

Quentin M. Rhoades
State Bar No. 3969
SULLIVAN, TABARACCI & RHOADES, P.C.
1821 South Avenue West
Third Floor
Missoula, Montana 59801
Telephone: (406) 721-9700
Facsimile: (406) 721-5838
gmr@montanalawyer.com

Pro Querente

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

**MONTANA SHOOTING SPORTS
ASSOCIATION, SECOND
AMENDMENT FOUNDATION,
Inc., and GARY MARBUT,**

Plaintiffs,

v.

**ERIC H. HOLDER, JR.,
ATTORNEY GENERAL OF THE
UNITED STATES OF AMERICA,**

Defendant.

Cause No. **CV-09-147-M-DWM**

***PLAINTIFFS' LR 7.4 NOTICE OF
SUPPLEMENTAL AUTHORITY
(Massachusetts v. United
States DHHS)***

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., Attorney General of the United States of America ("Defendant") filed a motion to dismiss, which has been fully briefed. On July 8, 2010, the U.S. District Court for the District of Massachusetts decided *Commonwealth of Massachusetts v. U.S. Dept. Health and Human Services*, No. 1:09-11156-JLT (D. Mass. July 8, 2010). (See copy attached for the convenience of the Court and counsel.) In the opinion, the Court ruled:

This court has determined that it is clearly within the authority of the Commonwealth to recognize same-sex marriages among its residents, and to afford those individuals in same-sex marriages any benefits, rights, and privileges to which they are entitled by virtue of their marital status. The federal government, by enacting and enforcing [federal Defense of Marriage Act], plainly encroaches upon the firmly entrenched province of the state, and, in doing so, offends the Tenth Amendment. For that reason, the statute is invalid.

Id., p. 36.

Such authority bears on the issues raised in several briefs filed in response to Defendant's motion to dismiss. These include:

1. Amicus Curiae Brief of the Goldwater Institute, *et al.* (Dkt. No. 32), pp. 6-10;
2. Brief of Utah, Alabama, Idaho, South Carolina, South Dakota, West Virginia and Wyoming, as Amicus Curiae, in

- Opposition to Defendant's Motion to Dismiss (Dkt. No. 34), pp. 5-11;
3. Amicus Brief of Weapons Collectors Society of Montana in Support of Plaintiffs (Dkt. No. 45), pp. 7-11;
 4. State of Montana's Brief in Intervention (Dkt. No. 47), pp. 5-6;
 5. 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;
 6. *Amici Curiae* Brief of Gun Owners Foundation, Gun Owners of America, Inc., and Virginia Citizens Defense League (Dkt. No. 54), pp. 28-29;
 7. Brief Amicus Curiae of Center for Constitutional Jurisprudence and Lawmakers from 18 States in Opposition to Motion to Dismiss (Dkt. No. 58), pp. 3-5;
 8. Brief of Amici Curiae Montana Legislators Opposing Defendant's Motion to Dismiss (Dkt. No. 64), pp. 20-26.

Such authority was not cited or argued in the briefs because it was promulgated after filing of the last brief concerning the motion to dismiss.

See, L.R. 7.4.

Dated this 13th day of July, 2010.

SULLIVAN, TABARACCI & RHOADES, P.C.

By: /s/ Quentin M. Rhoades

Quentin M. Rhoades

Pro Querente

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of July, 2010, I served a true and correct copy of the foregoing on the following persons by the following means:

- 1 CM/ECF
- Hand Delivery
- 2 Mail
- Overnight Delivery Service
- Fax
- E-Mail

1. Jessica B. Leinwand
 U.S. DEPARTMENT OF JUSTICE
 Civil Division, Federal Programs
 P.O. Box 883
 Washington, D.C. 20044
 20 Massachusetts Avenue, NW
 Washington, D.C. 20530
 Representing Defendant Eric H. Holder, Jr.

