

COURT OF APPEAL  
STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION FOUR

---

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

**No.: A115018**

**Plaintiffs-Respondents,**

**vs.**

**THE CITY AND COUNTY OF SAN FRANCISCO,  
SAN FRANCISCO POLICE CHIEF HEATHER FONG in  
her official capacity and SAN FRANCISCO POLICE DEPARTMENT,  
and Does 1-25,**

**Defendants-Appellants.**

---

**APPLICATION OF  
THE SAN FRANCISCO POLICE OFFICER'S ASSOCIATION  
TO FILE AMICUS CURIAE BRIEF;  
[PROPOSED] AMICUS CURIAE BRIEF OF  
THE SAN FRANCISCO POLICE OFFICER'S ASSOCIATION  
IN SUPPORT OF RESPONDENTS**

---

Michael S. Hebel S.B.N. - 57262  
SAN FRANCISCO POLICE OFFICERS ASSOCIATION  
800 Bryant Street, San Francisco, CA 94103  
Telephone: (415) 861-5060  
Facsimile: (415) 552-5741

Attorney for Amicus Curiae

 **COPY**

COURT OF APPEAL  
STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION FOUR

---

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

**No.: A115018**

**Plaintiffs-Respondents,**

**vs.**

**THE CITY AND COUNTY OF SAN FRANCISCO,  
SAN FRANCISCO POLICE CHIEF HEATHER FONG in  
her official capacity and SAN FRANCISCO POLICE DEPARTMENT,  
and Does 1-25,**

**Defendants-Appellants.**

---

**APPLICATION OF  
THE SAN FRANCISCO POLICE OFFICER'S ASSOCIATION  
TO FILE AMICUS CURIAE BRIEF;  
[PROPOSED] AMICUS CURIAE BRIEF OF  
THE SAN FRANCISCO POLICE OFFICER'S ASSOCIATION  
IN SUPPORT OF RESPONDENTS**

---

Michael S. Hebel S.B.N. - 57262  
SAN FRANCISCO POLICE OFFICERS ASSOCIATION  
800 Bryant Street, San Francisco, CA 94103  
Telephone: (415) 861-5060  
Facsimile: (415) 552-5741

Attorney for Amicus Curiae

**TABLE OF CONTENTS**

	<b>PAGE(S)</b>
<b>APPLICATION FOR LEAVE TO FILE AN AMICUS CURIAE BRIEF</b> .....	1
<b><u>INTERESTS OF THE AMICUS</u></b> .....	1
<b><u>REASONS FOR FILING</u></b> .....	1
<b><u>AMICUS CURIAE BRIEF</u></b> .....	4
<b>I. THE CITY'S RELIANCE ON TRAGIC CRIMINAL ACTS IS IMPROPER ARGUMENT</b> .....	4
<b>II. PROP H REVOKES SFPOA MEMBERS' STATE "LICENSES" TO POSSESS HANDGUNS TO DEFEND THEMSELVES OR OTHERS WHILE OFF-DUTY, OR ONCE RETIRED</b> .....	7
<b>III. PROP H ALSO CONFLICTS WITH FEDERAL LAWS PROTECTING STATE-GRANTED HANDGUN POSSESSION RIGHTS TO ACTIVE AND RETIRED POLICE OFFICERS</b> .....	9
<b>IV. THE ORDINANCE ALSO INTERFERES WITH THE STATE'S EXISTING LICENSING SCHEME FOR PRIVATE SECURITY COMPANIES AND GUARDS</b> .....	10
<b>CONCLUSION</b> .....	11
<b>CERTIFICATE OF WORD COUNT</b> .....	13

**TABLE OF AUTHORITIES**

**PAGE(S)**

**STATE CASES**

Doe v. City and County of San Francisco,  
(1982) 136 Cal.App.3d 509, 511 . . . . . 5

Galvan v. Superior Court,  
(1968) 70 Cal.2d 851, 869 . . . . . 5

Seelig v. Infinity Broadcasting Corp.,  
(2002) 97 Cal.App.4th 798, 808, fn. 5 . . . . . 5

