

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,
and GARY MARBUT,**

Plaintiffs,

v.

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

Defendant.

Cause No. _____

COMPLAINT

Plaintiffs, Montana Shooting Sports Association, Second Amendment
Foundation, Inc., and Gary Marbut ("PLAINTIFFS"), by and through the

undersigned counsel of record, allege for their Complaint against Eric H. Holder, Attorney General of the United States of America (“DEFENDANT”), as follows:

1. Plaintiff Montana Shooting Sports Association (“MSSA”) is a non-profit corporation organized under the laws of the State of Montana. The purpose of MSSA is to “support and promote firearm safety, the shooting sports, hunting, firearm collecting, and personal protection using firearms, to provide education to its members concerning shooting, firearms, safety, hunting and the right to keep and bear arms, to own and or manage one or more shooting facilities for the use of its members and or others, to conduct such other activities as serves the needs of its members.” MSSA regularly lobbies the Montana Legislature, and its efforts were instrumental in the passage of the Montana statutes at issue in this civil action. MSSA has a genuine and viable interest in this case, as its goals and its existence depends upon the protection of the rights and interests of its members, and the enforcement of Montana law.

2. Plaintiff Second Amendment Foundation, Inc. (“SAF”), is a non-profit membership organization incorporated under the laws of Washington with its principal place of business in Bellevue, Washington.

SAF has over 650,000 members and supporters nationwide, including Montana. The purposes of SAF include promoting the exercise of the right to keep and bear arms, education, research, publishing and legal action focusing on the Constitutional right to privately own and possess firearms, and the consequences of gun control.

3. Plaintiff Gary Marbut is the President of MSSA, a citizen of the United States, and a resident of Missoula, Montana. Marbut is responsible for promoting and protecting the interests of MSSA and its members. Further, as an individual, Marbut desires to manufacture and sell small arms and small arms ammunition per the Montana Firearms Freedom Act.

4. Defendant, Eric H. Holder, Jr., is the appointed, qualified, confirmed, and acting Attorney General and head of the Department of Justice of the United States of America and, as such, is the official charged with administering the United States Bureau of Alcohol, Tobacco, Firearms and Explosives ("BATFE"), and enforcement of both the National Firearms Act ("NFA"), and the Gun Control Act of 1968 ("GCA"). DEFENDANT maintains his offices as Attorney General in the District of Columbia.

5. This is an action for declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202, and 18 U.S.C. § 925A and is brought for the

purpose of determining a question of actual controversy between the parties as more fully appears in the complaint below.

6. Jurisdiction of this action is based generally on 5 U.S.C. § 704 and 28 U.S.C. § 1331. Jurisdiction is expressly conferred on this court by 18 U.S.C. § 925A(2).

7. Venue for this action is proper pursuant to 28 U.S.C. § 1391(e) because Plaintiff resides in this district and no real property is involved in this action.

8. The Montana Firearms Freedom Act ("MFFA"), House Bill 246 of the 2009 Montana legislative session, whose language is incorporated herein by this reference, becomes effective today. Its scope is limited to activity occurring exclusively within the state of Montana.

9. The activity authorized under the MFFA is primarily political. It has a commercial element, but the purpose is to allow Montanans who wish to avoid interference by the United States government in their legitimate activity (specifically, manufacturing and selling small arms and small arms ammunition), to do so if they strictly confine such activity to the political boundaries of their own state. Although there are commercial elements to the statutory scheme, they are incidental to the material

purpose and function of the MFFA. Passage of the MFFA was an express exercise by the State of Montana of powers reserved to the states and to the people under the 10th Amendment of the United States Constitution. The MFFA is also authorized under the conditions of the compact with the United States that Montana entered upon admission to the union. The United States Congress therefore has no authority, under the limited powers granted to it by the United States Constitution, to preempt the MFFA.

