

1 MONTANA HUMAN RIGHTS NETWORK
Cynthia L. Wolken
2 cynthia.wolken@gmail.com
1316B Cooper St.
3 Missoula, MT 59802
406-465-3376

4 PROSKAUER ROSE LLP
5 Gil N. Peles
gpeles@proskauer.com
6 2049 Century Park East
32nd Floor
7 Los Angeles, California 90067-3206
Telephone: (310) 557-2900
8 Facsimile: (310) 557-2193

9 Attorneys for *Amicus Curiae*
10 *Brady Center to Prevent Gun Violence et al.*

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

15 MONTANA SHOOTING SPORTS
ASSOCIATION, NIC., et al.

16 Plaintiff,

17 vs.

18 ERIC H. HOLDER, JR., Attorney General
19 of the United States,

20 Defendant.
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Case No. 09-CV-147-M-DWM-JCL

**BRIEF OF *AMICUS CURIAE*
BRADY CENTER TO PREVENT
GUN VIOLENCE,
INTERNATIONAL
BROTHERHOOD OF POLICE
OFFICERS, HISPANIC
AMERICAN POLICE COMMAND
OFFICERS ASSOCIATION,
NATIONAL BLACK POLICE
ASSOCIATION, NATIONAL
NETWORK TO END DOMESTIC
VIOLENCE, MONTANANS
UNITED TO STOP GUN
VIOLENCE AND THE
MONTANA HUMAN RIGHTS
NETWORK IN SUPPORT OF
DEFENDANT ERIC H.
HOLDER'S MOTION TO
DISMISS**

**BRIEF OF *AMICUS CURIAE* BRADY CENTER TO PREVENT GUN VIOLENCE, INTERNATIONAL
BROTHERHOOD OF POLICE OFFICERS, HISPANIC AMERICAN POLICE COMMAND OFFICERS
ASSOCIATION, NATIONAL BLACK POLICE ASSOCIATION, NATIONAL NETWORK TO END
DOMESTIC VIOLENCE, MONTANANS UNITED TO STOP GUN VIOLENCE AND THE MONTANA
HUMAN RIGHTS NETWORK**

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1 The Brady Center to Prevent Gun Violence (the “Brady Center”) submits this
2 motion as *amicus curiae*, together with the groups listed below, in support of the
3 Motion to Dismiss of Defendant Eric H. Holder, Jr. (“Defendant”). Specifically,
4 this motion is submitted in support of Section III of Defendant’s Motion to Dismiss,
5 which argues that the United States Constitution vests Congress with power under
6 the Commerce Clause to regulate interstate and intrastate manufacture and sale of
7 firearms.

8 **STATEMENT OF INTEREST OF AMICUS CURIAE**

9 **Brady Center to Prevent Gun Violence**

10 The Brady Center to Prevent Gun Violence is a non-profit organization
11 dedicated to reducing gun violence through education, research, and legal advocacy.
12 The Brady Center has a substantial interest in ensuring that gun laws are properly
13 interpreted to allow strong government action to prevent gun violence. Through its
14 Legal Action Project, the Brady Center has filed numerous briefs *amicus curiae* in
15 cases relating to gun violence prevention and firearms laws, including in the recent
16 U.S. Supreme Court cases *District of Columbia v. Heller*, 128 S. Ct. 2783 (2008),
17 *United States v. Hayes*, 129 S. Ct. 1079 (2009), and *McDonald v. City of Chicago*,
18 Nos. 08-4241, 08-4243, 08-4244 (S. Ct.).

19 **International Brotherhood of Police Officers**

20 The International Brotherhood of Police Officers (“IBPO”) is one of the
21 largest police unions in the country, representing more that 50,000 members. The
22 IBPO fully supports and defends the Second Amendment right to keep and bear
23 arms, and also fully supports applicability of uniform federal laws to protect the
24 public and law enforcement officers by helping to keep dangerous weapons out of
25 the wrong hands.

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1 **Hispanic American Police Command Officers Association**

2 The Hispanic American Police Command Officers Association is the oldest
3 and largest association in the United States of Hispanic-American command officers
4 from law-enforcement and criminal-justice agencies.

5 **National Black Police Association**

6 The National Black Police Association represents approximately 35,000
7 individual members and more than 140 chapters.

8 **National Network to End Domestic Violence**

9 The National Network to End Domestic Violence (“NNEDV”) is a non-profit
10 membership organization devoted to remedying domestic violence through legal,
11 legislative, and policy initiatives. The members of NNEDV are the state coalitions
12 against domestic violence, who represent their states' local organizations that
13 provide shelter, advocacy, and legal and counseling services to survivors of
14 domestic violence. The member organizations of NNEDV collectively represent
15 thousands of organizations that have hundreds of years of experience working with
16 survivors of domestic violence, including undertaking extensive efforts to improve
17 the justice system's response to victims of domestic violence. NNEDV works daily
18 to protect the safety of survivors of domestic violence, and takes a leadership role
19 within the domestic violence field in providing training, education, litigation support
20 and legislative advocacy on numerous issues relating to domestic violence and
21 firearms.

22 **Montanans United to Stop Gun Violence**

23 Montanans United to Stop Gun Violence is a grassroots movement, formed to
24 demand an end to improper and often violent misuse of firearms--within our
25 communities, our state, and this nation. MUtSGV advocates for a strong and
26 effective response, consistent with our democratic values and with a basic

1 democratic principle: The right of individual gun ownership carries with it both
2 individual and societal responsibilities, to protect the safety and well-being of all of
3 our citizens from the misuse of these lethal weapons by an irresponsible minority of
4 those with access to them. MUtSGV supports this amicus brief and the legitimacy
5 of federal gun control laws in Montana.

6 **Montana Human Rights Network**

7 The Montana Human Rights Network (“MHRN”) is a grassroots,
8 membership-based organization of over 1400 members. In response to white
9 supremacist organizing in Montana in the late 1980s, local groups formed to counter
10 hate activity in their communities. In June of 1990, activists from these groups
11 came together to discuss effective strategies for statewide activity countering
12 bigotry. The result was a commitment to form the MHRN. Over the years, as hate
13 groups have appealed to the “hot-button” social issues of the mainstream, the
14 Network has expanded its program to counter the efforts of the militias, freemen and
15 other “patriots,” anti-Indian groups, anti-environmental activists, and the religious
16 right in Montana. The MHRN joins this amicus brief in support of the
17 government’s right to enact and enforce reasonable gun control laws.

