

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FOUR

No. A111928

**PAULA FISCAL, LARRY P. BARSETTI, REBECCA KIDDER,
DANA K. DRENKOWSKI, JOHN CANDIDO, ALAN BYARD,
ANDREW SIRKIS, NATIONAL RIFLE ASSOCIATION, SECOND
AMENDMENT FOUNDATION, CALIFORNIA ASSOCIATION OF
FIREARM RETAILERS, and LAW ENFORCEMENT ALLIANCE
OF AMERICA,**

Petitioners,

vs.

**THE CITY AND COUNTY OF SAN FRANCISCO,
SAN FRANCISCO POLICE CHIEF HEATHER FONG in
her official capacity and SAN FRANCISCO POLICE
DEPARTMENT, and Does 1-25,**

Respondents.

**APPLICATION OF
GUN OWNERS OF CALIFORNIA
SENATOR H. L. RICHARDSON (RET.)
CALIFORNIA RIFLE & PISTOL ASSOCIATION
THE MADISON SOCIETY
TO SUBMIT AMICUS BRIEF IN SUPPORT OF PETITIONERS;
[PROPOSED] AMICUS BRIEF IN SUPPORT OF PETITIONERS**

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Amicus Curie respectfully move this Court, pursuant to **California Rules of Court, Rule 13(c)(1)**, for leave to file the concurrently submitted brief in support of Petitioner.

INTERESTS OF THE AMICUS

SENATOR H. L. RICHARDSON (RETIRED)

Senator H. L. “Bill” Richardson first entered the California Senate in 1966 – the same year Ronald Reagan was elected governor. During the ensuing 22 years, he bypassed three opportunities to run for Congress, choosing to remain in the Senate and the GOP leadership. Richardson tackled his job with energy and good ideas. The result was a record of success, even in the face of partisan opposition. He left the Senate in 1988. Today, California continues to feel his positive influence.

GUN OWNERS OF CALIFORNIA

Gun Owners of America, Inc., and its associated entity, Gun Owners of California (GOC), is a California non-profit corporation organized in 1974. It has 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 to keep and bear arms guaranteed by the Second Amendment to the Federal Constitution. It monitors government activities at the national, state and local levels that may affect the rights of all Americans who choose to own firearms.

CALIFORNIA RIFLE AND PISTOL ASSOCIATION

Petitioner CALIFORNIA RIFLE AND PISTOL ASSOCIATION, Inc. (hereinafter “CRPA”) is a non-profit membership organization with roughly 65,000 members. CRPA is incorporated under the laws of California, with headquarters in Fullerton. Among its other activities, CRPA works to preserve constitutional and statutory rights of gun ownership, including the right to self-defense and the right to keep and bear arms.

THE MADISON SOCIETY

Amicus MADISON SOCIETY is a Nevada non-profit, membership corporation with numerous chapters in California. Its purpose is to preserve and promote the legal and constitutional right to arms of its members and of law abiding, responsible Americans in general. To that end, Amicus MADISON SOCIETY engages in and/or supports litigation in California and nationwide. The Madison Society also engages in political education and advocacy through public meetings, advertising, publishing and distribution of literature, and contact with public officials.

REASONS FOR FILING

The accompanying brief primarily addresses the Legislative history and intent of Government Code Section 53071 and the significance of that intent in evaluating the legality of San Francisco’s Proposition H. Understanding the intended scope and application of § 53071 is critical to

understanding the preemptive effect of that statute on Proposition H. This is a topic about which these particular amici can provide valuable information to the court, since *amici* Senator H. L. Richardson (ret.) was the author of the bill that became Government Code § 53071.

Accordingly, the *amicus curiae* asks that this Court grant leave to file the *amicus* brief submitted herewith.

ARGUMENT

I. HISTORICAL CONTEXT OF GOVERNMENT CODE SECTION 53071

San Francisco's Proposition H is the latest in a long line of attempts to ban guns in that city, and may best be understood in terms of a time line of significant developments:

In 1923 the California Legislature was considering a massive collection of gun control laws. This included a prohibition against anyone buying a handgun without a permit. That provision was ultimately not enacted. But the Legislature went even further. It instead enacted into law what is now Penal Code § 12026, declaring that law abiding, responsible adults would *never* be subject to a permit law, i.e., a law that bans handgun possession unless you have a permit.

