

HB

186

<target><bill>HB 186</bill><subject>HB
186</subject><comm>SFIN26</comm></target>

SENATE FINANCE COMMITTEE REPORT

DATE: 2/26/10

FURTHER:

DATE TURNED
IN TO OFFICE: 4/14/10

Finance Committee considered CS FOR HOUSE BILL NO. 186(FIN) am

HB 186 AK FIREARMS EXEMPT FROM FED. REGULATION

"An Act declaring that certain firearms and accessories are exempt from federal regulation."

and recommends:

- be replaced with SCS or CS _____ (_____)
- adopt previous SCS or CS _____ (_____)
- attached amendment(s)
- adopt _____ Letter of Intent
- further referral to _____ Committee

SENATE BILL:
 Same Title
 New Title

HOUSE BILL:
 Same Title
 Technical Title Change
 New Title w/ SCR # _____

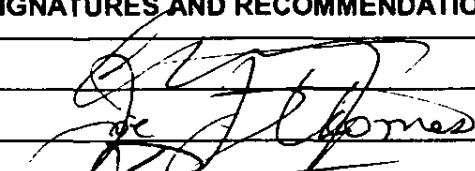


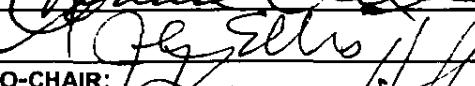

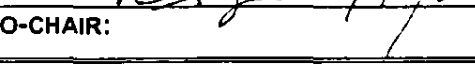
NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
Law	1/29/10		✓		3

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	PRINTED LAST NAME	DO PASS	DO NOT PASS	NO REC	AMEND
	Huggins	X			
	THOMAS EGAN	✓			
	OLSON			✓	
	ELLIS	X			
CO-CHAIR: 		✓			
CO-CHAIR: 					

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number: 3
 Bill Version: CSHB 186(FIN) am
 (S) Publish Date: 2/26/10

Identifier (file name): HB186CS(FIN)AM-LAW-CRIM-01-29-10 Dept. Affected: LAW
 Title: An Act declaring that certain firearms and accessories RDU: CRIMINAL
are exempt form federal regulation. Component: CRIMINAL JUSTICE LITIGATION

Sponsor: REPRESENTATIVE(s) Kelly, Wilson, Lynn, Gatto, Ramras,
Austerman, Stoltze, Hawker, Dahlstrom, Johnson, Millett, Newman
 Requester: JUDICIARY Component Number: 2202

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required		Information				
	FY 2011	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
OPERATING EXPENDITURES							
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	***	***	***	***	***	***	***

CAPITAL EXPENDITURES							
-----------------------------	--	--	--	--	--	--	--

CHANGE IN REVENUES ()							
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FUND SOURCE (Thousands of Dollars)

	FY 2011	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	***	***	***	***	***	***	***

Estimate of any current year (FY2010) cost: _____

POSITIONS

	FY 2011	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
Full-time							
Part-time							
Temporary							

ANALYSIS: (Attach a separate page if necessary)

This bill attempts to declare that firearms that are made in Alaska are exempt from any federal law or regulation. The bill grants the Attorney General for Alaska the authority to defend any Alaska citizen prosecuted for violating federal law regarding firearms, when that citizen defends on the ground that the firearm was manufactured in Alaska. The bill has significant constitutional issues. These issues would most likely arise in the context of a state citizen being charged with a crime in federal court. It is anticipated that an affected citizens might contend that the AG is required to exercise the discretion to defend them, which could result in significant litigation in both state and federal court. While such litigation is likely, it is difficult to estimate with any certainty the costs that might be incurred and they are therefore indeterminate at this point.

Prepared by: Eileen Donahue, Division Operations Manager
 Division: Administrative Services
 Approved by: Daniel S. Sullivan, Attorney General
Department of Law

Phone 465-5427
 Date/Time 1/29/10 12:00 AM
 Date 1/29/2010

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MEMORANDUM

April 8, 2009

SUBJECT: Interstate Commerce Clause and CSHB 186(JUD)
(Work Order No. 26-LS0627\S)

TO: Representative Lindsey Holmes

FROM: Gerald P. Luckhaupt
Legislative Counsel *JPL*

You have asked if the declarations in CSHB 186(JUD) regarding interstate and intrastate commerce would successfully prevent someone from being prosecuted for a firearms violation under federal law. In my opinion, CSHB 186(JUD) would not prevent the federal government from prosecuting someone for a firearms violation under federal law.¹

The commerce clause is found at Article I, § 8, of the Constitution of the United States:

The Congress shall have power . . . [t]o regulate commerce with foreign nations, and among the several states and with the Indian tribes

The extent of the commerce clause was first interpreted to not apply to commerce "which is carried on between man and man in a State, or between different parts of the same State, and which does not extend to or affect other States."² Over the years, "certain categories of activity such as 'production,' 'manufacturing,' and 'mining' were within the province of state governments, and thus were beyond the power of Congress under the Commerce Clause."³ As the interpretation of the commerce clause continued, the United States Supreme Court allowed incidental effects on purely interstate commerce if that

¹ 18 U.S.C. §§ 921 - 931 regulate certain firearms and activities. For example, 18 U.S.C. § 922(g) prohibits a felon from possessing in or affecting commerce firearms or ammunition.

² *Gibbons v. Ogden*, 9 Wheat. 1, 189 - 190 (1824)

³ *United States v. Lopez*, 514 U.S. 549 (1995).

regulation was necessary to regulate interstate commerce.⁴ The development of the commerce clause continued as explained in this excerpt from *United States v. Lopez*:⁵

In *A. L. A. Schechter Poultry Corp. v. United States*, 295 U.S. 495, 550 (1935), the Court struck down regulations that fixed the hours and wages of individuals employed by an intrastate business because the activity being regulated related to interstate commerce only indirectly. In doing so, the Court characterized the distinction between direct and indirect effects of intrastate transactions upon interstate commerce as "a fundamental one, essential to the maintenance of our constitutional system." *Id.*, at 548. Activities that affected interstate commerce directly were within Congress' power; activities that affected interstate commerce indirectly were beyond Congress' reach. *Id.*, at 546. The justification for this formal distinction was rooted in the fear that otherwise "there would be virtually no limit to the federal power and for all practical purposes we should have a completely centralized government." *Id.*, at 548.

Two years later, in the watershed case of *NLRB v. Jones & Laughlin Steel Corp.*, 301 U.S. 1 (1937), the Court upheld the National Labor Relations Act against a Commerce Clause challenge, and in the process, departed from the distinction between "direct" and "indirect" effects on interstate commerce. *Id.*, at 36-38 ("The question [of the scope of Congress' power] is necessarily one of degree"). The Court held that intrastate activities that "have such a close and substantial relation to interstate commerce that their control is essential or appropriate to protect that commerce from burdens and obstructions" are within Congress' power to regulate. *Id.*, at 37.

In *United States v. Darby*, 312 U.S. 100 (1941), the Court upheld the Fair Labor Standards Act, stating:

"The power of Congress over interstate commerce is not confined to the regulation of commerce among the states. It extends to those activities intrastate which so affect interstate commerce or the exercise of the power of Congress over it as to make regulation of them appropriate means to the attainment of a legitimate end, the exercise of the granted power of Congress to regulate interstate commerce." *Id.*, at 118.

