SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

UNLIMITED JURISDICTION

PAULA FISCAL et al.,

Plaintiffs and Petitioners,

vs.

CITY AND COUNTY OF SAN FRANCISCO et al.,

Defendants and Respondents.

Case No. CPF-05-505960

STATEMENT OF DECISION AND ORDER GRANTING MOTION FOR WRIT OF MANDATE AND/OR PROHIBITION OR OTHER APPROPRIATE RELIEF

Hearing Date:	February 23, 2006
Hearing Judge:	Hon. James L. Warren
Time:	9:30 a.m.
Place:	Dept. 301
Date Action Filed:	Dec. 28, 2005
Submission Date:	March 20, 2006

STATEMENT OF DECISION AND ORDER GRANTING MOTION FOR WRIT OF MANDATE AND/OR PROHIBITION OR OTHER APPROPRIATE RELIEF

This case involves Proposition H (Prop H), the so-called "Gun Control Initiative" passed by the voters of San Francisco on November 8, 2005.[1] On February 23, 2006, this Court heard the Motion for Writ of Mandate and/or Prohibition or Other Appropriate Relief of Petitioners Paula Fiscal, Larry P. Barsetti, Rebecca Kidder, Dana Drenkowski, John Candido, Alan Byard, Andrew Sirkis, National Rifle Association, Second Amendment Foundation, California Association Of Firearms Retailers, Law Enforcement Alliance Of America, and San Francisco Veteran Police Officers Association. Chuck Michel and Don Cates of Trutanich Michel appeared for Petitioners, while Deputy City Attorneys Wayne Snodgrass and Vince Chhabria appeared for the named Respondents, the City and County of San Francisco, San Francisco Police Department, and San Francisco Chief of Police Heather Fong. Roderick Thompson appeared on behalf of *amicus curiae* Legal Community Against Violence in support of Respondents, but at this Court's direction following objection by Petitioners, did not participate in oral argument. Other *amici* filed briefs in support of Petitioners, but did not appear at the hearing on Petitioners' motion.

This Court has reviewed and considered the memoranda, declarations, requests for judicial notice, and other papers submitted by the parties and/or *amici*, both in support of and in opposition to Petitioners' motion. The Court has also considered the arguments of counsel presented at the hearing, and has carefully reviewed the law to which the Court has been referred by the parties, as well as that which the Court has researched on its own. In light of all the foregoing, the Court now enters this Order Granting Petitioners' Motion for A Writ of Mandate.

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[1] By stipulation of the parties, implementation of Prop H has been held in abeyance pending the outcome of this writ petition.

A. Proposition II

Proposition H is entitled "Initiative ordinance prohibiting the sale, manufacture and distribution of firearms in the City and County of San Francisco, and limiting the possession of handguns in the City and County of San Francisco." (Ex. A to Petitioners' Memorandum of Points and Authorities.) It contains eight separate sections.

Section 1 is entitled "Findings." The Findings state that "[h]andgun violence is a serious problem in San Francisco." (*Id.*, § 1.1.) Handgun violence accounted for 67% of firearms injuries or deaths in San Francisco in 1999, described as the latest year for which information is available. (*Id.*) Section 1 states that Proposition H is not intended "to affect any resident of other jurisdictions with regard to handgun possession, including those who may temporarily be within the boundaries of the City and County," and that therefore "the provisions of Section 3 apply exclusively to residents of the City and County of San Francisco." (*Id.*, §§ 1.3, 1.5.) Section 1 invokes the "home rule" power arising under Article XI of the California Constitution and describes that power as allowing "counties to enact laws that exclusively apply to residents within their borders, even when such a law conflicts with state law or when state law is silent." (*Id.*, §1.4.)

Section 2 is entitled "Ban on Sale, Manufacture, Transfer or Distribution of Firearms in the City and County of San Francisco." It states, in its entirety, that "[w]ithin the limits of the City and County of San Francisco, the sale, distribution, transfer and manufacture of all firearms and ammunition shall be prohibited." (*Id.*, §2.)

Section 3 is entitled "Limiting Handgun Possession in the City and County of San Francisco." It states that within San Francisco's boundaries, "no resident of the City and County of San Francisco shall possess any handgun unless required for professional purposes, as enumerated herein. Specifically, any City, state or federal employee carrying out the functions

of his or her government employment, including but not limited to peace officers as defined by California Penal Code Section 830 et seq. and animal control officers may possess a handgun." (*Id.*, §3.) Section 3 also states that a member of the active military, the National Guard, and a security guard may possess a handgun "while actually employed and engaged in protecting and preserving property or life within the scope of his or her employment." (*Id.*) Section 3 allows any San Francisco resident to surrender his or her handgun without penalty at any district station of the San Francisco Police Department or San Francisco Sheriff's Department within 90 days after Section 3 becomes effective. (*Id.*)

Section 4 is entitled "Effective Date." It states that Proposition H shall become effective January 1, 2006. (*Id.*, §4.) As noted earlier (see, fn. 1, *supra*) after this litigation was filed, the parties stipulated to delay the enforcement of Proposition H to allow this Court to hear and decide Petitioners' writ motion.

Section 5 is entitled "Penalties." It directs the City's Mayor to propose, and the Board of Supervisors to adopt, penalties for violations of Proposition H. (*Id.*, §5.)

Section 6 is entitled "State Law." It provides that "[n]othing in this ordinance is designed to duplicate or conflict with California state law" or to "create or require any local license or registration for any firearms, or create an additional class of citizens who must seek licensing or registration." (*Id.*, §6.) Section 6 also states that Proposition H shall not apply to "any person currently denied the privilege of possessing a handgun under state law." (*Id.*)

Section 7 is entitled "Severability." It states that "[i]f any provision of this ordinance or the application thereof to any person or circumstances is held invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications or [sic] this ordinance which can be given effect without the invalid or unconstitutional provision or application. To this end, the provisions of this ordinance shall be deemed severable." (*Id.*, §7.)

Section 8 is entitled "Amendment." It authorizes the Board of Supervisors to "amend this ordinance in the furtherance of reducing handgun violence." (*Id.*, §8.)

B. Petitioners' action

Petitioners, consisting of individuals and organizations, contend that Proposition H is invalid in its entirety. Petitioners seek a writ of mandate and other equitable relief on several grounds.

First, Petitioners assert that Section 3 of the initiative, which generally prohibits San Francisco residents from possessing handguns within city limits, is invalid. Relying primarily on *Doe v. City and County of San Francisco* (1982) 136 Cal.App.3d 509, Petitioners claim that Section 3 conflicts with California Penal Code section 12026, as well as California Government Code section 53071.[2] They assert that Respondents' reliance on their home rule power is misplaced because Section 3 implicates a matter of statewide concern. Petitioners also contend that by prohibiting San Francisco residents from possessing handguns within city limits while allowing such possession by non-residents, Section 3 irrationally discriminates against San Francisco residents in violation of federal and state equal protection guarantees.

