

ENDORSED

FILED
San Francisco County Superior Court

DEC 29 2005

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By: *[Signature]*
Deputy Clerk
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

9

FOR THE COUNTY OF SAN FRANCISCO

10

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

CASE NO. **CPF 05-505960**

**PETITION FOR WRIT OF MANDATE
AND/OR PROHIBITION OR OTHER
APPROPRIATE RELIEF; COMPLAINT
FOR DECLARATORY AND INJUNCTIVE
RELIEF**

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Plaintiffs and Petitioners,

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vs.

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

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Defendants and Respondents.

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1 INTRODUCTION

2 A. Nature of the Case

3 1. On November 8, 2005, Respondent CITY AND COUNTY OF SAN FRANCISCO
4 (hereinafter "CITY") enacted legislation (hereinafter "the Ordinance") banning possession of
5 handguns by residents of San Francisco and also banning the sale or transfer of all firearms and
6 ammunition in the City. The Ordinance is attached hereto as Exhibit A and incorporated herein.
7 Mayor Gavin Newsom, Senator Dianne Feinstein, and Law Professor Frank Zimring (a leading
8 gun control proponent) have each publicly acknowledged that the Ordinance is preempted by state
9 law.¹ Although their opinions are of course not dispositive, they do place the creation and
10 enactment of this ordinance, and this challenge to it, in context and provide appropriate
11 perspective.

12 2. Petitioners ask this Court to invalidate the Ordinance, just as a similar ordinance was
13 invalidated after San Francisco's last attempt to enact a nearly identical handgun ban ordinance in
14 an original writ proceeding in 1982. (*Doe v. City & County of San Francisco* (1982) 136
15 Cal.App. 3d 509 [186 Cal.Rptr. 380].)

16 3. The Ordinance is unlawful for a number of reasons. Among these, it violates various
17 state laws and/or is preempted thereby. It also violates the federal and California guarantees of
18 equal protection. And it interferes with the criminal justice system in ways that contradict, and are
19 inimical to, state law. The Ordinance's language reflects various local policy and legislative

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21 ¹ See *New York Times* article "San Francisco Gun Vote: Tough Law or Thin Gesture?"
22 November 5, 2005 (quoting Franklin Zimring, the William G. Simon Professor of Law at Boalt
23 Hall, as calling the Ordinance a "triumph of symbolic politics" and a "sure loser" in state court);
24 *San Francisco Chronicle* article "Will voters deem S.F. a no-guns-allowed city? Motion seems
25 poised to pass, but firearm fans prepare for fight," November 5, 2005 ("It clearly will be thrown
26 out," said San Francisco Mayor Gavin Newsom on Friday, adding that he planned to vote for the
27 measure anyway to show his opposition to the proliferation of handguns. "It's so overtly
28 pre-empted. I'm having a difficult time with it, and that's my one caveat. ... It's really a public
opinion poll at the end of the day."); *San Jose Mercury* article "S.F. Voters Consider Tough
Handgun Ban," November 4, 2005 ("In the wake of the 1978 handgun slayings of then Mayor
George Moscone and supervisor Harvey Milk, one of Dianne Feinstein's first acts as Moscone's
replacement was to enact a handgun ban. It was struck down a couple of years later, however, by
the state Supreme Court. Feinstein, now a U.S. senator, is not taking a position on Proposition H,
because she feels the state's top court has already ruled, a spokesman said.")

1 choices, and requires various things, which have ruinous effects on policy choices made by the
2 state legislature through state law, and especially on the language and enforcement of the criminal
3 law. California state gun laws are carefully tailored to be inapplicable to criminal justice
4 personnel through painstakingly crafted statutory exceptions for law enforcement activities. In
5 contrast, the bluntly crafted Ordinance has only a severely limited and very narrow exemption
6 from the handgun possession ban (section three of the Ordinance) for criminal justice personnel.
7 And there are no exemptions whatever to the Ordinance's firearms and ammunition sale,
8 distribution, or transfer ban (section two of the Ordinance). That section applies fully against both
9 law enforcement agencies and related personnel.

