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COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FOUR

AUG - 8 2007

Court of Appeal - First App. Dist.
DIANA HERBERT

By _____
DEPUTY

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

Defendants-Appellants.

County of San Francisco Case No.: CPF05505960
The Honorable James Warren

**RESPONDENTS' NOTICE OF NEW
CALIFORNIA SUPREME COURT AUTHORITY**

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INTRODUCTION

On May 22, 2007, the parties completed briefing on this matter. Afterwards, a number of organizations and individuals filed amicus briefs in support of Respondents. Appellants filed an answer to these amicus briefs on July 18, 2007.

Since the completion of briefing by the parties and amici, the California Supreme Court filed decided and filed an opinion in the case *O'Connell v. City of Stockton* (July 26, 2007) 2007 WL 2127704. For the reasons outlined below, that opinion may have an impact on the court's decision in this matter.

I. Background Information

In *O'Connell v. Stockton*, the plaintiff filed an action challenging a city ordinance labeled "Seizure and Forfeiture of Nuisance Vehicles." (2007 WL 2127704 at *1.) That ordinance provided for the forfeiture of "[a]ny vehicle used to solicit an act of prostitution, or to acquire or attempt to acquire any controlled substance . . ." (*Id.*) Although the trial court dismissed the plaintiff's lawsuit, the Court of Appeal reversed, finding that the ordinance "was preempted by specific state law provisions governing vehicle forfeiture." (*Id.*) The Supreme Court granted review, asking the parties to brief three distinct issues, including whether the Stockton

ordinance was preempted by state law. (*Id.* at *12, fn. 1.) The Supreme Court determined that state law did preempt the Stockton ordinance. (*Id.*)

II. The Decision Supports Respondents Contention That In Analyzing Respondents’ Implied Preemption Claims, This Court Should Consider the State’s Firearms Statutes as a Whole

In the *O’Connell* case, the Supreme Court noted the Appellate Court’s conclusion that the city’s forfeiture ordinance was preempted by the provisions of the California Uniform Controlled Substances Act (UCSA), which also authorizes forfeiture of vehicles used in specific serious drug crimes. (*O’Connell, supra*, 2007 WL 2127704, *3.) But the Supreme Court did not limit itself solely to the UCSA’s vehicle forfeiture provisions. (*Id.*) Rather, the Supreme Court “consider[ed] the UCSA *as a whole*, a comprehensive scheme defining and setting penalties for crimes involving controlled substances.” (*Id.* (emphasis in original).)

After an extensive review of the UCSA, the Supreme Court determined that the “comprehensive nature of the USCA in defining drug crimes and specifying penalties (including forfeiture) is so thorough and detailed as to manifest the Legislature’s intent to preclude local regulation.” (*Id.* at *5.) In so ruling, the Supreme Court in *O’Connell* specifically rejected the Court of Appeal’s decision in a similar case – *Horton v. City of Oakland* (2000) 82 Cal.App.4th – which had “failed to consider the

UCSA's comprehensive scheme of drug crime penalties" and never considered "whether the UCSA as a whole constitutes a comprehensive scheme that fully occupies the field of penalizing crimes involving controlled substances." (*Id.* at *6.)

The Supreme Court's decision in *O'Connell v. Stockton* supports Respondents' arguments that in analyzing Respondent's claim of implied preemption this Court should consider the intent behind and effect of the State's firearms statutes *as a whole*, rather than in a piecemeal fashion.

III. The *O'Connell* Decision Further Detracts from the City's "Home Rule" / "Municipal Affair" Defense

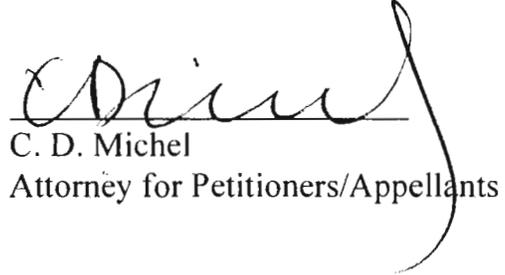
In the *O'Connell* case, the City of Stockton also argued that even if its forfeiture ordinance was preempted by state law, it was protected because the subject matter constituted a "municipal affair" rather than a matter of "statewide concern." (*O'Connell, supra*, 2007 WL 212704, *9.) The Supreme Court dispensed with this argument in short order, devoting only two paragraphs to the issue. (*Id.*) The court noted that the illegal activities at issue, prostitution and trafficking in controlled substances, had been "comprehensively addressed through various provisions of the state's Penal and Vehicle Codes" and therefore were not "matters of statewide concern." (*Id.*)

Likewise, as noted in Respondents' briefs, the effects firearm

ownership – for good or ill – are comprehensively addressed by the state’s statutory scheme. Like the Supreme Court in *O’Connell*, this court can easily dispense with San Francisco’s “home rule” defense of Proposition H.

DATED: August 7, 2007

TRUTANICH • MICHEL, LLP



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Attorney for Petitioners/Appellants

PROOF OF SERVICE

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

I, Claudia Ayala, am employed in the City of Long Beach, Los Angeles County, California. I am over the age eighteen (18) years and am not a party to the within action. My business address is 180 East Ocean Blvd., Suite 200 Long Beach, CA 90802.

On August 7, 2007, I served the foregoing document(s) described as

RESPONDENTS' OPPOSITION TO LCAV'S REQUEST FOR RECONSIDERATION OF ORDER DENYING APPLICATION FOR PERMISSION TO FILE AMICUS CURIAE BRIEF

on the interested parties in this action by placing

the original

a true and correct copy

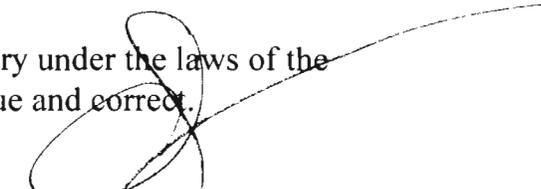
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"SEE ATTACHED SERVICE LIST"

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Executed on August 7, 2007, at Long Beach, California.

X (STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.



CLAUDIA AYALA

PAULA FISCAL et al.,
v.
CITY AND COUNTY OF SAN FRANCISCO et al.,
CASE NO.: A115018

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