

No. S091549

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

Russell Allen Nordyke et al.,
Plaintiffs/Appellants/*Petitioners*,

vs.

Mary V. King et al.,
Defendants/Appellees/*Respondents*

SUPREME COURT
FILED

MAY 14 2001

Frederick K. Ohlrich Clerk
F.K.O.
DEPUTY

On Certification from the United States
Court of Appeals for the Ninth Circuit
Case No. 99-17551

RECEIVED

On Appeal from the United States District Court for
the Northern District of California
The Honorable Martin J. Jenkins, District Judge, Presiding
Case No. 99-4398-MJJ

MAY - 9 2001

CLERK SUPREME COURT

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, THE COUNTIES OF MARIN, SANTA CLARA
AND SONOMA, LEGAL COMMUNITY AGAINST VIOLENCE, YOUTH
ALIVE!, THE CALIFORNIA POLICE CHIEFS ASSOCIATION, ALAMEDA
COUNTY BAR ASSOCIATION AND THE MILLION MOM MARCH
FOUNDATION IN SUPPORT OF
RESPONDENTS MARY V. KING ET AL.

LOUISE H. RENNE, State Bar #36508
City Attorney
D. CAMERÓN BAKER, State Bar #154432
Deputy City Attorney
1 Dr. Carlton B. Goodlett Place
Room 234
San Francisco, California 94102-5408
Telephone: (415) 554-4619
Facsimile: (415) 554-4763
E-Mail: Cameron_Baker@ci.sf.ca.us

Attorneys for Amicus The City and County of San
Francisco
[Other Counsel Listed on Appendix A]

ORIGINAL

No. S091549

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

Russell Allen Nordyke et al.,
Plaintiffs/Appellants/*Petitioners*,

vs.

Mary V. King et al.,
Defendants/Appellees/*Respondents*

On Certification from the United States
Court of Appeals for the Ninth Circuit
Case No. 99-17551

RECEIVED

MAY - 9 2001

On Appeal from the United States District Court for
the Northern District of California
The Honorable Martin J. Jenkins, District Judge, Presiding
Case No. 99-4398-MJJ

APPLICATION OF 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, THE COUNTIES OF MARIN, SANTA CLARA
AND SONOMA, LEGAL COMMUNITY AGAINST VIOLENCE, YOUTH
ALIVE!, THE CALIFORNIA POLICE CHIEFS ASSOCIATION, ALAMEDA
COUNTY BAR ASSOCIATION AND THE MILLION MOM MARCH
FOUNDATION FOR LEAVE TO FILE AMICUS BRIEF IN SUPPORT OF
RESPONDENTS MARY V. KING ET AL.

LOUISE H. RENNE, State Bar #36508
City Attorney
D. CAMERON BAKER, State Bar #154432
Deputy City Attorney
1 Dr. Carlton B. Goodlett Place
Room 234
San Francisco, California 94102-5408
Telephone: (415) 554-4619
Facsimile: (415) 554-4763
E-Mail: Cameron_Baker@ci.sf.ca.us

Attorneys for Amicus The City and County of San
Francisco
[Other Counsel Listed on Appendix A]

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, the Counties of Marin, Santa Clara and Sonoma, Legal Community Against Violence, Youth Alive!, The California Police Chiefs Association, Alameda County Bar Association and The Million Mom March Foundation (collectively "Amici") respectfully move this Court, pursuant to California Rules of Court 14(b), for leave to file the concurrently submitted brief, as amici curiae in support of defendant, appellant and petitioner the County of Los Angeles.

INTERESTS OF THE AMICI

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.

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.

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.

Established on October 20, 1877, the Alameda County Bar Association (ACBA) is the second oldest bar in California. Its mission is to support the professional development of its members; promote ethics quality and fairness in the practice of law; and improve access to legal services for residents of Alameda County. The ACBA is a 2,300 member voluntary bar association with an annual budget of \$1.5 million. The ACBA Gun Violence Prevention Committee supports legislative and other efforts to reduce gun-related deaths and injuries.

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 Alameda County chapter, focus on education, advocacy, lobbying for stronger gun laws, and providing resources responsive to the needs of gun victims.

REASONS FOR FILING

The accompanying amicus brief addresses two issues that the Amici believe require further briefing: (1) does state law preempt in any way a local government in California from adopting measures that prohibit the bringing onto or possession of firearms and ammunition on the local government's property, and (2) does a local government have the power to manage its own property so as to prohibit the possession of firearms on that property. For the reasons stated above, the first issue is of great importance to all Amici. The second issue is of great importance to government amici, many of which own property and seek to manage that property so as to safeguard and protect the safety, health and welfare of their citizens.

The brief explains that as set out in this Court's rulings and those of the California Courts of Appeal, state law generally permits local regulations of firearms sales, and is careful not to preempt such local regulations except in a few, narrow, specific circumstances. See, e.g., *California Rifle and Pistol Association*,

Inc. v. City of West Hollywood (1998) 66 Cal.App.4th 1302; *Suter v. City of Lafayette* (1997) 57 Cal.App.4th 1109. The brief also explains that the County, as landowner, has the power under California law to control and manage the property it owns. See California Government Code section 23004(d). For these reasons, as more fully stated in the accompanying proposed amicus brief, the Ordinance adopted by Alameda County should be upheld by this Court as a valid exercise of the County's powers.

Accordingly, Amici respectfully move that this Court grant leave to file the brief of amicus curiae submitted concurrently with this motion.

DATED: May 9, 2001

Respectfully submitted,

LOUISE H. RENNE

City Attorney

JOANNE HOEPER

Chief Trial Attorney

OWEN J. CLEMENTS

Chief of Special Litigation

ELLEN M. FORMAN

D. CAMERON BAKER

Deputy City Attorneys

1 Dr. Carlton B. Goodlett Place, Room
234

San Francisco, CA 94102

By: 

D. CAMERON BAKER

Deputy City Attorney

Attorneys for Amicus The City and

County of San Francisco

[See Appendix A for List of Other
Counsel]

APPENDIX A – LIST OF COUNSEL & ADDRESSES

TERESA HIGSMITH, State Bar#155262
Assistant City Attorney
CITY OF ALAMEDA
2263 Santa Clara Avenue, Room 280
Alameda, CA 94501
Telephone: (510) 748-4544
Facsimile: (510)748-4691
Attorneys for Amicus Curiae The City of
Alameda

MANUELA ALBUQUERQUE, State Bar
#67464
Berkeley City Attorney
MATTHEW J. OREBIC, State Bar #124491
CITY OF BERKELEY
2180 Milvia Street, Fourth Floor
Berkeley, CA 94704
Tel: (510) 981-6950
Fax: (510) 981-6960
Attorneys for Amicus Curiae The City of
Berkeley

CHARLES DICKERSON, State Bar #92590
City Attorney
CITY OF INGLEWOOD
One Manchester Blvd, Ste 860
Inglewood, CA 90301
Telephone: (310) 412-5372
Facsimile: (310) 412-8865
Attorneys for Amicus Curiae The City of
Inglewood

TOM CURRY
City Attorney
CITY OF LIVERMORE
1052 So. Livermore Avenue
Livermore, CA 94550
Telephone: (925) 373-5121
Facsimile: (925) 373-5125
Attorneys for Amicus Curiae The City of
Livermore

