

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Thursday, May 01, 2014 10:07 AM
To: Fox, Tim; Mattioli, Mark
Cc: Bennion, Jon; Barnes, John
Subject: FW: Second Amendment Amicus Brief in Nojay, et al., v. Cuomo
Attachments: NY Amicus Brief--circulation.pdf; 140 - Decision Order 12 31 13.pdf; Appellants' Brief.pdf

Tim – Alabama is soliciting joins for its 2nd Circuit amicus brief arguing that New York’s ban on semiautomatic firearms is unconstitutional. The brief argues that such guns are “arms” protected by the Second Amendment because they are commonly possessed by law-abiding citizens for lawful purposes. Thus, strict scrutiny should be applied to NY’s ban.

I recommend that we DO JOIN this brief. The deadline for joins is 3 pm our time on Tuesday, May 6.

Thanks.

From: Brasher, Andrew [<mailto:ABrasher@ago.state.al.us>]
Sent: Wednesday, April 30, 2014 4:31 PM
To:
Cc: cutle@ago.state.ms.us; Myers, Emily; Schweitzer, Dan; Killough, Lindsey
Subject: Second Amendment Amicus Brief in Nojay, et al., v. Cuomo

All,

This email is to let you know that Alabama intends to file an amicus brief in the Second Circuit supporting the plaintiffs-appellants in *Nojay, et al., v. Cuomo*, in which the district court applied intermediate scrutiny to uphold the constitutionality of a New York law that bans semiautomatic firearms. (Note that the New York AG’s Office is representing the defendants on the other side of this case.)

Alabama’s brief contends that New York’s gun ban is unconstitutional under the Second Amendment. Semiautomatic firearms are among the “arms” protected by the Second Amendment because they are commonly possessed by law-abiding citizens for lawful purposes. For this reason, strict rather than intermediate scrutiny should apply under Second Circuit case law. New York’s ban of these firearms cannot pass muster under strict scrutiny because such bans have little effect on gun violence and public safety, and a categorical ban is not the least restrictive means to serve the state’s interests in public safety and crime prevention.

The party we are supporting, the district court’s decision, and the draft amicus brief are all attached to this email.

The deadline to join this brief is 4:00 central time on **May 6, 2014**.

To join, please contact:

Megan Kirkpatrick
Assistant Solicitor General
mkirkpatrick@ago.state.al.us
(334) 353-2188

OR

Andrew Brasher
Solicitor General
Office of Alabama Attorney General Luther Strange
Direct: 334-353-2609
Fax: 334-242-4891

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Wednesday, April 30, 2014 4:42 PM
To: 'Brasher, Andrew'
Subject: RE: Second Amendment Amicus Brief in Nojay, et al., v. Cuomo
Attachments: photo.jpg

Plus – semi-auto firearms are fun to hunt elk with, as the attached picture attests. ☺

That's a SCAR 17 – the same gun used by the Navy Seals (but mine's only semi-auto, unfortunately).

I'll recommend to General Fox that we join.

Hope you're doing well!

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Direct: 334-353-2609
Fax: 334-242-4891

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: Kirkpatrick, Megan <mkirkpatrick@ago.state.al.us>
Sent: Tuesday, May 06, 2014 3:35 PM
To: Leesa.Thompson@oag.ok.gov; Sarah.Greenwalt@oag.ok.gov; taylorc@ag.state.la.us; Robert.Ellman@azag.gov; Susan.Britton@ag.ky.gov; sean.riley@ag.ky.gov; Pfeifer, Delberta; Allen.Winsor@myfloridalegal.com; RestucciaE@michigan.gov; ESmith@scag.gov; Karen.Bagby@ago.mo.gov; judy.mitchell@wyo.gov; bradford.phelps@arkansasag.gov; VanDyke, Lawrence; andy.oldham@texasattorneygeneral.gov; Julie.M.Blake@wvago.gov; saexeter@utah.gov; pdouglas@utah.gov; delayne.deck@ag.idaho.gov; Katie.Spohn@nebraska.gov; Lynell.Erickson@state.sd.us; Sherri.Wald@state.sd.us; npeterson@LAW.GA.GOV; dbahr@nd.gov; Hafner, Janell M (LAW); Burton, Anastasia
Cc: Brasher, Andrew; Killough, Lindsey
Subject: Amicus Brief in Nojay, et al. v. Cuomo, as filed
Attachments: Amicus Brief of Alabama etc - 14-36 (2).pdf

Please find attached the amicus brief in *Nojay, et al. v. Cuomo*, as filed in the Second Circuit this afternoon. Thank you for your support.

Megan Kirkpatrick, Assistant Solicitor General
State of Alabama, Office of Attorney General Luther Strange
501 Washington Avenue
Montgomery, AL 36130
(334) 353-2188

Confidentiality Notice: The information contained in this email and the documents attached hereto contain confidential information intended only for the use of the intended recipients. If the reader of the message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of the information contained herein is strictly prohibited. If you have received this communication in error, please immediately notify me by reply email.

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Wednesday, May 07, 2014 9:56 AM
To: James, Julie
Cc: Burton, Anastasia; Barnes, John
Subject: FW: Amicus Brief in Nojay, et al. v. Cuomo, as filed
Attachments: Amicus Brief of Alabama etc - 14-36 (2).pdf

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From: VanDyke, Lawrence
Sent: Thursday, May 01, 2014 12:48 PM
To: Barnes, John; Burton, Anastasia
Subject: FW: Second Amendment Amicus Brief in Nojay, et al., v. Cuomo

The filing will be on May 6, late in the day.

From: Brasher, Andrew [mailto:ABrasher@ago.state.al.us]
Sent: Thursday, May 01, 2014 12:42 PM
To: VanDyke, Lawrence
Subject: Re: Second Amendment Amicus Brief in Nojay, et al., v. Cuomo

Great, Lawrence. We are filing on May 6.

Andrew Brasher
Solicitor General
(334) 590-1029

On May 1, 2014, at 2:20 PM, "VanDyke, Lawrence" <LVanDyke@mt.gov> wrote:

Andrew – Exactly what day will this be filed?

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ashley.harwei@atg.in.gov; anna.joyce@doj.state.or.us; marlene.brown@dol.lps.state.nj.us;
diane.dewolf@myfloridalegal.com; jonathan.mitchell@oag.state.tx.us;
mary.mertz@ohioattorneygeneral.gov; sforney@attorneygeneral.gov; npeterson@law.ga.gov;
ariel.levinson-waldman@dc.gov; Leesa.Thompson@oag.ok.gov; dowker@chicago.gov;
frederick.nelson@ohioattorneygeneral.gov; patrick.wyrick@oag.ok.gov; Black, Michael;
steven.wu@ag.ny.gov; Sam Peterson; andy.oldham@texasattorneygeneral.gov;
michael.hendershot@ohioattorneygeneral.gov; jeffrey.thompson@iowa.gov; robyn.bender@ag.ky.gov;
laura-jane.weimer@state.co.us; james.adams@state.de.us; Aricka.seales@state.ma.us;
wiltonp@ag.state.la.us; lindstroma@michigan.gov; VanDyke, Lawrence;
allen.winsor@myfloridalegal.com; christopher.dodrill@wvago.gov; marmercado@justicia.pr.gov;
elbert.lin@wvago.gov; Mary.McTaggart@state.de.us; Sarah.Greenwalt@oag.ok.gov;
Michael.Francisco@state.co.us; Eric.Murphy@ohioattorneygeneral.gov; john.knepper@wyo.gov;
Kirkpatrick, Megan; craig.konnoth@doj.ca.gov; Killough, Lindsey; Loren.AliKhan@dc.gov;
lenningtondp@doj.state.wi.us; jacob.campion@ag.state.mn.us; Schlichting, Melissa;
Osvaldo.Vazquez@myfloridalegal.com; Michael.Casper@doj.state.or.us; deidra.shannon@doj.ca.gov;
tcxo@oag.state.va.us; cshapiro@atg.state.il.us; ktaylor@oag.state.va.us; whelanmf@doj.state.wi.us;
samuelsontc@doj.state.wi.us

Cc: cutle@ago.state.ms.us; Myers, Emily; Schweitzer, Dan; Killough, Lindsey

Subject: Second Amendment Amicus Brief in *Nojay, et al., v. Cuomo*

All,

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OR

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Direct: 334-353-2609

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Cc: Barnes, John; Burton, Anastasia; Mattioli, Mark
Subject: FW: Second Amendment Amicus Brief in Nojay, et al., v. Cuomo
Attachments: Second Amendment Amicus Brief in Nojay, et al., v. Cuomo

FYI – for the binder.

John – I'm still checking on the exact filing date, and will let you know when I hear back. I would assume it will be May 7, but I'll confirm. Thanks!

From: VanDyke, Lawrence
Sent: Thursday, May 01, 2014 12:18 PM
To: 'Brasher, Andrew'
Cc: cutle@ago.state.ms.us; Myers, Emily; Schweitzer, Dan; Killough, Lindsey
Subject: RE: Second Amendment Amicus Brief in Nojay, et al., v. Cuomo

Andrew – Montana would like to join this brief. Thank you for the opportunity.

Please list our Attorney General as "Timothy C. Fox".

General Fox's full address, should you need it, is:

Timothy C. Fox
Attorney General of Montana
P.O. Box 201401
Helena, MT 59620-1401
406-444-2026

Please confirm our join by return email, and if you could forward a copy of the final brief once filed, we would appreciate it.

Thank you again,

Lawrence VanDyke
Solicitor General ♦ Montana Department of Justice

215 N. Sanders ♦ P.O. Box 201401
Helena, Montana 59620
T: (406) 444-3442 ♦ F: (406) 444-3549
LVanDyke@mt.gov

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Sent: Wednesday, April 30, 2014 4:31 PM
To:

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To: 'mkirkpatrick@ago.state.al.us'; ABrasher@ago.state.al.us
Cc: Burton, Anastasia
Subject: FW: Second Amendment Amicus Brief in Nojay, et al., v. Cuomo

Andrew and Megan – Can you send a pdf copy of the final brief, once filed, to Anastasia Burton (copied)? Anastasia is going to do a press release for our office once the brief is filed, and would like to attach a copy of the brief. Feel free to copy me too, but because I'll be in and out today, if you could send it directly to Anastasia that would be very helpful.

- Lawrence

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Sent: Wednesday, April 30, 2014 4:31 PM
To: ccoppin@nmag.gov; paul.d.stern@maine.gov; dbahr@nd.gov; peter.sacks@ago.state.ma.us; kmunro@ag.nv.gov; JMcIntosh@scag.gov; pam.murphy@doj.nh.gov; eric.tabor@iowa.gov; jknorr@attorneygeneral.gov; margaret.chapple@ct.gov; james.layton@ago.mo.gov; paula.bickett@azag.gov; charles.mcquigan@state.sd.us; RPartington@riag.ri.gov; crimago@saipan.com; Edward.Dumont@doj.ca.gov; barbara.underwood@ag.ny.gov; Hampton, Andrea; sbluestone@nmag.gov; david.raupp@arkansasag.gov; gmorg@ago.state.ms.us; jlee@riag.ri.gov; attorney@samoatelco.com; stephan.finkel@lps.state.nj.us; Girard.D.Lau@hawaii.gov; stevemac@ku.edu; basay@atg.state.vt.us; fred.boss@doj.state.or.us; gkelley@ncdoj.gov; alanc@atg.wa.gov; Joe.Whalen@ag.tn.gov; alama@nmag.gov; judy.zeprun@state.ma.us; robert.ellman@azag.gov; joanne.grace@alaska.gov; Gregory.Dauria@ct.gov; anne.edwards@doj.nh.gov; tom.fisher@atg.in.gov; jwhite@ncdoj.gov; whowle@ag.nv.gov; Frances.Grunder@doj.ca.gov; mianf@ago.state.ms.us; ken.rosenstein@alaska.gov; allison.martin@ag.ky.gov; gibsoncj@doj.state.wi.us; hpizz@ago.state.ms.us; wellsik@doj.state.wi.us; Lee.Davidson@ag.ks.gov; edavis@doj.vi.gov; ssullivan@oag.state.md.us; jmaddrey@ncdoj.gov; dspence@oag.state.md.us; vicki.l.pendell@wvago.gov; sraphael@oag.state.va.us; judy.mitchell@wyo.gov; Steve.Creason@atg.in.gov; andrea.silkowitz@dol.lps.state.nj.us; brian.kane@ag.idaho.gov; Richard.Dearing@ag.ny.gov; wmckinney@ncdoj.com; katie.spohn@nebraska.gov; rrussell@nmag.gov; Mary Jo Woods; restucciae@michigan.gov; wbrockman@oag.state.md.us; agesmith@scag.gov; susan.lee@doj.ca.gov; todd.kim@dc.gov; delayne.deck@ag.idaho.gov; dan.domenico@state.co.us; heather.mcveigh@atg.in.gov; suzanne.gorman@doj.nh.gov; jbhoward@oag.state.md.us; potterkc@doj.state.wi.us; stjohnkm@doj.state.wi.us; ed.bedrosian@state.ma.us; john.garry@ag.state.mn.us; brooke.paup@texasattorneygeneral.gov; appeals@ohioattorneygeneral.gov; Sherri.Wald@state.sd.us;

adam.aston@texasattorneygeneral.gov; jhughes@atg.state.il.us; david.blake@state.co.us; Segrest, Stuart; susan.britton@ag.ky.gov; janell.hafner@alaska.gov; john.campbell@ag.ks.gov; delberta.pfeifer@ag.ks.gov; perry.zinn-rowthorn@ct.gov; jfishburn@ag.nv.gov; mwebb@ago.state.ms.us; barb.fehrman@ag.state.mn.us; vbeavers@ag.nv.gov; bromano@utah.gov; kris.ailslieger@ag.ks.gov; david.curran@arkansasag.gov; bob.fagan@msdh.state.ms.us; sean.riley@ag.ky.gov; ashley.harwel@atg.in.gov; anna.joyce@doj.state.or.us; marlene.brown@dol.lps.state.nj.us; diane.dewolf@myfloridalegal.com; jonathan.mitchell@oag.state.tx.us; mary.mertz@ohioattorneygeneral.gov; sforney@attorneygeneral.gov; npeterson@law.ga.gov; ariel.levinson-waldman@dc.gov; Leesa.Thompson@oag.ok.gov; dowkerc@michigan.gov; frederick.nelson@ohioattorneygeneral.gov; patrick.wyrick@oag.ok.gov; Black, Michael; steven.wu@ag.ny.gov; Sam Peterson; andy.oldham@texasattorneygeneral.gov; michael.hendershot@ohioattorneygeneral.gov; jeffrey.thompson@iowa.gov; robyn.bender@ag.ky.gov; laura-jane.weimer@state.co.us; james.adams@state.de.us; Aricka.seales@state.ma.us; wiltonp@ag.state.la.us; lindstroma@michigan.gov; VanDyke, Lawrence; allen.winsor@myfloridalegal.com; christopher.dodrill@wvago.gov; marmercado@justicia.pr.gov; elbert.lin@wvago.gov; Mary.McTaggart@state.de.us; Sarah.Greenwalt@oag.ok.gov; Michael.Franisco@state.co.us; Eric.Murphy@ohioattorneygeneral.gov; john.knepper@wyo.gov; Kirkpatrick, Megan; craig.konnoth@doj.ca.gov; Killough, Lindsey; Loren.AliKhan@dc.gov; lenningtondp@doj.state.wi.us; jacob.campion@ag.state.mn.us; Schlichting, Melissa; Osvaldo.Vazquez@myfloridalegal.com; Michael.Casper@doj.state.or.us; deidra.shannon@doj.ca.gov; tcox@oag.state.va.us; cshapiro@atg.state.il.us; ktaylor@oag.state.va.us; whelanmf@doj.state.wi.us; samuelsontc@doj.state.wi.us

Cc: cutle@ago.state.ms.us; Myers, Emily; Schweitzer, Dan; Killough, Lindsey

Subject: Second Amendment Amicus Brief in *Nojay, et al., v. Cuomo*

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The party we are supporting, the district court's decision, and the draft amicus brief are all attached to this email.

The deadline to join this brief is 4:00 central time on **May 6, 2014**.

To join, please contact:

Megan Kirkpatrick
Assistant Solicitor General
mkirkpatrick@ago.state.al.us
(334) 353-2188

OR

Andrew Brasher
Solicitor General
Office of Alabama Attorney General Luther Strange
Direct: 334-353-2609
Fax: 334-242-4891

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: Brasher, Andrew <ABrasher@ago.state.al.us>
Sent: Tuesday, May 06, 2014 10:19 AM
To: Burton, Anastasia; VanDyke, Lawrence; Kirkpatrick, Megan
Subject: RE: Second Amendment Amicus Brief in Nojay, et al., v. Cuomo

At exactly 4pm central time.

