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*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  
(McDonald v. City of Chicago)***

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. Since the final briefs were submitted on the motion, however, the United States Supreme Court decided *McDonald v. City of Chicago*, \_\_\_ U.S. \_\_\_, \_\_\_ S.Ct. \_\_\_, 2010 WL 2555188 (U.S.), 78 USLW 4844 (June 28, 2010). It holds that the right to keep and bear arms guaranteed under the Second Amendment of the United States Constitution is "among those fundamental rights necessary to our system of ordered liberty." *Id.*, \*20. As a fundamental right, any infringement thereon, including the federal statutes at issue in the Second Amended Complaint, is unconstitutional. This authority supports the Second Amendment arguments set forth in the *Amici Curiae* Brief of Gun Owners Foundation, Gun Owners of America, Inc., and Virginia Citizens Defense League (Dkt. No. 54) at pages 17 through 28. Specifically, see, pp. 18, 25, 26, , 27 and 28.

Such authority also supports the distinctions raised in Plaintiffs' briefs with the authority of *Gonzales v. Raich*, 545 U.S. 1 (2005), and *U.S. v. Stewart*, 451 F.3d 1071 (9th Cir. 2006), because it makes a clear

distinction between the right to keep and bear arms at issue in this case and the right to smoke medical marijuana, as was at issue in *Raich*, which has never been held to be a fundamental right. In addition, it creates a clear distinction between this case and the holding in *Stewart*, because in *Stewart*, it was held – under now overruled authority – that the right to keep and bear arms was not an individual right, much less a “fundamental” one. Now, not only is the right to keep and bear arms an individual right, but it is a fundamental one. The authority relates specifically to the arguments set forth in Plaintiff’s Response Brief in Opposition to Motion to Dismiss (Dkt. No. 51), at pp. 24 to 28.

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 13<sup>th</sup> day of July, 2010.

Respectfully Submitted,  
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:

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