ROBERT ZWEBEN
Law Office of Robert Zweben
1730 Solano Avenue
Berkeley, CA 94707
Telephone: (510) 524-9205
Facsimile: (510) 526-9190
Attorneys for Amicus Curiae The City of
Albany

MICHAEL BIDDLE, State Bar # 139223
City Attorney
CITY OF EMERYVILLE
1333 Park Avenue
Emeryville, CA 94608
Telephone: (510) 596-4381
Facsimile: (510) 596-3724
Attorneys for Amicus Curiae The City of
Emeryville

CHARLES WILLIAMS, State Bar #026659
City Attorney
CITY OF LAFAYETTE
1330 Arnold Drive, Suite 149
Martinez, CA 94533
Telephone: (925) 228-3840
Facsimile: (925) 228-1703
Attorneys for Amicus Curiae The City of
Lafayette

DANIEL S. MURPHY
Principal Deputy City Attorney
CITY OF LONG BEACH
333 W. Ocean Blvd., 11th Floor
Long Beach, CA 90802-4664
Telephone: (562) 570-2242
Facsimile: (562) 436-1579
Attorneys for Amicus Curiae The City of
Long Beach

JAMES K. HAHN, State Bar #66073
City Attorney
CARMEL SELLA, State Bar #162653
Special Assistant to the City Attorney
Office of the City Attorney
CITY OF LOS ANGELES
200 N. Main Street
1800 City Hall East
Los Angeles, CA 90012
Telephone: (213) 485-7657
Facsimile: (213) 847-3014
Attorneys for Amicus Curiae The City of
Los Angeles

GEORGE S. PEYTON, JR., State Bar #037643
LOMBARDI, LOPER & CONANT, LLP
1999 Harrison Street, Suite 1950
Oakland, CA 94612-3541
Telephone: (510) 433-2600
Facsimile: (510) 433-2699
Attorney for Amicus Curiae The City of
Piedmont

ROBERT LAZONE, State Bar #45484
City Attorney
CITY OF SAN CARLOS
939 Laurel Street, Ste D
San Carlos, CA 94070
Telephone: (650) 593-3117
Facsimile: (650) 637-1401
Attorneys for Amicus Curiae The City of
San Carlos

JOHN A. RUSSO, State Bar #129729
Oakland City Attorney
BARBARA J. PARKER, State Bar #069722
DORYANNA M. MORENO, State Bar
#140976
KANDIS A. WESTMORE, State Bar #194594
CITY OF OAKLAND
One Frank Ogawa Plaza, 6th Floor
Oakland, CA 94612
Telephone: (510) 748-4544
Facsimile: (510) 748-4691
Attorneys for Amicus Curiae The City of
Oakland

DANIEL J. MCHUGH
City Attorney
CITY OF REDLANDS
P.O. BOX 3005
Redlands, CA 92373-1505
Telephone: (909) 798-7595
Facsimile: (909) 798-7503
Attorneys for Amicus Curiae The City of
Redlands

MARSHA JONES MOUTRIE State Bar #
69711
City Attorney
CITY OF SANTA MONICA
1685 Main Street, #310
Santa Monica, CA 90401
Telephone: (310) 458-8336
Facsimile: (310) 395-6727
Attorneys for Amicus Curiae The City of
Santa Monica

MICHAEL JENKINS, State Bar #81997
City Attorney
CITY OF WEST HOLLYWOOD
333 South Hope St, 38th Floor
Los Angeles, CA 90071
Telephone: (213) 626-8484
Facsimile: (213) 626-0078
Attorneys for Amicus Curiae The City of
West Hollywood

Ann Miller Ravel, State Bar #62139
County Counsel
Debra L. Cauble, State Bar #81660
Asst. County Counsel
COUNTY OF SANTA CLARA
70 West Hedding
9th Floor, East Wing
San Jose, CA 95110
Attorneys for Amicus Curiae The County
of Santa Clara

BARRIE BECKER
JULIET LEFTWICH, State Bar #111721
LEGAL COMMUNITY AGAINST
VIOLENCE
268 Bush Street, No. 555
San Francisco, CA 94101
Telephone: (415) 433-2062
Facsimile: (415) 433-3357

EVELYN DOLVEN
663 Vicente Avenue
Berkeley, CA 94707
President of the Alameda County Chapter
of MILLION MOM MARCH
Telephone/Fax: (510) 524-5684

PATRICK FAULKNER, State Bar #70801
County Counsel
John F. Govi, State Bar # 88483
Assistant County Counsel
COUNTY OF MARIN
3501 Civic Center Dr, Ste 303
San Rafael, CA 94903
Telephone: (415) 499-6117
Facsimile: (415) 499-3796
Attorneys for Amicus Curiae The County
of Marin

Steven M. Woodside, State Bar #058684
County Counsel
COUNTY OF SONOMA
575 Administration Drive, Suite 105A
Santa Rosa, CA 95403
Attorneys for Amicus Curiae The County
of Sonoma

ROBERTA SCHILLER
Executive Director
WOMEN AGAINST GUN VIOLENCE
P.O. Box 1501
Culver City, CA 90232
Telephone: (310) 204-2348
Facsimile: (310) 204-6643
Amicus Curiae Women Against Gun
Violence

MARTIN J. MAYER, ESQ. State Bar #73890
Law Offices of Jones & Mayer
3777 North Harbor Blvd.
Fullerton, CA 92835
Telephone: (714) 446-1400
Facsimile: (714) 446-1448
Attorney for California Police Chiefs
Association

DAVID DURANT, State Bar #148205
President
YOUTH ALIVE!
3300 Elm Street
Oakland, CA 94605
Telephone: (925) 467-3792
Facsimile: (925) 467-3846

ANN WASSAM
Executive Director
Alameda County Bar Association
360 Twenty-Second Street
Suite 800
Oakland, CA 94612
Telephone: (510) 893-7160
Facsimile: (510) 893-3119

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 9, 2001, I served the attached:

APPLICATION OF 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, THE COUNTIES OF MARIN, SANTA CLARA AND SONOMA, LEGAL COMMUNITY AGAINST VIOLENCE, YOUTH ALIVE!, THE CALIFORNIA POLICE CHIEFS ASSOCIATION, ALAMEDA COUNTY BAR ASSOCIATION AND THE MILLION MOM MARCH FOUNDATION FOR LEAVE TO FILE AMICUS BRIEF IN SUPPORT OF RESPONDENTS MARY V. KING ET AL.

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

Donald E. Kilmer, Esq.
1261 Lincoln Avenue, Suite 108
San Jose, CA 95125

Sayre Weaver, Esq.
RICHARDS, WATSON & GERSON
44 Montgomery Street, Suite 960
San Francisco, CA 94104

Don B. Kates, Esq.
BENENSON & KATES
920 Arlene Way
Novato, CA 94947

C.D. Michell, Esq.
TRUTANICH & MICHELL
407 North Harbor Boulevard
San Pedro, CA 90731

**United States Ninth Circuit
Court of Appeals
U.S. Court of Appeals Building
95 Seventh Street
San Francisco, CA 94103**

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 9, 2001, at San Francisco, California.



