COURT OF APPEAL OF THE STATE OF CALIFORNIA FIRST

APPELLATE DISTRICT, DIVISION FOUR

PAULA FISCAL, LARRY P. BARSETTI, RECECCA 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, et al.,

Respondents.

Case No. A111928

AMICUS BRIEF OF LEGAL COMMUNITY AGAINST VIOLENCE IN SUPPORT OF RESPONDENTS

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I. INTRODUCTION

Respondent, the City and County of San Francisco (the "City"), recently passed a dubious milestone: a record number of homicides for the calendar year, a result of a double handgun shooting on the day before Thanksgiving.[1] There have been more homicides in 2005 – 91 and counting – than in all of 2004. (*Id.* at ¶ 2.) And 2004 had increased over 2003, which had more homicides than 2002. (*Ibid.*) In each of the last five years, more people have been killed in San Francisco than the previous year. (*Id.* at ¶¶ 2, 3.) Firearms were used in the great majority of those homicides, including 85% of the homicides committed so far this year. (*Id.* at ¶ 2.) And the great majority of the firearms used have been handguns. (*Id.* at ¶ 7.) In 2004, for example 56 of the 63 firearms homicides involved handguns.[2] On November 8, 2005 the voters of San Francisco took a significant step to address this alarming increase in gun violence by adopting Proposition H.

Amicus Curiae Legal Community Against Violence ("LCAV"), although not involved in drafting Proposition H, has extensive experience with California local gun ordinances. It has assisted many counties and municipalities in crafting a variety of local regulations to fit community needs. Nationwide, local communities have been willing to advance and

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[1] Declaration of Lieutenant John Hennessey in Support of City's Opposition to Petition For Writ of Mandate, filed December 5, 2005 ("Hennessey Decl."), ¶¶ 2, 3, 5.

[2] Compare Hennessey Decl. at ¶ 2 (63 total firearm homicides in 2004) and Proponent's Argument in Favor of Proposition H ("By December 2004, 56 of 87 San Francisco homicides that year involved handguns.") Exhibit ("Exh.") A to Declaration of Roderick Thompson ("Thompson Decl.") submitted in Support of Request for Judicial Notice.

test aggressive policies in their attempts to solve the problem of gun violence – policies that would not be politically viable on a statewide or national level. In addition to handgun bans, some communities prohibit the manufacture and/or sale of firearms, ammunition or both. LCAV is called upon by governmental entities and advocacy organizations to provide legal assistance for the development and implementation of these and other policies.

LCAV supports the rights of state and local governments to adopt regulations addressing the epidemic of gun violence that plagues their communities. It is especially important that communities have the ability to enact measures reflecting local concerns in light of the federal government's repeated failure to act.

LCAV supports the legal authority of the City and its citizens to enact Proposition H, and files this brief to assist the Court in its evaluation of the important state preemption law issues raised by the Petition.

II. FACTUAL AND PROCEDURAL BACKGROUND

The danger posed by firearms generally and handguns in particular is all too obvious. It is also confirmed by the sad statistics recounted above.

Some may believe that a handgun in the home will provide protection from gun violence and reduce the likelihood that a family member or friend becomes a gun violence victim. Sadly, the statistics indicate just the opposite is true. One study, cited in the Proponent's Argument in Favor of Proposition H, "found that a handgun in the home makes it 43 times more likely that a friend, family member or acquaintance will be killed than an intruder. In addition, suicide mortality increases fivefold with a handgun." (Thompson Decl., Exh. A., p. 2) Regardless of

the precise level of increased risk, there is strong statistical support showing that having a handgun in the home is dangerous.

In recent years, many municipalities have enacted ordinances to address this pressing public safety problem. Increasingly, the most effective legislation has been achieved at the local level. While some states, including most notably California, have made significant strides toward effective gun regulation, the most innovative state gun laws have started at the local level. Several local laws, including bans on Saturday Night Specials (also known as "junk guns") (Penal Code section 12125 et seq), have "trickled up" from local ordinances to become part of the California Penal Code. This pattern has been repeated with respect to the state's one-gun-a-month law (section 12072(a)(9)(A)), 50 caliber sniper rifle and assault weapon bans (section 12280(a)(1)), and trigger lock law (section 12088.1).

The policy issue of whether all handguns should be banned, as opposed to regulated, is a topic of debate inside, as well as outside, the gun violence prevention movement. There are no statewide bans on handguns. At the local level, however, there has been interest in banning these weapons. Given the inadequacy of federal firearms regulation, it should not be difficult to understand why some communities believe that an outright ban on handguns is a desirable option.

Some localities have successfully implemented handgun bans, which have withstood judicial challenges. Since 1976, Washington, D.C. has banned the purchase, sale, transfer and possession of civilian handguns. (See *Seegars v. Gonzales* (D.C. Cir. 2005) 396 F.3d 1248, rehg. den. (D.C. Cir. 2005) 413 F.3d 1 [rejecting challenge to the D.C. ban on standing grounds].) A number of Illinois communities, including Morton Grove,

have also enacted ordinances prohibiting the possession and sale of handguns. (See *Quilici v. Village of Morton Grove* (7th Cir. 1982) 695 F.2d 261, 271 [upholding law against Second Amendment challenge].)

The trend in federal law has been in the opposite direction – away from gun violence prevention legislation. Examples of the weakness of federal gun laws include the absence of any background check requirement for private sales (18 U.S.C. section 921(A)(21)(C)), the exemption for guns and ammunition from our nation's consumer product safety laws (15 U.S.C. section 2051 et seq., 2052(a)(1)(E)), and Congress's failure last year to renew the federal assault weapons ban (which has since expired). The unprecedented legal immunity given to the gun industry earlier this year through the Protection of Lawful Commerce in Arms Act (P.L. 109-92 (Oct. 25, 2005); 119 Stat 2095) is a good indication that there will be no meaningful federal gun regulation for the foreseeable future.

Against this backdrop of increased pressure for regulation at the local level, and an increasingly severe epidemic of gun violence within the City, on November 8, 2005, the voters of San Francisco passed Proposition H, by a margin of 58% to 42%. The Proponent's Argument in Favor of Proposition H notes some of the tragic history summarized above and that "access to handguns can transform heated exchanges or emotional moments into life long injury or death." (Thompson Decl., Exh. A, p. 2.) While no "single strategy will solve San Francisco's epidemic of violence," having less guns in the flow of commerce should make it more difficult to obtain one. (*Ibid.*) "It limits handgun possession to those who protect us, and ends firearm sales." (*Ibid.*)

Section 1 of the ordinance contains the findings of the people of San Francisco, including that: (1) handgun violence is a serious problem in

their city; (2) handguns pose a threat to their safety; (3) San Francisco may use its home rule power to enact the ordinance; and (4) the ordinance is not intended to affect residents of other jurisdictions temporarily within City limits or to impose an undue burden on inter-county commerce. (Legal Text of Proposition H, Thompson Decl., Exh. A.)

Section 2 bans within the limits of the City "the sale, distribution, transfer and manufacture of all firearms and ammunition." (Legal Text of Proposition H, Thompson Decl., Exh. A.)

Section 3 is entitled "Limiting Handgun Possession in the City . . . ." (Legal Text of Proposition H, Thompson Decl., Exh. A.) Unlike Section 2, it applies only to City residents, who shall not "possess any handgun unless required for specified professional purposes." (*Ibid.*) Among residents not covered are all state and federal peace officers, active members of the armed forces and security guards who are protecting and preserving property or life within the scope of their employment. (*Ibid.*) Residents may give up their handguns at any police station within 90 days of the effective date without penalty.[3] (*Ibid.*)

Proposition H is a courageous effort by the residents of San Francisco to do something at the local level about a pressing local problem – the tragic consequences of gun violence.

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[3] Other sections of the ordinance provide for a January 1, 2006 effective date (§ 4), that the Board of Supervisors will enact penalties for violations within 90 days of the effective date (§ 5), that nothing in the ordinance is intended to create a handgun licensing requirement or otherwise to duplicate or conflict with state law (§ 6), for severability (§ 7) and amendment by two-thirds vote of the Board (§ 8). (Legal Text of Proposition H, Thompson Decl., Exh. A.)

The day after the election, November 10, 2005, Petitioners (led by the National Rifle Association (the "NRA")) posted on the Internet and filed a 45-page Petition ("Petn.") seeking original relief from this Court in the form of a writ of mandate/prohibition to block implementation of the local ordinance endorsed by a majority of voters. Despite the exacting legal requirements for such extraordinary writ relief, much of the Petition appears directed to more of a political than a legal audience. It makes the specious arguments, for example, that doing without handguns and firearms sales "will have a ruinous effect on the City's cultural events" (Petn., p. 3) and that Proposition H is preempted by state hunting policy addressed to "the endless problem of deer overpopulation." (Petn, p. 41).

The Petition is most remarkable for what it does not say on the two principal legal issues raised. First, the lengthy Petition ignores entirely the City's home rule power, which the ordinance expressly invokes for its authority for the local ban on possession of handguns. Second, and at least equally glaring, is the Petition's complete omission of any reference to the Supreme Court's 2002 companion decisions in *Great Western Shows, Inc. v. County of Los Angeles* (2002) 27 Cal.4th 853 (*Great Western)* and *Nordyke v. King* (2002) 27 Cal.4th 875 (*Nordyke*), which are the controlling authority on the issue of state preemption of local gun regulation.