In 1969 San Francisco circumvented §12026 and enacted a handgun registration ordinance. That ordinance was then challenged in the state

Supreme Court on the grounds that it constituted a law requiring a permit to own handguns in violation of § 12026. The Supreme Court rejected that challenge, saying that a registration law only requires that handguns be “registered” but does not require the owner to have a “permit” or license. See: *Galvan v. Superior Court* (1969) 70 Cal. 2d 51. The *Galvin* court went to great length to define and distinguish the concepts of “license” and “registration.”

In 1970, displeased with the *Galvan* result, the California Legislature enacted a new statute to address that result. Authored by *amicus* herein Senator H. L. Richardson, that new statute (originally Govt. Code § 9619) became Govt. Code § 53071. Though somewhat obscurely worded when viewed in hindsight (though not when viewed in historical context), § 53071 was intended to ban any local law that required either “registration” or “licensing,” as *Galvin* had broadly defined those terms. This new law applied to the sale or possession of any kind of firearm.

In 1971 the Court of Appeals (First District) in *Olsen v. McGillicuddy*; 15 Cal.App.3d 897 (1971) declined to find a local ordinance, regulating BB guns, preempted under Govt. Code § 53071. The ordinance in question was a *possession and use regulation* of BB guns by minors. (Section 53071 was never intended to preclude localities from regulating the *use* of firearms or BB guns (which are not “firearms”) – hence the plethora of local firearm discharge ordinances.)

The California Legislature was again displeased, and in response to the *Olsen* decision they passed Government Code § 53071.5, preempting the field of BB gun regulation, including manufacturer, sale, and possession.¹ In drafting § 53071.5 differently from the language it had used in § 53071, the Legislature was tailoring the language of the new statute to respond to the language and terms used in the *Olsen* decision, just as it did in drafting § 53071 in response to the terms used in *Galvin*.

In 1972 San Francisco tried again to enact an ordinance which purported to require a permit to *buy* a handgun. This was quickly stricken down as contrary to both Pen. Code §12026 and Govt. Code § 53071. See: *Sippel v. Nelder* (1972) 24 Cal.App.3d 173.

On June 28, 1982 San Francisco tried once again; this time enacting an ordinance which purported to ban the possession of all handguns, but did not seek to abolish all exceptions, including the power the state grants to local police chiefs and sheriffs to issue concealed carry licenses (CCW permits) pursuant to Penal Code § 12050.

On August 3, 1982 the California Attorney General issued an opinion at the request of *amicus* herein Senator H. L. Richardson

¹ 53071.5: By the enforcement of this section, the Legislature occupies the whole field of regulation of the manufacture, sale, or possession of imitation firearms, as defined in Section 12250 of the Penal Code, and that section shall preempt and be exclusive of all regulations relating to the manufacture, sale, or possession of imitation firearms, including regulations governing the manufacture, sale, or possession of BB devices and air rifles described in subdivision (g) of Section 12001 of the Penal Code.

addressing the issue of whether a city could enact legislation of the type being contemplated by San Francisco, and finding such a regulation would be preempted. 65 Ops. Cal. Atty. Gen. 457 (1982); 1982 WL 155982 (Cal. A.G.).

Then in *Doe v. City & County of San Francisco* (1982) 136 C.A. 3d 509, this Court of Appeal struck down the San Francisco ordinance on three grounds: (a) it created licensing scheme in violation of Govt. Code § 53071; (b) it violated Pen. Code § 12026's prohibition on local permit requirements to keep a handgun in the home because it left the police chief free to issue concealed carry licenses that allowed the holder to have a handgun in the city; and (c) the existence of Pen. Code § 12026 impliedly deprives cities of the power to ban handguns (whether with or without a permit requirement) because the Legislature would not enact a prohibition of permit laws unless it also intended to bar all local attempts to ban handguns. *Doe* rejected the claim that § 12026 precludes only a license-issuance scheme but allows a total ban, stating: "It strains reason to suggest that the state Legislature would prohibit licenses and permits but allow a ban on possession." (*Doe*, 136 C.A.3d at 518.)