RITA JAYIN

SUPREME COURT
FILED

MAY 14 2001

No. S091549

Frederick K. Orlin Clerk


DEPUTY

IN THE SUPREME COURT OF CALIFORNIA

RUSSELL ALLEN NORDYKE, Plaintiff and Appellant,

v.

MARY V. KING, Defendant and Appellant.

On application of The City and County of San Francisco et al. for permission to file an amicus curiae brief in support of appellant Mary V. King is hereby granted.

An answer thereto may be served and filed by any party within twenty days of the filing of the brief.

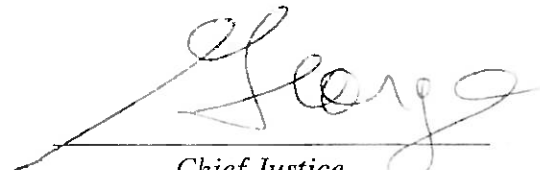

Chief Justice

TABLE OF CONTENTS

TABLE OF AUTHORITIES	iii
INTEREST OF AMICI CURIAE	1
INTRODUCTION	3
ARGUMENT	4
I. POSSESSION OF FIREARMS ON PROPERTY OWNED BY ALAMEDA COUNTY HAS RESULTED IN CRIME, INJURIES, AND FINANCIAL COSTS, AND HAS ENGENDERED FEAR AMONG RESIDENTS OF ALAMEDA COUNTY	4
II. THE CALIFORNIA CONSTITUTION AND STATUTES GRANT ALAMEDA COUNTY THE AUTHORITY TO ADOPT THE ORDINANCE	6
III. STATE LAW DOES NOT PREEMPT THE ORDINANCE	7
A. The Ordinance Is Presumptively Valid Because it Addresses A Significant Local Interest	9
B. The Ordinance Does Not Duplicate State Law	10
C. The Ordinance Does Not Contradict State Law	12
D. There Is No Express Preemption of the Ordinance	14
E. State Law Does Not Impliedly Preempt The Ordinance	17
1. The Subject of Firearms Possession 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	17
2. The Subject of Firearm Possession 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	20

3.	The Benefits of the Ordinance Outweigh Any Potential Burden on Transient Citizens	23
IV.	ALAMEDA COUNTY HAS JURISDICTION TO REGULATE THE ALAMEDA COUNTY FAIRGROUNDS	23
	CONCLUSION.....	23

TABLE OF AUTHORITIES

Cases

<i>California Rifle and Pistol Ass'n, Inc. v. City of West Hollywood</i> (1998) 66 Cal.App.4 th 1302	7, 21
<i>Candid Enterprises, Inc. v. Grossmont High School</i> (1985) 39 Cal.3d 878	6, 20
<i>Coalition for Economic Equity v. Wilson</i> (9 th Cir. 1997) 122 F.3d 692	13
<i>Doe v. City and County of San Francisco</i> (1982) 136 Cal.App.3d 509 ...	15, 16, 22
<i>Fisher v. City of Berkeley</i> (1984) 37 Cal.3d 644, <i>aff'd</i> , 475 U.S. 260 (1986)	9
<i>Galvan v. Superior Court of the City and County of San Francisco</i> (1969) 70 Cal. 2d 851, 864	14, 18
<i>Gleason v. The Municipal Court for the Los Angeles Judicial District</i> (1964) 226 Cal.App.2d 584	19, 20
<i>Gluck v. County of Los Angeles</i> (1979) 93 Cal.App.3d 121	9
<i>In Re Hubbard</i> (1964) 62 Cal.2d 119	16, 17, 18, 19, 20
<i>In Re Portnoy</i> (1942) 21 Cal.2d 237	10, 11
<i>Korean American Legal Advocacy Foundation v. City of Los Angeles</i> (1994) 23 Cal.App.4 th 376	11
<i>People v. Brewer</i> (1991) 235 Cal.App.3d 909	19, 20
<i>People v. Butler</i> (1967) 252 Cal.App.2d Supp. 1053	19, 20
<i>Pipoly v. Benson</i> (1942) 20 Cal.2d 366,	11
<i>Remmer v. City and County of San Francisco</i> (1949) 90 Cal.App.2d 854	11

<i>Sherwin-Williams Co. v. City of Los Angeles</i> (1993) 4 Cal. 4 th 893, 897	8, 10, 11
<i>Suter v. City of Lafayette</i> (1998) 57 Cal.App.4 th 1109.....	12, 14, 17, 20, 22
<i>Western Oil & Gas Assn. v. Monterey Bay Unified Air Pollution Control Dist.</i> (1989) 49 Cal.3d 408	8
Statutes	
California Constitution, Article XI, Section 7	6
Alameda County General Ordinance Code	
§ 6.72.030.....	7
§ 9.12.120.....	16
§ 9.12.120(C)	6, 13
California Penal Code	
§ 171b.....	6, 12, 13, 16
§ 171b(b)(1).....	16
§ 171b(b)(3).....	16
§ 171b(b)(c)	16
§ 626.9.....	11
§ 12025.....	11, 12
§ 12026.....	14
§ 12031.....	12
§ 12050.....	15
§ 12071(b)(1)(B).....	21
§ 12071.1(o)(1)	21
§ 12071.4(b)(2)	20
§ 12071.1	13
§12071.1(o)(4)	13

§ 12071.4..... 13

California Government Code

§ 23004..... 7, 21, 22

§ 23004(d)..... 10

§ 25351..... 7, 21

§ 25351.3..... 7, 21

§ 25353..... 7, 21

§ 53071..... 14

§ 53071.5..... 14

California Election Code

§ 18544..... 11

INTEREST OF AMICI CURIAE

Amici support the validity of Section 9.12.120 of the Alameda County General Ordinance Code, which prohibits the possession of firearms and ammunition on property owned by Alameda 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 believe that the possession of firearms is a matter that is subject to local regulation.

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.

Youth ALIVE! is a non-profit public health agency dedicated to preventing youth violence and generating youth leadership in California communities. Headquartered in Oakland, California, 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 East Oakland Partnership to Reduce Juvenile Gun Violence program, which works to reduce the

availability of guns, minimize risk factors for illegal gun use, and mobilize residents of East Oakland to reduce gun violence in that community.

The California Police Chiefs Association (CPCA) is an organization that represents municipal law enforcement agencies in California. The objectives of the CPCA 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.

Established on October 20, 1877, the Alameda County Bar Association (ACBA) is the second oldest bar in California. Its mission is to support the professional development of its members; promote ethics quality and fairness in the practice of law; and improve access to legal services for residents of Alameda County. The ACBA is a 2,300 member voluntary bar association with an annual budget of \$1.5 million. The ACBA Gun Violence Prevention Committee supports legislative and other efforts to reduce gun-related deaths and injuries.

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 Alameda County chapter, focus on education, advocacy, lobbying for stronger gun laws, and providing resources responsive to the needs of gun victims.