**STATUTES & RULES**

18 U.S.C. § 926(B) . . . . . 2, 9

Evidence Code § 452 . . . . . 5

California Penal Code § 12025 . . . . . 8

California Penal Code § 12026 . . . . . 11

California Penal Code § 12027 . . . . . 2, 8, 10

California Penal Code §12031 . . . . . 10

California Penal Code §12071.4 . . . . . 10

**APPLICATION FOR LEAVE TO FILE AN  
AMICUS CURIAE BRIEF**

Amicus Curiae, the San Francisco Police Officers Association (SFPOA), respectfully moves this Court, pursuant to California Rules of Court, Rule 8.200 (c)(1), for leave to file the concurrently submitted amicus brief in support of Respondents.

**INTERESTS OF THE AMICUS**

The San Francisco Police Officers Association is the professional union of the more than 2,200 sworn officers of San Francisco Police Department. SFPOA supports the San Francisco community through charitable giving and the promotion of programs that enhance public safety. The SFPOA also represents many retired San Francisco officers and is active in protecting their interests, particularly their interest in being able to defend themselves from the criminals they have arrested throughout their careers, as well as protecting their interests in post-retirement employment in the private security field.

**REASONS FOR FILING**

SFPOA filed an amicus curiae brief in the trial proceedings. Having reviewed the city and county of San Francisco's opening brief on appeal, SFPOA respectfully asks that the court consider the

short additional brief, below, which responds to comments made by the City on appeal. We also ask that the Court consider, in full, our amicus curiae brief filed in the trial proceedings, which can be found in Appellants' Appendix at Volume III, Tab 21, pages 0554-0572.

The SFPOA, on behalf of its members, opposes Proposition H on both legal and policy grounds. Proposition H has significant impact on current and retired law enforcement officers, and would violate state statutes that regulate and protect public law enforcement and private security companies by revoking their state-granted (see, e.g., Cal. Pen. Code § 12027) and federally protected (see, e.g., 18 U.S.C. § 926(B) and (C)) entitlement – “license” – to possess firearms to defend themselves and others.

The private security industry has grown exponentially in California in the wake of 9/11, providing much needed security for society that cannot be provided by overwhelmed public police agencies. Many active and retired officers are involved in this industry. Proposition H will have an adverse impact on the rights of active and retired officers, as well as on both private security company employers and employees, and will interfere with the way

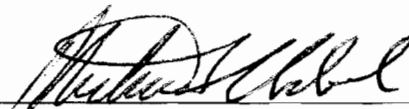
security companies and guards conduct business.

While Respondents' brief does discuss, in part, the problems that Proposition H would create for law enforcement and California's private security industry (ROB at pp. 54-55), SFPOA believes it stands in a position to supplement Respondents' analysis given its particular interest in and understanding of the state regulatory regimen concerning law enforcement officers, retired officers, and the private security industry. Thus, SFPOA is uniquely qualified to address how Proposition H nullifies, interferes and conflicts with that regulatory regimen and how it will impact SFPOA's members.

Accordingly, the SFPOA asks that this Court grant leave to file the amicus curiae brief submitted herewith.

Date: June 14, 2007

**LAW OFFICES OF MICHAEL S. HEBEL**



---

Michael S. Hebel  
Attorney for Amicus Curiae,  
San Francisco Police Officers  
Association

## **AMICUS CURIAE BRIEF**

At the trial court level, SFPOA filed an amicus curiae brief in support of the Petitioners. Rather than repeat that brief verbatim, SFPOA asks that this Court review its earlier brief and accept and consider this supplemental brief in support of Respondents on appeal.