Second, Petitioners contend that if Section 3 is invalidated, the Court must strike down Proposition H in its entirety. Petitioners assert that the voters who enacted the initiative would not have wanted to prohibit sales, transfers, or distribution of rifles and shotguns within San Francisco if city residents were nonetheless able to possess handguns.

Third, Petitioners contend that Section 2's prohibition against sales, transfers, and distribution of all firearms and ammunition is preempted by Penal Code section 12131(a), Penal Code section 12026, and Government Code section 53071. Petitioners also maintain that Section

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[2] Henceforth, all references to various "Codes" will be to Codes of the State of California.

2's ban on sales, transfers and distribution of firearms and ammunition will undermine law enforcement and the criminal justice system.

The Court will address each of these arguments in turn.

C. Section 3's prohibition against handgun possession by San Francisco residents is unenforceable. It conflicts with Penal Code section 12026 and implicates an issue of statewide concern

1. The home rule power to regulate municipal affairs

Article XI, Section 5(a) of the California Constitution states:

> It shall be competent in any city charter to provide that the city governed thereunder may make and enforce all ordinances and regulations in respect to municipal affairs, subject only to restrictions and limitations provided in their several charters and in respect to other matters they shall be subject to general laws. City charters adopted pursuant to this Constitution shall supersede any existing charter, and with respect to municipal affairs shall supersede all laws inconsistent therewith.

Article XI, Section 5(a) renders charter cities "supreme and beyond the reach of legislative enactment" with respect to municipal affairs. (*California Federal Savings and Loan Ass'n v. City of Los Angeles* (1991) 54 Cal.3d 1, 12 (hereinafter "*CalFed*"); *Bishop v. City of San Jose* (1969) 1 Cal.3d 56, 61.) This home rule power is limited, however. It "reserves to charter cities the right to adopt and enforce ordinances that conflict with general state laws, provided the subject of the regulation is a 'municipal affair' rather than one of 'statewide concern.'" (*Horton v. City of Oakland* (2000) 82 Cal.App.4th 580, 584-85.) In addition, "if there is a doubt as to whether or not [a] regulation is a municipal affair, that doubt must be resolved in favor of the legislative authority of the state." (*Ex Parte Daniels* (1920) 183 Cal. 636, 639.)

2. The *CalFed* analysis

In adjudicating whether the voters properly relied on their home rule authority to adopt Section 3, this Court follows the analysis dictated by *CalFed* and its progeny.

The Court must initially determine whether two "preliminary considerations" are present: (1) Section 3 must "implicate[] a municipal affair," and (2) it must "pose[] a genuine conflict

with state law." (*CalFed, supra*, 54 Cal.3d at p. 17.) "Where the preliminary conditions are satisfied, that is, where the matter implicates a 'municipal affair' and poses a genuine conflict with state law, the question of statewide concern is the bedrock inquiry through which the conflict between state and local interests is adjusted." (*CalFed, supra*, 54 Cal.3d at p. 17.)

Determining whether a charter city provision impacts a municipal or statewide concern is not always an easy task. "[T]he hinge of decision is the identification of a convincing basis for legislative action originating in extramunicipal concerns, one justifying legislative supersession based on sensible, pragmatic considerations." (*Id.* at p. 18.) "In other words, we must be satisfied that there are good reasons, grounded on statewide interests, to label a given matter a 'statewide concern.'" (*Johnson, supra*, 4 Cal.4th at p. 405.)

a. Section 3 implicates a municipal affair

This Court has found no case in which a court refrained from completing the home rule analysis because a local measure did not implicate a municipal affair. Rather, the courts have determined the existence of a municipal affair in a cursory fashion and moved to the next stage of the analysis. (See, *e.g.*, *Cawdrey v. City of Redondo Beach* (1993) 15 Cal.App.4th 1212, 1223 (succinctly noting that "Charter section 26 of the City here implicates a municipal affair, that is the election of municipal officers.").) In this case, the subject of Section 3 -- gun violence and the possession of handguns within San Francisco by San Francisco residents -- is clearly a matter of significant municipal concern. Handgun violence in the City of San Francisco has exacted a serious emotional and fiscal toll on those who live in and visit the city. The Court finds, therefore, that the first "preliminary consideration" of *CalFed* is satisfied.

b. Section 3 conflicts with Penal Code section 12026

The Court concludes and the parties agree that *CalFed*'s second "preliminary consideration" -- a conflict with state law -- is also met. Section 3 conflicts with Penal Code section 12026. This is clearly established in *Doe*, *supra*, where the court "infer[red] from Penal Code section 12026 that the Legislature intended to occupy the field of residential handgun possession to the exclusion of local government entities." (136 Cal.App.3d at p. 518.)

In *Doe*, the court addressed a handgun ordinance that banned residents and non-residents alike from possessing handguns within San Francisco. That ordinance, however, exempted persons authorized to carry handguns pursuant to Penal Code section 12050, as well as persons authorized to sell handguns pursuant to Penal Code section 12070. After analyzing the relevant law, the court invalidated the ordinance, ruling that it created a *de facto* licensing scheme in contravention of Government Code section 53071 and Penal Code section 12026. The court explained that the effect of the ordinance was to create a new class of persons who would be required to obtain a license or permit in order to possess a handgun in San Francisco. The court further held that even if the ordinance did not create a "licensing" requirement within the purview of Government Code section 53071 and Penal Code section 12026, the latter statute still preempted the ordinance because Penal Code section 12026 occupied the field of residential handgun possession to the exclusion of local government entities.

c. Section 3's prohibition implicates significant statewide interests

"[T]he question of statewide concern is the bedrock inquiry through which the conflict between state and local interests is adjusted." (*CalFed*, 54 Cal.3d at p. 17.) *CalFed* and numerous other cases note that there is no strict definition of what constitutes a "municipal affair." Nevertheless, there are some definite guidelines as to what things are not municipal affairs, and these guidelines inform the Court with respect to the inquiry here. One such

guidepost is that a local ordinance may override state law only if the state has no substantial interest in the subject, *i.e.*, where the ordinance concerns a "*purely* municipal affair[]." (*Jackson v. City of Los Angeles* (2003) 111 Cal.App. 4th 899 (quoting *Baggett v. Gates* (1982) 32 Cal.3d 8, 136) (emphasis added); see also *Committee of Seven Thousand v. Superior Court* (1988) 45 Cal.3d 491, 505 (distinguishing "*purely* municipal affairs" from matters of "statewide concern" and specifying that "statewide" refers to all matters of more than local concern. (emphasis added).)

