

FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

RUSSELL ALLEN NORDYKE; ANN
SALLIE NORDYKE, dba TS Trade
Shows; JESS B. GUY; DUANE DARR;
WILLIAM J. JONES; DARYL N.
DAVID; TASIANA WESTYSCHYN; JEAN
LEE; TODD BALTES; DENNIS BLAIR,
R.L. ADAMS; ROGER BAKER; MIKE
FOURNIER; VIRGIL McVICKER,

Plaintiffs-Appellants,

v.

MARY V. KING; GAIL STEELE;
WILMA CHAN; KEITH CARSON;
SCOTT HAGGERTY; COUNTY OF
ALAMEDA; COUNTY OF ALAMEDA
BOARD OF SUPERVISORS,

Defendants-Appellees.

No. 07-15763
D.C. No.
CV-99-04389-MJJ
Northern District of
California,
San Francisco

ORDER

Filed April 4, 2012

Before: Alex Kozinski, Chief Judge, Harry Pregerson,
Stephen Reinhardt, Diarmuid F. O'Scannlain,
Michael Daly Hawkins, Susan P. Graber, Ronald M. Gould,
Richard C. Tallman, Consuelo M. Callahan,
Milan D. Smith, Jr., and Sandra S. Ikuta, Circuit Judges.

Order;

Concurrence by Judge M. Smith;
Dissent by Chief Judge Kozinski

ORDER

The panel believes that the parties should attempt to settle this dispute by agreeing on the conditions for holding gun shows at the Alameda County fairgrounds, with the assistance of mediation. The case is referred to the Circuit Mediation Office for mediation, and its submission is deferred for 45 days or pending further order of the court.

The Circuit Mediator will contact the parties as soon as possible and shall provide a status report to the panel no later than 45 days following this order.

M. SMITH, Circuit Judge, concurring:

I concur with the Court's order sending this case to mediation. However, I would have attached a copy of a proposed disposition in this case so that the parties would know what they would face in the event mediation fails.

KOZINSKI, Chief Judge, with whom GOULD, Circuit Judge, joins, dissenting:

The parties have not asked for mediation; they have said nothing that suggests mediation would be fruitful; when asked about it in court, they displayed obvious distaste for the idea. We overstep our authority by forcing the parties to spend time and money engaging in a mediation charade. Our job is to decide the case, and do so promptly. This delay serves no useful purpose; it only makes us look foolish. I want no part of it.