18 **MEMORANDUM OF POINTS AND AUTHORITIES**

19 **I. STATEMENT OF ISSUE**

20 The Montana Firearms Freedom Act (“MFFA”), Mont. Rev. Code § 30-20-
21 101, *et. seq.*, purports to exempt Montana-made firearms and ammunition from
22 “federal law or federal regulation.” MCA § 30-20-104. The MFFA violates the
23 Supremacy Clause and poses a dangerous threat to public safety and national
24 security. Specifically the MFFA could:

- 25 • allow felons, domestic violence abusers, and the mentally ill to more easily
26 obtain firearms by exempting sales of Montana-made guns from the federal

1 Brady background check requirement that applies to all gun sales by licensed
2 dealers. 18 U.S.C. § 922(g),(t). Montana law does not require any
3 background check when a gun is sold.

4 • allow Montana-made handguns to be sold to, and possessed by, teenagers
5 14-18 years old who are barred by federal law from possessing handguns
6 when not supervised by an adult. 18 U.S.C. § 922(x). Montana law does not
7 prohibit teenagers 14 and over from possessing handguns unsupervised.

8 MCA § 45-8-344.

9 • allow the sale of dangerous firearms that can evade metal detectors by
10 exempting Montana-made guns from the federal Undetectable Firearms Act
11 of 1988, threatening airline safety and secured federal, state, and private
12 facilities. 18 U.S.C. § 922(p). Montana law does not require that firearms be
13 detectable by metal detectors.

14 • allow the manufacture of armor-piercing ammunition by exempting
15 Montana-made ammunition from the federal ban on the manufacture of this
16 dangerous ammunition. 18 U.S.C. § 922(a)(7)-(8). Montana law does not
17 prohibit the manufacture of ammunition that can pierce police body armor.

18 • allow the sale of virtually untraceable firearms – a bonanza for criminals
19 and gun traffickers – by exempting Montana-made guns from federal
20 requirements that firearms be stamped with serial numbers that identify
21 firearms so law enforcement can trace them to help solve gun crimes. 18
22 U.S.C. § 923(i). Montana law does not require that firearms be stamped with
23 serial numbers.

24 • allow the sale of Montana-made guns without gun dealer records which
25 are used when law enforcement is attempting to trace a crime gun to its
26 purchaser to solve gun crimes and stop gun-traffickers. 18 U.S.C. § 923(g).

1 Because federal law does not allow the government to maintain records of
2 gun ownership, 18 U.S.C. § 926, law enforcement generally can only trace a
3 crime gun by using gun dealer records to determine the gun's purchaser.

4 Montana law does not require gun dealers to keep any record of gun sales.

5 • allow persons to engage in the business of selling Montana-made guns
6 even if they have willfully violated federal gun laws, by exempting them
7 from federal law allowing the revocation of gun dealer licenses for willful
8 gun law violations. 18 U.S.C. § 923(e). Montana law does not require a
9 license to sell guns and does not prohibit willful violators of gun laws from
10 engaging in the business of selling guns.

11 • allow the possession of Montana-made guns in federal facilities located in
12 Montana if the MFFA's exemption from "federal law" includes an exemption
13 from the federal ban on firearms in federal facilities, which would pose a
14 threat to national security. 18 U.S.C. § 930. Montana law does not ban the
15 possession of firearms in federal facilities.

16 The MFFA operates from the false premise that the sale and distribution of
17 firearms can occur in an intrastate vacuum. As Congress has found, however, all
18 firearms have an effect on interstate commerce and nationwide gun trafficking, and
19 nearly all have been sold or transported in interstate commerce or contain
20 components or accessories that have been so sold or transported.

21 In particular, by exempting Montana-made ammunition and firearms from the
22 federal restrictions on armor-piercing ammunition and on firearms undetectable by
23 metal detectors, and allowing the sale of firearms without serial numbers, without
24 conducting background checks, and without keeping any record of sale allowing
25 guns to be traced, Montana-made guns will be much more likely to be sought after
26 by criminals and used in crimes nationwide. Gun traffickers, will likely seek out

1 virtually untraceable Montana-made firearms, fueling the illegal interstate gun
2 trafficking trade. Likewise, with about a half million firearms stolen from homes
3 nationwide each year,¹ stolen Montana-made guns will likely be trafficked interstate
4 to criminals who will particularly prize guns that have no serial number or record of
5 sale. Thus, the MFFA would severely undermine federal efforts to prevent
6 nationwide gun violence and interstate gun trafficking. It would undermine a core
7 purpose of the Gun Control Act of 1968, which was “to provide for better control of
8 the interstate traffic in firearms.” PL 90-618, October 22, 1968, 82 Stat. 1213 (Oct.
9 22, 1968).

10 Even the MFFA implicitly acknowledges that firearms are almost always
11 inherently the products of interstate commerce by purporting to exempt from
12 Congressional power the ability to regulate “firearms accessories” or parts necessary
13 to manufacture firearms. *See* MFFA § 4 (“[A] firearm accessory, or ammunition
14 that is manufactured in Montana from basic materials and that can be manufactured
15 without the inclusion of any significant parts imported from another state.”) Yet,
16 even aside from the severe nationwide impact of gun violence and gun trafficking,
17 the fact that nearly all firearms travel interstate or are made from components that
18 travel interstate demonstrates the interstate character of commerce in firearms.

19 Due to the inherently interstate nature of firearms, acknowledged repeatedly
20 by Congress, the federal government has ample authority to regulate such weapons
21 with a uniform set of federal laws, regardless of where the guns are made or
22 intended to be initially sold. As explained below, the MFFA’s evasion of federal
23 law would allow individuals to circumvent background checks and dealer licensing
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26 ¹ Department of Treasury, Bureau of Alcohol, Tobacco, Firearms and Explosives: *Following the*
27 *Gun: Enforcing Federal Law Against Firearms Traffickers*. Washington, DC; Department of the
Treasury, 2000, p.41.

1 requirements, and provide easy firearm access to criminals and convicted domestic
2 violence abusers.

3 All told, the MFFA would allow an unlicensed seller to sell unlimited
4 numbers of Montana-made firearms and armor-piercing ammunition to any buyer in
5 all cash, untraceable transactions, without background checks or records of sale.
6 Because Montana has no requirement that gun purchasers even give their name to
7 gun sellers, these nearly anonymous transactions would be highly attractive to
8 criminals and interstate gun traffickers. Even if federal authorities were able to
9 somehow trace crime guns back to this seller, they would be virtually powerless to
10 stop continued gun sales by this unlicensed dealer. The MFFA would pose a clear
11 threat to federal and other states' law enforcement's ability to protect the public
12 from gun violence, solve gun crimes, and stop gun trafficking. Such a result would
13 threaten the safety of citizens nationwide. The law must be invalidated.