10 4. In addition to the impact on law enforcement, because the ill-thought-out Ordinance
11 contains no exemptions at all from the ban on the sale or transfer of firearms or ammunition, and
12 no applicable exemptions from the handgun possession ban, essentially no movie, television, or
13 theatrical production involving a firearm can be made in the City. (Typically "prop" firearms are
14 nonetheless real "firearms," and are regulated as such though rigged to fire blanks.) Further, San
15 Francisco museums and non-profit organizations will have to divest themselves of the antique and
16 collectible handguns which their personnel can no longer possess, *e.g.*, the Nineteenth Century
17 pistols of the California Historical Society and the Society of California Pioneers (respectively),
18 the Marines Memorial Club collection of WWI and WWII military handguns, and the Veteran
19 Memorial Building's collection covering the Civil War to WWII.

20 5. The San Francisco Opera could perhaps keep its Nineteenth Century rifles, but it
21 could not put on operas involving those "prop" rifles since they would have to be transferred
22 between propmasters, actors, and other opera personnel (such transfers are only legal under state
23 and federal law when the parties are properly licensed or statutorily exempted from statutory
24 restrictions that would otherwise apply). Operas which can no longer be performed as written in
25 San Francisco because of the handgun possession or firearms transfer bans include, but are not
26 limited to, "Tosca," "Carmen," "The Girl of the Golden West," "Candide," "HMS Pinafore," "The
27 Death of Klinghoffer," "Lady Macbeth of Mtensk," "Eugene Onegin," and "Der Freischutz." By
28 the same token ACT and other San Francisco playhouses will no longer be able put on Chekhov's

1 “Uncle Vanya,” Harold Pinter’s “The Dumbwaiter” and many others, including plays by Eugene
2 O’Neill, Sean O’Casey, Lillian Hellman, Arthur Miller, Sam Shepard, Albert Camus, Aaron
3 Sorkin and Tennessee Williams, to name just a few. Likewise, the San Francisco Ballet will be
4 unable to put on ballets such as Mark Morris’ “The Hard Nut.”

5 **B. Why Extraordinary Relief is Warranted**

6 6. Extraordinary writ relief is warranted in this case because there is no adequate remedy
7 in the ordinary course of law. Although the Ordinance took effect on January 1, 2006, by
8 forthcoming stipulation with the City, the Ordinance is now set to be enforced starting on March
9 1, 2006, with regard to its transfer/sales ban. City residents will have only until April 1, 2006
10 either to relinquish their handguns to the police without compensation or to move their handguns
11 out of the City.

12 **AUTHENTICITY OF EXHIBITS**

13 7. All exhibits accompanying this petition are true and correct copies of the original
14 documents. The exhibits are incorporated herein by reference as though fully set out in this
15 petition.

16 **PARTIES**

17 **A. Petitioners/Plaintiffs**

18 8. Plaintiff/petitioner PAULA FISCAL was one of the petitioners in the 1982 *Doe* case.
19 She is a businesswoman and property owner living and having an office in San Francisco, in
20 which locations she keeps handguns for protection. The Ordinance will unlawfully deprive her of
21 her property (the handguns) and would disable her from protecting herself and her property.

22 9. Plaintiff/petitioner LARRY P. BARSETTI, is a lifelong resident of San Francisco and
23 a handgun owner. Having retired from the San Francisco Police Department as a Lieutenant, he
24 has a special permit to carry handguns issued under Penal Code section 12027. Petitioners
25 contend that his special permit is valid regardless of the Ordinance. Petitioners are informed and
26 believe and thereupon allege that CITY deems that its Ordinance prohibits possession of handguns
27 by City residents, regardless of whether they have obtained a permit to carry handguns under
28 Penal Code section 12027 (or any other statute). State law grants petitioner BARSETTI the

1 special privilege of carrying a concealed handgun so that he can defend himself if assailed by
2 criminals whom he angered in his years as a law enforcement officer. Petitioner BARSETTI also
3 has standing as a taxpayer and citizen.

4 10. Plaintiff/petitioner REBECCA KIDDER was born and has lived her entire life in San
5 Francisco, and owns a handgun therein. This property will become illegal, and she will be
6 deprived of it, and left defenseless, upon the effective date of the Ordinance.