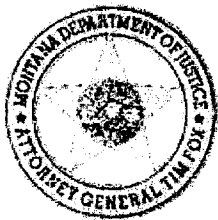
Andrew Brasher
Solicitor General
Office of Alabama Attorney General Luther Strange
Direct: 334-353-2609
Fax: 334-242-4891

From: Burton, Anastasia [mailto:ABurton@mt.gov]
Sent: Tuesday, May 06, 2014 11:16 AM
To: VanDyke, Lawrence; Kirkpatrick, Megan; Brasher, Andrew
Subject: RE: Second Amendment Amicus Brief in Nojay, et al., v. Cuomo

What time will it be filed?

Thanks, all,

Anastasia Burton
Deputy Communications Director
Attorney General Tim Fox, Montana Department of Justice
p 406.444.9869 | www.doj.mt.gov | Twitter: [@AGTimFox](#)



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From: VanDyke, Lawrence
Sent: Tuesday, May 06, 2014 9:51 AM
To: 'mkirkpatrick@ago.state.al.us'; [ABrasher@ago.state.al.us](#)
Cc: Burton, Anastasia
Subject: FW: Second Amendment Amicus Brief in Nojay, et al., v. Cuomo

Andrew and Megan – Can you send a pdf copy of the final brief, once filed, to Anastasia Burton (copied)? Anastasia is going to do a press release for our office once the brief is filed, and would like to attach a copy of the brief. Feel free to copy me too, but because I'll be in and out today, if you could send it directly to Anastasia that would be very helpful.

- Lawrence

From: Brasher, Andrew [mailto:ABrasher@ago.state.al.us]
Sent: Thursday, May 01, 2014 12:42 PM
To: VanDyke, Lawrence
Subject: Re: Second Amendment Amicus Brief in Nojay, et al., v. Cuomo

Great, Lawrence. We are filing on May 6.

Andrew Brasher
Solicitor General
(334) 590-1029

On May 1, 2014, at 2:20 PM, "VanDyke, Lawrence" <LVanDyke@mt.gov> wrote:

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michael.hendershot@ohioattorneygeneral.gov; jeffrey.thompson@iowa.gov; robyn.bender@ag.ky.gov;
laura-jane.weimer@state.co.us; james.adams@state.de.us; Aricka.seales@state.ma.us;
wiltonp@ag.state.la.us; lindstroma@michigan.gov; VanDyke, Lawrence;
allen.winsor@myfloridalegal.com; christopher.dodrill@wvago.gov; marmercado@justicia.pr.gov;
elbert.lin@wvago.gov; Mary.McTaggart@state.de.us; Sarah.Greenwalt@oag.ok.gov;
Michael.Francisco@state.co.us; Eric.Murphy@ohioattorneygeneral.gov; john.knepper@wyo.gov;
Kirkpatrick, Megan; craig.konnoth@doj.ca.gov; Killough, Lindsey; Loren.AliKhan@dc.gov;
lenningtondp@doj.state.wi.us; jacob.campion@ag.state.mn.us; Schlichting, Melissa;
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tcx@oag.state.va.us; cshapiro@atg.state.il.us; ktaylor@oag.state.va.us; whelanmf@doj.state.wi.us;
samuelsontc@doj.state.wi.us

Cc: cutle@ago.state.ms.us; Myers, Emily; Schweitzer, Dan; Killough, Lindsey

Subject: Second Amendment Amicus Brief in *Nojay, et al., v. Cuomo*

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The deadline to join this brief is 4:00 central time on **May 6, 2014**.

To join, please contact:

Megan Kirkpatrick
Assistant Solicitor General
mkirkpatrick@ago.state.al.us
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OR

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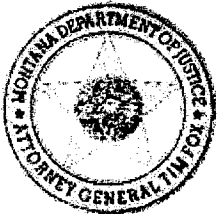
From: Burton, Anastasia
Sent: Tuesday, May 06, 2014 8:40 AM
To: VanDyke, Lawrence
Subject: RE: Second Amendment Amicus Brief in Nojay, et al., v. Cuomo

Lawrence, when you get the final pdf, could you send it to me so I can link to it in our news release today?

I'll release this once they file, which looks to be at 3 pm our time. If you hear that anything changes on that, could you let me know?

Thanks!

Anastasia Burton
Deputy Communications Director
Attorney General Tim Fox, Montana Department of Justice
p 406.444.9869 | www.doj.mt.gov | Twitter: [@AGTimFox](https://twitter.com/AGTimFox)



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From: VanDyke, Lawrence
Sent: Thursday, May 01, 2014 12:48 PM
To: Barnes, John; Burton, Anastasia
Subject: FW: Second Amendment Amicus Brief in Nojay, et al., v. Cuomo

The filing will be on May 6, late in the day.

From: Brasher, Andrew [<mailto:ABrasher@ago.state.mt.us>]
Sent: Thursday, May 01, 2014 12:42 PM
To: VanDyke, Lawrence
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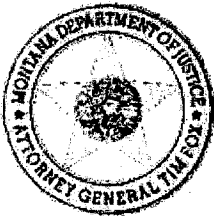
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Deputy Communications Director
Attorney General Tim Fox, Montana Department of Justice
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From: VanDyke, Lawrence
Sent: Tuesday, May 06, 2014 9:51 AM
To: 'mkirkpatrick@ago.state.al.us'; ABrasher@ago.state.al.us
Cc: Burton, Anastasia
Subject: FW: Second Amendment Amicus Brief in Nojay, et al., v. Cuomo

Andrew and Megan – Can you send a pdf copy of the final brief, once filed, to Anastasia Burton (copied)? Anastasia is going to do a press release for our office once the brief is filed, and would like to attach a copy of the brief. Feel free to copy me too, but because I'll be in and out today, if you could send it directly to Anastasia that would be very helpful.

- Lawrence

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Sent: Thursday, May 01, 2014 12:42 PM
To: VanDyke, Lawrence
Subject: Re: Second Amendment Amicus Brief in Nojay, et al., v. Cuomo

Great, Lawrence. We are filing on May 6.

Andrew Brasher

Solicitor General
(334) 590-1029

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OR

Andrew Brasher
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Direct: 334-353-2609
Fax: 334-242-4891

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: Kirkpatrick, Megan <mkirkpatrick@ago.state.al.us>
Sent: Tuesday, May 06, 2014 9:57 AM
To: VanDyke, Lawrence
Subject: RE: Second Amendment Amicus Brief in Nojay, et al., v. Cuomo

OK, great.

From: VanDyke, Lawrence [mailto:LVanDyke@mt.gov]
Sent: Tuesday, May 06, 2014 10:54 AM
To: Kirkpatrick, Megan
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It was me. Thank you! That was what I was going to ask.

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Lawrence,

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Megan Kirkpatrick, Assistant Solicitor General
State of Alabama, Office of Attorney General Luther Strange
501 Washington Avenue
Montgomery, AL 36130
(334) 353-2188

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Please list our Attorney General as “Timothy C. Fox”.

General Fox’s full address, should you need it, is:

Timothy C. Fox
Attorney General of Montana
P.O. Box 201401
Helena, MT 59620-1401
406-444-2026

Please confirm our join by return email, and if you could forward a copy of the final brief once filed, we would appreciate it.

Thank you again,

Lawrence VanDyke
Solicitor General • Montana Department of Justice

215 N. Sanders • P.O. Box 201401
Helena, Montana 59620
T: (406) 444-3442 • F: (406) 444-3549
LVanDyke@mt.gov

From: Brasher, Andrew [<mailto:ABrasher@ago.state.al.us>]
Sent: Wednesday, April 30, 2014 4:31 PM
To:
Cc: cutle@ago.state.ms.us; Myers, Emily; Schweitzer, Dan; Killough, Lindsey
Subject: Second Amendment Amicus Brief in Nojay, et al., v. Cuomo

All,

This email is to let you know that Alabama intends to file an amicus brief in the Second Circuit supporting the plaintiffs-appellants in *Nojay, et al., v. Cuomo*, in which the district court applied intermediate scrutiny to uphold the constitutionality of a New York law that bans semiautomatic firearms. (Note that the New York AG’s Office is representing the defendants on the other side of this case.)

Alabama's brief contends that New York's gun ban is unconstitutional under the Second Amendment. Semiautomatic firearms are among the "arms" protected by the Second Amendment because they are commonly possessed by law-abiding citizens for lawful purposes. For this reason, strict rather than intermediate scrutiny should apply under Second Circuit case law. New York's ban of these firearms cannot pass muster under strict scrutiny because such bans have little effect on gun violence and public safety, and a categorical ban is not the least restrictive means to serve the state's interests in public safety and crime prevention.

The party we are supporting, the district court's decision, and the draft amicus brief are all attached to this email.

The deadline to join this brief is 4:00 central time on **May 6, 2014**.

To join, please contact:

Megan Kirkpatrick
Assistant Solicitor General
mkirkpatrick@ago.state.al.us
(334) 353-2188

OR

Andrew Brasher
Solicitor General
Office of Alabama Attorney General Luther Strange
Direct: 334-353-2609
Fax: 334-242-4891

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: Barnes, John
Sent: Thursday, May 01, 2014 12:03 PM
To: VanDyke, Lawrence
Cc: Burton, Anastasia
Subject: RE: Second Amendment Amicus Brief in Nojay, et al., v. Cuomo

When will this amicus be filed?

From: VanDyke, Lawrence
Sent: Thursday, May 01, 2014 10:07 AM
To: Fox, Tim; Mattioli, Mark
Cc: Bennion, Jon; Barnes, John
Subject: FW: Second Amendment Amicus Brief in Nojay, et al., v. Cuomo

Tim – Alabama is soliciting joins for its 2nd Circuit amicus brief arguing that New York’s ban on semiautomatic firearms is unconstitutional. The brief argues that such guns are “arms” protected by the Second Amendment because they are commonly possessed by law-abiding citizens for lawful purposes. Thus, strict scrutiny should be applied to NY’s ban.

I recommend that we **DO JOIN** this brief. The deadline for joins is 3 pm our time on Tuesday, May 6.

Thanks.

From: Brasher, Andrew [<mailto:ABrasher@ago.state.al.us>]
Sent: Wednesday, April 30, 2014 4:31 PM
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Andrew Brasher
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Direct: 334-353-2609
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/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: Mattioli, Mark
Sent: Thursday, May 01, 2014 11:58 AM
To: Fox, Tim; VanDyke, Lawrence
Cc: Bennion, Jon; Barnes, John
Subject: RE: Second Amendment Amicus Brief in Nojay, et al., v. Cuomo

Okay, thanks. Lawrence please coordinate with John and Anastasia and then let's join as soon as possible.

-----Original Message-----

From: Fox, Tim
Sent: Thursday, May 01, 2014 11:54 AM
To: VanDyke, Lawrence
Cc: Mattioli, Mark; Bennion, Jon; Barnes, John
Subject: Re: Second Amendment Amicus Brief in Nojay, et al., v. Cuomo

I also agree that we DO JOIN. Let's get John Barnes or Anastasia to do a release when the time comes. Thank you.

Tim Fox
Attorney General
State of Montana
215 N. Sanders Street
Helena, MT 59601
Tel: (406) 444-2026
E-Mail: timfox@mt.gov

Sent from my iPhone

> On May 1, 2014, at 9:06 AM, "VanDyke, Lawrence" <LVanDyke@mt.gov> wrote:

>

> Tim – Alabama is soliciting joins for its 2nd Circuit amicus brief arguing that New York's ban on semiautomatic firearms is unconstitutional. The brief argues that such guns are "arms" protected by the Second Amendment because they are commonly possessed by law-abiding citizens for lawful purposes. Thus, strict scrutiny should be applied to NY's ban.

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> To join, please contact:

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> Megan Kirkpatrick

> Assistant Solicitor General

> mkirkpatrick@ago.state.al.us<mailto:mkirkpatrick@ago.state.al.us>

> (334) 353-2188

>

> OR

>

> Andrew Brasher

> Solicitor General

> Office of Alabama Attorney General Luther Strange

> Direct: 334-353-2609

> Fax: 334-242-4891

> <NY Amicus Brief--circulation.pdf>

> <140 - Decision Order 12 31 13.pdf>

> <Appellants' Brief.pdf>

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

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Sent: Thursday, May 01, 2014 11:54 AM
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Sent from my iPhone

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- > Assistant Solicitor General
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- > (334) 353-2188
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- > Solicitor General
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- > Direct: 334-353-2609
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- > <Appellants' Brief.pdf>

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: Mattioli, Mark
Sent: Thursday, May 01, 2014 10:23 AM
To: VanDyke, Lawrence; Fox, Tim
Cc: Bennion, Jon; Barnes, John
Subject: RE: Second Amendment Amicus Brief in Nojay, et al., v. Cuomo

I agree we should join. Tim, I'd like to communicate that we're joining before the end of this week. The deadline is May 6.

From: VanDyke, Lawrence
Sent: Thursday, May 01, 2014 10:07 AM
To: Fox, Tim; Mattioli, Mark
Cc: Bennion, Jon; Barnes, John
Subject: FW: Second Amendment Amicus Brief in Nojay, et al., v. Cuomo

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/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: Barnes, John
Sent: Thursday, May 01, 2014 12:49 PM
To: VanDyke, Lawrence; Burton, Anastasia
Subject: RE: Second Amendment Amicus Brief in Nojay, et al., v. Cuomo

Gotcha. Since the Weber amicus PR will go out on May 7, this PR should go out on May 6.

From: VanDyke, Lawrence
Sent: Thursday, May 01, 2014 12:48 PM
To: Barnes, John; Burton, Anastasia
Subject: FW: Second Amendment Amicus Brief in Nojay, et al., v. Cuomo

The filing will be on May 6, late in the day.

From: Brasher, Andrew [<mailto:ABrasher@ago.state.al.us>]
Sent: Thursday, May 01, 2014 12:42 PM
To: VanDyke, Lawrence
Subject: Re: Second Amendment Amicus Brief in Nojay, et al., v. Cuomo

Great, Lawrence. We are filing on May 6.

Andrew Brasher
Solicitor General
(334) 590-1029

On May 1, 2014, at 2:20 PM, "VanDyke, Lawrence" <LVanDyke@mt.gov> wrote:

Andrew – Exactly what day will this be filed?

