IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

[illegible] COUNTY OF SAN	Case No. S160968
	First Appellate District Court No. A115018
PAULA FISCAL, et al., Plaintiffs & Respondents	(S.F. Superior Court No. 505-960)

v.

THE CITY and
COUNTY OF SAN FRANCISCO, et al.,

Defendants and Appellants.

Plaintiffs/Respondents.

RESPONDENT'S ANSWER
TO PETITION FOR REVIEW

C. D. Michel - S.B.N. 144258
Don B. Kates - S.B.N. 39193
Thomas Maciejewski - S.B.N. 222736
TRUTANICH • MICHEL, LLP
180 East Ocean Blvd., Suite 200
Long Beach, California 90802
Telephone: 562-216-4444
Facsimile: 562-216-4445
Attorneys for Plaintiffs/Respondents

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE CITY AND COUNTY OF SAN FRANCISCO, SAN FRANCISCO POLICE CHIEF HEATHER FONG in her official capacity, SAN FRANCISCO POLICE DEPARTMENT Defendants/Appellants/Petitioners, v. 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, Plaintiffs/Respondents.	Case No. S160968 First Appellate District Court No. A115018 (S.F. Superior Court No. 505-960)

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180 East Ocean Blvd., Suite 200
Long Beach, California 90802
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Facsimile: 562-216-4445
Attorneys for Plaintiffs/Respondents

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INTRODUCTION AND SUMMARY

As noted by the First Appellate District panel at the start of oral argument on this matter, the City and County of San Francisco ("the City") has essentially been trying, unsuccessfully, to ban handguns for over forty years. Each attempt has been rebuffed either by the Legislature or the Courts. For example, the Legislature enacted Government Code section 53071 following the handgun registration ordinance discussed in *Galvan v. Superior Court* (1969) 70 Cal.2d 851). And the Court struck down the City's 1982 handgun ban attempt in *Doe v. City and County of San Francisco* (1982) 136 Cal.App.3d 509). Petitions for a rehearing of the *Doe* matter were denied October 28 and November 9, 1982, and the City's petition for a hearing by the Supreme Court was denied January 27, 1983. (1982 Cal. App. LEXIS 2035 at p. 1.)

For twenty-five years, since the publication of the First Appellate Court's decision in *Doe*, the law as to handgun bans and preemption has been settled. State law allows local regulation of firearms to a degree, but at least prohibits local governments from enacting total bans on firearm possession or sales. (*Id.* at pp. 517-518.) The City's Petition for Review presents no credible explanation of how the situation has changed so that the City should prevail now when it has failed in the past. Essentially, the

City's Petition asks the Court to revisit *Doe* again, without providing any compelling rationale for doing so. No previous decisions allowing local gun control regulation have been overturned. There is no "unsettled" law. If anything, the Appellate Court's decision in this case adds certainty about what cities can and cannot do.

The City's argument depends substantially on the notion that *Doe* has been marginalized over time and is in conflict with later appellate decisions. But in fact, this Court as recently as 2002 reaffirmed *Doe* by citing its holdings without *any* hint of narrowing its scope, and without *any* criticism whatever, in *Great Western Shows v. County of Los Angeles* (2002) 27 Cal.4th 853, 863-864. Moreover, the Legislature has reaffirmed *Doe* by thrice reenacting the statutes it interpreted; and the appellate courts continue to cite it approvingly.

There really is no confusion over the holdings or the continuing validity of *Doe*. And frankly, the City has known this all along. Or at least apparently everyone at the City except San Francisco Board of Supervisors member Chris Daly. Supervisor Daly's office drafted Prop H and, as acknowledged on the record by the City Attorney's office at oral argument before the Appellate Court in this matter, Supervisor Daly did so with no

input whatsoever from the City Attorney's office.[1] Regrettably, Supervisor Daly's office apparently did not consult with the Mayor, the Police Chief, or the District Attorney as to Proposition H either.[2]

Had such consultations taken place, this litigation might have been avoided. For when consulted by the press, a host of persons associated with the City and numerous local gun control advocates acknowledged that Prop H was preempted. These included former San Francisco Mayor and now Senator Dianne Feinstein,[3] the major proponent of the City's previous

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[1] After drafting Prop H, Mr. Daly secured the support of four other members of the Board of Supervisors for placing Prop H on the ballot. Supervisor Michela Alioto-Pier originally supported placing Prop H on the ballot, but she later withdrew her support. So there were ultimately four Supervisors supporting the proposal. This was the minimum number of signatures necessary to place Prop H on the ballot without gathering voter signatures.

