

## Local Government As An Agent Of Social Change: Litigating For The Public Interest

*By Ann Miller Ravel and Kate L. Didech*

There is a promising movement afoot in local government. A growing cadre of local government law offices has begun working together to realize a broader role for local government lawyers as agents of social justice. While attorneys for cities and counties have always worked hard to protect local residents--providing legal advice to departments and agencies to engineer innovative programs, drafting legislation that fosters healthy communities, and defending against lawsuits that threaten to undermine programs and local legislation designed to protect our communities--this is something different.

Being an attorney in a local government law office is beginning to mean not only being a public servant, but serving as an advocate for social justice. As part of local government lawyers' commitment to effectuating social change, local government lawyering is also beginning to entail designing and bringing impact litigation to challenge practices that harm the public health, violate residents' civil rights, and exploit children and senior citizens. The effects on the nation can be seen already, from an end to marriage discrimination in California to the enactment of local climate protection initiatives that have reduced greenhouse gas emissions by 23 million tons per year.<sup>1</sup>

Local government is particularly well-suited to the role of impact litigation plaintiff. Its officers and employees typically live in and are involved in the communities they serve, thus providing policy-makers a special perspective on, and a more nuanced ability to remedy, the harms that face their community members.

The burgeoning movement of municipal law offices bringing impact litigation to advance social justice is making local government a leader in efforts to protect vulnerable and underrepresented members of our communities. Municipal law offices in San Francisco, Oakland, Los Angeles, Washington, D.C., New York, and Seattle, as well as Santa Clara County, California, where I serve as County Counsel, have created or expanded affirmative litigation programs to ensure that the law serves its primary purpose: protecting the people who make up our democracy. Indeed, my own office has just hired our first annual fellow, who will join five other attorneys in our office who devote a portion of their time to our Impact Litigation and Social Justice Section.

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## **Local Governments' Traditional Tools For Social Change: Program Design and Legislation**

All local governments use their power and special perspective to serve their communities, to assist their neediest citizens, and to advance social change through programs and initiatives. Opportunities to effect change are wide-ranging. For example, in Santa Clara County, the Office of Affordable Housing helps to develop affordable housing in one of the most expensive areas in which to buy a home in the U.S. and coordinates with community-based and private-sector organizations to serve the area's homeless population. Santa Clara Valley Medical Center treats nearly 500,000 people a year, has trained nearly half of all doctors now practicing in the County, and provides high-quality medical care to County residents regardless of their ability to pay. The County also provides extensive services to children and senior citizens who are victims of abuse, neglect, or exploitation. Offering such services helps individuals and ingrains in our governmental structure a policy decision to commit long-term to advancing economic justice.

Local governments also advance social justice, both locally and more broadly, through targeted legislation. While local government legislation governs smaller geographical areas than state and federal government law, local enactments can pave the way for social change on a broad scale. For instance, New York City, San Francisco, Santa Clara County, and San Mateo County, California have passed ordinances requiring chain restaurants to provide key nutrition information on their menus, including calorie count. In response to this innovative local legislation, the California Legislature passed similar, statewide reform. Compliance with such menu labeling language is designed to stem the rising obesity crisis by helping residents make healthy eating choices.

Another example of local legislation remedying a vacuum in federal and state health policy is San Francisco's recent ordinance requiring employers to provide a certain amount of paid sick leave to every employee. The influence of San Francisco's ordinance has reached the California Legislature and at least eleven other states across the country, where lawmakers have proposed paid-sick leave legislation. The more paid sick leave is required across the nation, the more employees will be protected from having to choose between working while ill or facing discipline, and the more the general public will be protected from contagious disease.

## **Impact Litigation, Special Litigation, Affirmative Litigation: Local Lawyering to Advance Social Justice**

The needs of residents served by local government cannot all be met through social programs and legislation. A growing trend among local law offices, including my own, recognizes that to enhance our elected officials' fundamental commitment to the public interest, local government law offices must aid in the use of every available tool: including bringing litigation as a plaintiff on behalf of the community.

While municipal law offices are required to defend against lawsuits in which the government is the defendant, they may opt to bring plaintiffs'-side litigation, or affirmative litigation. Traditionally, affirmative litigation has been brought to assert and protect the government's interests, which, in turn, have been perceived as relatively narrow in scope,

focusing more on the government as a consumer and affirmative litigation as a means to recoup lost revenue. Over time, however, local governments have begun to define their own interests more expansively and to pursue impact litigation based on their roles as enforcer of laws and guardian of the rights and liberties of the people.

