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FACSIMILE TRANSMITTAL No. of Pages (incl. this page): **16** Date: **January 24, 2006**

To: C.D. Michel, Esq. F: 562.216.4445 T: 562.216.4457
Don B. Kates, Esq.
Thomas E. Maciejewski, Esq.
Trutanich-Michel LLP

To: Dennis J. Herrera, Esq. F: 415.554.4699 T: 415.554.4700
Wayne Snodgrass, Esq.
Vince Chabria, Esq.
Office of the City Attorney / CCSF

From: Cory M. Mason D: 415.954.4965

Matter: Fiscal, et al. vs CCSF, et al. Matter No: 20368

Please call Larry Coles at 415.954.3506 if this transmission is incomplete.

Message:



CONFIDENTIAL COMMUNICATION

THIS FACSIMILE TRANSMISSION IS INTENDED ONLY FOR THE USE OF THE ADDRESSEE NAMED ABOVE AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED AND CONFIDENTIAL. PLEASE FORWARD IT DIRECTLY TO THE ADDRESSEE IN A SEALED CONFIDENTIAL ENVELOPE. IF YOU ARE NOT THE INTENDED RECIPIENT, ANY DISSEMINATION, DISTRIBUTION OR COPYING IS STRICTLY PROHIBITED. IF YOU RECEIVED THIS FACSIMILE IN ERROR, PLEASE IMMEDIATELY NOTIFY THE SENDER BY TELEPHONE AND RETURN THE ORIGINAL MESSAGE TO FARELLA BRAUN + MARTEL LLP VIA THE U.S. POSTAL SERVICE AT OUR EXPENSE. THANK YOU.

1 Roderick M. Thompson (State Bar No. 96192)
 2 Cory Mason (State Bar No. 240987)
 3 Farella Braun & Martel LLP
 235 Montgomery Street, 30th Floor
 4 San Francisco, CA 94104
 Telephone: (415) 954-4400
 Facsimile: (415) 954-4480

5 Attorneys for
 6 Legal Community Against Violence

7
 8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
 9 IN AND FOR THE COUNTY OF SAN FRANCISCO
 10 UNLIMITED JURISDICTION

11 PAULA FISCAL, et al.,
 12 Plaintiffs and Petitioners,
 13 vs.
 14 CITY AND COUNTY OF SAN
 15 FRANCISCO, et al.,
 16 Defendants and Respondents.

Case No. CPF-05-505960

**UNOPPOSED EX PARTE APPLICATION
 BY LCAV FOR PERMISSION TO FILE
 AMICUS BRIEF IN SUPPORT OF
 RESPONDENTS; MEMORANDUM OF
 POINTS AND AUTHORITIES IN
 SUPPORT THEREOF; DECLARATION
 OF CORY M. MASON**

Date: February 15, 2006
 Time: 9:30 a.m.
 Dept: 301
 Judge: Honorable James L. Warren

Date Action Filed: December 29, 2005
 Trial: Not yet scheduled

21 Legal Community Against Violence ("LCAV") hereby applies for an order granting
 22 permission to file an *amicus curiae* brief in support of Respondents, the City and County of San
 23 Francisco, *et al.* ("Respondents" or the "City"). In addition, pursuant to California Rule of Court
 24 313(e), LCAV also seeks permission to submit a memorandum of points and authorities not to
 25 exceed 20 pages.

26 This application should be granted for the following reasons:

- 27 • It is unopposed by all parties in this case;

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- LCAV's *amicus* brief addresses important preemption law issues raised by Petitioners but does not duplicate arguments made by Respondents, who will primarily rely on alternate grounds to defend the City's handgun possession ban;
- In particular, Petitioners assert that a "primary" issue presented is whether *Doe v. City and County of San Francisco*, 136 Cal. App. 3d 509 (1982) mandates invalidating Proposition H's ban on possession of handguns as preempted because it conflicts with state law, whereas Respondents will rely primarily on the City's home rule authority, which would uphold the law even assuming a conflict;
- LCAV's *amicus* brief addresses directly and more fully these important issues concerning *Doe* and preemption raised by Petitioners;
- LCAV requires up to 20 pages for its *amicus* brief in order to provide an analysis of the state law preemption issues raised by Petitioners' 30-page Memorandum of Points and Authorities in Support of Motion for Writ of Mandate and/or Prohibition or Other Appropriate Relief. The Court has already recognized the complex nature of the issues presented in this case, as it has permitted Petitioners a total of 50 pages for their opening and reply memoranda by granting a stipulated application to file overlength briefs filed January 9, 2006.

