

No. S091547

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

Great Western Gun Shows, Inc.,
Plaintiff/Appellee/Respondent,

vs.

County of Los Angeles,
Defendant/Appellant/Petitioner.

On Certification from the United States
Court of Appeals for the Ninth Circuit
Case No. 99-56605

On Appeal from the United States District Court for
the Central District of California
The Honorable Richard A. Paez, District Judge, Presiding
Case No. CV-99-09661-RAP

BRIEF OF AMICI CURIAE THE CITY AND COUNTY OF SAN FRANCISCO, THE CITIES OF ALAMEDA, ALBANY, BERKELEY, EMERYVILLE, INGLEWOOD, LAFAYETTE, LIVERMORE, LONG BEACH, LOS ANGELES, OAKLAND, PIEDMONT, REDLANDS, SAN CARLOS, SANTA MONICA, AND WEST HOLLYWOOD, AND THE COUNTIES OF MARIN, SANTA CLARA AND SONOMA, LEGAL COMMUNITY AGAINST VIOLENCE, WOMEN AGAINST GUN VIOLENCE, ORANGE COUNTY CITIZENS FOR THE PREVENTION OF GUN VIOLENCE, THE MILLION MOM MARCH FOUNDATION, THE CALIFORNIA POLICE CHIEFS ASSOCIATION, AND YOUTH ALIVE! IN SUPPORT OF PETITIONER THE COUNTY OF LOS ANGELES

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INTEREST OF AMICI CURIAE

Amici support the validity of Chapter 13.67 of the Los Angeles County Code [hereinafter "the Ordinance" or "the Los Angeles Ordinance"], which prohibits the sale of firearms and ammunition on property owned by Los Angeles County.

The City and County of San Francisco, the Cities of Alameda, Albany, Berkeley, Emeryville, Inglewood, Lafayette, Livermore, Long Beach, Los Angeles, Oakland, Piedmont, Redlands, San Carlos, Santa Monica, and West Hollywood, and the Counties of Marin, Santa Clara and Sonoma all have enacted, or are considering enacting, ordinances that regulate firearms in their communities. These amici are concerned that, if the District Court's preemption analysis is allowed to stand, it could call into question the ability of local governments to regulate firearms. These amici are also concerned that their continuing ability to adopt firearm regulations, including local ordinances relating to firearm possession, on their property may be jeopardized should this Court adopt the U.S. District Court's reasoning in this case.

Legal Community Against Violence ("LCAV") is a nonprofit organization consisting of a network of law firms and attorneys throughout California dedicated to reducing gun violence through public education, litigation, and legislation. Created in the wake of the July 1, 1993 shootings at 101 California Street, San Francisco, which left nine people dead and five more people wounded, LCAV has over 400 active members statewide who work toward a common goal of effective firearms regulation. LCAV operates a clearinghouse for information about local firearms regulations through its Local Ordinance Project, designed to assist California city and county officials in determining whether their gun violence prevention policies are legally sound.

Women Against Gun Violence ("WAGV") is a coalition of individual members and over 100 supporting organizations representing thousands of women and men throughout California. WAGV develops and communicates strategies for reducing gun violence, particularly as it affects women. Part of WAGV's mission is to raise awareness about the human, public health and financial costs of the epidemic of gun violence, while taking concrete positive steps toward reducing gun violence and stopping the unfettered proliferation of firearms.

Orange County Citizens for the Prevention of Gun Violence ("OCCPGV") is a non-profit 501(c)(3) corporation founded in 1995 to work for the prevention of gun violence through education and advocacy using the public health model. OCCPGV works in coalition with many organizations in Orange County as well as with regional, state, and national groups in order to impact a broad range of issues associated with the prevention of handgun violence.

The Million Mom March Foundation is a national grassroots, chapter-based organization dedicated to preventing gun death and injury and supporting the victims and survivors of gun trauma. Million Mom March members have come together to support sensible gun laws. Individual chapters, including the Los Angeles County chapters, focus on education, advocacy, lobbying for stronger gun laws, and providing resources responsive to the needs of gun victims.

The California Police Chiefs Association (CPCA) is an organization that represents municipal law enforcement agencies in California. The objectives of the association are (1) to promote and advance the science and art of police administration and crime prevention; (2) to develop and disseminate professional administrative practices, and to promote their use in the police profession; (3) to foster police cooperation and the exchange of information and experience throughout the State; (4) to bring about

recruitment and training of qualified persons in the police profession; and (5) to encourage the adherence of all police officers to high professional standards of conduct in strict compliance with the Law Enforcement Officer's Code of Ethics. The CPCA believes that local government is the closest to the people, and therefore, most responsive to the needs of citizens. The CPCA is dedicated to saving human lives by substantively reducing the easy access and misuse of firearms and supports a legislative agenda that will reduce the opportunity for firearms to kill and injure innocent people.

Youth ALIVE! is a non-profit public health agency dedicated to preventing youth violence and generating youth leadership in California communities. Youth ALIVE! seeks to educate youth in violence prevention/intervention, and to inform decision makers, community leaders, their peers, and others about options to prevent youth violence. Youth ALIVE! operates the Teens on Target program in Los Angeles. Teens on Target trains young people to be peer educators for gun violence prevention. Many of the Teens on Target members have been paralyzed by gun violence.

INTRODUCTION

Gun violence is an epidemic ravaging communities throughout California. Los Angeles County, in particular, suffers severe impacts from gun violence, including crime, death and injury for direct victims, grief and fear among many of the County's other residents, and substantial financial costs for the County and its taxpayers. Property belonging to Los Angeles County has been used as a venue for gun-related criminal activities concerning firearm sales and to facilitate gun-related crime in other parts of Los Angeles County.