My office has concluded that such impact litigation is essential to our core mission: enabling our Board and County officers to carry out their policy goals and providing service dedicated to the public. The affirmative and impact litigation brought by local government lawyers is one of the most powerful tools available to ensure social and economic justice for residents and to advance local, state, and national public policy reform. Such litigation provides a mechanism by which local government can ensure that its citizens' rights are protected and that local, state, and national laws are enforced. The first impact litigation cases brought by local governments were filed to address pervasive public health hazards affecting large swaths of communities, such as the damage caused by tobacco. Local governments' impact litigation also includes those suits that focus on mitigating harms that directly affect the public health of narrower segments of communities, such as lead-based paint, which disproportionately affects low-income and minority children. Suits to advance public health are, however, just a fraction of the cases brought by my office and other municipal law offices; impact litigation ranges from suits to protect the rights of children and adults who have been wrongfully denied insurance coverage to suits to ensure that residents are free to marry the partner of their choice.

## **Tobacco**

Before local and state governments started filing tobacco cases, tobacco companies had successfully defeated the personal injury suits brought against them by asserting that there was no causal link between smoking and cancer and, after the causal link was incontrovertible, that plaintiffs had assumed the risk that they would be harmed by smoking. The tobacco companies' ability to deflect the lawsuits brought against them changed in the mid-1990s, when suits brought by local municipal law offices and State Attorneys General--including cases brought early on by San Francisco, New York, and Santa Clara County--employed a different tactic, highlighting the harm smoking wreaks on the public health. Many other state and local governments sued to recover the expenses they had incurred as a result of treating smoking-related illnesses.<sup>2</sup>

Unlike individual plaintiffs, government entities were not overwhelmed by the defendants' discovery tactics and were able to secure the production of never-before-seen documents that detailed the industry's efforts to suppress research that set forth the harms of smoking, and industry strategies to market cigarettes to children and to manipulate nicotine delivery using a variety of techniques. In the face of this evidence, and in the absence of an individual smoker who could be blamed for choosing to smoke, tobacco companies settled the lawsuits, agreeing to pay the government plaintiffs over \$200 billion over 25 years. Importantly, the settlements included certain commitments to advance public health, including requiring changes in the way tobacco is advertised and marketed.<sup>3</sup> Indeed, RJ Reynolds credits a lawsuit brought by several California cities and counties as the impetus for the decision to phase out the Joe Camel campaign.<sup>4</sup>

## **Guns**

Lawsuits brought by approximately thirty cities and counties against the gun manufacturers, dealers, and trade associations are sometimes considered the progeny of the tobacco litigation. Motivated by the desire to stem gun violence plaguing their communities and to require that guns be designed and sold in safer ways, municipalities brought suit under various theories, including products liability, unfair business practices, public nuisance, fraud, and negligent marketing and design. Municipalities generally claimed they were harmed by the increased expense of providing emergency services, police protection, and benefits to those employees who were injured by guns. These suits were not as successful as the ones brought against the tobacco industry. Many of the gun lawsuits were dismissed by the courts, and, in 2005, the gun industry obtained broad protection from state tort liability when Congress enacted the Protection of Lawful Commerce in Arms Act.<sup>5</sup>

Although the gun industry has prevailed legislatively, the suits uncovered information about the industry's flawed methods of distributing firearms and failure to safeguard the public from guns flowing to the illegal market. Moreover, twelve California cities and counties settled litigation against two gun-dealers and three distributors on terms that required the industry defendants to help prevent firearms from being sold on the illegal market, including by refraining from selling guns at gun shows, putting into practice measures to help ensure that guns are not sold to straw purchasers, and implementing security programs to prevent guns from being stolen.<sup>6</sup> Also, under pressure from the numerous lawsuits filed against it by cities and counties, Smith & Wesson settled a number of suits, agreeing to sell its guns only to dealers who abide by a strict code of conduct, to terminate sales to dealers who sell a disproportionate number of guns used in crimes, as well as to additional limitations on its distribution of handguns.<sup>7</sup> And, perhaps most importantly in the long run, the gun litigation changed the public discourse on the problem of gun violence, from being simply a matter of an individual, criminal act, to being a community and national problem perpetuated by an industry's policies, practices, and indifference to public safety.