### **I. THE CITY'S RELIANCE ON TRAGIC CRIMINAL ACTS IS IMPROPER ARGUMENT**

Appellants, the city and county of San Francisco, et al. ("the City"), begin their opening brief by informing this Court that the validity, *vel non*, of Proposition H is really about Deanne Bradford, Brian Williams, Jr., and other innocent victims of senseless and cruel criminal acts, which they lay at the feet of the state legislature and its "clearly inadequate firearms regulation." (AOB at p. 1.) This is improper argument on multiple levels and a transparent attempt to use emotional arguments to buttress the City's untenable legal



contentions. Courts from *Galvan*<sup>1</sup> to *Doe*<sup>2</sup> (and before and after) have repeatedly found that such arguments should be made to the Legislature, not Courts.

Moreover, there is a subtle suggestion within this argument that Respondents (who Appellants lump together as “the NRA”) and others who oppose Proposition H, as well as this Court, are somehow unaware of such criminal activity and need to be educated on the subject. Or worse, that opponents of Proposition H care less about victims of violent crime than does the City’s Board of Supervisors.

SFPOA’s members have seen firsthand the tragic impact of violent crime, including firearms related crime; we have seen the impact of violent crime on the victims, their families, and the community at large. We do not need, nor we suspect do Respondents or this Court need, to be “educated” by the City on the

---

<sup>1</sup> *Galvan v. Superior Court* (1968) 70 Cal.2d 851, 869 (noting that the parties “submitted materials concerning the desirability of weapons control, and the effect of weapons on crime rates” and holding that the parties arguments about the matters, “although of possible interest to the Legislature, are without merit in this court”).

<sup>2</sup> *Doe v. City and County of San Francisco* (1982) 136 Cal.App.3d 509, 511 (noting that although “[h]andgun control is a volatile issue of great public importance, invoking complex policy considerations . . . [the court is] only concerned with the narrow legal question of whether the state Constitution and state statutes permit San Francisco to enact [a handgun control] ordinance”).

existence or nature of violent crime. The underlying presumption in Appellants' opening remarks that those who oppose Prop H are unaware of or insensitive to crime victims is pure hubris; using personal and tragic stories of crime victims to buttress the City's legal arguments is more than improper argument, it is unseemly.

In sum, the City cannot claim the moral high ground on Prop H and dismiss those who oppose the proposition. While we cannot speak for all opponents, we suspect the vast majority, including the SFPOA, simply disagree – strongly – with the City's proposed solution to its crime problem. As noted in our amicus curiae brief filed with the trial court,<sup>3</sup> Proposition H would effectively disarm our members, depriving law enforcement officers of the state-sanctioned ability to defend themselves and others while off-duty, or once retired.<sup>4</sup> From a policy standpoint, this makes absolutely no sense.

Fortunately, this Court does not have to make policy decisions, or decide whether disarming law abiding citizens, including law enforcement personnel, is a rational means of deterring criminals from using guns to commit violent crimes. The

---

<sup>3</sup> SFPOA's trial court amicus brief is located in Appellants' Appendix at Volume IV, Tab 25, pages 0603-0622 (hereafter "IV AA 25:0603-0622").

<sup>4</sup> See Parts I, II and III of SFPOA's amicus brief, IV AA 25:0608-0611.

Legislature has done that. Moreover, as observed by the Honorable James L. Warren in his extensive Statement of Decision and Order Granting Motion for Writ of Mandate, filed June 12, 2006, because Legislature has enacted laws addressing these issues of statewide concern, local ordinances in conflict with such state laws are preempted. (V AA 44:0945.) Such is the case here.

Below is a summary of how Proposition H would impact the members of SFPOA in ways that conflict with state laws intended to provide our members with a "license" to possess certain firearms under certain circumstances.

**II. PROP H REVOKES SFPOA MEMBERS' STATE "LICENSES" TO POSSESS HANDGUNS TO DEFEND THEMSELVES OR OTHERS WHILE OFF-DUTY, OR ONCE RETIRED**

Section 3 of Prop H bans handgun possession by off-duty and retired law enforcement personnel who reside in San Francisco, and does so in direct conflict with multiple state laws designed to both protect officers from retaliation by criminals and to allow officers to combat crime, as addressed in SFPOA's trial court amicus curiae brief. (IV AA 25:0608-0610, and footnotes 1 and 3, listing relevant statutes.) Prop H's limited exemption for officers possessing handguns *only* while "carrying out the functions of his or her

government employment” also is inimical to state policy manifest in the state’s regulatory regimen. (IV AA 25:0610-0611.)