From: Brasher, Andrew [<mailto:ABrasher@ago.state.al.us>]
Sent: Wednesday, April 30, 2014 4:31 PM
To: ccoppin@nmag.gov; paul.d.stern@maine.gov; dbahr@nd.gov; peter.sacks@ago.state.ma.us; kmunro@ag.nv.gov; JMcIntosh@scag.gov; pam.murphy@doj.nh.gov; eric.tabor@iowa.gov; iknorr@attorneygeneral.gov; margaret.chapple@ct.gov; james.layton@ago.mo.gov; paula.bickett@azag.gov; charles.mcquigan@state.sd.us; RPartington@riag.ri.gov; crimago@saipan.com; Edward.Dumont@doj.ca.gov; barbara.underwood@ag.ny.gov; Hampton, Andrea; sbluestone@nmag.gov; david.raupp@arkansasag.gov; gmorg@ago.state.ms.us; jlee@riag.ri.gov; attorney@samoatelco.com; stephan.finkel@lps.state.nj.us; Girard.D.Lau@hawaii.gov; stevemac@ku.edu; basay@atg.state.vt.us; fred.boss@doj.state.or.us; gkelley@ncdoj.gov; alanc@atg.wa.gov; Joe.Whalen@ag.tn.gov; alama@nmag.gov; judy.zeprun@state.ma.us; robert.ellman@azag.gov; joanne.grace@alaska.gov; Gregory.Dauria@ct.gov; anne.edwards@doj.nh.gov; tom.fisher@atg.in.gov; jwhite@ncdoj.gov; whowie@ag.nv.gov; Frances.Grunder@doj.ca.gov; mianf@ago.state.ms.us; ken.rosenstein@alaska.gov; allison.martin@ag.ky.gov; gibsoncj@doj.state.wi.us; hpizz@ago.state.ms.us; wellsk@doj.state.wi.us; Lee.Davidson@ag.ks.gov; edavis@doj.vi.gov; ssullivan@oag.state.md.us; jmaddrey@ncdoj.gov; dspence@oag.state.md.us; vicki.l.pendell@wvago.gov; sraphael@oag.state.va.us; judy.mitchell@wyo.gov; Steve.Creaseon@atg.in.gov; andrea.silkowitz@dol.lps.state.nj.us; brian.kane@ag.idaho.gov; Richard.Dearing@ag.ny.gov; wmckinney@ncdoj.com; katie.spohn@nebraska.gov; russell@nmag.gov; Mary Jo Woods; restucciae@michigan.gov; wbrockman@oag.state.md.us; agesmith@scag.gov; susan.lee@doj.ca.gov; todd.kim@dc.gov;

delayne.deck@ag.idaho.gov; dan.domenico@state.co.us; heather.mcveigh@atg.in.gov;
suzanne.gorman@doj.nh.gov; jbhoward@oag.state.md.us; potterkc@doj.state.wi.us;
stjohnkm@doj.state.wi.us; ed.bedrosian@state.ma.us; john.garry@ag.state.mn.us;
brooke.paup@texasattorneygeneral.gov; appeals@ohioattorneygeneral.gov; Sherri.Wald@state.sd.us;
adam.aston@texasattorneygeneral.gov; jhughes@atg.state.il.us; david.blake@state.co.us; Segrest,
Stuart; susan.britton@ag.ky.gov; janell.hafner@alaska.gov; john.campbell@ag.ks.gov;
delberta.pfeifer@ag.ks.gov; perry.zinn-rowthorn@ct.gov; jfishburn@ag.nv.gov; mwebb@ago.state.ms.us;
barb.fehrman@ag.state.mn.us; vbeavers@ag.nv.gov; bromano@utah.gov; kris.ailslieger@ag.ks.gov;
david.curran@arkansasag.gov; bob.fagan@msdh.state.ms.us; sean.riley@ag.ky.gov;
ashley.harwel@atg.in.gov; anna.joyce@doj.state.or.us; marlene.brown@dol.lps.state.nj.us;
diane.dewolf@myfloridalegal.com; jonathan.mitchell@oag.state.tx.us;
mary.mertz@ohioattorneygeneral.gov; sforney@attorneygeneral.gov; npeterson@law.ga.gov;
ariel.levinson-waldman@dc.gov; Leesa.Thompson@oag.ok.gov; dowker@michigan.gov;
frederick.nelson@ohioattorneygeneral.gov; patrick.wyrick@oag.ok.gov; Black, Michael;
steven.wu@ag.ny.gov; Sam Peterson; andy.oldham@texasattorneygeneral.gov;
michael.hendershot@ohioattorneygeneral.gov; jeffrey.thompson@iowa.gov; robyn.bender@ag.ky.gov;
laura-jane.weimer@state.co.us; james.adams@state.de.us; Aricka.seales@state.ma.us;
wiltonp@ag.state.la.us; lindstroma@michigan.gov; VanDyke, Lawrence;
allen.winsor@myfloridalegal.com; christopher.dodrill@wvago.gov; marmercado@justicia.pr.gov;
elbert.lin@wvago.gov; Mary.McTaggart@state.de.us; Sarah.Greenwalt@oag.ok.gov;
Michael.Franisco@state.co.us; Eric.Murphy@ohioattorneygeneral.gov; john.knepper@wyo.gov;
Kirkpatrick, Megan; craig.konnoth@doj.ca.gov; Killough, Lindsey; Loren.AliKhan@dc.gov;
lenningtondp@doj.state.wi.us; jacob.campion@ag.state.mn.us; Schlichting, Melissa;
Osvaldo.Vazquez@myfloridalegal.com; Michael.Casper@doj.state.or.us; deidra.shannon@doj.ca.gov;
tcx@oag.state.va.us; cshapiro@atg.state.il.us; ktaylor@oag.state.va.us; whelanmf@doj.state.wi.us;
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/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: Kirkpatrick, Megan <mkirkpatrick@ago.state.al.us>
Sent: Tuesday, May 06, 2014 9:55 AM
To: VanDyke, Lawrence; Brasher, Andrew
Cc: Burton, Anastasia
Subject: RE: Second Amendment Amicus Brief in Nojay, et al., v. Cuomo

Lawrence,

I'll send an as-filed copy of the brief. Are you the one who just tried to call? If so, sorry about the strange connection.

Megan Kirkpatrick, Assistant Solicitor General
State of Alabama, Office of Attorney General Luther Strange
501 Washington Avenue
Montgomery, AL 36130
(334) 353-2188

Confidentiality Notice: The information contained in this email and the documents attached hereto contain confidential information intended only for the use of the intended recipients. If the reader of the message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of the information contained herein is strictly prohibited. If you have received this communication in error, please immediately notify me by reply email.

From: VanDyke, Lawrence [mailto:LVanDyke@mt.gov]
Sent: Tuesday, May 06, 2014 10:51 AM
To: Kirkpatrick, Megan; Brasher, Andrew
Cc: Burton, Anastasia
Subject: FW: Second Amendment Amicus Brief in Nojay, et al., v. Cuomo

Andrew and Megan – Can you send a pdf copy of the final brief, once filed, to Anastasia Burton (copied)? Anastasia is going to do a press release for our office once the brief is filed, and would like to attach a copy of the brief. Feel free to copy me too, but because I'll be in and out today, if you could send it directly to Anastasia that would be very helpful.

- Lawrence

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From: Brasher, Andrew [mailto:ABrasher@ago.state.al.us]
Sent: Wednesday, April 30, 2014 4:31 PM
To: ccoppin@nmag.gov; paul.d.stern@maine.gov; dbahr@nd.gov; peter.sacks@ago.state.ma.us; kmunro@ag.nv.gov; JMcIntosh@scag.gov; pam.murphy@doj.nh.gov; eric.tabor@iowa.gov; jknorr@attorneygeneral.gov; margaret.chapple@ct.gov; james.layton@ago.mo.gov; paula.bickett@azag.gov; charles.mcguigan@state.sd.us; RPartington@riag.ri.gov; crimago@saipan.com; Edward.Dumont@doj.ca.gov; barbara.underwood@ag.ny.gov; Hampton, Andrea; sbluestone@nmag.gov; david.raupp@arkansasag.gov; gmorg@ago.state.ms.us; jlee@riag.ri.gov; attorney@samoatelco.com; stephan.finkel@lps.state.nj.us; Girard.D.Lau@hawaii.gov; stevemac@ku.edu; basay@atg.state.vt.us; fred.boss@doj.state.or.us; gkelley@ncdoj.gov; alanc@atg.wa.gov; Joe.Whalen@ag.tn.gov; alama@nmag.gov; judy.zepun@state.ma.us; robert.ellman@azag.gov; joanne.grace@alaska.gov; Gregory.Dauria@ct.gov; anne.edwards@doj.nh.gov; tom.fisher@atg.in.gov; jwhite@ncdoj.gov; whowie@ag.nv.gov; Frances.Grunder@doj.ca.gov; mlanf@ago.state.ms.us; ken.rosenstein@alaska.gov; allison.martin@ag.ky.gov; gibsonci@doj.state.wi.us; hpizz@ago.state.ms.us; wellsik@doj.state.wi.us; Lee.Davidson@ag.ks.gov; edavis@doj.vi.gov; ssullivan@oag.state.md.us; jmaddrey@ncdoj.gov; dspence@oag.state.md.us; vicki.l.pendell@wvago.gov; sraphael@oag.state.va.us; judy.mitchell@wyo.gov; Steve.Creason@atg.in.gov; andrea.silkowitz@dol.lps.state.nj.us; brian.kane@ag.idaho.gov; Richard.Dearing@ag.ny.gov; wmckinney@ncdoj.com; katie.spohn@nebraska.gov; rrussell@nmag.gov; Mary Jo Woods; restucciae@michigan.gov; wbrockman@oag.state.md.us; agesmith@scag.gov; susan.lee@doj.ca.gov; todd.kim@dc.gov; delayne.deck@ag.idaho.gov; dan.domenico@state.co.us; heather.mcveigh@atg.in.gov; suzanne.gorman@doj.nh.gov; jbhoward@oag.state.md.us; potterkc@doj.state.wi.us; stjohnm@doj.state.wi.us; ed.bedrosian@state.ma.us; john.garry@ag.state.mn.us; brooke.paup@texasattorneygeneral.gov; appeals@ohioattorneygeneral.gov; Sherri.Wald@state.sd.us; adam.aston@texasattorneygeneral.gov; jhughes@atg.state.il.us; david.blake@state.co.us; Segrest, Stuart; susan.britton@ag.ky.gov; janell.hafner@alaska.gov; john.campbell@ag.ks.gov; delberta.pfeifer@ag.ks.gov; perry.zinn-rowthorn@ct.gov; jfishburn@ag.nv.gov; mwebb@ago.state.ms.us; barb.fehrman@ag.state.mn.us; vbeavers@ag.nv.gov; bromano@utah.gov; kris.aillsieger@ag.ks.gov; david.curran@arkansasag.gov; bob.fagan@msdh.state.ms.us; sean.riley@ag.ky.gov; ashley.harwel@atg.in.gov; anna.joyce@doj.state.or.us; marlene.brown@dol.lps.state.nj.us; diane.dewolf@myfloridalegal.com; jonathan.mitchell@oag.state.tx.us; mary.mertz@ohioattorneygeneral.gov; sformey@attorneygeneral.gov; npeterson@law.ga.gov; ariel.levinson-waldman@dc.gov; Leesa.Thompson@oag.ok.gov; dowkerc@michigan.gov; frederick.nelson@ohioattorneygeneral.gov; patrick.wyrick@oag.ok.gov; Black, Michael; steven.wu@ag.ny.gov; Sam Peterson; andy.oldham@texasattorneygeneral.gov; michael.hendershot@ohioattorneygeneral.gov; jeffrey.thompson@iowa.gov; robyn.bender@ag.ky.gov; laura-jane.weimer@state.co.us; james.adams@state.de.us; Aricka.seales@state.ma.us; wiltonp@ag.state.la.us; lindstroma@michigan.gov; VanDyke, Lawrence; allen.winsor@myfloridalegal.com; christopher.dodrill@wvago.gov; mamercedo@justicia.pr.gov; elbert.lin@wvago.gov; Mary.McTaggart@state.de.us; Sarah.Greenwalt@oag.ok.gov; Michael.Franisco@state.co.us; Eric.Murphy@ohioattorneygeneral.gov; john.knepper@wyo.gov; Kirkpatrick, Megan; craig.konnoth@doj.ca.gov; Killough, Lindsey; Loren.AliKhan@dc.gov; lenningtondp@doj.state.wi.us; jacob.campion@ag.state.mn.us; Schlichting, Melissa; Osvaldo.Vazquez@myfloridalegal.com; Michael.Casper@doj.state.or.us; deidra.shannon@doj.ca.gov; tcox@oag.state.va.us; cshapiro@atg.state.il.us; ktaylor@oag.state.va.us; whelanmf@doj.state.wi.us; samuelsonc@doj.state.wi.us
Cc: cutle@ago.state.ms.us; Myers, Emily; Schweitzer, Dan; Killough, Lindsey
Subject: Second Amendment Amicus Brief in *Nojay, et al., v. Cuomo*

All,

This email is to let you know that Alabama intends to file an amicus brief in the Second Circuit supporting the plaintiffs-appellants in *Nojay, et al., v. Cuomo*, in which the district court applied intermediate scrutiny to uphold the constitutionality of a New York law that bans semiautomatic firearms. (Note that the New York AG's Office is representing the defendants on the other side of this case.)

Alabama's brief contends that New York's gun ban is unconstitutional under the Second Amendment. Semiautomatic firearms are among the "arms" protected by the Second Amendment because they are commonly possessed by law-abiding citizens for lawful purposes. For this reason, strict rather than intermediate scrutiny should apply under Second Circuit case law. New York's ban of these firearms cannot pass muster under strict scrutiny because such bans have little effect on gun violence and public safety, and a categorical ban is not the least restrictive means to serve the state's interests in public safety and crime prevention.

The party we are supporting, the district court's decision, and the draft amicus brief are all attached to this email.

The deadline to join this brief is 4:00 central time on **May 6, 2014**.

To join, please contact:

Megan Kirkpatrick
Assistant Solicitor General
mkirkpatrick@ago.state.al.us
(334) 353-2188

OR

Andrew Brasher
Solicitor General
Office of Alabama Attorney General Luther Strange
Direct: 334-353-2609
Fax: 334-242-4891

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Thursday, January 17, 2013 11:02 AM
To: Fox, Tim
Cc: Mattioli, Mark; Barnes, John; James, Julie
Subject: Amicus Memo in Kachalsky v. Cacaces (U.S.) -- Second Amendment case
Attachments: Kachalsky Cert Petition (Filed).pdf; Kachalsky Op. (2d Cir.).pdf; Virginia Amicus Memo - Kachalsky - Cert Stage.doc

Recommendation: I recommend that we do join this amicus brief, even though it is only a cert-stage brief.

Decision Deadline: 3 pm on Friday, February 8

Analysis: This amicus brief (drafted by Virginia) supports petitioners in the next Second Amendment challenge being brought by the same folks that brought the successful challenges in *Heller* and *McDonald* (absolute ban on handguns). This is the next logical step – challenging New York’s law that, while it allows you to have a handgun in your home, does not allow you to get a permit to take it outside the home (absent a strong showing of unique and particularized need). This challenge will be especially timely, given the current push by some to impose more gun bans. The Second Circuit’s decision purported to apply heightened scrutiny to the ban, but arguably applied little more than rational basis review. The court also distinguished the right of self-defense in the home (established in *Heller* and *McDonald*) from the right of self-defense in public. The specific question addressed in this appeal is: “Does the Second Amendment secure a right to carry a handgun for self-defense outside the home?”

Virginia’s brief will provide an emphatic “yes” to that question, urging the Court to grant the petition and recognize the right of the citizens of the United States to lawfully protect themselves from unlawful violence outside the home. The brief will provide empirical evidence, taken from other states with more permissive laws than New York’s, showing that New York’s fears of increased violence from a more liberal regime of handgun carry are baseless.

From: Schweitzer, Dan [mailto:DSCHWEITZER@NAAG.ORG]

Sent: Wednesday, January 16, 2013 12:43 PM

To: chris.coppin@cwagweb.org; paul.d.stern@maine.gov; dbahr@nd.gov; agjwmcinto@scag.gov; pam.murphy@doj.nh.gov; eric.tabor@iowa.gov; jknorr@attorneygeneral.gov; james.layton@ago.mo.gov; paula.bickett@azag.gov; charles.mcguigan@state.sd.us; RPartington@riag.ri.gov; crimago@saipan.com; barbara.underwood@ag.ny.gov; Hampton, Andrea; Schweitzer, Dan; sbluestone@nmag.gov; david.raupp@arkansasag.gov; gmorg@ago.state.ms.us; jlee@riag.ri.gov; attorney@samoatelco.com; stephan.finkel@lps.state.nj.us; Girard.D.Lau@hawaii.gov; stevemac@ku.edu; dennis.hansen@arkansasag.gov; drobinson@law.ga.gov; hughesafran@hotmail.com; basay@atg.state.vt.us; Mary.Williams@doj.state.or.us; gkelley@ncdoj.gov; alanc@atg.wa.gov; alama@nmag.gov; judy.zeprun@state.ma.us; joanne.grace@alaska.gov; jnotz@atg.state.il.us; mcgimseyr@ag.state.la.us; Gregory.Dauria@ct.gov; anne.edwards@doj.nh.gov; tom.fisher@atg.in.gov; jwhite@ncdoj.gov; whowle@ag.nv.gov; Frances.Grunder@doj.ca.gov; mlanf@ago.state.ms.us; ken.rosenstein@alaska.gov; allison.martin@ag.ky.gov; hpizz@ago.state.ms.us; wellsik@doj.state.wi.us; Lee.Davidson@ksag.org; edavis@doj.vi.gov; donna.murasky@dc.gov; ssullivan@oag.state.md.us; jmaddrey@ncdoj.gov; dspence@oag.state.md.us; wjy@wvago.gov; debbie.jourgensen@wyo.gov; Steve.Creason@atg.in.gov; jafarshee@ago.state.al.us; andrea.silkowitz@dol.lps.state.nj.us; brian.kane@ag.idaho.gov; Richard.Dearing@ag.ny.gov; katie.spohn@nebraska.gov; russell@nmag.gov; mwood@ago.state.ms.us; hunterg@atg.wa.gov; restucciae@michigan.gov; wbrockman@oag.state.md.us; agesmith@scag.gov; susan.lee@doj.ca.gov; SG@atg.in.gov; todd.kim@dc.gov; delayne.deck@ag.idaho.gov; dan.domenico@state.co.us; mscodro@atg.state.il.us; heather.mcveigh@atg.in.gov; suzanne.gorman@doj.nh.gov; jbhoward@oag.state.md.us; potterkc@doj.state.wi.us; stjohnkm@doj.state.wi.us; ed.bedrosian@state.ma.us; john.garry@ag.state.mn.us; Barbara.Durham@myfloridalegal.com; brooke.paup@texasattorneygeneral.gov; meanssp@doj.state.wi.us; Sherri.Wald@state.sd.us; adam.aston@texasattorneygeneral.gov; jhughes@atg.state.il.us; david.blake@state.co.us; Segrest, Stuart;