[2] In contrast, following the defeat of Prop H at the trial court level, Mayor Gavin Newsom and District Attorney Kamala Harris proposed scaled-back firearms restrictions that they believed would withstand legal scrutiny based on their "consultation with legal scholars." (See "San Francisco passes new gun law," *San Francisco Chronicle*, August 2, 2007 (available at http://www.sfgate.com/cgi-bin/article.cgi?f=/n/a/2007/08/02/state/n142029D13.DTL).)

[3] See "S.F. Voters Consider Tough Handgun Ban," *San Jose Mercury*, 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.") (available at http://www.officer.com/article/article.jsp?id=26761).

handgun ban attempt that resulted in the *Doe* decision, and the City's current mayor, Gavin Newsom.[4] Gun control advocate Franklin Zimring, William G. Simon Professor of Law and Boalt Hall, called Prop H a "triumph of symbolic politics" and a "sure loser" in state court.[5]

The rationale on which Supervisor Daly's office bottomed Prop H despite *Doe* was that the City's ordinance could be in conflict with state law yet still survive under the municipal affairs "home rule" doctrine. Toward that end, the Supervisor's office drafted the section of Prop H banning handgun possession to apply only to San Francisco residents. Respondents extensively explained to the courts below why this drafting sleight of hand was ineffectual. And as noted by the respected trial court judge[6] and three

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[4] See "Will voters deem S.F. a no-guns-allowed city? Motion seems poised to pass, but firearm fans prepare for fight," *San Francisco Chronicle*, November 5, 2005 ("'It clearly will be thrown out,' said San Francisco Mayor Gavin Newsom on Friday, adding that he planned to vote for the measure anyway to show his opposition to the proliferation of handguns. 'It's so overtly 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.'") (available at http://www.sfgate.com/cgi-bin/article.cgi?f=/ c/a/2005/11/05/ BAGOLFJMCD1.DTL).

[5] See "San Francisco Gun Vote: Tough Law or Thin Gesture?" *New York Times*, November 5, 2005 (quoting Franklin Zimring and available at http://www.nytimes.com/ 2005/11/05/national/05gun.html).

[6] Judge James Warren invalidated Prop H at the trial court level. Immediately following Judge Warren's ruling, Supervisor Daly implied that Judge Warren was somehow personally partially at fault for the City's crime problem. "I am very disappointed that Judge James Warren delayed his

equally well respected appellate court judges below, the legal authority, including this Court's recent decision in *O'Connell v. City of Stockton* (2007) 41 Cal.4th 1061, confirmed the inapplicability of the municipal affairs doctrine to this matter. (Slip Opinion at pp. 22-23.) As the City's Petition for Review omits any mention of either "home rule" or the "municipal affairs doctrine," the City seems to have abandoned what used to be the core of its case.

Instead, the City now contends that the trial and appeals court

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ruling by months, asking the City to suspend enforcement while almost 50 people were murdered on our streets. Given this disregard for the voters of San Francisco, it's no surprise that Warren would strike down Proposition H. Passed in November 2005 by 58% of San Francisco voters, Proposition H will reduce the unacceptable homicide number of gun-related homicides in our City.

Supporters of Proposition H knew the National Rifle Association would appeal had we won at this first step. Since Judge Warren has sided with the powerful gun lobby against the safety of San Franciscans, I call on City Attorney Dennis Herrera to swiftly appeal. I am optimistic that, like Board of Supervisors President Aaron Peskin's ordinance increasing relocation benefits for the most vulnerable tenants, the Court of Appeal will reverse Judge Warren's decision.

I wish Judge Warren a pleasant retirement."