Under *CalFed*, this Court must adjust the conflict between any state and local interests by "allocat[ing] the governmental powers under consideration in the most sensible and appropriate fashion as between the local and state legislative bodies." (*CalFed*, supra, 54 Cal.3d at p. 17.) In determining whether "the subject of the regulation is a 'municipal affair' rather than one of 'statewide concern'" (*American Financial Services Association v. City of Oakland* (2005) 34 Cal.4th 1239, 1251), the Court must uphold Section 3 unless it finds "a convincing basis for [state] legislative action originating in extramunicipal concerns, one justifying legislative supersession based on sensible, pragmatic considerations." (*Johnson*, supra, 4 Cal.4th at p. 405.) *CalFed* "requir[es] as a condition of state legislative supremacy, a dimension demonstrably transcending identifiable municipal interests." (*Johnson v. Bradley*, 4 Cal.4th 389, 399-400.) "Statewide concern" refers to "all matters of more than local concern and thus includes matters the impact of which is primarily regional rather than truly statewide." (*Committee of Seven Thousand v. Superior Court* (1988) 45 Cal.3d 491, 505.)

In *City of Watsonville v. State Department of Health Services* (2005) 133 Cal.App.4th 875, the court addressed whether Watsonville could ban fluoridation in the city water system in an effort to promote water quality. The *Watsonville* court recognized the city's interest in local water quality control, but upheld a state law that mandated fluoridation of water supplies serving

more than a minimum number of users. The court could have minimized the salient issue in that case by focusing myopically on the water supply of Watsonville residents. The court, however, recognized that the city and state had opposite views of which water policy best preserved the health, welfare and safety of the public in general, including the citizens of Watsonville. In such a situation, the court found that the state policy must prevail because "citizens throughout the state are entitled to the assurance that the water they receive conforms to all current public health standards." (*Id.* at p. 888.) "A patchwork of inconsistent local measures cannot provide that assurance." (*Id.*)

In the case at bar, the focus of Section 3 is handgun violence, handgun possession, and the control of firearms. Penal Code section 12026 demonstrates the Legislature's intent to occupy, on a statewide basis, the field of residential and commercial handgun possession to the exclusion of local governmental entities. While the Court recognizes that "problems with firearms are likely to require different treatment in San Francisco County than in Mono County," the Court rejects Respondents' attempt to dilute the import of Section 3 by characterizing it as merely involving handgun possession by San Francisco residents. (*Great Western Shows, Inc. v. County of Los Angeles* (2002) 27 Cal.4th 853, 862; *Galvan v. Superior Court* (1969) 70 Cal.2d 851, 864.) The City has a vital interest in the health and safety of its inhabitants and the problems of handgun violence. The Court is nonetheless convinced that, in light of the existing statewide series of laws relating to firearms control, extramunicipal concerns tip the scales in favor of statewide regulation of residential and business handgun possession. The system of state laws is reasonably related to the identified statewide concern and narrowly tailored to avoid infringing upon legitimate municipal affairs.

i. Extraterritorial impacts

Whether a local law implicates statewide interests turns, in great part, on whether the law has meaningful impacts outside the jurisdiction that has adopted it. The extramunicipal effect is often the starting point in evaluating a state interest. An ordinance does not fall within the municipal affairs doctrine if the ordinance "affects persons outside of the municipality ..." (*Committee of Seven Thousand v. Superior Court* (1988) 45 Cal.3d 491, 505; *Metromedia, Inc. v. City of San Diego* (1980) 26 Cal.3d 848, 879.)

Respondents contend that Section 3 will have no effect on transients because nonresidents are not subject to the handgun possession ban. Respondents cite several municipal tax cases to support their position. The first set of these cases holds that tax measures are purely municipal affairs. For example, in *Ex parte Braun* (1903) 141 Cal. 204, the court held that a charter city tax measure was a municipal affair, explaining that it was "confined in operation to the city of Los Angeles, and affects none but its citizens and taxpayers and those doing business within its limits." (*Id.* at p. 210.) The local law was "peculiarly for the benefit of the inhabitants of the city, and not directly for the benefit of any one else." (*Id.*) The concurring opinion echoed this key point, upholding the law as a home rule measure because it "appl[ies] only to the territory of the city and the inhabitants thereof." (*Id.* at p. 214 [McFarland, J., concurring].) To the same effect is *Fisher v. County of Alameda* (1993) 20 Cal.App.4th 120, which held that a charter city's real estate transfer tax regulates a municipal affair because it "has no impact outside the limits of the taxing municipality but rather 'is purely local in its effects.'" (*Id.* at pp. 130-31.)

According to Respondents, Section 3 is analogous to the above-cited tax ordinances because it only impacts the municipality (San Francisco) and the effect of its enforcement will not reach the surrounding Bay Area. Respondents argue that Section 3 is limited to San Francisco residents within the boundaries of San Francisco, a limitation that makes the ban a

purely municipal affair. The Court rejects Respondents' analysis. As explained below, the effects of the instant gun control measure are distinguishable from the effects of the cited tax ordinances. Furthermore, Respondents' position is predicated upon a misapplication of the tax cases that have raised statewide concerns.

In this Court's view, Respondents argue correctly that in *CalFed*, the court ruled that a local tax implicated a statewide concern because there was a detailed record of legislative findings and reports regarding the effect of the tax on financial institutions. The *CalFed* court distinguished *Ex parte Braun, supra*, 141Cal. 204, because that decision involved a garden-variety tax measure that "was entirely local," affecting only citizens, taxpayers, and businesses in Los Angeles, while the law in *CalFed* implicated "a widespread fiscal crisis across the state." (*CalFed, supra*, 54 Cal.3d at p. 12.) Notably, the *CalFed* court found that "tax rate parity" among various types of banks and financial institutions was a recurring theme of California corporate tax law. (*Id.* at p. 18.) The court provided that the extensive legislative reports, developments in federal law, and "the increasingly vulnerable financial condition of the savings and loan industry throughout the decade of the 1970's and beyond" removed the charter city's home rule authority. (*Id.* at pp. 18-24.)

Based upon a comparison between *CalFed* and *Ex parte Braun*, Respondents assert that "[t]his Court may not find any extramunicipal effect of Section 3 absent" the type of "detailed Legislative findings" that were present in *CalFed*. (Opposition at 16:8-12.) While Respondents' initial argument is correct, their conclusion is not for at least two reasons. First, neither *CalFed* nor any other reported decision ***requires*** "detailed Legislative findings" to rule that an area of regulation is a statewide concern. In fact, the *CalFed* court specifically held that it is for the courts, not the Legislature, to make that determination. (*CalFed*, 54 Cal.3d 1, 24, fn. 21.) This "requirement" is entirely an invention of Respondents, and it ignores the long line of cases in

which matters have been found to be of "statewide concern" without such detailed findings. Second, the reason such "detailed Legislative findings" were necessary in the *CalFed* case was that there was expansive case law suggesting that "charter city tax measures" were inflexibly "municipal affairs." (*CalFed*, 54 Cal.3d at pp. 6-7.) The "detailed Legislative findings" were necessary to distinguish the effects of the *CalFed* tax from this well-established body of earlier tax cases.