This application is based upon this *Ex Parte* Application, the attached Memorandum of Points and Authorities in support thereof, the attached Declaration of Cory M. Mason, any oral argument heard by the Court, and the entire record in this action.

DATED: January 24, 2006

FARELLA BRAUN & MARTEL LLP

By: 
Roderick M. Thompson

Attorney for Legal Community Against Violence

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Legal Community Against Violence ("LCAV") is a public interest law center dedicated to preventing gun violence, formed in the wake of the 1993 assault weapon massacre at 101 California Street in San Francisco. LCAV is the country's only organization devoted exclusively to providing legal assistance in support of gun violence prevention. LCAV concentrates on state and local policy reform, serving governmental entities and advocacy organizations in California and throughout the United States.

Although it was not involved in drafting the ordinance at issue here, LCAV has particular interest in and experience with California local gun ordinances. It has assisted counties and municipalities in crafting local regulations to fit community needs, and, as *amicus curiae*, it has provided the courts with informed analysis of the legal bases for such local regulation.

Accordingly, LCAV seeks an order granting permission to file an *amicus curiae* brief in support of Respondents, the City and County of San Francisco, *et al.* ("Respondents" or the "City"). LCAV's application for *ex parte* permission is unopposed by all parties in this case. (Decl. of Cory M. Mason in Supp. of *Ex Parte* Application by LCAV for Permission to File *Amicus* Brief in Supp. of Respondents ["Mason Decl."] ¶¶ 3, 4.)

Petitioners' memorandum asserts that a "primary" issue presented is whether *Doe v. City and County of San Francisco*, 136 Cal. App. 3d 509 (1982) mandates invalidating Proposition H's ban on possession of handguns as preempted because it conflicts with state law. (Petitioners' Mem. of P. & A. in Supp. of Mot. for Writ of Mandate and/or Prohibition or Other Appropriate Relief, filed January 11, 2006 ["Mem. of P. & A. or "Memorandum of Points and Authorities"] at 1.) Respondents have indicated that, just as they did in the court of appeal, they will not challenge Petitioners' broad reading of *Doe* and will rely primarily on the City's home rule authority, which would uphold the local ordinance even if in conflict with state law. (Mason Decl. ¶ 7.)

1 **II. ARGUMENT**

2 “With the permission of the court, an amicus curiae may file briefs setting out his or her
3 views and arguments.” 48 Cal. Jur. 3d *Parties* § 19 (2005) (footnote omitted). Such “[b]riefs
4 may be filed in both trial and appellate courts.” *Id.* (footnotes omitted). The practice of allowing
5 the participation of *amici curiae* is well-established in California trial courts. *See, e.g., Marshall*
6 *v. Marshall*, 212 Cal. 736, 738 (1931) (noting that a brief by *amici curiae* was filed at the trial
7 court’s request); *County of Alameda v. Carleson*, 5 Cal. 3d 730, 735 (1971) (noting that the trial
8 court denied motion to intervene but allowed appearance as *amicus curiae*); *In re Veterans’*
9 *Industries, Inc.*, 8 Cal. App. 3d 902, 924-25 (1970) (discussing that an *amicus curiae* lacks
10 standing to appeal a superior court judgment against the *amicus curiae*’s position); *Padres Hacia*
11 *Una Vida Mejor v. Davis*, 96 Cal. App. 4th 1123, 1127-28 (2002) (noting that the superior court
12 granted a request to file *amicus curiae* brief in mandamus action); *cf.* Cal. R. Ct. 105(b)
13 (providing that in the appellate division of the Superior Court, an *amicus curiae* brief “may be
14 filed on permission first obtained from the presiding judge, subject to conditions he or she may
15 prescribe”). The LCAV’s *amicus* brief will assist the Court in deciding the issue of the scope of
16 state preemption, which, though of central importance to this proceeding, will not otherwise be
17 the subject of adequate briefing. The Court should therefore grant LCAV’s request for
18 permission to file its *amicus* brief.