INTRODUCTION

Alameda County, like other urban Counties within California, has a problem with gun violence. In recent years, Alameda County has experienced problems relating to gun violence on County-owned property used for the enjoyment and recreation of County residents. Gun violence in these places not only physically harms those hit by bullets, but emotionally harms any witnesses and causes fear and anxiety in the community at large with respect to further gun violence. Alameda County must also devote financial resources in both providing security to prevent gun violence on its property as well as in treating the consequences of gun violence. To address these problems and to ensure that its own property is used to promote the health and welfare of its residents, Alameda County adopted Section 9.12.120 of the Alameda County General Ordinance Code [hereinafter "the Ordinance" or "the Alameda Ordinance"], which prohibits the possession of firearms and ammunition on property that is owned by the County.

Plaintiffs-Petitioners Russell Allen Nordyke and Sallie Ann Nordyke produce trade shows, including gun shows. In the past, the Nordykes have held such shows at the Alameda Fairgrounds, which is located on property owned by the County of Alameda. The Nordykes challenge the Ordinance on a number of grounds, including the contention that state law preempts the Ordinance.

In the instant brief, Amici focus this Court's attention on the significant local interests at stake and highlight why the Ordinance falls within Alameda County's regulatory power.

ARGUMENT

I. POSSESSION OF FIREARMS ON PROPERTY OWNED BY ALAMEDA COUNTY HAS RESULTED IN CRIME, INJURIES, AND FINANCIAL COSTS, AND HAS ENGENDERED FEAR AMONG RESIDENTS OF ALAMEDA COUNTY

Alameda County leads Northern California counties in the number of homicides and other violent crimes committed. Criminal Justice Statistics Center, California Department of Justice, California Criminal Justice Profile 1999, Table 11.¹ According to the Alameda County Public Health Department, Alameda County ranks fifth among California's fifty-eight counties in death rates due to homicide. Community Assessment, Planning and Education Unit of the Office of the Director, Alameda County Public Health Department, Alameda County Health Status Report 2000, at 39. In 1998, over sixty percent of homicides committed in Alameda County were committed with firearms. California Department of Health Services, Epidemiology and Prevention for Injury Control Branch, Injury Data Summaries, 1998.

This gun violence inflicts not only human costs, but tremendous financial costs for Alameda County. The Alameda County Public Health Department calculates that the average cost per hospitalization for persons injured by firearms in 1997 was \$32,235.25, although charges went as high as \$972,680 per patient. Sonia Jain, MPH and Carter Pratt, MPH, Alameda County Public Health Dep't and Contra Costa Health Services, *The Impact of Firearms in Alameda and West Contra Cost Counties* (1999). Because many of these victims are treated in County hospitals and have no insurance or are insured by the County's indigent program, a large percentage of these costs are absorbed by the County itself.

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

Gun violence not only affects the streets of Alameda County but on July 4, 1998, it invaded the Alameda County Fair held at the Alameda County Fairgrounds. On that date, a man commenced firing into the gathered crowd, injuring ten people, including several children. *Suspect in Shooting Arraigned Again*, San Francisco Chronicle, August 15, 1998, at A18. Others were injured as a result of the subsequent stampede by the terrified fairgoers. Rick DeVecchio and Laura Hamburg, *Fair Shooting Spurs Review of Security; Richmond Man Arrested in 4th of July Rampage*, San Francisco Chronicle, July 6, 1998, at A1.

In the days following the shooting, attendance at the fair plunged 40 percent due to widespread fear among the community. *Attendance Down 11.6% at Alameda County Fair*, San Francisco Chronicle, July 15, 1999, at A25. The 1998 Fair ended with a deficit of \$800,000 as a result in the drop in attendance. Catherine Bowman, *Alameda County Fair Cancels Fireworks*, San Francisco Chronicle, April 15, 1999, at A18. A year later, the Fair still had aftershocks from the shooting as attendance at the 1999 Fair was 11.6 percent lower than the previous year. *Attendance Down 11.6% at Alameda County Fair*, San Francisco Chronicle, July 15, 1999, at A25.

The County responded to its problems with gun violence and to the Fairgrounds shooting by adopting the Ordinance, which provides: "Every person who brings onto or possesses on county property a firearm, loaded or unloaded, or ammunition for a firearm, is guilty of a misdemeanor." Alameda County General Ordinance Code § 9.12.120(B). The findings, which are incorporated into the Ordinance, specifically reference the Fairgrounds shooting and certain details concerning the detrimental effects of gun violence on the County. See Alameda County General Ordinance Code § 9.12.120(A).

The Ordinance defines "County Property" as:

real property, including any buildings thereon, owned or leased by the county of Alameda (hereinafter "county"), and in the county's possession, or in the possession of a public or private entity under contract with the county to perform a public purpose, including by not limited to real property owned or leased by the county in the unincorporated portions of the county, such as the county park in Sunol and the Alameda County Fairgrounds in the city of Pleasanton, but does not include any "local public building" as defined in Penal Code Section 171b(c), where the state regulates the possession of firearms pursuant to Penal Code Section 171b.

Alameda County General Ordinance Code § 9.12.120 (C). Under this definition, the Ordinance applies to all County-owned property, including but not limited to the property where the Nordykes hold their trade shows, the public picnic grounds on the Fairgrounds, all the parking lots in Alameda County on County-owned land, any open space owned by the County as well as all County-owned buildings not within the definition of "local public buildings" as used in California Penal Code Section 171b. By contrast, the Ordinance does not apply to private property or property owned by the state or local government other than the County. The Ordinance aims to ensure that County-owned property is a safe haven for Alameda residents, not a place to fear gun violence.

II. THE CALIFORNIA CONSTITUTION AND STATUTES GRANT ALAMEDA 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 California 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, 885. A municipality's police powers include the power to "regulate in the area of firearms control." *California Rifle and*

Pistol Ass'n, Inc. v. City of West Hollywood (1998) 66 Cal.App.4th 1302, 1310. Alameda County acted pursuant to its police powers when it prohibited the possession of firearms and ammunition on County-owned property.

The Government Code provides an additional source of authority for the 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 provide specific authority for counties to take a variety of 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 & 25353. Thus, the County was also acting pursuant to the Government Code when it adopted the Ordinance for the benefit of its residents.²

III. STATE LAW DOES NOT PREEMPT THE ORDINANCE

As an initial point, the Legislature has expressly authorized the County to manage its property, including the Fairgrounds, under the Government Code. See, e.g., Government Code section 23004. While it is true that the Legislature could restrict or limit this authority, it has not done so. Indeed, to the extent that Penal Code section 171b bears on this facet of the case, it illustrates that the Legislature was careful to carve out "local public buildings" from other County properties and, thus, did not in any

² This is not the first time that Alameda County has enacted an ordinance managing its own property. For example, Alameda County has a separate ordinance that specifically regulates smoking in facilities that the County owns. See Alameda County General Ordinance Code § 6.72.030.

way revoke the County's authority with respect to those other properties, which include the property at issue here.

Moreover, there is a firm statutory rule against repeal of authorizing statutes via implication by a later act.

[This] presumption against implied repeal is so strong that, "To overcome the presumption the two acts must be irreconcilable, clearly repugnant, and so inconsistent that the two cannot have concurrent operation. The courts are bound, if possible, to maintain the integrity of both statutes if the two may stand together." ... Courts have also noted that implied repeal should not be found unless "... the later provision gives *undebatable evidence* of an intent to supercede the earlier"

Western Oil & Gas Assn. v. Monterey Bay Unified Air Pollution Control Dist. (1989) 49 Cal.3d 408, 419-20 [citations omitted]. The Nordykes can point to no statute (and certainly none are cited in their brief) that would limit via implication the County's authority to act under the Government Code.