(Statement of Supervisor Chris Daly on Judge Warren's Ruling on Proposition H, June 12, 2006 (available at http://www.sfgov.org/site/bdsupvrs_page.asp?id=40857").

decisions "turn California law on its head" or create "significant conflict and confusion" in the law of firearms preemption. (Petition at p. 4.) The City contends that the decision below creates "significant uncertainty among cities and counties" as to their ability to adopt firearms regulations (Petition at p. 3.), and the City argues that the decision below represents a shift in the law due to the opinion's concluding statement that "when it comes to regulating firearms, local governments are well advised to tread lightly." (Petition at p. 4, quoting Slip Opinion at p. 24.) But taken in context, it is clear that this admonition represents nothing of the sort. Proposition H was likely the most extreme gun ban ever enacted in the United States, with the exception of the confiscation of all firearms enacted by the seceding state of Tennessee during the Civil War. (See Robert Moon, *A Brief Historical Note on Gun Control in Tennessee*, 82 Case & Comment 38, 38 (1977).) It is therefore unremarkable that the Appellate Court would advise local governments to tread lightly and not follow the San Francisco example by enacting the sort of extreme, complete handgun ban that Prop H represented.

Both the trial court and the appellate court correctly applied *Doe* and established California law in finding Prop H preempted, and the City has failed to demonstrate that these courts applied the law improperly. The

decisions below merely articulate established California firearms preemption law regarding gun bans. Any "confusion" on the part of the City is attributable to its over-enthusiasm and penchant for regulating in areas that State law prohibits rather than lack of clarity in the Appellate Court decision or conflict among the various court decisions concerning firearms preemption. More importantly, the City has presented no credible reason why the Court should review this case. Again, to the extent that the opinion represents *any* change in the status quo ante, it represents an *increase* in certainty as to the types of firearms regulations that local governments are prohibited from adopting. The City may disagree with this added certainty, but mere disagreement with an Appellate Court opinion is not sufficient cause for Supreme Court review. (California Rules of Court, Rule 8.500 (b).) As the City well knows, the appropriate place to try to change the law is the Legislature. And in fact, such a legislative change is already being pursued, apparently on the City's behalf. (See Assembly Bill 2566, introduced February 22, 2008 by Assembly Member Hancock.)

ARGUMENT

I. THIS COURT SHOULD DISREGARD THE CITY'S POLICY DISCUSSION

In drafting its Petition for Review, the City has interspersed discussion of why it believes that Prop H is necessary as a policy matter.

(See, e.g., Petition at pp. 3-4.) In deciding whether to grant review, this Court should disregard such arguments. As both this Court[7] and the Appellate Court[8] have emphasized to the City, policy arguments regarding the desirability of firearms laws are appropriately addressed to the Legislature, not to the Courts. In fact, the City affirmatively argued this point itself in successfully opposing the filing of a criminological policy amicus brief by the Pink Pistols in the Appellate Court. (See Appellants' Opposition to Applications of California Sportsman's Lobby, Outdoor Sportsmen's Coalition of California, and Pink Pistols for Leave to File Amicus Briefs, filed July 9, 2007 and arguing that "[b]ecause the Pink Pistols' proposed amicus brief offers nothing save improper policy arguments, this Court should not permit its filing.")

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[7] *Galvan v. Superior Court*, supra, 70 Cal.2d 851, 869 (noting that "San Francisco and Galvan [had] both submitted materials concerning the desirability of weapons control, and the effect of weapons control on crime rates" and holding that "the wisdom of legislation is beyond the competence of the court").

[8] *Fiscal v. City and County of San Francisco* (2008) 158 Cal.App.4th 895, 902-903; Slip Opinion at p. 4 ("[t]his case is not about the public policy choices that the voters in San Francisco have made by enacting Prop H. Thus we need not, and do not pass judgment on the merits of Prop H, or engage ourselves in the sociological and cultural debate about whether gun control is an effective means to combat crime").

II. THERE IS NO PRESUMPTION AGAINST PREEMPTION IN THIS MATTER

Within the City's mostly unobjectionable and largely superfluous introductory generalities regarding California firearms preemption jurisprudence (Petition at pp. 8-18) will be found at least one misleading statement. In outlining California firearms preemption law, the City cites a line of cases to support its contention that this Court should presume that Proposition H is not preempted by State law. (Petition at p. 10.) Although it is true that in some circumstances courts follow a "presumption against preemption," the court below noted that any such presumption is overcome when the Legislature is aware of a judicial finding of statutory preemption and nonetheless reenacts the statute upon which the preemption was based:

> [T]he Legislature is deemed to be aware of existing laws and judicial decisions in effect at the time legislation is enacted and to have enacted and amended statutes in the light of such decisions as have a direct bearing upon them.' [Citation.]" Given the presumption of the Legislature's awareness of Doe during the three times it has reenacted Penal Code section 12026 since the Doe decision, it is reasonable to assume that if the Legislature intended to reopen this area of regulation to local units of government, it would have addressed the issue specifically by repealing or amending Penal Code section 12026. Because it did not do so, we conclude that the Legislature intended to maintain the prohibitions placed on local government that are contained in Penal Code section 12026, as interpreted by the Doe decision.