10. PLAINTIFF MARBUT wishes to manufacture and sell small arms and small arms ammunition to customers exclusively in Montana, pursuant to the MFFA, without complying with the NFA or the GCA, or other applicable federal laws. MARBUT has sought permission and assurances from BATFE that he may proceed under MFFA without fear of criminal prosecution or civil sanction, so long as he strictly confines such activity to Montana.

11. PLAINTIFF MSSA and PLAINTIFF SAF have members, along with other Montana citizens, who wish to manufacture and sell small arms and small arms ammunition to customers in Montana, pursuant to the MFFA, without complying with the NFA or the GCA, or other applicable

federal laws.

12. Like PLAINTIFF MARBUT, other members of PLAINTIFF MSSA and PLAINTIFF SAF, and other Montana citizens, have sought permission and assurances from BATFE that they may proceed under MFFA without fear of criminal prosecution or civil sanction, sanction so long as he strictly confines such activity to Montana.

13. BATFE refuses to give permission to Marbut or anyone else to proceed under MFFA, and instead, on September 29, 2009, it issued a letter to Plaintiff Gary Marbut contending that "to the extent the [MFFA] conflicts with Federal firearms laws and regulations, Federal law supersedes the MFFA, and all provisions of the GCA and NFA, and their corresponding regulations, continue to apply." (See copy attached hereto as Exhibit A.) This is consistent with an "open letter" BATFE issued to the general public on July 16, 2009, warning that MFFA conflicts with federal firearms law and regulations, and that federal law therefore supersedes the MFFA. (See copy attached hereto as Exhibit B.)

14. As a result of BATFE'S actions in issuing its July 16, 2009, "open letter," and in its September 29, 2009, letter to PLAINTIFF MARBUT, and its refusal to give other Montana citizens assurances or permission to

exercise their rights under the MFFA, no Montanan who wishes to proceed under the MFFA can do so without fear of federal criminal prosecution and/or civil sanctions, including fines and/or forfeiture.

15. There is therefore a real and actual controversy between PLAINTIFFS and DEFENDANT regarding whether the United States Constitution confers power on Congress to regulate activities contemplated by the MFFA. Under the 10th Amendment, all regulatory authority of all such activities within Montana's political borders is left in the sole discretion of Montana. Federal law therefore does not preempt the MFFA and cannot be invoked to regulate or prosecute Montana citizens acting in compliance with the MFFA, so long as they do so solely within the political borders of Montana.

16. In addition, PLAINTIFFS face irreparable harm from DEFENDANT'S threat to enforce the NFA and/or the GCA and other federal laws and regulations through the prosecution of civil actions and criminal indictments against Montana citizens who proceed in compliance with MFFA. The threat of federal civil action and/or criminal prosecution faced under the circumstances effectively blocks PLAINTIFFS and all law abiding citizens from exercising their rights under and otherwise benefitting from

the MFFA, a wrong for which they have no adequate legal remedy at law.

REQUEST FOR RELIEF

PLAINTIFFS respectfully request:

A. A declaratory judgment pursuant to 28 U.S.C. § 2201 and Federal Rule of Civil Procedure 57 for the purpose of determining and adjudicating the questions of actual controversy between the parties as set forth above, that:

(i) The United States Constitution confers no power on Congress to regulate the special rights and activities contemplated by the MFFA;

(ii) Under the 10th Amendment of the United States Constitution, all regulatory authority of all such activities within Montana's political borders is left in the sole discretion of Montana; and

(iii) Federal law does not preempt the MFFA and cannot be invoked to regulate or prosecute Montana citizens acting in compliance with the MFFA.

B. A permanent injunction order enjoining DEFENDANT and any agency of the United States of America from prosecuting any civil action or criminal indictment or information under the NFA or the GCA, or any other federal laws and regulations, against PLAINTIFFS or other Montana citizens

acting, solely within the political borders of Montana, in compliance with the MFFA.

C. An order awarding to PLAINTIFFS costs and a reasonable attorney fee under the private attorney general doctrine.

D. PLAINTIFFS request such other and further relief as may be

///

///

proper in the circumstances.

DATED this ____ day of September, 2009.

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

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

