

IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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ADAM RICHARDS, BRETT STEWART, THE SECOND  
AMENDMENT FOUNDATION, INC, and THE  
CALGUNS FOUNDATION INC.,  
*Plaintiffs - Appellants,*

vs.

ED PRIETO (Sheriff of Yolo County) and YOLO COUNTY,  
*Defendants - Appellees.*

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APPEAL FROM THE  
UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

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**MOTION TO ALIGN ORAL ARGUMENT TOGETHER  
WITH RELATED CASE**

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## **STATEMENT OF FACTS**

This case, *Richards v. Prieto*, was initially filed in the District Court on May 5, 2009. Nearly six months later, on October 23, 2009, Edward Peruta, the lead appellant in Case No. 10-56971, brought his action in District Court, copying large portions of the complaint filed by *Richards* Appellants verbatim without providing them advance notice.

Both cases allege that California Penal Code § 12050, and its application by identically-situated defendants, violate the Second Amendment and the Equal Protection Clause of the Fourteenth Amendment. The parties' substantive Second Amendment and Equal Protection arguments are quite similar; however, Appellants in this case advance as their primary argument a prior restraint methodology that the *Peruta* appellants belatedly mention, in cursory fashion, for the first time on appeal.

The cases proceeded along somewhat different yet similar timelines. Notwithstanding its almost six month head start, *Richards* was repeatedly stayed pending the outcome of *McDonald v. City of Chicago*, 130 S. Ct. 3020 (2010) and *Nordyke v. King*, No. 07-15763, and was also delayed as the Appellants managed to settle their differences

with one set of defendants. *Peruta* continued more or less without impediment, and was decided by the District Court about five months prior to the decision below in *Richards*.

Briefing in *Peruta* has just begun. *Richards* Appellants have no intention to seek any continuance in their deadlines, and in fact are willing to advance the schedule in this case, although the space between the briefing schedules in both cases is already quite slight.

### **STATEMENT OF LAW**

Pursuant to Ninth Circuit Rule 28-2.6, case are deemed related if they:

- Arise out of the same or consolidated cases in the district court or agency;
- Are cases previously heard in the appellate court which concern the case being briefed;
- Involve the same transaction or event; or
- Raise the same or closely-related issues.

Pursuant to Ninth Circuit Advisory Committee Notes to Circuit Rules 34-1 to 34-3 (1):

***Appeals Raising the Same Issues.*** *When other pending cases raise the same legal issues, the*

*court may advance or defer the hearing of an appeal so that related issues can be heard at the same time. Cases involving the same legal issue are identified during the court's inventory process. The first panel to whom the issue is submitted has priority. Normally, other panels will enter orders vacating submission and advise counsel of the other pending case when it appears that the first panel's decision is likely to be dispositive of the issue.*

*Panels may also enter orders vacating submission when awaiting the decision of a related case before another court or administrative agency. (Rev. 12/1/09)*

### **ARGUMENT / CONCLUSION**

The *Richards* case and the *Peruta* case raise identical (if not “the same”) transactions and events, identical issues of law, and they have institutionally identical defendants. Indeed, the initial complaints were largely identical. However, the parties have not each explored all the issues at the same depth.

Judicial efficiency strongly warrants that one panel fully and equally consider the various arguments raised by each appeal. Given the nearly identical timeline in each case, the fact that briefing remains open in both cases, and that under this Court’s ordinary procedures neither case would be set for argument in the near future, no party

could be prejudiced by merely having the same panel consider both cases at the same time. Alignment of the argument in the two cases is thus clearly warranted.

Wherefore, respectfully, Appellants request that the case be set for argument before the same panel on the same day as *Peruta v. County of San Diego*, No. 10-56971.

Respectfully Submitted on May 31, 2011,

      /s/        
Donald Kilmer for Appellants

**CERTIFICATE OF SERVICE**

On May 31, 2011, I served the foregoing **MOTION TO SCHEDULE ORAL ARGUMENT TOGETHER WITH RELATED CASE** by electronically filing it with the Court's ECF/CM system, which generated a Notice of Filing and effects service upon counsel for all parties in this case.

I declare under penalty of perjury that the foregoing is true and correct and that his declaration was made on May 31, 2011 in San Jose, CA.

/s/ Donald Kilmer  
Attorney of Record for Appellants