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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
Pending *en banc* reconsideration.
Federal Rule of Appellate Procedure 28(j) Letter.
Original Panel: Arthur L. Alarcon, Diarmuid F. O'Scannlain and Ronald M. Gould. Filed: April 20, 2009.

Your Honors:

The incorporation analysis of the original panel has been affirmed in *McDonald v. Chicago*, 561 U.S. ___ (2010). On Second Amendment issues in this case, that leaves only: (1) the scope of the right that is protected, and (2) the government's burden if the right is violated.

The controlling opinions in *McDonald* placed great weight on congressional interpretation of fundamental rights as found in the statutory language of the *Civil Rights Act of 1866*, the *Civil Rights Act of 1871* and the *Freedmen's Bureau Act*. (Slip Opinion of the Court at 26-27, 29, 32 and Concurring Opinion at 30-31.) We urge this Court to mirror that analysis.

In the *Protection of Lawful Commerce in Arms Act* (PLCAA)[1], Congress addressed the nature and scope of the right protected by the Second Amendment. In § 2(b)(2) of the PLCAA, Congress is advancing a

[1] Public Law 109-92, 15 U.S.C. § 7901-7903

constitutionally inspired policy of protecting "*a citizen's access to a supply of firearms and ammunition for all lawful purposes, including hunting, self-defense, collecting and competitive or recreational shooting*." Thus Congress recognizes that the Second Amendment means more than mere possession of a handgun in the home. Since California's Constitution[2] does not recognize a "*right to keep and bear arms*" – the field is unoccupied and the U.S. Congress is as good (or better) authority for determining the scope of this right.

The *McDonald* Court rejected the notion that the Second Amendment is different from any other amendment that protects fundamental rights. The County produced no evidence that the fairgrounds is a sensitive place or that banning gun shows from the fairgrounds would reduce crime. A proper analysis of the County's ordinance must reject a restriction on a fundamental right when the government provides no evidence that its regulation is narrowly tailored to address a compelling government interest.

The original panel read the right protected by the Second Amendment too narrowly and did not force the County to meet its constitutionally required burdens. This *en banc* panel should correct those mistakes.

Respectfully Submitted,

/s/

Donald Kilmer
Attorney for Appellants

encl: Slip Opinion – *McDonald et al. v. City of Chicago, Illinois, et al.*

[2] See *Kasler v. Lockyer*, 23 Cal.4th 472, 480 (2000).