In an effort to counter these problems and ensure that its own property is used to promote the health and welfare of its residents, Los

Angeles County adopted an ordinance that prohibits the sale of firearms and ammunition on County-owned property alone, but does not affect the sale of firearms and ammunition in other locations in the County.

Plaintiff-Respondent, Great Western Shows, Inc., is in the business of conducting gun shows. Great Western has held, and plans to continue holding, gun shows at the Los Angeles County Fairgrounds, which are owned by the County of Los Angeles.

Great Western challenges the authority of Los Angeles County to adopt the Ordinance, contending that state law preempts the Ordinance and that the County did not have jurisdiction to adopt the Ordinance. Great Western filed this action in the Central District of California and applied for a preliminary injunction to prevent the County of Los Angeles from enforcing the Ordinance. The District Court granted the preliminary injunction, concluding that there were substantial questions regarding whether state law preempts the Ordinance.

Defendant/Petitioner, the County of Los Angeles appealed to the Ninth Circuit. Following briefing and oral argument, the Ninth Circuit certified the following two questions to this Court:

1. Does state law regulating the sale of firearms and gun shows preempt a municipal ordinance prohibiting gun and ammunition sales on county property?
2. May a county, consistent with Article 11, § 7 of the California Constitution, regulate the sale of firearms and ammunition on its property located in an incorporated city within the borders of the county?

In its brief to this Court, the County of Los Angeles has persuasively explained why it had the authority to adopt the Ordinance. By the instant brief, Amici wish to draw this Court's attention to the local interests at stake in this case and provide additional authority demonstrating that: 1) state law does not preempt the Los Angeles Ordinance; and 2) Los Angeles County has jurisdiction to adopt the Ordinance.

ARGUMENT

I. SALES OF FIREARMS ON PROPERTY OWNED BY LOS ANGELES COUNTY HAVE CONSTITUTED, ATTRACTED, AND FACILITATED CRIMINAL ACTIVITY

Los Angeles County leads all the counties in California in the number of homicides and other violent crimes. Criminal Justice Statistics Center, Division of Criminal Justice Information Services, Cal. Dept. of Justice, Cal. Criminal Justice Profile, 1999, Table 11.¹ According to the California Department of Health Services, 1,192 residents of Los Angeles County died as a result of firearms in 1998 and another 1,930 were injured by firearms. Cal. Dept. of Health Services, Epidemiology and Prevention for Injury Control Branch, Injury Data Summaries, 1998 [hereinafter "DHS Injury Data Summaries"]. Fifty percent of the state's gun-related homicides and fifty-five percent of the state's firearm-related assaults took place in Los Angeles County. *Id.* Such violence engenders emotional harm and injury in the residents of Los Angeles County, including grief, pain and fear for victims and non-victims alike.

In addition to the physical and emotional toll, this gun violence also imposes a tremendous financial burden on the County itself. According to a 1996 study, Los Angeles County had costs of over \$52 million and accounted for 41% of the state's hospitalization costs for firearms injuries. Wendy Max, M.D., Martha Michel, and Dorothy P. Rice, *The Cost of Firearms Injuries in California, 1996* at pp. 22, 78, University of California, San Francisco (1999) [hereinafter "Max Study."]. Dr. Max's research and analysis also showed that "Los Angeles County had both the highest number of discharges (3,174 – 47% of the total) and the highest rate

¹ This report is available online at http://justice.hdcdojnet.state.ca.us/cjsc_stats/prof99/index.htm.

– 33.8 per 100,000 persons." *Id.* at p. 22. As a result, Los Angeles County also had the highest hospitalization costs in the state.

The County itself pays a huge portion of these medical costs. Only fifty-eight percent of the discharged patients were covered by insurers other than the County's indigent program. Max Study at p. 78. Of the remaining forty-two percent, twenty percent were covered by the County's indigent program and the final twenty-two percent were uninsured. *Id.* Thus, the County ultimately pays for much of the costs incurred as a result of gun violence injuries.

According to studies conducted by the federal Bureau of Alcohol, Tobacco and Firearms (ATF), there is a solid link between gun shows and gun violence. One ATF study described "gun shows as a venue for criminal activity and a source of firearms used in crimes." Bureau of Alcohol, Tobacco & Firearms, Department of the Treasury, Gun Shows: Brady Checks and Crime Gun Traces (1999) at p. 7 [hereinafter "ATF Gun Show Report"].² "[T]oo often the shows provide a ready supply of firearms to prohibited persons, gangs, violent criminals, and illegal firearms traffickers." *Id.* at p. 6. In more than one-third of the investigations involved in the ATF Gun Show Report, guns purchased at a gun show were used to perpetrate violent crimes, such as robbery, assault, and murder. ATF Gun Show Report at p. 7.

ATF has also concluded that gun shows provide a place for persons to engage in gun trafficking and related crimes, including but not limited to sales of firearms to felons and other ineligible persons, sales of banned weapons like machine guns, and sales that take place without the required background checks and waiting periods. *Id.* at 7-8 & Table 7. Another

² This report and others are available on the ATF's website, <http://www.atf.treas.gov/pub/index.htm#Firearms>.

common problem at gun shows involves indirect illegal sales to criminals via "straw purchasers," persons otherwise eligible to purchase firearms who make the purchases for the purpose of illegally reselling the firearms to felons, minors, or other persons legally barred from owning firearms. The ATF Gun Show Report concluded that "straw purchasers" commonly acquire guns at gun shows. *Id.* at p. 7 & Table 7.