See also *United States v. Wrightwood Dairy Co.*, 315 U.S. 110, 119 (1942) (the commerce power "extends to those intrastate activities which

⁴ *Houston, E. & W. T. R. Co. v. United States*, 234 U.S. 342 (1914)

United States v. Lopez, 514 U.S. 549 (1995) (syllabus and majority opinion enclosed).

in a substantial way interfere with or obstruct the exercise of the granted power").

In *Wickard v. Filburn*, the Court upheld the application of amendments to the Agricultural Adjustment Act of 1938 to the production and consumption of home grown wheat. 317 U. S., at 128-129. The *Wickard* Court explicitly rejected earlier distinctions between direct and indirect effects on interstate commerce, stating:

"[E]ven if appellee's activity be local and though it may not be regarded as commerce, it may still, whatever its nature, be reached by Congress if it exerts a substantial economic effect on interstate commerce, and this irrespective of whether such effect is what might at some earlier time have been defined as 'direct' or 'indirect.'" *Id.*, at 125.

The *Wickard* Court emphasized that although Filburn's own contribution to the demand for wheat may have been trivial by itself, that was not "enough to remove him from the scope of federal regulation where, as here, his contribution, taken together with that of many others similarly situated, is far from trivial." *Id.*, at 127-128.

Jones & Laughlin Steel, Darby, and *Wickard* ushered in an era of Commerce Clause jurisprudence that greatly expanded the previously defined authority of Congress under that Clause. In part, this was a recognition of the great changes that had occurred in the way business was carried on in this country. Enterprises that had once been local or at most regional in nature had become national in scope. But the doctrinal change also reflected a view that earlier Commerce Clause cases artificially had constrained the authority of Congress to regulate interstate commerce.

But even these modern era precedents which have expanded congressional power under the Commerce Clause confirm that this power is subject to outer limits. In *Jones & Laughlin Steel*, the Court warned that the scope of the interstate commerce power "must be considered in the light of our dual system of government and may not be extended so as to embrace effects upon interstate commerce so indirect and remote that to embrace them, in view of our complex society, would effectually obliterate the distinction between what is national and what is local and create a completely centralized government." 301 U. S., at 37; see also *Darby, supra*, at 119-120 (Congress may regulate intrastate activity that has a "substantial effect" on interstate commerce); *Wickard, supra*, at 125 (Congress may regulate activity that "exerts a substantial economic effect on interstate commerce"). Since that time, the Court has heeded that warning and undertaken to decide whether a rational basis existed for concluding that a regulated activity sufficiently affected interstate

commerce. See, e.g., *Hodel v. Virginia Surface Mining & Reclamation Assn., Inc.*, 452 U.S. 264, 276-280 (1981); *Perez v. United States*, 402 U.S. 146, 155-156 (1971); *Katzenbach v. McClung*, 379 U.S. 294, 299-301 (1964); *Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241, 252-253 (1964).

Similarly, in *Maryland v. Wirtz*, 392 U.S. 183 (1968), the Court reaffirmed that "the power to regulate commerce, though broad indeed, has limits" that "[t]he Court has ample power" to enforce. *Id.*, at 196, overruled on other grounds, *National League of Cities v. Usery*, 426 U.S. 833 (1976), overruled by *Garcia v. San Antonio Metropolitan Transit Authority*, 469 U.S. 528 (1985). In response to the dissent's warnings that the Court was powerless to enforce the limitations on Congress' commerce powers because "[a]ll activities affecting commerce, even in the minutest degree, [*Wickard*], may be regulated and controlled by Congress," 392 U.S., at 204 (Douglas, J., dissenting), the *Wirtz* Court replied that the dissent had misread precedent as "[n]either here nor in *Wickard* has the Court declared that Congress may use a relatively trivial impact on commerce as an excuse for broad general regulation of state or private activities," *id.*, at 197, n. 27. Rather, "[t]he Court has said only that where 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." *Ibid.* (first emphasis added).

Consistent with this structure, we have identified three broad categories of activity that Congress may regulate under its commerce power. *Perez v. United States*, *supra*, at 150; see also *Hodel v. Virginia Surface Mining & Reclamation Assn.*, *supra*, at 276-277. First, Congress may regulate the use of the channels of interstate commerce. See, e.g., *Darby*, 312 U.S., at 114; *Heart of Atlanta Motel*, *supra*, at 256 ("[T]he authority of Congress to keep the channels of interstate commerce free from immoral and injurious uses has been frequently sustained, and is no longer open to question." (quoting *Caminetti v. United States*, 242 U.S. 470, 491 (1917))). Second, Congress is empowered to regulate and protect the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities. See, e.g., *Shreveport Rate Cases*, 234 U.S. 342 (1914); *Southern R. Co. v. United States*, 222 U.S. 20 (1911) (upholding amendments to Safety Appliance Act as applied to vehicles used in intrastate commerce); *Perez*, *supra*, at 150 ("[F]or example, the destruction of an aircraft (18 U.S.C. § 32), or . . . thefts from interstate shipments (18 U.S.C. § 659)"). Finally, Congress' commerce authority includes the power to regulate those activities having a substantial relation to interstate commerce, *Jones & Laughlin Steel*, 301 U.S., at 37, *i.e.*,

those activities that substantially affect interstate commerce. *Wirtz, supra*, at 196, n. 27.

Within this final category, admittedly, our case law has not been clear whether an activity must "affect" or "substantially affect" interstate commerce in order to be within Congress' power to regulate it under the Commerce Clause. Compare *Preseault v. ICC*, 494 U.S. 1, 17 (1990), with *Wirtz, supra*, at 196, n. 27 (the Court has never declared that "Congress may use a relatively trivial impact on commerce as an excuse for broad general regulation of state or private activities"). We conclude, consistent with the great weight of our case law, that the proper test requires an analysis of whether the regulated activity "substantially affects" interstate commerce.

Lopez, at 554 - 559. The *Wickard* case is particularly relevant as it involved an individual farmer who grew his own wheat for his own consumption. As noted, *Wickard* was still subject to federal regulation even though as an individual his potential effect on interstate commerce was small but when combined with others the court noted that the potential effect on interstate commerce could be great.

In *Lopez*, the Court struck down 18 U.S.C. § 922(q), the "Gun Free School Zones Act of 1990," which made it a federal crime to possess a gun within a school zone. The Court found that

Section 922(q) is a criminal statute that by its terms has nothing to do with "commerce" or any sort of economic enterprise, however broadly one might define those terms. Section 922(q) is not an essential part of a larger regulation of economic activity, in which the regulatory scheme could be undercut unless the intrastate activity were regulated. It cannot, therefore, be sustained under our cases upholding regulations of activities that arise out of or are connected with a commercial transaction, which viewed in the aggregate, substantially affects interstate commerce.

Second, §922(q) contains no jurisdictional element which would ensure, through case by case inquiry, that the firearm possession in question affects interstate commerce.

.....

The possession of a gun in a local school zone is in no sense an economic activity that might, through repetition elsewhere, substantially affect any sort of interstate commerce. Respondent was a local student at a local school; there is no indication that he had recently moved in interstate commerce, and there is no requirement that his possession of the firearm have any concrete tie to interstate commerce.

