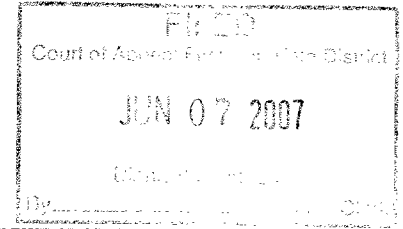


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COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FOUR



**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' OPPOSITION TO APPLICATION OF
LEGAL COMMUNITY AGAINST VIOLENCE
FOR PERMISSION TO FILE AMICUS BRIEF**

C. D. Michel- S.B.N. 144258
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CG COPY

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Although Respondents ordinarily do not oppose submissions from “friends of the court,” Respondents must oppose the application of the Legal Community Against Violence (“LCAV”) to file an amicus brief in support of Appellants (“the City”). Respondents recently learned from the City itself that the City retained the LCAV to provide legal advice to the City in this litigation. LCAV is therefore not a true “amicus curiae.”

Through a Public Records Act request, counsel for Respondents recently asked the City to provide “[a]ll communications including but not limited to e-mails (including attachments) or other correspondence from or to the Legal Community Against Violence.” The City responded on May 18, 2007. A copy of the response is attached as Exhibit A. In that response the City revealed that “[t]hrough the City Attorney’s Office, the City retained the Legal Community Against Violence as a consultant in matters related to the litigation filed against Prop H . . .” Because of that relationship, the City asserted that “[a]ny correspondence . . . between the City and the Legal Community Against Violence is related [the Prop H litigation]” and is therefore “covered by the attorney work product doctrine, the attorney client privilege, or both.”

As noted by the California Supreme Court, the role of a party to the litigation and the role of amicus curiae are mutually exclusive. (*Connerly v.*

State Personnel Bd. (2006) 37 Cal.4th 1169, 1177.) “Amici curiae, literally ‘friends of the court,’ perform a valuable role for the judiciary *precisely because they are nonparties* who often have a different perspective from the principal litigants.” (*Id.* (emphasis added).)

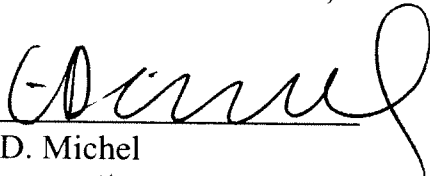
By retaining the LCAV to provide counsel to the City in this case, the City either made LCAV a party to this case, or a law firm with the City as a client. Neither can be an “amicus curiae.”

Allowing the LCAV to file an “amicus” brief would effectively permit the City to file two Opposition briefs contrary to California Rules of Court, rule 8.204 (c), which limits the length of a party’s brief to 14,000 words.

The court should not approve LCAV’s Application.

DATED: 6/5/07

TRUTANICH • MICHEL, LLP



C. D. Michel
Attorney for Petitioners/Appellants

EXHIBIT A

Office of the Mayor
City & County of San Francisco



Gavin Newsom

May 18, 2007

Mr. Clint Monfort
Trutanich-Michel LLP
180 Ocean Boulevard
Suite 200
Long Beach, CA 90802
Fax: 562-216-4445

 **COPY**

Dear Mr. Monfort:

This letter responds to your Public Records Act Request for: "All communications including but not limited to e-mails (including attachments) or other correspondence from or to the Legal Community Against Violence."

Through the City Attorney's Office, the City retained the Legal Community Against Violence as a consultant in matters related to the litigation filed against Prop H by your office. Any correspondence in the possession of the Mayor's Office between the City and the Legal Community Against Violence is related to that litigation. Accordingly, those communications are covered by the attorney work product doctrine, the attorney client privilege, or both.

Sincerely,

A handwritten signature in black ink, appearing to read "Joe Arellano".

Joe Arellano
Deputy Communications Director
Office of Mayor Gavin Newsom

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 June 6, 2007, I served the foregoing document(s) described as

**RESPONDENTS' OPPOSITION TO APPLICATION OF
LEGAL COMMUNITY AGAINST VIOLENCE
FOR PERMISSION TO FILE AMICUS BRIEF**

on the interested parties in this action by placing
 the original
 a true and correct copy
thereof enclosed in sealed envelope(s) addressed as follows:

"SEE ATTACHED SERVICE LIST"

X (BY MAIL) As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under the practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Long Beach, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date is more than one day after date of deposit for mailing an affidavit.

Executed on June 6, 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

C. D. Michel
Glenn McRoberts
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County of San Francisco et al.,

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San Francisco County Superior Court
400 McAllister St.
San Francisco, CA 94102

San Francisco County Superior
Court Judge

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