The City's Opposition primarily relies on the first issue – its home rule power – in defending the limited ban on handgun possession. This brief refutes the main assertion in the Petition, that the 1982 decision in *Doe v. City and County of San Francisco* (1982) 136 Cal.App.3d 509 (*Doe*) is both the definitive authority on the preemption of local gun regulation and should be controlling here. As explained below, the Supreme Court in *Great Western* specifically addressed and resolved a conflict between *Doe*

and other appellate court decisions; *Doe* has been properly confined by subsequent legislative action and court decisions to its narrow holding that state law preempts local licensing or permitting of handgun possession. It is not controlling here. When analyzed under the *Great Western* standard, Proposition H is not preempted by state law.[4]

III. ARGUMENT

Petitioners argue that Proposition H is preempted in its entirety by state law, but do not review the relevant case law or apply the proper preemption analysis. As noted, they fail even to mention the Supreme Court's recent definitive treatment of the subject, *Great Western*.

A. The Standard in California for Preemption Analysis of Local Gun Regulations

1. The Ninth Circuit Requested Certification, Finding *Doe*'s Reasoning in Conflict With Later Court of Appeal Decisions on the Scope of Implied State Preemption of Local Gun Control Regulations.

In *Great Western Shows, Inc. v. Los Angeles County* (9th Cir. 2000) 229 F.3d 1258 (*Great Western Shows*), the Ninth Circuit reviewed a preemption challenge to a Los Angeles County ordinance outlawing sales of firearms and ammunition on county property, including the county fairgrounds where plaintiff had held its gun shows for many years. The court noted that several state laws "clearly pertain to the sale of firearms at gun shows." (*Id.* at p. 1261.) The district court had reasoned that "'[i]t would be nonsensical'" for the Legislature to expressly permit gun sales at

[4] Alternatively, for the reasons explained in the City's Opposition, even if a conflict were found with state law, because the handgun possession ban in Proposition H is directed to a municipal affair, it would still be valid and enforceable under the City's home rule authority.

gun shows and still intend to allow local ordinances to ban such sales. (*Ibid.*) The Ninth Circuit found support for this argument in *Doe*, which "inferred from the legislature's restriction on local handgun permit requirements an intent to foreclose local laws banning possession citywide." (*Id.* at p. 1262 [referring to *Doe's* statement that it "'strains reason to suggest that the state Legislature would prohibit licenses and permits but allow a ban on possession'" *Doe*, *supra*, 136 Cal.App.3d at p. 518].) The Ninth Circuit also noted that an Opinion of the Attorney General adopted this same reasoning, explicitly relying on *Doe*. (*Id.* [citing 77 Ops.Cal.Atty.Gen 147 (1994)].)

On the other hand, the Ninth Circuit noted that *California Rifle and Pistol Assn. v. City of West Hollywood* (1998) 66 Cal.App.4th 1302 (*California Rifle*), "appears to have disavowed the logic underlying the district court's conclusion and the pertinent part of *Doe*." (*Great Western Shows*, *supra*, 229 F.3d at p. 1262.) The court explained why it believed the reasoning of *Doe* and *California Rifle* were in tension:

> [T]he [*California Rifle*] court confronted the argument that because under state law sales of firearms are regulated, but legal, a city cannot ban the sale of certain types of firearms. [Citation.] The court rejected this reasoning as tautological: "Again, it is no doubt tautologically true that something that is not prohibited by state law is lawful under state law, but the question here is whether the Legislature intended to strip local governments of their constitutional power to ban the local sale of firearms which the local governments believe are causing a particular problem within their borders." [Citation.] **This reasoning appears to be at tension with the reasoning of *Doe*.**

(*Id.*, bold emphasis added [quoting *California Rifle*, *supra*, 66 Cal.App.4th at p. 1324].)

Referring to *Doe* and *California Rifle*, the Ninth Circuit determined that "[t]he Courts of Appeal of the State of California have responded in seemingly conflicting ways to this type of argument in the area of local gun regulation preemption." (*Great Western Shows*, *supra*, 229 F.3d at p. 1261-62.) After noting that *Suter v. City of Lafayette* (1998) 57 Cal.App.4th 1109 (*Suter*) was discussed in *California Rifle*, the Ninth Circuit concluded "[i]n 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." (*Id.* at p. 1263.) Mindful that "[t]he area of gun control regulation is a sensitive area of local concern," the court suggested that "[a] clear statement by the California Supreme Court would provide guidance to local governments with respect to the powers they may exercise in passing local gun control regulations." (*Ibid.*) For this reason, it certified pursuant to then California Rule of Court 29.5 to the "California Supreme Court questions of law concerning the possible state preemption of local gun control ordinances." (*Id.* at p. 1259.)

2. The Supreme Court Granted Certification and Clarified the Law on State Preemption of Local Gun Control Ordinances.

The Supreme Court granted the Ninth Circuit's request for certification. (*Great Western*, *supra*, 27 Cal.4th at p. 858.) In April, 2002 it provided the suggested "clear statement" on the powers of local governments to pass gun regulation. Under the heading "*State Law Preemption in General and as Applied to Gun Control*," the Supreme Court in *Great Western* first set out the general preemption standard: Local legislation enacted under the Constitutional police power (Article XI, Section 7) is valid unless in conflict with state law; a conflict exists if the

ordinance contradicts, duplicates, or enters an area occupied by general law, either expressly or by legislative implication. (*Id.* at p. 860 [citing *Sherwin-Williams Co. v. City of Los Angeles* (1993) 4 Cal.4th 893, 897-98[5], fn. omitted (*Sherwin-Williams*)].)[6] The Court carefully and exhaustively traced the development of the law on preemption of local gun regulation through the principal cases. (*Id.* at pp. 861-64.) "A review of the gun law preemption cases indicates that the Legislature has preempted discrete areas of gun regulation rather than the entire field of gun control." (*Id.* at p. 861.)

The *Great Western* Court started with "the seminal case to advance this proposition" – its unanimous decision in *Galvan v. Superior Court* (1969) 70 Cal.2d 851 (*Galvan*). (*Great Western*, *supra*, 27 Cal.4th at p. 861.) That case involved an earlier San Francisco ordinance that made it "unlawful for any person within San Francisco to own, possess or control an *unregistered* firearm." (*Galvan*, 70 Cal.2d at p. 855, fn. 1, italics added.)[7] The issue raised in *Galvan*, the *Great Western* Court explained, concerned the requirement that "all firearms within San Francisco, with

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[5] Because Los Angeles was acting as a *county*, not as a city (as San Francisco is here), it could not invoke charter city home rule authority.

[6] Because Los Angeles was acting as a county, not as a city (as San Francisco is here), it could not involve charter City home rule authority.

[7] The City's power to ban possession of firearms generally does not appear to have been directly questioned or addressed in *Galvan*. The *Galvan* Court did swiftly reject challenges to the ordinance as violative of the Second Amendment ("It is . . . settled in this state that regulation of firearms is a proper police function") and due process-notice (because "the penalty is imposed upon the possession of unregistered firearms" and "Galvan does not contend that the law violates due process because one might unknowingly possess a firearm"). (*Galvan*, *supra*, 70 Cal.2d at pp. 866, 868.) Petitioners here do not contend that the Second Amendment or Due Process are at issue.

certain exceptions . . . be registered" with the City. (*Great Western*, *supra*, at p. 861.)

The Court first briefly described its conclusion in *Galvan* that the registration requirement was not expressly preempted by the licensing prohibition in Penal Code Section 12026, distinguishing between "licensing, which signifies permission or authorization, and registration, which entails recording." (*Great Western*, *supra*, 27 Cal. 4th at p. 861.) The *Great Western* Court next discussed and summarized for three paragraphs the lengthy *Galvan* implied preemption analysis using its three-part test.[8] (*Id.* at pp. 861-62.)

"In *Galvan*" the Court "found the San Francisco ordinance did not meet the first test, i.e., that the subject matter had been so fully and completely covered by general law as to clearly indicate that it had become

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[8] The Court had earlier in the opinion set out the implied preemption test, by quoting from its decision in *Sherwin-Williams*, *supra*, 4 Cal.4th at pages 897-98, footnote omitted:

> ["][L]ocal legislation enters an area that is 'fully occupied' by general law when the Legislature has expressly manifested its intent to 'fully occupy' the area [citation], 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. [Citations.]"

(*Great Western*, *supra*, 27 Cal.4th at pp. 860-61.)

exclusively a matter of state concern." (*Great Western*, *supra*, 27 Cal. 4th at p. 861.) This finding was based on a determination that despite the many state statutes relating to weapons, there were "'various subjects that the legislation deals with only partly or not at all.'" (*Id.* at p. 861 [quoting *Galvan*, *supra*, 70 Cal.2d at p. 860].) Further, the *Great Western* Court quoted *Galvan*'s conclusion that "'there are some indications that the Legislature did not believe that it had occupied the entire field of gun or weapons control'" in the context of the implied reach of Penal Code section 12026: "'[T]he Legislature has expressly prohibited requiring a license to keep a concealable weapon at a residence or place of business. (Pen. Code, § 12026.) Such a statutory provision would be unnecessary if the Legislature believed that all gun regulation was improper.'" (*Id.* at pp. 861-62 [quoting *Galvan*, *supra*, 70 Cal.2d at p. 860].)

