



Attorneys At Law

Russ Building / 235 Montgomery Street
San Francisco / CA 94104

T 415.954.4400 / F 415.954.4480
www.fbm.com

RODERICK M. THOMPSON
rthompson@fbm.com
D 415.954.4445

March 10, 2008

Via Hand-Delivery

The Honorable Chief Justice Ronald M. George and
Honorable Associate Justices
California Supreme Court
350 McAllister Street
San Francisco, CA 94102-3600

Re: Request for Depublication of *Fiscal v. City and County of San Francisco*,
No. A115018 (First Appellate District, Division Four, Jan. 9, 2008);
Petition For Review filed 2/19/08 (Case No. S160968)

Dear Chief Justice George and Associate Justices:

Pursuant to Rule 8.1125(a) of the California Rules of Court, Legal Community Against Violence ("LCAV"), hereby requests that the Court order depublication of the above-captioned decision of the Court of Appeal.

Formed in the wake of the 1993 assault-weapon massacre at 101 California Street in San Francisco, LCAV is a public interest law center dedicated to preventing gun violence. It is the country's only organization devoted exclusively to providing legal assistance in support of gun violence prevention. Serving governmental entities and advocacy organizations in California and throughout the United States, LCAV concentrates on state and local policy reform and has particular interest in, and experience with, local gun ordinances in California. It has assisted counties and municipalities in crafting a variety of local regulations to fit community needs and, as amicus curiae, it has provided the judiciary with informed analysis of the legal bases for such local regulation.

LCAV makes this request for depublication because the *Fiscal* decision misstates the law of preemption regarding local gun violence prevention ordinances. Specifically, the *Fiscal* opinion 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. LCAV urges the Court to grant the petition for review filed by Defendants City and County of San Francisco, et al., which would result in automatic depublication. But if the petition for review is not granted, LCAV requests that the Court order



depublishation of the *Fiscal* decision in order to avoid ambiguity in the case law on this important issue. If left unmodified, the *Fiscal* decision could lead to confusion, encourage baseless challenges to local firearm regulations, and chill the enactment of new gun-safety ordinances.

The *Fiscal* decision incorrectly suggests that Penal Code section 12026 broadly sweeps to prohibit "localities from restricting handgun possession in an individual's home, business, or private property" (Slip Op. at 8). While the preemptive scope of Section 12026 may be debatable, no court has found it to prohibit local governments from "restricting" many important aspects of handgun possession, such as requiring gun owners to use trigger locks or to safely store their firearms. More fundamentally, the *Fiscal* decision incorrectly interprets this Court's exhaustive preemption analysis in *Great Western Shows*. For example, the *Great Western* decision concluded that previous cases demonstrated "that the Legislature has chosen not to broadly preempt local control of firearms but has targeted certain specific areas for preemption." (*Great Western, supra*, 27 Cal.4th at p. 864.) Yet the *Fiscal* decision asserts that the opposite is true. The opinion concludes with the following unfortunate—and unwarranted—warning:

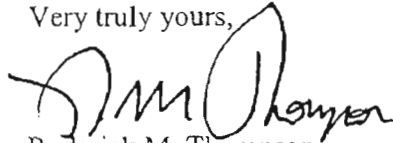
"[W]hile courts have tolerated subtle local encroachment into the field of firearms regulation, laws which significantly intrude upon the state prerogative have been uniformly struck down as preempted. Therefore, when it comes to regulating firearms, local governments are well advised to trade lightly. (See *California Dreamin', supra*, 30 U.S.F.L. Rev. 395.)"

(Slip Op. at 24) (citations omitted). The only authority offered in support of this "advice" is a law review article that actually *encourages* local firearm regulation. See Eric Gorovitz, *California Dreaming: "The Myth of State Preemption of Local Firearm Regulation"* (1996) 30 U.S.F. Law Rev. 395, 426 ("Like other public health problems, the firearm injury epidemic demands local action . . . I hope to encourage local governments . . . to join with their neighbors to protect all Californians from this devastating epidemic.").

As the City and County of San Francisco ably summarizes in its petition for review; the scourge of gun violence in California and throughout the nation remains unabated. It is particularly important that cities and other local governments not be discouraged needlessly from protecting their citizens to the fullest extent allowed by state law.

We appreciate the Court's attention to this important issue.

Very truly yours,



Roderick M. Thompson

RMT:avd

cc: All Counsel

DECLARATION OF SERVICE

Case Name: *Paula Fiscal, et al. v. The City and County of San Francisco, et al.*
 Case Nos.: Court of Appeal; First Appellate Dist., No. A115018
 (San Francisco County Superior Court Case No. 505960)

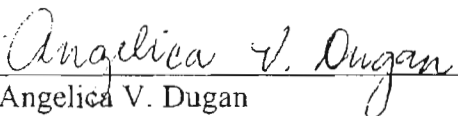
I, Angelica V. Dugan, declare:

I am employed at Farella Braun & Martel LLP, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. On March 10, 2008, I served the attached

Letter Brief

<input checked="" type="checkbox"/>	FACSIMILE -- same day delivery to the addressee's facsimile number to all listed below.
<input checked="" type="checkbox"/>	MAIL -- placed in the US mail at San Francisco, postage fully prepaid. I am familiar with this firm's practice for processing of US mail. In the ordinary course of business this firm deposits US mail on the day collected.
C.D. Michel, Esq. Don B. Kates, Esq. Trutanich Michel, LLP 180 East Ocean Blvd., Suite 200 Long Beach, CA 90802 Telephone: (562) 216-4444 Facsimile: (562) 216-4445 Attorneys for Paula Fiscal, <i>et al.</i> , Plaintiffs and Respondents	Dennis J. Herrera, Esq. Wayne Snodgrass, Esq. Vince Chhabria, Esq. 1 Dr. Carlton B. Goodlett Place City Hall, Room 234 San Francisco, CA 94102 Telephone: (415) 554-4675 Facsimile: (415) 554-4699 Attorneys for City and County of San Francisco, <i>et al.</i> , Defendants and Appellants
<input checked="" type="checkbox"/>	PERSONAL SERVICE – caused delivery by hand to the addressee set forth below via Specialized Legal Services.
Honorable Paul H. Alvarado San Francisco Superior Court 400 McAllister Street San Francisco, CA 94102	California Court of Appeal First Appellate District, Division Four 350 McAllister Street San Francisco, CA 94102

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on March 10, 2008, at San Francisco, California.



 Angelica V. Dugan