(*Fiscal v. San Francisco*, supra, 158 Cal.App.4th 895, 908-909; Slip Opinion at pp. 11-12 (citations omitted).)

As correctly noted by the Appellate Court, in 1982 the *Doe* court specifically found that Penal Code section 12026 deprives "local entities of any power to regulate handgun possession on private property." (*Id.* at p. 908.) Since the decision of the *Doe* court, Penal Code section 12026 has been reenacted three times: in 1988, in 1989, and in 1995. (*Fiscal*, supra, 158 Cal.App.4th 895, 908 & n. 5; Slip Opinion at p. 11.) Each reenactment of Section 12026 ratified *Doe's* holding that Section 12026 preempts local bans on handgun possession. Even if the Court were convinced by the City's argument that *Doe* was incorrectly decided in 1982, the Legislature's threefold ratification of *Doe*'s holding makes that holding sacrosanct. Tellingly, the City's Petition for Review neglects any mention of the Legislature's ratification of the preemption found in *Doe*.

III. TO THE EXTENT THE APPELLATE COURT'S DECISION CHANGES THE STATUS QUO AT ALL, IT *ADDS* CERTAINTY

The City's major substantive arguments for Supreme Court review are contained in the final ten pages of the Petition. (Petition at pp. 18-27.) The City argues that the decision below conflicts with the broad approach of prior firearms cases, conflicts with specific holdings in particular decisions, and creates uncertainly as to what type of local government regulations are permissible. Each of these contentions is demonstrably

false.

A. The Appellate Court's Decision is Consistent with Caselaw Interpreting Government Code section 53071

The City argues that the decision below conflicts with this Court's interpretation of Government Code section 53071 in *Nordyke v. King* (2002) 27 Cal.4th 875 and *Great Western Shows v. County of Los Angeles*, supra, 27 Cal.4th 853. (Petition at pp. 18-20.) But as the Appellate Court painstakingly pointed out, these cases concern a local government's ability to control the use of its own public property and are "palpably distinguishable" from this matter:

> In deciding *Great Western* and *Nordyke*, our Supreme Court was careful to confine its preemption analysis to the question of whether state law authorizing gun shows necessarily compelled counties to allow their property to be used for this purpose. The court found that there was acceptable interplay between the local government's exercise of its power to control the use of its property and the state government's regulation of gun shows to permit local governments to ban the sale of firearms and ammunition at gun shows on county-owned public property. Neither case can be properly read to extend that limited preemption inquiry to a case such as this one involving a local government's attempt to enact an absolute and total ban of firearm and ammunition sales on all property, public and private, within its geographic jurisdiction.

(*Fiscal*, supra, 158 Cal.App.4th 895, 917-918 (citations omitted); Slip Opinion at p. 22.)

Moreover, it is not the case, as the City implies, that Prop H invalidates only automatically-created licenses of the sort created by Penal

Code section 12025.5, which justifies carrying a concealed weapon when a person reasonably believes he or she is in grave danger and has obtained a restraining order related to that fear of bodily harm. As the Appellate Court noted, "at a minimum, section 3 of Prop H would invalidate all licenses possessed by City residents to carry a concealed weapon issued under Penal Code section 12050 . . ." (*Fiscal*, supra, 158 Cal.App.4th 895, 911; Slip Opinion at p. 14.) There can be no reasonable dispute that a concealed carry permit issued pursuant to Penal Code section 12050 is a "license," nor is there any reasonable dispute that such a license would be impermissibly voided by Prop H.

Furthermore, the City's objection to the Appellate Court's "overbroad" interpretation of licensing (Petition at p. 19) is puzzling because that interpretation is precisely the interpretation that this Court applied in *Galvan*. (70 Cal.2d 851.) The *Galvan* court did not adopt the City's narrow definition of a "license" as a piece of paper issued by an authority. Rather, the *Galvan* court defined "licensing" as the exercise of power to give "permission or authority to do a particular thing or exercise a particular privilege." (70 Cal.2d at p. 851.)