There is no question that problems associated with gun shows in general also infect gun shows occurring on property owned by Los Angeles County. As noted in Findings L-N in the Los Angeles Ordinance, there are the following specific examples of such problems:³

- L. At the Great Western Gun Show held at the Los Angeles County Fairgrounds last April 30th – May 2nd, the State Department of Justice (DOJ) conducted a sting operation to determine if illegal gun trafficking was occurring. During this event, DOJ agents purchased several items that are not legal for sale in California, including two illegal assault weapons, five illegal machine gun conversion kits, and one illegal rocket launcher with projectile. Each of these items was purchased without the completion of a background check as required by law. The firearms purchased were delivered immediately to the agents, without regard to the 10-day waiting period that is also required by law. According to the Attorney General, the only reason the agents were not able to identify more illegal gun trafficking is that they ran out of time and money. In fact, city of Pomona police arrested five additional individuals at the gun show for illegal sales; and
- M. According to the ATF, on August 13, 1999, the ATF, Pomona Police Department and the State DOJ Bureau of Narcotics Enforcement (BNE) made an arrest after an individual delivered 10 Sten machine guns, and a Browning Automatic Rifle to an undercover ATF agent. Pursuant to a search of his residence, additional machine guns and machine gun kits were discovered.

³ In addition to these examples, the ATF Gun Show Report describes an incident involving a gun dealer who frequented Southern California gun shows. The dealer sold over 1,700 firearms, many at gun shows, without complying with the recording requirements. Many of these guns were subsequently recovered after being used in crimes of violence, including homicide, within Los Angeles County. ATF Gun Show Report at 8.

The selling of machine guns or the kits to manufacture machine guns is a violation of federal firearms law. The investigation began on July 10, 1999, after undercover agents met with the individual at his vendor's table at the Great Western Gun Show, Fairplex Complex in the city of Pomona. This meeting eventually led to the delivery of six machine guns in the days following the initial negotiations; and

- N. At least three of the weapons acquired or possessed by the robbers in the infamous North Hollywood shootout of February 28, 1997 were traced back to a gun show on county property where the robbers had purchased them.

Los Angeles County Code § 13.67.010 (emphasis added).

In fact, the two men who perpetrated one of the most notorious incidents of violence in recent memory, the February 1997 North Hollywood shootout, possessed firearms traced back to a Great Western gun show that took place on County-owned property. Jeffrey L. Rabin and Steve Berry, *Weekend Gun Shows Drawing More Scrutiny; Weapons: Recent Shootings Have Increased Pressure to Close Them, But Organizers Mount a Counteroffensive*, L.A. Times, August 16, 1999, at A1. In that incident, two bank robbers used assault weapons to fire hundreds upon hundreds of bullets at countless people, taking their gunfire from the bank through a residential neighborhood. Beth Shuster and Doug Smith, *The North Hollywood Shootout; Hours of Terror; Police Kill 2 Suspects After Foiled Bank Heist*, L.A. Times, March 1, 1997, at A1. Ten police officers and three civilians were wounded, while other residents in the community feared for their own safety. *Id.* It took hours for the police to put an end to the shooting because the robbers' illegal assault weapons were so much more powerful than standard police weapons. *Id.*

Thus, at the time when it considered adoption of the Ordinance, the Los Angeles County Board of Supervisors had before it evidence 1) that the sale of firearms at gun shows was linked with both gun trafficking crimes

and gun violence within the County and 2) that gun shows on County-owned property shared these negative propensities. Given this evidence, the Board of Supervisors rationally prohibited further gun sales on County-owned property in order to protect and improve the health and safety of the residents and visitors to Los Angeles County as well as reduce the financial burden of gun violence upon the County itself.

II. THE CALIFORNIA CONSTITUTION AND GOVERNMENT CODE STATUTES GRANT LOS ANGELES COUNTY THE AUTHORITY TO ADOPT THE ORDINANCE

Article XI, Section 7 of the California Constitution provides that “a county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.” Under this provision, a county’s police powers are as broad as the state Legislature’s police powers, and the county may act to protect the welfare of its residents. *Candid Enterprises, Inc. v. Grossmont High School* (1985) 39 Cal.3d 878. A municipality’s police powers include the power to regulate handgun sales. *California Rifle and Pistol Ass’n, Inc. v. City of West Hollywood* (1998) 66 Cal.App.4th 1302, 1310 [hereinafter *City of West Hollywood*].

For example, a city or county may act to prohibit firearm dealerships in or near areas such as residential districts, schools, and bars because “dealerships can be the targets of persons who are or should be excluded from possessing weapons.” *Suter v. City of Lafayette* (1998) 57 Cal.App.4th 1109, 1131-32; see also *Cheney v. Supreme Court of California* (1891) 90 Cal. 617 [upholding validity of firearms ordinance and concluding that police power gives municipalities the power to regulate “the times and places at which at which occupations may be plied”].

As noted above, when the County chose to prohibit sales of firearms and ammunition on County-owned property, it knew that sales of firearms

on its property had attracted criminals and criminal conduct to its property and had facilitated criminal conduct like the North Hollywood shootout elsewhere in Los Angeles County. See Los Angeles County Code § 13.67.010 [legislative findings]. Thus, the prohibition of sales of firearms and ammunition on County-owned property would “ensure that its property was used in a manner consistent with promoting the health, safety, and welfare of its residents.” See Los Angeles County Code § 13.67.020.

Additionally, the California Legislature in the Government Code provided further authority for Los Angeles County to enact the Ordinance. Government Code Section 23004 authorizes counties to “[m]anage, sell, lease, or otherwise dispose of property as the interests of its habitants so require.” Cal. Gov't Code § 23004. Government Code sections 25351, 25351.3, and 25353 specifically authorize counties to take measures in managing their property, including acquiring, constructing, and leasing buildings, parks, and pleasure grounds for the benefit and enjoyment of the public. Cal. Gov't Code §§ 25351, 25351.3, and 25353. Thus, the County exercised its powers under the Government Code to enact the Ordinance.