19 Petitioners rely heavily upon *Doe v. City and County of San Francisco* but do not explain
20 that the *Doe* court’s implied preemption comments do not conform with current, well-established
21 preemption analysis and were not necessary to that decision. The Supreme Court’s 2002
22 companion decisions in *Great Western Shows, Inc. v. County of Los Angeles*, 27 Cal. 4th 853
23 (2002) (“*Great Western*”) and *Nordyke v. King*, 27 Cal. 4th 875 (2002) (“*Nordyke*”) addressed
24 and clarified state preemption analysis of local gun regulations. Petitioners understate the
25 significance of *Great Western* and mischaracterize its treatment of *Doe*, do not mention *Nordyke*,
26 and do not apply the preemption framework set out in these post-*Doe* Supreme Court cases. In its
27 Opposition, the City will rely primarily on its home rule authority to defend its local ordinance’s

1 handgun possession regulation, and, therefore, will not respond directly or completely to
2 Petitioners' assertions concerning *Doe* and implied preemption. (Mason Decl. ¶ 7.)

3 LCAV's *amicus* brief summarizes the current law, analyzes this important preemption
4 issue under the framework provided by the Supreme Court in *Great Western* and *Nordyke*, and
5 explains why *Doe* is not controlling. The brief thus directly addresses the "primary issues
6 presented" as framed by Petitioners: "whether *Doe* remains good law and, if so, whether the
7 CITY's new ordinance contains any provisions that render *Doe* inapplicable." (Mem. of P. & A.
8 at 1:5-6.)

9 LCAV's brief will therefore be helpful to the Court and not duplicative of arguments
10 made by the City, and the Court will benefit from a greater understanding of the issues in this
11 case should it grant LCAV's *ex parte* request for permission to file an *amicus* brief.

12 Pursuant to California Rule of Court 313(e), LCAV also seeks *ex parte* permission to file
13 an opening memorandum of points and authorities in excess of 15 pages. Written notice of
14 LCAV's application for additional pages was provided in accordance with California Rule of
15 Court 313(e). (Mason Decl. ¶ 5.) LCAV requests up to 20 pages for its *amicus* brief in order to
16 provide sufficient analysis of the issues raised by Petitioners' 30-page Memorandum of Points
17 and Authorities. The Court has already recognized the complex nature of the issues presented in
18 this case, as it has permitted Petitioners a total of 50 pages for their opening and reply memoranda
19 by granting a stipulated application to file overlength briefs filed January 9, 2006.

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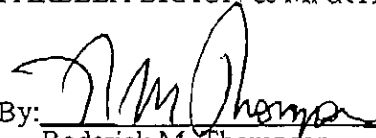
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III. CONCLUSION

For the foregoing reasons, LCAV respectfully requests that the Court grant its *Ex Parte* Application for Permission to File *Amicus* Brief in Support of Respondents, and execute the accompanying Proposed Order.

DATED: January 24, 2006

FARELLA BRAUN & MARTEL LLP

By: 
Roderick M. Thompson

Attorney for Legal Community Against
Violence

1 **DECLARATION OF CORY M. MASON IN SUPPORT OF EX PARTE APPLICATION**
2 **BY LCAV FOR PERMISSION TO FILE AMICUS BRIEF IN SUPPORT OF**
3 **RESPONDENTS**

4 I, Cory M. Mason declare as follows:

5 1. I am an attorney at law licensed to practice in the State of California. I am an
6 associate at Farella Braun & Martel LLP, attorneys for Legal Community Against Violence
7 ("LCAV"). I have first hand knowledge of the matters set forth below; if called as a witness, I
8 could and would testify to the same.

