

# Feds accused of renegeing on compact for statehood

## Lawsuit brief says Montanans never gave up right to make and deal guns

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Posted: June 21, 2011  
8:27 pm Eastern

By Bob Unruh  
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One of the "friend-of-the-court" briefs in a federal court fight over the right to regulate gun manufacturing and sales in the state of Montana is accusing the federal government of renegeing on the promises that were made when the territory became a state in 1889.

The dispute is over the Montana Firearms Freedom Act, which was adopted by lawmakers and signed into law by the governor in the state. It specifies that weapons and ammunition made, sold and kept in the state are exempt from federal licensing and other regulations.

The federal government is arguing that the Commerce Clause allows federal agencies to impose any requirement they choose on those weapons, and the dispute is pending at the 9th U.S. Circuit Court of Appeals now.

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As part of those arguments a long list of states, individuals and organizations have filed amicus briefs with the appellate court, and one, from 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.

Earlier, the plaintiffs in the case, who have organized under the [Firearms Freedom Act](#) banner, filed their brief, asking 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," the brief filed by the [Montana Shooting Sports Association, the Second Amendment Foundation](#) and MSSA President Gary Marbut of Missoula 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

borning 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 case at the center of the dispute isn't complicated: It's the state law that "declares that any firearms, ammunition and firearm accessories made and retained in Montana are not subject to any federal authority under the Commerce Clause," because those items are not in "interstate commerce."

The plan was launched in Montana, but has been very popular nationwide.

"Following Montana's enactment, virtually identical versions of the MFFA were adopted in 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, virtually identical copies of the MFFA have also been introduced in the legislatures of 23 other states, [for a total of 31 jurisdictions where it has been enacted or introduced,](#)" the brief explains.

After Montana adopted the law, it went to court to obtain a verdict that the federal government could not interfere with the state law's provisions. As the plaintiffs expected, a federal judge in Montana disagreed with them, and the case now has been elevated to the 9th Circuit.

The collectors association brief also notes the federal plan violates the Tenth Amendment to the U.S. Constitution, an argument raised by many of the other amicus parties.

"Congress' commerce powers are broad; however, such powers are not unlimited," the brief explained. "The Commerce Clause itself imposes constraints on Congress' authority to regulate wholly intrastate activities.

"The Tenth Amendment restates the Constitution's principle of federalism by explicitly memorializing that those powers not delegated to the United States, or prohibited by it to the states, are reserve to the states or to the people."

"The MFFA is a law that allows Montana to regulate exclusively what the United States Supreme Court ... would describe as a 'local matter' – firearm production and trade conducted within Montana's borders," the brief argues.

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 list of Montana legislators submitted a brief that said the Tenth Amendment is the "final safeguard" against federal encroachment on state authority.

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."

"Federal preemption of the MFFA would not merely displace competing state firearms regulations, it would override state sovereignty in such a way that constitutional liberty is diminished, necessarily increasing the risk of tyranny and abuse of power," it said.

In the brief from the state of Montana, officials argued the court "was forced to 'pile inference upon inference' in order to find a substantial effect on interstate commerce from the completely intrastate manufacture of firearms..."

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.

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.