1. James Edward Brown
 John E. Bloomquist
 DONEY CROWLEY BLOOMQUIST & PAYNE UDA, P.C.
 Diamond Block ,Suite 200
 44 West Sixth Avenue
 P.O. Box 1185
 Helena, MT 59624
 Representing Weapons Collectors Society of MT (Amicus)
 Representing Western Tradition Partnership (Amicus)

1. Mark L. Shurtleff
 OFFICE OF THE ATTORNEY GENERAL
 P.O. Box 142320
 Salt Lake City, UT 84114-2320
 Representing State of Utah & Other States (Amicus)

CERTIFICATE OF SERVICE
(continued)

1. Patrick T. Fox
DOUBEK & PYFER
P.O. Box 236
Helena, MT 59624
Representing State of Utah & Other States (Amicus)

1. Jeffrey T. Renz
CRIMINAL DEFENSE CLINIC
School of Law
32 Campus Drive
University of Montana
Missoula, MT 59812
Representing Montana Legislators (Amicus)

1. Jennifer W. Bordy
ATTORNEY AT LAW
7720 A Shedhorn Drive
PMB 132
Bozeman, MT 59718
Representing Montana Legislators (Amicus)

1. Duncan Scott
SCOTT & KIENZEL
1001 South Main Street
Kalispell, MT 59901
Representing Paragon Foundation, Inc. (Amicus)

2. Arthur V. Wittich
WITTICH LAW OFFICE
602 Ferguson Avenue
Suite 5
Bozeman, MT 59718
*Representing Center for Constitutional Jurisprudence
& Lawmakers from 17 States (Amicus)*

CERTIFICATE OF SERVICE
(continued)

1. Anthony T. Caso
LAW OFFICE OF ANTHONY T. CASO
8001 Folsom Blvd
Suite 100
Sacramento, CA 95826
*Representing Center for Constitutional Jurisprudence
& Lawmakers from 17 States (Amicus)*

1. Nicholas C. Dranias
GOLDWATER INSTITUTE
500 East Coronado Road
Phoenix, AZ 85004
*Representing Goldwater Institute Scharf-Norton
Center for Constitutional Gov't., et al. (Amicus)*

1. Timothy C. Fox
GOUGH SHANAHAN JOHNSON & WATERMAN
P.O. Box 1715
Helena, MT 59624-1715
*Representing Goldwater Institute Scharf-Norton
Center for Constitutional Gov't., et al. (Amicus)*

1. Chris D. Tweeten
OFFICE OF THE MONTANA ATTORNEY GENERAL
P.O. Box 201401
Helena, MT 59620-1401
*Representing Montana Attorney Gen
Steve Bullock (Intervenor)*

///

///

CERTIFICATE OF SERVICE
(continued)

1. Gregory A. Jackson
JACKSON LAW FIRM, P.C.
320 - 11th Avenue
Helena, MT 59601
*Representing Gun Owners Foundation, Gun Owners
of America, Inc. & Virginia Citizens Defense League*

2. Herbert W. Titus
William J. Olson
John S. Miles
Jeremiah L. Morgan
WILLIAM J. OLSON, P.C.
370 Maple Avenue West
Suite 4
Vienna, VA 22180-5615
*Representing Gun Owners Foundation, Gun Owners
of America, Inc. & Virginia Citizens Defense League*

1. Cynthia L. Wolken
P.O. Box 1222
Helena, MT 59624
*Representing Brady Center to Prevent Gun Violence; & Int'l
Brotherhood of Police Officers, et al.*

1. Gil N. Peles
PROSKAUER ROSE, LLP
2049 Century Park East
32nd Floor
Los Angeles, CA 90067-3206
Representing Brady Center to Prevent Gun Violence

///

///

CERTIFICATE OF SERVICE
(continued)

2. Paul M. Kienzle
Attorney At Law
P.O. Box 587
Albuquerque, NM 87103
Representing Paragon Foundation, Inc. (Amicus)

By: /s/ Quentin M. Rhoades
Quentin M. Rhoades