



LCAV Case Study **Empowering Effective Community Action – Analyzing Local Authority to Regulate Firearms**

The Challenge: At the federal level, there has been no significant gun control legislation enacted in the past decade. As a result, gun violence prevention advocates have turned their attention to the state and local level, where grassroots support for such legislation is strong. Those advocates face the daunting task of navigating a diverse and complex legal landscape of state and local laws and regulations governing firearms.

In general, a local government's power to regulate in the interests of public health, safety and welfare is as broad as that of the state, unless state law limits the powers allocated to local governments. Such limitations, falling under the legal doctrine known as "preemption," have become a standard tool of gun rights activists to undermine grassroots support for gun violence prevention laws by restricting the ability of local governments to adopt such legislation. Communities that enact local firearms ordinances in the face of strict preemption laws would almost certainly face litigation, and could lose a court challenge.

In 2003, a national gun violence prevention organization identified a Midwestern state and an Eastern state as states that might be ripe for local firearms regulation. In the Midwestern state, the national organization's focus was the legal viability of local measures regulating guns on public property. In the Eastern state, the organization was interested in a broad range of potential measures. The organization approached LCAV to research and analyze the legal landscape for local gun violence prevention legislation.

LCAV's Role: LCAV undertook a thorough legal review of the constitutions, statutes and case law in both states to assess the authority of local governments to regulate firearms.

After a detailed review of the laws and policies surrounding the power of local governments to regulate in the Eastern state, LCAV concluded that municipalities and counties have broad authority to enact firearm-related ordinances. Moreover, LCAV determined that municipalities, unlike counties, also have an express grant of power under state law to regulate and prohibit the sale and use of firearms.

Conversely, LCAV's research and analysis determined that local communities in the Midwestern state are preempted from enacting most firearms regulations.

In both cases, LCAV attorneys presented the legal analysis to the staff of the national organization to be shared with activists on the ground.

Results: LCAV's work furnished gun violence prevention activists with the comprehensive legal analysis that must guide them as they develop effective strategies for policy change at the state and/or local level. Activists in one state can proceed with the confidence that local firearms ordinances would survive a challenge based on preemption. In the other state, gun violence prevention groups know that they will have to focus their efforts on the state level.

LCAV is a public interest law center dedicated to preventing gun violence. Formed in the wake of the 1993 assault weapon massacre at 101 California Street in San Francisco, LCAV provides free legal assistance to activists and public officials, including law enforcement and government attorneys, working to prevent gun violence. To learn more about our services or to request assistance, visit our web site, www.lcav.org, the nation's most comprehensive source for information on U.S. firearms regulation.

June 2004