Unlike the tax ordinance at issue in *Ex parte Braun, supra*, 141 Cal. 204, Section 3 has multiple extraterritorial consequences, including one that *Doe* itself recognized: a San Francisco handgun ban inevitably affects adjacent counties by flooding them with the handguns that are no longer allowed in San Francisco.

Doe, supra, 136 Cal.App.3d. at p. 513 states:

> The City and County of San Francisco...concedes that "it cannot be argued that the regulation of firearms is a municipal affair within the meaning of Article XI, Section 5, subdivision (a)," of the state Constitution. We agree. Clearly, the Handgun Ordinance, which prohibits possession by both residents and those passing through San Francisco, legislates in an area of statewide concern. (See *Professional Fire Fighters, Inc. v. City of Los Angeles*, supra, 60 Cal.2d at pp. 293-294, 32 Cal.Rptr. 830, 384 P.2d 158, and cases cited therein; *Long Beach Police Officers Assn. v. City of Long Beach*, supra, 61 Cal.App.3d at p. 371, 132 Cal.Rptr. 348.) It affects not just persons living in San Francisco, but transients passing through and residents of nearby cities where San Francisco's handguns might be sold.

In the case now before the Court, it is certainly foreseeable that, if this ordinance were to go into effect, some San Franciscans would respond by selling or otherwise disposing of their handguns in other counties rather than give them to San Francisco police or have them confiscated without compensation. This outgrowth from the enforcement of Section 3 is clear; it is not "merely a hypothetical extramunicipal ripple effect." (Opposition at 16:6-7.) Moreover, using Respondents' own argument that the availability of handguns increases gun violence, it follows that the flow of handguns from San Francisco into adjacent counties will increase

violence in those areas. This potential, but real, effect supports Petitioners' argument that statewide control applies with respect to the conduct involved here.

The Court notes that Petitioners champion the opposite theory. Petitioners theorize that more handgun possession by trustworthy citizens will affect these adjacent areas by reducing crime there. This issue, however, is not before the Court. It is thus unnecessary for this Court to resolve this criminological disagreement and decide whether an increase in handguns positively or negatively influences society. Rather, the Court simply concludes that Section 3 cannot qualify as a purely municipal affair because of its inevitable impact on areas outside of San Francisco. [3]

A further potential extraterritorial effect of Section 3 is that San Francisco residents who currently own handguns may be effectively prohibited from participating in activities involving the use of those guns outside the city. Although residents could conceivably store handguns outside of San Francisco for use in hunting, target shooting or other legal activities, they are

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[3] Some appellate courts, the Attorney General, and the Legislative Counsel have already found these types of effects to implicate statewide concerns.

In *Long Beach Police Officers Assn. v. City Of Long Beach* (1976) 61 Cal.App.3d 364, a local association of police officers brought an action to enjoin enforcement of city regulations relating to the discharge of firearms by the city's police officers in apprehending felons. The court ruled that "[j]ust as use of city streets by police and fire vehicles affects not only the municipality's citizens but also transients, and is thus a matter of state-wide concern (citation), so also the firing of guns by Long Beach police officers and the apprehension or escape of felons in Long Beach affects the people of the state generally." (*Id.* at p. 371.)

The Legislative Counsel of California specifically pointed to the *Long Beach* decision when asked by Senator H.L. Richardson for a legal opinion on whether an ordinance of the type at issue in *Doe* was preempted by state law. (Legislative Counsel of California, letter from Paul Antilla, Deputy Legislative Counsel, to Senator H.L. Richardson, dated March 2, 1982, and attached at Section 4 of Petitioners' accompanying Judicial Notice Request.) On page 8 of its March 2, 1982 opinion, the Legislative Counsel specifically mentioned that the *Long Beach* court found that the city ordinance regulating the discharge of police firearms in Long Beach "affected not only the municipality's citizens but also transients and was thus a matter of state-wide concern." The Legislative Counsel's office further opined that "since an area of firearms control so closely related to internal city affairs as was the case in the *Long Beach* situation is not exclusively a municipal affair, it is our opinion that an ordinance relating to the broader area of the sale and possession of concealable firearms by inhabitants of the city would not be considered a municipal affair." (*Id.*, emphasis added.)

Similarly, the California Attorney General explained that a California city does not have the authority to prohibit the possession of handguns within the city. (65 Ops.Cal.Atty.Gen. 457 [1982 WL 155982].) In its 1982 opinion, the Attorney General relied on the *Long Beach* opinion in considering whether such a local ordinance could be considered a municipal affair. In comparing a handgun possession ban to the police discharge regulation considered in *Long Beach*, the Attorney General noted that "[t]he use of a firearm within the city would appear to be

more likely either to secrete their handguns within city limits, thus placing themselves in violation of the law, or surrender their handguns altogether due to the cost and inconvenience of remote storage. The California Attorney General has identified this effect as one reason why a city ordinance banning handgun possession is not a municipal affair. (65 Ops.Cal.Atty.Gen 457, *9.)

ii. The state interest

The statute books contain almost one hundred pages of unannotated state gun laws that set out a myriad of statewide licensing schemes, exceptions, and exemptions dealing with the possession and use of handguns. These laws support the argument that California has an overarching concern in controlling gun use by defining the circumstances under which firearms can be possessed uniformly across the state, without having this statewide scheme contradicted or subverted by local policy. For example, state law allows an off-duty or retired police officer to carry a weapon to defend himself from criminal retaliation. (Penal Code, § 12027.) Proposition H, on the other hand, allows an active-duty officer who lives in San Francisco to possess a gun only when "carrying out the functions of his or her government employment" rather than at any time. Moreover, Proposition H eliminates a retired officer's ability to possess a handgun entirely. The existence of these state interests, and their statewide import, is apparent. An ordinance that invalidates these statutory authorizations frustrates the state's interests.

In sum, local ordinances in conflict with state law will prevail only as to matters that are of vital interest to the city but of little or no interest to the state. That is the opposite of the situation here. "[T]he state has a more substantial interest in the subject than the charter city." (*CalFed, supra*, 54 Cal.3d at p. 18.)

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of greater concern than possession of such weapons in the city." (*Id.* at *9). The Attorney General concluded that "[i]f such use of firearms is not a municipal affair a fortiori neither is the possession of firearms." (*Id.* at *24).