If the *Doe* case is still good law it flatly invalidates San Francisco's Proposition H. In addition to Proposition H being in conflict with Govt. Code § 53071, Pen. Code § 12026 has an *identically phrased* preclusion of any local ban of handgun *purchasing*. It equally "strains reason" to suggest

that section 12026 (b)'s prohibition of local licensing of handgun sales allows a ban on such sales.²

In 1998 an another court appeals upheld a local ban on certain handguns that the ordinance misidentified as “Saturday Night Specials.” *California Rifle & Pistol Assn. (CRPA) v. City of West Hollywood* (1998) 66 Cal.App.4th 1302, 78 Cal.Rptr.2d 591. Unfortunately *CRPA* misinterpreted Govt. Code § 53071 to not apply to local bans if the local ordinance banned only the *sale of certain kinds* of guns, but not others. Even under the *CRPA* view of § 53071, however, § 53071 still invalidates the San Francisco initiative, which bans the sale of *all* guns, and *possession* of handguns unless licensed (*i.e.*, non-residents, police, etc.) by the ordinance. *CRPA* did not, however, either expressly or implicitly purport to overrule the 1982 *Doe* case. Rather, it distinguished that case, and Penal Code § 12026 and Government Code §53071, on the grounds that they dealt with bans of all guns or handguns, not with bans of only some specific types.

In 2002, the California Supreme Court took up firearm preemption issues in a pair of cases certified to that Court by the Ninth Circuit Court of

² Interestingly, the 1982 San Francisco handgun ban ordinance, though declared illegal in the *Doe vs. San Francisco* case in 1982, was kept on the books for years - in fact until 2004, when self defense civil rights groups sued San Francisco over its “assault weapon” ordinance, and while at it demanded the repeal of the unenforceable handgun ban ordinance, as well as the repeal of a dozen other illegal San Francisco gun control ordinances. San Francisco then finally repealed these ordinances.

Appeals. See: *Nordyke v. King*, (2002) 27 Cal. 4th 875; *Great Western v. Los Angeles* (2002) 27 Cal. 4th 853. The cases involved the attempt by Alameda and Los Angeles Counties to ban gun shows from county fairgrounds by prohibiting either the possession, or the sale, of firearms on county owned property. Although the California Supreme Court ultimately found that the local ordinances were not preempted, the holdings are limited to the facts of those cases:

In sum, whether or not the Ordinance is partially preempted, Alameda County has the authority to prohibit the operation of gun shows held on its property, and, at least to that extent, may ban possession of guns on its [county owned] property.

Nordyke v. King, (2002) 27 Cal. 4th 875, 885

The California Supreme Court essentially dodged the certified question of preemption put to it by the Ninth Circuit, because it decided the case on the completely different grounds of private property ownership and land management, instead of whether the ordinances conflicted with state laws regulating firearms.

These two cases are significant for the proposition that California preemption law, at least with respect to firearm regulation, is far from uniform. After setting forth an analysis of the conflicting preemption policies of current statutory and case law, the Ninth Circuit, in its order certifying the preemption issue to the California Supreme Court found:

“In sum, 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.” See: *Nordyke v. King*, (2000) 229 F.3d 1266.

Despite the repeated decisions rejecting San Francisco’s attempts to ban firearms in that city, these most recent decisions have apparently emboldened San Francisco to try again. This time San Francisco apparently hopes to distinguish its attempt by limiting part of the ordinance’s application to city residents in order to try to make it purely a municipal affair. Although this is a nonsensical position, it makes no difference if the ordinance is expressly preempted by Govt. Code § 53071.

II. GOVERNMENT CODE § 53071'S EXPRESS PREEMPTION OF LOCAL “LICENSING” OF FIREARMS SHOULD BE READ ACCORDING TO THE BROAD MEANING OF THE LICENSING CONCEPT DESCRIBED IN *GALVAN*, TO WHICH SECTION 53071 WAS A DIRECT LEGISLATIVE RESPONSE.

Penal Code § 12026 prohibits local bans on handgun purchase and ownership. Government Code § 53071 extends this to all guns by expressly preempting any local “licensing” power. Section 53071, which was *written in reaction to the Galvan decision*, was also intended to reverse its holding by expressly preempting local registration or licensing of firearms.³ So Govt. Code § 53071's preemption of local “licensing” must be read in light of the broad meaning *Galvan* gave to the concept of licensing.

