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Pro Querente

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION**

<p>MONTANA SHOOTING SPORTS ASSOCIATION, SECOND AMENDMENT FOUNDATION, Inc., and GARY MARBUT,</p> <p>Plaintiffs,</p> <p>v.</p> <p>ERIC H. HOLDER, JR., ATTORNEY GENERAL OF THE UNITED STATES OF AMERICA,</p> <p>Defendant.</p>	<p>Cause No. CV-09-147-M-DWM</p> <p><i>PLAINTIFFS' LR 7.4 NOTICE OF SUPPLEMENTAL AUTHORITY (Virginia v. Sebelius and Dept. of Health and Human Services)</i></p>
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Plaintiffs Montana Shooting Sports Association, Second Amendment Foundation, Inc., and Gary Marbut ("Plaintiffs"), by and through their counsel of record, hereby submits pursuant to L.R. 7.4 the following:

NOTICE OF SUPPLEMENTAL AUTHORITY

Defendant Eric H. Holder, Jr., filed a motion to dismiss, which has been fully briefed. On July 15, 2010, the Court held oral argument on that motion. On August 2, 2010, however, the U.S. District Court for the Eastern District of Virginia issued a Memorandum Opinion in *Commonwealth of Virginia v. Kathleen Sebelius, Secretary of the Department of Health and Human Services*, Civil Action No. 3:10CV188-HEH (Docket No. 84)(E.D.Va. August 2, 2010), a copy of which is attached for the convenience of the Court and counsel. In that opinion, the U.S. District Court for the Eastern District of Virginia ruled, among other things, that:

... [t]he Commerce Clause aspect of this debate raises issues of national significance. The position of the parties is widely divergent and at times novel. The guiding precedent is informative, but inconclusive. Never before has the Commerce Clause and associated Necessary and Property clause been extended this far. At this juncture, the Court is not persuaded that the Secretary has demonstrated that the Complaint fails to state a cause of action with respect to the Commerce Clause element. That portion of the Complaint advances a plausible claim with an arguable legal basis.

Id., p. 24-25; *see also id.*, pp. 17-25.

The authority relates specifically to the arguments raised in several

briefs, including: (1) Amicus Brief of the Goldwater Institute, *et al.* (Dkt. No. 32), pp. 4-5; (2) Amicus Brief of Weapons Collectors Society of Montana in Support of Plaintiffs (Dkt. No. 45), pp. 7-11; (3) State of Montana's Brief in Intervention (Dkt. No. 47), pp. 7-13; (4) Brief of the Paragon Foundation, Inc., as Amicus Curiae in Support of Plaintiffs and in Opposition to Motion to Dismiss (Dkt. 50), pp. 6-9; (5) Plaintiff's Response Brief in Opposition to Motion to Dismiss (Dkt. No. 51), pp. 23-28; (6) Amici Curiae Brief of Gun Owners Foundation, Gun Owners of America, Inc., and Virginia Citizens Defense League (Dkt. 54) pp. 1-14; (7) Brief Amicus Curiae of Center for Constitutional Jurisprudence and Lawmakers from 18 States in Opposition to Motion to Dismiss (Dkts. 56 and 58), pp. 5-11; (8) Brief of Amici Curiae Montana Legislators Opposing Defendant's Motion to Dismiss (Dkt. 64), pp. 4-20; and (9) Plaintiff's Response to Brief of Amicus Curiae Brady Center to Prevent Gun Violence, *et al.*, In Support of Defendant Eric H. Holder's Motion to Dismiss (Dkt. 85), pp. 2-9.

Such authority was not cited or argued in the briefs, or argued during oral argument, because it was promulgated after filing of the last brief concerning the motion to dismiss and after oral argument. *See* L.R. 7.4.

Dated this 4th day of August 2010.

Respectfully Submitted,
SULLIVAN, TABARACCI & RHOADES, P.C.

By: /s/ Quentin M. Rhoades
Quentin M. Rhoades
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CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of August, 2010, I served a true and correct copy of the foregoing on the following persons by the following means:

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