D. **Section 2 is unenforceable because it conflicts with the Unsafe Handgun Act, Penal Code section 12026, and Government Code section 53071. Section 2 is also inimical to the state statutes regarding the administration of the criminal justice system**

1. Section 2

Section 2 of Proposition H, entitled "Ban on Sale, Manufacture, Transfer or Distribution of Firearms in the City and County of San Francisco," provides:

> Within the limits of the City and County of San Francisco, the sale, distribution, transfer and manufacture of all firearms and ammunition shall be prohibited.

Contrary to Section 3, there are no exceptions contained in Section 2. The most significant impact of Section 2 is obvious: there will be no sales of firearms in San Francisco. Storefront firearms dealers in the city will immediately go out of business. Other businesses that deal in the sale of firearms, such as auction houses that offer collectible firearms for sale, will be adversely affected.

The impact of the "transfer" and "distribution" bans is more difficult to gauge, mostly because the effect of this prohibition is not easy to quantify. Petitioners raise several concerns regarding the practical effects of this section. They fear that a literal interpretation of the "transfer" and "distribution" ban might adversely affect the operations of law enforcement agencies and the criminal justice system. For example, the mere disarming of a captured criminal might, if the ordinance were interpreted literally, constitute a violation of law, regardless of whether the "disarmer" were a trained police officer or a private citizen. Additionally, Petitioners argue that the transfer/distribution ban would inhibit the production of film, opera, television, and theatrical features within San Francisco, at least to the extent that they involve the use of firearms. Lastly, Petitioners argue that the transfer/distribution ban would prevent the operation of many private security companies, not to mention flag ceremonies,

color guards, and other ceremonial activities to the extent these involve the transfer or distribution of firearms. While not dispositive of this motion, all of these positions have merit.

2. Legal standards for preemption

Under Article XI, section 7 of the California Constitution, "[a] county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws." (*Id.*) Because a ban on firearms sales falls within the City's police power, "[t]he question as to preemption is whether the State Legislature has *removed* the constitutional police power of the City" to ban firearms and ammunition sales, transfers, or distribution within its borders. (*California Rifle & Pistol Association, supra*, 66 Cal.App.4th at p. 1309 [emphasis in original].)

Local legislation is preempted only if it "duplicates, contradicts, or enters an area fully occupied by general law," either expressly or by implication. (*Sherwin-Williams Co. v. City of Los Angeles* (1993) 4 Cal.4th 893, 897 [quotations omitted].)

"Local legislation is 'duplicative' of general law when it is coextensive therewith." (*Id.* [citation omitted].) The Supreme Court has held that that a local firearms restriction does not duplicate state law unless it prohibits "precisely the same acts" that state law prohibits. (*Great Western Shows, supra*, 27 Cal.4th at p. 865.)

"Local legislation is 'contradictory' to general law when it is inimical thereto." (*Sherwin-Williams, supra*, 4 Cal.4th at p. 898 [citation omitted].) A local firearms law contradicts state law where it "mandate[s] what state law expressly forbids," or "forbid[s] what state law expressly mandates." (*Great Western Shows, supra*, 27 Cal.4th at p. 866.)

"Finally, local legislation enters an area that is 'fully occupied' by general law when the Legislature has expressly manifested its intent to 'fully occupy' the area, or when it has impliedly done so in light of one of the following indicia of intent: '(1) the subject matter has been so fully

and completely covered by general law as to clearly indicate that it has become exclusively a matter of state concern; (2) the subject matter has been partially covered by general law couched in such terms as to indicate clearly that a paramount state concern will not tolerate further or additional local action; or (3) the subject matter has been partially covered by general law, and the subject is of such a nature that the adverse effect of a local ordinance on the transient citizens of the state outweighs the possible benefit to the locality.'" (*Great Western Shows, supra*, 27 Cal.4th at p. 861.)

3. The Unsafe Handgun Act preempts Section 2

In 1999, the Legislature enacted the Unsafe Handgun Act ("UHA"), Penal Code sections 12125-12233. The UHA establishes a comprehensive protocol for designating which handguns may be sold in California. The UHA was precipitated by a growing number of conflicting local "Saturday Night Special" ordinances and the Legislature's realization that it needed to address the issue at the state level. (See *CPRA v City of West Hollywood*, (1998) 66 Cal.App.4th 1302.)

The UHA charges the California Department of Justice with testing and compiling a list of handguns that "may be sold in this state pursuant to this title." (Penal Code, § 12131(a).) Respondents seek to distinguish Section 2 of the ordinance from the UHA by arguing that Section 2 is designed to enhance public safety, while the UHA is a narrow "consumer protection" law drawn to safeguard gun buyers. The UHA's goals, however, include curbing handgun crime as well as promoting gun safety. The legislative history shows that banning cheaply made guns is a means of reducing gun availability to criminals. Thus, the UHA protects buyers and the general public from injury by unsafe guns. Section 2 and the UHA promote the same regulatory purpose.

When the UHA was being drafted, both state and local officials realized it would preempt existing Saturday Night Special bans as well as future attempts at similar local bans. Petitioners

present legislative history showing that cities and a Senate committee report warned the Legislature that the UHA would preempt such ordinances. The author of the UHA responded by inserting a provision to preserve local ordinances against preemption by the UHA. When the Legislature ultimately enacted the UHA, however, these amendments were deleted. This indicates the Legislature's knowledge and intent to preclude local interference with handgun legislation or laws inimical to the UHA. The Legislature thus squarely determined that the UHA would preempt any "local [contrary] ordinance, both those already in existence and any proposed locally in the future." (See Petitioner's Request for Judicial Notice § 1(e), Senate Public Safety Committee report on SB 15, p. 9.)

Significantly, cities such as San Francisco and West Hollywood, recognizing the UHA's preemptive effect on the topic, repealed their own Saturday Night Special ordinances. If Respondents' current position that the UHA does not preempt local handgun sales bans were correct, its Saturday Night Special ordinance would have been enforceable despite the UHA.

Under the UHA, manufacturers of approved guns get a written state license to sell a particular model in California. Section 2 operates to revoke that license, thereby infringing into the area of licensing which the state fully occupies. "It has been held that where, as here, the state expressly permits operation under a certain set of standards, it implies that the specified standards are exclusive. Local authorities thus are preempted from imposing more stringent standards and making impermissible that which the higher authority expressly permits." (*Suter v. City of Lafayette*, (1997) 57 Cal.App.4th 1109, 1126.)