7 11. Plaintiff/petitioner DANA K. DRENKOWSKI, a U.S. Army reserve officer, is
8 currently on active duty as Chief of Civil and Military Affairs Multilateral Force, Iraq. He resides
9 in San Francisco and stores an extensive collection of handguns there. His handguns would not be
10 exempt under the Ordinance because it has no exemption for the military; and, in any event he is a
11 member of the reserves, not of the regular Army, and his handguns are kept only for his personal
12 use both for defense and as a competitive target shooter and hunter.

13 12. Plaintiff/petitioner JOHN CANDIDO, a resident of San Francisco, was a police
14 officer with SFPD from 1963 through 1995. He was also a law enforcement officer with the San
15 Francisco Sheriff's Department from 1951 through 1960.

16 13. Plaintiff/petitioner ALAN BYARD is a San Francisco Patrol Special Police Officer
17 and has been since 1977. He also works for a private security company as a trainer and is a
18 lifelong resident of San Francisco.

19 14. Plaintiff/petitioner ANDREW SIRKIS, a San Francisco handgun owner, and owns
20 real property in San Francisco. The Ordinance deprives him of his property.

21 15. Each of said plaintiffs/petitioners is a citizen of and/or property owner in San
22 Francisco who has within the past year paid taxes to CITY and/or for its benefit.

23 16. Plaintiff/petitioner NATIONAL RIFLE ASSOCIATION (hereinafter "NRA") is a
24 non-profit membership organization founded in 1871 and incorporated under the laws of New
25 York, with headquarters in Fairfax, Virginia and an office in Sacramento, California. The NRA
26 represents several hundred thousand individual members and 850 affiliated clubs and associations
27 in California and tens of thousands of members in CITY, including police officers.

28 17. Plaintiff/petitioner SECOND AMENDMENT FOUNDATION is the nation's oldest

1 and largest tax-exempt education, research, publishing and legal action group focusing on the
2 Constitutional right and heritage to privately own and possess firearms. Founded in 1974, the
3 Foundation has grown to more than 600,000 members and supporters and conducts many
4 programs designed to better inform the public about the consequences of gun control.

5 18. Plaintiff/petitioner CALIFORNIA ASSOCIATION OF FIREARM RETAILERS is a
6 501(c) non-profit membership organization founded in 2004 and incorporated under the laws of
7 California. The California Association of Firearm Retailers represents firearm retailers
8 throughout California. It operates under the umbrella of the National Association of Firearm
9 Retailers.

10 19. Plaintiff/petitioner LAW ENFORCEMENT ALLIANCE OF AMERICA ("LEAA")
11 is a nonprofit, non-partisan advocacy organization under section 501, subdivision (c)(4) of the
12 Internal Revenue Code. Its principal offices are in Virginia and its executive director is James J.
13 Fotis, a retired New York police officer. LEAA's members consist of law enforcement
14 professionals and officers, crime victims, and concerned citizens, many of whom reside and/or
15 work in San Francisco and pay taxes thereto. In this action, LEAA represents these members and
16 officers, including deputy sheriffs.

17 20. Plaintiff/petitioner SAN FRANCISCO VETERANS POLICE OFFICERS
18 ASSOCIATION ("SFVPOA") represents retired San Francisco officers and is active in protecting
19 their interests, particularly their interest in being able to defend themselves from the criminals they
20 have arrested throughout their careers, as well as protecting their interests in post public agency
21 retirement employment.

22 21. In this suit, NRA, SAF, SFVPOA, and LEAA (respectively) represent the interests of
23 their thousands of respective members, including police officers and retired officers, who reside in
24 the CITY and who are too numerous to conveniently bring this action individually. In addition to
25 their standing as citizens and taxpayers, those members' interests include their ownership and
26 possession of handguns in San Francisco and their desire to purchase and interest in purchasing
27 firearms in San Francisco.

28 **B. Respondents/Defendants**

1 22. Respondent/defendant CITY is an entity duly formed under the laws of California
2 which governs the City and County of San Francisco. CITY is the entity which has enacted, and
3 is beneficially interested in, the enactment hereby challenged.

4 23. Respondent/defendant HEATHER FONG is the chief of the SAN FRANCISCO
5 POLICE DEPARTMENT. Both respondents are charged with enforcing the Ordinance.