14 **II. ARGUMENT**

15 **A. The Constitution Grants Congress Authority to Regulate the Sale** 16 **and Distribution of Firearms.**

17 The Constitution grants Congress the authority, without limitation, “[t]o
18 regulate commerce . . . among the several States.” U.S. Const. art. I, § 8, cl. 3. The
19 Supreme Court has repeatedly recognized that “[t]he power of Congress to regulate
20 interstate commerce is plenary and extends to all such commerce be it great or
21 small.” *Hodel v. Indiana*, 452 U.S. 314, 321 (1981) (quoting *NLRB v. Fainblatt*,
22 306 U.S. 601, 606 (1939)); accord *Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1, 196
23 (1824). Thus, “state action cannot circumscribe Congress’ plenary commerce
24 power.” *Gonzales v. Raich*, 545 U.S. 1, 29 (2005).

25 It is well-established that Congress may regulate even purely local activities
26 under the Commerce Clause, as augmented by the Necessary and Proper Clause,

1 wherever such activities “so affect interstate commerce, or the exertion of power of
2 Congress over it, as to make regulation of them appropriate means to the attainment
3 of a legitimate end.” *United States v. Wrightwood Dairy Co.*, 315 U.S. 110, 119
4 (1942). As Justice Jackson, speaking for a unanimous Court, explained in *Wickard*
5 *v. Filburn*:

6 [E]ven if appellee’s activity be local and though it may not be
7 regarded as commerce, it may still, whatever its nature, be reached by
8 Congress if it exerts a substantial economic effect on interstate
9 commerce, and this irrespective of whether such effect is what might
at some earlier time have been defined as “direct” or “indirect.”

10 317 U.S. 111, 125, 128-29 (1942) (Congress may set quotas limiting local wheat
11 production because “[h]omegrown wheat . . . competes with wheat in commerce”).

12 Recently, in *Gonzales v. Raich*, the Supreme Court upheld a federal law that
13 criminalized the intrastate manufacture and use of controlled substances even if they
14 are recommended by a physician for purely local, medicinal use and never enter
15 interstate commerce. The Court reiterated that, “[o]ur case law firmly establishes
16 Congress’ power to regulate purely local activities that are part of an economic
17 ‘class of activities’ that have a substantial effect on interstate commerce.” *Gonzales*,
18 545 U.S. at 17. Furthermore:

19 We have never required Congress to legislate with scientific
20 exactitude. When Congress decides that the ‘total incidence’ of a
21 practice poses a threat to a national market, it may regulate the entire
22 class. . . . [W]hen ‘a general regulatory statute bears a substantial
relation to commerce, the *de minimis* character of individual instances
arising under that statute is of no consequence.’

23 *Id.*, quoting *Perez v. United States*, 402 U.S. 146, 154-55 (1971). Accordingly, so
24 long as “the class of activities is regulated and that class is within the reach of
25 federal power” under the Commerce Clause, “the courts have no power ‘to excise,
26 as trivial, individual instances’ of the class.” *Perez*, 402 U.S. at 154 (citation

1 omitted).² Just as the Court has found that Congress has the power to regulate
2 intrastate production and use of wheat and drugs, Congress certainly also has the
3 power to regulate firearms.

4 **B. The Sale and Distribution of Firearms Cause a Substantial**
5 **Economic Effect on Interstate Commerce.**

6 Congress has long recognized that the manufacture, sale, and possession of
7 firearms substantially affects interstate commerce. Nationwide, nearly 110,000
8 people are shot each year, with more than 30,000 dead from gunfire.³ The costs to
9 the nation from gun trafficking and gun violence are about \$100 billion per year.⁴
10 Annually, more than 42,000 guns cross state lines before being recovered in crimes,
11 and most of these guns flow from states with weaker gun laws to states with
12 stronger gun laws.⁵ Indeed, “states that have strong illegal gun regulations have
13 significantly lower crime gun export rates, on a per capita basis, than states with
14 comparatively weak illegal gun regulations.”⁶ In order to stem this flow of guns
15 across state lines, Congress has established minimum federal standards for gun
16 manufacturing, sale, and possession.

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19 ² The Court has thus recognized that Congress has the authority under the Commerce Clause to
20 prohibit racial discrimination even by restaurants not frequented by interstate travelers in order to
21 eliminate obstacles to interstate travel by black citizens, *Katzenbach v. McClung*, 379 U.S. 294,
22 300-02 (1964); to proscribe “[e]xtortionate credit transactions, though purely intrastate,” because
23 “there is a tie-in between local loan sharks and interstate crime,” *Perez*, 402 U.S. at 154-55; and to
24 protect farmland from surface coal mining in order to prevent “losses in agricultural productivity”
25 that “affect[] interstate commerce in agricultural products,” *Hodel v. Indiana*, 452 U.S. at 324-26.

26 ³ National Center for Injury Prevention and Control, Web-based Injury Statistics Query and
27 Reporting System (2006 (deaths) and 2008 (injuries)).

28 ⁴ See Phillip J. Cook & Jens Ludwig, *Gun Violence: The Real Costs*, Oxford University Press, at
117 (2000); See also Wendy Max & Dorothy P. Rice, *Data Watch: Shooting In The Dark:
Estimating The Cost of Firearm Injuries*, *Health Affairs* (Winter 1993) 171, 181.

⁵ *Mayors Against Illegal Guns, The Movement of Illegal Guns in America* (2008) at 5-6 (citing
Department of Treasury, Bureau of Alcohol, Tobacco, Firearms, and Explosives.

⁶ *Id.* at 20.