4. *Nordyke v. King* (2002) 27 Cal.4th 875 and *Great Western v. Los Angeles* (2002) 27 Cal.4th 853

In 2002, the California Supreme Court addressed firearm preemption issues in a pair of cases, *Nordyke v. King* (2002) 27 Cal.4th 875 and *Great Western v. Los Angeles* (2002) 27 Cal.4th 853, which had been certified to it by the Ninth Circuit Court of Appeals. These cases

involved attempts by Alameda and Los Angeles counties to ban gun shows at county-owned fairgrounds. In *Great Western*, the county sought to ban the sale of guns and ammunition at the Los Angeles County Fairgrounds. (See *Great Western*, *supra*, at p. 859.) In *Nordyke*, the county outlawed possession of firearms at the Alameda County Fairgrounds. (See *Nordyke*, *supra*, at pp. 880-81.)

The Ninth Circuit found "tension" between *Doe* and the other appellate cases and referred the cases to the California Supreme Court to answer several certified questions. (*Great Western Shows, Inc. v. Los Angeles County* (9th Cir. 2000) 229 F.3d 1258, 1263 (noting that "there is tension in the reasoning underlying several decisions of the Courts of Appeal of the State of California and an Opinion of its Attorney General.").)

Respondents rely heavily on these cases and argue that they allow localities to enact ordinances such as Section 2. Respondents and *amicus* Legal Community Against Violence suggest that these companion cases cast doubt on the reasoning and holdings of *Doe*. They overstate the narrow holding of those decisions, however. In *Great Western*, the court addressed a county's ability to control activities on its own property:

> Thus, a county has broad latitude under Government Code § 23004, subdivision (d), to use its property, consistent with its contractual obligations, "as the interests of its inhabitants require." . . . [T]he County is not compelled to grant access to its property to all comers. Nor do the gun show statutes mandate that counties use their property for such shows. If the County does allow such shows, it may impose more stringent restrictions on the sale of firearms than state law prescribes. For all the above reasons, we conclude that the Ordinance is not preempted by the sale of firearms and/or ammunition on County property. We do not decide whether a broader countywide ban of gun shows would be preempted. (*Id.* at 870.)

The *Great Western* court thus based its decision on a county's power to use public, county-owned public property as it sees fit, in light of the express language in applicable state statutes that contemplated additional local regulation. (*Id.* at p. 866.)

Nordyke similarly involved a discrete issue regarding gun law preemption. The court described it as follows:

> We granted the request of the United States Court of Appeals for the Ninth Circuit, for certification pursuant to California Rules of Court, rule 29.5 to address the following question: Does state law regulating the possession of firearms and gun shows preempt a municipal ordinance prohibiting gun possession on county property? (*Nordyke*, supra, 27 Cal.4th at p. 880 (emphasis added).)

Like *Great Western*, the *Nordyke* court (1) relied heavily upon the county's statutory right to regulate activities on its own property, and (2) answered the narrow issue presented with an equally narrow holding:

> We further conclude that under Government Code § 23004, subdivision (d), a county is given substantial authority to manage its property, including the most fundamental decision as to how the property will be used, and that nothing in the gun show statutes evince an intent to override that authority. The gun show statutes do not mandate that counties use their property for such shows. (Id. at p. 882.)

Thus, *Great Western* and *Nordyke* explain that state gun show regulations, which expressly contemplate additional local regulation, do not preclude local governments from banning the sale or possession of firearms and ammunition at gun shows on county-owned public property. Neither case addresses the validity of gun laws beyond the limited context of the facts presented. Indeed, both cases clarified the confined scope of their rulings. (*Great Western*, *supra*, at p. 870; *Nordyke*, *supra*, at p. 885.)

This Court also notes that both *Great Western* and *Nordyke* involved a circumscribed ban on weapons. Section 2 of the proposal before us, on the other hand, proposes a complete ban on firearms "[w]ithin the limits of the City and County of San Francisco." Section 2 disallows "the sale, distribution, transfer and manufacture of all firearms and ammunition" on public and private property. Such a total ban is impermissible under the current statewide statutory scheme. *Great Western* recognizes the well-accepted proposition "that when a statute or statutory scheme seeks to promote a certain activity and, at the same time, permits more stringent regulation of

that activity, local regulation cannot be used to completely ban the activity or otherwise frustrate the statute's purpose." (*Great Western*, *supra*, at p. 868.) Section 2 runs afoul of this recognized principle of law.

Respondents claim that Section 2 does not duplicate or conflict with state laws banning or authorizing the sale or transfer of various types of firearms and ammunition because it merely "overlaps" with those regulations. (Opp. at 21-25.) That characterization is flawed given that within city limits, Section 2 swallows the state regulations whole. In terms of prohibited firearms and acts, *e.g.*, sale of assault weapons, Section 2 duplicates state law by doubly banning them. For approved firearms and acts, *e.g.*, sale of UHA-approved handguns, it conflicts with state law by banning that which the Legislature has authorized.

5. Government Code section 53071 preempts Section 2

Section 2's sales ban also contravenes Government Code section 53071, which expressly preempts any local enactment *relating to* the licensing or registration of commercially manufactured firearms.[4] This issue was previously visited in *Doe, supra,* where the court invalidated San Francisco's 1982 ordinance because, *inter alia,* Government Code section 53071 preempted local laws "relating to licensing." The *Doe* court found that, even if the regulation at issue were not "a direct licensure requirement, [it] is at least a local regulation relating to licensing." (136 Cal.App.3d at p. 517.) (emphasis added)

Moreover, section 53071 declares that the state licensing provisions in the Penal Code are *exclusive* of local regulations relating to licensing. The section does not merely proscribe those local regulations that create new licensing schemes; rather, it precludes any regulations relating

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[4] Government Code section 53071 provides:

> It is the intention of the Legislature to occupy the whole field of regulation of the registration or licensing of commercially manufactured firearms as encompassed by the provisions of the Penal Code, and such

to licensing or registration.[5] The Court sees no practical distinction between requiring additional licenses or permits, on the one hand, and revoking or otherwise invalidating existing state licenses or permits, on the other hand. Section 53071 makes no such distinction. A local regulation that invalidates existing licenses, but does not affirmatively create new licensing schemes, "relates" to the state's regulatory scheme of licensing firearms.

6. Penal Code section 12026 preempts Section 2

Respondents concede that Penal Code section 12026 generally prohibits localities from banning handgun possession. They nevertheless argue that Section 2 can ban sales and purchases of guns and ammunition.[6]

Section 12026 does not merely authorize the possession of handguns by citizens, it also sets forth their ability to purchase them. Section 12026 provides that citizens may "purchase, own, possess, keep or carry" handguns in their homes and offices. A complete ban on the sale of guns and ammunition necessarily would render a citizen's right to purchase handguns illusory, since citizens typically come to possess a handgun by buying it. A local ordinance that substantially burdens the purchasing and possession of handguns by banning their sale is just as contrary to section 12026 as was the possession ban struck down by *Doe*.

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provisions shall be exclusive of all local regulations, relating to registration or licensing of commercially manufactured firearms, by any political subdivision as defined in Section 1721 of the Labor Code.

