

CARMEN A. TRUTANICH
C. D. MICHEL
LOS ANGELES, CA

GLENN S. MCROBERTS
SAN DIEGO, CA



OF COUNSEL:
CURT LIVESAY
JOHN F. MAGHTINGER
LOS ANGELES, CA

DON B. KATES
SAN FRANCISCO, CA

MARK K. BENENSON
NEW YORK, N.Y.

DAVID T. HARDY
TUCSON, AZ

Writer's Direct Contact:
(562) 216-4444
cmichel@tmlp.com

March 20, 2008

Clerk of the Supreme Court
California Supreme Court
350 McAllister Street
San Francisco, CA 94102



Re: Fiscal et al., v. City and County of San Francisco et al.,
Supreme Court Case No. S160968
Court of Appeal Case No. A115018 (First District Court of Appeal, Division Four)
Superior Court Case No. 505960
City and County of San Francisco's Request for Depublication of Court of
Appeal Opinion (Rule 8.1125)

Honorable Justices of the Supreme Court:

Pursuant to Rule 8.1125(b) of the California Rules of Court, Respondents hereby oppose the request of the Legal Community Against Violence ("LCAV") to depublish the above-captioned decision of the Court of Appeal.

The LCAV ostensibly requests depublication because it believes the opinion below "misinterprets the law as explained by this Court in its 2002 companion decisions *Great Western Shows, Inc. v. County of Los Angeles* (2002) 27 Cal.4th 853 and *Nordyke v. King* (2002) 27 Cal.4th 875." Yet in its current request, LCAV offers no specific explanation of how any specific holding of the decision conflicts with either *Great Western* or *Nordyke*. In the lower courts, however, LCAV and San Francisco both relied heavily, and unsuccessfully, on these cases. In the trial court below, LCAV submitted an amicus brief which laid out its argument in detail. The trial court rejected LCAV's broad interpretations of the rulings in *Great Western* and *Nordyke*. And San Francisco relied heavily on *Great Western* and *Nordyke* to support its claims on appeal. The Appellate Court considered and rejected those arguments.

The LCAV is also concerned about dicta at the end of the opinion stating that "the goal of any local authority wishing to legislate in the area of gun control should be to accommodate the local interest with the least possible interference with state law" and that "while courts have tolerated subtle local encroachment into the field of firearms regulation, laws which significantly intrude upon the state prerogative have been uniformly struck down as preempted." (Slip Opinion at p. 24 (citations omitted).) The LCAV objects to the Court's citation to *California Dreamin': The Myth of State Preemption of Local Firearm Regulation* (1996) 30 U.S.F.L.Rev. 395 for the proposition that "when it comes to regulating firearms, local governments are well advised to tread lightly." (*Id.*)

As noted in the article itself, Mr. Eric Gorovitz authored *California Dreamin'* in 1996, when he was Chair of the Local Ordinance Committee of the LCAV. It is not surprising, therefore, that the LCAV would object to the court's use of one of the LCAV's own publications in an opinion striking down Prop H, a local ordinance that the LCAV supported so strongly that it provided free legal services to San Francisco to defend it. But while Mr. Gorovitz and the LCAV prepared *California Dreamin'* with the intention of encouraging some local firearms regulation, the *types* of firearms regulations suggested by the article are modest relative to the complete handgun ban contemplated by Prop H.

Section I of the article begins with a discussion of the "municipal affairs" doctrine in California and concludes that "[l]ocal firearm regulation is unlikely to fall within the unfettered 'municipal affairs' power of charter cities" and therefore such regulations are "subject to preemption by state law." (*California Dreamin'*, supra, 30 U.S.F.L.Rev. 395, 400.) Section III of *California Dreamin'* is entitled "Some Ideas for Local Regulation" and considers "several types of regulation" that the LCAV believed "should withstand challenge alleging preemption by state law[.]" (*California Dreamin'*, supra, 30 U.S.F.L.Rev. 395, 421.) The specific types of local regulations suggested by the article include "Banning the Sale of 'Saturday Night Specials'" (*Id.* at pp. 422-423), land-use "Regulations Restricting Firearms Dealers" (*Id.* at pp. 423-424), "Regulation of Ammunition" (*Id.* at pp. 424-425), and "Taxation of Firearms Dealers." (*Id.* at pp. 425-426.) And significantly, *California Dreamin'* was written before the passage of the state's Unsafe Handgun Act and that Act's attendant preemptive effect.

Each of these suggestions is significantly less restrictive than the complete ban on handgun possession contemplated by Prop H. So the Court's citation to *California Dreamin'*, and its advice to local governments to consider that article and "tread lightly" is unremarkable when viewed in comparison to the Prop H complete handgun ban, one of the most extreme firearms bans ever enacted in the United States.

As noted in Respondents' Answer to the City's Petition for review, the Appellate Court's decision is an articulate restatement of firearms preemption law in California. The LCAV's displeasure with the Appellate Court's citation to one of its own publications in dicta is insufficient grounds for depublication.

Sincerely,

TRUTANICH • MICHEL, LLP

A handwritten signature in black ink, appearing to read "C. D. Michel", written in a cursive style.

C. D. Michel

CDM/ca

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, March 20, 2008, I served the foregoing document(s) described as

**OPPOSITION TO LEGAL COMMUNITY AGAINST VIOLENCE LETTER
REQUESTING DEPLICATION OF COURT OF APPEAL OPINION**

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 March 20, 2008, 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

CITY AND COUNTY OF SAN FRANCISCO et al.,
v.
PAUL FISCAL et al.,

First District Court of Appeal Case No.: A115018
San Francisco Superior Court Case No.: 505-960

SERVICE LIST

Dennis J. Herrera, City Attorney Wayne Snodgrass, Deputy City Attorney Office of the City Attorney City Hall, Room 234 1 Dr. Carlton B. Goodlett Place San Francisco,	Attorneys for Petitioners/Defendants
Honorable Paul H. Alvarado San Francisco Superior Court 400 McAllister Street San Francisco, CA 94102	San Francisco Superior Court
California Court of Appeal First Appellate District Division Four 350 McAllister Street San Francisco, CA 94102	California Court of Appeal
Roderick M. Thompson Farella Braun & Martel, LLP Attorneys At Law Russ Building 235 Montgomery Street San Francisco, CA 94104	Attorneys for Legal Community Against Violence