susan.britton@ag.ky.gov; john.campbell@ksag.org; jung.kim@dol.lps.state.nj.us; dave.jones@alaska.gov; delberta.pfeifer@ksag.org; perry.zinn-rowthorn@ct.gov; mwebb@ago.state.ms.us; barb.fehrman@ag.state.mn.us; vbeavers@ag.nv.gov; bromano@utah.gov; timothy.osterhaus@myfloridalegal.com; kris.aillslienger@ksag.org; Alexandra.Schimmer@ohioattorneygeneral.gov; bob.fagan@msdh.state.ms.us; Eileen.carey@state.ma.us; sean.riley@ag.ky.gov; ashley.harwel@atg.in.gov; dGetchell@oag.state.va.us; anna.joyce@doj.state.or.us; marlene.brown@dol.lps.state.nj.us; peter.michael@wyo.gov; diane.dewolf@myfloridalegal.com; jonathan.mitchell@oag.state.tx.us; mary.mertz@ohioattorneygeneral.gov; sforney@attorneygeneral.gov; npeterson@law.ga.gov; jneiman@ago.state.al.us; ariel.levinson-waldman@dc.gov; burschj@michigan.gov; Dave.Cole@azag.gov; Leesa.Thompson@oag.ok.gov; dowkerc@michigan.gov; frederick.nelson@ohioattorneygeneral.gov; patrick.wyrick@oag.ok.gov; bill.young@ag.tn.gov; Black, Michael; MBrady@oag.state.va.us; Sam Peterson; abrasher@ago.state.al.us; pamela.spang@state.ma.us; luisroman@justice.com; kguthrie@ago.state.al.us; andy.oldham@texasattorneygeneral.gov; Jason.pleggenkuhle@ag.state.mn.us; Fred.Yarger@state.co.us; robyn.bender@ag.ky.gov; laura-jane.weimer@state.co.us; james.adams@state.de.us; Aricka.seales@state.ma.us; Wilton, Patricia; pamela.webster@state.de.us; VanDyke, Lawrence

Subject: Amicus Memo in *Kachalsky v. Cacaces* (U.S.) -- Second Amendment case

To: Civil Amicus Contacts
From: Mike Brady, Virginia

The Commonwealth of Virginia is preparing an amicus brief to be filed in the Supreme Court of the United States in support of a petition for writ of certiorari from a decision of the United States Court of Appeals for the Second Circuit. The case is *Kachalsky v. Cacaces*, No. 12-845. A New York statute prohibits law-abiding citizens from carrying a handgun outside the home unless the citizen first demonstrates "proper cause" to carry a handgun. The Commonwealth will assert the State's interest in the Second Amendment being interpreted so as to meaningfully protect the citizen's right of lawful self-defense. The amicus brief will contend that this restriction of Second Amendment rights is neither narrowly tailored nor reasonably calculated to advance the State's interest in preventing criminal violence in view of the long experience of other States with more liberal handgun carry laws and the substantial body of evidence that has been collected on the relationship between such laws and the incidence of crime. An amicus memo providing further detail is attached.

A draft of the amicus brief will be circulated on Friday, February 1. As the amicus brief is due to be filed on Monday, February 11, the Commonwealth requests that States communicate their joinder by COB on Friday, February 8. To join or for more information, please contact the attorney listed below:

Mike Brady
Assistant Attorney General
Office of the Attorney General of Virginia
900 East Main Street
Richmond, Virginia 23219
Telephone: (804) 786-3518
Email: mbrady@oag.state.va.us

Dan Schweitzer
Supreme Court Counsel
National Association of Attorneys General
2030 M Street, NW, 8th Floor

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Thursday, February 07, 2013 3:50 PM
To: Barnes, John
Subject: FW: Amicus Memo in Kachalsky v. Cacaces (U.S.) -- Second Amendment case
Attachments: Kachalsky Cert Petition (Filed).pdf; Kachalsky Op. (2d Cir.).pdf; Virginia Amicus Memo - Kachalsky - Cert Stage.doc

From: VanDyke, Lawrence
Sent: Thursday, January 17, 2013 11:02 AM
To: Fox, Tim
Cc: Mattioli, Mark; Barnes, John; James, Julie
Subject: Amicus Memo in Kachalsky v. Cacaces (U.S.) -- Second Amendment case

Recommendation: I recommend that we do join this amicus brief, even though it is only a cert-stage brief.

Decision Deadline: 3 pm on Friday, February 8

Analysis: This amicus brief (drafted by Virginia) supports petitioners in the next Second Amendment challenge being brought by the same folks that brought the successful challenges in *Heller* and *McDonald* (absolute ban on handguns). This is the next logical step – challenging New York’s law that, while it allows you to have a handgun in your home, does not allow you to get a permit to take it outside the home (absent a strong showing of unique and particularized need). This challenge will be especially timely, given the current push by some to impose more gun bans. The Second Circuit’s decision purported to apply heightened scrutiny to the ban, but arguably applied little more than rational basis review. The court also distinguished the right of self-defense in the home (established in *Heller* and *McDonald*) from the right of self-defense in public. The specific question addressed in this appeal is: “Does the Second Amendment secure a right to carry a handgun for self-defense outside the home?”

Virginia’s brief will provide an emphatic “yes” to that question, urging the Court to grant the petition and recognize the right of the citizens of the United States to lawfully protect themselves from unlawful violence outside the home. The brief will provide empirical evidence, taken from other states with more permissive laws than New York’s, showing that New York’s fears of increased violence from a more liberal regime of handgun carry are baseless.

From: Schweitzer, Dan [<mailto:DSCHWEITZER@NAAG.ORG>]
Sent: Wednesday, January 16, 2013 12:43 PM
To: chris.coppin@cwagweb.org; paul.d.stern@maine.gov; dbahr@nd.gov; agjwmcinto@scag.gov; pam.murphy@doj.nh.gov; eric.tabor@iowa.gov; jknorr@attorneygeneral.gov; james.layton@ago.mo.gov; paula.bickett@azag.gov; charles.mcguigan@state.sd.us; RPartington@riag.ri.gov; crimago@saipan.com; barbara.underwood@ag.ny.gov; Hampton, Andrea; Schweitzer, Dan; sbluestone@nmag.gov; david.raupp@arkansasag.gov; gmorg@ago.state.ms.us; jlee@riag.ri.gov; attorney@amoatelco.com; stephan.finkel@lps.state.nj.us; Girard.D.Lau@hawaii.gov; stevemac@ku.edu; dennis.hansen@arkansasag.gov; drobinson@law.ga.gov; hughesafran@hotmail.com; basay@atg.state.vt.us; Mary.Williams@doj.state.or.us; gkelley@ncdoj.gov; alanc@atg.wa.gov; alama@nmag.gov; judy.zeprun@state.ma.us; joanne.grace@alaska.gov; jnotz@atg.state.il.us; mcgimseyr@ag.state.la.us; Gregory.Dauria@ct.gov; anne.edwards@doj.nh.gov; tom.fisher@atg.in.gov; jwhite@ncdoj.gov; whowle@ag.nv.gov; Frances.Grunder@doj.ca.gov; mlanf@ago.state.ms.us; ken.rosenstein@alaska.gov; allison.martin@ag.ky.gov; hpizz@ago.state.ms.us; wellslk@doj.state.wi.us; Lee.Davidson@ksag.org; edavis@doj.vi.gov; donna.murasky@dc.gov; ssullivan@oag.state.md.us; jmaddrey@ncdoj.gov; dspence@oag.state.md.us; wjy@wvago.gov; debbie.jourgensen@wyo.gov; Steve.Creason@atg.in.gov; jafarshee@ago.state.al.us; andrea.silkowitz@dol.lps.state.nj.us; brian.kane@ag.idaho.gov; Richard.Dearing@ag.ny.gov;

katie.spohn@nebraska.gov; rrussell@nmag.gov; mwood@ago.state.ms.us; hunterg@atg.wa.gov;
restucciae@michigan.gov; wbrockman@oag.state.md.us; agesmith@scag.gov; susan.lee@doj.ca.gov; SG@atg.in.gov;
todd.kim@dc.gov; delayne.deck@ag.idaho.gov; dan.domenico@state.co.us; mscodro@atg.state.il.us;
heather.mcveigh@atg.in.gov; suzanne.gorman@doj.nh.gov; jbhoward@oag.state.md.us; potterkc@doj.state.wi.us;
stjohnkm@doj.state.wi.us; ed.bedrosian@state.ma.us; john.garry@ag.state.mn.us; Barbara.Durham@myfloridalegal.com;
brooke.paup@texasattorneygeneral.gov; meanssp@doj.state.wi.us; Sherri.Wald@state.sd.us;
adam.aston@texasattorneygeneral.gov; jhughes@atg.state.il.us; david.blake@state.co.us; Segrest, Stuart;
susan.britton@ag.ky.gov; john.campbell@ksag.org; jung.kim@dol.lps.state.nj.us; dave.jones@alaska.gov;
delberta.pfeifer@ksag.org; perry.zinn-rowthorn@ct.gov; mwebb@ago.state.ms.us; darb.fehrman@ag.state.mn.us;
vbeavers@ag.nv.gov; bromano@utah.gov; timothy.osterhaus@myfloridalegal.com; kris.ailsieger@ksag.org;
Alexandra.Schimmer@ohioattorneygeneral.gov; bob.fagan@msdh.state.ms.us; Eileen.carey@state.ma.us;
sean.riley@ag.ky.gov; ashley.harwel@atg.in.gov; dGetchell@oag.state.va.us; anna.joyce@doj.state.or.us;
marlene.brown@dol.lps.state.nj.us; peter.michael@wyo.gov; diane.dewolf@myfloridalegal.com;
jonathan.mitchell@oag.state.tx.us; mary.mertz@ohioattorneygeneral.gov; sforney@attorneygeneral.gov;
npeterson@law.ga.gov; jneiman@ago.state.al.us; ariel.levinson-waldman@dc.gov; burschj@michigan.gov;
Dave.Cole@azag.gov; Leesa.Thompson@oag.ok.gov; dowker@oag.state.va.us; frederick.nelson@ohioattorneygeneral.gov;
patrick.wyrick@oag.ok.gov; bill.young@ag.tn.gov; Black, Michael; MBrady@oag.state.va.us; Sam Peterson;
abrasher@ago.state.al.us; pamela.spang@state.ma.us; luisroman@justice.com; kguthrie@ago.state.al.us;
andy.oldham@texasattorneygeneral.gov; Jason.pleggenkuhle@ag.state.mn.us; Fred.Yarger@state.co.us;
robyn.bender@ag.ky.gov; laura-jane.weimer@state.co.us; james.adams@state.de.us; Aricka.seales@state.ma.us; Wilton,
Patricia; pamela.webster@state.de.us; VanDyke, Lawrence
Subject: Amicus Memo in *Kachalsky v. Cacaces* (U.S.) – Second Amendment case

To: Civil Amicus Contacts
From: Mike Brady, Virginia

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Mike Brady
Assistant Attorney General
Office of the Attorney General of Virginia
900 East Main Street
Richmond, Virginia 23219
Telephone: (804) 786-3518
Email: mbrady@oag.state.va.us

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Friday, February 01, 2013 5:14 PM
To: Fox, Tim; Mattioli, Mark
Cc: Barnes, John
Subject: FW: Virginia Amicus Brief in Support of Petitioner in Kachalsky v. Cacace, No. 12-845 (U.S.)
Attachments: DRAFT Amicus Brief of the Commonwealth of Virginia - Kachalsky v Cacace (2 1 13).pdf

Tim and Mark previously approved our joining this Second Amendment amicus brief. I looked at the draft that just came in (attached), and it looks good. Absent objection, I'll send an email asking to join towards the end of next week.

- Lawrence

From: Schweitzer, Dan [mailto:DSCHWEITZER@NAAG.ORG]

Sent: Friday, February 01, 2013 2:44 PM

To: chris.coppin@cwagweb.org; paul.d.stern@maine.gov; dbahr@nd.gov; agjwmcinto@scag.gov; pam.murphy@doj.nh.gov; eric.tabor@iowa.gov; jknorr@attorneygeneral.gov; james.layton@ago.mo.gov; paula.bickett@azag.gov; charles.mcguigan@state.sd.us; RPartington@riag.ri.gov; crimago@saipan.com; barbara.underwood@ag.ny.gov; Hampton, Andrea; Schweitzer, Dan; sbluestone@nmag.gov; david.raupp@arkansasag.gov; gmorg@ago.state.ms.us; jlee@riag.ri.gov; attorney@samoatelco.com; stephan.finkel@lps.state.nj.us; Girard.D.Lau@hawaii.gov; stevemac@ku.edu; dennis.hansen@arkansasag.gov; darylrobinson@law.ga.gov; basay@atg.state.vt.us; Mary.Williams@doj.state.or.us; gkelley@ncdoj.gov; alanc@atg.wa.gov; alama@nmag.gov; judy.zeprun@state.ma.us; joanne.grace@alaska.gov; jnotz@atg.state.il.us; mcgimseyr@ag.state.la.us; Gregory.Dauria@ct.gov; anne.edwards@doj.nh.gov; tom.fisher@atg.in.gov; jwhite@ncdoj.gov; whowle@ag.nv.gov; Frances.Grunder@doj.ca.gov; mlanf@ago.state.ms.us; ken.rosenstein@alaska.gov; allison.martin@ag.ky.gov; hpizz@ago.state.ms.us; wellsik@doj.state.wi.us; Lee.Davidson@ksag.org; edavis@doj.vi.gov; donna.murasky@dc.gov; ssullivan@oag.state.md.us; jmaddrey@ncdoj.gov; dspence@oag.state.md.us; vlp@wvago.gov; debbie.jourgensen@wyo.gov; Steve.Creazon@atg.in.gov; jafarshee@ago.state.al.us; andrea.silkowitz@dol.lps.state.nj.us; brian.kane@ag.idaho.gov; Richard.Dearing@ag.ny.gov; katie.spohn@nebraska.gov; rrussell@nmag.gov; mwood@ago.state.ms.us; restucciae@michigan.gov; wbrockman@oag.state.md.us; agesmith@scag.gov; susan.lee@doj.ca.gov; SG@atg.in.gov; todd.kim@dc.gov; delayne.deck@ag.idaho.gov; dan.domenico@state.co.us; mscodro@atg.state.il.us; heather.mcveigh@atg.in.gov; suzanne.gorman@doj.nh.gov; jbhoward@oag.state.md.us; potterkc@doj.state.wi.us; stjohnkm@doj.state.wi.us; ed.bedrosian@state.ma.us; john.garry@ag.state.mn.us; Barbara.Durham@myfloridalegal.com; brooke.paup@texasattorneygeneral.gov; meanssp@doj.state.wi.us; Sherri.Wald@state.sd.us; adam.aston@texasattorneygeneral.gov; jhughes@atg.state.il.us; david.blake@state.co.us; Segrest, Stuart; susan.britton@ag.ky.gov; john.campbell@ksag.org; jung.kim@dol.lps.state.nj.us; dave.jones@alaska.gov; delberta.pfeifer@ksag.org; perry.zinn-rowthorn@ct.gov; mwebb@ago.state.ms.us; barb.fehrman@ag.state.mn.us; vbeavers@ag.nv.gov; bromano@utah.gov; timothy.osterhaus@myfloridalegal.com; kris.aillsliager@ksag.org; Alexandra.Schimmer@ohioattorneygeneral.gov; bob.fagan@msdh.state.ms.us; Eileen.carey@state.ma.us; sean.riley@ag.ky.gov; ashley.harwel@atg.in.gov; dGetchell@oag.state.va.us; anna.joyce@doj.state.or.us; marlene.brown@dol.lps.state.nj.us; peter.michael@wyo.gov; diane.dewolf@myfloridalegal.com; jonathan.mitchell@oag.state.tx.us; mary.mertz@ohioattorneygeneral.gov; sforney@attorneygeneral.gov; npeterson@law.ga.gov; jneiman@ago.state.al.us; ariel.levinson-waldman@dc.gov; burschj@michigan.gov; Leesa.Thompson@oag.ok.gov; dowkerc@michigan.gov; frederick.nelson@ohioattorneygeneral.gov; patrick.wyrick@oag.ok.gov; bill.young@ag.tn.gov; Black, Michael; MBrady@oag.state.va.us; Sam Peterson; abrasher@ago.state.al.us; pamela.spang@state.ma.us; kguthrie@ago.state.al.us; andy.oldham@texasattorneygeneral.gov; Jason.pleggenkuhle@ag.state.mn.us; Fred.Yarger@state.co.us; robyn.bender@ag.ky.gov; laura-jane.weimer@state.co.us; james.adams@state.de.us; Aricka.seales@state.ma.us; Wilton, Patricia; pamela.webster@state.de.us; VanDyke, Lawrence; allen.winsor@myfloridalegal.com; christopher.dodrill@wvago.gov; mamercado@justicia.gobierno.pr
Subject: Virginia Amicus Brief in Support of Petitioner in Kachalsky v. Cacace, No. 12-845 (U.S.)