1 Thus, Congress has regulated firearms that are manufactured, sold, and
2 shipped and possessed in or affecting interstate commerce. *See, e.g.*, 18 U.S.C. §
3 922 *et seq.* Indeed, Congress has found that simple possession of a firearm can
4 “affect[] commerce,” e.g., 18 U.S.C. § 922(g),(h). Some of the many Congressional
5 findings concerning the impacts of firearms on interstate commerce recognize that:

- 6 • “there is a widespread traffic in firearms moving in or otherwise affecting
7 interstate or foreign commerce”. Pub. L. No. 90-351, § 901(a)(1), 82 Stat.
8 225 (1968).
- 9 • “crime at the local level is exacerbated by the interstate movement of
10 drugs, guns, and criminal gangs” 18 U.S.C. § 922(q)(1)(B)
- 11 • “firearms and ammunition move easily in interstate commerce and have
12 been found in increasing numbers in and around schools . . .” 18 U.S.C. §
13 922(q)(1)(C)
- 14 • “even before the sale of a firearm, the gun, its component parts,
15 ammunition, and the raw materials from which they are made have
16 considerably moved in interstate commerce” 18 U.S.C. § 922(q)(1)(D)
- 17 • “while criminals freely move from State to State, ordinary citizens and
18 foreign visitors may fear to travel to or through certain parts of the country
19 due to concern about violent crime and gun violence, and parents may
20 decline to send their children to school for the same reason.” 18 U.S.C.
21 § 922(q)(1)(E)

22 Gun possession affects interstate commerce in multiple ways. It is the rare
23 firearm that has not been sold or transported in interstate commerce, or that does not
24 contain components that have been so sold or transported.⁷ Moreover, after they are

25 _____
26 ⁷ The data from a report prepared by Senator Charles Schumer (NY) (*The War between the States:
27 How Gunrunners Smuggle Weapons Across America*, 1997) illustrates how big a problem
28 gunrunning has become. For this report, Senator Schumer analyzed raw data from the ATF

1 purchased, firearms flow freely across state borders. But guns have their most
2 significant impact on interstate commerce when they are used to kill, to injure, to
3 intimidate and to commit other crimes. The possession of a firearm is, of course, an
4 essential first step in the use of a firearm. And firearms are used against human
5 beings hundreds of times each day in the United States. The costs of this gun
6 violence -- not only in human terms, but also in economic terms -- are devastating to
7 American society. These costs justify a congressional conclusion that the purchase
8 and possession of firearms has a substantial effect on interstate commerce.⁸

9 The total annual cost of firearm injuries, including lost earnings, pain,
10 disability, and the costs of lost life, reach a staggering aggregate economic cost to
11 American society approaching \$100 billion annually.⁹ And of course firearms are
12 capable of grave interstate affects; a gun made, bought, and sold in Montana by a
13 Montana resident may be used to shoot residents of other states, even when they are
14 across the border.

15 All of these costs associated with gun violence appropriately may be
16 considered in determining the nexus between gun possession and interstate
17 commerce. As *Wickard v. Filburn* made clear, the relevant inquiry is whether the
18 regulated activity may be deemed to have “a substantial economic effect on
19 interstate commerce,” not whether the effect is “direct” or “indirect.” 317 U.S. at

20 regarding the 47,068 guns traced in 1996 to show that states with weak gun laws are far more
21 often the source of guns used in crimes committed in states with strong laws than the reverse.
22 ⁸ In 2007, the ten states with the weakest gun laws supplied more than half of the guns that crossed
23 state lines before being recovered in crimes. The Bureau of Alcohol, Tobacco, Firearms and
24 Explosives (ATF) trace data shows that 42,500 guns crossed state lines before being recovered in
25 crimes in 2007. For 34,127 of these guns, ATF identified the state where the guns were originally
26 purchased. Just ten states accounted for 57% of the guns. Mayors Against Illegal Guns, *The*
27 *Movement of Illegal Guns in America* (2008) at 5-6 (citing Department of Treasury, Bureau of
28 Alcohol, Tobacco, Firearms, and Explosives. *Following the Gun: Enforcing Federal Law*
Against Firearm Traffickers, Department of the Treasury, 2000, p. 23).

⁹ Phillip J. Cook & Jens Ludwig, *Gun Violence: The Real Costs*, Oxford University Press, at 117
(2000).

1 125. In much the same manner that the loan sharking in *Perez v. United States*
2 affected interstate commerce by providing organized crime with the means by which
3 to “finance its national operations,” 402 U.S. at 157, gun possession affects
4 interstate commerce by providing individuals with the means by which to commit
5 the killings, assaults and other violent crimes that so severely tax the national
6 economy.

7 The costs of gun violence to our nation provide an ample factual basis for a
8 Congressional conclusion that firearm possession has the requisite effect on
9 interstate commerce. Any activity whose annual consequences impose costs of
10 about \$100 billion annually on individuals, insurance companies and federal, state
11 and local governments necessarily “is ‘commerce which concerns more States than
12 one’ and has a real and substantial relation to the national interest.” *Heart of*
13 *Atlanta Motel v. United States*, 379 U.S. 241, 255 (1964). Moreover, victims of
14 firearm injuries travel from one state to another to obtain medical and rehabilitative
15 services; pharmaceuticals, medical supplies and equipment to care for these
16 individuals also are transported in interstate commerce; and sums of money are
17 transferred across state lines from private insurers and government agencies to
18 hospitals, physicians, disabled victims and others.

19 Gun possession and consequent gun violence also affect commerce for many
20 of the same reasons that other activity has been found to affect commerce. They
21 “exact[] millions from the pockets of people,” *Perez*, 402 U.S. at 156, as a result of
22 crimes committed by persons wielding firearms. They “degrad[e] the quality of life
23 in local communities” by turning streets, parks and even schools into battle zones,
24 “damag[e] the property of citizens” and “deter[] professional, as well as skilled,
25 people from moving into [certain] areas . . . and thereby caus[e] industry to be
26 reluctant to establish there.” *Hodel v. Virginia Surface Mining & Reclamation*

1 *Ass'n*, 452 U.S. 264, 277 (1981); *Katzenbach v. McClung*, 379 U.S. at 300. They
2 also “counteract[] governmental programs and efforts,” *Hodel*, 452 U.S. at 277, in
3 such fields as crime control, public health, urban development and education.

4 **C. Federal Laws that Regulate the Sale and Distribution of Firearms**
5 **are Fundamental to Public Safety.**

6 Beginning with the National Firearms Act of 1934, Congress has regulated
7 the sale and distribution of firearms. Federal regulations prevent the sale of certain
8 types of particularly dangerous weapons and accessories, disallow criminals and
9 domestic violence abusers from obtaining weapons, and prevent children from
10 obtaining firearms. By seeking to avoid federal regulations that establish minimum
11 standards to keep deadly firearms away from dangerous criminals and individuals
12 who may misuse them, the MFFA threatens to jeopardize the ability of federal and
13 state governments and law enforcement to promote public safety and protect
14 communities from gun violence.

15 **1. National Firearms Act (1934) (26 U.S.C. § 5801)**

16 In 1934 Congress enacted the National Firearms Act (“NFA”)¹⁰ in an effort to
17 target “lethal weapons. . . [that] could be used readily and efficiently by criminals or
18 gangsters.”¹¹ Thus the NFA was directed towards the regulation of machine guns,
19 sawed-off shotguns and rifles, silencers, and certain concealable firearms.¹² The
20 NFA required parties manufacturing or transferring such “firearms”¹³ to submit an
21 application for the transaction, thereby taxing such activities and seeking to ensure

22 ¹⁰ Pub. L. No. 73-474, 48 Stat. 1236 (1934) (codified as amended at 26 U.S.C. §§ 5801-5881
23 (1988)).