6 24. The true names or capacities, whether individual, corporate, associate or otherwise of
7 the respondents/defendants named herein as DOE, are presently unknown to plaintiffs/petitioners,
8 who therefore sue said defendants/respondents by such fictitious names. Plaintiffs/petitioners
9 pray leave to amend this complaint/petition to show the true names or capacities of said
10 defendants/respondents if and when the same have been finally determined.

11 JURISDICTION AND VENUE

12 25. This Court has jurisdiction under sections 525, 526, 1060 and 1085 of the California
13 Code of Civil Procedure and other applicable laws and constitutional provisions.
14 Plaintiffs/petitioners lack a “plain, speedy, and adequate remedy, in the ordinary course of law.”
15 (Cal. Code of Civ. Proc. § 1086.)

16 26. Because this action is brought against a public officer of the City of San Francisco and
17 against the City of San Francisco itself, this action is properly brought in the City and County of
18 San Francisco. (Cal. Code of Civ. Proc. §§ 393(b), 394(a).) Further, many of the
19 plaintiffs/petitioners reside or are located in San Francisco and the claims arose in San Francisco.

20 CHRONOLOGY OF PERTINENT EVENTS

21 27. On June 28, 1982, CITY adopted an ordinance prohibiting any person within the City
22 from possessing a handgun. As already stated, the Court of Appeal invalidated the 1982
23 ordinance in the *Doe* case.

24 28. On November 8, 2005, CITY enacted legislation (“the Ordinance”) nearly identical
25 to the 1982 ordinance.

26 29. Plaintiffs/Petitioners filed a Petition for Writ of Mandate And/Or Prohibition in the
27 First Appellate District of the California Court of Appeals on November 9, 2005.

28 30. On December 9, 2005, the First Appellate District declined to exercise original

1 jurisdiction to consider the writ petition filed by plaintiffs/petitioners.

2 31. Section 2 of the Ordinance bans the "sale, distribution, transfer and manufacture of all
3 firearms and ammunition" within the limits of the City.

4 32. Section 3 of the Ordinance, with some exemptions, prohibits possession of handguns
5 within the limits of the City by City residents. The Ordinance allows possession of handguns
6 where such possession is required by specific, enumerated professional purposes. Namely, the
7 Ordinance exempts from its handgun ban (a) government employees carrying out the functions of
8 government employment, (b) active members of the United States armed forces or the National
9 Guard and (c) security guards, "regularly employed and compensated by a person engaged in any
10 lawful business, while actually employed and engaged in protecting and preserving property or life
11 within the scope of his or her employment."

12 33. Section 4 of the Ordinance provides that the Ordinance "shall become effective on
13 January 1, 2006."

14 34. Under section 3 of the Ordinance, residents of the City must get handguns out of the
15 City or surrender their handguns to the San Francisco Police Department or to the San Francisco
16 Sheriffs Department (without compensation) by April 1, 2006, in order to avoid penalty.

17 35. Section 5 of the Ordinance provides that the Board of Supervisors shall enact
18 unspecified penalties within ninety days of the effective date of the section. The Ordinance
19 therefore requires the Board to enact penalties by April 1, 2005. Section 5 also requires that the
20 Mayor recommend penalties to the Board within thirty days of the effective date of the Ordinance.

21 **IRREPARABLE INJURY**

22 36. The named individual petitioners, and the individuals and entities represented in this
23 action, are irreparably injured by the mere enactment and existence of the Ordinance in the
24 following ways:

25 a. Whether or not a penalty scheme has been enacted under the Ordinance,
26 those petitioners who own handguns are subject to having their property confiscated by SFPD or
27 SFSD as of January 1, 2006 and so long as the Ordinance remains on CITY's books;

28 b. Whether or not a penalty scheme has been enacted under the Ordinance,

1 those petitioners who own firearms cannot sell them – even if the firearms are inoperable antiques
2 which are expressly exempt from regulation by federal and state law;

3 c. Whether or not a penalty scheme has been enacted under the Ordinance,
4 after January 1, 2006 business enterprises that have a stock of handguns are subject to having that
5 stock confiscated by CITY authorities;

6 d. Whether or not a penalty scheme has been enacted under the Ordinance,
7 business enterprises which sell firearms in violation of the Ordinance are subject to having their
8 business licenses voided, and to other administrative penalty;