## **Recent Notable Impact Litigation Cases**

### **Marriage Equality**

#### *In re Marriage Cases*

After the California Supreme Court ruled that San Francisco lacked the authority to issue marriage licenses to same-sex couples without first obtaining a decision from the courts in 2004, San Francisco City Attorney Dennis Herrera filed a lawsuit challenging California's statutory exclusion of gay and lesbian couples from marriage. After a four-year legal battle, the California Supreme Court struck down the portions of California's marriage laws that denied same-sex couples the opportunity to marry. Applying California's Constitution, the Court held that the fundamental right to marry the person of one's choice applies equally to lesbian, gay, and bisexual people. The Court also held that the marriage restriction was based on a suspect classification, sexual orientation, and was invalid on equal protection grounds because it was not necessary to advance a compelling government interest. As a result of the California Supreme Court's decision, all couples in California are now free to marry. However, California voters in November 2008 will consider a proposed constitutional amendment to eliminate the right of same-sex couples to marry.

### **Alcopops Mischaracterization**

#### *County of Santa Clara v. State Board of Equalization*

The County of Santa Clara sued the California Board of Equalization for its mischaracterization of alcopops--sweetened, alcoholic beverages sold in single-serving bottles or cans--as malt beverages rather than as distilled spirits. As a result of

Local governments are involved in gun litigation to this day. New York City has waged a litigation campaign against out-of-state gun dealers that have sold guns in violation of federal law and industry practice, and which have been found to be responsible for funneling a large number of the guns involved in crimes into the city. Many of the twenty-seven gun dealers New York City has sued have now settled, agreeing to submit to close monitoring of their records by a court-appointed Special Master.<sup>8</sup>

Now, with the Supreme Court's opinion striking down the District of Columbia's ban on handguns as a violation of the Second Amendment, much of local governments' involvement in gun litigation will be on the defensive end, as challenges to local restrictions on gun ownership and possession are being mounted in the courts.<sup>9</sup> In the immediate future, local governments will strive to keep their residents safe from gun violence through their defense of sensible local ordinances restricting ownership and possession of handguns.

## Lead

The harms tackled by local governments in the tobacco and gun cases were, and remain, severe and widespread public health problems; no community member was unaffected by the dangers they posed. Although remedying such large-scale harms remains an aim of some recently-filed impact litigation, there has been a shift in recent years toward suits designed to protect individuals and communities who are poor, disenfranchised, and underrepresented.

A perfect example of impact litigation that seeks to protect the public by focusing on harms that weigh more heavily on particularly vulnerable community members is the series of lawsuits brought by states and municipalities against companies that once manufactured lead-based paint. As alleged in the lead-paint litigation filed by my office and joined by several other local government plaintiffs, manufacturers produced and disseminated lead-based paint years after knowing it to be hazardous and conspired to mislead the government and the public about its dangers. Lead-based paint is known to cause severe harm to children who ingest flaking paint or dust. Children exposed to lead are known to suffer a reduction in cognitive

this classification, alcopops were taxed at the much lower rate applicable to malt beverages (\$3.10 less per gallon than distilled spirits), were able to be sold at a lower cost on the retail market, and were able to be sold at nearly every convenience store in California. As a result, the community lost \$40 million a year in tax revenues, and alcopops were more readily accessible to minors. In response to the lawsuit, the Board of Equalization voted to reclassify alcopops as distilled spirits.

## Cancellation Of Insurance Coverage

*People of the State of California v. California Physicians' Service, Inc.*  
*People of the State of California v. Wellpoint, Inc.*  
*People of the State of California v. HealthNet, Inc.*

Los Angeles City Attorney Rocky Delgadillo has filed suit against health insurers Anthem Blue Cross, Blue Shield, and HealthNet, accusing them of unlawfully revoking coverage from thousands of individuals, often after they have filed a claim for ongoing or costly medical treatments. The lawsuit alleges that the health insurance companies engaged in unlawful and deceptive business practices by rescinding coverage based on innocent or inadvertent omissions in insurance applications--and by investigating policyholders only after they were diagnosed with expensive medical conditions--in order to maximize profits. The lawsuits seek reinstatement of the wrongfully cancelled policies, full restitution for those who were denied medical coverage, and over one billion dollars in fines and civil penalties. State Insurance Commissioner Steve Poizner has stated that he will examine the lawsuits' allegations and determine whether action from his office is warranted.<sup>10</sup>

abilities, brain damage, and even death. Low-income children and children living in communities of color are particularly likely to be exposed to the health risks posed by lead-based paint.