Second, the *Great Western* Court explained, *Galvan* found no implied preemption under part two of the implied preemption test because partial legislative coverage of the area did not indicate that any paramount state concern "would not tolerate further or additional local action":

> "The issue of 'paramount state concern' also involves the question 'whether substantial, geographic, economic, ecological or other distinctions are persuasive of the need for local control, and whether local needs have been adequately recognized and comprehensively dealt with at the state level.' [Citation.] [¶] That problems with firearms are likely to require different treatment in San Francisco County than in Mono County should require no elaborate citation of authority . . . ."

(*Great Western*, *supra*, 27 Cal.4th at p. 862 [quoting *Galvan*, *supra*, 70 Cal.2d at pp. 863-74].) The *Great Western* Court repeated this quote from *Galvan* later in the opinion in performing its own implied preemption

analysis, noting that the statement "is true today [2002] as it was more than 30 years ago." (*Id.* at p. 867.)

Third, the *Great Western* Court noted *Galvan*'s conclusion on the last prong of the implied preemption analysis, i.e., that the ordinance in question placed no undue burden on non-San Franciscans who were given seven days to register their guns. (*Great Western*, *supra*, 27 Cal.4th at p. 862.) Once again, the *Great Western* Court specifically endorsed and reaffirmed *Galvan*'s reasoning on this point in applying the third test to its own facts: "As for the third test, we agree with previous cases that '[l]aws designed to control the sale, use or possession of firearms in a particular community have very little impact on transient citizens, indeed, far less than other laws that have withstood preemption challenges.'" (*Id.* at p. 867 [quoting *Suter*, *supra*, 57 Cal.App.4th at p. 1119 and citing *Galvan*, *supra*, 70 Cal.2d at pp. 864-65].)

The *Great Western* Court next turned to the legislative reaction to *Galvan*. Here the Court used the Court of Appeal's decision in *Olsen v. McGillicuddy* (1971) 15 Cal.App.3d 897 (Olsen) to explain that the Legislature had enacted a narrow preemption statute, "Government Code section 53071, which made clear an 'intent "to occupy the whole field of registration or licensing of . . . firearms."'" (*Great Western*, *supra*, 27 Cal.4th at p. 862 [quoting *Olsen*, *supra*, 15 Cal.App.3d at p. 902, italics omitted].) Noting "*Galvan's* strong statement concerning the narrowness of state law firearms preemption," the *Great Western* Court quoted the *Olsen* court on the significance of "the Legislature's limited response to *Galvan*":

> "Despite the opportunity to include an expression of intent to occupy the entire field of firearms, the legislative intent was

> limited to registration and licensing. We infer from this limitation that the Legislature did not intend to exclude [localities] from enacting further legislation concerning the use of firearms."

(*Id.* at pp. 862-63 [quoting *Olsen*, *supra*, 15 Cal.App.3d at p. 902].) *Olsen* upheld the validity of a local ordinance prohibiting a parent from allowing a minor child to posses or fire a BB gun. (*Id.* at p. 863.)

Great Western next noted the legislative reaction to *Olsen,* section 53071.5 of the Government Code, "'which expressly occupies the field of the manufacture, possession, or sale of *imitation* firearms.'" (*Great Western*, *supra*, 27 Cal.4th at p. 863 [quoting *California Rifle*, *supra*, 66 Cal.App.4th at p. 1315].) Here, quoting *California Rifle*, the Court explained:

> ["]Thus once again the Legislature's response was measured and limited, extending state preemption into a new area in which legislative interest had been aroused, but at the same time carefully refraining from enacting a blanket preemption of all local firearms regulation." (Italics added.) As the court further explained: "This statute is expressly limited to imitation firearms, thus leaving real firearms still subject to local regulation. The express preemption of local regulation of sales of imitation firearms, but not sales of real firearms, demonstrates that the Legislature has made a distinction, for whatever policy reason, between regulating the sale of real firearms and regulating the sale of imitation firearms."

(*Ibid.* [quoting *California Rifle*, *supra*, 66 Cal.App.4th at p. 1312, italics omitted].) *California Rifle* upheld a local ban on sales of a type of handguns known as Saturday Night Specials. (*Ibid.*) The Court also noted that *Suter* had upheld a city's authority to confine firearms dealers to specified commercial zones, but struck down the portion of the ordinance

"regarding firearms storage covered by the detailed provisions of Pen. Code § 12071." (*Ibid.*)

Finally, in its survey of the developing case law on preemption, the *Great Western* Court turned, "[o]n the other hand" to the only decision it discussed finding a local gun ordinance preempted – *Doe*. (*Great Western*, *supra*, 27 Cal.4th at p. 863.) It described the San Francisco ordinance there as "outlaw[ing] the possession of handguns within the city but exempt[ing] those persons who obtained a license to carry a concealed weapon under Penal Code section 12050." (*Ibid.*) The Court was cryptic in its description of *Doe*. It noted *Doe*'s acknowledgement that *Galvan* and *Olsen* "'suggested the Legislature has not prevented local government *bodies from regulating all aspects of the possession of firearms.*' [Citation.]" (*Id.* at pp. 863-64, original italics [quoting *Doe*, *supra*, 136 Cal.App.3d at p. 516].) The Court then described *Doe*'s preemption holding:

> Nonetheless, the ordinance directly conflicted with Government Code section 53071 and Penal Code section 12026, the former explicitly preempting local licensing requirements, the latter exempting from licensing requirements gun possession in residences and places of business. Thus, the effect of the San Francisco ordinance "is to create a new class of persons who will be required to obtain licenses in order to possess handguns" in residences and places of business [citation], which the two statutes forbid [citation].

(*Id.* at p. 864 [quoting and citing *Doe*, *supra*, 136 Cal.App.3d at pp. 517, 571-18].) Significantly, the Court said nothing about *Doe*'s one-paragraph discussion under the heading "Implied Preemption," which had not utilized the three-part test described at length and applied by the *Great Western* Court. (See *Id.* at pp. 863-864, 865-67.)

The Court summarized its "review of case law and the corresponding development of gun control statutes in response to that law" as demonstrating "that the Legislature has chosen not to broadly preempt local control of firearms but has targeted certain specific areas for preemption." (*Great Western*, *supra*, 27 Cal.4th at p. 864.) The Court proceeded to apply this structure for its analysis of the issue presented and held that the Los Angeles County ordinance was not preempted. With this background, we turn to the proper preemption analysis of Proposition H.

B. Section 3's Possession Ban on Some Local Residents Creates No Licensing or Permitting Requirement, and, Therefore, Is Not Preempted Expressly or Impliedly by State Law.

In support of their preemption argument, Petitioners rely almost exclusively on the Court of Appeal decision in *Doe*, which invalidated an 1982 ordinance Petitioners assert to be "indistinguishable" from Section 3 of Proposition H. (Petn., p. 17.) In fact, Section 3 is materially different from the ordinance at issue in *Doe*, which provides no basis for invalidating Section 3 and certainly no basis for skipping the preemption analysis mandated by the Supreme Court. (See pp. 18-22, below.) When tested under the *Great Western* preemption analysis, Section 3 should be upheld as a valid exercise of local police power not in conflict with state law.

1. Petitioners Overstate the Significance of *Doe*, Which Has Been Narrowly Construed by the Courts and the Legislature.

Doe struck down San Francisco's 1982 handgun possession ban, which applied to residents and nonresidents alike, because it contained an express exemption for concealed weapons licensees and thereby created a licensing requirement in contravention of state law. In particular, *Doe* found express preemption and a conflict with state law based on the

language in the 1982 ordinance "that exempt[ed] from the general ban on possession any person authorized to carry a handgun pursuant to Penal Code section 12050." (*Doe*, *supra*, 136 Cal.App.3d at pp. 516-17.) *Doe* recognized that "this particular exemption plays an important role in the arguments" it considered. (*Id.* at p. 512.) Because of that exemption, the ordinance's effect, the *Doe* court held, was to create a new class of persons who "must obtain licenses or relinquish their handguns," something expressly preempted by Government Code section 53071 and in conflict with Penal Code section 12026.[9] (*Id.* at pp. 517, 518.) Section 3 of Proposition H, in contrast, has no such exemption. As also noted above, in the portion of the decision that the Ninth Circuit in *Great Western* had found to be inconsistent with other court of appeal decisions, *Doe* also has a one-paragraph discussion of "Implied Preemption." (*Id.* at p. 518.) There, the court stated that even if there were no licensing "requirement within the

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[9] At the time, Section 12026 provided: "'Section 12025 shall not be construed to prohibit any citizen of the United States 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 [related to felons and narcotics addicts], from owning, possessing, or keeping within his place of residence or place of business any pistol, revolver, or other firearm capable of being concealed upon the person, *and no permit or license to purchase, own, possess, or keep any such firearm at his place of residence or place of business shall be required of him.*'" (*Doe*, *supra*, 136 Cal.App.3d at pp. 513-514, italics added by the *Doe* court [quoting Pen. Code, § 12026].)

Section 53071 read then and reads now "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 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." (Gov. Code, § 53071.)

express wording of" sections 53071 and 12026, it would still have found the ordinance preempted under "the theory of implied preemption." (*Ibid.*) The court "infer[red]" from section 12026 "that that the Legislature intended to occupy the field of residential handgun possession to the exclusion of local governmental entities." (*Ibid.*)

a. The Legislature Has Consistently Construed Section 12026 Narrowly as Limited to a Prohibition on Licensing and Permitting of Handguns at the Local Level.