9 e. Whether or not a penalty scheme has been enacted under the Ordinance,
10 business enterprises which sell firearms will be unable to do so because no one will be willing to
11 buy from them so long as the Ordinance remains on the books;

12 f. Whether or not a penalty scheme has been enacted under the Ordinance,
13 business enterprises which sell firearms will be deterred from doing so after January 1, 2006
14 because they might be sued for illegal sale of a gun they sold (legally under state law) that is
15 misused or discharged accidentally causing injury to someone;

16 g. Whether or not a penalty scheme has been enacted under the Ordinance,
17 business enterprises, both within and also outside San Francisco, that transfer firearms from
18 abroad or otherwise through the Port of San Francisco will be deterred or prevented from doing so
19 after January 1, 2006.

20 h. Peace officers who are represented in this suit are irreparably injured by the
21 Ordinance's curtailment of their state law privilege to carry arms (as hereinafter alleged) after the
22 Ordinance officially comes into effect on January 1, 2006. Whether or not a penalty scheme has
23 been enacted under the Ordinance, these officers are subject to administrative discipline by their
24 department for possessing handguns at times and under circumstances not covered by the uniquely
25 narrow exemption the Ordinance provides as to its handgun ban. And, as alleged herein, such
26 officers are precluded from the proper and necessary performance of their duties by the firearm
27 "transfer" provision of the Ordinance, which has no criminal justice exemption at all;

28 i. All taxpayer petitioners are irreparably injured by the waste of tax funds

1 which will be spent to add the Ordinance's unlawful provisions to CITY's codes, and to print
2 them in those codes, and by other expenditures of public funds relating to the implementation of
3 the Ordinance.

4 **PUBLIC INTEREST INVOLVED**

5 37. A citizen / taxpayer mandamus action is appropriate because the Ordinance is
6 unconstitutional and unlawful, e.g., by violating Government Code section 53071 and Penal Code
7 section 12026 (b) and for the other reasons hereinafter set out. Government Code section 53071
8 and Penal Code section 12026 (b) were intended to protect law-abiding, responsible people in the
9 acquisition, possession, and lawful use of firearms.

10 **DECLARATORY RELIEF / JUDGMENT ALLEGATIONS**

11 **(By All Plaintiffs/Petitioners Against All Respondents/Defendants on All Causes of Action)**

12 38. Plaintiffs/petitioners reallege all prior paragraphs and incorporate them herein as if set
13 out verbatim.

14 39. Plaintiffs/petitioners contend that the Ordinance (1) is contrary to and preempted by
15 California Penal Code section 12026 and California Government Code section 53071 (2) violates
16 the equal protection guarantees of the United States and California constitutions and (3) would
17 preclude the enforcement of state criminal laws. By contrast, the City contends that the Ordinance
18 is not preempted by state law, does not violate equal protection guarantees, and would not
19 preclude the enforcement of state criminal laws. The City has, therefore, indicated its intention to
20 enforce the ordinance.

21 40. Accordingly, an active controversy has arisen and now exists between
22 plaintiffs/petitioners and respondents/defendants.

23 41. To resolve this controversy, plaintiff/petitioners request that, pursuant to California
24 Code of Civil Procedure section 1060, this Court declare that the Ordinance is unlawful, conflicts
25 with state law, intrudes into an area fully occupied by state law, and declare the following:

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28 **FIRST CLAIM**

**PREEMPTION/CONTRADICTION OF STATE LAW
AS TO HANDGUN POSSESSION**

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3 42. Plaintiffs/petitioners reallege all prior paragraphs and incorporate them herein as if set
4 out verbatim.

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6 43. The Ordinance would ban the possession and transfer of handguns, even by persons
7 expressly authorized by state law to have them. The only persons who are entirely exempt from
8 the ban would be persons who either: (a) are within the limited exceptions contained in section
9 three of the Ordinance; or (b) have special permits or authorization under Penal Code sections
10 12025.5, 12027, 12050 or other state laws which specially authorize or permit handgun
11 possession. Thus, the Ordinance makes handgun possession dependent on special permission or
12 permits/licenses, and operates to create a new class of persons who will be required to obtain
13 licenses in order to possess handguns. That is contrary to Penal Code section 12026 (b), which
14 forbids localities from conditioning handgun possession or sale on possession of a permit or
15 license, as well as Government Code section 53071.