Great Western argues that if a county acts for the benefit of its citizens, it must necessarily act pursuant to its police powers and only its police powers. There is no basis in law or reason for such a proposition. The Government Code explicitly calls for counties to manage their property for the benefit of the public. A county could enact an ordinance regulating particular conduct throughout the county and then adopt a similar ordinance concerning that same kind of conduct when it occurs on property owned by the county. Both ordinances would be for the benefit of the public.⁴

⁴ For example, Los Angeles County's Health and Safety Code regulates smoking in unincorporated areas of the County. Los Angeles County Code § 11.64.030. Los Angeles County's Administration Code (continued on next page)

Accordingly, the County must be said to have enacted the Ordinance pursuant to its constitutional police powers **and** pursuant to its powers under the Government Code.

III. STATE LAW DOES NOT PREEMPT THE ORDINANCE'S REGULATION OF FIREARM SALES ON COUNTY-OWNED PROPERTY

As an initial point, the Legislature cannot be said to preempt (whether expressly or impliedly) what it has expressly authorized. Thus, because the Legislature expressly authorized the County to manage the Fairgrounds under the Government Code, there can be no preemption as to acts taken by the County in furtherance of that authority. More significantly, even if the County's authority to enact the Ordinance were limited to the constitutional grant of police powers, the Ordinance is not preempted as it does not conflict with state law. *Sherwin-Williams Co. v. City of Los Angeles* (1993) 4 Cal.4th 893, 897.

The preemption analysis commences with two notable considerations. First, although Great Western asserts that the relevant field of preemption is the sale of firearms at gun shows, see Respondent's Brief on the Merits at 13, a more plausible alternative is the County's ability to control activities on its own property. When the preemption analysis proceeds from this perspective, Great Western is unable to cite any affirmative limitations on the County's ability to proscribe the sale of firearms on its own property.

Second, even accepting Great Western's suggested field of preemption, Great Western must concede that the Ordinance serves "a

(footnote continued from previous page)
separately regulates smoking in County-owned facilities. Los Angeles County Code § 2.126.040.

significant local interest to be served which may differ from one locality to another" *Gluck v. County of Los Angeles* (1979) 93 Cal.App.3d 121, 133 [upholding an ordinance regulating the use of streets and sidewalks and concluding that conditions peculiar to the locality may differ from place to place]. The Court has traditionally been "reluctant to infer legislative intent to preempt a field covered by municipal regulation 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, *aff'd*, 475 U.S. 260 (1986). Given these points, the Los Angeles Ordinance is presumptively valid.

Great Western cannot overcome this presumption of validity because, as shown below, the Ordinance does not contradict, duplicate, or enter an area occupied by general law, either expressly or by legislative implication. *Sherwin-Williams Co.* at 897. Thus, state law does not preempt it in any way.

A. The Ordinance Is Presumptively Valid Because It Addresses A Significant Local Interest

Los Angeles County has significant interests in regulating firearms sales on County-owned property, including an interest in preventing crime occurring on its property and in reducing gun violence within the County. As these interests are peculiarly local, the Ordinance is presumptively valid.

As this Court has noted, "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." *Galvan v. Superior Court of the City and County of San Francisco* (1969) 70 Cal.2d 851, 864, [comparing the severity of gun violence in Mono County and in San Francisco]; see also *Cheney*, 90 Cal. 617 [upholding ordinance banning concealed weapons and noting that police requirements of a city are

different from those of the state at large and stricter regulations are essential to the good order of a crowded metropolis].

Comparing the counties identified in *Galvan* with Los Angeles County illustrates how the magnitude of gun violence in different counties requires different local responses. In 1998, Mono County had no firearms related deaths or hospitalizations while forty-five San Franciscans died from firearms and another sixty-seven were hospitalized with injuries. *DHS Injury Data Summaries, supra*. By contrast, in Los Angeles County there were 1,192 deaths and 1,930 injuries caused by gun violence. *Id.* Similarly, Los Angeles County has greater levels of human suffering and community fear in addition to the tremendous financial costs associated with gun violence in Los Angeles County.

Furthermore, the type of activities on County-owned property will be always be of particular concern to the County. Not only does the County affirmatively seek to limit criminal activity on its property, but it must be cognizant of the susceptibility to lawsuits arising out of activities on their property. Indeed, Alameda County has been sued as a result of a shooting that took place at the Alameda Fairgrounds, which is owned by Alameda County. See *Woman Sues County Over Carnival Shooting*, S. F. Chronicle, August 21, 1998, at A21.

Thus, Los Angeles County has several interests at issue with respect to the Ordinance. It has one interest in regulating its own property and another interest in addressing its exceptionally high rate of gun violence and associated costs. As these are clearly local interests, this Court presumes the Ordinance is valid.

B. The Ordinance's Regulation of Firearms Sales On County-Owned Property Does Not Contradict State Law

Relying on *Northern Cal. Psychiatric Society v. City of Berkeley* (1986) 178 Cal.App.3d 90, the District Court erroneously concluded that

the Los Angeles Ordinance conflicts with state law because the Ordinance directly prohibits state sanctioned activities. In particular, the Court expressed concern that the Ordinance contradicted California Penal Code Section 12071, which provides for licensing of firearm dealers, and California Penal Code Section 12071.1, which requires certain security measures at gun shows. Great Western currently argues that the Ordinance contradicts not only Section 12071 and 12071.1, but a number of other statutes as well. These statutes directly or indirectly affect the sale of firearms, but none of them authorizes the sale of firearms on County-owned property.