Petitioners badly misread recent amendments to section 12026 as showing a legislative endorsement of Petitioners' broad and inaccurate reading of *Doe* as holding that section 12026 creates a general right to possess handguns in the home. To the contrary, the cited amendments demonstrate both on their face and in the pertinent legislative history that the Legislature intended the preemptive effect of section 12026 to be limited to the field of licensing and permitting of handguns.

Petitioners argue that because section 12026 was amended after *Doe*, the Legislature is deemed to have acquiesced in the *Doe* holding. (Petn., pp. 21, fn. 3, 22.) But those amendments show that, contrary to Petitioner's broad reading of *Doe,* the Legislature intended the section to be read more narrowly as creating only: (1) an exception to section 12025's prohibition on concealed weapons; and (2) a preemption of local licensing or permitting of concealed weapons. As summarized in the Assembly in 1995, as "existing law":

> Section 12026 of the Penal Code provides for [1] a **pre-emption of the concealed weapons permit requirement** to United States citizens under certain conditions (possession of firearm at place of residence, business, etc.). It also provides for [2] **an exemption from the concealed weapon permit**

> requirements that might otherwise be imposed on United States citizens under the same conditions (place of residence, business etc.).

(Assembly Third Reading Analysis, Thompson Decl., Exh. B., emphasis added.)

The 1995 amendment clarified this dual limited purpose of section 12026, by "Rearrang[ing] the language found in Section 12026 to create two distinct subdivisions. One subdivision would address the pre-emption preventing concealed weapons permits from being required of citizens who possess firearms in their homes and businesses. The other subdivision would address the exemption . . ." (Assembly Third Reading Analysis, Thompson Decl., Exh. B.) The Legislature considered this amendment to be only a "technical change in language [that] would have no substantive effect." (*Ibid.*) The result is the current version of section 12026, which has subpart (a) addressed to the reach of section 12025 ("Section 12025 shall not apply") and subpart (b), addressed to the preemption of local laws requiring a permit or license ("No permit or license to purchase, own, possess, keep, or carry, either openly or concealed, shall be required . . . ."). (Pen. Code §12026.) Subpart (b) is a legislative codification of the narrow holding of *Doe*, as preempting only laws directed at permitting or licensing.

If the Legislature had agreed with Petitioners' broad reading of *Doe*, it could have and would have clarified section 12026 to so provide. Instead, it preserved the narrow preemptive scope of that section to only permitting and licensing of handguns. As the court in *Suter*, *supra*, 57 Cal.App.4th at page 1120, footnote 3 recognized, "[a]lthough the *Doe* court, like the courts in the earlier cases, essentially invited the Legislature to state an intent to preempt local legislation in the area of firearm control, the Legislature has not responded to that invitation." Thus, the fact that

since *Doe,* section 12026 has been amended three times without substantive change is confirmation that the Legislature does not intend any broadening of its narrow preemptive reach.

Petitioners also point to the reference "[n]otwithstanding Section 12026" in another Penal Code section, section 626.9(h) and (i) (miscited by Petitioners as 626.85), part of the "Gun-Free School Zone Act." (See Petn., p. 22.) They incompletely describe this statute as barring students from "hav[ing] firearms in college" housing and argue the cross-reference to section 12026 confirms that it created a "general right" to possess handguns. (*Ibid.*) Sections 626.9(h) and (i) do not, in fact, ban all possession. They allow only those with "written permission" from the university or college to bring or possess a firearm on campus or university grounds. By creating an express exception for those obtaining "written permission," the statute adopted a licensing scheme. This exemption from the possession ban of section 626.9(h)(i), like the exemption for section 12050 permit holders in *Doe*, could be construed as a new licensing scheme in conflict with section 12026. Therefore the "notwithstanding Section 12026" reference is logically necessary to avoid the exemption/preemption language of section 12026.

In sum, since *Doe* the Legislature has consistently treated section 12026 as preempting the licensing and permitting of handguns in the home or place of business. Its actions cannot be twisted into an endorsement of a general right of handgun possession. More restrictive measures, such as Proposition H, that do not create new or different licensing requirements are entirely consistent with the Legislature's desire to promote public safety

through section 12026, one of the provisions of the Dangerous Weapons Control Act.[10] The Petition ignores the purpose stated in the title of the act – to control dangerous weapons – and instead relies on a one-sided and entirely inadmissible discussion of "Legislative History." (Petn., pp. 26-30.) It asserts, in essence, that based on a newspaper article, the NRA wrote the amendment to section 12026 in 1923 and that the NRA (and thus the Legislature) intended to create a right of gun ownership.[11] This assertion is both questionable historically and immaterial to the issue at

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[10] Section 12026 is part of the "Dangerous Weapons Control Act," Penal Code sections 12000 et seq., originally enacted in 1917. (*Galvan, supra*, 70 Cal.2d at p. 858; *Doe, supra*, 136 Cal.App.3d at p. 513; *People v. Mills* (1992) 6 Cal.App.4th 1278, 1288, fn. 3.) "The clear intent of the Legislature in adopting the weapons control act was to limit as far as possible the use of instruments commonly associated with criminal activity [citation] and, specifically, 'to minimize the danger to public safety arising from the free access to firearms that can be used for crimes of violence.' [Citation.]" (*People v. Bell* (1989) 49 Cal.3d 502, 544.)

[11] Petitioners rely upon a 1923 article from the San Francisco Chronicle which they assert contains "statement of supporter who persuaded governor to sign the Act." (Petn., p. 39, fn.18.) A less admissible piece of evidence of legislative intent is hard to imagine. Preliminarily, the statements in the newspaper article do not even purport to have been made to the governor, let alone a legislator. Even if they had been communicated in writing to the governor and assuming that Petitioners had produced an authenticated copy from the governor's office indicating actual receipt of such a letter, it still would be entirely irrelevant to establishing *the legislature's purpose*. A letter to a governor urging signature is not admissible as evidence of legislative intent. (*California Teachers Assn. v. San Diego Community College Dist.* (1981) 28 Cal.3d 692, 701, fn.1; *Kauffman & Broad Communities, Inc. v. Performance Plastering, Inc.* (2005) 133 Cal.App.4th 26, 37.) Petitioners' cases do not lend any support for the cited "evidence." For example, the "news articles" cited in *People v. Tanner* (1979) 24 Cal.3d 514, 547-49 were not related to legislative intent at all, but were the comments in a concurring opinion, noting the "hullabaloo" of publicity after the Supreme Court decided to accept review of the issue under discussion.

hand. The legislative intent behind the 1995 amendment, not the one from 1923, is the relevant legislative history to section 12026(b), which was intended to preempt local licensing and permitting of handguns.

b. As Subsequent Case Law Has Confirmed, the *Doe* Holding Is Properly Limited to Finding State Preemption of Local Licensing or Permitting of Handguns.

Doe's treatment in *Suter* and *Great Western* confirms that *Doe* must be read narrowly. Curiously, to support the section of their brief broadly asserting that *Doe* has been "respected, not repudiated, in subsequent cases," Petitioners cite but a single case, which they describe as "the major post-*Doe* firearm preemption case," *California Rifle*. That case paraphrased and distinguished *Doe* and upheld a local ban on sales of Saturday Night Specials (a holding that squarely supports the validity of Section 2 of Proposition H). The *California Rifle* court directly and unequivocally rejected Petitioners reading of section 12026 as creating "rights":

> There is no basis for a conclusion that Penal Code section 12026 was intended to create a "right" or to confer the "authority" to take any action (such as purchasing an SNS) for which a license or permit may not be required. The words of the statute are words of proscription and limitation upon local governments, not words granting a right or authority to members of the public. (See, e.g., *Suter v. City of Lafayette*, *supra,* 57 Cal.App.4th at p. 1127 (interpreting Pen. Code, § 12072) ["The Penal Code, however, establishes a *limitation*, not a right."].) No authority has been cited for the proposition that a statute prohibiting a permit requirement can be construed as intended to create a broad enforceable right to purchase any type of handgun not specifically outlawed by state law. Again, the Legislature could expressly create such a right, but has not.

(*California Rifle, supra*, 66 Cal.App.4th at p. 1324.)

In their section on the treatment of *Doe* in subsequent cases (Petn., pp. 19-20), not only do Petitioners omit any mention of the *Suter* court's interpretation of the legislative non-reaction to *Doe*'s invitation to endorse its broad implied preemption discussion (described above), they ignore entirely the companion Supreme Court opinions decided twenty years after *Doe* squarely addressing the preemption issue, *Great Western,* 27 Cal.4th 853 (described above) and *Nordyke*, 27 Cal.4th 875 (discussed below).

Those Supreme Court decisions, upholding, respectively, sales and possession bans on county property, necessarily confine *Doe* to its narrow holding that state statutes preempt local licensing and registration schemes. The *Great Western* Court specifically described the *Doe* holding as such: "local law may not impose additional licensing requirements when state law specifically prohibits such requirements." (*Great Western, supra*, 27 Cal.4th at p. 866). This definitive 2002 interpretation by the Supreme Court obviously controls over any suggestion by the Court of Appeal in *California Rifle* of a broader reading of the 1982 *Doe* decision. Most significant, although exhaustively describing and applying the case law on implied preemption of local gun regulations, the companion Supreme Court decisions never mention, let alone approve, *Doe's* implied preemption discussion.