Additionally, 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. Here, the Nordykes assert that the relevant field of preemption is the possession of firearms. See Appellants' Opening Brief On Questions of State Law Certified From the United States Court of Appeals for the Ninth Circuit [Appellants' Opening Brief] at 33. However, the more plausible field is the County's ability to control activities on its own property. The Nordykes cannot cite any affirmative limitations on the County's ability to proscribe the possession of firearms on the property subject to the Ordinance.

Even putting aside these points, the Nordykes must concede the Ordinance serves a significant local interest that may differ from one locality to another. Because it arises from such an interest, the Alameda

County Ordinance is presumptively valid. The Nordykes 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

This Court presumes that the Ordinance is valid because Alameda County has significant local interests in regulating the possession of firearms and ammunition on County-owned property. "[I]f there is a significant local interest to be served which may differ from one locality to another then the presumption favors the validity of the local ordinance against an attack of state preemption." *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]; *Fisher v. City of Berkeley* (1984) 37 Cal.3d 644, 707, *aff'd*, 475 U.S. 260 (1986) ["We will be 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."]. Here, the County has three significant local interests, all of which support the enactment of the Ordinance.

First, the County has a substantial local interest in ensuring that its residents feel safe and are safe on County-owned property, which necessarily includes an interest in preventing gun violence from occurring on its property. Just as conditions on streets and sidewalks vary from locality to locality, so do conditions on County-owned property and so does gun crime in general. Put differently, although other Counties may not have experienced gun violence on their properties, Alameda County has

and therefore, Alameda County may affirmatively act to preclude further gun violence on its property.

Second, activities that take place on property owned by a particular county inherently are of special concern to that county. Each county has a special interest in ensuring that its own property is used for the benefit, not the detriment, of its residents. The California Legislature recognized that interest when it specifically authorized counties to [m]anage, sell, lease, or otherwise dispose of its property as the interests of its inhabitants require.” Cal. Gov’t Code § 23004(d). (emphasis added). Accordingly, the County Board of Supervisors enacted the Ordinance to ensure that its property is used for the benefit of County residents.

Third, each County has a particular local interest in the activities on their property because that Counties may be subject to a lawsuits arising out of those activities. For example, people have sued Alameda County as a result of the July 4, 1998 shooting that took place at the Alameda Fair. Moreover, as community interests and norms differ, a County may decide to permit activities on its property that another would preclude.

Given these three interests, Alameda County’s prohibition of gun possession on its property arises from significant, particularly local interests warranting deference by the Court.

B. The Ordinance Does Not Duplicate State Law

Local law is duplicative of state law only if it is coextensive with state law. *Sherwin-Williams*, 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 where 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 v. City of Los Angeles* (1994) 23 Cal.App.4th 376, 389-92 [no preemption even though both ordinance and statute would have the effect of prohibiting alcohol sales at a particular location].

There is no duplication here because the Alameda Ordinance is not coextensive with the statutes cited by the Nordykes. The Ordinance establishes a new crime not extant under state law. This crime includes a key element – County-owned property – not contained in any of the criminal statutes cited by the Nordykes. In fact, many of those statutes cited as duplicative are limited to property not within the Ordinance's definition of County Property.

Moreover, the statutes cited contain elements that are not included in the Ordinance. For example, some of the statutes apply to locations that are not necessarily on County-owned property. See Cal. Elec. Code § 18544 [firearm possession at a polling place]; Cal. Penal Code § 626.9 [firearm possession in a school zone]. The other cited statutes prohibit certain conduct not covered by the Ordinance. For example, unlike the Ordinance, Penal Code Section 12025 prohibits the carrying of a concealable firearm concealed on the person or in the vehicle. In addition, unlike the Ordinance, a person cannot be convicted of violating Penal Code Section 12031 unless the person carries a loaded firearm in specified locations. See

Cal. Penal Code §§ 12025 & 12031. Thus, it is apparent that the Ordinance is not coextensive with state law.

C. The Ordinance 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.” *Suter v. City of Lafayette* (1998) 57 Cal.App.4th 1109, 1124 (emphasis added). None of the statutes cited by the Nordykes expressly authorizes persons to possess firearms on County-owned property. Therefore, the Ordinance does not contradict state law. The Nordykes make three contentions in support of their contradiction argument, each of which is meritless.

First, the Nordykes advance the puzzling contention that the Ordinance contradicts state law because the Ordinance employs different definitions than the state statutes do and does not contain the identical exceptions employed by those statutes. See Appellants' Opening Brief at 16-20. In essence, the Nordykes argue that unless the Ordinance is identical in all respects to the state statutes, it must be contradictory and, thus, preempted. (Of course, they also argue that any ordinance, which is merely duplicative of state law, is similarly preempted.) However, the Nordykes err in that their cited statutory definitions and exceptions do not expressly authorize any conduct, let alone the possession of firearms on County-owned property. This being so, the Ordinance does not penalize any conduct specifically authorized by these state statutes and, thus, survives preemption.

Second, the Nordykes rely on recent amendments to Section 171b of the California Penal Code. Initially, that statute criminalized the possession of firearms in a defined set of “local public buildings.” The Legislature in 2000 enacted an exception to this crime for gun shows conducted pursuant to state law. Cal. Penal Code § 171b.

Section 171b does not support preemption in this case for the simple reason that the Ordinance defines the "County Property" regulated by the Ordinance so as not to "include any 'local public building' as defined in Penal Code Section 171b(c)." Alameda County General Ordinance Code § 9.12.120(C). Because the Ordinance, by its terms, does not apply to activity regulated by the statute, the Ordinance cannot contradict the statute.³

Moreover, the Nordykes confuse the difference between excepting an act from a crime and granting an affirmative right to do that act. The net effect of the Legislature's amendment of section 171b is to make it no longer a **state** crime for a person to enter a local public building with a firearm for the purpose of attending a gun show. Contrary to the Nordykes' claims, that amendment does not provide an affirmative right for a person to engage in this conduct. See Appellants' Reply Brief on Questions of State Law Certified From the United States Court of Appeals for the Ninth Circuit at 7. As the Ninth Circuit has stated, "Lest we lose sight of the forest for the trees, [state law] does not require what it barely permits." *Coalition for Economic Equity v. Wilson* (9th Cir. 1997) 122 F.3d 692, 709. Accordingly, the amendment to Penal Code section 171b does not preclude a County from making such conduct a local crime.