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Id., at 561. See also *United States v. Morrison*, 529 U.S. 598 (2000) (striking down the "Violence Against Women Act" that created civil liability for the commission of any gender based violent crime and noting that again there was no "express jurisdictional element which might limit its reach" to those acts connected with or affecting interstate commerce).⁶

The limits of the *Lopez* and *Morrison* decisions were found in the context of medical marijuana. In *Gonzales v. Raich*, 545 U.S. 1 (2005),⁷ the Court held the commerce clause authorized Congress to enact federal laws regulating and criminalizing activities involving controlled substances even if those activities were wholly intrastate and were pursuant to a state statutory scheme that authorized the activities.

Unlike those at issue in *Lopez* and *Morrison*, the activities regulated by the CSA [Controlled Substances Act] are quintessentially economic. "Economics" refers to "the production, distribution, and consumption of commodities." Webster's Third New International Dictionary 720 (1966). The CSA is a statute that regulates the production, distribution, and consumption of commodities for which there is an established, and lucrative, interstate market. Prohibiting the intrastate possession or manufacture of an article of commerce is a rational (and commonly utilized) means of regulating commerce in that product. Such prohibitions include specific decisions requiring that a drug be withdrawn from the market as a result of the failure to comply with regulatory requirements as well as decisions excluding Schedule I drugs entirely from the market. Because the CSA is a statute that directly regulates economic, commercial activity, our opinion in *Morrison* casts no doubt on its constitutionality.

...
Second, limiting the activity to marijuana possession and cultivation "in accordance with state law" cannot serve to place respondents' activities beyond congressional reach. The Supremacy Clause unambiguously provides that if there is any conflict between federal and state law, federal law shall prevail. It is beyond peradventure that federal power over commerce is "superior to that of the States to provide for the welfare or necessities of their inhabitants," however legitimate or dire those necessities may be. *Wirtz*, 392 U.S., at 196 (quoting *Sanitary Dist. of Chicago v. United States*, 266 U.S. 405, 426 (1925)). See also 392 U.S., at 195-196; *Wickard*, 317 U.S., at 124 ("[N]o form of state activity can constitutionally thwart the regulatory power granted by the commerce clause to Congress"). Just as state acquiescence to federal regulation

⁶ Syllabus and majority opinion enclosed.

Syllabus and majority opinion enclosed.

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cannot expand the bounds of the Commerce Clause, see, e.g., *Morrison*, 529 U.S., at 661-662 (Breyer, J., dissenting) (noting that 38 States requested federal intervention), so too state action cannot circumscribe Congress' plenary commerce power. See *United States v. Darby*, 312 U.S. 100, 114 (1941) ("That power can neither be enlarged nor diminished by the exercise or non-exercise of state power").

Raich, *id.* at 25 - 26.

The *Wickard* and *Raich* cases seem especially relevant to CSHB 168(JUD). They clearly stand for the proposition that the Commerce Clause allows federal regulation of purely intrastate activities and products if Congress could rationally conclude that those activities could enter or affect interstate commerce. The production of wheat in *Wickard* and the production of marijuana in *Raich* could enter and could affect interstate commerce. Similarly, the production of a firearm, even if performed wholly intrastate and with materials found only in that state, could seemingly affect interstate commerce in firearms generally.

Indeed, this was the decision of the Ninth Circuit Court of Appeals in *United States v. Stewart*, 451 F.3d 1071 (9th Cir. 2006).⁸ Robert Stewart manufactured homemade machine guns and machine gun kits wholly within California and was convicted of possessing a machine gun in violation of federal law. Stewart appealed and the Ninth Circuit Court of Appeals, based upon *Lopez* and *Morrison*, and before *Raich* was decided, initially reversed his conviction finding that the simple possession of homemade machines did not have a substantial effect on interstate commerce. See *United States v. Stewart*, 348 F.3d 1132(2003). After the United States Supreme Court decided *Raich*, the Supreme Court vacated the decision of the Ninth Circuit and told the court to reconsider their opinion in light of *Raich*.⁹ On remand, the Ninth Circuit found that Congress had the authority to regulate machine guns, including one's wholly a product of intrastate commerce. The court found that "[h]omemade guns, even those with a unique design, can enter the interstate market and affect supply and demand."¹⁰

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Enclosures

⁸ Opinion enclosed.

⁹ *United States v. Stewart*, 545 U.S. 1112 (2005).

¹⁰ *Stewart*, 451 F.3d at 1077.



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State Legislation to Exempt Firearms from Federal Regulation

AK H 186 **AUTHOR:** Kelly (R)
TITLE: Firearms Exempt From Federal Regulation
INTRODUCED: 03/12/2009
DISPOSITION: Pending
SUMMARY:
 Declares that certain firearms and accessories are exempt from federal regulation.
STATUS:
 03/12/2009 INTRODUCED.
 03/12/2009 To HOUSE Committee on JUDICIARY. (PASSED)
 03/12/2009 To HOUSE Committee on FINANCE.

AK S 146 **AUTHOR:** Dyson (R)
TITLE: Firearms Exempt From Federal Regulation
INTRODUCED: 03/11/2009
DISPOSITION: Pending
SUMMARY:
 Declares that certain firearms and accessories are exempt from federal regulation.
STATUS:
 03/11/2009 INTRODUCED.
 03/11/2009 To SENATE Committee on JUDICIARY.
 03/11/2009 To SENATE Committee on FINANCE.

MT D 671 **AUTHOR:** Office of Curtiss
TITLE: Firearms and Ammunition
DISPOSITION: Pending
SUMMARY:
 Exempts from Federal regulation under the commerce clause of the Constitution of the United States, which regulates interstate and international commerce, a firearm, firearm accessory, or ammunition manufactured and retained in this State.
STATUS:
 01/09/2009 Draft delivered to Requester.

MT H 246 **AUTHOR:** Boniek (R)
TITLE: Commerce Clause
INTRODUCED: 01/13/2009
DISPOSITION: To Governor
SUMMARY:
 Exempt Montana-made firearms and ammunition from commerce clause.
STATUS:
 04/03/2009 Eligible for GOVERNOR'S desk.

TN H 1783 **SAME AS:** TN S 1644

ALASKA

MONTANA (Enacted)

TENNESSEE

AUTHOR: West (D)
TITLE: Firearms and Ammunition
INTRODUCED: 02/23/2009
DISPOSITION: Pending
SUMMARY:
 Relates to firearms and ammunition; enacts the Tennessee Firearms Freedom Act.
STATUS:
 03/02/2009 In HOUSE Committee on JUDICIARY; Referred to Subcommittee on CRIMINAL PROCEDURE AND PRACTICE.

TN H 1796 **SAME AS:** TN S 1610
AUTHOR: West (D)
TITLE: Firearms and Ammunition
INTRODUCED: 02/23/2009
DISPOSITION: Pending
SUMMARY:
 Relates to firearms and ammunition; enacts the Tennessee Firearms Freedom Act.
STATUS:
 03/02/2009 In HOUSE Committee on JUDICIARY; Referred to Subcommittee on CRIMINAL PROCEDURE AND PRACTICE.

TN S 1610 **SAME AS:** TN H 1796
AUTHOR: Beavers (R)
TITLE: Firearms and Ammunition
INTRODUCED: 02/12/2009
DISPOSITION: Pending
SUMMARY:
 Relates to firearms and ammunition; enacts the Tennessee Firearms Freedom Act. - Amends TCA Title 4.
STATUS:
 02/18/2009 To SENATE Committee on JUDICIARY.