In an effort to put an end to this health hazard, local governmental entities in California have asserted public nuisance claims against the manufacturers, seeking to hold them financially responsible for removing lead-based paint from homes in their jurisdictions. The California Court of Appeal has held that the manufacturers can be held liable for the public nuisance resulting from their promoting lead-based paint for interior use with knowledge of the harm that would result.<sup>11</sup> Thus, despite the Supreme Court of Rhode Island's recent decision to overturn a landmark jury verdict requiring three companies to pay for cleaning up the homes that their products contaminated,<sup>12</sup> we may, in the future, see manufacturers being required to abate the nuisance caused by the lead-based paint in homes across California. Local governments remain optimistic that the manufacturers of lead-based paint will ultimately be held responsible for the cost of cleaning up the public health hazard they created in California.

### **Annexation: Equal Protection In City Services**

Sometimes, impact litigation is used by local government after the political processes engaged in to help its underserved, underrepresented residents have proven unsuccessful. Along these lines, Santa Clara County has used litigation to ensure its residents are not deprived of equal access to municipal services. These County residents, like many people across the county, live in small, urban pockets of land that have remained unincorporated from the cities that surround them. Residents of these pockets, who typically are economically disadvantaged, people of color, are not eligible to receive municipal services from the cities that literally surround them. As a result, these residents must rely on counties for these services. However, counties have relatively few mechanisms and resources for providing such residents with municipal services, such as police protection, clean water, sewage systems, and public lighting, particularly in an urban environment. Thus, residents of unincorporated pockets receive a far lower level of services than their city-dwelling counterparts. To remedy this inequality among its

### **Suing Slumlords**

*District of Columbia v. Williams*

The District of Columbia is suing twenty-three landlords whose more than seventy rental properties throughout the District have a history of serious housing code violations that have subjected tenants to uninhabitable, squalor-like conditions. More than 470 rental units are affected. The lawsuit asks that the court appoint a receiver to collect rent from the apartment residents and use the money to make the repairs necessary to make the rental units habitable. If the rent that is collected is insufficient to make the necessary repairs, the District will ask that the court declare the buildings a public nuisance, and order the landlords to pay for the repairs out of pocket, pay civil penalties, or be charged with contempt. The lawsuit follows many efforts to get the landlords to bring their properties up to code via requests, fines, and other suits.

### **Toxic Toys and Candies**

*People of the State of California v. Mattel, Inc.*

*People of the State of California v. Alpro Alimento Proteinicos, S.A. De C.V.*

California Attorney General Bill Lockyer, Los Angeles City Attorney Rocky Delgadillo, and Alameda County District Attorney Tom Orloff sued major candy makers for failing to warn consumers of the dangerous amounts of lead in certain candies imported from Mexico into California, in violation of California's Safe Drinking Water and Toxic Enforcement Act of 1986, otherwise known as Proposition 65. These tainted candies had been responsible for a large outbreak in lead poisonings, which particularly impacted Latino communities in California.

residents, Santa Clara County has attempted to achieve the annexation of unincorporated pockets of land through the political process, with a policy of encouraging annexation, providing funding to facilitate annexation, and engaging in joint planning efforts with cities to promote annexation. Where the political process failed, Santa Clara County litigated to require the initiation of annexation proceedings. Santa Clara County successfully settled a case against the City of San Jose for breaching its contractual commitment to undertake the annexation of urban, unincorporated pockets. In this way, Santa Clara County has ensured that its residents are not deprived of access to city services.

### **Termination of Medi-Cal Eligibility**

Medi-Cal is the public health insurance program that the neediest Californians, including many of the children who find themselves in juvenile detention facilities, rely upon to receive medical care. A recent lawsuit filed by San Francisco City Attorney Dennis Herrera aims to ensure that members of one of the most vulnerable groups in our communities—juveniles detained in public institutions—obtain the medical benefits and care they need.