“An ordinance contradicts state law if it is inimical to state law; i.e., it penalizes conduct that state law expressly authorizes.” *Suter, supra*, 57 Cal.App.4th at 1124 (emphasis added). For example, in *Northern Cal. Psychiatric Society v. City of Berkeley*, the court held that a city ordinance, which was an "outright ban" of electric shock treatments for psychiatric patients, contradicted state law. 178 Cal.App.3d at 105. The Berkeley ordinance prohibited all patients from receiving electric shock therapy anywhere in Berkeley under any circumstances. A state statute, however, expressly stated that electric shock therapy "may be administered" to patients and another statute guaranteed to mentally ill persons a "right to treatment services" that included shock therapy. The court therefore held the Berkeley ordinance directly conflicted with the California statutes. *Id.*

In the instant case, the Los Angeles Ordinance does not contradict state law for three reasons: 1) the state statutes at issue here license or acknowledge firearms sales generally – they do not expressly authorize firearms sales on County-owned property or any other particular location; 2) the Los Angeles Ordinance merely regulates the location of firearms sales and does not prohibit firearms licensees from selling firearms at gun shows in general or on property that is not owned by the County; and 3)

state law expressly recognizes that there can be additional local laws regulating gun shows.

1. State law does not expressly authorize firearms sales on county-owned property

In contrast to the express statutory guarantee of a right to shock treatment in *Northern California Psychiatric Society*, the Penal Code statutes at issue here do not expressly authorize firearm sales on County-owned property. Although Great Western relies on a number of statutes⁵ in support of its argument that state law guarantees a right to sell firearms at each and every gun show in the state, none of the cited statutes creates such a right. Indeed, under Great Western's logic, Great Western has no discretion to decide who may be a vendor in its own gun shows because “these statutes , as Great Western views the law, every firearms dealer in California has a right to sell firearms at Great Western's gun shows even if Great Western did not want to include a particular dealer. However, the applicable state law is to the contrary and does not create such a right. Accordingly, there is no basis for Great Western's position.

Great Western argues that state law requiring unlicensed buyers and sellers to use licensed dealers as intermediaries in firearms transfers creates a right to initiate transfers and sales at gun shows. The *Suter* court considered and rejected a similar argument. In *Suter*, the appellants contended that the California Penal Code's requirement that all firearm sales by private citizens be conducted through a licensed dealer or law enforcement agency created a right for private citizens to sell firearms. 57 Cal.App.4th at 1127. In rejecting this argument, the Court held that the

⁵ Great Western claims to rest this argument on California Penal Code Sections 12026.2, 12070, 12071, 12072, 12076, 12071.1, 12071.4, and 12082.

Penal Code "establishes a limitation, not a right." *Id.* at 1127 (emphasis in original).

Just as the statutes at issue in *Suter* anticipated the possibility that persons would sell firearms, but did not create a right to sell firearms, the gun show security regulations and other statutes cited by Great Western anticipate the possible sale and transfer of firearms at gun shows, but do not create the right to engage in such sales and transfers. The statutes simply impose limits on vendors and gun show owners if firearms are sold at gun shows.

Similarly, the state statute establishing the licensing scheme for firearm dealers does not guarantee licensed dealers a right to sell firearms on County-owned property. Penal Code Section 12071(b)(1) provides:

b) A license is subject to forfeiture for a breach of any of the following prohibitions and requirements:

(1)(A) Except as provided in subparagraphs (B) and (C), the business shall be conducted only in the buildings designated in the license.

(B) A person licensed pursuant to subdivision (a) may take possession of firearms and commence preparation of registers for the sale, delivery, or transfer of firearms at gun shows or events, as defined in Section 178.100 of Title 27 of the Code of Federal Regulations, or its successor, if the gun show or event is not conducted from any motorized or towed vehicle. A person conducting business pursuant to this subparagraph shall be entitled to conduct business as authorized herein at any gun show or event in the state without regard to the jurisdiction within this state that issued the license pursuant to subdivision (a), provided the person complies with (i) all applicable laws, including, but not limited to, the waiting period specified in subparagraph (A) of paragraph (3), and (ii) all applicable local laws, regulations, and fees, if any.

Thus, by its own terms, Section 12071 is only a licensing statute. It does not authorize the sale of firearms on County-owned property or any other location in particular. Moreover, nothing in this statute guarantees a right

to force counties or other landowners to make their property available for firearms sales. To the contrary, at most it provides an exception to the general limitation that a dealer may sell firearms only at its licensed place of business.

Significantly, it has already been held that having a license to sell firearms does not give one an unfettered right to sell firearms wherever one likes or in whatever manner one wishes. See *Suter, supra*, 57 Cal.App.4th at 1131 [upholding zoning ordinance that prohibited licensed firearms dealers from selling firearms in certain areas of the city]; cf. *Korean American Legal Advocacy Foundation v. City of Los Angeles* (1994) 23 Cal.App.4th 376, *modified*, 23 Cal.App.4th 1861D [holding that land use ordinance regulating location of alcohol sales not preempted by licensing statute authorizing sale of alcohol in stores where ordinance precluded licensed persons from selling alcohol in stores at certain locations].

As Great Western can point to no state statute authorizing dealers to sell wherever they wish, it has no basis to argue that a local ordinance precluding sale of guns on County-owned property conflicts with state-created right.