To: Civil Amicus Contacts
From: Mike Brady, Assistant Attorney General, Virginia

The Commonwealth of Virginia is preparing an amicus brief to be filed in the Supreme Court of the United States in support of a petition for writ of certiorari from a decision of the United States Court of Appeals for the Second Circuit. The case is *Kachalsky v. Cacace*, No. 12-845. A New York statute prohibits law-abiding citizens from carrying a handgun outside the home unless the citizen first demonstrates "proper cause" to carry a handgun. The Commonwealth will assert the States' interest in the Second Amendment being interpreted so as to meaningfully protect the citizen's right of lawful self-defense. The amicus brief will contend that this restriction of Second Amendment rights is neither properly tailored nor reasonably calculated to advance the State's interest in preventing criminal violence in view of the long experience of other States with more liberal handgun carry laws and the substantial body of evidence that has been collected on the relationship between such laws and the incidence of crime. A draft amicus brief, which has yet to be set in form, is attached.

As the amicus brief is due to be filed on Monday, February 11, the Commonwealth requests that States communicate their joinder by COB on Friday, February 8. To join or other inquiries, please contact the attorney listed below:

Mike Brady
Assistant Attorney General
Office of the Attorney General of Virginia
900 East Main Street
Richmond, Virginia 23219
Telephone: (804) 786-3518
Email: mbrady@oag.state.va.us

Dan Schweitzer
Supreme Court Counsel
National Association of Attorneys General
2030 M Street, NW, 8th Floor
Washington, DC 20036
(202) 326-6010
(202) 785-0410 - fax
dschweitzer@naag.org

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Thursday, February 07, 2013 3:00 PM
To: Fox, Tim; Mattioli, Mark
Cc: Barnes, John; James, Julie
Subject: FW: Update on Amicus Brief in Kachalsky v. Cacace, No. 12-845
Attachments: UPDATED DRAFT Amicus Brief of the Commonwealth of Virginia - Kachalsky v Cacace (2 7 2013).pdf

Attached is Virginia's updated draft cert-stage amicus brief in the New York 2nd Amendment case pending before the SCOTUS. Tim has already said he wants to join this one, consistent with Mark's and my recommendations. Deadline for joining is tomorrow. Arkansas, Florida, Kansas, South Carolina, and South Dakota have already joined, and I would assume many more will join before the deadline. Absent objection, I will let Virginia know tomorrow morning that we are joining.

From: Schweitzer, Dan [mailto:DSCHWEITZER@NAAG.ORG]

Sent: Thursday, February 07, 2013 12:21 PM

To: chris.coppin@cwagweb.org; paul.d.stern@maine.gov; dbahr@nd.gov; agjwmcinto@scag.gov; pam.murphy@doj.nh.gov; eric.tabor@iowa.gov; jknorr@attorneygeneral.gov; james.layton@ago.mo.gov; paula.bickett@azag.gov; charles.mcguigan@state.sd.us; RPartington@riag.ri.gov; crimago@saipan.com; barbara.underwood@ag.ny.gov; Hampton, Andrea; Schweitzer, Dan; sbluestone@nmag.gov; david.raupp@arkansasag.gov; gmorg@ago.state.ms.us; jlee@riag.ri.gov; attorney@samoatelco.com; stephan.finkel@lps.state.nj.us; Girard.D.Lau@hawaii.gov; stevemac@ku.edu; dennis.hansen@arkansasag.gov; darylrobinson@law.ga.gov; basay@atg.state.vt.us; Mary.Williams@doj.state.or.us; gkelley@ncdoj.gov; alanc@atg.wa.gov; alama@nmag.gov; judy.zeprun@state.ma.us; joanne.grace@alaska.gov; jnotz@atg.state.il.us; mcgimseyr@ag.state.la.us; Gregory.Dauria@ct.gov; anne.edwards@doj.nh.gov; tom.fisher@atg.in.gov; jwhite@ncdoj.gov; howie@ag.nv.gov; Frances.Grunder@doj.ca.gov; mlanf@ago.state.ms.us; ken.rosenstein@alaska.gov; allison.martin@ag.ky.gov; hpizz@ago.state.ms.us; wellsik@doj.state.wi.us; Lee.Davidson@ksag.org; edavis@doj.vi.gov; donna.murasky@dc.gov; ssullivan@oag.state.md.us; jmaddrey@ncdoj.gov; dspence@oag.state.md.us; vlp@wvago.gov; debbie.jourgensen@wyo.gov; Steve.Creason@atg.in.gov; jafarshee@ago.state.al.us; andrea.silkowitz@dol.lps.state.nj.us; brian.kane@ag.idaho.gov; Richard.Dearing@ag.ny.gov; katie.spohn@nebraska.gov; rrusell@nmag.gov; mwood@ago.state.ms.us; restucciae@michigan.gov; wbrockman@oag.state.md.us; agesmith@scag.gov; susan.lee@doj.ca.gov; SG@atg.in.gov; todd.kim@dc.gov; delayne.deck@ag.idaho.gov; dan.domenico@state.co.us; mscodro@atg.state.il.us; heather.mcveigh@atg.in.gov; suzanne.gorman@doj.nh.gov; jbhoward@oag.state.md.us; potterkc@doj.state.wi.us; stjohnm@doj.state.wi.us; ed.bedrosian@state.ma.us; john.garry@ag.state.mn.us; Barbara.Durham@myfloridalegal.com; brooke.paup@texasattorneygeneral.gov; meanssp@doj.state.wi.us; Sherri.Wald@state.sd.us; adam.aston@texasattorneygeneral.gov; jhughes@atg.state.il.us; david.blake@state.co.us; Segrest, Stuart; susan.britton@ag.ky.gov; john.campbell@ksag.org; jung.kim@dol.lps.state.nj.us; dave.jones@alaska.gov; delberta.pfeifer@ksag.org; perry.zinn-rowthorn@ct.gov; mwebb@ago.state.ms.us; barb.fehrman@ag.state.mn.us; vbeavers@ag.nv.gov; bromano@utah.gov; timothy.osterhaus@myfloridalegal.com; kris.aillslienger@ksag.org; Alexandra.Schimmer@ohioattorneygeneral.gov; bob.fagan@msdh.state.ms.us; Eileen.carey@state.ma.us; sean.riley@ag.ky.gov; ashley.harwel@atg.in.gov; dGetchell@oag.state.va.us; anna.joyce@doj.state.or.us; marlene.brown@dol.lps.state.nj.us; peter.michael@wyo.gov; diane.dewolf@myfloridalegal.com; jonathan.mitchell@oag.state.tx.us; mary.mertz@ohioattorneygeneral.gov; sforney@attorneygeneral.gov; npeterson@law.ga.gov; jneiman@ago.state.al.us; ariel.levinson-waldman@dc.gov; burschj@michigan.gov; Leesa.Thompson@oag.ok.gov; dowker@michigan.gov; frederick.nelson@ohioattorneygeneral.gov; patrick.wyrick@oag.ok.gov; bill.young@ag.tn.gov; Black, Michael; MBrady@oag.state.va.us; Sam Peterson; abrasher@ago.state.al.us; pamela.spang@state.ma.us; kguthrie@ago.state.al.us; andy.oldham@texasattorneygeneral.gov; Jason.pleggenkuhle@ag.state.mn.us; Fred.Yarger@state.co.us; robyn.bender@ag.ky.gov; laura-jane.weimer@state.co.us; james.adams@state.de.us; Aricka.seales@state.ma.us; Wilton, Patricia; pamela.webster@state.de.us; VanDyke, Lawrence; allen.winsor@myfloridalegal.com;

christopher.dodrill@wvago.gov; mamercado@justicia.gobierno.pr

Subject: Update on Amicus Brief in *Kachalsky v. Cacace*, No. 12-845

To: Civil Amicus Contacts

From: Mike Brady, Assistant Attorney General, Virginia

The Commonwealth of Virginia is preparing an amicus brief to be filed in the Supreme Court of the United States in support of the petition in *Kachalsky v. Cacace*, No. 12-845. The petition challenges a New York statute's criminal prohibition on law-abiding citizens carrying a handgun outside the home unless the citizen first demonstrates "proper cause" to carry, interpreted to mean that the applicant has been personally subject to threats. The Second Circuit upheld this restriction, 701 F.3d 81 (2d Cir. 2012), analogues to which are also being challenged in the Third, Fourth, and Ninth Circuits of the United States Courts of Appeals. The Commonwealth will assert the States' interest in the Second Amendment being interpreted so as to meaningfully protect the citizen's right of lawful self-defense. The amicus brief will contend that this restriction of Second Amendment rights is neither properly tailored nor reasonably calculated to advance the State's interest in preventing criminal violence or protecting public safety, in view of the long experience of other States with more liberal handgun carry laws and the substantial body of empirical evidence documenting the relationship between such laws and crime/public safety outcomes.

An updated draft amicus brief, now set in form and shortened slightly so as to comply with the Supreme Court's word limit, is attached. We are grateful for the support of Arkansas, Florida, Kansas, South Carolina, and South Dakota and look forward to receiving confirmation from others, as this petition affords the Court an excellent vehicle for giving effect to the right to bear arms.

Again, with the amicus brief due to be filed on Monday, February 11, the Commonwealth requests that States communicate their joinder by COB this Friday, February 8. To join or other inquiries, please contact the attorney listed below:

Mike Brady
Assistant Attorney General
Office of the Attorney General of Virginia
900 East Main Street
Richmond, Virginia 23219
Telephone: (804) 786-3518
Email: mbrady@oag.state.va.us

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Friday, February 08, 2013 1:50 PM
To: Barnes, John
Subject: FW: Update: Joinders to Virginia Amicus Brief - Kachalsky v. Cacace, No. 12-845 (U.S.)

FYI – looks like 11 states have joined the Virginia 2nd Amendment amicus brief so far. There is some language below that might be helpful in the event you do press.

From: Brady, Michael H. [mailto:MBrady@oag.state.va.us]
Sent: Friday, February 08, 2013 1:14 PM
Cc: chris.coppin@cwagweb.org; paul.d.stern@maine.gov; dbahr@nd.gov; agjwmcinto@scag.gov; pam.murphy@doj.nh.gov; eric.tabor@iowa.gov; jknorr@attorneygeneral.gov; james.layton@ago.mo.gov; paula.bickett@azag.gov; charles.mcguigan@state.sd.us; RPartington@riag.ri.gov; crimago@saipan.com; barbara.underwood@ag.ny.gov; Hampton, Andrea; Schweitzer, Dan; sbluestone@nmag.gov; david.raupp@arkansasag.gov; gmorg@ago.state.ms.us; jlee@riag.ri.gov; attorney@samoatelco.com; stephan.finkel@lps.state.nj.us; Girard.D.Lau@hawaii.gov; stevemac@ku.edu; dennis.hansen@arkansasag.gov; darylrobinson@law.ga.gov; basay@atg.state.vt.us; Mary.Williams@doj.state.or.us; gkelley@ncdoj.gov; alanc@atg.wa.gov; alama@nmag.gov; judy.zeprun@state.ma.us; joanne.grace@alaska.gov; jnotz@atg.state.il.us; mcgimseyr@ag.state.la.us; Gregory.Dauria@ct.gov; anne.edwards@doj.nh.gov; tom.fisher@atg.in.gov; jwhite@ncdoj.gov; whowle@ag.nv.gov; Frances.Grunder@doj.ca.gov; mlanf@ago.state.ms.us; ken.rosenstein@alaska.gov; allison.martin@ag.ky.gov; hpizz@ago.state.ms.us; wellsik@doj.state.wi.us; Lee.Davidson@ksag.org; edavis@doj.vi.gov; donna.murasky@dc.gov; ssullivan@oag.state.md.us; jmaddrey@ncdoj.gov; dspence@oag.state.md.us; vlp@wvago.gov; debbie.jourgensen@wyo.gov; Steve.Creazon@atg.in.gov; jafarshiee@ago.state.al.us; andrea.silkowitz@dol.lps.state.nj.us; brian.kane@ag.idaho.gov; Richard.Dearing@ag.ny.gov; katie.spohn@nebraska.gov; rrussell@nmag.gov; mwood@ago.state.ms.us; restucciae@michigan.gov; wbrockman@oag.state.md.us; agesmith@scag.gov; susan.lee@doj.ca.gov; SG@atg.in.gov; todd.kim@dc.gov; delayne.deck@ag.idaho.gov; dan.domenico@state.co.us; mscodro@atg.state.il.us; heather.mcveigh@atg.in.gov; suzanne.gorman@doj.nh.gov; jbhoward@oag.state.md.us; potterkc@doj.state.wi.us; stjohknm@doj.state.wi.us; ed.bedrosian@state.ma.us; john.garry@ag.state.mn.us; Barbara.Durham@myfloridalegal.com; brooke.paup@texasattorneygeneral.gov; meanssp@doj.state.wi.us; Sherri.Wald@state.sd.us; adam.aston@texasattorneygeneral.gov; jhughes@atg.state.il.us; david.blake@state.co.us; Segrest, Stuart; susan.britton@ag.ky.gov; john.campbell@ksag.org; jung.kim@dol.lps.state.nj.us; dave.jones@alaska.gov; delberta.pfeifer@ksag.org; perry.zinn-rowthorn@ct.gov; mwebb@ago.state.ms.us; barb.fehrman@ag.state.mn.us; vbeavers@ag.nv.gov; bromano@utah.gov; timothy.osterhaus@myfloridalegal.com; kris.aillslienger@ksag.org; Alexandra.Schimmer@ohioattorneygeneral.gov; bob.fagan@msdh.state.ms.us; Eileen.carey@state.ma.us; sean.riley@ag.ky.gov; ashley.harwel@atg.in.gov; Getchell, Earle D.; anna.joyce@doj.state.or.us; marlene.brown@dol.lps.state.nj.us; peter.michael@wyo.gov; diane.dewolf@myfloridalegal.com; jonathan.mitchell@oag.state.tx.us; mary.mertz@ohioattorneygeneral.gov; sformey@attorneygeneral.gov; npeterson@law.ga.gov; jneiman@ago.state.al.us; ariel.levinson-waldman@dc.gov; burschj@michigan.gov; Leesa.Thompson@oag.ok.gov; dowkerc@michigan.gov; frederick.nelson@ohioattorneygeneral.gov; patrick.wyrick@oag.ok.gov; bill.young@ag.tn.gov; Black, Michael; Brady, Michael H.; Sam Peterson; abrasher@ago.state.al.us; pamela.spang@state.ma.us; kguthrie@ago.state.al.us; andy.oldham@texasattorneygeneral.gov; Jason.pleggenkuhle@ag.state.mn.us; Fred.Yarger@state.co.us; robyn.bender@ag.ky.gov; laura-jane.weimer@state.co.us; james.adams@state.de.us; Aricka.seales@state.ma.us; Wilton, Patricia; pamela.webster@state.de.us; VanDyke, Lawrence; allen.winsor@myfloridalegal.com; christopher.dodrill@wvago.gov; mamercado@justicia.gobierno.pr
Subject: FW: Update: Joinders to Virginia Amicus Brief - Kachalsky v. Cacace, No. 12-845 (U.S.)