24 ¹¹ H.R. Rep. No. 1337, 83d Cong., 2d Sess. (1954), 1954 U.S.C.C.A.N. 4025, 4542.

25 ¹² See National Firearms Act: Hearings on H.R. 9066 before the House Comm. on Ways and
26 Means, 73d Cong., 2d Sess. 1-3 (1934).

27 ¹³ The NFA defines “firearm” to include a shotgun having a barrel length of less than 18 inches or
28 a weapon made from a shotgun with an overall length of less than 26 inches, a rifle having a barrel
length of less than 16 inches or a weapon made from a rifle with an overall length of less than 26
inches, a machinegun, a silencer, and a destructive device; it excludes an antique firearm from the
definition. 26 U.S.C. § 5845.

1 that criminals do not obtain these weapons.¹⁴ The Act also required that firearms be
2 registered to aid the tracing of crime guns back to their owner or purchaser.¹⁵ The
3 MFPA would threaten these longstanding federal regulations, exempting some
4 Montana-made weapons from federal laws that severely restrict the sale and
5 possession of these dangerous weapons.

6 **2. Gun Control Act of 1968 (18 U.S.C. § 921)**

7 In the wake of several highly publicized violent crimes involving firearms,
8 including the assassinations of President John F. Kennedy and Martin Luther King,
9 Jr., and the shooting of Medgar Evers,¹⁶ Congress understood that any truly effective
10 firearm measure would have to control the sale of firearms nationwide to prevent
11 dangerous people from arming themselves with deadly weapons.¹⁷ Thus in 1968,
12 Congress sought to curb growing use of firearms in violent crimes¹⁸ via the Gun
13 Control Act of 1968 (“GCA”).¹⁹ To accomplish this, the legislation sought to
14 “strengthen Federal controls over interstate and foreign commerce in firearms and []
15 assist the States effectively to regulate firearms traffic within their borders.”²⁰

16 In order to strengthen Federal controls over interstate and foreign commerce
17 in firearms to better assist State regulation of firearms traffic within State borders,
18 the Act ensured that many “firearms were channeled through federally licensed
19 dealers to eliminate mail order purchases and the generally widespread commerce in
20

21 ¹⁴ See 26 U.S.C. §§ 5811-22.

22 ¹⁵ 26 U.S.C. § 5841.

23 ¹⁶ H.R. Rep. No. 1577, 90th Cong., 2d Sess. (1968), reprinted in 1968 U.S.C.C.A.N. 4410, 4413,
4426 (commenting on incidents which should have been subject to stricter controls).

24 ¹⁷ H.R. Rep. No. 1577, 90th Cong., 2d Sess. (1968), reprinted in 1968 U.S.C.C.A.N. 4410, 4413
(noting incidents involving rifles or shotguns that have been cited to further illustrate demand for
more restrictive transactions).

25 ¹⁸ See H.R. Rep. No. 1577, 90th Cong., 2d Sess. (1968), reprinted in 1968 U.S.C.C.A.N. 4410,
4413 (listing violence statistics for thirteen months ending September, 1967).

26 ¹⁹ H.R. Rep. No. 1577, 90th Cong., 2d Sess. (1968), reprinted in 1968 U.S.C.C.A.N. 4410, 4411.

27 ²⁰ *Huddleston v. United States*, 415 U.S. 814, 824 (1974) (quoting S. Rep. No. 1501, 90th Cong.,
2d Sess. 22 (1968)).

1 them.”²¹ The Act barred the sale of firearms to dangerous people, including felons,
2 the mentally ill, and fugitives from justice. 18 U.S.C. § 922(g).

3 In addition to providing a more effective licensing system for firearms, the
4 GCA contained recordkeeping requirements to help ensure that prohibited persons
5 did not obtain firearms. Also included, were marking requirements, e.g., serial
6 numbers, to create a chain of custody and thereby “combat crime” and “assist” law
7 enforcement.²² Congress also used the GCA to grant the Bureau of Alcohol,
8 Tobacco, Firearms and Explosives the authority to investigate criminal and
9 regulatory violations of both the NFA and the GCA.²³ The MFFA purports to
10 exempt Montana-made weapons from the minimum standards set by the GCA that
11 have helped law enforcement prevent gun violence and interstate gun trafficking for
12 more than four decades.

13 **3. Brady Handgun Violence Prevention Act (1993) (18 U.S.C. §** 14 **922)**

15 With gun violence, as well as the accompanying societal and economic costs,
16 reaching new heights,²⁴ Congress enacted the Brady Handgun Violence Prevention
17 Act (“Brady Act”) in 1993.²⁵ Like the GCA, the Brady Act addresses the
18 nationwide scourge of gun violence by restricting access to guns by dangerous
19 people.²⁶ This is accomplished, in part, by the establishment of a Brady background
20 check system whereby background checks are conducted by gun dealers at the point

21 ²¹ S. Rep. No. 1501, 90th Cong., 2d Sess. 22 (1968).

22 ²² *United States v. Mobley*, 956 F.2d 450, 454 (3d Cir. 1992).

23 ²³ 28 U.S.C. § 599A.

24 ²⁴ See H.R. Rep. No. 324, 103d Cong., 2d Sess. 6 (1994), reprinted in 1994 U.S.C.C.A.N. 1802,
1803 (*citing* U.S. Dep’t of Justice, Federal Bureau of Investigation, Bureau of Justice Statistics
25 Sourcebook of Criminal Justice Statistics -- 1992 at 357 and U.S. Dep’t of Justice, Federal Bureau
26 of Investigation, Uniform Crime Reports for the United States 1992 at 10). See S. Rep. No. 1097,
90th Cong., 2d Sess. (1968), reprinted in 1968 U.S.C.C.A.N. 2112, 2116. See *Firearm Injuries*
Cost \$20 Billion a Year-Study, Reuters, Jan. 7, 1994, available in LEXIS, News Library, Current
27 News File.

28 ²⁵ 18 U.S.C. § 922(s) (Supp. V 1993).

²⁶ See 18 U.S.C. § 922(s)(3)(B)(i)-(vii) (Supp. V 1993).

