

COPY

1 ARTHUR V. WITTICH
Wittich Law Firm, P.C.
2 602 Ferguson Avenue, Suite 5
Bozeman, MT 59718
3 Telephone: (406) 585-5598
E-mail: artw@law-advisor.com

4
5 ANTHONY T. CASO, Cal. Bar No. 88561
Law Office of Anthony T. Caso
6 8001 Folsom Boulevard, Suite 100
Sacramento, California 95826
7 Telephone: (916) 386-4432
Facsimile: (916) 307-5164
8 E-Mail: tom@caso-law.com

9 Attorneys for Amici Curiae Center
for Constitutional Jurisprudence and
10 State Lawmakers

11
12 UNITED STATES DISTRICT COURT
13 FOR THE DISTRICT OF MONTANA
14 MISSOULA DIVISION

15
16 MONTANA SHOOTING SPORTS
ASSOCIATION, INC., *et al.*
17 Plaintiff,

18 v.

19 ERIC HOLDER, JR., *et al.*
20 Defendants.

Case No.: CV-09-147-M-DWM-JCL

21
22 }
23 } **APPLICATION OF CENTER FOR**
24 } **CONSTITUTIONAL**
25 } **JURISPRUDENCE AND**
26 } **LAWMAKERS FROM 17 STATES**
27 } **FOR LEAVE TO PARTICIPATE**
28 } **AS AMICUS CURIAE**

23 The Center for Constitutional Jurisprudence and the state lawmakers from 17
24 states move this Court for leave to participate as amici curiae in this matter and to file
25 brief amicus curiae in support of plaintiffs on the motion to dismiss.

26 The Center for Constitutional Jurisprudence is a nonprofit, public interest
27 organization dedicated to upholding the principles of the American Founding,
28 including the proposition that all powers not expressly conferred upon the Congress

1 were reserved for the States or the people. The Center has provided counsel for parties
2 at all levels of state and federal courts, and has participated as amicus curiae at both
3 the District Court and Supreme Court levels. The Center operates as a voice for
4 individuals and organizations seeking to exercise and protect their Constitutional
5 rights. The instant action is just such a case.

6 **Alaska** Senator Mike Kelly; **Colorado** Representatives Randy Baumgardner,
7 Laura K. Bradford, Cory Gardner, Steven A. King, Jerry Sonnenberg, Amy Stephens,
8 Mark Waller; Colorado Senators Greg Brophy, Bill Cadman, Ted Harvey, Keith King,
9 Mike Kopp, Kevin Lundberg, Shawn Mitchell, Mark Scheffel, Dave Schultheis;
10 **Idaho** Representative Eric Anderson, Clifford R. Bayer, Carlos Bilbao, Darrell Bolz,
11 Gary E. Collins, George E. Eskridge, Marge Chadderdon, Lawrence E. Denney,
12 Lenore Hardy, Stephen Hartgen, R.J. Dick Harwood, Rich Jarvis, Thomas F.
13 Loertscher, Him Marriott, M. Peter Nielsen, Joe A. Palmer, Ken Roberts, Robert E.
14 Schaefer, Erik Simpson, John A. Stevenson, Patrick A. Takasugi, Tom Trail, Fred
15 Wood, Jo An E. Wood; **Indiana** Senators Ron Alting, Jim Arnold, Richard D. Bray,
16 James R. Buck, Michael D. Delph, Randy Head, Jean Leising, Jim Lewis, James W.
17 Merritt, Jr., Johnny Nugent, Allen E. Paul, Tim Skinner, Brent Steele, Marlin A.
18 Stutzman, Greg Walker, D. Brent Waltz, John Waterman, Carlin Yoder, R. Michael
19 Young, Richard Young; **Michigan** Representatives David Agema, Justin Amash,
20 Terry L. Brown, Brian Calley, Hugh D. Crawford, Kevin Daley, Larry DeShavor,
21 John Espinoza, Bob Genetski, Gail Haines, Richard Hammel, Goeff Hansen, David
22 Hildenbrand, Rick Jones, Martin Knollenberg, Kenneth L. Kurtz, Richard LeBlanc,
23 Matt Lori, Pete Lund, James Marleau, Jeffrey C. Mayes, Gary McDowell, Kim
24 Meltzer, Thomas M. Miller, Tim Moore, Chuck Moss, Andrew W. Neumann, Paul
25 Opsommer, Phillip Pavlov, John M. Proos, Bill Rogers, Paul Scott, Joel Sheltroun;
26 Dudley Spade, Jim Stamas; **Minnesota** Representative Steve Drazkowski; **Missouri**
27 Representative Cynthia L. Davis; **New Hampshire** Representatives Daniel C. Itse,
28 Peyton B. Hinkle, Carol M. Vita; **Oklahoma** Representatives Don L. Armes, Gary W.