Santa Clara County joined San Francisco’s lawsuit against the State of California to end the State’s policy of terminating Medi-Cal benefits when youth are detained in juvenile facilities and to clarify that state and federal laws require the Medi-Cal program to pay for the care that detained youth receive when they leave the juvenile facilities and are admitted for more than 24 hours as hospital or psychiatric hospital patients. What makes California’s practice dismaying is not that cities and counties are bearing the burden that should be shouldered by the state and federal government; it is that the children—who often suffer from serious medical conditions, including substance abuse and acute mental health disorders—are deprived of critical medical and psychiatric care when they are released, putting their health in jeopardy and making it more likely that untreated psychiatric problems will lead to further incarceration. San Francisco and Santa Clara County are seeking declaratory and injunctive relief to prevent California’s unlawful practice of denying care to its most vulnerable children.

As a result of the suit, candy makers agreed to reduce the lead content of the candies and to ensure that no lead would enter the candies through the manufacturing processes, thereby substantially reducing the risk that children would be exposed to lead in the future. Since this agreement was struck, Attorney General Jerry Brown and Los Angeles City Attorney Rocky Delgadillo have sued twenty companies under Proposition 65 for making or selling toys with unlawful quantities of lead.

### **Contingent Fee Agreements in Public Nuisance Litigation**

*County of Santa Clara v. Superior Court*

The Santa Clara County Counsel’s Office retained private lawyers to assist in *County of Santa Clara v. Atlantic Richfield Co.*, our suit against manufacturers of lead-based paint. The manufacturers filed a motion to bar our retention of private attorneys, claiming that private attorneys prosecuting public nuisance actions on a contingent fee basis is unethical under the California Supreme Court’s decision in *People ex rel. Clancy v. Superior Court*. In *Clancy*, the Court held that the government’s representative must be neutral in public nuisance actions, as these cases entail a “delicate weighing of interest” and a “balancing of interests.” The California Court of Appeal found *Clancy* distinguishable, because our contingency fee agreement required that the private attorneys play a limited role in the litigation that is subordinate to the in-house, government lawyers, and have no decision-making authority or ability to control the litigation. Thus, the absolute neutrality requirement did not bar public lawyers from compensating private

## **Subprime Lending And The Foreclosure Crisis**

Another recent trend in impact litigation is to bring cases to address the economic harms suffered in local communities throughout the country. Both the City of Baltimore and the City of Cleveland have filed lawsuits to address the foreclosure crisis crippling their neighborhoods and the nation. Baltimore has sued Wells Fargo, alleging that the bank discriminatorily targeted the city's African-American neighborhoods for high-risk, unfairly-priced, subprime loans that were much more likely to lead to foreclosure, in violation of the Fair Housing Act. Baltimore seeks compensation for its lost revenues attributable to the resulting increased foreclosure rate and number of vacant homes, as well as the costs it has incurred providing additional services in response to the foreclosure crisis. Cleveland has taken a different approach. It has sued twenty-one banks under a public nuisance theory, alleging that the banks' unscrupulous subprime lending practices resulted in the city's foreclosure crisis, leading property values to plummet, and damaging the city's tax base. These cases are both in preliminary stages. Notably, both Cleveland and Baltimore took action to help struggling homeowners in their cities long before either state legislatures or Congress passed laws designed to provide homeowners with some relief.

attorneys for their assistance in litigation. Recently, the California Supreme Court granted review of the Court of Appeal's decision. Local government offices across California are optimistic that the Court will hold that government lawyers can continue to use the aid of private attorneys to pursue public nuisance actions. Without support from contingent fee counsel, governmental entities typically will lack the resources to combat industry-wide nuisances, and our communities will suffer.

## **Benefits of The Impact Litigation Movement**

Winning impact and affirmative litigation has profound effects. Equitable remedies can result in social change on a local, state or national scale. Damages fund government programs that help individuals get back on their feet and that maintain a sense of community. There are also intrinsic benefits to bringing lawsuits that seek to uphold the law, enforce the rights of the people, and promote the public interest. Even when such suits do not achieve the desired result in the courts, they still may lead to the desired reform, whether by focusing public attention on existing inequities, changing the public discourse, or gaining concessions from defendants that benefit the public good. Moreover, a lawsuit brought in good faith to vindicate the rights of a community may deepen a community's pride in its government, its leaders, and in the community as a whole.

## **Collaborating With Law Students**

Impact litigation programs provide a perfect opportunity to collaborate with law students and to encourage in them a lifelong commitment to public service. The San Francisco City Attorney's Office has formed Affirmative Litigation working groups with Yale Law School and

University of California, Berkeley, School of Law. New York's Law Department is offering a new seminar this fall at Harvard Law School, entitled Green Cities--New York.