The state laws entitling SFPOA members and others similarly situated to possess handguns are outlined, in part, in Respondents’ opening brief. (ROB at pp. 12-14.) Perhaps the most obvious conflict can be seen by comparing Penal Code section 12025, which generally prohibits unlicensed carrying of concealed weapons, with Penal Code section 12027, which specifically exempts: “Any police officer . . . whether active or honorably retired” from the prohibitions of Section 12025. (Cal. Pen. Code § 12027(a)(1)(A).) Moreover, the exemption language in Section 12027 is mandatory (unless the officer has somehow forfeited his right to possess): “Any peace officer described in this paragraph *shall be issued* an identification certificate by the law enforcement agency from which the officer has retired.” (Cal. Pen. Code § 12027(a)(1)(A).)

Prop H would revoke these state privileges for San Francisco’s active and retired officers, for both public and private possession of handguns – for all except those who are on active duty and acting within the scope of that duty. In short, just reviewing two sections of

the Penal Code provides ample evidence to support the trial court's finding that Prop H impermissibly conflicts with state law regarding state-wide issues. Moreover, federal law further protects these state-granted privileges across state boundaries, i.e., Prop H also conflicts with and is preempted by federal law.

**III. PROP H ALSO CONFLICTS WITH FEDERAL LAWS PROTECTING STATE-GRANTED HANDGUN POSSESSION RIGHTS TO ACTIVE AND RETIRED POLICE OFFICERS**

Federal law recognizes that most states provide exemptions from concealed-carry laws to active and honorably retired law enforcement officers subject to certain conditions. Congress recently acknowledged and provided protection for these state laws by enacting legislation to permit residents of one state to carry a concealed firearm within other states. (18 U.S.C. §§ 926B and 926C.) Section 926B concerns active law enforcement officers; section 926C concerns qualified retired law enforcement officers. Both sections provide that:

Notwithstanding any other provision of the law of any State or any political subdivision thereof, an individual who is a qualified [retired] law enforcement officer and who is carrying the identification required by subsection (d) may carry a concealed firearm that has been shipped or transported in interstate or foreign commerce, subject to subsection (b).

(18 U.S.C. §§ 926B(a) and 926C(a)(the brackets reflect the language added to 926C(a).)

Consequently, a police officer, active or retired, who otherwise satisfies the requirements of these federal laws is entitled to carry a concealed firearm (a handgun) in San Francisco, notwithstanding any State law or local ordinance to the contrary. In this case, the State law entitles such officers to carry concealed firearms; thus it is the local ordinance (Prop H) which clearly conflicts with both State and federal laws by purporting to deny such officers the right to carry handguns.

#### **IV. THE ORDINANCE ALSO INTERFERES WITH THE STATE'S EXISTING LICENSING SCHEME FOR PRIVATE SECURITY COMPANIES AND GUARDS**

Some of SFPOA members are involved in the private security industry, an issue largely ignored in Appellants' opening brief. Prop H strips such security personnel of rights or licenses provided by state law. For example, under existing law a security guard may actually wear/carry a handgun (loaded and holstered) while in transit, provided the guard is in uniform. (See Pen. Code § 12027(e).)<sup>5</sup> If

---

<sup>5</sup> In addition to Pen. Code §12027(e), the state has addressed private guards in the following sections, which are affected by Proposition H ban on possession: Pen. Code §12031(b)(7) and (d)(1)-(6) (Exempting

the guard is not in uniform, the handgun must be transported in "civilian" fashion, e.g., unloaded and locked in a vehicle's trunk, etc. (See Pen. Code § 12026, et seq.) Either way, the handgun is in the "possession" of the guard throughout. Prop H conflicts with this statutory right to transport the firearm to and from work, because the guard is not "actually employed or engaged in protecting and preserving," etc., during this transport, as required under the City's ordinance. (For more detailed discussion of the impact of Prop H on the security industry, see IV AA 25:0611-0612.)