As their third contention, the Nordykes posit that the Ordinance contradicts the statutory provisions of Penal Code Sections 12071.1 and 12071.4 relating to security and conduct at gun shows. Specifically, the Nordykes asserts Section 12071.1(o)(4), requiring gun show producers to

³ For example, Section 171b does not apply to any property other than buildings and therefore has no bearing on County-owned land, such as the County park in Sunol, parking lots, the picnic grounds, gardens, and other open spaces at the Alameda Fairgrounds.

post signs stating "All firearms transfers between private parties at the show shall be conducted through a licensed dealer in accordance with applicable state and federal law," gives persons explicit permission to possess and sell firearms at gun shows. However, the plain language of the statute demonstrates that the statute does not authorize such conduct. The *Suter* court had before it a similar argument, namely 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. *Suter*, 57 Cal.App.4th at 1127. Even though the language of that statute contemplated the possibility that private persons would transfer firearms, the Court rejected the argument, holding that the Penal Code "establishes a limitation, not a right." *Id.* at 1127 (emphasis in original). The gun show security statutes cited by the Nordykes impose limits on persons who possess firearms at gun shows, but do not expressly guarantee a state right to possess firearms.

D. There Is No Express Preemption of the Ordinance

As this Court has previously held, the California Legislature has not expressly preempted the entire field of firearms regulations. *Galvan v. Superior Court of the City and County of San Francisco* (1969) 70 Cal.2d 851, 866. Instead, the Legislature has expressly preempted only a few, select areas of firearms law, none of which are implicated here. See Cal. Gov't Code § 53071 [expressly preempting local registration or licensing of commercially manufactured firearms]. No other statutes expressly preempt local regulation of firearms. Compare Cal. Gov't Code § 53071.5 [preempting field of imitation firearms]; Penal Code § 12026 [authorizing possession of firearms in home or business without any permit and precluding local governments from imposing such a permit]. Accordingly, the Legislature has not expressly preempted the field of firearms possession.

Nevertheless, the Nordykes try to concoct an express preemption argument by first seeking to contort the Ordinance into a licensing scheme based upon its exception with respect to persons authorized to carry concealed weapons under Penal Code Section 12050 and then misapplying *Doe v. City and County of San Francisco* (1982) 136 Cal.App.3d 509. This argument fails of its own weight.

The ordinance at issue in *Doe* prohibited handgun possession throughout San Francisco, including individual homes and residences. It excepted from its purview individuals having permits issued under Penal Code Section 12050. The Court described the effect of the *Doe* ordinance as follows: “Persons presently possessing handguns in their homes who are not licensed to carry [under 12050] must obtain licenses [under that section] or relinquish their handguns. Persons who could have purchased handguns for home possession under prior law are required under the San Francisco ordinance to enter the permit system.” 136 Cal.App.3d at 517. In light of this effect, the *Doe* Court held the ordinance expressly preempted under Section 53071 because it “in substance creates a licensing requirement where one had not previously existed.” 136 Cal.App.3d at 517. The *Doe* Court also found a conflict with Penal Code section 12026, which expresses authorizes home possession without a local license or permit. *Id.* at 518 [ordinance “does create a license requirement”].

By contrast, the Alameda Ordinance does not impose any blanket ban on the possession of firearms within the County. Instead, it prohibits only the possession of firearms upon County-owned property. Accordingly, persons desiring to possess a firearm in their home or business face no new licensing or permit requirement. This is a critical distinction in the scope of the respective ordinances because, as highlighted above, the *Doe* Court’s central concern rested on the ban on possession of

firearms in the home, an issue not presented by the Alameda Ordinance. See 136 Cal.App.3d at 517.

Additionally, in allowing firearms possession by persons with permits issued pursuant to Penal Code section 12050, the Alameda Ordinance merely continues a prior state-sanctioned policy of permitting those few individuals to carry weapons upon their person. See Alameda County General Ordinance Code 9.12.120. In so doing, the Ordinance pays the appropriate deference to a pre-existing state licensing scheme and avoids a potential conflict with state law.

Notably, the Ordinance's exception tracks some of the language found in Penal Code Section 171b, which prohibits firearms in certain kinds of public buildings, but provides limited exceptions. For example, Section 171b provides an exception for "a person holding a valid license to carry the firearm pursuant to Article 3 (commencing with Section 12050) of Chapter 1 of Title 2 of Part 4." Cal. Penal Code § 171b(b)(3) (emphasis added). Neither the exception found in the Ordinance nor the exception found in Section 171b authorizes permit holders to do anything they please. Rather, these exceptions merely acknowledge that permit holders may carry concealed handguns into local public buildings for certain specified purposes pursuant to state law.⁴

E. State Law Does Not Impliedly Preempt The Ordinance

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

⁴ Similarly, Section 171b contains an exception for "A person who possesses weapons in, or transports weapons into, a court of law to be used as evidence." Cal. Penal Code § 171b(b)(1) (emphasis added). Surely the Legislature did not intend this to mean that a person who brings firearms into courtrooms for evidentiary purposes has the authority under the exception to bring any firearms into any public building for any purpose.

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 (1964) 62 Cal.2d 119, (emphasis added). In the instant case, all three *Hubbard* factors demonstrate that state law does not impliedly preempt the Ordinance.

1. **The Subject of Firearms Possession 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 addressed the issue of firearms sales on County-owned property at all, much less in a comprehensive manner.

Citing a list of statutes relating to firearms, Petitioners claim that the Legislature has occupied the field of firearms possession “by sheer multiplicity.” See Appellants' Opening Brief at 33-36. This Court, however, has rejected a numeric approach to determining if there is preemption.

To approach the issue of preemption as a quantitative problem provides no guidance in determining whether the Legislature intends that local units shall not legislate concerning a particular subject, and further confounds a meaningful solution to preemption problems by offering a

superficially attractive rule of preemption that requires only a statutory nosecount. . . . A field cannot properly consist of statutes unified by a single common noun.

Galvan, supra, 70 Cal.2d at 861-62. Thus, this Court must look beyond Petitioners' simplistic listing of statutes.

Instead of merely counting statutes that contain either firearm or weapon, "the task is, as shown in *Hubbard*, to determine whether the state has occupied a relevant field – an area of legislation which includes the subject of the local legislation, and is sufficiently logically related so that a court, or a local legislative body, can detect a patterned approach to the subject." *Id.*, 70 Cal.2d at 862.

Even a cursory examination of the statutes cited by the Nordykes reveals the absence of any discernible pattern. Most of these statutes have nothing to do with where a person may possess a firearm, much less whether a person may possess a firearm on County-owned property. For example, the Nordykes cite statutes concerning whether it is legal to advertise certain kinds of firearms, whether a person may irresponsibly display or "brandish" a firearm, and the procedures for disposing of confiscated and surplus firearms. See Appellants' Opening Brief at 34-35. Even using very imaginative and creative reasoning, it is difficult to understand how one could find that these statutes are part of a patterned approach to anything.

Petitioners also cite statutes concerning whether a person may possess a firearm in certain locations such as schools and the Governor's residence. Such statutes, however, do not indicate that the Legislature intended to preclude local governments from prohibiting the possession of firearms in other locations, especially when the location is the County's own property. This Court has rejected the theory "that by making specific acts illegal the Legislature intended all other acts of similar character to be

of such innocent character that no local authority might adopt a contrary view." See *In Re Hubbard*, 62 Cal.2d at 126. In *Hubbard*, this Court reasoned:

To adopt such a view (for which no authority has been presented) would be to fly in the face of the well-settled doctrine that the use of specific words and phrases connotes an intent to exclude that which is not specifically stated. By limiting the general statutes to regulation or prohibition of specifically enumerated activities, the Legislature did not intend to prevent local authority from legislating on those subjects in regard to which the former are silent.