Great Western's treatment of *Doe* in is especially significant because its reason for accepting certification from the Ninth Circuit was "'the settlement of important questions of law.'" (*Great Western*, supra, 27 Cal.4th at p. 859 [quoting Cal. Rules of Ct., Rule 29(a)].) As discussed above, the Ninth Circuit had requested certification because it found "tension" among the Courts of Appeal regarding the *Doe* implied preemption reasoning. In particular, the Ninth Circuit pointed to *California*

Rifle as "appear[ing] to have disavowed the logic underlying . . . the pertinent part of *Doe*." (*Great Western Shows*, *supra*, 229 F.3d at p. 1262.) The *Great Western* Court's lengthy survey of California gun law preemption cases mentions *only* the *Doe* court's express preemption holding; it makes no reference whatsoever to *Doe*'s treatment of implied preemption. (*Great Western, supra*, 27 Cal.4th at pp. 863-64.) Given the Court's goal to resolve the tension identified by the Ninth Circuit regarding *Doe's* implied preemption reasoning, its silence on *Doe*'s reasoning is tantamount to disapproval.[12]

Moreover, Petitioners mistakenly characterize the *Doe* court's discussion of implied preemption as an "alternative holding." (Petn., p. 26.) The Supreme Court has explained that "[a]n appellate decision is not authority for everything said in the court's opinion but only 'for the points actually involved and actually decided.' [Citations.]" (*Santisas v. Goodin* (1998) 17 Cal.4th 599, 620.) To this end, "[w]hatever may be said in an opinion that is *not necessary* to a determination of the question involved is to be regarded as mere dictum," and "[t]he statement of a principle *not*

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[12] In any event, even putting aside the significance of the Rule 29.5 certification, "it is settled that the authority of an older case may be as effectively dissipated by a later trend of decision as by a statement expressly overruling it." (*Fujii v. State* (1952) 38 Cal.2d 718, 728.) The trend of decision since the 1982 *Doe* case has been to construe state statutes narrowly as targeting only "certain specific areas for preemption" of local gun control regulations. (*Great Western*, *supra*, 27 Cal.4th at p. 864.) *Doe's* implied preemption finding of a legislative intent "to occupy the field of residential handgun possession" (*Doe, supra*, 136 Cal. App. 3d at p. 518) is contrary to the trend in later decisions. (See Amicus Brief of State of California, Thompson Decl., Exh. D, p. 6 ["*Suter* by implication overrule[d] the holdings in *Doe*"], and p. 11 ["*Suter* demonstrates the court's movement away from the notion that firearm regulation is reserved exclusively to the state Legislature"].)

necessary to the decision will not be regarded either as a part of the decision or as a precedent that is required by the rule of *stare decisis* to be followed." (*Childers v. Childers* (1946) 74 Cal.App.2d 56, 61-62, italics added.)

Doe invalidated San Francisco's 1982 possession ban because it contained an express exemption for concealed weapons licensees and thereby created a licensing requirement. The Court's holding was based on finding the licensing requirement and *express* preemption and conflict. Its cursory treatment of implied preemption thereafter was not necessary to its determination of whether the ordinance was valid. Indeed, the Court's use of the subjunctive tense, "[i]f we were to find . . . no 'licensing' requirement" before its discussion of implied preemption demonstrates that it was discussing a hypothetical set of facts. (*Doe*, *supra*, 136 Cal.App.3d at p. 518. Finding a licensing requirement, not finding implied preemption under an assumed set of facts, was the essential part of the decision. The Court's discussion of implied preemption, therefore, is merely non-binding dictum.

In any event, to the extent that the implied preemption discussion can be read as an "alternative holding," this Court is free to revisit it:

> [B]ecause there is no "horizontal stare decisis" within the Court of Appeal, intermediate appellate court precedent that might otherwise be binding on a trial court (see *Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455 [20 Cal. Rptr. 321, 369 P.2d 937]) is not absolutely binding on a different panel of the appellate court. So, in appropriate and rare cases, appellate court precedent is open for reexamination and critical analysis.

(*In re the Marriage of Ahmad* (2001) 88 Cal.App.4th 398, 409.)[13]

Because of Petitioners' stubborn insistence in ignoring the impact of *Great Western,* this could be that rare case where an explicit reexamination of precedent is appropriate. The arguments made by Petitioners here are recycled versions of the same arguments made and not accepted in *Great Western* (that *Doe* created a right in California to possess handguns that preempts all local legislative power).[14] This Court may wish to use the

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[13] To the extent that Petitioners imply that because *Doe* was decided by a panel of this District Court of Appeal it has some special significance, they are mistaken. While the "[d]ecisions of every division of the District Courts of Appeal are binding upon all . . . the superior courts of this state," (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455) an appellate district court may follow or disagree with its own or any other appellate districts' prior decisions. (See e.g., *State v. Yeats* (1977) 66 Cal.App.3d 874, 879 [Fourth Appellate District disapproved its own prior opinion].) As Justice Jefferson noted in a concurring opinion, "[t]he *Auto Equity Sales* case did *not* hold that courts exercising concurrent jurisdiction are required to follow the first decision announced upon a particular point of law." (*Galloway Crane & Trucking Co. v. Insurance Exchange* (1977) 67 Cal.App.3d 386, 392, original italics [Jefferson, J., concurring].) He explained:

> I know of no rule of law which requires us to be bound by a prior Court of Appeal decision, whether it be from a division of the Second District or a division of any other district. In my view, we follow a prior Court of Appeal decision because we feel that it is correctly decided or that the point of law has become well settled and no sound reason is advanced for departing from the particular rule of law.

(*Id.* at pp. 391-392)

Therefore, this Court is free to reevaluate and even reject *Doe* as it could any other decision issued by the courts of appeal.

[14] Petitioners' counsel filed the Brief of Amicus California Sporting Goods Association in *Great Western.* (Thompson Decl., Exh. C.) The principal arguments in that brief have been repeated in the Petition without substantive change. For example, the earlier brief states at page 3

(footnote continued on next page)

opportunity to revisit *Doe* and expressly reject that interpretation. In any event, *Great Western*, not *Doe*, is controlling on the issue of whether Section 3 is preempted by state law.

2. Under the *Great Western* Standard, Section 3 Is Not Preempted by State Law Expressly or by Legislative Implication.

Great Western sets out the structure to be followed in determining whether a local gun regulation ordinance is preempted: "'If otherwise valid local legislation conflicts with state law, it is preempted by such law and is void. A conflict exists if the local legislation 'duplicates, contradicts, or enters an area fully occupied by general law, either expressly or by legislative implication.'" (*Great Western, supra*, 27 Cal.4th at p. 860 [quoting *Sherwin-Williams*, *supra*, 4 Cal.4th at pp. 897-98].)

Petitioners do not appear to argue that state law has expressly preempted the field of handgun possession regulation. Nor could they. In *Great Western*, the Supreme Court concluded "a review of case law and the corresponding development of gun control statutes in response to that law demonstrates that the Legislature has chosen not to broadly preempt local control of firearms but has targeted certain specific areas for preemption." (*Great Western*, *supra*, 27 Cal.4th at p. 864.) In particular, the Court held "the Legislature has declined to preempt the entire field of gun regulation,

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(footnote continued from previous page)
"[S]ection [12026] is not, strictly speaking, a conventional preemption statute. Instead, section 12026 creates a right to possess handguns and is binding on state agencies no less than on localities," a meritless argument repeated in the Petition, page 31, footnote 14. The earlier brief also makes the same lengthy and misguided assertion that a 1923 newspaper article quoting an NRA member established such a gun "right." (See p. 21, fn. 11, above.)

instead preempting portions of it, such as licensing and registration of guns and sale of imitation firearms." (*Id.* at p. 866.) Section 3's prohibition on residents possessing handguns does not fall in any of those targeted areas.

This conclusion is mandated by the plain language of the express preemption statutes. "It is the intention of the Legislature to occupy the whole field of *regulation of registration or licensing*" of firearms. (Gov. Code, § 53071, italics added.) There is no mention of the broader field of possession of handguns. Nor could this omission have been accidental. When the Legislature decided to occupy the field of imitation handguns in the very next section, it stated its intent to occupy "the whole field of regulation of *the manufacture, sale, or possession* of imitation firearms." (Gov. Code, § 53071.5, italics added.) If it intended to occupy the field of "regulation of the manufacture, sale, or possession" of real guns, the Legislature would have said so.

Section 3 is not preempted on any other basis. It does not duplicate or contradict state law and there is no basis for finding implied preemption.

a. Section 3 Is Not Duplicative Of State Law.

An ordinance is duplicative if it is coextensive with state law. (*Sherwin-Williams, supra*, 4 Cal.4th at pp. 897-98.) Section 3 provides that no San Francisco resident "shall possess any handgun" within City limits (except for specified law enforcement and related purposes). It does not create a licensing or registration requirement to allow possession. It simply bans all possession by those residents covered by the ordinance.

The Supreme Court in Nordyke, *supra*, 27 Cal.4th at page 883 addressed the same issue in the context of an Alameda county ordinance that made it a misdemeanor to "bring[] onto or possess[] on county property

a firearm, loaded or unloaded, or ammunition for a firearm." After reviewing the same Penal Codes sections relied upon by Petitioners here (12025, 12031, 12050 and 12051) the Court found "the state statutes, read together, make it a crime to possess concealed or loaded firearms without the proper license." (*Ibid.*) Comparing the effect of the state statutes and the local possession ban ordinance, the *Nordyke* Court concluded there was no conflict, in reasoning equally applicable here:

> The Ordinance does not duplicate the statutory scheme. Rather, it criminalizes possession of a firearm on county property, whether concealed, loaded or not, and whether the individual is licensed or not. Thus, the Ordinance does not criminalize "'precisely the same acts which are . . . prohibited'" by statute.

