



August 2, 2013

1100 K Street
Suite 101
Sacramento
California
95814

Telephone
916.327.7500
Facsimile
916.441.5507

Chief Justice Tani Cantil-Sakauye
and Associate Justices
Supreme Court of California
350 McAllister Street
San Francisco, CA 94102-4797

Re: *CalGuns Foundation, Inc. v. County of San Mateo*
Case No. S 212356 (Court of Appeal No. A136092)
Request for Publication (Rule 8.1120)

Dear Chief Justice Cantil-Sakauye and Associate Justices:

On behalf of the California State Association of Counties (CSAC) and the League of California Cities (League), we respectfully request that the Court publish the opinion in *CalGuns Foundation, Inc. v. County of San Mateo*, issued by Division Two of the First Appellate District on July 15, 2013.

Interest of CSAC and the League

CSAC is a non-profit corporation. The membership consists of the 58 California counties. CSAC sponsors a Litigation Coordination Program, which is administered by the County Counsels' Association of California and is overseen by the Association's Litigation Overview Committee, comprised of county counsels throughout the State. The Litigation Overview Committee monitors litigation of concern to counties statewide and has determined that this case is a matter affecting all counties.

The League is an association of 467 California cities dedicated to protecting and restoring local control to provide for the public health, safety, and welfare of their residents, and to enhance the quality of life for all Californians. The League is advised by its Legal Advocacy Committee, comprised of 24 city attorneys from all regions of the State. The Committee monitors litigation of concern to municipalities, and identifies those cases that have statewide or nationwide significance. The Committee has identified this case as having such significance.

CSAC and the League's member cities and counties have a strong interest in this opinion's publication. The opinion directly addresses the manner in which cities and counties can regulate firearms possession on park property, and more generally

addresses fundamental preemption principles that are applicable to a wide range of local government activities. As such, for the reasons set forth below, CSAC and the League urge the Court to order that the opinion be published.

The Opinion Meets the Standard for Publication

The opinion in *CalGuns v. County of San Mateo* meets the standards for publication set forth in California Rules of Court, rule 8.1105, subdivision (c)¹ because of the manner in which the opinion applies, explains, and advances existing law, and because it addresses an issue of continuing public interest.

1. The Opinion Explains an Existing Rule of Law by Distinguishing *Fiscal v. City of San Francisco* From the Facts Presented by This Case.

In this opinion, CalGuns and its amicus, the National Rifle Association (NRA), attempted to persuade the court that the County of San Mateo's ordinance banning firearms in county parks is preempted by State law for the reasons identified by the Court of Appeal in *Fiscal v. City of San Francisco* (2008) Cal.App.4th 895. The opinion, however, distinguishes the ordinance in *Fiscal* (total prohibition on the possession and sale of handguns within the city limits) from San Mateo's ordinance, noting that the *Fiscal* court found San Francisco's ordinance was preempted "because of the extreme breadth of the ordinance being challenged." (Slip. Op. at p. 13.)

The opinion goes on to explain how the ban on firearms in county parks is instead governed by *Great Western Shows, Inc. v. County of Los Angeles* (2002) 27 Cal.4th 853 [no preemption of ordinance banning gun and ammunition sales on county property], and *Nordyke v. King* (2002) 27 Cal.4th 875 [no preemption of an ordinance banning possession of firearm on specified county property]. (Slip. Op. at pp. 14-15, 17.) In providing a detailed description of how to apply *Great Western* and *Nordyke*, and by distinguishing those cases from *Fiscal* in applying preemption analysis to the ordinance at issue in this case, the opinion explains an existing rule of law, and thus warrants publication under rule 8.1105, subdivision (c)(3).

¹ Unless otherwise stated, all citations to the "rules" are to the California Rules of Court.

2. The Opinion Advances a New Clarification of Existing Law by Concluding that the Land Use Authority of Local Government is Relevant in Evaluating a Firearm Possession Ban in Public Parks.

The opinion notes that San Mateo County’s ordinance banning firearms in local parks is a “land use regulation,” rather than merely a gun control regulation. (Slip Op. at p. 16.) As such, there is a “particular reluctance” to finding preemption, since land use regulations address significant local interests that differ from one locality to another. (*Ibid.*, citing *Browne v. County of Tehama* (2013) 213 Cal.App.4th 704, 719.)

Neither *Fiscal*, *Great Western*, nor *Nordyke* address the impact of a local government’s land use authority in their preemption analysis. Indeed, CSAC and the League are not aware of any other published case making clear that this type of ordinance – a ban on firearms in a public park – is a land use ordinance and should be treated as such by the courts when confronted with a preemption challenge by according deference to local control in this area of traditional police power. (*Big Creek Lumber Co. v. County of Santa Cruz* (2006) 38 Cal.4th 1139, 1149 [“Thus, when local government regulates in an area over which it traditionally has exercised control, such as the location of particular land uses, California courts will presume, absent a clear indication of preemptive intent from the Legislature, that such regulation is not preempted by state statute.”].) The opinion therefore advances a new clarification of existing law, and meets the standard for publication under rule 8.1105, subdivision (c)(4).