2. The Ordinance does not prohibit any conduct expressly authorized by state law

If Los Angeles County had enacted an ordinance providing that licensed dealers are licensed to sell firearms only on their licensed business premises, that would have contradicted state law. If Los Angeles County had enacted an ordinance excusing Los Angeles gun show owners and vendors from complying with the state's gun show security regulations that, too, would have conflicted with state law. However, that is not what Los Angeles County did. Los Angeles County simply adopted an ordinance that regulates the geographic location where dealers may sell firearms by prohibiting the sale of firearms on County-owned property.

Even if state law were interpreted to guarantee a generalized right to sell firearms at gun shows, the Ordinance would not contradict such law. Unlike in *Northern California Psychiatric Society*, the Ordinance does not ban the regulated activity throughout the municipality. “[A]ny right to sell a product is not destroyed by an ordinance that limits the manner in which the product may be sold.” *Suter, supra*, 57 Cal.App.4th at 1127; cf. *Bravo Vending v. City of Rancho Mirage* (1993) 16 Cal.App.4th 383 [ordinance prohibiting sale of cigarettes in vending machines did not ban or otherwise destroy the business of selling cigarettes].

Similarly, regulating the location in which a product may be sold does not destroy a right to sell a product. See *Korean American Legal Advocacy Foundation*, 23 Cal.App.4th at 388 [although city could not have banned entirely the sale of alcohol in its jurisdiction, ordinance prohibiting the sale of alcohol at certain locations was valid even though it had an impact on sales of alcohol by persons licensed to sell alcohol *in stores*].

The Los Angeles Ordinance does not ban licensed dealers from selling firearms at gun shows or destroy anybody's right to sell a product. The Ordinance simply regulates the geographic location of gun sales within Los Angeles County and prohibits only the sale of firearms on property owned by Los Angeles County. The Ordinance succinctly states: “The sale of firearms and/or ammunition on county property is prohibited.” (L.A. Ordinance § 13.67.030 (emphasis added).) The Ordinance’s definitions make it clear that “County Property” does not include all property within the territory of Los Angeles County. “County Property” is defined as:

real property owned, leased, subleased or otherwise assigned by the county, or real property subject to the use and control of the county. It includes real property of the county in the possession of a public or private entity under contract with the county.

L.A. Ordinance § 13.67.040.

Thus, the Ordinance does not affect the ability of people to sell firearms anywhere else in Los Angeles County besides County-owned property. In particular, nothing in the Ordinance prevents licensed dealers from selling firearms at gun shows in Los Angeles County if those sales do not take place on County-owned property and nothing in the Ordinance restricts firearms sales to the licensed place of business.

3. State law provides for local laws affecting gun shows.

In addition to the foregoing points, state law actually provides for local regulations affecting gun shows and affecting county control over county-owned property. Penal Code Section 12071 expressly provides for local laws affecting gun shows:

A person conducting business pursuant to this subparagraph shall be entitled to conduct business as authorized herein at any gun show or event in the state without regard to the jurisdiction within this state that issued the license pursuant to subdivision (a), provided the person complies with (i) all applicable laws, including, but not limited to, the waiting period specified in subparagraph (A) of paragraph (3), and (ii) all applicable local laws, regulations, and fees, if any.

Cal. Penal Code § 12071 (emphasis added). Penal Code section 12071.1 contains similar language. Penal Code § 12071.1(o).

The U.S. District Court improperly dismissed this statutory language. (ER 2 at 10-11.) In doing so, the court failed to properly apply the rule of statutory construction that requires courts to interpret statutory language so that “no part or provision will become useless or meaningless, since it is presumed that every word and provision was intended to have some meaning and function.” See ER 2 at 10-11 (quoting *California Teachers’ Ass’n v. Parlier Unified Sch. Dist.* (1984) 157 Cal.App.3d 174, 179). The U.S. District Court’s error is based in part upon a misunderstanding of both the Ordinance and the relevant statutes.

Giving meaning to all parts of the statute, including the provisions for local laws, demonstrates that the cited language merely states the ability to sell guns at a gun show as an exception to the general rule that a dealer may sell firearms only at its licensed place of business. In other words, the exception creates a limited defense to the otherwise criminal conduct of selling a firearm away from the licensed place of business. Contrary to the U.S. District Court's conclusion, application of the Ordinance does not render the statute nugatory -- licensed dealers can comply with the Ordinance and still conduct limited sales away from their licensed premises, just not on County property.

Moreover, there is another rule of statutory construction at play here. If possible, courts must construe statutes so that they do not conflict with each other. *Sanford v. Garamendi* (1991) 233 Cal.App.3d 1109, 1122. As noted above, the Government Code authorizes counties to regulate their property. See *supra*, Part II at pp. 10-11. When read in harmony with the Government Code, Penal Code Section 12071 does not provide gun dealers an unfettered right to sell firearms on County-owned property.

C. The Ordinance's Regulation of Firearm Sales On County-Owned Property Does Not Duplicate State Law

In its brief before this Court, Great Western argues that the Ordinance is preempted as duplicative of state law because state law arguably prohibits much of what the Ordinance prohibits. In particular, Great Western notes that cash and carry sales of firearms are prohibited by the statutory waiting period and that sales of assault weapons, machine guns, and Saturday Night Specials are already banned under state law. Although the Ordinance would preclude these acts as well, Great Western's conclusion that the Ordinance is therefore duplicative of state law does not necessarily follow.

Local law is only duplicative of state law if it is coextensive with state law. *Sherwin-Williams, supra*, 4 Cal.4th at 897-98. An ordinance is duplicative, rather than supplementary, when the ordinance is substantially identical to a state statute. *Pipoly v. Benson* (1942) 20 Cal.2d 366, 370-71. Thus, in *In Re Portnoy* (1942) 21 Cal.2d 237, part of the ordinance was duplicative of the state gambling statute because “[s]ubstantially the entire text” of the ordinance was found in the Penal Code. 21 Cal.2d at 240.

