cases have specifically declined to do. (*Galvan v. Superior Court* (1969) 70 Cal.2d 851, 869.) Because the Pink Pistols' proposed amicus brief offers nothing save improper policy arguments, this Court should not permit its filing.

For both of these reasons, appellants respectfully urge the Court to deny Sportsmen's and the Pink Pistol's applications for leave to file amicus curiae briefs.

Dated: July 9, 2007

DENNIS J. HERRERA
City Attorney
WAYNE SNODGRASS
VINCE CHHABRIA
Deputy City Attorneys

By: 
WAYNE SNODGRASS

Attorneys for Defendants and Appellants

PROOF OF SERVICE

I, HOLLY TAN, 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, #1 Dr. Carlton B. Goodlett Place – City Hall, Room 234, San Francisco, CA 94102.

On July 9, 2007, I served the following document(s):

**APPELLANTS' OPPOSITION TO APPLICATIONS OF CALIFORNIA
SPORTSMAN'S LOBBY, OUTDOOR SPORTSMEN'S COALITION OF
CALIFORNIA, AND PINK PISTOLS FOR LEAVE TO FILE AMICUS
BRIEFS**

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
Attorneys for Respondents

Tracy Duell-Cazes
Law Offices of Tracy Duell-Cazes
2125 Canoas Garden Ave., Suite
120
San Jose, CA 95125
Telephone: 408-267-8484
Facsimile: 408-267-8489
Attorneys for Amicus Pink Pistols

Kevin Lee Thomason
5600 Picardy Dr. N
Oakland, CA 94605
*Attorney for Amici California Sportsman's
Lobby; and Outdoor Sportsmen's
Coalition of California*

in the manner indicated below:

- BY MAIL:** I caused true and correct copies of the above documents, by following ordinary business practices, to be placed and sealed in envelope(s) addressed to the addressee(s), at the City Attorney's Office of San Francisco, #1 Dr. Carlton B. Goodlett Place – City Hall, Room 234, City and County of San Francisco, California, 94102, for collection and mailing with the United States Postal Service, and in the ordinary course of business, correspondence placed for collection on a particular day is deposited with the United States Postal Service that same day.

I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct.

Executed July 9, 2007, at San Francisco, California.



HOLLY TAN