The Commonwealth of Virginia will be filing its amicus brief in the Supreme Court in support of a petition for writ of certiorari, *Kachalsky v. Cacace*, No. 12-845 on Monday, February 11. The petition challenges a New York statute's criminal prohibition on law-abiding citizens carrying a handgun outside the home unless the citizen first demonstrates "proper cause" to carry, interpreted to mean that the applicant has been personally subject

to threats. The Second Circuit upheld this restriction, 701 F.3d 81 (2d Cir. 2012), analogues to which are also being challenged in the Third, Fourth, and Ninth Circuits of the United States Courts of Appeals. The Commonwealth will assert the States' interest in the Second Amendment being interpreted so as to meaningfully protect the citizen's right of lawful self-defense. The amicus brief will contend that this restriction of Second Amendment rights is neither properly tailored nor reasonably calculated to advance the State's interest in preventing criminal violence or protecting public safety in view of the long experience of other States with more liberal handgun carry laws and the substantial body of empirical evidence documenting the relationship between such laws and crime/public safety outcomes.

Virginia is grateful for the support of the States of Alaska, Arkansas, Florida, Georgia, Kansas, Michigan, Montana, South Carolina, South Dakota, Texas, and West Virginia and believes this petition affords the Court an excellent vehicle for clarifying that all law-abiding U.S. citizens must be permitted to exercise the right to bear arms for purposes of self-defense. To afford additional states the time to join, we will accept sign-ons until 9:00 a.m. EST on Monday, February 11. The amicus brief will be filed that morning and a copy provided to those States who join.

To join or other inquiries, please contact the attorney listed below:

Mike Brady
Assistant Attorney General
Office of the Attorney General of Virginia
900 East Main Street
Richmond, Virginia 23219
Telephone: (804) 786-3518
Email: mbrady@oag.state.va.us

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Tuesday, May 20, 2014 1:14 PM
To: James, Julie
Cc: Barnes, John; Burton, Anastasia
Subject: FW: 2nd Amendment Brief in Shew v. Malloy
Attachments: 2nd Amendment Brief in Shew v. Malloy; Amicus Brief in Shew, et al. v. Malloy (2d Cir.) - Second Amendment case; Re: Amicus Brief in Shew, et al. v. Malloy (2d Cir.) - Second Amendment case

FYI – for the binder.

John and Anastasia – this is another brief just like the one we joined recently involving a challenge to New York’s semi-auto ban (this is a Conn. semi-auto ban).

Thanks.

From: VanDyke, Lawrence
Sent: Tuesday, May 20, 2014 1:12 PM
To: 'Kirkpatrick, Megan'
Cc: ABrasher@ago.state.al.us
Subject: RE: 2nd Amendment Brief in Shew v. Malloy

Megan and Andrew – Montana would like to join this brief.

Please list our Attorney General as “Timothy C. Fox”.

General Fox’s full address, should you need it, is:

Timothy C. Fox
Attorney General of Montana
P.O. Box 201401
Helena, MT 59620-1401
406-444-2026

Please confirm our join by return email, and if you could forward a copy of the final brief once filed, we would appreciate it.

Thank you,

Lawrence VanDyke
Solicitor General ♦ Montana Department of Justice

215 N. Sanders ♦ P.O. Box 201401
Helena, Montana 59620
T: (406) 444-3442 ♦ F: (406) 444-3549
LVanDyke@mt.gov

From: Kirkpatrick, Megan [<mailto:mkirkpatrick@ago.state.al.us>]
Sent: Friday, May 16, 2014 3:42 PM
To: Kirkpatrick, Megan; Leesa.Thompson@oag.ok.gov; Sarah.Greenwalt@oag.ok.gov; taylorc@ag.state.la.us; Robert.Ellman@azag.gov; Susan.Britton@ag.ky.gov; sean.riley@ag.ky.gov; Pfeifer, Delberta; Allen.Winsor@myfloridalegal.com; RestucciaE@michigan.gov; ESmith@scag.gov; Karen.Bagby@ago.mo.gov; judy.mitchell@wyo.gov; bradford.phelps@arkansasag.gov; VanDyke, Lawrence; andy.oldham@texasattorneygeneral.gov; Julie.M.Blake@wvago.gov; saexeter@utah.gov; pdouglas@utah.gov; delayne.deck@ag.idaho.gov; Katie.Spohn@nebraska.gov; Lynell.Erickson@state.sd.us; Sherri.Wald@state.sd.us; npeterson@LAW.GA.GOV; dbahr@nd.gov; Hafner, Janell M (LAW); Burton, Anastasia
Cc: Brasher, Andrew; Guthrie, Karen
Subject: 2nd Amendment Brief in Shew v. Malloy

All,

Thanks again for joining the amicus brief in *Nojay, et al., v. Cuomo*. Alabama plans to file an almost identical amicus brief in *Shew v. Malloy*, in which the district court applied intermediate scrutiny to uphold the constitutionality of a Connecticut law that bans semiautomatic firearms.

The draft amicus brief and a redline copy showing changes from the *Nojay* brief are attached to this email.

The deadline to join this brief is 4:00 central time on **Thursday, May 22, 2014**.

To join, please contact:

Megan Kirkpatrick
Assistant Solicitor General
mkirkpatrick@ago.state.al.us
(334) 353-2188

OR

Andrew Brasher
Solicitor General
abrasher@ago.state.al.us
(334) 353-2609

Megan Kirkpatrick, Assistant Solicitor General
State of Alabama, Office of Attorney General Luther Strange
501 Washington Avenue
Montgomery, AL 36130
(334) 353-2188

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From: Kirkpatrick, Megan
Sent: Tuesday, May 06, 2014 4:35 PM
To: 'Leesa.Thompson@oag.ok.gov'; 'Sarah.Greenwalt@oag.ok.gov'; 'taylorc@ag.state.la.us'; 'Robert.Ellman@azag.gov'; 'Susan.Britton@ag.ky.gov'; 'sean.riley@ag.ky.gov'; 'Pfeifer, Delberta'; 'Allen.Winsor@myfloridalegal.com';

'RestucciaE@michigan.gov'; 'ESmith@scag.gov'; 'Karen.Bagby@ago.mo.gov'; 'judy.mitchell@wyo.gov';
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'dbahr@nd.gov'; 'Hafner, Janell M (LAW)'; 'Burton, Anastasia'
Cc: Brasher, Andrew; Killough, Lindsey
Subject: Amicus Brief in *Nojay, et al. v. Cuomo*, as filed

Please find attached the amicus brief in *Nojay, et al. v. Cuomo*, as filed in the Second Circuit this afternoon. Thank you for your support.

Megan Kirkpatrick, Assistant Solicitor General
State of Alabama, Office of Attorney General Luther Strange
501 Washington Avenue
Montgomery, AL 36130
(334) 353-2188

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/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Monday, May 19, 2014 11:19 AM
To: Fox, Tim; Mattioli, Mark
Subject: FW: Amicus Brief in Shew, et al. v. Malloy (2d Cir.) - Second Amendment case
Attachments: Doc 125 Decision.pdf; Shew v Malloy Appellants' Brief.pdf; CT Amicus Brief for circulation - Tables - 2014-05-16.docx

Tim and Mark – Alabama is filing another 2nd amendment brief much like the one they filed in the case challenging New York's semi-auto ban, but this time in the case challenging Connecticut's. For the same reason we joined the earlier brief, **I recommend that we DO JOIN this one.** Deadline is basically noon this Thursday, May 22. Thanks.

From: Schweitzer, Dan [mailto:DSCHWEITZER@NAAG.ORG]

Sent: Monday, May 19, 2014 7:11 AM

To: ccoppin@nmag.gov; paul.d.stern@maine.gov; dbahr@nd.gov; peter.sacks@ago.state.ma.us; kmunro@ag.nv.gov; JMcIntosh@scag.gov; pam.murphy@doj.nh.gov; eric.tabor@iowa.gov; jknorr@attorneygeneral.gov; margaret.chapple@ct.gov; james.layton@ago.mo.gov; paula.bickett@azag.gov; charles.mcguigan@state.sd.us; RPartington@riag.ri.gov; crimago@saipan.com; Edward.Dumont@doj.ca.gov; barbara.underwood@ag.ny.gov; Hampton, Andrea; Schweitzer, Dan; sbluestone@nmag.gov; david.raupp@arkansasag.gov; gmorg@ago.state.ms.us; jlee@riag.ri.gov; attorney@samoatelco.com; stephan.finkel@lps.state.nj.us; Girard.D.Lau@hawaii.gov; stevemac@ku.edu; basay@atg.state.vt.us; fred.boss@doj.state.or.us; gkelley@ncdoj.gov; alanc@atg.wa.gov; Joe.Whalen@ag.tn.gov; alama079@gmail.com; judy.zeprun@state.ma.us; robert.ellman@azag.gov; joanne.grace@alaska.gov; Gregory.Dauria@ct.gov; anne.edwards@doj.nh.gov; tom.fisher@atg.in.gov; jwhite@ncdoj.gov; whowle@ag.nv.gov; Frances.Grunder@doj.ca.gov; mlanf@ago.state.ms.us; ken.rosenstein@alaska.gov; allison.martin@ag.ky.gov; gibsoncj@doj.state.wi.us; hpizz@ago.state.ms.us; wellsik@doj.state.wi.us; Lee.Davidson@ag.ks.gov; edavis@doj.vi.gov; ssullivan@oag.state.md.us; jmaddrey@ncdoj.gov; dspence@oag.state.md.us; vicki.l.pendell@wvago.gov; sraphael@oag.state.va.us; judy.mitchell@wyo.gov; Steve.Creaseon@atg.in.gov; andrea.silkowitz@dol.lps.state.nj.us; brian.kane@ag.idaho.gov; Richard.Dearing@ag.ny.gov; wmkinney@ncdoj.com; katie.spohn@nebraska.gov; rrussell@nmag.gov; mwood@ago.state.ms.us; restucciae@michigan.gov; wbrockman@oag.state.md.us; agesmith@scag.gov; susan.lee@doj.ca.gov; todd.kim@dc.gov; delayne.deck@ag.idaho.gov; dan.domenico@state.co.us; heather.mcveigh@atg.in.gov; suzanne.gorman@doj.nh.gov; jbhoward@oag.state.md.us; potterkc@doj.state.wi.us; stjohnkm@doj.state.wi.us; ed.bedrosian@state.ma.us; john.garry@ag.state.mn.us; brooke.paup@texasattorneygeneral.gov; appeals@ohioattorneygeneral.gov; Sherri.Wald@state.sd.us; adam.aston@texasattorneygeneral.gov; jhughes@atg.state.il.us; david.blake@state.co.us; Segrest, Stuart; susan.britton@ag.ky.gov; janell.hafner@alaska.gov; john.campbell@ag.ks.gov; delberta.pfeifer@ag.ks.gov; perry.zinn-rowthorn@ct.gov; jfishburn@ag.nv.gov; mwebb@ago.state.ms.us; barb.fehrman@ag.state.mn.us; vbeavers@ag.nv.gov; bromano@utah.gov; kris.aillsieger@ag.ks.gov; david.curran@arkansasag.gov; bob.fagan@msdh.state.ms.us; sean.riley@ag.ky.gov; ashley.harwel@atg.in.gov; anna.joyce@doj.state.or.us; marlene.brown@dol.lps.state.nj.us; diane.dewolf@myfloridalegal.com; jonathan.mitchell@oag.state.tx.us; mary.mertz@ohioattorneygeneral.gov; sforney@attorneygeneral.gov; npeterson@law.ga.gov; ariel.levinson-waldman@dc.gov; Leesa.Thompson@oag.ok.gov; frederick.nelson@ohioattorneygeneral.gov; patrick.wyrick@oag.ok.gov; Black, Michael; steven.wu@ag.ny.gov; Sam Peterson; abrasher@ago.state.al.us; andy.oldham@texasattorneygeneral.gov; michael.hendershot@ohioattorneygeneral.gov; jeffrey.thompson@iowa.gov; robyn.bender@ag.ky.gov; laura-jane.weimer@state.co.us; james.adams@state.de.us; Aricka.seales@state.ma.us; wiltonp@ag.state.la.us; lindstroma@michigan.gov; VanDyke, Lawrence; allen.winsor@myfloridalegal.com; christopher.doddrill@wvago.gov; marmercado@justicia.pr.gov; elbert.lin@wvago.gov; Mary.McTaggart@state.de.us; Sarah.Greenwalt@oag.ok.gov; Michael.Franco@state.co.us; Eric.Murphy@ohioattorneygeneral.gov; john.knepper@wyo.gov; mkirkpatrick@ago.state.al.us; craig.konnoth@doj.ca.gov; ikilough@ago.state.al.us; Loren.AliKhan@dc.gov; lenningtondp@doj.state.wi.us; jacob.campion@ag.state.mn.us; Schlichting, Melissa; Osvaldo.Vazquez@myfloridalegal.com; Michael.Casper@doj.state.or.us; deidra.shannon@doj.ca.gov; tcox@oag.state.va.us; cshapiro@atg.state.il.us; ktaylor@oag.state.va.us; whelanmf@doj.state.wi.us;

samuelsontc@doj.state.wi.us; sittings@michigan.gov

Subject: Amicus Brief in *Shew, et al. v. Malloy* (2d Cir.) - Second Amendment case

To: Civil Amicus Contacts

From: Alabama AGO

This email is to let you know that Alabama intends to file an amicus brief in the Second Circuit supporting the plaintiffs-appellants in *Shew, et al. v. Malloy, et al.*, No. 14-319, in which the district court applied intermediate scrutiny to uphold the constitutionality of a Connecticut law that bans semiautomatic firearms. This brief is substantially similar to the one filed in *Nojay, et al. v. Cuomo*.

Alabama's brief contends that Connecticut's gun ban is unconstitutional under the Second Amendment. Semiautomatic firearms are among the "arms" protected by the Second Amendment because they are commonly possessed by law-abiding citizens for lawful purposes. For this reason, strict rather than intermediate scrutiny should apply under Second Circuit case law. Connecticut's ban of these firearms cannot pass muster under strict scrutiny because such bans have little effect on gun violence and public safety, and a categorical ban is not the least restrictive means to serve the state's interests in public safety and crime prevention.

The brief of the party we are supporting, the district court's decision, and the draft amicus brief are all attached to this email.

The deadline to join this brief is 4:00 central time on **Thursday, May 22, 2014**.

To join, please contact:

Megan Kirkpatrick
Assistant Solicitor General
mkirkpatrick@ago.state.al.us
(334) 353-2188

OR

Andrew Brasher
Solicitor General
abrasher@ago.state.al.us
(334) 353-2609

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: Kirkpatrick, Megan <mkirkpatrick@ago.state.al.us>
Sent: Friday, May 16, 2014 3:42 PM
To: Kirkpatrick, Megan; Leesa.Thompson@oag.ok.gov; Sarah.Greenwalt@oag.ok.gov; taylorc@ag.state.la.us; Robert.Ellman@azag.gov; Susan.Britton@ag.ky.gov; sean.riley@ag.ky.gov; Pfeifer, Delberta; Allen.Winsor@myfloridalegal.com; RestucciaE@michigan.gov; ESmith@scag.gov; Karen.Bagby@ago.mo.gov; judy.mitchell@wyo.gov; bradford.phelps@arkansasag.gov; VanDyke, Lawrence; andy.oldham@texasattorneygeneral.gov; Julie.M.Blake@wvago.gov; saexeter@utah.gov; pdouglas@utah.gov; delayne.deck@ag.idaho.gov; Katie.Spohn@nebraska.gov; Lynell.Erickson@state.sd.us; Sherri.Wald@state.sd.us; npeterson@LAW.GA.GOV; dbahr@nd.gov; Hafner, Janell M (LAW); Burton, Anastasia
Cc: Brasher, Andrew; Guthrie, Karen
Subject: 2nd Amendment Brief in Shew v. Malloy
Attachments: CT Amicus Brief for circulation - Tables - 2014-05-16.docx; Redline NY to CT comparison.docx

All,

Thanks again for joining the amicus brief in *Nojay, et al., v. Cuomo*. Alabama plans to file an almost identical amicus brief in *Shew v. Malloy*, in which the district court applied intermediate scrutiny to uphold the constitutionality of a Connecticut law that bans semiautomatic firearms.