³ *Suter v. Lafayette* (1997) 57 Cal.App.4th 1109, fn. 2 on 1111.

As Justice Baxter reminds us, it is normally presumed that when legislating on the same subject “the Legislature intended that similar phrases be accorded the same meaning, particularly if the terms have been construed by judicial decision.” *People v. Wells*, (1996) 12 Cal.4th 979, 986.

With regard to Govt. Code § 53071, that presumption is fortified by our knowledge that its author, *amici* Senator Richardson, and its sponsors were actually aware of *Galvan* and the construction it had given the concept of “licensing” in interpreting Penal Code § 12026 and that they were adopting that construction.

Further confirmation of Govt. Code § 53071's intent to deprive cities of any power to ban gun sales or possession, are documents provided by the Legislative Intent Service. These include a contemporary statement by § 53071's primary author, letters urging its enactment (including one by then Assemblyman Floyd Wakefield), and the Governor's press release upon signing § 53071 into law.⁴ These are all mutually consistent in their refutation of the argument that by “licensing” § 53071 only precludes ordinances that involve the issuance of a physical license while allowing cities to ban guns altogether. The governor's press release epitomizes all the documents. He described what he was signing as:

legislation which will insure uniform regulations on their [firearms'] use throughout the state . . . in much the

4 See Request for Judicial Notice which will be filed forthwith.

same way as the state establishes uniform regulations governing such things as traffic safety on highways throughout California .

Gov. Reagan said, “Without this legislation, sportsmen might well be confronted in the future by a chaotic maze of differing local firearm licensing regulations each time they entered another local jurisdiction to go hunting.

“Imagine driving along a freeway from one county to another, not knowing from one mile to the next if traffic regulations had changed and, if so, in what way,” he said. He noted that California now has a comprehensive Deadly Weapons Control Act which provides for statewide regulation of firearms. [Emphasis added.]

These documents are irreconcilable with San Francisco’s

Proposition H. Allowing cities to enact a chaotic maze of total gun bans without recognizing the exceptions built into state laws perpetuates the very problem Govt. Code § 53071 was intended to eliminate. Its intent can only be fulfilled by understanding that § 53071 preempts all local power to ban guns, regardless of what form the ban takes. The intent was to “insure uniform regulations” on the purchase and possession of firearms, by placing those subjects exclusively in the power of the state to establish.

Although the Legislature could have worded Govt. Code § 53071 differently to make it clearer that the statute prohibits local bans of gun sales or possession, in light of *Galvin* precipitating § 53071 (and *Olsen* later separately precipitating 53071.5) the language of § 53071 is completely understandable. When enacting § 53071.5, the legislature simply did not simultaneously go back and amend § 53071. This is typical in Sacramento.

At the time § 53071.5 was passed, the state of law as interpreted by *Doe*, had already been interpreted as supporting the position that *Amici* are urging here, therefore there was no need to amend § 53071.

Moreover, the Legislature had no reason to rewrite Pen. Code § 12026 or Govt. Code § 53071. The legislators had already been authoritatively and repeatedly advised that the wording of the §§ 12026 and 53071 *do* preclude complete local bans of either firearm sale or possession, so there was no need to change it. *Galvan, Doe*, and three opinions by the Attorney General and Legislative Counsel,⁵ respectively, have found that localities are precluded from banning the acquisition and possession (by persons qualified under state law) of handguns permitted by state law.⁶

The only reason for the Legislature to rewrite these laws would be if it disagreed with those opinions. Far from disagreeing, the Legislature ratified those opinions by reenacting Pen. Code § 12026 repeatedly over the years

⁵ Legislative Counsel opinions are entitled to as much weight as Attorney General Opinions, or even more. The Legislative Counsel is, after all, the Legislature's own lawyer. "It must be presumed that [such opinions] have come to the attention of the Legislature, and if [they] were contrary to the legislative intent that some corrective measure would have been adopted." (*California Ass'n. of Psychology Providers v. Rank* (1990) 51 Cal. 3d 1, 21 (referring to Attorney General opinions, but applying the same point to the Legislative Counsel in the next paragraph).)