16
17 44. In producing what is effectively a licensing or permit requirement to buy or possess a
18 handgun, the Ordinance intrudes upon an area which state law fully occupies. Beyond
19 establishing a permit requirement, the Ordinance violates Penal Code section 12026's implied
20 preclusion of local attempts to ban the possession of handguns by law-abiding, responsible adults
21 whom state law allows to acquire and possess them, and Government Code section 53071's
22 express preclusion of cities enacting licensing schemes for handguns.

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25 **SECOND CLAIM
PREEMPTION/CONTRADICTION OF STATE LAW
AS TO FIREARM AND AMMUNITION SALE OR TRANSFER**

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27 45. Plaintiffs/petitioners reallege all prior paragraphs and incorporate them herein as if set
28 out verbatim.

46. Penal Code section 12026 (b) and Government Code section 53071 were intended to
protect the rights to purchase firearms and ammunition therefor. By prohibiting those things, the
Ordinance violates state law and intrudes upon areas that are occupied by state law to the
exclusion of any local enactment.

1 **THIRD CLAIM**
2 **EQUAL PROTECTION RIGHTS OF CITY RESIDENTS**

3 47. Plaintiffs/petitioners reallege all prior paragraphs and incorporate them herein as if set
4 out verbatim.

5 48. Under the Ordinance, San Francisco residents – but no other persons – are forbidden
6 to possess handguns in the City. The many non-San Franciscans who have an office or shop in the
7 City are free to keep handguns there for their protection. That classification is invalid and
8 contrary to the federal and California guarantees of equal protection. There is no rational
9 relationship between the residency of the person possessing a handgun and the dangers of handgun
10 possession in the City.

11 **FOURTH CLAIM**
12 **FIREARM AND AMMUNITION SALES BANS**
13 **PRECLUDE THE ENFORCEMENT OF STATE CRIMINAL LAWS**

14 49. Plaintiffs/petitioners reallege all prior paragraphs and incorporate them herein as if set
15 out verbatim.

16 50. Because it was so poorly thought out, or because of choices deliberately made, section
17 two of the Ordinance effectively precludes distribution of firearms and ammunition by criminal
18 justice agencies to their officers. It also precludes transfer of arms and ammunition between
19 criminal justice personnel and agencies, and the introduction of crime guns and ammunition into
20 judicial proceedings, as well as seizures and returns of firearms as required by state law. Because
21 of the ruinous effects section two would have on the enforcement and administration of state law
22 and judicial proceedings, section two is inimical to, and preempted by, state law.

23 **FIFTH CLAIM**
24 **EQUAL PROTECTION RIGHTS OF PEACE OFFICERS**

25 51. Plaintiffs/petitioners reallege all prior paragraphs and incorporate them herein as if set
26 out verbatim.

27 52. Peace officers and retired officers are exempted under state law from a host of gun
28 laws that apply to civilians, particularly including those banning the carrying of concealed or
loaded handguns. But CITY's Ordinance abolishes that privilege for San Francisco peace officers
who reside in the City. Contradicting the state policy of completely exempting peace officers, the

1 Ordinance allows officers to carry their firearms only as “required” to perform their duties and
2 only while “carrying out the functions of [each officer’s] government employment. . . .” The
3 effect of this exceptionally narrowly-worded exemption is that San Francisco-resident peace
4 officers: (a) must leave their handguns in the station house when they go off duty and cannot carry
5 any handgun at that time; (b) cannot keep handguns (including their duty weapon) in their homes
6 while off duty; (c) cannot carry their duty weapon to and from their place of employment, or
7 anywhere else while off duty; and (d) cannot carry a back up weapon. These restrictions do not
8 apply to San Francisco peace officers who reside outside the City. In making this discrimination
9 between San Francisco peace officers based on their residence, the Ordinance is invalid and
10 contrary to the federal and California guarantees of equal protection. There is no rational
11 relationship between the residency of San Francisco peace officers and the dangers of handgun
12 possession by San Francisco peace officers in the City.

13 **INJUNCTIVE RELIEF SOUGHT**

14 **(By All Plaintiffs/Petitioners Against All Respondents/Defendants)**

15 53. Plaintiffs/petitioners reallege all prior paragraphs and incorporate them herein as if set
16 out verbatim.