(*Ibid.*)

San Francisco's ordinance differs from the Alameda ordinance in that it applies to a more narrow class – only county residents – and a more narrow category of firearms – only handguns – but covers a larger area, city limits as opposed to only county property. None of these differences, however, makes *Nordyke* legally distinguishable. Just like the Alameda ordinance at issue in *Nordyke*, Section 3 "does not duplicate the statutory scheme. Rather, it criminalizes possession of a [handgun] . . . whether the individual is licensed or not." (*Nordyke*, *supra*, 27 Cal.4th at p. 883.) *Nordyke* is controlling; Section 3 is not duplicative of state law.

b. Section 3 Does Not Contradict State Law.

"An ordinance contradicts state law if it is inimical to state law; i.e., it penalizes conduct that state law expressly authorizes or permits conduct which state law forbids." (*Suter, supra*, 57 Cal.App.4th at p. 1124.) There is no state law mandating possession of handguns. The purpose of the

Dangerous Weapon Control Act was to curtail crime by limiting the free availability of firearms (see p. 21, fn. 10, above). Among other things, it contains a prohibition against carrying concealed weapons (Pen. Code § 12025) and provides for licenses and permits allowing handguns to be "carried concealed" (Pen. Code § 12050).

The extensive gun show regulations at the state level in *Great Western* regulated sales and "therefore contemplated such sales," but did "not mandate such sales." Thus, the ordinance banning sales on county property was not in conflict with state law. (*Great Western, supra*, 27 Cal.4th at p. 866.) Similarly, here the state laws prohibiting local permitting of guns possessed in the home contemplate that some citizens may want to possess a handgun in their homes, but they do not mandate such possession. Section 12026(b) provides that no license or permit will be required for handguns in the home or a place of business. "There is no basis for a conclusion that Penal Code section 12026 was intended to create a 'right' or to confer the 'authority' to take any action." (*California Rifle, supra*, 66 Cal.App. at p. 1324 ["The words of the statute are words of proscription and limitation upon local governments, not words granting a right or authority to members of the public."].)

Section 3's prohibition on possession of handguns does not conflict with state law. "The Ordinance does not mandate what state law expressly forbids, nor does it forbid what state law expressly mandates." (*Great Western, supra*, 27 Cal.4th at p. 866 [citing *Doe*, *supra*, 136 Cal.App.3d at p. 509, for the proposition that "local law may not impose additional licensing requirements when state law specifically prohibits such requirements"].) Section 3 is more restrictive than, but not contradictory to,

state licensing law requirements. It neither mandates anything forbidden by state law nor forbids anything mandated by that law.

Doe found a conflict based on the express exception in the 1982 ordinance that 'exempt[ed] from the general ban on possession any person authorized to carry a handgun pursuant to Penal Code section 12050." (*Doe, supra*, 136 Cal.App.3d at pp. 516-17.) By its terms, section 12050 allowed then, as it does today, licenses "to carry concealed" a handgun. The ordinance's effect, the *Doe* court held, was to create a new class of persons who "must obtain licenses or relinquish their handguns." (*Id.* at p. 517.) Proposition H's possession ban, in contrast, contains no such exception. Its effect is to bar possession of handguns by San Francisco residents (outside of law enforcement and the other enumerated classes). No permits or licenses are involved. Residents subject to the ban cannot avoid it by obtaining a permit to carry a concealed weapon under section 12050. They are still subject to the ban whether or not they have a permit to carry a concealed weapon.

As noted, section 12026 has two parts. Subpart (a) provides an exception to section 12025's sanction for carrying a concealed weapon. It states "Section 12025 shall not apply" to a person (except felons and other enumerated classes) who carries at the person's residence or business. The reach of section 12025 is immaterial here. It criminalizes the act of concealing a weapon, and the exception of section 12026(a) applies only to that act of concealing, as that is all that is criminalized by section 12025. Section 3 of Proposition H, in contrast, criminalizes possession of handguns by San Francisco residents within its borders - whether or not concealed. It has no effect on whether a person who conceals a weapon is or is not in violation of section 12025.

Subpart (b) of section 12026 prohibits requiring a "permit or license to purchase, own, possess, keep or carry" a concealable firearm in the person's residence or business. Once again, Section 3 poses no conflict. It does not require any permit or license. It prohibits possession. Indeed, Proposition H expressly states in Section 6 that it is not "designed to duplicate or conflict with California state law" and that it shall not be "construed to create or require any local license or registration for any firearm, or create an additional class of citizens who must seek licensing or registration." (Legal Text of Proposition H, Thompson Decl., Exh. A.)

c. Finally, Section 3 Is Not Impliedly Preempted.

Using the three-part test from *Great Western* (but not mentioned or used in *Doe*), Proposition H is plainly not preempted. Each of the three parts examines the extent of state regulation in the area. Because the Supreme Court's thorough treatment of this issue in *Galvan* (ban on possession of unregistered handguns), *Great Western* (ban on sales on county property) and *Nordyke* (ban on possession on county property) discussed the relevant state law, they are largely dispositive and need not be repeated here.

(i) Handgun Possession Regulation Has Not Been So Fully and Completely Covered by State Law to Indicate That It Is Exclusively a Matter of State Concern.

The Supreme Court's decision in *Nordyke* - which upheld a possession ban on county property - necessarily rejected this argument and is also controlling here. (See e.g., *Nordyke, supra*, 27 Cal.4th at p. 884 [noting that the fact that "certain classes of persons are exempt from state criminal prosecution for gun possession does not necessarily mean that they

are exempt from local prosecution for possessing the gun on restricted county property."].) The various state statutes related to possession are limited to specific classes of people or other specific situations. They do not cover the field. In this context, as noted, the *Great Western* Court held "the Legislature has declined to preempt the entire field of gun regulation, instead preempting portions of it, such as licensing and registration of guns and sale of imitation firearms." (*Great Western, supra*, 27 Cal.4th at p. 866.)

(ii) Gun Possession Regulation Is Not Partially Covered by State Law in Such Terms as to Indicate That It Is an Issue of Paramount State Concern.

Great Western's discussion on this point is apt:

> [W]e are reluctant to find such a paramount state concern, and therefore implied preemption, "when there is a significant local interest to be served that may differ from one locality to another." (*Fisher v. City of Berkeley* (1984) 37 Cal.3d 644, 707 [209 Cal. Rptr. 682, 693 P.2d 261].) It is true today as it was more than 30 years ago when we stated it in *Galvan*, "[t]hat problems with firearms are likely to require different treatment in San Francisco County than in Mono County." (*Galvan*, *supra*, 70 Cal.2d at p. 864.)

(*Great Western*, *supra*, 27 Cal.4th at pp. 866-67.)

As shown above, gun violence is of significant local interest to the citizens of San Francisco. Indeed, and unfortunately, the gun homicide rate has increased in each of the years since the *Great Western* court's recognition that San Francisco's firearms problems may require different legislative treatment than those of other localities.

(iii) Section 3 Is Narrowly Drawn To Minimize Adverse Effects on Citizens of Other Nearby Counties and Towns, Which Plainly Do Not Outweigh Its Benefits.

Once again, the Supreme Court's decision in *Great Western* addressed this issue in terms equally applicable here: "[W]e agree with previous cases that '[l]aws designed to control the sale, use or possession of firearms in a particular community have very little impact on transient citizens, indeed, far less than other laws that have withstood preemption challenges.'" (*Great Western, supra*, 27 Cal.4th at p. 867 [quoting *Suter, supra*, 57 Cal.App.4th at p. 1119; *Galvan, supra*, 70 Cal.2d at pp. 864-65].) Section 3, which applies only to San Francisco residents, will have less effect on outsiders than the ordinances upheld in *Galvan, Suter* and *Great Western*.

3. Section 2 Is Plainly a Valid Exercise of San Francisco's Police Power and Is Not Preempted.

Section 2 of Proposition H is also not preempted for much of the same reasons.[15] It prohibits within San Francisco "the sale, distribution, transfer and manufacture of all firearms and ammunition." *Great Western*'s upholding of a county ordinance prohibiting the "sale of firearms and/or ammunition on county property" is on point. (*Great Western, supra*, 27 Cal.4th at p. 859.) The fact that Section 2 applies within the San Francisco city limits instead of just on county property does not lessen the persuasive impact of *Great Western*. Further, *California Rifle* addressed and upheld an ordinance that banned within city limits the sale of handguns classified

[15] Petitioners strain to read into the ordinance dubious restrictions on the operation of the criminal justice system, hunting and even the City's cultural events. These arguments are answered by the City's opposition and need not be dissected again here.

as Saturday Night Specials. (*California Rifle, supra*, 66 Cal.App.4th at p. 1306.) There, the court posed the question as "whether the Legislature has taken away the City's constitutional power to regulate handgun sales." (*Id.* at p. 1308.) After undertaking the preemption analysis established by *Sherwin Williams* and endorsed by *Great Western*, the *California Rifle* court answered the question in the negative. In words equally applicable here, the City has the power to regulate handgun sales, and "a court would be acting illegitimately if it interfered with the political judgment of local elected officials simply because some might disagree."[16] (*Ibid.*) Petitioners do not even try to challenge the City's authority to ban the manufacture of guns and ammunition within its limits.