⁶ "Cities may not enact an ordinance to prohibit sale or possession of handguns." March 2, 1982 Legislative Counsel Opinion (emphasis added) (see request for Judicial Notice filed herewith); 65 Ops. Cal. Att. Gen. 457 (1982) ("A California city does not have the legislative authority to prohibit the possession of operative handguns within the city even if law enforcement officers are precluded from the prohibition"); 77 Ops. Cal. Atty. Gen. 147 (1994) (state law occupies the field as to the sale of any kind of firearm or ammunition).

without relevant change.⁷

At least eight bills to allow cities to ban guns or handgun acquisition and possession have been introduced -- but rejected -- over the past thirteen years.⁸ Ordinarily the non-enactment of legislation has little import. But here there is a pattern of repeated attempts to change the law, all being repeatedly rejected. These repeated attempts show the Legislature's knowledge that localities have no such power under current law. See: *People v. Romero* (1996) 13 Cal.4th 497, 520. The fact that these bills failed, confirms the Legislature's intent that localities should not have such power.

As summarized in the hearing memorandum on Assembly Bill 634:

The Legislature, in enacting pre-emption statutes, has expressed its intent for the need for uniform statewide standards relating to . . . firearms, [a subject] already involving extensive and comprehensive regulation by the state[. Here] . . . the need for existing statewide standards and the uniformity it provides could not be more necessary. Conversely, permitting any widespread additional local restrictions [regarding] . . . firearms could not possibly add anything other than general confusion to the regulatory scheme.⁹

⁷ Acts of 1995, Ch. 322, § 1; Acts of 1989, Ch. 958, § 1; Acts of 1988, Ch. 577, § 2. The one noteworthy change is that § 12026 is now subdivided.

⁸ Assem. Bill No. 136 (1997-98 Reg. Sess.); Assem. Bill No. 247 (1997-98 Reg. Sess.); Sen. Bill No. 644 (1997-98 Reg. Sess.); Assem. Bill No. 634 (1995-96 Reg. Sess.); Assem. Bill No. 2706 (1993-94 Reg. Sess.) Sen. Bill No. 1293 (1993-94 Reg. Sess.); Assem. Bill 2865 (1993-94 Reg. Sess.); Assem. Bill 137 (1993-94 Reg. Sess.).

⁹ See Jan. 23, 1996 Assembly Committee on Public Safety Hearing Memo on AB 634, p. 2 (emphasis added).

III. THE ORDINANCE CONFLICTS WITH, DUPLICATES, AND FRUSTRATES MULTIPLE STATE LICENSING SCHEMES

The general approach taken by the state regulatory scheme is to identify a problem area, regulate it, and then to create myriad exceptions to the regulations for situations or persons that are not part of the problem. In essence, this approach creates a comprehensive licensing scheme throughout the dangerous weapons control statutes contained in Pen. Code §§ 12000 through 12809. It was this scheme that Govt. Code §53071 was enacted to protect.

A. Statutes Regulating Firearms

There is no other piece of personal property so highly regulated in California as firearms. There are state laws concerning manufacture, distribution and sale, acquisition, transfer, use, where possessed, by whom possessed, in what manner possessed, storage, ownership, transportation, forfeiture, sale, receipt, inheritance, composition, design, size, safety features, accessories, age and function.¹⁰

¹⁰ For example, in addition to the laws addressing carrying handguns in public, there are laws dealing with gun design. [See the various law regulating semi-automatic and full automatic weapons, at both the State and Federal level.] There are laws regulating size and function. [See Penal Code section 12125-12133 (which is the State counterpart to now preempted local ordinances regulating “Saturday Night Specials”).] There are laws classifying guns by age. [See California Penal Code § 12001 and 18 USC 921(a)(16).] There are laws proscribing who may have a gun. [See Penal Code § 12021 and Welfare & Institution Code §§ 8100 et seq.] There are laws regulating the transportation of firearms. [See e.g. Penal Code § 12026.2] There are schemes for licensing and registration of handguns. [Penal Code §§ 12070 and 12021] There are laws for the concealed carry of handguns. [See Penal Code § 12050]. There are laws

As noted above, Govt. Code § 53071 indicates an express intent by the legislature to occupy the whole field of the regulation of firearms licensing and registration. That code section was interpreted in *Doe* when the Appellate Court questioned “whether the San Francisco Handgun Ordinance merely regulates possession or instead constitutes a licensing ordinance in violation of the express preemption of § 53071.” See: *Doe*, 136 Cal.App.3d at 516.