### **CONCLUSION**

We respectfully request that the Court review in full our amicus curiae brief filed in the trial court. (IV AA 25:0603-0622.) Our purpose here is to emphasize issues ignored by the City in its opening brief, especially in the two areas discussed above. First, state and federal law currently permits most of our members to possess firearms both in public and in private for self defense and

---

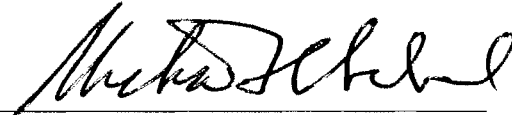
armored vehicle guards, uniformed security guards, private patrol operator employees, and private investigators from the Pen. Code §12031 prohibiting the possession of concealed and loaded firearms); Pen.Code §12071.4(g) (Exempting Private Security Guards from the prohibition against simultaneous possession of both firearms and ammunition at Gun Shows); and Pen.Code §12071.4(i) (Exempting Private Security Guards from the requirement that firearms be tagged at Gun Shows).

the defense of others. Prop H would revoke that permission/license, leaving our members unarmed against criminals who might seek revenge, and unable to assist others under assault by armed criminals. Second, Prop H impermissibly interferes with the state's licensing regimen for private security companies and guards. Many of our members have taken up careers in the security industry and would, again, have state licenses effectively revoked by provisions of Prop H – something neither state nor federal law will tolerate.

Accordingly, we ask the Court to uphold the trial court's decision granting the motion for writ of mandate and declaring Proposition H invalid.

Date: June 14, 2007

**LAW OFFICES OF MICHAEL S. HEBEL**



---

Michael S. Hebel  
Attorney for Amicus Curiae,  
San Francisco Police Officers  
Association



**CERTIFICATE OF WORD COUNT  
(Cal. Rules of Court, rule 8.204 (c)(1))**

The text of this brief consists of 2237 words as counted by the Corel WordPerfect version 12 word-processing program used to generate the brief.

Date: June 14, 2007

**LAW OFFICES OF MICHAEL S. HEBEL**

A handwritten signature in black ink, appearing to read "Michael S. Hebel", is written over a horizontal line.

Michael S. Hebel  
Attorney for Amicus Curiae,  
San Francisco Police Officers  
Association

PROOF OF SERVICE

STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES

I, Megan Fahey, declare: I am employed by the San Francisco Police Officers Association. I am 18 years of age or older and not a party to this matter. I am readily familiar with the business practice at the San Francisco Police Officers Association for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system and is deposited with the United States Postal Service that same day in the ordinary course of business.

On June 14, 2007, I served the following:

**APPLICATION OF THE SAN FRANCISCO POLICE OFFICER'S ASSOCIATION  
TO FILE AMICUS CURIAE BRIEF; [PROPOSED] AMICUS CURIAE BRIEF OF THE SAN  
FRANCISCO POLICE OFFICER'S ASSOCIATION IN SUPPORT OF RESPONDENTS**

on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the office of the San Francisco Police Officers Association located at 800 Bryant Street, San Francisco, California, 94103, and addressed as follows:

C. D. Michel  
TRUTANICH - MICHEL, LLP  
180 East Ocean Blvd., Suite 200  
Long Beach, CA 90802  
Attorneys for Paula Fiscal et al.,

Hon. Paul H. Alvarado  
San Francisco County Superior Court  
400 McAllister St.  
San Francisco, CA 94102

Wayne K. Snodgrass, Deputy City Attorney  
San Francisco City Attorney's Office  
#1 Dr. Carlton B. Goodlett Place,  
City Hall, Room 234  
San Francisco, CA 94102  
Attorneys for City and  
County of San Francisco et al.,

California Supreme Court  
350 McAllister St.  
San Francisco, CA 94102

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on June 14, 2007, at San Francisco, California.

  
Megan Fahey