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Assistant Solicitor General
mkirkpatrick@ago.state.al.us
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OR

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Megan Kirkpatrick, Assistant Solicitor General
State of Alabama, Office of Attorney General Luther Strange
501 Washington Avenue
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(334) 353-2188

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Sent: Tuesday, May 06, 2014 4:35 PM

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Subject: Amicus Brief in Nojay, et al. v. Cuomo, as filed

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Megan Kirkpatrick, Assistant Solicitor General
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charles.mcguigan@state.sd.us; RPartington@riag.ri.gov; crimago@saipan.com;
Edward.Dumont@doj.ca.gov; barbara.underwood@ag.ny.gov; Hampton, Andrea;
Schweitzer, Dan; sbluestone@nmag.gov; david.raupp@arkansasag.gov;
gmorg@ago.state.ms.us; jlee@riag.ri.gov; attorney@samoatelco.com;
stephan.finkel@lps.state.nj.us; Girard.D.Lau@hawaii.gov; stevemac@ku.edu;
basay@atg.state.vt.us; fred.boss@doj.state.or.us; gkelley@ncdoj.gov; alanc@atg.wa.gov;
Joe.Whalen@ag.tn.gov; alama079@gmail.com; judy.zeprun@state.ma.us;
robert.ellman@azag.gov; joanne.grace@alaska.gov; Gregory.Dauria@ct.gov;
anne.edwards@doj.nh.gov; tom.fisher@atg.in.gov; jwhite@ncdoj.gov;
whowie@ag.nv.gov; Frances.Grunder@doj.ca.gov; mlanf@ago.state.ms.us;
ken.rosenstein@alaska.gov; allison.martin@ag.ky.gov; gibsoncj@doj.state.wi.us;
hpizz@ago.state.ms.us; wellsik@doj.state.wi.us; Lee.Davidson@ag.ks.gov;
edavis@doj.vi.gov; ssullivan@oag.state.md.us; jmaddrey@ncdoj.gov;
dspence@oag.state.md.us; vicki.i.pendell@wvago.gov; sraphael@oag.state.va.us;
judy.mitchell@wyo.gov; Steve.Creaseon@atg.in.gov; andrea.silkowitz@dol.lps.state.nj.us;
brian.kane@ag.idaho.gov; Richard.Dearing@ag.ny.gov; wmckinney@ncdoj.com;
katie.spohn@nebraska.gov; rrussell@nmag.gov; mwood@ago.state.ms.us;
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dan.domenico@state.co.us; heather.mcveigh@atg.in.gov; suzanne.gorman@doj.nh.gov;
jborahward@oag.state.md.us; potterkc@doj.state.wi.us; stjohnm@doj.state.wi.us;
ed.bedrosian@state.ma.us; john.garry@ag.state.mn.us;
brooke.paup@texasattorneygeneral.gov; appeals@ohioattorneygeneral.gov;
Sherri.Wald@state.sd.us; adam.aston@texasattorneygeneral.gov;
jhughes@atg.state.il.us; david.blake@state.co.us; Segrest, Stuart;
susan.britton@ag.ky.gov; janell.hafner@alaska.gov; john.campbell@ag.ks.gov;
delberta.pfeifer@ag.ks.gov; perry.zinn-rowthorn@ct.gov; jfishburn@ag.nv.gov;
mwebb@ago.state.ms.us; barb.fehrman@ag.state.mn.us; vbeavers@ag.nv.gov;
bromano@utah.gov; kris.aillslienger@ag.ks.gov; david.curran@arkansasag.gov;
bob.fagan@msdh.state.ms.us; sean.riley@ag.ky.gov; ashley.harwel@atg.in.gov;
anna.joyce@doj.state.or.us; marlene.brown@dol.lps.state.nj.us;
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npeterson@law.ga.gov; ariel.levinson-waldman@dc.gov; Leesa.Thompson@oag.ok.gov;
frederick.nelson@ohioattorneygeneral.gov; patrick.wyrick@oag.ok.gov; Black, Michael;
steven.wu@ag.ny.gov; Sam Peterson; abrasher@ago.state.al.us;
andy.oldham@texasattorneygeneral.gov;
michael.hendershot@ohioattorneygeneral.gov; jeffrey.thompson@iowa.gov;
robyn.bender@ag.ky.gov; laura-jane.weimer@state.co.us; james.adams@state.de.us;
Aricka.seales@state.ma.us; wiltonp@ag.state.la.us; lindstroma@michigan.gov; VanDyke,
Lawrence; allen.winsor@myfloridalegal.com; christopher.dodrill@wvago.gov;
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Sarah.Greenwalt@oag.ok.gov; Michael.Francisco@state.co.us;
Eric.Murphy@ohioattorneygeneral.gov; john.knepper@wyo.gov;

To: mkirkpatrick@ago.state.al.us; craig.konnoth@doj.ca.gov; lkillough@ago.state.al.us; Loren.AliKhan@dc.gov; lenningtondp@doj.state.wi.us; jacob.campion@ag.state.mn.us; Schlichting, Melissa; Osvaldo.Vazquez@myfloridalegal.com; Michael.Casper@doj.state.or.us; deidra.shannon@doj.ca.gov; tcox@oag.state.va.us; cshapiro@atg.state.il.us; ktaylor@oag.state.va.us; whelanmf@doj.state.wi.us; samuelsontc@doj.state.wi.us; sittings@michigan.gov

Subject: Amicus Brief in *Shew, et al. v. Malloy* (2d Cir.) - Second Amendment case

Attachments: Doc 125 Decision.pdf; *Shew v Malloy* Appellants' Brief.pdf; CT Amicus Brief for circulation - Tables - 2014-05-16.docx

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From: Alabama AGO

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The deadline to join this brief is 4:00 central time on **Thursday, May 22, 2014**.

To join, please contact:

Megan Kirkpatrick
Assistant Solicitor General
mkirkpatrick@ago.state.al.us
(334) 353-2188

OR

Andrew Brasher
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(334) 353-2609

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Tuesday, May 20, 2014 1:14 PM
To: James, Julie
Cc: Barnes, John; Burton, Anastasia
Subject: FW: 2nd Amendment Brief in Shew v. Malloy
Attachments: 2nd Amendment Brief in Shew v. Malloy; Amicus Brief in Shew, et al. v. Malloy (2d Cir.) - Second Amendment case; Re: Amicus Brief in Shew, et al. v. Malloy (2d Cir.) - Second Amendment case

FYI – for the binder.

John and Anastasia – this is another brief just like the one we joined recently involving a challenge to New York’s semi-auto ban (this is a Conn. semi-auto ban).

Thanks.

From: VanDyke, Lawrence
Sent: Tuesday, May 20, 2014 1:12 PM
To: 'Kirkpatrick, Megan'
Cc: ABrasher@ago.state.al.us
Subject: RE: 2nd Amendment Brief in Shew v. Malloy

Megan and Andrew – Montana would like to join this brief.

Please list our Attorney General as “Timothy C. Fox”.

General Fox’s full address, should you need it, is:

Timothy C. Fox
Attorney General of Montana
P.O. Box 201401
Helena, MT 59620-1401
406-444-2026

Please confirm our join by return email, and if you could forward a copy of the final brief once filed, we would appreciate it.

Thank you,

Lawrence VanDyke
Solicitor General • Montana Department of Justice

215 N. Sanders • P.O. Box 201401
Helena, Montana 59620
T: (406) 444-3442 • F: (406) 444-3549
LVanDyke@mt.gov

From: Kirkpatrick, Megan [<mailto:mkirkpatrick@ago.state.al.us>]
Sent: Friday, May 16, 2014 3:42 PM
To: Kirkpatrick, Megan; Leesa.Thompson@oag.ok.gov; Sarah.Greenwalt@oag.ok.gov; taylorc@ag.state.la.us; Robert.Ellman@azag.gov; Susan.Britton@ag.ky.gov; sean.riley@ag.ky.gov; Pfeifer, Delberta; Allen.Winsor@myfloridalegal.com; RestucciaE@michigan.gov; ESmith@scag.gov; Karen.Bagby@ago.mo.gov; judy.mitchell@wyo.gov; bradford.phelps@arkansasag.gov; VanDyke, Lawrence; andy.oldham@texasattorneygeneral.gov; Julie.M.Blake@wvago.gov; saexeter@utah.gov; pdouglas@utah.gov; delayne.deck@ag.idaho.gov; Katie.Spohn@nebraska.gov; Lynell.Erickson@state.sd.us; Sherri.Wald@state.sd.us; npeterson@LAW.GA.GOV; dbahr@nd.gov; Hafner, Janell M (LAW); Burton, Anastasia
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All,

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'dbahr@nd.gov'; 'Hafner, Janell M (LAW)'; 'Burton, Anastasia'

Cc: Brasher, Andrew; Killough, Lindsey

Subject: Amicus Brief in Nojay, et al. v. Cuomo, as filed

Please find attached the amicus brief in *Nojay, et al. v. Cuomo*, as filed in the Second Circuit this afternoon. Thank you for your support.

Megan Kirkpatrick, Assistant Solicitor General
State of Alabama, Office of Attorney General Luther Strange
501 Washington Avenue
Montgomery, AL 36130
(334) 353-2188

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/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Monday, May 19, 2014 11:19 AM
To: Fox, Tim; Mattioli, Mark
Subject: FW: Amicus Brief in Shew, et al. v. Malloy (2d Cir.) - Second Amendment case
Attachments: Doc 125 Decision.pdf; Shew v Malloy Appellants' Brief.pdf; CT Amicus Brief for circulation - Tables - 2014-05-16.docx

Tim and Mark – Alabama is filing another 2nd amendment brief much like the one they filed in the case challenging New York's semi-auto ban, but this time in the case challenging Connecticut's. For the same reason we joined the earlier brief, I recommend that we **DO JOIN** this one. Deadline is basically noon this Thursday, May 22. Thanks.

From: Schweitzer, Dan [mailto:DSCHWEITZER@NAAG.ORG]

Sent: Monday, May 19, 2014 7:11 AM

To: ccoppin@nmag.gov; paul.d.stern@maine.gov; dbahr@nd.gov; peter.sacks@ago.state.ma.us; kmunro@ag.nv.gov; JMcIntosh@scag.gov; pam.murphy@doj.nh.gov; eric.tabor@iowa.gov; jknorr@attorneygeneral.gov; margaret.chapple@ct.gov; james.layton@ago.mo.gov; paula.bickett@azag.gov; charles.mcguigan@state.sd.us; RPartington@riag.ri.gov; crimago@saipan.com; Edward.Dumont@doj.ca.gov; barbara.underwood@ag.ny.gov; Hampton, Andrea; Schweitzer, Dan; sbluestone@nmag.gov; david.raupp@arkansasag.gov; gmorg@ago.state.ms.us; jlee@riag.ri.gov; attorney@samoatelco.com; stephan.finkel@lps.state.nj.us; Girard.D.Lau@hawaii.gov; stevemac@ku.edu; basay@atg.state.vt.us; fred.boss@doj.state.or.us; gkelley@ncdoj.gov; alanc@atg.wa.gov; Joe.Whalen@ag.tn.gov; alama079@gmail.com; judy.zeprun@state.ma.us; robert.ellman@azag.gov; joanne.grace@alaska.gov; Gregory.Dauria@ct.gov; anne.edwards@doj.nh.gov; tom.fisher@atg.in.gov; jwhite@ncdoj.gov; whowle@ag.nv.gov; Frances.Grunder@doj.ca.gov; mlanf@ago.state.ms.us; ken.rosenstein@alaska.gov; allison.martin@ag.ky.gov; gibsoncj@doj.state.wi.us; hpizz@ago.state.ms.us; wellsik@doj.state.wi.us; Lee.Davidson@ag.ks.gov; edavis@doj.vi.gov; ssullivan@oag.state.md.us; jmaddrey@ncdoj.gov; dspence@oag.state.md.us; vicki.l.pendell@wvago.gov; sraphael@oag.state.va.us; judy.mitchell@wyo.gov; Steve.Creaseon@atg.in.gov; andrea.silkowitz@dol.lps.state.nj.us; brian.kane@ag.idaho.gov; Richard.Dearing@ag.ny.gov; wmckinney@ncdoj.com; katie.spohn@nebraska.gov; russell@nmag.gov; mwood@ago.state.ms.us; restucciae@michigan.gov; wbrockman@oag.state.md.us; agesmith@scag.gov; susan.lee@doj.ca.gov; todd.kim@dc.gov; delayne.deck@ag.idaho.gov; dan.domenico@state.co.us; heather.mcveigh@atg.in.gov; suzanne.gorman@doj.nh.gov; jbhoward@oag.state.md.us; potterkc@doj.state.wi.us; stjohnkm@doj.state.wi.us; ed.bedrosian@state.ma.us; john.garry@ag.state.mn.us; brooke.paup@texasattorneygeneral.gov; appeals@ohioattorneygeneral.gov; Sherri.Wald@state.sd.us; adam.aston@texasattorneygeneral.gov; jhughes@atg.state.il.us; david.blake@state.co.us; Segrest, Stuart; susan.britton@ag.ky.gov; janell.hafner@alaska.gov; john.campbell@ag.ks.gov; delberta.pfeifer@ag.ks.gov; perry.zinn-rowthorn@ct.gov; jfishburn@ag.nv.gov; mwebb@ago.state.ms.us; barb.fehrman@ag.state.mn.us; vbeavers@ag.nv.gov; bromano@utah.gov; kris.aillslienger@ag.ks.gov; david.curran@arkansasag.gov; bob.fagan@msdh.state.ms.us; sean.riley@ag.ky.gov; ashley.harwel@atg.in.gov; anna.joyce@doj.state.or.us; marlene.brown@dol.lps.state.nj.us; diane.dewolf@myfloridalegal.com; jonathan.mitchell@oag.state.tx.us; mary.mertz@ohioattorneygeneral.gov; sforney@attorneygeneral.gov; npeterson@law.ga.gov; ariel.levinson-waldman@dc.gov; Leesa.Thompson@oag.ok.gov; frederick.nelson@ohioattorneygeneral.gov; patrick.wyrick@oag.ok.gov; Black, Michael; steven.wu@ag.ny.gov; Sam Peterson; abrasher@ago.state.al.us; andy.oldham@texasattorneygeneral.gov; michael.henderson@ohioattorneygeneral.gov; jeffrey.thompson@iowa.gov; robyn.bender@ag.ky.gov; laura-jane.weimer@state.co.us; james.adams@state.de.us; Aricka.seales@state.ma.us; wiltonp@ag.state.la.us; lindstroma@michigan.gov; VanDyke, Lawrence; allen.winsor@myfloridalegal.com; christopher.dodrigill@wvago.gov; marmercado@justicia.pr.gov; elbert.lin@wvago.gov; Mary.McTaggart@state.de.us; Sarah.Greenwalt@oag.ok.gov; Michael.Franco@state.co.us; Eric.Murphy@ohioattorneygeneral.gov; john.knepper@wyo.gov; mkirkpatrick@ago.state.al.us; craig.konnoth@doj.ca.gov; lkillough@ago.state.al.us; Loren.AliKhan@dc.gov; lenningtondp@doj.state.wi.us; jacob.campion@ag.state.mn.us; Schlichting, Melissa; Osvaldo.Vazquez@myfloridalegal.com; Michael.Casper@doj.state.or.us; deidra.shannon@doj.ca.gov; tcox@oag.state.va.us; cshapiro@atg.state.il.us; ktaylor@oag.state.va.us; whelanmf@doj.state.wi.us;

samuelsontc@doj.state.wi.us; sittsj@michigan.gov

Subject: Amicus Brief in *Shew, et al. v. Malloy* (2d Cir.) - Second Amendment case

To: Civil Amicus Contacts

From: Alabama AGO

This email is to let you know that Alabama intends to file an amicus brief in the Second Circuit supporting the plaintiffs-appellants in *Shew, et al. v. Malloy, et al.*, No. 14-319, in which the district court applied intermediate scrutiny to uphold the constitutionality of a Connecticut law that bans semiautomatic firearms. This brief is substantially similar to the one filed in *Nojay, et al. v. Cuomo*.

Alabama's brief contends that Connecticut's gun ban is unconstitutional under the Second Amendment. Semiautomatic firearms are among the "arms" protected by the Second Amendment because they are commonly possessed by law-abiding citizens for lawful purposes. For this reason, strict rather than intermediate scrutiny should apply under Second Circuit case law. Connecticut's ban of these firearms cannot pass muster under strict scrutiny because such bans have little effect on gun violence and public safety, and a categorical ban is not the least restrictive means to serve the state's interests in public safety and crime prevention.

The brief of the party we are supporting, the district court's decision, and the draft amicus brief are all attached to this email.

The deadline to join this brief is 4:00 central time on **Thursday, May 22, 2014**.

To join, please contact:

Megan Kirkpatrick
Assistant Solicitor General
mkirkpatrick@ago.state.al.us
(334) 353-2188

OR

Andrew Brasher
Solicitor General
abrasher@ago.state.al.us
(334) 353-2609

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Friday, May 23, 2014 9:05 AM
To: James, Julie
Cc: Barnes, John; Burton, Anastasia
Subject: FW: Second Amendment Amicus Brief in Shew v. Malloy, as filed
Attachments: Shew v Malloy States' Amicus Brief, as filed.pdf

FYI – for the binder. Thanks.