The decision below, therefore, merely reiterates the definition of "license" employed by this Court for at least the past thirty-nine years.

The City's rejection of the Appellate Court's determination that Prop H "effectively cancels" the licenses of firearms dealers and is thus preempted ignores that reality of state regulation of firearms dealers. In many ways, the State requires firearms dealers to act as quasi-State agents by issuing and administering licenses related to both firearms and the people who wish to purchase firearms. For example, Penal Code section 12071 requires that a prospective handgun purchaser pass a knowledge test and acquire a "handgun safety certificate" (i.e., a license) before being allowed to buy any handgun. And once a particular handgun is selected from a state list of handguns that may be sold (i.e., are licensed) in California, Penal Code section 12072 requires the dealer to hold the gun for ten days while the state completes a background check on the potential buyer. Only when the potential buyer is determined to be eligible to possess the firearm is the sale allowed (i.e., licensed) to proceed.

It is the firearms dealer that issues such certificates and withholds or allows the final transfer. A complete prohibition on firearms sales would affect the administration of all such licenses in the jurisdiction.

Finally, the City's reliance on *Suter v. City of Lafayette* (1997) 57 Cal.App.4th 1109 is misplaced. *Suter* concerned the power of local governments to require that a firearms dealer obtain land-use permits and

police permits (i.e., business licenses) – not any power of a local government to ban firearms sales completely. (*Id.* at p. 1116.) The effect of *Suter* is merely that local governments may require firearms dealers to obtain the same sorts of business permits that they require of other businesses, not that local governments may circumvent the State Legislative scheme by banning sales completely. In other words, it was and still is the law that cities can regulate firearms businesses like any other business, but they cannot run them out of town.

B. The Appellate Court's Decision is Consistent with Caselaw Interpreting Penal Code Section 12026

The City also argues that the Appellate Court, in finding Prop H's ban on handgun sales preempted by Penal Code section 12026, "blaze[d] wholly new territory" and extended Section 12026's scope. In fact, the Appellate Court's reading of Section 12026 is conventional and consistent with prior caselaw, including *Doe* and *CRPA*.

On a first note, it is puzzling that the City argues that the lower court's reading of Section 12026 as preempting Prop H's sales ban is "breathtaking[ly] broad." (Petition at p. 23.) Section 12026 (b) explicitly prohibits local governments from requiring a "permit or license to purchase . . ." Just as *Doe* recognized that it "strains reason to suggest that the state Legislature would prohibit licenses and permits but allow a ban on

possession" (136 Cal.App.3d 509, 518), it equally strains reason to suggest that the Legislature would prohibit local governments from requiring licenses and permits to purchase handguns but then allow a complete ban on the sale of handguns. There is nothing breathtaking about that conclusion.

Moreover, in deciding *Doe*, the Appellate Court found that in enacting Penal Code section 12026, "the Legislature intended to occupy the field of residential handgun possession to the exclusion of local governmental entities." (136 Cal.App. 509, 518.) That is, the Legislature intended to create and protect a statutory "right" for private individuals to possess handguns in their residences. (See also *Sippel v. Nelder* (1972) 24 Cal.App.3d 173, 177 (holding that a person who is not in a prohibited class under state law is "*entitled*, under Penal Code, section 12026, to possess a concealed firearm at his residence. . .") (emphasis added).) In 1994, the California Attorney General explicitly noted that Section 12026 "recognizes the right of an individual 'to purchase, own, possess, keep, or carry' pistols, revolvers, and concealable firearms on one's own private property . . ." (77 Ops.Atty.Gen. Cal. 147.) And as noted above, the Legislature's reenactment of Section 12026 in 1988, 1999, and 1995 without comment as to either *Sippel* and *Doe* (in 1988, 1989, and 1995) or the Attorney General's conclusion (in 1995) ratifies that conclusion.

A corollary to Section 12026's creation of a statutorily-protected ability / right to possess handguns in a private residence is a prohibition on local ordinances that prohibit the sale of all handguns. As the United States Supreme Court has noted in the context of a state law prohibiting the distribution of contraceptives to minors, "[a] total prohibition against sale of contraceptives, for example, would intrude upon individual decisions . . . as harshly as a direct ban on their use." (*Carey v. Population Services International* (1977) 431 U.S. 678, 677-678.) "Indeed, in practice, a prohibition against all sales, since more easily and less offensively enforced, might have a more devastating effect upon the freedom to choose contraception." (*Id.* at p. 678.) Just as a recognized right to use contraception precludes a ban on the sale of contraceptives, a right to possess handguns precludes a ban on the sale of handguns. The Appellate Court's reading of Section 12026 as prohibiting sales of handguns is entirely consistent with both common sense and standard rights jurisprudence.