Id., 62 Cal.2d at 126-27 (emphasis added). Accordingly, the *Hubbard* Court held that a statute prohibiting twelve specific games of chance did not indicate that the Legislature approved all other games of chance or intended to prevent local governments from regulating other games. *Id.*

Courts have applied similar reasoning in the context of statutes that prohibit certain conduct in a variety of places. For example, in *People v. Butler* (1967) 252 Cal.App.2d Supp. 1053, the court reviewed a variety of statutes regulating alcohol consumption on public school grounds, on licensed premises, on unlicensed premises, and by minors on on-sale premises. *Butler*, 252 Cal.App.2d at 1057. The court held that these statutes did not demonstrate a comprehensive scheme precluding local government from regulating alcohol consumption in other locations where alcohol consumption might create a police problem. *Id.* at 1057-58; *see also People v. Brewer* (1991) 235 Cal.App.3d 909 [reaffirming *Butler* court's holding that state law does not preempt local regulation of alcohol consumption]; *Gleason v. The Municipal Court for the Los Angeles Judicial District* (1964) 226 Cal.App.2d 584 [holding that ordinance regulating loitering in tunnels, pedestrian subways, and bridge overpasses appropriately supplemented state statutes that regulated loitering around schools, public toilets, private property, and public streets].

Applying *Hubbard*, *Butler*, and *Gleason* to the instant case, it follows that the Legislature has not impliedly preempted local regulation concerning possession of firearms on County-owned property. The Legislature's regulation of possession of firearms on school property and at the Governor's residence does not demonstrate that the Legislature has completely covered the field or indicated that the possession of firearms in other locations, such as on County-owned property, is exclusively a matter of state concern.

2. **The Subject of Firearm Possession 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**

By providing for local laws related to gun shows and to possession of firearms, the Legislature has "indicated clearly" that such 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.*, *supra*, 39 Cal.3d at 888. Thus, in *Suter*, the court held that Penal Code Section 12071 did not impliedly preempt an ordinance requiring the licensing of firearm dealers because the statute provided for local licensing requirements and there "can be no implied preemption of an area where state law expressly allows supplementary local legislation." *Suter*, *supra*, 57 Cal.App.4th at 1120-21.

Here, the Legislature has "indicated clearly" that local laws affecting firearms possession and gun shows are permissible. See, e.g., Cal. Penal Code § 12071.4(b)(2) [requiring gun show vendors to acknowledge that they are complying with local laws dealing with the possession of firearms]; Cal. Penal Code § 12071(b)(1)(B) [requiring licensed dealers to

comply with all local laws at gun shows]; Cal. Penal Code § 12071.1(o)(1) [requiring gun show producers to post notices at gun shows announcing that they will comply with all local firearms laws “without exception”]. Therefore, state law does not impliedly preempt the Ordinance.

Moreover, in light of the Legislature’s approach to firearms regulation, it is clear that the Legislature intended not to preempt local law regarding the possession of firearms on County-owned property.⁵ As the *West Hollywood* court concluded:

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.”

West Hollywood, 66 Cal.App.4th at 1318-19 (emphasis added). The Court based its conclusion of the Legislature’s response to court rulings, noting that despite courts rulings that the field of firearms regulation or subfields of firearms regulation are not preempted, the Legislature’s response was a narrow preemption of certain subfields and not preemption of the entire field of firearms or other subfields of firearms regulation. See *id.*, 66 Cal.App.4th at 1314-19 [Legislature’s history of selective and narrow preemption in response to courts holding that the Legislature had not preempted local firearms regulations indicated that the Legislature had expressly avoided preemption]; *Suter*, 57 Cal.App.4th at 1119.

⁵ In addition, as discussed below, the Legislature’s adoption of Government Code Sections 23004, 25351, 25351.3, and 25353 indicate an intent by the Legislature to allow counties to regulate their own property.

Significantly, the Legislature has again declined to preempt the entire field of firearms possession in light of the *Suter* and *West Hollywood* decisions. That choice clearly indicates that the Legislature did not intend to preempt the field of firearms possession.

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

“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. Here, the benefits of providing security on County-owned property and reducing the human and financial costs of gun violence outweigh any conceivable burden on transient citizens who wish to possess firearms on County-owned property.

IV. ALAMEDA COUNTY HAS AUTHORITY UNDER THE GOVERNMENT CODE TO REGULATE THE ALAMEDA COUNTY FAIRGROUNDS

As noted above, the Government Code authorizes Alameda 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. These grants of authority have not been limited subsequently by the Legislature with respect to the property here at issue.

CONCLUSION

The Nordykes suggest in their brief that there are “broad public policies at issue here.” Appellants’ Opening Brief at 41. They are correct,

but misidentify those policies. The Nordykes frame this case as one concerning whether a person can carry a gun into a gun show on County property, which is by definition a private right pertaining to the individual. In truth, the more salient public policy issues are 1) whether the County can prohibit on its property conduct it knows to present a risk to the safety and welfare of its citizens and 2) whether the public at large can find a safe haven from gun violence on County property. Both of these issues concern rights of the public at large. Public policy concerns support upholding the Alameda County Ordinance.

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

Dated: May 9, 2001

LOUISE H. RENNE
City Attorney
JOANNE HOEPER
Chief Trial Attorney
OWEN J. CLEMENTS
Chief of Special Litigation
D. CAMERON BAKER
Deputy City Attorneys
1 Dr. Carlton B. Goodlett Place,
Room 234
San Francisco, CA 94102

By: 
D. CAMERON BAKER
Deputy City Attorney

Attorneys for Amicus THE CITY
AND COUNTY OF SAN
FRANCISCO
[Other Attorneys Listed On
Appendix A]

APPENDIX A - LIST OF COUNSEL & ADDRESSES

TERESA HIGHSMITH, State Bar#155262
Assistant City Attorney
CITY OF ALAMEDA
2263 Santa Clara Avenue, Room 280
Alameda, CA 94501
Telephone: (510) 748-4544
Facsimile: (510)748-4691
Attorneys for Amicus Curiae The City of
Alameda

MANUELA ALBUQUERQUE, State Bar
#67464
Berkeley City Attorney
MATTHEW J. OREBIC, State Bar #124491
CITY OF BERKELEY
2180 Milvia Street, Fourth Floor
Berkeley, CA 94704
Tel: (510) 981-6950
Fax: (510) 981-6960
Attorneys for Amicus Curiae The City of
Berkeley

CHARLES DICKERSON, State Bar #92590
City Attorney
CITY OF INGLEWOOD
One Manchester Blvd, Ste 860
Inglewood, CA 90301
Telephone: (310) 412-5372
Facsimile: (310) 412-8865
Attorneys for Amicus Curiae The City of
Inglewood

TOM CURRY
City Attorney
CITY OF LIVERMORE
1052 So. Livermore Avenue
Livermore, CA 94550
Telephone: (925) 373-5121
Facsimile: (925) 373-5125
Attorneys for Amicus Curiae The City of
Livermore