When an ordinance and statute differ in scope and substance, however, they are not duplicative. *Sherwin-Williams*, 4 Cal.4th at 902 [holding that local anti-graffiti measure was not duplicative of state anti-graffiti measure because the two measures were different in scope and substance]; see also *Remmer v. City and County of San Francisco* (1949) 90 Cal.App.2d 854, 859 [holding that there was no duplication when ordinance and statute contained different elements]. Local law may have the same ultimate effect as state law, but still not be preempted by state law. See *Korean American Legal Advocacy Foundation, supra*, 23 Cal.App.4th at 389-92 [no preemption even though both ordinance and statute would have the effect of prohibiting alcohol sales at a particular location]. Furthermore, local laws designed to deter or prevent criminal misconduct are not duplicative of the state law that criminalizes the misconduct. *Bravo Vending, supra*, 16 Cal.App.4th at 411-12 [ordinance designed to prevent cigarette sales to minors by prohibiting cigarette sales in vending machines was not preempted by statute banning the sale of cigarettes to minors].

The Los Angeles Ordinance is not coextensive with the statutes cited by Great Western. While the Ordinance precludes firearm sales on County-owned property, the statutes cited by Great Western entirely ban the sale of certain kinds of firearms or regulate the timing of transfers. Additionally, violation of the Ordinance requires a key element – County-owned property – that is not part of any of the cited statutes, including:

- California Penal Code Section 12072(c)(1), which requires a waiting period before transferring a firearm;
- California Penal Code Section 12220, which bans machine guns;
- California Penal Code Section 12280, which bans assault weapons; and
- California Penal Code Section 12125, which bans "unsafe handguns," also known as junk guns or Saturday Night Specials.

Moreover, each of these state statutes contains an element not found in the Ordinance. For example, a firearm must be an assault weapon to violate Section 12280, a machine gun to violate Section 12220, and an "unsafe" handgun to violate Section 12125. The sale of a firearm outside of these categories would still violate the Ordinance if it occurred on County-owned property. Similarly, the waiting period of Penal Code Section 12072(c)(1) finds no counterpart in the Ordinance. A gun transfer on non-County property without waiting the statutorily mandated ten-day period would violate Section 12072, but not violate the Ordinance. The Ordinance and the cited statutes are not coextensive and therefore, not duplicative.

D. State Law Does Not Expressly Preempt the Ordinance's Regulation of Firearm Sales on County-Owned Property

State law preempts local legislation "when the Legislature has expressly manifested its intent to 'fully occupy' the area." *Sherwin-Williams*, 4 Cal.4th at 898. State law does not expressly preempt the broad field of firearms. *City of West Hollywood, supra*, 66 Cal.App.4th at 1312-13; see also *Suter*, 57 Cal.App.4th at 1124 [there is no Legislative declaration of intent to occupy the field of regulation of sale of firearms]. Instead, the California Legislature has carefully limited its express

preemption of firearms laws to three statutes regulating the registration and licensing of real firearms and the sale of imitation firearms.

None of the above three statutes express a legislative intent to divest the City generally of its police power to regulate the sale of handguns; instead these statutes demonstrate a quite contrary choice to legislate narrowly, thus avoiding any implication of wholesale divestiture of the City's constitutional police power to regulate firearms.

City of West Hollywood, supra, 66 Cal.App.4th at 1312-13. In the absence of any language expressly preempting the County's right to regulate conduct on its own property, there is no basis to argue express preemption.

E. State Law Does Not Impliedly Preempt the Ordinance's Regulation of Firearms Sales on County-Owned Property

In rare circumstances, a court may find that the Legislature has impliedly preempted local law. In *In Re Hubbard*, this Court held that

counties and cities have full power to legislate in regard to municipal affairs unless: (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 municipality.

In Re Hubbard, supra 62 Cal. 2d 119, 128 (emphasis added). All three *Hubbard* factors show that there is no implied preemption present here.

1. **The Subject of Firearm Sales on County-Owned Property Has Not Been Completely Covered by General Law So As To Indicate That It Is Exclusively a Matter of State Concern**

“[T]he cases uniformly construe state regulation of firearms narrowly, finding no preemption of areas not specifically addressed by state law.” *Suter, supra*, 57 Cal.App.4th at 1120, n.2 (emphasis added). Here, the Legislature has not specifically addressed the issue of firearms sales on County-owned property at all, much less in a comprehensive manner.

Moreover, given the Legislature’s approach to firearms regulation, it cannot be said the Legislature intended to preempt local law with respect to the sale of firearms on County-owned property. As the *West Hollywood* court concluded:

The record shows that, rather than intending to deprive municipalities of their police power to regulate handgun sales, the Legislature has been cautious about depriving local municipalities of aspects of their constitutional police power to deal with local conditions. . . . The very existence of the three code sections [statutes regarding licensing, registration, and imitation firearms], each of which specifically preempts a narrowly limited field of firearms regulation, is a rather clear indicator of legislative intent to leave areas not specifically covered within local control. Thus state law does not ‘clearly indicate’ that the Legislature has intended a preemption here; in fact, it clearly indicates the opposite.”

City of West Hollywood, supra, 66 Cal.App.4th at 1318-19.

As noted in *West Hollywood*, the Legislature’s response to court rulings is a strong indicator of Legislative intent. Thus, when the Legislature chooses to preempt only a few subfields and not the entire field of firearms or other subfields after court rulings that the field of firearms regulation or subfields of firearms regulation are not preempted, the Legislature’s response indicates an intent not to preempt local regulation. See *id.* at 1314-19; *Suter*, 57 Cal.App.4th at 1119.