Furthermore, the City's reliance on language in *California Rifle and Pistol Association v. West Hollywood* (1998) 66 Cal.App.4th 1302 is misplaced. As the decision below correctly noted, *CRPA* concluded that "cities had some leeway to ban the sale of on particular gun deemed to

present dangers to a local community above and beyond the dangers presented by handguns in general." (*Fiscal*, supra, 158 Cal.App.4th 895, 916; Slip Opinion at p. 20.) But the *CRPA* decision did not "stand for the principle that municipalities are free to ban the sale of *all* firearms" and the *CRPA* court was "careful to make this distinction . . . ." (*Id.*) *CRPA* and the decision of the court below are entirely consistent, and there is no conflict for this Court to resolve – particularly not in light of the fact that in any event the *CRPA* decision has essentially been superseded by statute, as discussed below.

C. The Decision Below Properly Interpreted the Unsafe Handgun Act

The Petition claims that the court below erred in holding that the UHA preempts local attempts to ban handguns which state law declares "may be sold." (Petition at pp. 24-27.) But the Petition's treatment of this issue omits *any* discussion of the dispositive points underlying the decision below. Specifically, the Appellate Court found that: a) while the UHA was under consideration the Legislature was expressly warned by a city that, as written, the UHA would preempt its and other city handgun sale ban ordinances; b) the warning was repeated in a Senate committee report as to both current and future local handgun sale bans; c) the UHA's author responded to these warnings by proposing language that would have

preserved such ordinances; d) the Legislature rejected that language. (Slip Opinion at p. 18.) Thus, in enacting the UHA the Legislature apparently contemplated that it would preempt local handgun sale bans. The Petition fails to mention this pertinent legislative history at all, much less offer an explanation of why the history does not support a finding of preemption.

The Petition also neglects to mention that, as the Appellate Court noted, following the passage of the UHA "cities, including San Francisco, repealed their own Saturday Night Special ordinances . . . in recognition of 'the UHA's preemptive effect on the topic. . ." (Slip Opinion at p. 18.) Again, the City has failed to offer any explanation for the repeal of its Saturday Night Special ordinance other than the preemptive effect of the UHA. The City's strained analysis of the applicability of *CRPA,* which was decided before the adoption of the UHA, and *Great Western*, which considered a different subject matter entirely, must yield to the clear preemptive intent of the UHA evident in its language and legislative history.

CONCLUSION

The City's Petition all but concedes that Prop H is preempted by state law. In seeking Supreme Court review, the City seems more interested in modifying the language and logic of the Appellate Court's opinion than

in having Prop H reinstated. The Appellate Court's decision, however, contains no misstatements or misinterpretations of law that would justify review.

The City is obviously unhappy with the decision's reaffirmation of firearms preemption law in California when it comes to banning the sale or possession of firearms. And the City would certainly prefer that the opinion of the Court below, an opinion that clearly articulates how Penal Code section 12026, Government Code section 53071, and the Unsafe Handgun Act preempt local bans on the possession and sale of firearms, simply not exist. But the City's displeasure with the result of its latest foray into civilian disarmament is not grounds for Supreme Court review.

Respondents respectfully request that the Court deny the City's request for review.

DATED: March 10, 2008

TRUTANICH • MICHEL, LLP

C. D. Michel
Attorneys for Plaintiffs'/Respondents'

CERTIFICATE OF WORD COUNT

(Cal. Rules of Court, rule 8.504(d))

The text of this brief consists of 4348 words as counted by the Corel WordPerfect version 12 word-processing program used to generate the brief.

DATED: March 10, 2008

TRUTANICH • MICHEL, LLP

C. D. Michel
Attorneys for Plaintiffs'/Respondents'

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 10, 2008, I served the foregoing document(s) described as

RESPONDENT'S OPPOSITION TO PETITIONER'S PETITION FOR REVIEW

on the interested parties in this action by placing
[ ] the original
[X] 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 10, 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 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