C. To the Extent State Law Has Partially Preempted the Field, the Remainder of Proposition H Should Be Upheld.

It may be that one or more of the specific areas treated by state law could be found to be included within the literal reach of Proposition H. As the Supreme Court recognized in *Nordyke*, however, this possibility that local ordinances might theoretically conflict with one or more very specific

[16] Petitioners neglect to advise the court that the opinion of the Attorney General upon which they rely strongly to argue that Section 2 is preempted (Petn., pp. 31, fn. 14, 39-40) was rejected in both *Suter* ("[e]ven were we bound by the Attorney General's opinion, and we are not, we would not be bound by the cited statement" that firearms sales regulations are preempted (*Suter, supra*, 57 Cal.App.4th at p. 1121)) and *California Rifle* (we "agree with *Suter* that the opinion has little persuasive force in the present context" (*California Rifle, supra*, 66 Cal.App.4th at p. 1326)). Moreover, the current California Attorney General, who submitted an amicus brief to the *Great Western* court, agreed that "*Suter* by implication overrules the holding[] in *Doe* . . . [and] implements the intent of the California Legislature to permit local governments to pass ordinances forbidding the sale of firearms on their property, as the holding in *City of West Hollywood* makes clear." Amicus Brief of State of California, Thompson Decl., Exh. D, p. 6.

state laws directed to gun regulation would result in partially preempting but not invalidating the ordinance:

> We first note that the fact that certain classes of persons are exempt from state criminal prosecution for gun possession does not necessarily mean that they are exempt from local prosecution for possessing the gun on restricted county property. But even if we accept the Nordykes' argument that in at least some cases the Legislature meant to preempt local governments from criminalizing the possession of firearms by certain classes of people, that would establish at most that the Ordinance is *partially* preempted with respect to those classes. Partial preemption does not invalidate the Ordinance as a whole.

(*Nordyke, supra*, 27 Cal.4th at p. 884 [citation omitted].)

Section 7 of Proposition H makes manifest San Francisco's intent that if any part of the ordinance is held invalid, it "shall not affect other provisions or applications of this ordinance."

CONCLUSION

Reasonable minds may differ as to the wisdom of particular local solutions to gun violence prevention, including some of the provisions of Proposition H. But under the *Great Western* standard, the City's ordinance is not preempted by state law. Proposition H should be upheld as a valid

exercise of the City's police power.

Respectfully submitted,

Dated: December 6, 2005

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CERTIFICATION OF COUNSEL

I, Roderick M. Thompson, certify pursuant to Rule of Court 14(c)(1) that the foregoing brief of Amicus Curiae Legal Community Against Violence contains 11,652 words, as calculated by the Microsoft Word computer program used to prepare the brief.

Dated: December 6, 2005.

Roderick M. Thompson

Firearm Ban H

PROPOSITION H

Shall the City ban the manufacture, distribution, sale and transfer of firearms and ammunition within San Francisco, and ban City residents from possessing handguns within San Francisco?

YES
NO

Digest

by the Ballot Simplification Committee

THE WAY IT IS NOW: State law regulates the manufacture, distribution, transport, import, sale, purchase, possession and concealment of firearms within California. The City and County of San Francisco further regulates the sale of firearms and prohibits the sale or transfer of certain types of firearms within San Francisco.

THE PROPOSAL: Proposition H is an ordinance that would ban the manufacture, distribution, sale and transfer of firearms and ammunition within San Francisco.

Proposition H also would prohibit San Francisco residents from possessing handguns within San Francisco. An exception would allow residents to possess handguns if it is required for specific professional purposes. For example, San Francisco residents who are security guards, peace officers or active members of the U.S. armed forces would be permitted to possess handguns.

The Board of Supervisors would be required to enact penalties for violation of this ordinance.

Proposition H would take effect January 1, 2006. Until April 1, 2006, residents could surrender their handguns to any district station of the San Francisco Police Department or the San Francisco Sheriff's Department without penalty.

The Board of Supervisors could amend this ordinance by a two-thirds vote (66.7%) if it determined that its amendment would further reduce handgun violence.

A "YES" VOTE MEANS: If you vote "yes," you want to ban the manufacture, distribution, sale and transfer of firearms and ammunition within San Francisco, and you want to prohibit—with limited exceptions—San Francisco residents from possessing handguns within San Francisco.

A "NO" VOTE MEANS: If you vote "no," you do not want to ban the manufacture, distribution, sale and transfer of firearms and ammunition within San Francisco, and you do not want to prohibit—with limited exceptions—San Francisco residents from possessing handguns within San Francisco.

Controller's Statement on "H"

City Controller Edward Harrington has issued the following statement on the fiscal impact of Proposition H:

Should the proposed ordinance be approved by the voters, in my opinion, it would have a minimal impact on the cost of government.

How "H" Got on the Ballot

On December 14, 2004 the Department of Elections received a proposed ordinance with supporting signatures from Supervisors Ammiano, Daly, Dufty and Gonzalez (adopted prior to the expiration of Supervisor Gonzalez's term of office).

The City Elections Code allows four or more Supervisors to place an ordinance on the ballot in this manner.

THIS MEASURE REQUIRES 50%+1 AFFIRMATIVE VOTES TO PASS.

ARGUMENTS FOR AND AGAINST THIS MEASURE IMMEDIATELY FOLLOW THIS PAGE. THE FULL TEXT BEGINS ON PAGE 101.
SOME OF THE WORDS USED IN THE BALLOT DIGEST ARE EXPLAINED ON PAGE 35.

H Firearm Ban

PROPONENT'S ARGUMENT IN FAVOR OF PROPOSITION H

How Many More?
Yes on H to Limit Handguns

How many more? On November 27, 1978 Dan White assassinated Mayor George Moscone and Supervisor Harvey Milk. On May 9, 2005 a disgruntled ex-employee walked into a South of Market nonprofit and killed a hardworking father of two with a handgun. Every day, neighbors live in fear that someone they love could be murdered. By December 2004, 56 of 87 San Francisco homicides that year involved handguns.

Easy access to handguns can transform heated exchanges or emotional moments into lifelong injury or death. The New England Journal of Medicine found that a handgun in the home makes it 43 times more likely that a friend, family member or acquaintance will be killed than an intruder. In addition, suicide mortality increases fivefold with a handgun.

Proposition H takes two meaningful steps to reduce handguns in San Francisco. It limits handgun possession to those who protect us, and ends firearms sales. Proposition H is substantially different from the measure signed by Mayor Dianne Feinstein in the 1980s that was defeated in court.

For years the National Rifle Association and its front groups have spent millions to spread misinformation and rig the political process. When the NRA can't buy politicians, then try legal challenges, scare tactics, and even blacklisting (www.nrablacklist.com). Proposition H is San Francisco's chance to speak up.

No single strategy will solve San Francisco's epidemic of violence. We need new investments in education, community development and jobs as well as meaningful gun reform. Fewer handguns in the flow of commerce will make it more difficult to obtain one.

Please join us in voting Yes on H!

Supervisor Chris Daly

Committee to Ban Handgun Violence

REBUTTAL TO PROPONENT'S ARGUMENT IN FAVOR OF PROPOSITION H

Proposition H denies you choice.

You may feel you don't need a gun to defend yourself now. But that could change.

Proposition H denies people protection.

You may never need a gun to defend yourself, but someone else will: a woman alone in her apartment during a break-in, a gay man surrounded by attackers, a battered wife pursued by a stalker.

Proposition H encourages criminals.

Robbers, rapists and home invaders can be sure that their next victim will be helpless. Imprisoned felons say they fear a homeowner's firearm more than the police.

Proposition H will not reduce crime.

Washington DC banned handguns in 1976. Now their murder rate is 60% higher.

The United Kingdom banned and confiscated handguns in 1997. Gun crime in England and Wales nearly doubled from 1998 to 2003, and home invasions are an epidemic.

Chicago banned handguns in 1982. In 2003 the murder rate in Chicago was 38% higher than before the ban.

Gun prohibition has been tried, and always failed. A 2002 CDC task force found that there is no evidence that gun control reduces crime or violence.

San Francisco is a city where you should be safe, proud and free. Today you have the right to defend yourself against violent crime. Your sister, your cousin, your neighbor have the same right. Keep those rights.

Vote No on Proposition H.

Coalition Against Prohibition

Arguments printed on this page are the opinion of the authors and have not been checked for accuracy by any official agency.

Firearm Ban H

OPPONENT'S ARGUMENT AGAINST PROPOSITION H

Prohibiting pistols would make San Francisco a magnet for violent crime. If this law passes, criminals will laugh, but won't turn in their guns. Most criminals get their guns illegally, so they are already committing a crime by owning them.

This law will leave law abiding men and women with no defense against robbers, rapists, stalkers or home invaders. Violent criminals will know this and flock here seeking easy victims.

The sponsors of this flop have not done their homework. A long-standing California preemption statute prohibits cities from passing a patchwork of conflicting gun laws. If Prop H passes, we will have to pay for a costly lawsuit that San Francisco will lose.

San Franciscans should reject this unfair, unconstitutional and unworkable scheme.

Banning guns is not a progressive cause. Organizations including the San Francisco Pink Pistols oppose this ordinance because it denies gays the means to defend themselves against hate crimes.

Coalition Against Prohibition

REBUTTAL TO OPPONENT'S ARGUMENT AGAINST PROPOSITION H

Yes on H. Stop the NRA Lies.