1 Banz, Lisa J. Billy, Marian Cooksey, Ann Coody, David Dank, David Derby, Dale
2 DeWitt, Rex Duncan, John Enns, Corey Holland, Jeff Hickman, Charlie Joyner, Sally
3 R. Kern, Charles D. Key, Guy H. Liebmann, Steve Martin, Scott C. Martin, Mark E.
4 McCullough, Skye McNiel, Lewis Moore, Jason Nelson, Leslie Osborn, Pat Ownbey,
5 Eric Procter, Wade Rousselot, Michael O. Reynolds, Phil Richardson, Jim Ritze, Todd
6 Russ, Mike Sanders, Daniel S. Sullivan, Sue Tibbs, Todd Thomsen, Paul Wesselhoft,
7 G. Harold Wright, John A. Wright; Oklahoma Senators Cliff Branan, Randy
8 Brogdon, James A. Reynolds, Steve Russell, Anthony Sykes; **Pennsylvania**
9 Representatives Scott Boyd, Michele Brooks, Martin Causer, Paul Clymer, Bryan
10 Cutler, Gordon Denlinger, Seth Grove, Rob Kauffman, Mark Keller, Dan Moul, Tina
11 Pickett, Kathy Rapp, Todd Rock, Sam Rohrer, Curtis Sonney, RoseMarie Swanger;
12 **South Dakota** Senators Corey W. Brown, Art Fryslie, Tom Hansen, Frank Kloucek,
13 Don Kopp, Ryan Maher, Al Novstrup, Jim Peterson, Larry Rhoden; South Dakota
14 Representatives Jason Frerichs, Brock L. Greenfield, Phil Jensen, Kent Juhnke, Mark
15 Kirkeby, David Novstrup, Tim Rounds, Lance S. Russell, Todd Schlekeway;
16 **Tennessee** Senator Mae Beavers; Tennessee Lieutenant Governor Ron Ramsey;
17 **Texas** Representative Leo Berman; **Utah** Senators Stuart Adams, Curt S. Bramble, D.
18 Chris Buttars, Allen Christensen, Margaret Dayton, Jon J. Greiner, David P. Hinkins,
19 Scott K. Jenkins, Peter C. Knudson, Dan Liljenquist, Mark Madsen, Wayne L.
20 Niederhauser, Ralph Okerland, Howard Stephenson, Jerry Stevenson, Dennis Stowell,
21 Stephen H. Urquhart, John L. Valentine, Kevin Van Tassell, Michael Waddoups;
22 **Virginia** Representative Bill Carrico; **Washington** Representative Matt Shea, Bill
23 Hinkle; **West Virginia** Senator Dave Sypolt; and **Wyoming** Representative Allen
24 Jaggi are co-sponsors or supporters of legislation similar to that under review in this
25 action. These legislators are vitally interested in this matter both on the subject matter
26 of the legislation, and the general principles of constitutional structure. These state
27 lawmakers also seek to protect the rights of their constituents and the voices of the
28 people of their state. Unless the federalist structure created in our Constitution is

1 upheld in this case, these legislators and their constituents will suffer significant injury
2 to their liberties.

3 The Center and the legislators believe the issue before this court is one of
4 particular importance to the notion of dual sovereignty and the preservation of States'
5 police power. The plan of the Constitution is one of enumerated powers, limiting the
6 reach of the federal government to those few areas of interest expressly granted by
7 Constitution. Those interests which the Constitution does not direct Congress to
8 regulate are left to the people and the states – a point made clear by the Tenth
9 Amendment. While the federal government has the power to regulate commerce
10 between the states, it does not have the authority to displace State governments' police
11 powers to regulate for the general welfare within state boundaries.

12 The people of the state of Montana have exercised their right under the plan of
13 the Constitution and the Tenth Amendment to control the purely intrastate activity of
14 production, sale and regulation of small firearms and ammunition. This is not a
15 regulation of interstate commerce. Instead this is a regulation of a purely instate
16 commercial activity. Congress does not have greater power under the Commerce
17 Clause to regulate a purely instate commercial activity because the commercial
18 activity involves the manufacture and distribution of small firearms.

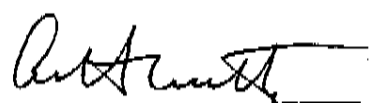
19 Amici believes that its participation will assist the Court by bringing to the Court
20 information about how the use of federal commercial regulation on purely instate
21 activities infringes upon the rights of the people and the states, in violation of the
22 notion of dual sovereignty.

23 WHEREFORE, Amici Center for Constitutional Jurisprudence and state
24 legislators of 17 states respectfully urge this Court to grant this application for leave to
25 participate as amici curiae in support of plaintiffs.

1 DATED this 8th day of April, 2010.

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Respectfully submitted,
ARTHUR V. WITTICH


Wittich Law Firm, P.C.

ANTHONY T. CASO
Law Office of Anthony T. Caso
Attorneys for Amici Curiae