9 2. The names, addresses and telephone numbers for the parties' counsel are:

10 C.D. Michel, Esq.
11 Don B. Kates, Esq.
12 Thomas E. Maciejewski, Esq.
13 Trutanich Michel, LLP
14 180 East Ocean Blvd., Suite 200
15 Long Beach, CA 90802
16 Telephone: (562) 216-4444
17 Facsimile: (562) 216-4445
18 Attorneys for Paula Fiscal, et al.,
19 Plaintiffs and Petitioners

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, et al., Defendants and
Respondents

20 3. On January 23, 2006 at approximately 11:15 a.m., I spoke with Thomas E.
21 Maciejewski, counsel for Petitioners, and informed him that LCAV intended to seek an *ex parte*
22 order granting permission to file an *amicus curiae* brief in excess of 15 pages in support of
23 Respondents, the City and County of San Francisco, et al. (the "City") on Wednesday, January
24 25, 2006 at 11 a.m. in Department 301 of the San Francisco Superior Court. In an email on
25 January 24, 2006 at approximately 10:45 a.m., Mr. Maciejewski confirmed that Petitioners would
26 not oppose LCAV's *ex parte* request to file an *amicus* brief, and that they would be filing a
27 statement of non-opposition to that effect. I received a copy of Petitioners' Statement of Non-
28 Opposition by facsimile shortly thereafter.

29 4. On January 23, 2006 at approximately 4 p.m., I left a voicemail message for Vince
30 Chhabria, counsel for the City, and informed him that LCAV intended to seek an *ex parte* order
31 granting permission to file an *amicus curiae* brief in excess of 15 pages in support of the City on
32 Wednesday, January 25, 2006 at 11 a.m. in Department 301 of the San Francisco Superior Court.
33 SF Superior Court / CPF-05-505960

1 During a telephone conversation at approximately 10:30 a.m. on January 24, 2006, Mr. Chhabria
2 confirmed that the City would not oppose LCAV's *ex parte* application.

3 5. On January 23, 2006, by facsimile at approximately 6:20 p.m., LCAV provided
4 written notice of this *ex parte* application, including the hearing date, time and location, to Vince
5 Chhabria, counsel for the City. At approximately the same time, LCAV also attempted to provide
6 written notice to counsel for Petitioners via the facsimile number provided on their letterhead.
7 After encountering difficulties with this number, LCAV emailed to Mr. Maciejewski a PDF copy
8 of the letter providing written notice at approximately 9:40 a.m. on January 24, 2006. Attached
9 as Exhibit A are true and correct copies of the letter I sent to Mr. Chhabria and the letter and
10 email I sent to Mr. Maciejewski.

11 6. LCAV served the parties with this application by facsimile on January 24, 2006.

12 7. Our firm has contacted counsel for the City and has confirmed that the City's
13 Opposition will rely primarily on the City's home rule authority to defend its local ordinance's
14 handgun possession regulation, and, therefore, will not respond directly or completely to
15 Petitioners' assertions concerning *Doe* and implied preemption. The City's counsel has indicated
16 that, just as the City did in the court of appeal, it will not challenge Petitioners' broad reading of
17 *Doe* and will rely primarily on the City's home rule authority, which would uphold the local
18 ordinance even if in conflict with state law.

19 8. Counsel for LCAV has made every effort to concisely respond to the arguments
20 directed at state law preemption of Proposition H's handgun possession ban. Given the
21 complexity and scope of such an analysis, and the incomplete nature of the analysis provided by
22 Petitioners, LCAV has determined that no less than 20 pages are required to provide a complete
23 analysis of the relevant case law and its application to the facts presented.

24 I declare under penalty of perjury under the laws of the State of California that the
25 foregoing is true and correct. Executed this 24th day of January, 2006, in San Francisco,
26 California.



Cory M. Mason

EXHIBIT A

TO

**UNOPPOSED *EX PARTE* APPLICATION BY LCAV
FOR PERMISSION TO FILE *AMICUS* BRIEF IN
SUPPORT OF RESPONDENTS; MEMORANDUM
OF POINTS AND AUTHORITIES IN SUPPORT
THEREOF; DECLARATION OF CORY M. MASON**

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CORY MASON
cmason@fbm.com
D 415.954.4965

January 23, 2006

Via Facsimile

Vince Chhabria, Esq.
#1 Dr. Carlton B. Goodlett Place
Office of the City Attorney
City Hall, Room 234
San Francisco, CA 94102

Re: Fiscal et al. v. City and County of San Francisco et al.