3. There Are No Published Cases Directly Holding That Public Entities Are Not Required to Include Exemptions For Concealed Weapon License Holders in Their Firearm Possession Ordinances.

The opinion also applies an existing rule of law to new facts (rule 8.1105, subd. (c)(2)), by holding, for the first time, that there is no requirement that local ordinances addressing possession of firearms include an exemption for concealed weapon license holders. The ordinance at issue in *Nordyke* contained an exemption for persons holding valid firearms licenses pursuant to Penal Code section 12050 (now section 26150). (*Nordyke, supra*, 27 Cal.4th at p. 881.) And the ordinance in *Great Western* addressed sale, rather than possession, of firearms on county property. (*Great Western, supra*, 27 Cal.4th at p. 858.) Therefore, by applying the preemption analysis in these cases to an ordinance regulating possession on county property that does not include an exemption for concealed weapon license holders, the court has applied existing law to facts not

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presented in any other published opinion. This analysis will be useful to public entities as they consider how best to address the issue of firearms possession on their own property.

4. By Directly Refuting the NRA’s Argument That Concealed Weapon Carriers Should Not Be Required to Know Different Possession Laws in Different Local Jurisdictions, the Opinion Applies an Existing Rule of Law to a New Argument.

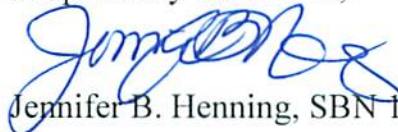
The opinion notes the NRA’s argument that permitting local governments to enact restrictions that apply to those with carry licenses would create a “patchwork quilt” of regulation that would cause confusion. (Slip Op. at p. 10.) The court analyzed the holdings in *Great Western* and *Nordyke* to explain why those cases defeat the argument. Since the “patchwork” argument was not directly addressed in *Great Western* or *Nordyke*, this opinion applies those existing rules to this new argument in a manner that warrants publication under rule 8.1105, subdivision (c)(2).

5. The Opinion Addresses an Issue of Continuing Public Interest, Which is Likely to Be Raised Again in Future Litigation

Finally, the opinion meets the standard for publication under rule 8.1105, subdivision (c)(6) because it involves an issue of continuing public interest. Both the appellant’s brief and the NRA amicus brief in the Court of Appeal cited at least twenty-four local ordinances in California with the same restrictions as the San Mateo County ordinance at issue here. Should those ordinances be subject to a challenge in the future, this opinion would be the only published case directly on point and would therefore be immensely helpful to the lower courts and the parties involved.

For these reasons, CSAC and the League believe the opinion meets the standards for publication, and urge this Court to order the opinion published.

Respectfully Submitted,


Jennifer B. Henning, SBN 193915

Counsel for California State Association of Counties
and League of California Cities

Proof of Service Attached

Proof of Service by Mail

CalGuns Foundation, Inc. v. County of San Mateo
Case No. S212356

I, Mary Penney, declare:

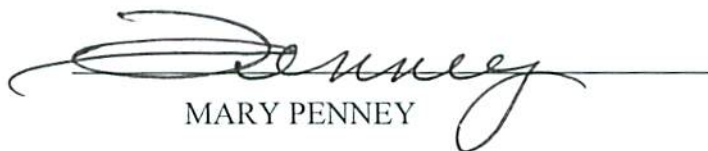
That I am, and was at the time of the service of the papers herein referred to, over the age of eighteen years, and not a party to the within action; and I am employed in the County of Sacramento, California, within which county the subject mailing occurred. My business address is 1100 K Street, Suite 101, Sacramento, California, 95814. I served the within **REQUEST FOR PUBLICATION** by placing a copy thereof in a separate envelope for each addressee named hereafter, addressed to each such addressee respectively as follows:

Proof of Service List

Party	Attorney
CalGuns Foundation Inc., et al.: Plaintiffs and Appellants	Donald Edward Joseph Kilmer, Jr. 1645 Willow Street - Suite 150 San Jose, CA 95125
County of San Mateo : Defendant and Respondent	David Abraham Silberman Office of County Counsel 400 County Center - 6th Floor Redwood City, CA 94063-1662
National Rifle Association : Amicus curiae for appellant	C. D. Michel Michel & Associates, P.C. 180 East Ocean Blvd., Suite 200 Long Beach, CA 90802
Law Center to Prevent Gun Violence : Publication Requestor	Simon James Frankel Covington & Burling LLP One Front Street San Francisco, CA 94111
Court of Appeal	Clerk of the Court First Appellate District, Division 2 350 McAllister Street San Francisco, CA 94102-3600

and by placing the envelopes for collection and mailing following our ordinary business practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on August 2, 2013, at Sacramento, California.


MARY PENNEY