TN S 1644 **SAME AS:** TN H 1783
AUTHOR: Beavers (R)
TITLE: Firearms and Ammunition
INTRODUCED: 02/12/2009
DISPOSITION: Pending
SUMMARY:
 Relates to firearms and ammunition; enacts the Tennessee Firearms Freedom Act.
STATUS:
 02/18/2009 To SENATE Committee on JUDICIARY.

TEXAS

TX H 1863 **AUTHOR:** Berman (R)
TITLE: Firearm Manufacturer Regulation
INTRODUCED: 02/26/2009
DISPOSITION: Pending
SUMMARY:
 Relates to exempting the intrastate manufacture of a firearm, a firearm accessory, or ammunition from federal regulation.
STATUS:
 03/04/2009 To HOUSE Committee on PUBLIC SAFETY.



SENATE BILL 1644

By Beavers

AN ACT to amend Tennessee Code Annotated, Title 4, relative to exempting from regulation under the commerce clause of the Constitution of the United States a firearm, firearm accessory, or ammunition manufactured and retained in Tennessee.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 4, is amended by adding Sections 2 through 6 of this act as a new chapter thereto.

SECTION 2. This chapter shall be known and may be cited as the "Tennessee Firearms Freedom Act".

SECTION 3. The general assembly declares that the authority for this chapter is the following:

(1) The tenth amendment to the United States Constitution guarantees to the states and their people all powers not granted to the federal government elsewhere in the Constitution and reserves to the state and people of Tennessee certain powers as they were understood at the time that Tennessee was admitted to statehood. The guarantee of those powers is a matter of contract between the state and people of Tennessee and the United States as of the time that the compact with the United States was agreed upon and adopted by Tennessee and the United States;

(2) The ninth amendment to the United States Constitution guarantees to the people rights not granted in the Constitution and reserves to the people of Tennessee certain rights as they were understood at the time that Tennessee was admitted to statehood. The guarantee of those rights is a matter of contract between the state and

people of Tennessee and the United States as of the time that the compact with the United States was agreed upon and adopted by Tennessee and the United States.

(3) The regulation of intrastate commerce is vested in the states under the ninth and tenth amendments to the United States Constitution, particularly if not expressly preempted by federal law. Congress cannot preempt state regulation of intrastate commerce pertaining to the manufacture on an intrastate basis of firearms, firearms accessories, and ammunition;

(4) The second amendment to the United States Constitution reserves to the people the right to keep and bear arms as that right was understood at the time that Tennessee was admitted to statehood, and the guarantee of the right is a matter of contract between the state and people of Tennessee and the United States as of the time that the compact with the United States was agreed upon and adopted by Tennessee and the United States; and

(5) The Tennessee Constitution clearly secures to Tennessee citizens, and prohibits government interference with, the right of individual Tennessee citizens to keep and bear arms.

SECTION 4. As used in this chapter, unless the context otherwise requires:

(1) "Firearms accessories" means items that are used in conjunction with or mounted upon a firearm but are not essential to the basic function of a firearm, including but not limited to telescopic or laser sights, magazines, flash or sound suppressors, folding or aftermarket stocks and grips, speedloaders, ammunition carriers, and lights for target illumination;

(2) "Generic and insignificant parts" includes but is not limited to springs, screws, nuts, and pins; and

(3) "Manufactured" means creating a firearm, a firearm accessory, or ammunition from basic materials for functional usefulness, including but not limited to forging, casting, machining, or other processes for working materials.

SECTION 5. A firearm, a firearm accessory, or ammunition that is manufactured commercially or privately in Tennessee is not subject to federal law or federal regulation, including registration, under the authority of congress to regulate interstate commerce. It is declared by the legislature that those items have not traveled in interstate commerce. This section applies to a firearm, a firearm accessory, or ammunition that is manufactured in Tennessee from basic materials and that can be manufactured without the inclusion of any significant parts imported into this state. Generic and insignificant parts that have other manufacturing or consumer product applications are not firearms, firearms accessories, or ammunition, and their importation into Tennessee and incorporation into a firearm, a firearm accessory, or ammunition manufactured in Tennessee does not subject the firearm, firearm accessory, or ammunition to federal regulation. It is declared by the legislature that basic materials, such as unmachined steel and unshaped wood, are not firearms, firearms accessories, or ammunition and are not subject to congressional authority to regulate firearms, firearms accessories, and ammunition under interstate commerce as if they were actually firearms, firearms accessories, or ammunition. The authority of congress to regulate interstate commerce in basic materials does not include authority to regulate firearms, firearms accessories, and ammunition made in Tennessee from those materials. Firearms accessories that are imported into Tennessee from another state and that are subject to federal regulation as being in interstate commerce do not subject a firearm to federal regulation under interstate commerce because they are attached to or used in conjunction with a firearm in Tennessee.

SECTION 6. A firearm manufactured or sold in Tennessee under this chapter must have the words "Made in Tennessee" clearly stamped on a central metallic part, such as the receiver or frame.

SECTION 7. This act shall take effect upon becoming a law, the public welfare requiring it.

Gun Groups File Lawsuit to Validate Montana Firearms Freedom Act

FOR IMMEDIATE RELEASE

Contact: Gary Marbut, 406-549-1252

Alan Gottlieb, 425-454-7012

MISSOULA - The Montana Shooting Sports Association (MSSA) and the Second Amendment Foundation (SAF) filed a lawsuit in federal court in Missoula today to validate the principles and terms of the Montana Firearms Freedom Act (MFFA).

The MFFA was enacted by the 2009 Montana Legislature, signed by Governor Schweitzer, and becomes effective today, Oct. 1.

Lead attorney for the plaintiffs' litigation team is Quentin Rhoades of the Missoula firm of Sullivan, Tabaracci & Rhoades, PC. The MFFA litigation team also includes other attorneys located in Montana, New York, Florida, Arizona and Washington.

"We feel very strongly that the federal government has gone way too far in attempting to regulate a lot of activity that occurs only in-state," explained MSSA President Gary Marbut. "The Montana Legislature and governor agreed with us by enacting the MFFA. It's time for Montana and her sister states to take a stand against the bullying federal government, which the Legislature and Governor have done and we are doing with this lawsuit. We welcome the support of many other states that are stepping up to the plate with their own firearms freedom acts."

"We're happy to join this lawsuit," said SAF founder Alan Gottlieb, "because we believe this issue should be decided by the courts."

The MFFA declares that any firearms made and retained in Montana are not subject to any federal authority under the power given to Congress in the U.S. Constitution to regulate "commerce ... among the several states." The MFFA relies on the Tenth Amendment and other principles to challenge Congress' commerce clause power to regulate a wide spectrum of in-state activities. This is a states' rights effort, using firearms as the object of the exercise. The MFFA exempts Montana-made and retained firearms, firearm accessories and ammunition from federal power, saying that if these items do not cross state lines, they are strictly INTRASTATE commerce, not INTERSTATE commerce, and not subject to federal authority.

MSSA continues to strongly urge that no Montana citizen attempt to manufacture an MFFA-covered item, even after the law takes effect today, until MSSA can prove the

principles of the MFFA in court. Until the courts rule in support of the MFFA, any such manufacturer could be subject to federal criminal prosecution.