My office has developed a project-based seminar on local government lawyering for social change; that class will be offered this year both at Stanford Law School and Santa Clara Law School. We also have a clinical program that will be available to students at Harvard Law School in conjunction with their local government law classes. And, we continue to work with externs from many other law schools, including University of California, Davis, School of Law.

The students bring fresh ideas and energy to the office, provide necessary research, and assist in the development of non-litigation projects aimed at advancing the public interest. We hope to expand our program to include students who are pursuing their advanced degrees in a variety of academic pursuits--including public policy, economics, statistics, and environmental sciences--to assist us in developing impact litigation, legislation, and social programs.

## Conclusion

Each of the many municipal law offices across the country represents an opportunity for a lawyer or a law student to advance and be an advocate for social change. Lawyers and law students serving in these offices, by the very nature of their work, help effect social change; they counsel officers and departments serving the most vulnerable members of our communities, and they defend against lawsuits that challenge innovative programs and ordinances tailored to promote the public interest. The growing impact litigation movement also provides lawyers and law students in municipal law offices the opportunity to be a central force in local governments' movement to further economic and social justice and to influence public policy. Through impact litigation cases, local governments have already brought about much change. As I survey the impact litigation cases being handled by the courts and percolating in the pipelines, I anticipate that more municipal law offices will decide that the obligations to ensure justice and serve the community require them to engage in impact litigation. I am optimistic that more social change is coming, and that our communities--at the local, state, and national levels--will be strengthened as a result.

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<sup>1</sup> Pew Center on Global Climate Change, *Climate Change 101: Local Action*, [http://www.pewclimate.org/global-warming-basics/climate\\_change\\_101](http://www.pewclimate.org/global-warming-basics/climate_change_101).

<sup>2</sup> See University of California, San Francisco, *Tobacco Lawsuit Summary Chart* (2004), <http://www.library.ucsf.edu/tobacco/litigation/summary.html> (listing suits brought by governments against tobacco companies).

<sup>3</sup> See Office of the Attorney General, State of California, *Tobacco Master Settlement Agreement Summary*, <http://ag.ca.gov/tobacco/resources/msasumm.php>.

<sup>4</sup> See Office of the City Attorney, San Francisco, *Cities, Counties Announce Tobacco Victory*, Sept. 9, 1997, [http://www.sfgov.org/site/cityattorney\\_page.asp?id=660](http://www.sfgov.org/site/cityattorney_page.asp?id=660).

<sup>5</sup> See Protection of Lawful Commerce in Arms Act, Sec. 397, 109th Cong. (2005).

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<sup>6</sup> Office of the City Attorney Dennis Herrera, *California Cities' Settlement With Gun Industry Distributors, Dealers To Include Major Distribution Reforms, Payment*, Aug. 21, 2003, [www.sfgov.org/site/cityattorney\\_page.asp?id=19070](http://www.sfgov.org/site/cityattorney_page.asp?id=19070).

<sup>7</sup> See Amy Paulson, *Smith & Wesson Agrees To Landmark Gun Safety Settlement*, CNN, Mar. 17, 2000, available at <http://archives.cnn.com/2000/ALLPOLITICS/stories/03/17/gun.lawsuit/index.html>.

<sup>8</sup> *Mayor Bloomberg Announces More Than Half Of Gun Dealers Named In New York City Lawsuits Have Settled*, Aug. 17, 2007, [http://www.mikebloomberg.com/en/issues/illegal\\_guns/mayor\\_bloomberg\\_announces\\_more\\_than\\_half\\_of\\_gun\\_dealers\\_named\\_in\\_new\\_york\\_city\\_lawsuits\\_have\\_settled.htm](http://www.mikebloomberg.com/en/issues/illegal_guns/mayor_bloomberg_announces_more_than_half_of_gun_dealers_named_in_new_york_city_lawsuits_have_settled.htm).

<sup>9</sup> *D.C. v. Heller*, 128 S.Ct. 2783 (2008).

<sup>10</sup> Lisa Girion, *Anthem Blue Cross Sued Over Rescissions*, Los Angeles Times, Apr. 17, 2008, available at, <http://www.latimes.com/business/custom/admark/la-fi-insure17apr17,0,1782472.story>.

<sup>11</sup> *County of Santa Clara v. Atlantic Richfield Co.*, 137 Cal. App.4th 292 (2006).

<sup>12</sup> *State v. Lead Industries, Inc.*, 951 A.2d 428 (July 1, 2008).