[5] San Francisco currently has gunshops, pawnshops, and auction houses that hold valid state licenses specific to their firearm transactions. Moreover, manufacturers of UHA-approved handgun models receive a written state license to sell that model in California. Section 2 effectively cancels all of these licenses. Clearly, therefore, Proposition H "relates to" the State's plan to regulate firearms.

[6] Penal Code § 12026 provides, in pertinent part:

> ...No permit or license to purchase, own, possess, keep, or carry, either openly or concealed, shall be required of any citizen of the United States or legal resident over the age of 18 years who resides or is temporarily within this state, and who is not within the excepted classes prescribed by Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code, to purchase, own, possess, keep, or carry, either openly or concealed, a pistol, revolver, or other firearm capable of being concealed upon the person within the citizen's or legal resident's place of residence, place of business, or on private property owned or lawfully possessed by the citizen or legal resident.

The conflict between Section 2 and Penal Code section 12026 becomes even more apparent when one considers that Section 2 bans the purchase or sale of ammunition. *Doe* holds that the Legislature intended to occupy the field of residential handgun possession to the exclusion of local municipalities. (*Doe*, 136 Cal.App.3d at p.518.)[7] It would make little sense for the Legislature to occupy the field of handgun possession while allowing local governmental entities to outlaw the transfer of ammunition. The possession of handguns is meaningless without the concomitant ability to obtain the ammunition that is used with them.

7. Section 2's lack of exceptions is inimical to the criminal justice system

While Section 3 has detailed provisions excepting members of the military and law enforcement from its scope, Section 2 lacks such exemptions. Petitioners contend that Section 2 will thus lead to ridiculous results because law enforcement, the criminal justice system, and private industries cannot "transfer" firearms. Respondents seek to read into Section 2 multiple implicit exceptions for police, the criminal justice system, and its officers and employees. (See *People v. Centr-O-Mart* (1950) 34 Cal.2d 702, 703 ("statute will not be construed to impair or limit the sovereign power of the state to act in its governmental capacity and perform its governmental functions in behalf of the people in general, unless such intent clearly appears.").) Although the Court does not necessarily accept Petitioners' exaggerated view of Section 2, it agrees that the lack of exceptions is fatal to its enforcement.

First, a system involving implied exceptions where some persons can transfer firearms and ammunition and other persons cannot creates a *de facto* licensing problem that violates Government Code section 53071, Penal Code section 12026, and the reasoning of *Doe*.

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[7] In a 1994 opinion, the Attorney General concluded that local bans on the sale of handgun ammunition were invalid because such bans violate section 12026's guarantee "of the right to possess handguns on private property." (See 77 Ops.Cal.Atty.Gen. 147 (1994).) The Legislature implicitly ratified the opinion by subsequently re-enacting section 12026 without substantive alterations. See *Orange County Employees Assn.*, *supra*, 14 Cal.App.4th at pp. 582-83.

Second, the omission of exceptions appears to be intentional. "It is a well-settled principle of statutory construction that '[w]here a statute with reference to one subject contains a given provision, the omission of such provision from a similar statute concerning a related subject...is significant to show that a different intention existed.'" (*Traverso v. People ex rel. Dept. of Transportation* (1993) 6 Cal.4th 1152, 1167.) State gun control laws typically include law enforcement exceptions and even the City's other gun control ordinances, *e.g.*, repealed Saturday Night Special ban and Section 3, include such exemptions.

Third, the Court notes that Section 2 does not define the terms "transfer" and "distribute." Respondents contend that the Court should give those terms a common sense meaning and rule that "a 'transfer' is commonly understood to mean a conveyance of property or an interest in property--not merely the physical passing of an item from one person's hands to another's. And 'distribution' ordinarily refers to the act of apportioning or dividing, not simply of providing in the sense in which a police department provides its officers with necessary equipment." (Opp. at p.26, LL 5-9.) Petitioners suggest that "transfer" and "distribution" simply mean a change in possession or control, meaning that the police, for example, would be unable to "transfer" firearms or ammunition as a part of performing their governmental duties. Petitioners cite *In re Marriage of Barneson* (1999) 69 Cal.App.4th 583, 590, where the court consulted several dictionaries and noted that "transfer" includes any "pass[ing] or hand[ing] over [of an object] from one to another" and does not necessitate any change in the ownership or legal status of the object. (*Barneson, supra*, 69 Cal.App. 4th at p. 590.)

The first step in statutory construction is to construe a statute by giving the terms used their ordinary meaning. (*California Teachers Association v. Governing Board of Rialto Unified School District* (1997) 14 Cal.4th 627 (citations omitted).) One ordinary meaning of transfer is a change in ownership. As Respondents note, in construing a statute, a court does not "consider

the statutory language in isolation," but rather "look[s] to the entire substance of the statute in order to determine the scope and purpose of the provision. That is, courts construe the words in question in context, keeping in mind the nature and obvious purpose of the statute." (*People v. Murphy* (2001) 25 Cal.4th 136, 142 (internal cites, quotes, and ellipses omitted).)

Thus, the Court could construe "transfer" as used in Section 2 to mean an ownership change. The word "distribute," however, does not require an ownership change. Therefore, unless the Court finds implied exceptions for police departments to distribute firearms or ammunition to their officers, or for private industries to distribute firearms or ammunition to actors or employees, Section 2 would preclude those acts. Further, ownership of ammunition is often transferred when ammunition is physically transferred. Obviously, the transferor typically does not expect to get the ammunition back.

Fourth, this Court does not have unfettered discretion to rewrite a statute under the guise of "implying exceptions." Proposition H contains very specific exceptions in Section 3, but none in Section 2. Courts may not write an exemption into a law that lacks it, especially when that law already has a much more limited exemption in another section. (*Langsam v. City of Sausalito* (1987) 190 Cal.App.3d 871, 877 ("Under the guise of construction the court will not rewrite a law [citation]; it will not supply an omission."); *Wildlife Alive v. Chickering* (1976) 18 Cal.3d 190, 195 ("where exceptions to a general rule are specified by statute, other exceptions are not to be implied or presumed."); *Los Angeles Department v. Superior Court* (2001) 87 Cal.App.4th 1161, 1166 ("'[T]he statement of limited exceptions excludes others, and therefore the judiciary has no power to add additional exceptions; the enumeration of specific exemptions precludes implying others.'"); *Lake v. Reed* (1997) 16 Cal. 4th 448, 466 (same).)

E. Section 2 is not severable as to long guns

Having determined that Section 2 is invalid as to the sale of handguns and handgun ammunition, the Court must now address whether Section 2's ban on the sale of rifles and shotguns and their ammunition, which is intermingled with the ban on handguns, can survive. Respondents posit that these remaining portions of Section 2 are viable since Section 7 of Proposition H provides that in the event any "provision" of the ordinance is held invalid, the remaining provisions are to be severed and remain in force.