This concept has caught national attention. Tennessee has passed a clone of the MFFA. Other clones have been introduced in Alaska, Texas, Florida, South Carolina, Pennsylvania, Michigan and Minnesota. Legislators in 20 other states have indicated that they will introduce MFFA clones in their states once their legislatures reconvene, Marbut said. Information about the Firearms Freedom Act movement is being accumulated and made publicly available at firearmsfreedomact.com.

This movement follows multi-state rejection of Washington-mandated Real ID, a law passed by Congress requiring state drivers licenses to conform to federal identification standards. The FFA movement also works in tandem with resolutions introduced or passed in many states asserting state sovereignty under the Ninth and Tenth Amendments to the U.S. Constitution. As is the rest of the Bill of Rights, the Ninth and Tenth Amendments are limitations on federal power. The Ninth Amendment says: "The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people." The Tenth Amendment declares: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

Under our federated system of government in the U.S., Marbut noted, states and the federal government are widely recognized to share power and authority, with definite limits placed on federal power by the states, the creators of the federal government. The MFFA lawsuit is designed to test and define those limits, to assert states' authority, and to limit what many see as overbearing authority assumed by Congress and the federal government.

Beginning during the New Deal, federal courts have generally upheld federal commerce clause authority, initially in the 1942 case of *Wickard v. Filburn* and continuing recently with the 2005 case of *Gonzales v. Raich*. *Raich* was the Supreme Court case allowing federal regulation of medical marijuana in California. However, other cases such as the 1995 case of *US v. Lopez* suggest that federal commerce power is not infinitely elastic, that there are limits to federal commerce power, and that it has just not yet been determined what those limits may be. The MFFA litigation is structured to clarify and affirm those limits.

The modern era of dramatically-expanded federal commerce clause power was ushered in with the *Wickard* decision. The Supreme Court allowed this considerable expansion of federal commerce power under *Wickard* only after President Roosevelt threatened to pack the Court with cronies if the Court didn't cease declaring

Roosevelt's New Deal programs to be unconstitutional and beyond federal reach. (http://en.wikipedia.org/wiki/Commerce_clause)

MSSA is the primary political advocate for Montana gun owners. SAF is a national organization headquartered in Bellevue, WA that works nationally to advance the interests of gun owners.

Copy of Complaint available at: <http://www.marbut.com/complaint.html>

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
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qmr@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

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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

ATF – Bureau of Alcohol, Tobacco, Firearms and Explosives

Identify Prohibited Persons

The Gun Control Act (GCA) makes it unlawful for certain categories of persons to ship, transport, receive, or possess firearms. 18 USC 922(g). Transfers of firearms to any such prohibited persons are also unlawful. 18 USC 922(d).

These categories include any person:

- Under indictment or information in any court for a crime punishable by imprisonment for a term exceeding one year;
- convicted of a crime punishable by imprisonment for a term exceeding one year;
- who is a fugitive from justice;
- who is an unlawful user of or addicted to any controlled substance;
- who has been adjudicated as a mental defective or has been committed to any mental institution;
- who is an illegal alien;
- who has been discharged from the military under dishonorable conditions;
- who has renounced his or her United States citizenship;
- who is subject to a court order restraining the person from harassing, stalking, or threatening an intimate partner or child of the intimate partner; or
- who has been convicted of a misdemeanor crime of domestic violence (enacted by the Omnibus Consolidated Appropriations Act of 1997, Pub. L. No. 104-208, effective September 30, 1996). 18 USC 922(g) and (n).

The Arms Export Control Act (AECA) prohibits the issuance of licenses to persons who have been convicted of:

Section 38 of the AECA, 22 USC 2778;

Section 11 of the Export Administration Act of 1979, 60 USC App. 2410;

Sections 7903, 794, or 798 of Title 18, USC, relating to espionage involving defense or classified information;

Section 16 of the Trading with the Enemy Act, 50 USC App. 16;

Section 30A of the Securities Exchange Act of 1934, 15 USC 78dd-1, or section 104 of the Foreign Corrupt Practices Act, 15 USC 78dd-2;

Chapter 105 of Title 18, USC, relating to sabotage;

Section 4(b) of the Internal Security Act of 1950, 50 USC 783(b), relating to communication of classified information;

Sections 57, 92, 101, 104, 222, 224, 225, or 226 of the Atomic Energy Act of 1954, 42 USC 2077 2122, 2131, 2234, 2272, 2275, and 2276;

Section 601 of the National Security Act of 1947, 50 USC 421, relating to the protection of the identity of undercover intelligence officers, agents, and other sources;

Section 371 of Title 17, USC, when it involves conspiracy to violate any of the above statutes; and

International Emergency Economic Powers Act, 50 USC 1702 and 1705.

Prohibitions on Certain Types of Firearms

Federal firearms laws prohibit transactions in and possession of certain types of firearms. These include, for example:

Transfer or possession of a machinegun, 18 USC 922(o);

Manufacture, importation, sale, or possession of any firearm not detectable by airport security devices, 18 USC 922(p);

and Possession of a firearm not registered as required by the National Firearms Act (NFA), 26 USC 5861(d).

[ATF.gov](http://www.atf.gov) is an official site of the [U.S. Department of Justice](http://www.dhs.gov)

ATF – Bureau of Alcohol, Tobacco, Firearms and Explosives

Manufacturers

1. Must a person who engages in the business of manufacturing and importing firearms have a separate license to cover each type of business?
2. May a person licensed as a manufacturer of ammunition also manufacture firearms?
3. May a person licensed as a manufacturer of firearms also manufacture ammunition?
4. Is a person who reloads ammunition required to be licensed as a manufacturer?
5. Must a licensed manufacturer pay excise taxes?
6. May a person engage in gunsmithing under a dealer's license (type 01), or do gunsmiths need to be licensed as "manufacturers" of firearms?

Q: Must a person who engages in the business of manufacturing and importing firearms have a separate license to cover each type of business?

Yes. A separate license is required to cover each of these types of businesses.

[27 CFR 478.41]

Q: May a person licensed as a manufacturer of ammunition also manufacture firearms?

No. A person licensed as a manufacturer of ammunition may not manufacture firearms unless he or she obtains a license as a firearms manufacturer.

Q: May a person licensed as a manufacturer of firearms also manufacture ammunition?

Yes. The person may also manufacture ammunition (not including destructive device ammunition or armor piercing ammunition) without obtaining a separate license as a manufacturer of ammunition.

Q: Is a person who reloads ammunition required to be licensed as a manufacturer?

Yes, if the person engages in the business of selling or distributing reloads for the purpose of livelihood and profit. No, if the person reloads only for personal use.

[18 U.S.C. 922(a) (i) and 923(a), 27 CFR 478.41]

Q: Must a licensed manufacturer pay excise taxes?

Yes. Licensed manufacturers incur excise tax on the sale of firearms and ammunition manufactured. See Item 17, "Federal Excise Tax" in the General Information section of this publication.

Q: May a person engage in gunsmithing under a dealer's license (type 01), or do gunsmiths need to be licensed as "manufacturers" of firearms?

