



**Association of Defense
Counsel of Northern
California and Nevada**

ASCDC

ASSOCIATION OF
SOUTHERN CALIFORNIA
DEFENSE COUNSEL

January 14, 2021

Chief Justice Tani G. Cantil-Sakauye
Justice Carol A. Corrigan
Justice Goodwin Liu
Justice Mariano Florentino-Cuéllar
Justice Leondra R. Kruger
Justice Joshua P. Groban
Justice Martin Jenkins
Supreme Court of California
350 McAllister Street
San Francisco, CA 94102-4797

Re: Support for petition for review in No. S266003,
Hoffmann v. Young (2020) 56 Cal.App.5th 1021

Honorable Justices,

Pursuant to Rule 8.500(g) of the California Rules of Court, the Association of Defense Counsel of Northern California and Nevada (“ADC-NCN”) and the Association of Southern California Defense Counsel (“ASCDC”) write jointly to urge the Court to grant the petition for review in this case.

Interest of the Requesting Organizations

ADC-NCN celebrated its 60th anniversary last year, and currently numbers approximately 800 attorneys primarily engaged in the defense of

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civil actions. Members represent civil defendants of all stripes, including businesses, individuals, homeowners, HOAs, schools and municipalities and other public entities. Members have a strong interest in the development of substantive and procedural law in California, and extensive experience with civil matters generally. ADC-NCN's Nevada members are also interested in the development of California law because Nevada courts often follow the law and rules adopted in California.

ASCDC is the nation's largest and preeminent regional organization of lawyers who specialize in defending civil actions. It has over 1,100 attorneys in Central and Southern California, among whom are some of the leading trial and appellate lawyers of California's civil defense bar. The ASCDC is actively involved in assisting courts on issues of interest to its members. In addition to representation in appellate matters, the ASCDC provides its members with professional fellowship, specialized continuing legal education, representation in legislative matters, and multifaceted support, including a forum for the exchange of information and ideas.

Although ASCDC and ADC-NCN are separate organizations, they coordinate from time to time on matters of shared interest, such as this letter. Together and separately, they have appeared as *amicus curiae* in many cases before both the California Supreme Court and Courts of Appeal across the state to express the interests of their members and their members' clients, a broad cross-section of California businesses and organizations.

No party has paid for or drafted this letter.

Why the Court should grant review

This Court should grant review "to secure uniformity of decision" on "an important question of law." (Cal. Rules of Court, rule 8.500(b)(1).)

This case involves "recreational use immunity," under which a landowner "owes no duty of care ... to persons entering for a recreational purpose." (Civ. Code, § 846.) This immunity protects landowners, including

ordinary homeowners like those involved in this case, of which there are millions across the state. The specific question of law this case presents is the meaning and application of a statutory exception to this immunity for “persons who are expressly invited rather than merely permitted to come upon the premises by the landowner.” (*Id.*, subd. (d)(3).)

There is a lack of uniformity among decisions interpreting this exception. As the petition for review points out, there are at least three strands of cases. One strand reads the statute literally, such that the exception applies only if an invitation is issued by the landowner. (E.g., *Johnson v. Unocal Corp.* (1993) 21 Cal.App.4th 310, 317; *Wang v. Nibbelink* (2016) 4 Cal.App.5th 1, 32; *Jackson v. Pacific Gas & Elec. Co.* (2001) 94 Cal.App.4th 1110, 1116.) A second strand holds that the exception may apply to an invitation by a nonlandowner, if the landowner expressly authorizes the invitation. (E.g., *Ravell v. U.S.* (9th Cir. 1994) 22 F.3d 960, 963 & fn. 3 [applying California law].)

A third strand, beginning with *Calhoon v. Lewis* (2000) 81 Cal.App.4th 108, 113–114 and now continuing with this case, has held that the landowner’s express consent is unnecessary. The 2-1 majority decision in this case ruled that “common sense” dictated that an invitation by a child of the landowners was legally the same as an invitation by the landowners, and that only if the child had been expressly not permitted to make the invitation would recreational use immunity not apply.

The merits of any of these three approaches is for another day. California law, landowners, home-owning parents, and recreational users all need certainty as to which is the law. The issue affects a huge number of Californians, and a wide range of activities, virtually anything that can be considered “recreational.” The nonexclusive list in the statute explicitly identifies “activities such as fishing, hunting, camping, water sports, hiking, spelunking, sport parachuting, riding, including animal riding,

snowmobiling, and all other types of vehicular riding, rock collecting, sightseeing, picnicking, nature study, nature contacting, recreational gardening, gleaning, hang gliding, private noncommercial aviation activities, winter sports, and viewing or enjoying historical, archaeological, scenic, natural, or scientific sites.” Millions of Californians enjoy these activities. Not always on their own property. And as this case involving motorcycling illustrates, recreational purposes include many other activities enjoyed by millions as well.

The answer to the petition for review argues there is no conflict between this case and the first two strands of cases identified above “because none of those other cases concerned the efficacy of an invitation extended by a living-at-home child of the landowners.” Several responses are in order.

First, specific factual differences between the cases do not change the fact that there is conflict in principle: whether the invitation must be express and from the landowner, or whether something else satisfies the statute.

Second, given that there is nothing in the statutory text for this “exception to the exception,” the *Hoffmann* majority opinion throws further open the door pushed aside by *Calhoon* for yet more extra-statutory exceptions.

Third, the child in this case was 18, living at home all the time. The next case could be 16, or 14, or 12, or 8, or 4. Or a college student home over break. Or an adult child visiting for the holidays. If these factual differences are to make a difference in the application of the statute, that is something the Legislature, or this Court, should determine.

Parents need to know what instructions they need give their children (if any) to preserve this statutory immunity from suit. So too with other landowner and whoever could be considered their “ostensible agent.” Recreational users deserve certainty about what invitations are, and which

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are not, sufficient to impose a duty of care on landowners. This Court should grant review and reinstate uniformity of decision on this issue.

Respectfully submitted,

ASSOCIATION OF DEFENSE
COUNSEL OF NORTHERN
CALIFORNIA AND NEVADA

ASSOCIATION OF DEFENSE
COUNSEL OF SOUTHERN
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PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is: Gordon Rees Scully Mansukhani, LLP, 1111 Broadway, Suite 1700, Oakland, CA 94607; email: espier@grsm.com. On the date indicated below, I served the within document(s):

Support for petition for review in No. S266003,
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- VIA E-SERVICE (TrueFiling) on the recipients designated on the electronic service list generated by TrueFiling system.
- VIA U.S. MAIL: by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in United States mail in the State of California at Oakland, addressed as set forth below.

Clerk, Court of Appeal
Second Appellate
District, Div. 6
Court Place
200 E. Santa Clara Street
Ventura, CA 93001

Case No. B292539

Hon. Linda D. Hurst
San Luis Obispo County
Superior Court
Paso Robles Branch
901 Park Street
Paso Robles, CA 93446

Case No. 16CVP0060

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on January 14, 2021, at Walnut Creek, California.

/s/ Eileen Spiers
Eileen Spiers