But the first requirement of severance is that the wording of the provision involved must be such that the portion to be severed is "mechanically" or "grammatically" severable from the invalid provision. "The cases prescribe three criteria for severability: the invalid provision must be grammatically, functionally, and volitionally separable." (*Calfarm Ins. Co. v. Deukmejian* (1989) 48 Cal.3d 805, 821.) The saved portion must be "'complete in itself'" and not "'so connected with the rest of the statute as to be inseparable.'" (*McMahan v. City and County of San Francisco* (2005) 127 Cal.App.4th 1368, 1374 (quoting Supreme Court caselaw).)

Section 2's rifle, shotgun, and ammunition sales bans are not complete in themselves, nor are they separable from the handgun and handgun ammunition sales bans. Rather the two sets of bans are inseparably linked in one sentence; they are a unitary whole. Section 2 reads: "Within the limits of the City and County of San Francisco, the sale, distribution, transfer and manufacture of all firearms and ammunition shall be prohibited."

There is no way to sever mechanically the Section 2 prohibitions affecting handguns and their ammunition from the prohibitions affecting rifles, shotguns and their ammunition. Instead of severing these things from each other, the Court would have to reconstruct Section 2 by excising the words "firearms and handgun ammunition," and substituting "rifles, shotguns, and rifle and shotgun ammunition." But to rewrite Section 2 by "insert[ing] additional language into

[it] ... would violate the cardinal rule of statutory construction that courts must not add" to or delete from laws they are construing. (See *Birkenfeld v City of Berkeley* (1976) 17 Cal.3d 129, 173 (striking down an entire ordinance where "severance" would have required adding and/or subtracting words from the ordinance).) The Court cannot disentangle the respective bans without exceeding its powers by deleting and adding words.[8]

Another obstacle to dividing Section 2 between long and short guns is the difficult test a party must meet to justify severing a valid part from an invalid part. (See *Gerken v. Fair Political Practices Com.* (1993) 6 Cal.4th 707, 714-715.) *"The test is whether it can be said with confidence that the electorate's attention was sufficiently focused upon the parts to be severed so that it would have separately considered and adopted them in the absence of the invalid portions."* (*Id.*, italics in original.)

Gun laws have traditionally regulated handguns more vigorously than long guns. For example, California's first major gun control law, the 1923 Uniform Firearms Act, was not a "firearms" act at all. Its myriad restrictions applied only to handguns, *e.g.*, the UFA forbade convicted felons from possessing handguns, not long guns. The focus on handguns is also clear from the text of Proposition H. Section 3 bans possession of all handguns by city residents. In contrast, Section 2 allows existing long gun owners to keep their long guns. The explanation for this disparate treatment is clear. Handguns are more apt for criminal misuse because of their size and concealability.

The facts do not show that the difference between regulation of handguns and regulation of long guns was presented to the voters. Indeed, no facts are presented to suggest that the distinction was ever made. Rather, the focus of the public debate on Proposition H, and of the

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[8] Moreover, the severability clause on which the City relies is most likely statutorily inapplicable to this situation. Section 7 provides that the invalidation of one "provision" of Proposition H does not affect the validity of other provisions. In the instant situation, the Court is concerned only with one provision, namely Section 2.

ballot arguments and the ordinance's own findings, was all on the effect of the ordinance in barring handguns. For instance, the only pro-Proposition H ballot argument that pointed out that Proposition H would ban the sale of "firearms" described the ordinance as one of two "steps to reduce handguns in San Francisco." (Respondents' Request for Judicial Notice in Support of Opposition to Petition for Writ of Mandate, Ex. A.)

Given this context, one can fairly describe Proposition H as a handgun ban accompanied by an implied, ancillary long gun control measure. The handgun ban would remove handguns and the long gun control measure would insure that buyers could not fill the void with long guns. If this explanation is correct, the long gun provisions inherently included in Section 2 are not severable because it is not clear that such a ban was something the voters "would have separately considered and adopted in the absence of the invalid." (*People's Advocate, Inc. v. Superior Court* (1986) 181 Cal. App.3d 316 (quoting) *Santa Barbara School District v. Superior Court* (1975)13 Cal.3d 315, 331.) In other words, the thrust of Proposition H was to remove handguns from San Francisco. If the Court were to rewrite Section 2 and apply it solely to long guns, the perverse result would be to induce persons to buy more handguns. The Court cannot say "with confidence" that the long gun ban was an independent measure "complete in itself" that "would have been adopted by the legislative body had [it] foreseen the partial invalidation of the statute." (*People's Advocate, Inc., supra*,181 Cal. App.3d at p. 333 (quoting (and adding brackets to) *Santa Barbara School District v. Superior Court* (1975)13 Cal.3d 315, 331.).) Therefore, severance is inappropriate in this case since "it is by no means clear that the electorate would have approved" that result. (*Birkenfeld, supra*, 17 Cal.3d at p.174.)

CONCLUSION

For the reasons stated above, Proposition H is adjudged invalid as preempted by state law. A writ shall issue and judgment shall be entered forthwith.

Dated: 6/12/06

Judge of the Superior Court
James L. Warren

CALIFORNIA SUPERIOR COURT

CITY AND COUNTY OF SAN FRANCISCO

LAW & MOTION, ROOM 301

PAULA FISCAL, et al., Plaintiffs and Petitioners, vs. CITY AND COUNTY OF SAN FRANCISCO et al., Defendants and Respondents.	NO. CPF-05-505960 **CERTIFICATE OF SERVICE BY MAIL (CCP 1013a(4))**

I, Gordon Park Li, Clerk of the Superior Court of the City and County of San Francisco, certify that:

1) I am not a party to the within action;

2) On JUN 12 2006, I served the attached:

STATEMENT OF DECISION AND ORDER GRANTING MOTION FOR WRIT OF MANDATE AND/OR PROHIBITION OR OTHER APPROPRIATE RELIEF

by placing a copy thereof in a sealed envelope, addressed as following:

Wayne Snodgrass, Esq.
Deputy City Attorney
#1 Dr. Carlton B. Goodlett Place
City Hall, Room 234
San Francisco, CA 94102

C.D. Michel
Trutanich-Michel, LLP
180 East Ocean Blvd., Suite 200
Long Beach, CA 90802

and,

3) I then placed the sealed envelope in the outgoing mail at 400 McAllister Street, San Francisco, CA, 94102 on the date indicated above for collection, attachment of required prepaid postage, and mailing on that date following standard court practice.

DATED: JUN 12 2006

Gordon Park Li

By: _____, Deputy

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STATEMENT OF DECISION

PAULA FISCAL et al VS. CITY AND COUNTY OF SAN FRANCISCO et al

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