Generally, a person engaged in gunsmithing requires only a dealer's license (type 01). There are circumstances in which a gunsmith might require a manufacturing license. Generally, a person should obtain a license as a manufacturer of firearms if the person is: 1. performing operations which create firearms or alter firearms (in the case of alterations, the work is not being performed at the request of customers, rather the person who is altering the firearms is purchasing them, making the changes, and then reselling them), 2. is performing the operations as a regular course of business or trade, and 3. is performing the operations for the purpose of sale or distribution of the firearms.

Below are examples of operations performed on firearms and guidance as to whether or not such operations would be considered manufacturing under the Gun Control Act (GCA). These examples do not address the question of whether the operations are considered manufacturing for purposes of determining excise tax. Any questions concerning the payment of excise tax should be directed to the Alcohol and Tobacco Tax and Trade Bureau, U.S. Department of the Treasury.

1. A company produces a quantity of firearm frames or receivers for sale to customers who will assemble firearms.

The company is engaged in the business of manufacturing firearms and should be licensed as a manufacturer of firearms.

2. A company produces frames or receivers for another company that assembles and sells the firearms.

Both companies are engaged in the business of manufacturing firearms and each should be licensed as a manufacturer of firearms.

3. A company provides frames to a subcontractor company that performs machining operations on the frames and returns the frames to the original company which assembles and sells the completed firearms.

Both companies are engaged in the business of manufacturing firearms and should be licensed as manufacturers of firearms.

4. A company produces barrels for firearms and sells the barrels to another company that assembles and sells complete firearms.

Because barrels are not firearms, the company that manufactures the barrels is not a manufacturer of firearms. The company that assembles and sells the firearms should be licensed as a manufacturer of firearms.

5. A company receives firearm frames from individual customers, attaches stocks and barrels and returns the firearms to the customers for the customers' personal use.

The operations performed on the firearms were not for the purpose of sale or distribution. The company should be licensed as a dealer or gunsmith, not as a manufacturer of firearms.

6. A company acquires one receiver, assembles one firearm, and sells the firearm.

The company is not manufacturing firearms as a regular course of trade or business and is not engaged in the business of manufacturing firearms. This company does not need to be licensed as a manufacturer.

7. An individual acquires frames or receivers and assembles firearms for his personal use, not for sale or distribution.

The individual is not manufacturing firearms for sale or distribution and is not required to be a licensed manufacturer.

8. A gunsmith regularly buys military type firearms, Mausers etc., and "sporterizes" them for resale.

The gunsmith is in the business of manufacturing firearms and should be licensed as a manufacturer.

9. A gunsmith buys semiautomatic pistols or revolvers and modifies the slides to accept new Style f sights. The sights are not usually sold with these firearms and do not attach to the existing mounting openings.

The gunsmith offers these firearms for sale. This would be considered the manufacturing of firearms and the gunsmith should be licensed as a manufacturer.

10. A gunsmith buys government model pistols and installs "drop-in" precision trigger parts or other "drop-in parts" for the purpose of resale.

This would be considered the manufacturing of firearms, as the gunsmith is purchasing the firearms, modifying the firearms and selling them. The gunsmith should be licensed as a manufacturer.

11. A gunsmith buys surplus military rifles, bends the bolts to accept a scope, and then drills the receivers for a scope base. The gunsmith offers these firearms for sale.

This would be considered the manufacturing of firearms and the gunsmith should be licensed as a manufacturer.

12. A gunsmith buys surplus military rifles or pistols and removes the stocks, adds new stocks or pistol grips, cleans the firearms, then sends the firearms to a separate contractor for bluing. These firearms are then sold to the public.

This would be considered manufacturing of firearms and the gunsmith should be licensed as a manufacturer.

13. A company purchases surplus firearms, cleans the firearms then offers them for sale to the public.

The company does not need to be licensed as a manufacturer.

[ATF.gov](http://atf.gov) is an official site of the [U.S. Department of Justice](http://www.dhs.gov)

Firearms Freedom Act

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The Firearms Freedom Act (FFA) is sweeping the Nation.

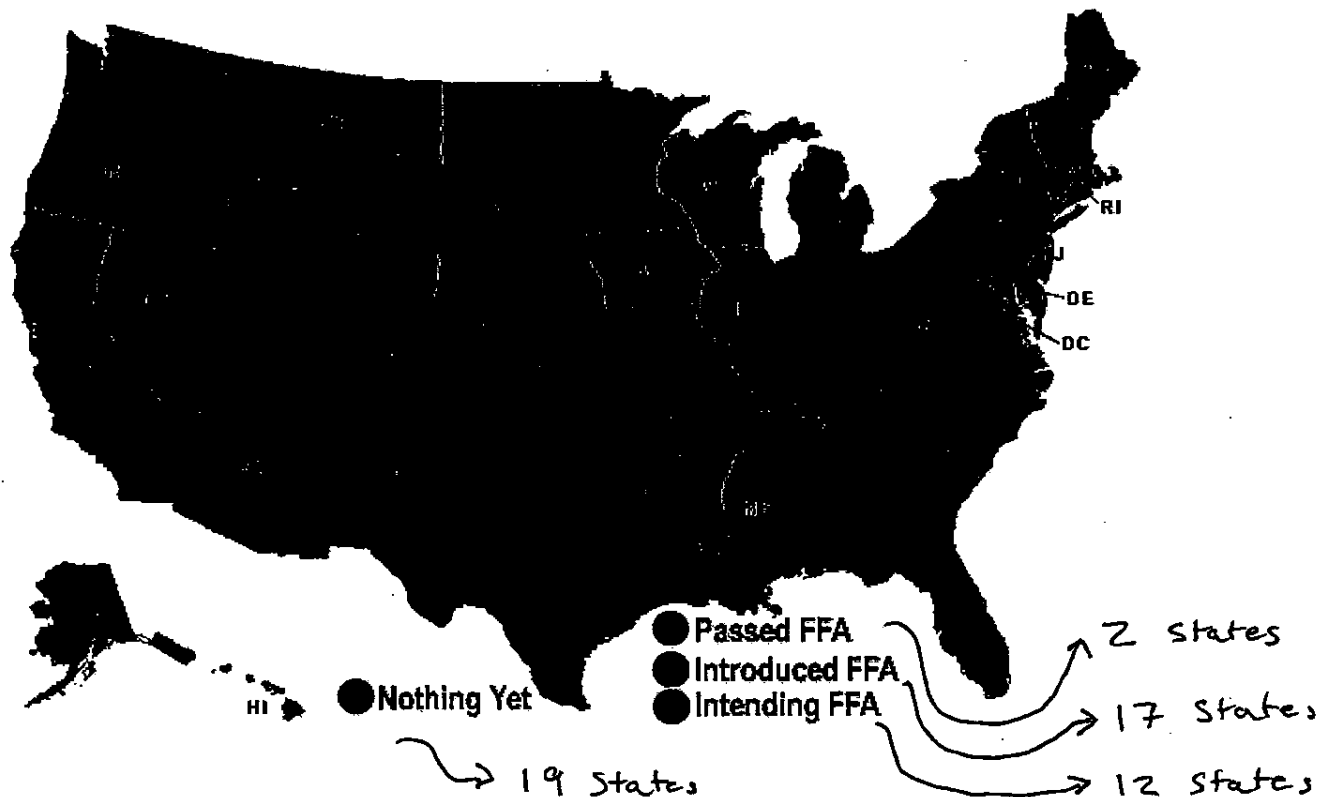
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Originally introduced and passed in Montana, the FFA declares that any firearms made and retained in-state are beyond the authority of Congress under its constitutional power to regulate commerce among the states.