Just like the National Rifle Association, opponents will say anything to confuse and scare voters. First, opponents say they'll be many bad results. Then they say the measure is illegal and won't go into effect. While they're at it, they invoke the images of anti-LGBT violence to support their cause. Here's the truth:

Handgun violence isn't just about criminals. The legal handgun owner is often involved in suicides, domestic disturbances and workplace violence. The criminals often get their guns illegally by robbing law abiding gun owners.

Let a court decide its legality. If opponents really thought Proposition H was illegal, why would they fight so hard to defeat it? The NRA's lawyer threatened to sue to get it off the ballot earlier this year. That didn't happen. Now, they're threatening junk lawsuits to scare San Franciscans, while working in Washington to deny gun violence victims the right to sue gunmakers. Go figure.

Three of three LGBT murders involved firearms. According to the National Center of Anti-Violence Programs and Community United Against Violence, in 2003, all three San Francisco bias-related murders involved firearms, including two gay men and a transgender woman gunned down during Pride Weekend. Since many hate crimes happen in public, a concealed carry permit – of which there are fewer than 12 – is needed. Don't be misled.

Join us. Send a message to the NRA. Vote Yes on H!

Supervisor Chris Daly

Committee to Ban Handgun Violence

H Firearm Ban

PAID ARGUMENTS IN FAVOR OF PROPOSITION H

NO PAID ARGUMENTS IN FAVOR OF PROPOSITION H WERE SUBMITTED

PAID ARGUMENTS AGAINST PROPOSITION H

NO on H.

We have a bridge to sell to anyone who believes criminals will turn in their handguns.

REPUBLICANS UNITED FOR SAN FRANCISCO

Mike DeNunzio
Howard Epstein
Sue C. Woods
Dana Walsh

The true source of funds used for the printing fee of this argument is Republicans United for San Francisco.

The three largest contributors to the true source recipient committee are: 1. Michael DeNunzio 2. Howard Epstein 3. William Lowenberg.

"Pink Pistols" Opposes Proposition H

Lesbian, Gay, Bisexual and Transgendered people have come a long way since our rebellion at Stonewall in 1969. Now, members of the LGBT community are comfortable being employed as police, firefighters, EMTs, and soldiers.

But police are not enough. There are lessons learned in our struggle over these decades:

- To count on our brothers and sisters in the community,
- To have a proud, self-sufficient community,
- To love ourselves enough to say, "Yes, we are worth saving."

We have a different vision for San Francisco than Chris Daly. We want a San Francisco where sexual minorities are proud, independent and secure. A San Francisco where we can find refuge, sanctuary and protection in our own home, or the home of a friend, when hatred rears its head. Daly would have us cower in our living rooms and bedrooms, helpless to stop attackers from hurting our friends and families.

The LGBT community has a well-deserved reputation for being gentle and nonviolent. We know that deadly force must not be resorted to lightly, but even thinkers such as the Dalai Lama and Mahatma Gandhi saw that using force may be a moral necessity.

Let's fix what's broken in the world, but stand strong together. Remember the lessons of history. Vote No on Proposition H.

San Francisco Pink Pistols

The true source of funds used for the printing fee of this argument is the SF Pink Pistols.

ABSURD

Guns and cars do not kill people. Drunks, criminals, wild kids and foolish adults are the problem. **If** guns were 43 times more likely to kill their owners, hunters and NRA members would be stacked up like cordwood in America's hospitals!

Japan strictly prohibits pistol ownership and has **double** *our rate of suicide*. Heavy drinking is a much better predictor of violence and suicide than pistols, but America tried Alcohol *Prohibition* in the1920s and wound up with Bootleggers, Rumrunners, Highjackers, and Al Capone's Mobsters shooting up Chicago.

Murderous Drug Dealers and Gang Bangers are unchecked by the *failed Supervisors* who are pushing Prop H. **Your guns are their Scape-goat!** *Legal guns* discourage Home Invasions, reduce death and injury from Rapists and Burglars, and *are a civil right*!

The Coalition Against Prohibition (www.sfcap.org) says: **Vote NO on Prop H.**

The true source of funds used for the printing fee of this argument is the Coalition Against Prohibition.

Remember Deborah Hollis? Probably not. You won't hear about Deborah from supporters of Proposition H.

Deborah was the Muni driver whose ex-husband stalked her, beat her, threatened to kidnap her children, boarded her bus to attack her.

Deborah did everything right. She got a restraining order. But Floyd Hollis repeatedly violated that order to stalk and attack her.

On February 11, 1999, Floyd Hollis advanced on Deborah screaming threats. Deborah shot him, saving herself and her children. Even the San Francisco District Attorney ruled she acted in self-defense.

Proposition H would take away Deborah's right to protect herself and her children. Don't leave women without a way to defend themselves. Vote NO on Proposition H.

Julie Burns
David Burns

The true sources of funds used for the printing fee of this argument are Julie and David Burns.

H Firearm Ban

PAID ARGUMENTS AGAINST PROPOSITION H

NO on H.

One of the first laws enacted by the National Socialist German Workers' Party (Nazis) was to ban the private ownership of guns. Proposition I would do the same.

A similar measure was tried before in San Francisco and declared in violation of California state law. Proposition H will be contested in the Courts at great cost to San Francisco taxpayers. Does any reasonable voter believe criminals will turn in their handguns, if Proposition H passes?

SAN FRANCISCO REPUBLICAN PARTY

Mike DeNunzio, Chairman
Howard Epstein, VC – Communications
Timothy Alan Simon, VC – Political Affairs
Barbara Kiley, VC – Finance

Members, 12th Assembly District
Michael Antonini, D.D.S.
Harold M. Hoogasian
Stephanie Jeong
Roger Schulke

Members, 13th Assembly District
Christopher L. Bowman
John Brunello
Jim Fuller
Steven Jin Lee
Dana Walsh
Sue C. Woods

The true source of funds used for the printing fee of this argument is the San Francisco Republican Party.

The three largest contributors to the true source recipient committee are: 1. Michael DeNunzio 2. Michael Antonini 3. Sue C. Woods.

Absentee voters! Warning! Stop the madness! Stop Supervisor Chris Daly.

Think! Daly's Proposition H will:

- **Take the rights of residents to defend themselves.**
- **Leave small business owners vulnerable to criminals.**
- **Give police the right to search your home.**
- **Cost the taxpayer money to litigate**
- **Safer, for thugs to assault you.**

Think, Supervisor Daly's Proposition H is wrong, Join Davy Jones, Housing Rights Association, a tenants group; Senior Citizen Alliance, **NO on Proposition H.**

Davy Jones, Chairman,
Committee Oppose Handgun Ban (PAC)
www.opposegunban.com

The true source of funds used for the printing fee of this argument is the Committee Oppose Handgun Ban (PAC).

The three largest contributors to the true source recipient committee are: 1. Allan Levite 2. Jason Walters 3. Ed Yee.

LEGAL TEXT OF PROPOSITION H

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.

Be it ordained by the People of the City and County of San Francisco:

Section 1. **Findings**

The people of the City and County of San Francisco hereby find and declare:

1. Handgun violence is a serious problem in San Francisco. According to a San Francisco Department of Public Health report published in 2002, 176 handgun incidents in San Francisco affected 213 victims in 1999, the last year for which data is available. Only 26.8% of firearms were recovered. Of all firearms used to cause injury or death, 67% were handguns.
2. San Franciscans have a right to live in a safe and secure City. The presence of handguns poses a significant threat to the safety of San Franciscans.
3. It is not the intent of the people of the City and County of San Francisco 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.
4. Article XI of the California Constitution provides Charter created counties with the "home rule" power. This power allows 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. San Francisco adopted its most recent comprehensive Charter revision in 1996.
5. Since it is not the intent of the people of the City and County of San Francisco to impose an undue burden on inter-county commerce and transit, the provisions of Section 3 apply exclusively to residents of the City and County of San Francisco.

Section 2. **Ban on Sale, Manufacture, Transfer or Distribution of Firearms in the City and County of San Francisco**

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.

Section 3. **Limiting Handgun Possession in the City and County of San Francisco**

Within the limits of the City and County of San Francisco, 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. Active members of the United States armed forces or the National Guard and security guards, regularly employed and compensated by a person engaged in any lawful business, while actually employed and engaged in protecting and preserving property or life within the scope of his or her employment, may also possess handguns. Within 90 days from the effective date of this section, any resident of the City and County of San Francisco may surrender his or her handgun at any district station of the San Francisco Police Department, or to the San Francisco Sheriff's Department without penalty under this section.

Section 4. **Effective Date**

This ordinance shall become effective January 1, 2006.

Section 5. **Penalties**

Within 90 days of the effective date of this section, the Board of Supervisors shall enact penalties for violations of this ordinance. The Mayor, after consultation with the District Attorney, Sheriff and Chief of Police shall, within 30 days from the effective date, provide recommendations about penalties to the Board.

Section 6. **State Law**

Nothing in this ordinance is designed to duplicate or conflict with California state law. Accordingly, any person currently denied the privilege of possessing a handgun under state law shall not be covered by this ordinance, but shall be covered by the California state law which denies that privilege. Nothing in this ordinance shall be construed to create or require any local license or registration for any firearm, or create an additional class of citizens who must seek licensing or registration.

Section 7. **Severability**

If 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 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.

Section 8. **Amendment**

By a two-thirds vote and upon making findings, the Board of Supervisors may amend this ordinance in the furtherance of reducing handgun violence.