1 of purchase.²⁷ Thus, pursuant to the Brady Act, the Attorney General established
2 and maintains the National Instant Criminal Background Check System (NICS)
3 within the FBI.²⁸ The Brady Act authorizes NICS to issue a denial of a gun
4 purchase if it has concluded “that the receipt of a firearm” by the prospective
5 transferee “would violate” federal or state law.²⁹ Alternatively, NICS must issue a
6 “proceed” if it has concluded that such receipt “would not violate” federal or state
7 law.³⁰ Gun dealers may sell a firearm to a buyer if NICS transmits a “proceed”
8 response or if three business days have elapsed since the background check was
9 begun. 18 U.S.C. § 922(t). Brady background checks have contributed to a historic
10 decline in lethal assaults by blocking 1.8 million attempts by high-risk people to buy
11 a gun from a licensed gun dealer.³¹ The MFFA would exempt Montana-made guns
12 from Brady background checks, making it much easier for guns to be purchased by
13 dangerous people prohibited by federal law from possessing guns.

14 **4. Domestic Violence Offender Gun Ban (1996) (18 U.S.C. §**
15 **922(g)(9))**

16 The Domestic Violence Offender Gun Ban³² was an amendment to the
17 Omnibus Consolidated Appropriations Act of 1997.³³ The Act is often referred to as
18 “the Lautenberg Amendment” after its sponsor, Senator Frank Lautenberg.
19 Congress enacted the Lautenberg Amendment to prevent dangerous domestic
20 violence abusers from having access to firearms. Allowing convicted domestic
21 violence abusers to arm themselves with firearms both jeopardizes abusers’ family
22 members, but also places law enforcement officers at a heightened risk of death or

23 ²⁷ Brady Handgun Violence Prevention Act, 18 U.S.C. § 922(s) (Supp. 1993).

24 ²⁸ See 28 C.F.R. Part 25(A) (2006).

25 ²⁹ 18 U.S.C. § 922(t)(1)(B)(ii) (emphasis added).

26 ³⁰ 18 U.S.C. § 922(t)(2) (emphasis added).

27 ³¹ Department of Justice. Bureau of Justice Statistics, Background Checks for Firearm Transfers, 2008: Statistical Tables (August 2009) (Table 1).

28 ³² Pub. L. 104-208, 18 U.S.C. § 922(g)(9).

³³ Pub. L. No. 104 - 208, 110 Stat. 1303; 18 U.S.C. § 841.

1 injury, causing a nationwide public safety issue. Indeed, the Supreme Court
2 recently upheld a broad interpretation of this law, declaring that “[f]irearms and
3 domestic strife are a potentially deadly combination nationwide.” *United States v.*
4 *Hayes*, 129 S. Ct. 1079, 1087 (2009).

5 Because domestic violence is a pervasive national epidemic, the Lautenberg
6 Amendment was enacted to establish a “zero tolerance when it comes to guns and
7 domestic violence.”³⁴ As stated by Senator Lautenberg, “the amendment would
8 prohibit any person convicted of domestic violence from possessing a firearm.”³⁵
9 Senator Lautenberg emphasized that the Amendment ensures “that a spouse abuser,
10 wife beater, or child abuser should not have a gun.”³⁶

11 The statute was passed to address “an estimated 2 million women [who] are
12 victimized by domestic violence.”³⁷ The presence of a gun in a violent home
13 substantially elevates the risk that domestic violence will turn deadly.³⁸ When
14 domestic violence incidents involve a firearm, the abuse is twelve times more likely
15 to result in death compared to abuse incidents that do not involve a firearm.³⁹ In
16 addition, allowing domestic violence abusers to access firearms is especially
17 dangerous for law enforcement, with 14% of police officer deaths nationwide
18 occurring during a response to domestic violence calls.⁴⁰ The MFFA would
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21 ³⁴ 142 Cong. Rec. S11872-01, 11878 (1996).

22 ³⁵ 142 Cong. Rec. S11872-01, 11878 (1996).

23 ³⁶ 142 Cong. Rec. S11872-01, 11878 (1996).

24 ³⁷ 142 Cong. Rec. S10379-01, 10380 (1996).

25 ³⁸ Shannon Frattaroli & Jon S. Vernick, *Separating Batterers and Guns*, 30 *Evaluation Rev.* 296
26 (2006); Emily F. Rothman et al, *Gun Possession Among Massachusetts Batterer Intervention*
27 *Program Enrollees*, *Evaluation Review Vol. 30 No. 3*, 283 (June 2006).

28 ³⁹ *Id.*

⁴⁰ National Law Enforcement Officers Memorial Fund, *Domestic Violence Takes a Heavy Toll on*
the Nation’s Law Enforcement Community, available at
<http://www.nleomf.com/media/press/domesticviolence07.htm>.

1 endanger domestic violence abuse victims and law enforcement by exempting
2 Montana-made guns from this law.

3 **5. Juvenile Firearm Possession Ban (1994) (18 U.S.C. § 922)**

4 By 1994, Congress realized that it was necessary to prohibit the sale of
5 handguns to, and the possession of handguns by, juveniles.⁴¹ Spurring this
6 realization was, among other things, an awareness that juvenile crime, which often
7 involves both guns and drugs, was a pervasive, nationwide problem that could not
8 be solved at the local level alone. Youth in our nation suffer a “rate of firearm
9 trauma that is the highest in the industrialized world,” such that fatal firearm injuries
10 are the second-leading cause of death for ages 1-19.⁴² Studies have shown that
11 access to firearms is the main factor leading to these firearms deaths and injuries.⁴³

12 Congress realized that violent crime resulting from juvenile handgun use went
13 “hand-in-hand”⁴⁴ with the use of illicit drugs. To attempt to control one without
14 controlling the other, Congress concluded, would be fruitless.⁴⁵ Congress also
15 understood that guns, illegal drugs, and criminal gangs were able to move easily
16 across state lines.⁴⁶ This mobility, Congress concluded, allowed juveniles easy
17 access to handguns, created an environment that allowed those juveniles to become
18 violent criminals, and created a mentality that considered the random use of
19 handguns to be acceptable.⁴⁷

20 Moreover, this mobility prevented states from successfully targeting these
21 illegal activities: “[i]ndividual States and localities find it impossible to handle the

22 ⁴¹ See H.R. Rep. No. 103-711, at 390-91 (1994), reprinted in 1994 U.S.C.C.A.N. 1839, 1858-59.

23 ⁴² Judy Muman, Joseph A. Dake, James H. Price, Association of Selected Risk Factors with
24 Variation in Child and Adolescent Firearm Mortality by State, *Journal of School Health* (Oct.
2004).

25 ⁴³ *Id.*

26 ⁴⁴ See H.R. Rep. No. 103-711, at 390-91 (1994), reprinted in 1994 U.S.C.C.A.N. 1839, 1858.