17 54. Plaintiffs/petitioners also seek an injunction pursuant to Code of Civil Procedure
18 sections 525 and 526 on the above claims. The City’s wrongful conduct, unless enjoined by order
19 of this Court, will continue to cause great and irreparable injury to plaintiffs/petitioners, who will
20 be prohibited from engaging in transfers of firearms and ammunition and who will be prohibited
21 from possessing handguns.

22 55. The City’s wrongful conduct will be of a continuing nature for which
23 plaintiffs/petitioners will have no adequate remedy at law in that it will be impossible for
24 determine monetary damages caused by the City’s wrongful conduct.

25 56. Accordingly, plaintiffs/petitioners seek a permanent injunction forbidding
26 defendants/respondents, their agents, employees, representatives, and all those acting in concert
27 with them from enforcing the Ordinance and requiring defendants/respondents to remove the
28 Ordinance from the list of municipal ordinances.

1 WRIT OF MANDATE

2 (By All Plaintiffs/Petitioners Against All Respondents/Defendants)

3 57. Plaintiffs/petitioners reallege all prior paragraphs and incorporate them herein as if set
4 out verbatim.

5 58. Plaintiffs/petitioners also contend that, based upon a proper construction of the
6 Ordinance, Penal Code section 12026, and Government Code section 53071, the Ordinance is
7 preempted by state law. Plaintiffs/petitioners also contend that the Ordinance violates the equal
8 protection guarantees of the United States and California constitutions and that the Ordinance
9 would preclude application of state criminal laws. Plaintiffs/petitioners therefore allege that
10 defendants/respondents have a clear, present, and ministerial duty not to enforce the Ordinance
11 and to remove the Ordinance from the list of municipal ordinances. Section Two of the
12 Ordinance, prohibiting the transfer of firearms and ammunition, is set to take effect on January 1,
13 2006. Section Three of the Ordinance, prohibiting the possession of handguns, is set to take effect
14 on April 1, 2006. Defendants/respondents have indicated their intention to enforce all sections of
15 the Ordinance.

16 59. Defendants/respondents' wrongful conduct will be of a continuing nature for which
17 plaintiffs/petitioners have no plain, speedy, adequate remedy at law. Plaintiffs/petitioners present
18 important questions of statutory and constitutional interpretation, and the public interest in
19 immediate disposition of those questions is significant. There is no other adequate remedy at law
20 that does not involve the risk of substantial delay. Further, it is impossible to ascribe monetary
21 damages caused by defendants/respondents' wrongful conduct.

22 60. Plaintiff/petitioners seek a writ of mandate, pursuant to Code of Civil Procedure
23 sections 1085 and 1087 commanding that defendants/respondents (a) not enforce the Ordinance
24 and (b) remove the Ordinance from the list of municipal ordinances.

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PRAYER

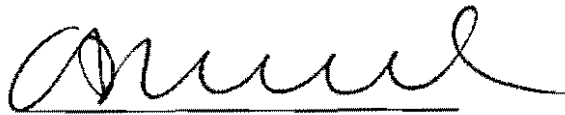
Wherefore petitioners pray for the following relief:

1. Issuance of a peremptory writ and permanent injunction ordering respondents not to enforce the Ordinance, and to remove it from the list of municipal ordinances;
2. A declaration that the Ordinance is invalid as set forth in each of the above claims;
3. For costs and attorneys' fees as provided by federal and California law;
4. Such other relief as may be just and proper.

Dated:

Respectfully submitted,

TRUTANICH • MICHEL, LLP



C. D. MICHEL

Attorney for Petitioners

VERIFICATION

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I, C.D. Michel, declare as follows:

I am one of the attorneys for the petitioners herein. I have read the foregoing Petition for Writ of Mandate/Prohibition Or Other Extraordinary Relief and know its contents. The facts alleged in the petition are within my own knowledge and I know these facts to be true. Because of my familiarity with the relevant facts and because my clients are absent from the county where I have my office, I, rather than petitioners, verify this petition.

I declare under penalty of perjury that the foregoing is true and correct and that this verification was executed on December 27, 2005, at Long Beach, California.

TRUTANICH • MICHEL, LLP



C. D. Michel
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