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Via: U.S. Mail

Dear Chief Justice George and Associate Justices:

Pursuant to Rule 8.500 (g) of the California Rules of Court, *amici curiae* Senator H.L. Richardson and Gun Owners of California ask this Court to deny the City and County of San Francisco's Petition for Review.

Interest of the Amici Curiae

Senator H.L. Richardson (Retired)

Senator H.L. "Bill" Richardson first entered the California Senate in 1966 – the same year that Ronald Reagan was elected governor. During the ensuing twenty-two years, Senator Richardson bypassed three opportunities to run for Congress, choosing to remain in the Senate and the GOP leadership. The result was a record of success, even in the face of partisan opposition, including authoring the bill that became Government Code section 53017 at issue herein. Senator Richardson left the Senate in 1988.

Gun Owners of California

Gun Owners of California ("GOC") is a California non-profit corporation organized in 1974 and associated with the Gun Owners of America, Inc. The organizations have offices in Sacramento, California and in Falls Church, Virginia, conveniently located to facilitate lobbying state and federal legislatures. GOC is a leading voice in California supporting the right to self defense and the right to keep and bear arms guaranteed by the Second Amendment to the United States Constitution. GOC monitors government activities at the national, state, and local levels that may affect the rights of all Americans who choose to own firearms.

The City's Petition for Review is, in Effect, an Request for an Advisory Opinion

The City's Petition for Review, filed February 19, 2008, all but concedes that the Court of Appeal correctly determined that the Prop H handgun ban is preempted by Penal Code section

12026. Instead of asking this Court to reverse that determination, the City asks this Court to "resolve [the] confusion" created as a result of the decision below. (Petition for Review at p. 4.) To that end, the City asks this Court to "settle the important question of Section 53071's preemptive reach" (Petition for Review at p. 22), "settle the important question of how broadly [Section 12026]'s preemptive reach extends" (Petition for Review at p. 24), and "settle the important question of the [Unsafe Handgun Act's] preemptive scope" (Petition for Review at p. 27).

The City's March 20, 2008 Reply Brief in Support of its Review Petition elaborates on why it wishes this Court to review the decision of the Court of Appeal. Namely, the City argues that "[t]he Opinion will create substantial uncertainty on the part of local legislative bodies about whether they can adopt many kinds of local regulations of handgun sales or possession, even regulations that fall well short of absolute bans." (Reply at pp. 11-12.) Therefore, the City suggests that "[t]his Court should grant review to resolve the degree to which Section 12026 preempts local laws that regulate handgun sales or possession." (Reply at p. 12.) The City even presents this Court with a list of hypotheticals that it believes this Court should resolve:

- "Would local laws that regulate the manner in which handguns must be stored in the home, in order to reduce accidental shootings, be preempted?" (Reply at p. 12.)
- "What about local laws that limit the amount of handgun ammunition a person may buy at one time?" (*Id.*)
- "Or local laws that require dealers to obtain additional liability insurance, adding to dealers' costs of doing business?" (*Id.*)

As is patently obvious, none of these questions was before the trial court or the Court of Appeal. This case concerns the legal validity of Proposition H, a complete handgun ban – not every hypothetical the City can concoct regarding the application of State law to ordinances that either do not yet exist or have not yet been challenged in court. In asking this Court to answer questions that were not presented to the trial court and conclusively determine the application of Penal Code section 12026, Government Code section 53071, and the Unsafe Handgun Act to every factual scenario the City can imagine, the City is, in effect, asking this Court to issue an advisory opinion. This Court should decline to indulge the City in this regard.

Wilson v. Transit Authority of Sacramento (1962) 199 Cal.App.2d 716 extensively considered the extent to which an actual controversy must exist between the parties in order for a court to render an opinion. Specifically, that case noted that there must be a "controversy of concrete actuality as opposed to one which is merely academic or hypothetical; for as has been aptly said, a statute providing for a declaration of rights 'does not constitute a court a fountain of legal advice.'" (*Id.* at p. 722 (citations omitted).) Citing to 26 Corpus Juris Secundum, Declaratory Judgments, the court elaborated that a "difference of opinion does not give rise to a justiciable case until an actual concrete controversy arises" and that "[d]eclaratory judgment statutes do not authorize the courts to give advisory opinions." (*Id.*)

The *Wilson* court further looked to the United States Supreme Court for assistance on the meaning of "justiciable controversy:"

> A 'controversy' in this sense must be one that is appropriate for judicial determination. . . A justiciable controversy is thus distinguished from a difference or dispute of a hypothetical or abstract character; from one that is academic or moot. . . . The controversy must be definite and concrete, touching the legal relations of parties having adverse legal interests. . . . It must be a real and substantial controversy admitting of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts.
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> (*Wilson*, supra, 199 Cal.App.2d 716, 723 (quoting *Aetna Life Ins. Co. v. Haworth* (1937) 300 U.S. 227).)

The *Wilson* court summarized the justiciable controversy doctrine as follows: "In short, the controversy must be of a character which admits of specific and conclusive relief by judgment within the field of judicial determination, as distinguished from an advisory opinion upon a particular or hypothetical state of facts." (*Id.* at p. 724.) As the questions raised on page 12 of the City's Reply Brief in support of its Petition for Review leave no doubt, in asking this Court for review of the Court of Appeal's decision, the City is asking this Court to rule on multiple hypothetical fact patterns that were not considered by either the trial court or the Court of Appeal. The City is asking for an "advisory opinion."

Conclusion

As aptly noted in the Respondents' Answer to the City's Petition for Review, the Court of Appeal's decision is an articulate restatement and clarification of California firearms preemption law. To the extent that the decision clarifies the law, it increases certainty as to the extent of State preemption of local firearms ordinances. This is a laudable and positive development. But the Court of Appeal could not have – and should not have – rendered an opinion as to the validity of every local firearms ordinance imaginable. The validity of those hypothetical ordinances will have to be determined at a later date. This is not unusual, but is the result of the ordinary and fundamental function of the American judicial system. As the City's Petition for Review represents an improper request for an advisory opinion, this Court should deny the Review Petition.

Regards,

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Attorney for Amici