Since its passage in Montana, a clone of the Firearms Freedom Act has been enacted in Tennessee, and has been introduced in the legislatures of Alaska, Texas, South Carolina, Minnesota and Florida. Legislators in many other states have announced that they will introduce FFA clones when their legislatures next convene.

The FFA is primarily a Tenth Amendment challenge to the powers of Congress under the "commerce clause," with firearms as the object – it is a state's rights exercise.

Help Fund the Lawsuit – Donate





U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives

Assistant Director

Washington, DC 20226

JUL 16 2009

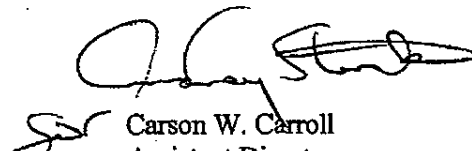
OPEN LETTER TO ALL TENNESSEE
FEDERAL FIREARMS LICENSEES

The purpose of this letter is to provide guidance on your obligations as a Federal firearms licensee ("FFL"). The Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF") is dedicated to your success in meeting your requirements as a Federal firearms licensee. The following guidance is intended to assist you in accomplishing this goal.

The passage of the Tennessee Firearms Freedom Act, H.B. 1796, 106th Leg. (Tenn. 2009) 1796 ("Act"), effective June 19, 2009, has generated questions from industry members as to how this State law may affect them while engaged in a firearms business activity. The Act purports to exempt personal firearms, firearms accessories, and ammunition manufactured in the State, and which remain in the State, from most Federal firearms laws and regulations. However, because the Act conflicts with Federal firearms laws and regulations, Federal law supersedes the Act, and all provisions of the Gun Control Act and the National Firearms Act, and their corresponding regulations, continue to apply.

As you may know, Federal law requires a license to engage in the business of manufacturing firearms or ammunition, or to deal in firearms, even if the firearms or ammunition remain within the same state. All firearms manufactured by a licensee must be properly marked. Additionally, each licensee must record the type, model, caliber or gauge, and serial number of each firearm manufactured or otherwise acquired, and the date such manufacture or other acquisition was made. The information required must be recorded in the licensee's records not later than the seventh day following the date such manufacture or other acquisition was made. Firearms transaction records and NICS background checks must be conducted prior to disposition of firearms to unlicensed persons. These, as well as other Federal requirements and prohibitions, apply whether or not the firearms or ammunition have crossed state lines.

If you have any questions regarding the Federal firearms laws and regulations, please contact your local ATF office. ATF works closely with the firearms industry and appreciates the important role the industry plays in combating violent crime. A listing of ATF office phone numbers can be found at <http://www.atf.gov/contact/field.htm>.


Carson W. Carroll
Assistant Director
(Enforcement Programs and Services)

Derek Miller

From: Maria Rensel [akconservative@ymail.com]
Sent: Thursday, February 04, 2010 5:42 PM
To: Rep. Mike Kelly
Subject: Alaska Firearms Freedom Act

Follow Up Flag: Follow up
Flag Status: Completed

I am writing in support of the Alaska Firearms Freedom Act. I am a member of the Second Amendment Task force as well as a Founder of the Interior Alaska Conservative Coalition (IACC). I am in touch on a daily basis with Alaskans in the Interior who are committed to the restoration of all of our Constitutional Rights.

This bill will be a step in the right direction for a state that has many, many citizens who want their legislature to stand up for our liberty, state sovereignty and second amendment rights as well as the entire Constitution. We are simply insisting that all levels of government uphold the Law of the Land. Why do we even have to ask?

Sincerely,

Maria Rensel

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Derek Miller

From: Brandi Fleshman [bfleshman2@alaska.edu]
Sent: Thursday, February 04, 2010 12:34 PM
To: Rep. Mike Kelly
Subject: Firearms Freedom Act

Follow Up Flag: Follow up
Flag Status: Completed

Representative Kelly:

Please support the Firearms Freedom Act in the House Judiciary Committee.

Brandi Fleshman
2026 Kendall Ave.
North Pole, AK 99705

Derek Miller

From: Tomaszewski [sparkyselectricalservices@gmail.com]
Sent: Thursday, February 04, 2010 12:11 PM
To: Rep. Mike Kelly
Subject: Alaska Firearms Freedom Act

Follow Up Flag: Follow up
Flag Status: Completed

I support this Bill and would appreciate your support.

Frank Tomaszewski

Derek Miller

From: Douglas Hart [dsimshart@gmail.com]
Sent: Thursday, February 04, 2010 11:23 AM
To: Rep. Mike Kelly
Subject: Alaska Firearms Freedom Act

Follow Up Flag: Follow up
Flag Status: Completed

Representative Kelly,

I wish to add my name to those who have written to you in support of this act. I know that there are many who do not believe Barack Obama can, could, or would do anything to "abridge" our 2nd Amendment Rights. The fact remains, however, that I do believe he/they (I include his 'friends') would like to curtail these rights and will do so if given the opportunity. I believe that, in these present circumstances, apathy and complacency are our Worst Enemies!

I've recently read where there are many in the current administration that wish for the United States to ratify a United Nations Treaty that would adversely affect the 2nd Amendment Rights of American Citizens. My question, sir, is how can the United States Federal Government enter into a Treaty in an Area that is NOT granted to it by the Constitution but is Reserved unto the States of the Union?

With Appreciation,

Doug Hart

Douglas S. Hart, Sr
Master Sergeant, US Army (Retired)

"MOAQN ABE"

Derek Miller

From: s.murray@gci.net on behalf of Susan Murray [s.murray@gci.net]
Sent: Thursday, February 04, 2010 10:37 AM
To: Rep. Mike Kelly
Subject: FFA

Follow Up Flag: Follow up
Flag Status: Completed

Please support the Alaska Firearms Freedom Act. Thank you

Derek Miller

From: Al Weber [al@tlcgeneral.com]
Sent: Thursday, February 04, 2010 9:05 AM
To: Rep. Mike Kelly
Subject: Firearms Freedom Act

Follow Up Flag: Follow up
Flag Status: Completed

Mr. Kelly,

Thank you for the work you are doing to restore states' rights in Alaska and the USA. Our Federal Government has arrogantly usurped power not granted to it by the Constitution and as a result it has grown into a dangerous monster with a salacious appetite for more and more power. The Firearms Freedom Act is a big step in returning the power to the states and to the people as intended by the framers of our Constitution as they clearly stated in the 10th Amendment.

The Fire Arms Freedom Act is big step in the right direction, but it is only the first step. We have a long way to go to undo the damage that has and is being done.

God Bless you and all the men and women who are willing to take a stand for what is right rather than for what is convenient. You are in my prayers. Keep up the good work.

Al Weber

<><

cell 907 378-9427

work 907-479-8810

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Derek Miller

From: Phil Evans [philevans@pbevans.com]
Sent: Thursday, February 04, 2010 8:59 AM
To: Rep. Mike Kelly
Subject: Fire Arms Freedom Act

Follow Up Flag: Follow up
Flag Status: Completed

Dear Rep Kelly:

I wholeheartedly support the Fire Arms Freedom Act. For states like Alaska, firearms are an integral part of our lively hood. Hunting with all of the associated support is an important industry for our state. Shooting sports and all of us who are involved with the various ranges help cultivate the talented shooters who go on to UAF Nanooks Rifle Team and make us national champions.