27 ⁴⁵ See H.R. Rep. No. 103-711, at 390-91 (1994), reprinted in 1994 U.S.C.C.A.N. 1839, 1858-59.

28 ⁴⁶ See H.R. Rep. No. 103-711, at 390-91 (1994), reprinted in 1994 U.S.C.C.A.N. 1839, 1858.

⁴⁷ See H.R. Rep. No. 103-711, at 390-91 (1994), reprinted in 1994 U.S.C.C.A.N. 1839, 1858.

1 problem by themselves; even States and localities that have made a strong effort to
2 prevent, detect, and punish crime find their efforts unavailing due in part to the
3 failure or inability of other States and localities to take strong measures.”⁴⁸ It was
4 clear that a national effort was needed to solve the problem of juvenile handgun
5 possession and use so as to curtail both violent crime and illegal drug trafficking.⁴⁹

6 The MFFA exempts Montana-made guns from the federal Juvenile Firearm
7 Possession Ban, allowing teens 14 and over to possess handguns unsupervised,
8 jeopardizing federal efforts to prevent the gun deaths and injuries caused by persons
9 under 18.

10 **6. Prohibitions on Guns in School Zones and Federal Buildings**
11 **(18 U.S.C. §§ 922(q), 930)**

12 Sixty-five students and six school employees were shot and killed at school
13 during the academic years 1986 through 1990.⁵⁰ An additional 201 individuals were
14 severely wounded by firearms at school during that same period.⁵¹ And 242 more
15 were taken hostage at gunpoint on school premises.⁵²

16 Congress responded to this alarming increase in gun violence in schools by
17 enacting the Gun-Free School Zones Act.⁵³ The Act amended the existing federal
18 criminal statute regulating the possession and sale of firearms in order to address the
19 growing national problem of guns in and around schools. The Act prohibits any
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22 ⁴⁸ See H.R. Rep. No. 103-711, at 390-91 (1994), reprinted in 1994 U.S.C.C.A.N. 1839, 1858-59.

23 ⁴⁹ See H.R. Rep. No. 103-711, at 390-91 (1994), reprinted in 1994 U.S.C.C.A.N. 1839, 1859.

24 ⁵⁰ Center to Prevent Handgun Violence, Caught in the Crossfire: A Report on Gun Violence in our
25 Nation's Schools (Sept. 1990), reprinted in Gun-Free School Zones Act of 1990: Hearing on H.R.
26 3757 Before the Subcomm. on Crime of the House Comm. on the Judiciary, 101st Cong., 2d Sess.
27 7 (1990) (statement of Rep. Feighan), p. 81.

28 ⁵¹ *Id.*

⁵² *Id.*

⁵³ 18 U.S.C. § 922(q)(1)(A).

1 individual knowingly to possess a firearm at a place that the individual knows, or
2 has reasonable cause to believe, is a school zone.⁵⁴

3 Likewise, Congress acted to protect federal facilities from gun violence by
4 barring the possession of firearms at buildings owned or leased by the federal
5 government and federal court facilities. 18 U.S.C. § 930. The U.S. Supreme Court
6 recently recognized the importance of keeping guns out of “sensitive places such as
7 schools and government buildings,” declaring such laws to be “presumptively
8 lawful” under the Second Amendment. *District of Columbia v. Heller*, 128 S.Ct.
9 2783, 2817 (U.S. 2008).

10 In enacting the Gun Free School Zones Act, Congress listed numerous factual
11 findings concerning the nationwide impact of guns at schools, declaring that:

12 (A) crime, particularly crime involving drugs and guns, is a
13 ***pervasive, nationwide problem;***

14 (B) crime at the local level is exacerbated by the ***interstate***
15 movement of drugs, guns, and criminal gangs;

16 (C) firearms and ammunition ***move easily in interstate***
17 ***commerce*** and have been found in increasing numbers in and around
18 schools, as documented in numerous hearings in both the Committee
19 on the Judiciary [of] the House of Representatives and the Committee
20 on the Judiciary of the Senate;

21 (D) even before the sale of a firearm, the gun, its component
22 parts, ammunition, and the raw materials from which they are made
23 ***have considerably moved in interstate commerce;***

24
25
26 ⁵⁴ 18 U.S.C. § 922(q)(1)(A). A school zone is defined as a place in, on the grounds of, or within a
27 distance of 1,000 feet from the grounds of a public, parochial or private elementary or secondary
28 school. 18 U.S.C. § 921(a)(25).

1 (E) while criminals freely move from State to State,
2 ordinary citizens and foreign visitors may fear to travel to or through
3 certain parts of the country due to concern about violent crime and
4 gun violence, and parents may decline to send their children to school
5 for the same reason;

6 (F) the occurrence of violent crime in school zones has
7 resulted in a decline in the quality of education in our country;

8 (G) this decline in the quality of education has an adverse
9 impact on interstate commerce and the foreign commerce of the
10 United States;

11 (H) States, localities, and school systems find it almost
12 impossible to handle gun-related crime by themselves--even States,
13 localities, and school systems that have made strong efforts to prevent,
14 detect, and punish gun-related crime find their efforts unavailing due
15 in part to the failure or inability of other States or localities to take
16 strong measures; and

17 (I) the Congress has the power, under the interstate
18 commerce clause and other provisions of the Constitution, to enact
19 measures to ensure the integrity and safety of the Nation's schools by
20 enactment of this subsection.

21 18 U.S.C. § 922(q)(1)(A)-(I) (emphasis added).

22 In exempting Montana-made firearms from federal prohibitions on guns in
23 sensitive places, the MFFA threatens the safety of school zones and the security of
24 federal facilities, undermines federal efforts to prevent gun violence and adversely
25 impacts interstate commerce in all of the ways described by Congress.

1 Federal law requires that anyone “engaged in the business” of manufacturing
2 or selling firearms obtain a license. 18 U.S.C. § 923. Licensees are charged with
3 keeping records of gun acquisitions and sales and conducting background checks on
4 prospective buyers. *Id.* “When a firearms dealer ... fails to ensure that guns are
5 sold to authorized persons, the public safety is directly and meaningfully
6 implicated,” and this “is a significant factor in the prevalence of lawlessness and
7 violent crime in the United States.” *RSM, Inc. v. Herbert*, 466 F.3d 316, 324 (4th
8 Cir. 2006) (*quoting* Omnibus Crime Control & Safe Streets Act of 1968, Pub.L. No.
9 90-357, § 901(a)(2), 82 Stat. 197, 225).