Dear Mr. Chhabria:

This letter confirms my voicemail message of this afternoon during which I provided notice that Legal Community Against Violence ("LCAV") will seek an *ex parte* order granting permission to file an *amicus curiae* brief in excess of 15 pages in support of the City and County of San Francisco in the above-referenced matter. As I indicated in my voicemail, LCAV plans to present its *ex parte* application on Wednesday, January 25, 2006 at 11 a.m. in Department 301 of the San Francisco Superior Court. The San Francisco Superior Court is located at 400 McAllister St., San Francisco, CA 94102.

Sincerely,



Cory Mason

 **FARELLA BRAUN + MARTEL LLP**

Attorneys At Law

Russ Building / 235 Montgomery Street
San Francisco / CA 94104T 415.954.4400 / F 415.954.4480
www.fbm.comCORY MASON
cmason@fbm.com
D 415 954.4965

January 23, 2006

*Via Facsimile*Thomas E. Maciejewski, Esq.
Trutanich Michel, LLP
180 East Ocean Blvd.
Suite 200
Long Beach, CA 90802Re: Fiscal, et al. v. City and County of San Francisco, et al.

Dear Mr. Maciejewski:

This letter confirms our conversation of this morning during which I provided notice that Legal Community Against Violence ("LCAV") will seek an *ex parte* order granting permission to file an *amicus curiae* brief in excess of 15 pages in support of the City and County of San Francisco in the above-referenced matter. As we discussed, LCAV plans to present its *ex parte* application on Wednesday, January 25, 2006 at 11 a.m. in Department 301 of the San Francisco Superior Court. The San Francisco Superior Court is located at 400 McAllister St., San Francisco, CA 94102.

You indicated that you would let me know whether your clients plan to oppose LCAV's application, though I have not yet heard back from you in this regard. I would appreciate if you would inform me of your clients' intentions at your earliest convenience.

Sincerely,



Cory Mason

Mason, Cory (20) x4965

From: Mason, Cory (20) x4965
Sent: Tuesday, January 24, 2006 9:37 AM
To: 'tmaciejewski@tmllp.com'
Cc: Thompson, Rod (27) x4445; Coles, Larry (20) x3506
Subject: Fiscal v. City and County of San Francisco: PDF of Letter Confirming Notice of LCAV's Ex Parte Application



SFX245E.pdf (31 KB)

r. Maciejewski:

Attached is a letter confirming our conversation of yesterday morning regarding Legal Community Against Violence's intention to seek an ex parte order granting permission to file an amicus brief in support of the City and County of San Francisco in the above-referenced matter.

We attempted to send this letter to you last night via the facsimile number provided on your letterhead, but our fax department encountered some difficulties with this number. To ensure your receipt of yesterday's letter, I am attaching a PDF copy.

Sincerely,

Cory Mason
Attorney at Law

Farella Braun + Martel LLP
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235 MONTGOMERY STREET
SAN FRANCISCO / CA 94104

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D 415.954.4965
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-----Original Message-----
From: Coles, Larry (20) x3506
Sent: Tuesday, January 24, 2006 9:23 AM
To: Mason, Cory (20) x4965
Subject: PDF of Letter to Maciejewski

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PROOF OF SERVICE

I, the undersigned, declare that I am employed in the County of San Francisco, State of California. I am over the age of 18 years and not a party to the within action. My business address is 235 Montgomery Street, Suite 3000, San Francisco, California 94104.

On this date I served the attached:

UNOPPOSED EX PARTE APPLICATION BY LCAV FOR PERMISSION TO FILE AMICUS BRIEF IN SUPPORT OF RESPONDENTS; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF; DECLARATION OF CORY M. MASON

by placing a true copy thereof, addressed as set forth below and enclosed in a sealed envelope:

MAIL - with postage thereon fully prepaid, deposited for collection and mailing with the U.S. Postal Service pursuant to the ordinary business practice of this office.

HAND DELIVERY - delivered by **Specialized Legal Services** to the addressee.

FEDERAL EXPRESS - delivered by overnight courier to the addressee.

FACSIMILE TRANSMISSION - a true and correct copy transmitted via facsimile to each addressee listed below.

C.D. Michel, Esq.
Don B. Kates, Esq.
Thomas E. Maciejewski, 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, et al.,
Plaintiffs and Petitioners

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, et al., Defendants and Respondents

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed in San Francisco, California on **January 24, 2006**.


Lawrence L. Coles