Simply put, our second amendment rights shall not be infringed. Many have died to defend our Constitution. Currently, there are those who have never served in the military to defend our freedoms who are hell bent on taking them away. We must stand together to protect our rights.

Thank you for your service!

Phil Evans

Derek Miller

From: Carl St. George [cstgeorge@gci.com]
Sent: Thursday, February 04, 2010 8:40 AM
To: Rep. Mike Kelly
Subject: Firearms Freedom Act

Follow Up Flag: Follow up
Flag Status: Completed

Hey Mike,

I just wanted to take a minute to thank you for everything you are & have been doing to protect our 2nd Amendment rights, and our State sovereignty. Please do everything in your power to get this act of legislation through. Have a good day, and may God bless you & your work there.

Thanks,
Carl St. George
330 Gold Claim Ave
Fairbanks AK 99712

Derek Miller

From: akinvest@gci.net on behalf of Rodger Hopp [akinvest@gci.net]
Sent: Thursday, February 04, 2010 8:19 AM
To: Rep. Mike Kelly
Subject: FFA

Follow Up Flag: Follow up
Flag Status: Completed

Rep Mike Kelly, I am writing to show support for the "Firearms Freedom Act" and related issues currently being considered. I view this as a very important action that is sorely needed to help establish the position of Alaska sovereignty from oppressive, restrictive and highly regulatory actions from legislators and regulators in the Federal Government. You have a massive base of support in the Interior. Thanks Mikel!
Sincerely, Rodger P Hopp

Derek Miller

From: Michael Lockery [northern_templar@yahoo.com]
Sent: Thursday, February 04, 2010 8:16 AM
To: Rep. Mike Kelly
Subject: Firearms Freedom act

Follow Up Flag: Follow up
Flag Status: Completed

Mr. Kelly, Please forward this letter to whom ever you need too. I support this act 100%. I am an active voter and plan on continuing to fight the politicians (no matter which party) who are trying to sell our God given rights away. Thank you for your service, Michael Lockery Two Rivers, Alaska.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

Sarah Palin, Governor

P.O. BOX 110300
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April 14, 2009

The Honorable Mike Kelly
State Capitol, Room 513
Juneau, AK 99801

The Honorable John Coghill
Chair, House Rules Committee
State Capitol, Room 214
Juneau, AK 99801

Re: CSHB 186(FIN) – Exempting Firearms from Federal Regulation

Dear Representatives Kelly and Coghill:

I write to inform you of my reasons for seeking an amendment to CSHB 186(FIN). I have asked that the bill be amended to change “shall” to “may” on page 3, line 18. This paragraph currently mandates that the Attorney General defend individuals who are charged with firearms violations in federal court. The enclosed amendment would make the defense of individuals discretionary.

A statute which requires the Attorney General to represent all who are accused of violating a particular law, regardless of the individual merits of their cases, could result in court decisions which do not advance the interests of Alaska’s citizens. AS 44.23.020, which requires the Attorney General to prosecute crimes and defend the state in civil lawsuits, does not mandate that the Attorney General defend particular individuals. CHSB 186(FIN), without the attached amendment, would therefore add a mandatory duty which does not otherwise exist, and would not allow the Attorney General to refuse to defend cases which, in his opinion, are not meritorious.

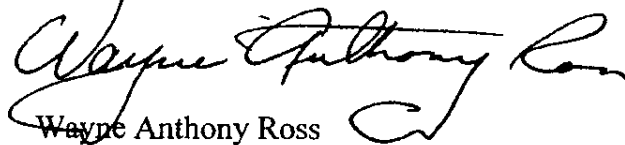
It has been said that bad facts make bad law. It is the duty of the executive to defend the laws which are promulgated by the legislature. The most powerful tool which the Attorney General possesses in defending the laws is the discretion to choose which cases to defend. To reverse that process, and require the state to defend individuals whose behavior is not consistent with the intent of the legislation is to deprive the state of

Representatives Kelly and Coghill
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this valuable advantage. For that reason, I urge the Rules Committee to adopt the proposed amendment.

Sincerely,



Wayne Anthony Ross
Attorney General

4-13-10

Alaska State Legislature

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Member
House Finance Committee

Representative Mike Kelly

House District 7

MEMORANDUM

DATE: January 20, 2010

TO: Representative Mike Kelly

FROM: Derek Miller

RE: Sectional Analysis for CSHB 186(FIN) – (26-LS0627\P.A)

A sectional summary of a bill should not be considered an authoritative interpretation of the bill. The bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1.

Findings Section. The authority of this Act is the Second, Ninth, and Tenth Amendments to the Constitution of the United States. The Second Amendment reserves to the people the right to keep and bear arms, the Ninth Amendment guarantees to the people rights not granted in the constitution, and the Tenth Amendment guarantees to the states and their people all powers not granted to the federal government elsewhere in the constitution. The United States Congress has not expressly preempted state regulation of intrastate commerce pertaining to the manufacture on an intrastate basis of firearms, firearm accessories, and ammunition. Article I, Section 19 of the Constitution of the State of Alaska secures to the citizens and prohibits government interference with the right of individual Alaska citizens to keep and bear arms.

Section 2.

(a) A personal firearm, a firearm accessory, or ammunition that is manufactured commercially or privately in this state and that remains in the state is not subject to federal law or federal regulation including registration under the authority of the United States Congress to regulate intrastate commerce.

(b) This section applies to a firearm, a firearm accessory, or ammunition that is manufactured in this state from basic materials without the inclusion of significant parts imported from another state. Generic and insignificant parts that have other manufacturing or consumer applications are not firearms, firearm accessories, or ammunition and their incorporation into a firearm, firearm accessory, or ammunition manufactured in this state does not subject them to federal regulation. Basic materials, such as unmachined steel and unshaped wood are not firearms, firearm accessories, and ammunition and are not subject to federal regulation under intrastate commerce. Firearm accessories imported into this state from another state and are attached to or used in conjunction with a firearm in this state does not subject the firearm to federal regulation under intrastate commerce.

(c) A firearm manufactured or sold in this state and not subject to federal regulation must have the words "Made in Alaska" clearly stamped on a central metallic part, such as the receiver or frame.

(d) Permits the Attorney General of Alaska to defend a citizen of the state who is prosecuted by the government of the United States under power to regulate interstate commerce for violating federal law concerning the manufacture, sale, transfer, or possession of a firearm, a firearm accessory, or ammunition manufactured and retained within this state.

(e) Definitions section.

"Firearm accessory" – an item that is used in conjunction with or mounted on a firearm but is not essential to the basic function of a firearm. This includes: a telescope or laser sight, magazine, flash or sound suppressor, folding or aftermarket stock and grip, speedloader, ammunition carrier, and light for target illumination.

"Generic and insignificant parts" – includes springs, screws, nuts, and pins.

"Manufactured" – means a firearm a firearm accessory, or ammunition that has been created from basic materials for functional usefulness, including forging, casting, machining, or other processes for working materials.

Section 3.

Applicability section. This Act applies to firearms, firearm accessories, and ammunition that are manufactured and retained in this state after October 1, 2009.