10 The MFFA purports to exempt all Montana-made guns from the requirements
11 of federal law that anyone engaged in the business of selling firearms must obtain a
12 license and keep a record of firearm sales. Because federal law does not allow the
13 government to maintain records of gun ownership, 18 U.S.C. § 926, law
14 enforcement generally can only trace a crime gun by using gun dealer records to
15 determine the gun’s purchaser. Without these records, crime guns are generally
16 untraceable. Federal law also allows the revocation of licenses by dealers who have
17 willfully violated federal gun laws. 18 U.S.C. § 923(e). Because Montana law does
18 not require a license to sell guns and does not prohibit willful violators of gun laws
19 from engaging in the business of selling guns, the MFFA would make it much more
20 difficult for law enforcement nationwide to solve crimes committed with Montana-
21 made weapons.

22 **D. Federal Gun Regulations Do Not Interfere With the**
23 **Second Amendment of the United States Constitution.**

24 Section 2(4) of the MFFA cites to the Second Amendment of the United
25 States Constitution as support for the law. According to that section:

26 The second amendment to the United States constitution reserves to
27 the people the right to keep and bear arms as that right was understood

1 at the time that Montana was admitted to statehood in 1889, and the
2 guaranty of the right is a matter of contract between the state and
3 people of Montana and the United States as of the time that the
4 compact with the United States was agreed upon and adopted by
5 Montana and the United States in 1889.

6 However, federal gun regulations, identified above, do not interfere with the Second
7 Amendment because they are reasonable gun violence prevention laws that protect
8 the public without unduly interfering with the ability of “law-abiding, responsible
9 citizens” to use firearms for self-defense in their home. *District of Columbia v.*
10 *Heller*, 128 S. Ct. 2783, 2821 (2008). The Supreme Court’s recent Second
11 Amendment decision does not place these laws in jeopardy. In *District of Columbia*
12 *v. Heller*, the Court struck down the District of Columbia’s broad restrictions on
13 handgun possession and use in the home because they did not allow for self-defense
14 use. 128 S. Ct. at 2783. While the Court’s 5-4 decision was controversial,⁵⁵ it was
15 also narrow: the Court made clear that it was only recognizing a right against the
16 federal government for “law-abiding, responsible citizens to use arms in defense of
17 hearth and home.” *Id.* at 2821. Thus, the Court recognized only a limited right for
18 citizens who were both “law-abiding” and “responsible,” and then only for gun use
19 in the home for self-defense.

20 The Court went further to clarify that this right is “not unlimited,” does not
21 prevent a wide range of reasonable and “presumptively lawful” gun laws, and is
22 certainly not a right to keep a gun “in any manner whatsoever.” *Id.* at 2816, 2817
23 n.26. According to the Court, “nothing in our opinion should be taken to cast doubt
24 on longstanding prohibitions on the possession of firearms by felons and the
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26 ⁵⁵ See, e.g., Richard Posner, *In Defense of Looseness: The Supreme Court and Gun Control*, NEW
27 REPUBLIC, Aug. 27, 2008, at 33 (criticizing the “faux originalism” of Justice Scalia’s majority
28 opinion); J. Harvie Wilkinson III, *Of Guns, Abortions, and the Unraveling Rule of Law*, 95 VA. L.
REV. 253, 266-67 (2009) (arguing that historical evidence on both sides was equally strong and the
majority should have deferred to the legislature rather than interject its own values on the text);
Douglas Kmiec, *Guns and the Supreme Court: Dead Wrong*, TIDINGS ONLINE, July 11, 2008,
available at <http://www.the-tidings.com/2008/071108/kmiec.htm> (arguing that a true originalist
undertaking in *Heller* would have led to the exact opposite result).

1 mentally ill, or laws forbidding the carrying of firearms in sensitive places such as
2 schools and government buildings, or laws imposing conditions and qualifications
3 on the commercial sale of arms.” *Id.* at 2817. Thus, the Court’s narrow holding was
4 that Mr. Heller had a right only to register his gun and obtain a license to carry it in
5 his home if he was both “law abiding” and “responsible.”

6 In *Heller*, the Supreme Court held that the District of Columbia’s “ban on
7 handgun possession in the home violates the Second Amendment, as does its
8 prohibition against rendering any *lawful* firearm *in the home* operable for the
9 purpose of immediate self-defense.” *Heller*, 128 S. Ct. at 2821-22 (emphasis
10 omitted and added). The Court made clear that its holding was narrow and stressed
11 that it did not jeopardize other firearms laws, noting that the Second Amendment
12 leaves government “a variety of tools for combating that problem . . . the problem of
13 handgun violence in this country.” *Id.* at 2822.

14 Since *Heller*, there have been more than 200 challenges to federal gun laws,
15 claiming that these gun laws violate the Second Amendment. These challenges
16 have been overwhelmingly rejected. *See, e.g., United States v. White*, 593 F.3d
17 1199, 1205-06 (11th Cir. 2010) (rejecting Second Amendment challenge to
18 domestic violence abuser gun ban); *U.S. v. Vongxay*, 594 F.3d 1111 (9th Cir. 2010)
19 (rejecting Second Amendment challenge to felon gun ban); *Kodak v. Holder*, 342
20 Fed. Appx. 907 (4th Cir. 2009) (unpublished) (rejecting Second Amendment
21 challenge to federal armor-piercing bullet restrictions); *U.S. v. Knight*, 574 F. Supp.
22 2d 224 (D. Me. 2008) (rejecting Second Amendment challenge to ban on gun
23 possession by person subject to court order restraining such person from harassing,
24 stalking, or threatening an intimate partner).

1 Thus, the MFFA's claim that the Second Amendment somehow allows states
2 to exempt themselves from federal gun laws is wholly unsupported by the Supreme
3 Court's explanation of the limited nature of the Second Amendment right in *Heller*.

4 **CONCLUSION**

5 The Commerce Clause grants the federal government authority to regulate
6 firearms because such weapons are easily and frequently sold and traded across state
7 lines and used in crimes that affect commerce. The MFFA's evasion of federal law
8 would allow individuals to circumvent numerous safety measures, including
9 background checks, gun dealer licensing and recordkeeping requirements, and
10 provide firearm access to minors, criminals and convicted domestic violence
11 abusers. Such a result would threaten nationwide public safety. The MFFA must be
12 invalidated.

13
14 DATED this 18th day of May, 2010.

15 /s/ Cynthia Wolken

16
17 Cynthia L. Wolken
18 *Attorney for Amicus Curiae*
19 *Brady Center to Prevent Gun*
20 *Violence et al.*