For example, the *Suter* Court noted that the Legislature's response to *Doe v. City and County of San Francisco* (1982) 136 Cal.App.3d 509, suggested that "the Legislature has not prevented local governmental bodies from regulating all aspects of the possession of firearms." *Suter*, 57 Cal. App.4th at 1119, n.2 (quoting *Doe*, 136 Cal.App. at 516). Therefore, although the *Doe* court "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." *Suter*, 57 Cal.App.4th at 1119, n.3.

The Legislature's response to *Suter* (or lack of a response) similarly demonstrates that the Legislature does not intend to preempt local regulations concerning firearms sales. Although the *Suter* Court's holding that state law did not preempt the field of firearm sales was, in effect, another invitation to the Legislature to preempt the field of firearm sales, it chose not to. There is no basis to find that the Legislature has indicated an intent to make firearm sales exclusively a matter of state concern.

2. The Subject of Firearm Sales on County-Owned Property Has Not 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

The Legislature has not even partially covered the subject of firearm sales on County-owned property given there are no state statutes on point. Furthermore, by expressly recognizing that the possibility of local laws regulating gun shows and gun sales, the Legislature has "indicated clearly" that local laws are allowed. A court may not find implied preemption when "the Legislature has expressed its intent to permit local regulations. Similarly, it should not be found when the statutory scheme recognizes local regulations." *Candid Enterprises, Inc. v. supra*, 39 Cal.3d at 878. The *Suter* Court put it more succinctly, there "can be no implied

preemption of an area where state law expressly allows supplementary local legislation." *Suter*, 57 Cal.App.4th at 1120-21.

As discussed above, the state laws principally relied upon by Great Western specifically provides for supplementary local laws. See Penal Code §§ 12071, 12071.1(o). In these circumstances, there can be no implied preemption of the Ordinance.

3. The Benefits of the Ordinance Outweigh Any Potential Burden on Transient Citizens

The third *Hubbard* factor is, likewise, not present here. "Laws 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." *Suter*, 57 Cal.App.4th at 1120 [holding that there was no implied preemption of field of firearm sales or regulation of firearm dealers]. Moreover, the benefits of preventing County-owned property from being used for criminal activities and from being a source of guns causing death and injury within the County outweigh the burden on transient citizens, if any.

IV. LOS ANGELES COUNTY HAS JURISDICTION TO REGULATE THE LOS ANGELES COUNTY FAIRGROUNDS

As noted above, the California Government Code provides authority for Los Angeles County to enact the Ordinance. Government Code Section 23004 authorizes counties to "Manage, sell, lease, or otherwise dispose of its property as the interests of its inhabitants require." Cal. Gov't Code § 23004. Government Code Section 25351.3 authorizes county boards of supervisors to construct and lease convention and exhibit halls as well as other buildings such as opera houses and music halls "for the use, benefit and enjoyment of the public." Cal. Gov't Code § 25351.3. Significantly,

these grants of authority are not limited in application to only property or buildings located outside the jurisdiction of incorporated cities.

More importantly, it defies logic to suggest that a County may not regulate its own property. Great Western's heavy reliance on the fact that the property is within a city's jurisdictional limits proves inconsequential. While the question of the proper boundary between County and City may seem tempting, here the Court need not enter that particular thicket. It goes without saying that an owner of private property in the city is free to manage its own property in the absence of contrary city law. Here, the City of Pomona does not have any ordinances that conflict with the Los Angeles Ordinance. Thus, the County qua landowner should be able to manage its property just as a private landowner does.

CONCLUSION

For the foregoing reasons and the reasons expressed in the County's briefs before this Court, state law does not preempt the Ordinance and the County acted within its powers in enacting the Ordinance.

Dated: May 4, 2001

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PROOF OF SERVICE

I, **RITA JAYIN**, declare as follows:

I am a citizen of the United States, over the age of eighteen years and not a party to the within entitled action. I am employed at the City Attorney's Office, City Hall, Room 234, 1 Dr. Carlton B. Goodlett Place, San Francisco, California 94102.

On May 4, 2001, I served the attached:

BRIEF OF AMICI CURIAE THE CITY AND COUNTY OF SAN FRANCISCO, THE CITIES OF ALAMEDA, ALBANY, BERKELEY, EMERYVILLE, INGLEWOOD, LAFAYETTE, LIVERMORE, LONG BEACH, LOS ANGELES, OAKLAND, PIEDMONT, REDLANDS, SAN CARLOS, SANTA MONICA, AND WEST HOLLYWOOD, AND THE COUNTIES OF MARIN, SANTA CLARA AND SONOMA, LEGAL COMMUNITY AGAINST VIOLENCE WOMEN AGAINST GUN VIOLENCE, ORANGE COUNTY CITIZENS FOR THE PREVENTION OF GUN VIOLENCE, THE MILLION MOM MARCH FOUNDATION, THE CALIFORNIA POLICE CHIEFS ASSOCIATION, AND YOUTH ALIVE! IN SUPPORT OF PETITIONER THE COUNTY OF LOS ANGELES

on the interested parties in said action, by placing a true copy thereof in sealed envelope(s) addressed as follows:

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and served the named document in the manner indicated below:

- BY MAIL:** I caused true and correct copies of the above documents, by following ordinary business practices, to be placed and sealed in envelope(s) addressed to the addressee(s), at the City Attorney's Office of San Francisco, Fox Plaza Building, 1390 Market Street, City and County of San Francisco, California, 94102, for collection and mailing with the United States Postal Service,

and in the ordinary course of business, correspondence placed for collection on a particular day is deposited with the United States Postal Service that same day.

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

Executed May 4, 2001, at San Francisco, California.



RITA JAYIN