Later, in the *CRPA* case, the court found no preemption of local ordinances with respect to the sale of a certain classes of allegedly dangerous firearms designated as “Saturday Night Specials.” That court found that firearm *sales* are regulated by only a relatively few sections of Pen. Code: §§ 12070, 12071, 12071.1, 12071.4, 12072, 12078, 12081, 12082 and 12084. See: *CRPA v. City of West Hollywood* (1998) 66 Cal.App.4th 1302, 78 Cal.Rptr.2d 591.

B. Statutes Licensing Handgun Possession

In contrast, the state law scheme with respect to *possession* of firearms is much more comprehensive, and the express statutory permissions to possess handguns that are created by statutory exemptions to the general prohibitions are much more comprehensive. All of those

regulating the transfer of firearms. [Penal Code § 12072] There are laws requiring training before purchase of a firearm. [Penal Code § 12081]. This list is not nearly exhaustive and does not address federal law.

statutory privileges are invalidated by the ordinance, in direct conflict with Govt. Code § 53071.

1. Carrying Concealed or Loaded Handguns in Public

Perhaps the best place to start to understand the state's approach to handgun possession is with the laws that regulate and license the carrying of concealed or loaded handguns in public. San Francisco's Proposition H contains no exception to its general ban on handgun possession for persons with a valid CCW license under Pen. Code § 12050. Nor does it respect the statutory licenses to carry a concealed handgun *without* a CCW found in Pen. Code §§12025.5, 12026, 12026.1, 12026.2, 12027, or 12027.1.

Regarding loaded firearms, Pen. Code § 12031 generally prohibits carrying a loaded firearm in public, but §§ 12031(b), 12031(j), 12031(k), and 12031(l) create situations where a loaded handgun can be possessed, all of which are also prohibited by the ordinance.

It is thus possible for a person found in possession of a handgun in San Francisco, to be adjudged not guilty of violating Pen. Code §§ 12025 or 12031, yet still be found guilty of violating Proposition H.

2. Other Firearm Possession Restrictions and Allowances/Licenses

In addition to dealing with the carrying of concealed or loaded handguns in public, California state law also regulates firearm possession

under the following statutes: Business and Professions Code § 7596.3 *et seq.* for issuance of firearms to employees of a security and alarm company. Civil Code § 1714.3 imposing civil liability for negligent possession and storage of a firearm. Civil Code § 3482.1 regulating shooting ranges and activities thereon. Education Code § 48900, which provides for the expulsion of a student for unlawful possession of a firearm. Family Code § 6389 prohibits persons subject to domestic violence restraining orders from possessing firearms while the order is in effect. There are several Fish and Game Code sections regulating possession of firearms while engaged in certain activities and in certain areas: §§ 2005, 6854, 10651, 10662, 10663 and 10665. Sections of the Health and Safety Code prohibit possession of a firearm by any person in possession of a controlled substance. California Penal Code § 171d prohibits possession of a firearm by unauthorized persons in the Governor's, or any other constitutional officer's residence. California Penal Code § 186.22 *et seq.* regulates possession of firearms by persons found to be members of street gangs. California Penal Code § 417 *et seq.* criminalizes the irresponsible display – brandishing – of a firearm. Most of the sections of California Penal Code §§ 830 *et seq.* pertain to the possession of firearms by persons designated a peace officers. California Penal Code § 1203 governs possession of firearms by persons on probation. California Penal Code § 12020.5 criminalizes the unlawful advertising of, among other things, certain kinds of firearms. California Penal Code §

12021 penalizes possession of a firearm by a convicted felon or any person found guilty of a set of enumerated misdemeanors. California Penal Code § 12026.1 outlines the regulations for transporting a firearm in a motor vehicle. California Penal Code §§ 12028, 12028.5 & 12090 each provide for the disposition of firearms after a trial, firearms temporarily taken during a domestic dispute, and firearms declared to be a nuisance.

California Penal Code § 12032, outlines the procedures for disposition of surplus firearms in the possession of an official of a state or local agency.

