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December 13, 2011

**VIA E-FILE**

Ms. Molly C. Dwyer, Clerk  
United States Court of Appeals for the Ninth Circuit  
95 Seventh Street  
San Francisco, CA 94119-3939

Re: *Nordyke, et al., v. King, et al., Case No. 07-15763*

Dear Ms. Dwyer:

On October 11, 2011, Appellants in the above case filed a Federal Rule of Appellate Procedure 28(j) letter brief regarding *Neighborhood Enterprises, Inc., et al. v. City of St. Louis; et al.*, 644 F.3d 728 (8th Cir. July 13, 2011). That opinion is not relevant to this appeal for these reasons:

*Neighborhood Enterprises* involved a challenge to a permit requirement for outdoor signs. A sign was not subject to the permit requirement if it was a “[n]ational, state, religious, fraternal, professional and civic symbol[] or crest [], or on site ground based measure display device used to show time and subject matter of religious services.” *Id.* at 736. The Court found the requirement was content based because signs were exempt from it based on the message sought to be conveyed. *Id.* Accordingly, the Court reviewed the regulation under strict scrutiny and found it unconstitutional. *Id.* at 738-39.

Contrary to Appellants assertion, the Ordinance prohibiting gun possession on certain County-owned property, including the Fairgrounds, which Appellants’ challenge as applied to their gun shows, does not exempt gun possession for artistic purposes from its purview. The Ordinance includes an exception for possession of a firearm by an authorized participant in a production or event on County-owned property when the participant lawfully uses the firearm as part of the production or event, provided that when such firearm is not in the actual possession of the authorized participant, it is secured to prevent unauthorized use. Excerpts of Record (“ER2”) in Appeal No. 07-15763, Vol. II, p. 404-05, Subd. (f)(4).

The foregoing exception was not unavailable to Appellants. The Alameda County Fair Association, an independent non-profit organization, operates the Fairgrounds and leases the Fairgrounds for “events.” ER2, Vol. III, p. 440. The Association

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invited Appellant gun show operators to submit a plan for conducting their event in compliance with the Ordinance but they never did so. ER2, Vol. 2, pp. 393-396; Vol. III, p. 443, Fact 26; p. 444, Fact 32. The Scottish Games are conducted on the Fairgrounds in compliance with the exception. ER2, Vol. III, p. 445, Facts 40-42.

Very truly yours,

/s/  
Sayre Weaver

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# CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on December 13, 2011.

I hereby certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

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/s/  
Clotilde Bigornia