

Law Offices of Donald Kilmer

A Professional Corporation

1645 Willow Street, Suite 150
San Jose, California 95125
E-Mail: Don@DKLawOffice.com
Phone: 408/264-8489
Fax: 408/264-8487

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Via: E-File

U.S. Court of Appeals for the Ninth Circuit
95 7th Street
San Francisco, California 94103-1526

Re: Nordyke, et al., v. King, et al., Case No.: 07-15763
Oral Argument Scheduled for October 19, 2010.
Before: Arthur L. Alarcon, Diarmuid F. O'Scannlain and
Ronald M. Gould

Your Honors:

At Appellants' instigation, Appellees corrected their false statement of fact that gun shows have continued to take place in Alameda County since 1999. (See Docket Entry: 168 correcting 167.) However Appellees refuse to retract their statement that their Ordinance, forbidding firearms on County property, contains an exception for gun shows and that the Nordykes simply refuse to avail themselves of that exception.

Appellants have already recounted how they inquired of County Counsel, in pre-litigation correspondence, whether their gun shows qualify for an exception to the Alameda Ordinance. And that those letters went unanswered. (See post-oral argument letter brief dated January 20, 2009, Filed January 26, 2009, Docket Entry: 77.)

In an effort to finally put this issue to rest, Appellants make three points:

1. Appellees' assertion that their ordinance has an exception for gun shows – with guns – is flatly contradicted by previous findings of this Court and the California Supreme Court.

- A. “The Ordinance would forbid the presence of firearms at gun shows, such as Nordyke's, held at the Fairgrounds. Practically, the Ordinance makes it unlikely that a gun show could profitably be held there.” *Nordyke v. King*, 229 F.3d 1266, 1268.
 - B. “[T]he effect on the Nordykes of the Ordinance banning guns on county property is to make gun shows on such property virtually impossible.” *Nordyke v. King*, 27 Cal. 4th 875, 882.
2. Because this case is on appeal from a district court order granting Defendant/Appellees’ motion for summary judgment and/or the denial of Plaintiff/Appellants’ motion to amend, any disputed fact or factual inference must be resolved in Appellants’ favor. *Eastman Kodak Co. v. Image Technical Services, Inc.* (1992) 504 U.S. 451; *T.W. Elec. Service, Inc. v. Pacific Elec. Contractors Ass’n* (9th Cir. 1987) 809 F.2d 626, 630-631.
 3. Finally, courts should not permit parties to manipulate litigation by artificially attempting to moot issues in order to insulate their conduct from judicial review. See generally: *City of Mesquite v. Aladdin’s Castle*, 455 U.S. 283 (1982); *Northeastern Florida Chapter of the Assoc. General Contractors of America v. City of Jacksonville*, 508 U.S. 656, 662 (1993).

Since the legal interpretation of the ordinance’s effect on gun shows has been resolved by prior findings of this Court (and the California Supreme Court), any attempt by Appellees to opportunistically re-interpret their ordinance to contradict those findings is frivolous. Nor is there any guarantee that the County will not revert to their prior interpretation of the Ordinance absent injunctive relief.

Respectfully Submitted,

/s/

Donald Kilmer
Attorney for Appellants

9th Circuit Case Number(s) 07-15763

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