ROBERT ZWEBEN
Law Office of Robert Zweben
1730 Solano Avenue
Berkeley, CA 94707
Telephone: (510) 524-9205
Facsimile: (510) 526-9190
Attorneys for Amicus Curiae The City of
Albany

MICHAEL BIDDLE, State Bar # 139223
City Attorney
CITY OF EMERYVILLE
1333 Park Avenue
Emeryville, CA 94608
Telephone: (510) 596-4381
Facsimile: (510) 596-3724
Attorneys for Amicus Curiae The City of
Emeryville

CHARLES WILLIAMS, State Bar #026659
City Attorney
CITY OF LAFAYETTE
1330 Arnold Drive, Suite 149
Martinez, CA 94533
Telephone: (925) 228-3840
Facsimile: (925) 228-1703
Attorneys for Amicus Curiae The City of
Lafayette

DANIEL S. MURPHY
Principal Deputy City Attorney
CITY OF LONG BEACH
333 W. Ocean Blvd., 11th Floor
Long Beach, CA 90802-4664
Telephone: (562) 570-2242
Facsimile: (562) 436-1579
Attorneys for Amicus Curiae The City of
Long Beach

JAMES K. HAHN, State Bar #66073
City Attorney
CARMEL SELLA, State Bar #162653
Special Assistant to the City Attorney
Office of the City Attorney
CITY OF LOS ANGELES
200 N. Main Street
1800 City Hall East
Los Angeles, CA 90012
Telephone: (213) 485-7657
Facsimile: (213) 847-3014
Attorneys for Amicus Curiae The City of
Los Angeles

GEORGE S. PEYTON, JR., State Bar #037643
LOMBARDI, LOPER & CONANT, LLP
1999 Harrison Street, Suite 1950
Oakland, CA 94612-3541
Telephone: (510) 433-2600
Facsimile: (510) 433-2699
Attorney for Amicus Curiae The City of
Piedmont

ROBERT LAZONE, State Bar #45484
City Attorney
CITY OF SAN CARLOS
939 Laurel Street, Ste D
San Carlos, CA 94070
Telephone: (650) 593-3117
Facsimile: (650) 637-1401
Attorneys for Amicus Curiae The City of
San Carlos

JOHN A. RUSSO, State Bar #129729
Oakland City Attorney
BARBARA J. PARKER, State Bar #069722
DORYANNA M. MORENO, State Bar
#140976
KANDIS A. WESTMORE, State Bar #194594
CITY OF OAKLAND
One Frank Ogawa Plaza, 6th Floor
Oakland, CA 94612
Telephone: (510) 748-4544
Facsimile: (510) 748-4691
Attorneys for Amicus Curiae The City of
Oakland

DANIEL J. MCHUGH
City Attorney
CITY OF REDLANDS
P.O. BOX 3005
Redlands, CA 92373-1505
Telephone: (909) 798-7595
Facsimile: (909) 798-7503
Attorneys for Amicus Curiae The City of
Redlands

MARSHA JONES MOUTRIE State Bar #
69711
City Attorney
CITY OF SANTA MONICA
1685 Main Street, #310
Santa Monica, CA 90401
Telephone: (310) 458-8336
Facsimile: (310) 395-6727
Attorneys for Amicus Curiae The City of
Santa Monica

MICHAEL JENKINS, State Bar #81997
City Attorney
CITY OF WEST HOLLYWOOD
333 South Hope St, 38th Floor
Los Angeles, CA 90071
Telephone: (213) 626-8484
Facsimile: (213) 626-0078
Attorneys for Amicus Curiae The City of
West Hollywood

Ann Miller Ravel, State Bar #62139
County Counsel
Debra L. Cauble, State Bar #81660
Asst. County Counsel
COUNTY OF SANTA CLARA
70 West Hedding
9th Floor, East Wing
San Jose, CA 95110
Attorneys for Amicus Curiae The County
of Santa Clara

BARRIE BECKER
JULIET LEFTWICH, State Bar #111721
LEGAL COMMUNITY AGAINST
VIOLENCE
268 Bush Street, No. 555
San Francisco, CA 94101
Telephone: (415) 433-2062
Facsimile: (415) 433-3357

EVELYN DOLVEN
663 Vicente Avenue
Berkeley, CA 94707
President of the Alameda County Chapter
of MILLION MOM MARCH
Telephone/Fax: (510) 524-5684

PATRICK FAULKNER, State Bar #70801
County Counsel
John F. Govi, State Bar # 88483
Assistant County Counsel
COUNTY OF MARIN
3501 Civic Center Dr, Ste 303
San Rafael, CA 94903
Telephone: (415) 499-6117
Facsimile: (415) 499-3796
Attorneys for Amicus Curiae The County
of Marin

Steven M. Woodside, State Bar #058684
County Counsel
COUNTY OF SONOMA
575 Administration Drive, Suite 105A
Santa Rosa, CA 95403
Attorneys for Amicus Curiae The County
of Sonoma

ROBERTA SCHILLER
Executive Director
WOMEN AGAINST GUN VIOLENCE
P.O. Box 1501
Culver City, CA 90232
Telephone: (310) 204-2348
Facsimile: (310) 204-6643
Amicus Curiae Women Against Gun
Violence

MARTIN J. MAYER, ESQ. State Bar #73890
Law Offices of Jones & Mayer
3777 North Harbor Blvd.
Fullerton, CA 92835
Telephone: (714) 446-1400
Facsimile: (714) 446-1448
Attorney for California Police Chiefs
Association

DAVID DURANT, State Bar #148205

President

YOUTH ALIVE!

3300 Elm Street

Oakland, CA 94605

Telephone: (925) 467-3792

Facsimile: (925) 467-3846

ANN WASSAM

Executive Director

Alameda County Bar Association

360 Twenty-Second Street

Suite 800

Oakland, CA 94612

Telephone: (510) 893-7160

Facsimile: (510) 893-3119

PROOF OF SERVICE

I, **ARLENE G. ABELLA** , 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 9, 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, THE COUNTIES OF MARIN, SANTA CLARA AND SONOMA, LEGAL COMMUNITY AGAINST VIOLENCE, YOUTH ALIVE!, THE CALIFORNIA POLICE CHIEFS ASSOCIATION, ALAMEDA COUNTY BAR ASSOCIATION AND THE MILLION MOM MARCH FOUNDATION IN SUPPORT OF RESPONDENTS MARY V. KING ET AL.

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

Donald E. Kilmer, Esq.
1261 Lincoln Avenue, Suite 108
San Jose, CA 95125

Sayre Weaver, Esq.
RICHARDS, WATSON & GERSON
44 Montgomery Street, Suite 960
San Francisco, CA 94104

Don B. Kates, Esq.
BENENSON & KATES
920 Arlene Way
Novato, CA 94947

C.D. Michell, Esq.
TRUTANICH & MICHELL
407 North Harbor Boulevard
San Pedro, CA 90731

**United States Ninth Circuit
Court of Appeals
U.S. Court of Appeals Building
95 Seventh Street
San Francisco, CA 94103**

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, City Hall, Room 234, 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 9, 2001, at San Francisco, California.

A handwritten signature in black ink, appearing to read "A. Abella", is positioned above a horizontal line.

ARLENE G. ABELLA