California Penal Code § 12034 makes the owner of a vehicle responsible for the safe and lawful transportation of firearms in his/her vehicle.

California Penal Code § 12035 addresses the issue of criminally negligent storage of a firearm. California Penal Code § 12040 makes it a crime for a

person to be in possession of a firearm while wearing a mask. California Penal Code § 12095 *et seq.* outlines the state permit process for possession

of a short barreled rifle and/or short barreled shotgun. California Penal

Code § 12101 places tight restrictions on possession of a firearm by a

minor. California Penal Code §§ 12200 *et seq.* regulates possession of

machine guns in California. California Penal Code §§ 12275 *et seq.* [also

known as the Roberti-Roos Assault Weapons Act] regulates the sale and

possession of certain specified rifles, shotguns and pistols. California Penal

Code § 12590 prohibits possession of a firearm while engaged in a labor

dispute and picketing in a public place. Welfare and Institutions Code §

8100 *et seq.* prohibits the possession of firearms by mental patients and sets forth due process requirements for firearm forfeiture. For polling places in the county, Proposition H duplicates Election Code §18544. The ordinance duplicates (and conflicts) with California Penal Code §171b for firearms brought into state and public buildings in the county. For any place within the county where a committee of the California Assembly or Senate might hold hearings, the ordinance duplicates California Penal Code §171c. For any school located in the county, the ordinance is redundant with respect to California Penal Code §§ 626.9 and 626.95.

That's over fifty (50) state statutes. Each of them deals in some way with the regulation of firearm possession.¹¹ Many of these sections are broad in their reach, quite long in their text, quite complex in their application, and most importantly for §53071 analysis, quite thorough in their exceptions.

Clearly, the subject matter of *possession* of firearms in general and handguns in particular has been so fully covered by general law, and that the scheme of express and *de facto* licenses created through statutory exceptions have become so extensive, as to be covered by the express preemption provisions of Govt. Code § 53071.

¹¹ This does not include other statutes relating to criminal enhancements for possession of a firearm during a criminal act. Nor has this list touched upon the entire body of Federal law on this topic.

CONCLUSION

Black's Law Dictionary 5th Edition defines "prohibit" as follows:

To forbid by law; to prevent; – not synonymous with "regulate." San Francisco is not trying to use Proposition H to regulate public/municipal safety with any police powers reserved to it under California constitutional and statutory law. They are trying to prohibit the enjoyment of rights and privileges enjoyed by the rest of Californians who rightly look to Sacramento for statewide gun policy.

Petitioners' request for relief should be granted.

Date: December _____, 2005

Donald E. Kilmer, Jr.
Attorney for Amicus

CERTIFICATE OF WORD COUNT

(Cal. Rules of Court, rule 14(c)(1))

The text of this brief consists of 5376 words as counted by the Corel WordPerfect™ word-processing program used to generate the brief.

Dated: December_____, 2005

Donald E. Kilmer, Jr.
Attorneys for Amicus

PROOF OF SERVICE

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

I, David Speakman, am employed in the City of San Jose, Santa Clara County, California. I am over the age eighteen (18) years and am not a party to the within action. My business address is 1261 Lincoln Avenue, Suite 111; San Jose, CA 95125.

On December _____, 2005, I served the foregoing document(s) described as:

APPLICATION OF GUN OWNERS OF CALIFORNIA; SENATOR H. L. RICHARDSON (RET.); CALIFORNIA RIFLE & PISTOL ASSOCIATION THE MADISON SOCIETY; TO SUBMIT AMICUS BRIEF IN SUPPORT OF PETITIONERS; [PROPOSED] AMICUS BRIEF IN SUPPORT OF PETITIONERS

on the interested parties in this action by placing

the original
 a true and correct copy

thereof enclosed in sealed envelope(s) addressed as follows:

C. D. Michel
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Clerk of the Court
California Supreme Court
350 McAllister Street
San Francisco, CA 94102
(5 Copies)

X **(BY MAIL)** As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under the practice it would be deposited with the U.S. Postal Service on that same day with postage thereon

fully prepaid at **San Jose**, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date is more than one day after date of deposit for mailing an affidavit.

Executed on December _____, 2005, at **San Jose**, California.

X (STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

David Speakman