



Revived! State Law Banishing D.C. Gun Rules

Arguments scheduled in 9th Circuit on Montana's 'freedom act'

By: Bob Unruh – January 10th, 2013

Just as the rhetoric in Washington on guns has hit a zenith – with Joe Biden promising executive orders to try to prevent the hardware from doing damage – a court order has revived a stunning plan adopted by several states that tells Washington, regarding many guns, to just go away.

Gary Marbut, president of the Montana Shooting Sports Association, confirmed that the 9th U.S. Circuit Court of Appeals has scheduled oral arguments in the MSSA v. Holder case for March 4 in Portland, Ore. He is the only individual who is a plaintiff in the case

The challenge to Washington's death-grip on gun rules across the nation has been stalled at the appellate level for nearly two years, but a ruling from the notoriously and often-overturned court bench is needed for the plaintiffs to reach the U.S. Supreme Court, where they want to finish their fight.

“You probably know that I wrote the Montana Firearms Freedom Act to mount a challenge to federal ‘Commerce Clause’ power, using firearms as the vehicle for the exercise,” Marbut said in his announcement about the sudden movement in the case.

“The MFFA declares that any firearms made and retained in Montana are simply not subject to any federal authority under the power given to Congress in the Constitution to ‘regulate commerce ... among the states.’”

The case was brought on Oct. 9, 2009, when the MFFA went into effect, and Marbut explains, “We need to get to the U.S. Supreme Court in order to overturn a century of bad Commerce Clause precedent.”

He noted the contributions of the Second Amendment Foundation, and Missoula attorney Quentin Rhoades on the case.

Officials who have worked on the Montana Firearms Freedom Act, which simply declares that guns made, sold and kept in the state of Montana are exempt from federal limits and requirements, also prompted similar legislation in seven other states.

Among those are Tennessee (SB1610); Utah (SB11); Wyoming (HB95); South Dakota (SB89); Arizona (HB2307); Idaho (HB589); and Alaska (HB1860). Representing a consensus among the states on the limits of federal power, additional copies of the MFFA were also introduced in the legislatures of 23 other states, for a total of 31 jurisdictions where it has been enacted or introduced.

Those laws are on hold pending the outcome of Montana's court challenge.

A federal judge in Montana determined that the state could not do what it wanted.

When South Dakota's law was signed by Gov. Mike Rounds, a commentator said it addresses the "rights of states which have been carelessly trampled by the federal government for decades."

WND reported when Wyoming joined the states with self-declared exemptions from federal gun regulation, officials there took the unusual step of including penalties for any agent of the U.S. who "enforces or attempts to enforce" federal gun rules on a "personal firearm."

The costs could be up to two years in prison and \$2,000 in fines for an offender there.

Filings already submitted to the appellate panel challenge whether the judges will choose a "tyrannical" Washington or a federal government restrained by the Constitution.

Quoting Alexander Hamilton's statement that the federalism system was intended to suppress "attempts of the government to establish tyranny," a brief filed by the Montana Shooting Sports Association, the Second Amendment Foundation and Marbut states: "The government may argue that it is not, in its current incarnation, tyrannical. The national government usually abides by the law, typically protects its citizens' rights, and always celebrates in its peaceful transfers of power. Whatever fear appellants or anyone else may have of its becoming tyrannical, the government may argue, is no more than disingenuous alarmism," the brief explains.

"Such an argument would be wrong."

The brief explains the federal government already has proven that it is tyrannical.

"The wholesale stripping of independent sovereignty from the states has destroyed the balance of power, and given the federal government advantages it demonstrably tends to abuse. The outrage that is our \$14.5 trillion national debt may be the worst example. The burning cry of the American Revolution was 'no taxation without representation.' By borrowing more money than the current generation can repay in our lifetimes, Congress leaves a legacy of debt for future generations. Our progeny did not vote for the monumental hole their parents are digging for them. Still they will certainly be saddled with the duty to make good. This is tyranny."

The plaintiffs also have argued that the U.S. reneged on the promises that were made when the territory of Montana became a state in 1889.

The Weapons Collectors Society in Montana points out that Montana became a state in the union under a legal compact, and at the time, "It was the understanding of the parties that the United States Constitution would not be construed by the federal government to deny or disparage the rights reserved by the people of Montana and by the state, including the right to regulate and engage in the intrastate manufacture and sale of guns and ammunition.

"The compact states on its face that it may not be amended without consent of both the state of Montana and the United States... The appellee's assertion the MFFA is

preempted by federal law is an attempt to unilaterally amend that contract ... and is, therefore, unenforceable.”

The organization, representing hundreds of gun enthusiasts across the state, explains how strongly Montanans felt then – and feel now – about their right to defend themselves:

It cannot be fairly disputed that firearms making and selling was occurring within the boundaries of Montana in 1889. Those manufacturing activities were not regulated by the federal government at that time. ... It is difficult to envision that those who negotiated the terms of the compact in 1889 did not understand that the state reserved the right to regulate those firearms manufacturing/selling activities within Montana at the time of the making of the compact or had agreed the people of Montana had given up forever their ability to make and sell firearms without first obtaining the federal government’s permission.

It is unlikely that the negotiators to the compact understood the text of the U.S. Constitution to allow the federal government to regulate in any way the right to make, keep, bear, and sell arms.

Indeed, it could be argued that Montana would not have agreed to join the Union if the federal government had, at that time, suggested that it was going to enact legislation similar to the [Gun Control Act] or [National Firearms Act] and subject Montana citizens to federal criminal prosecution and civil penalties for engaging in local firearms dealing.

A brief from the Center for Constitutional Jurisprudence and 15 state legislators from Indiana, Colorado, Utah, West Virginia, New Hampshire, Idaho, Oklahoma and Minnesota pointed out that the federal gun laws were set up to “assist state and local authorities with the control of local crime,” but that’s an area of concern over which Congress has no authority.

A number of Montana legislators submitted a brief that said the Tenth Amendment is the “final safeguard” against federal encroachment on state authority. And a brief from the states of Utah, Alaska, Idaho, Michigan, Nebraska, South Carolina, South Dakota, West Virginia and Wyoming said Washington’s “enumerated powers” under the Constitution simply don’t include the authority to regulate intrastate activity.

Also filing briefs with the 9th Circuit were Gun Owners of America and the Goldwater Institute and Cato Institute, who argued the U.S. Supreme Court has determined “Congress may not ‘commandeer’ state legislatures by requiring them to legislate as directed by the federal government.”

It was U.S. District Judge Donald Molloy who affirmed the “findings” of Magistrate Jeremiah Lynch in dismissing the case.

The Montana Firearms Freedom Act has been described as part of a growing national effort by states to reject federal authority and control when that authority is not included in the Constitution.

Officials at the Tenth Amendment Center, in fact, have a long list of issues over which there currently are campaigns to “nullify” or void Washington interference.

Those include firearms regulations, medical marijuana laws, REAL ID, health care, the use of the National Guard, taxes, the authority of sheriffs and others.