From: Kirkpatrick, Megan [<mailto:mkirkpatrick@ago.state.al.us>]
Sent: Thursday, May 22, 2014 3:26 PM
To: Julie.M.Blake@wvago.gov; janell.hafner@alaska.gov; adam.aston@texasattorneygeneral.gov; jonathan.mitchell@texasattorneygeneral.gov; andy.oldham@texasattorneygeneral.gov; VanDyke, Lawrence; dbahr@nd.gov; ESmith@scag.gov; npeterson@LAW.GA.GOV; Delberta.Pfeifer@ag.ks.gov; delayne.deck@ag.idaho.gov; brian.kane@ag.idaho.gov; Sherman.furey@ag.idaho.gov; pdouglas@utah.gov; saexeter@utah.gov; seanreyes@utah.gov; Lynell.erickson@state.sd.us; sherri.wald@state.sd.us; Robert.ellman@azag.gov; brett.mecum@azag.gov; Karen.bagby@ago.mo.gov; james.layton@ago.mo.gov; Brittany.zielke@wyo.gov; russell@nmag.gov; ckraft@nmag.gov; sbluestone@nmag.gov; eglenn@nmag.gov; dpederson@nmag.gov; Sean.Riley@ag.ky.gov; robyn.bender@ag.ky.gov; susan.britton@ag.ky.gov; allen.winsor@myfloridalegal.com; tyler.cathey@myfloridalegal.com; Katie.spohn@nebraska.gov; david.cookson@nebraska.gov; holley.bolen@nebraska.gov; restucciae@michigan.gov; sittsj@michigan.gov; Bradford.phelps@arkansasag.gov; phillipst@ag.state.la.us; wiltonp@ag.state.la.us; sarah.greenwalt@oag.ok.gov; Patrick.wyrick@oag.ok.gov
Cc: Brasher, Andrew; Guthrie, Karen
Subject: Second Amendment Amicus Brief in Shew v. Malloy, as filed

All:

Attached please find the amicus brief in *Shew v. Malloy*, as filed in the Second Circuit this afternoon. Thank you for your support.

Megan Kirkpatrick, Assistant Solicitor General
State of Alabama, Office of Attorney General Luther Strange
501 Washington Avenue
Montgomery, AL 36130
(334) 353-2188

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/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: Kirkpatrick, Megan <mkirkpatrick@ago.state.al.us>
Sent: Tuesday, May 20, 2014 1:16 PM
To: VanDyke, Lawrence
Cc: Brasher, Andrew; Guthrie, Karen
Subject: RE: 2nd Amendment Brief in Shew v. Malloy

Lawrence,

Thank you for your support. I'll send you an as-filed copy of the brief.

Megan Kirkpatrick, Assistant Solicitor General
State of Alabama, Office of Attorney General Luther Strange
501 Washington Avenue
Montgomery, AL 36130
(334) 353-2188

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From: VanDyke, Lawrence [mailto:LVanDyke@mt.gov]
Sent: Tuesday, May 20, 2014 2:12 PM
To: Kirkpatrick, Megan
Cc: Brasher, Andrew
Subject: RE: 2nd Amendment Brief in Shew v. Malloy

Megan and Andrew – Montana would like to join this brief.

Please list our Attorney General as "Timothy C. Fox".

General Fox's full address, should you need it, is:

Timothy C. Fox
Attorney General of Montana
P.O. Box 201401
Helena, MT 59620-1401
406-444-2026

Please confirm our join by return email, and if you could forward a copy of the final brief once filed, we would appreciate it.

Thank you,

Lawrence VanDyke
Solicitor General • Montana Department of Justice

215 N. Sanders • P.O. Box 201401
Helena, Montana 59620
T: (406) 444-3442 • F: (406) 444-3549
LVanDyke@mt.gov

From: Kirkpatrick, Megan [<mailto:mkirkpatrick@ago.state.al.us>]
Sent: Friday, May 16, 2014 3:42 PM
To: Kirkpatrick, Megan; Leesa.Thompson@oag.ok.gov; Sarah.Greenwalt@oag.ok.gov; taylorc@ag.state.la.us; Robert.Ellman@azag.gov; Susan.Britton@ag.ky.gov; sean.riley@ag.ky.gov; Pfeifer, Delberta; Allen.Winsor@myfloridalegal.com; RestucciaE@michigan.gov; ESmith@scag.gov; Karen.Bagby@ago.mo.gov; judy.mitchell@wyo.gov; bradford.phelps@arkansasag.gov; VanDyke, Lawrence; andy.oldham@texasattorneygeneral.gov; Julie.M.Blake@wvago.gov; saexeter@utah.gov; pdouglas@utah.gov; delayne.deck@ag.idaho.gov; Katie.Spohn@nebraska.gov; Lynell.Erickson@state.sd.us; Sherri.Wald@state.sd.us; npeterson@LAW.GA.GOV; dbahr@nd.gov; Hafner, Janell M (LAW); Burton, Anastasia
Cc: Brasher, Andrew; Guthrie, Karen
Subject: 2nd Amendment Brief in Shew v. Malloy

All,

Thanks again for joining the amicus brief in *Nojay, et al., v. Cuomo*. Alabama plans to file an almost identical amicus brief in *Shew v. Malloy*, in which the district court applied intermediate scrutiny to uphold the constitutionality of a Connecticut law that bans semiautomatic firearms.

The draft amicus brief and a redline copy showing changes from the *Nojay* brief are attached to this email.

The deadline to join this brief is 4:00 central time on **Thursday, May 22, 2014**.

To join, please contact:

Megan Kirkpatrick
Assistant Solicitor General
mkirkpatrick@ago.state.al.us
(334) 353-2188

OR

Andrew Brasher
Solicitor General
abrasher@ago.state.al.us
(334) 353-2609

Megan Kirkpatrick, Assistant Solicitor General
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From: Kirkpatrick, Megan

Sent: Tuesday, May 06, 2014 4:35 PM

To: 'Leesa.Thompson@oag.ok.gov'; 'Sarah.Greenwalt@oag.ok.gov'; 'taylorc@ag.state.la.us'; 'Robert.Ellman@azag.gov'; 'Susan.Britton@ag.ky.gov'; 'sean.riley@ag.ky.gov'; 'Pfeifer, Delberta'; 'Allen.Winsor@myfloridalegal.com'; 'RestucciaE@michigan.gov'; 'ESmith@scag.gov'; 'Karen.Bagby@ago.mo.gov'; 'judy.mitchell@wyo.gov'; 'bradford.phelps@arkansasag.gov'; 'LVanDyke@mt.gov'; 'andy.oldham@texasattorneygeneral.gov'; 'Julie.M.Blake@wvago.gov'; 'saexeter@utah.gov'; 'pdouglas@utah.gov'; 'delayne.deck@ag.idaho.gov'; 'Katie.Spohn@nebraska.gov'; 'Lynell.Erickson@state.sd.us'; 'Sherri.Wald@state.sd.us'; 'npeterson@LAW.GA.GOV'; 'dbahr@nd.gov'; 'Hafner, Janell M (LAW)'; 'Burton, Anastasia'

Cc: Brasher, Andrew; Killough, Lindsey

Subject: Amicus Brief in *Nojay, et al. v. Cuomo*, as filed

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From: VanDyke, Lawrence
Sent: Tuesday, May 20, 2014 10:14 AM
To: Fox, Tim; Mattioli, Mark
Subject: RE: Amicus Brief in Shew, et al. v. Malloy (2d Cir.) - Second Amendment case

Importance: High

Tim and Mark – Just a reminder. Deadline for joining this 2nd amendment amicus brief is in two days. Thanks!

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Sent: Monday, May 19, 2014 11:19 AM
To: Fox, Tim; Mattioli, Mark
Subject: FW: Amicus Brief in Shew, et al. v. Malloy (2d Cir.) - Second Amendment case

Tim and Mark – Alabama is filing another 2nd amendment brief much like the one they filed in the case challenging New York's semi-auto ban, but this time in the case challenging Connecticut's. For the same reason we joined the earlier brief, **I recommend that we DO JOIN this one.** Deadline is basically noon this Thursday, May 22. Thanks.

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marmercado@justicia.pr.gov; elbert.lin@wvago.gov; Mary.McTaggart@state.de.us; Sarah.Greenwalt@oag.ok.gov;
Michael.Franco@state.co.us; Eric.Murphy@ohioattorneygeneral.gov; john.knepper@wyo.gov;
mkirkpatrick@ago.state.al.us; craig.konnoth@doj.ca.gov; lkillough@ago.state.al.us; Loren.AliKhan@dc.gov;
lenningtondp@doj.state.wi.us; jacob.campion@ag.state.mn.us; Schlichting, Melissa;
Osvaldo.Vazquez@myfloridalegal.com; Michael.Casper@doj.state.or.us; deidra.shannon@doj.ca.gov;
tcox@oag.state.va.us; cshapiro@atg.state.il.us; ktaylor@oag.state.va.us; whelanmf@doj.state.wi.us;
samuelsontc@doj.state.wi.us; sittsj@michigan.gov

Subject: Amicus Brief in *Shew, et al. v. Malloy* (2d Cir.) - Second Amendment case

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From: Alabama AGO

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Assistant Solicitor General
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abrasher@ago.state.al.us
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From: Fox, Tim
Sent: Tuesday, May 20, 2014 11:49 AM
To: VanDyke, Lawrence
Cc: Mattioli, Mark
Subject: Re: Amicus Brief in Shew, et al. v. Malloy (2d Cir.) - Second Amendment case

I agree that WE DO JOIN. Thank you Lawrence. Tim

Sent from my iPhone

On May 20, 2014, at 7:14 PM, "VanDyke, Lawrence" <LVanDyke@mt.gov> wrote:

Tim and Mark – Just a reminder. Deadline for joining this 2nd amendment amicus brief is in two days. Thanks!

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From: Schweitzer, Dan [<mailto:DSCHWEITZER@NAAG.ORG>]
Sent: Monday, May 19, 2014 7:11 AM
To: ccoppin@nmag.gov; paul.d.stern@maine.gov; dbahr@nd.gov; peter.sacks@ago.state.ma.us; kmunro@ag.nv.gov; JMcIntosh@scag.gov; pam.murphy@doj.nh.gov; eric.tabor@iowa.gov; jknorr@attorneygeneral.gov; margaret.chapple@ct.gov; james.layton@ago.mo.gov; paula.bickett@azag.gov; charles.mcquigan@state.sd.us; RPartington@riag.ri.gov; crimago@saipan.com; Edward.Dumont@doj.ca.gov; barbara.underwood@ag.ny.gov; Hampton, Andrea; Schweitzer, Dan; sbluestone@nmag.gov; david.raupp@arkansasag.gov; gmorg@ago.state.ms.us; jlee@riag.ri.gov; attorney@samoatelco.com; stephan.finkel@lps.state.nj.us; Girard.D.Lau@hawaii.gov; stevemac@ku.edu; basay@atg.state.vt.us; fred.boss@doj.state.or.us; gkelley@ncdoj.gov; alanc@atg.wa.gov; Joe.Whalen@ag.tn.gov; alama079@gmail.com; judy.zerun@state.ma.us; robert.ellman@azag.gov; joanne.grace@alaska.gov; Gregory.Dauria@ct.gov; anne.edwards@doj.nh.gov; tom.fisher@atg.in.gov; jwhite@ncdoj.gov; whowie@ag.nv.gov; Frances.Grunder@doj.ca.gov; mlanf@ago.state.ms.us; ken.rosenstein@alaska.gov; allison.martin@ag.ky.gov; gibsoncj@doj.state.wi.us; hpizz@ago.state.ms.us; wellsik@doj.state.wi.us; Lee.Davidson@ag.ks.gov; edavis@doj.vi.gov; ssullivan@oag.state.md.us; jmaddrey@ncdoj.gov; dspence@oag.state.md.us; vicki.l.pendell@wvago.gov; sraphael@oag.state.va.us; judy.mitchell@wyo.gov; Steve.Creason@atg.in.gov; andrea.silkowitz@dol.lps.state.nj.us; brian.kane@ag.idaho.gov; Richard.Dearing@ag.ny.gov; wmckinney@ncdoj.com; katie.spohn@nebraska.gov; rrussell@nmag.gov; mwood@ago.state.ms.us; restucciae@michigan.gov; wbrockman@oag.state.md.us; agesmith@scag.gov; susan.lee@doj.ca.gov; todd.kim@dc.gov; delayne.deck@ag.idaho.gov; dan.domenico@state.co.us; heather.mcveigh@atg.in.gov; suzanne.gorman@doj.nh.gov; jbhoward@oag.state.md.us; potterkc@doj.state.wi.us; stjohnkm@doj.state.wi.us; ed.bedrosian@state.ma.us; john.garry@ag.state.mn.us; brooke.paup@texasattorneygeneral.gov; appeals@ohioattorneygeneral.gov; Sherri.Wald@state.sd.us; adam.aston@texasattorneygeneral.gov; jhughes@atg.state.il.us; david.blake@state.co.us; Segrest, Stuart; susan.britton@ag.ky.gov; janell.hafner@alaska.gov; john.campbell@ag.ks.gov;

delberta.pfeifer@ag.ks.gov; perry.zinn-rowthorn@ct.gov; jfishburn@ag.nv.gov; mwebb@ago.state.ms.us; barb.fehrman@ag.state.mn.us; vbeavers@ag.nv.gov; bromano@utah.gov; kris.ailslieger@ag.ks.gov; david.curran@arkansasag.gov; bob.fagan@msdh.state.ms.us; sean.riley@ag.ky.gov; ashley.harwel@atq.in.gov; anna.joyce@doj.state.or.us; marlene.brown@dol.lps.state.nj.us; diane.dewolf@myfloridalegal.com; jonathan.mitchell@oag.state.tx.us; mary.mertz@ohioattorneygeneral.gov; sforney@attorneygeneral.gov; npeterson@law.ga.gov; ariel.levinson-waldman@dc.gov; Leesa.Thompson@oag.ok.gov; frederick.nelson@ohioattorneygeneral.gov; patrick.wyrick@oag.ok.gov; Black, Michael; steven.wu@ag.ny.gov; Sam Peterson; abrasher@ago.state.al.us; andy.oldham@texasattorneygeneral.gov; michael.hendershot@ohioattorneygeneral.gov; jeffrey.thompson@iowa.gov; robyn.bender@ag.ky.gov; laura-jane.weimer@state.co.us; james.adams@state.de.us; Aricka.seales@state.ma.us; wiltonp@ag.state.la.us; lindstroma@michigan.gov; VanDyke, Lawrence; allen.winsor@myfloridalegal.com; christopher.dodrigill@wvago.gov; marmercado@justicia.pr.gov; elbert.lin@wvago.gov; Mary.McTaggart@state.de.us; Sarah.Greenwalt@oag.ok.gov; Michael.Franco@state.co.us; Eric.Murphy@ohioattorneygeneral.gov; john.knepper@wyo.gov; mkkirkpatrick@ago.state.al.us; craig.konnoth@doj.ca.gov; lkillough@ago.state.al.us; Loren.AliKhan@dc.gov; lenningtondp@doj.state.wi.us; jacob.campion@ag.state.mn.us; Schlichting, Melissa; Osvaldo.Vazquez@myfloridalegal.com; Michael.Casper@doj.state.or.us; deidra.shannon@doj.ca.gov; tcx@oag.state.va.us; cshapiro@atq.state.il.us; ktaylor@oag.state.va.us; whelanmf@doj.state.wi.us; samuelsontc@doj.state.wi.us; sittsj@michigan.gov

Subject: Amicus Brief in *Shew, et al. v. Malloy* (2d Cir.) - Second Amendment case

To: Civil Amicus Contacts
From: Alabama AGO

This email is to let you know that Alabama intends to file an amicus brief in the Second Circuit supporting the plaintiffs-appellants in *Shew, et al. v. Malloy, et al.*, No. 14-319, in which the district court applied intermediate scrutiny to uphold the constitutionality of a Connecticut law that bans semiautomatic firearms. This brief is substantially similar to the one filed in *Nojay, et al. v. Cuomo*.

Alabama's brief contends that Connecticut's gun ban is unconstitutional under the Second Amendment. Semiautomatic firearms are among the "arms" protected by the Second Amendment because they are commonly possessed by law-abiding citizens for lawful purposes. For this reason, strict rather than intermediate scrutiny should apply under Second Circuit case law. Connecticut's ban of these firearms cannot pass muster under strict scrutiny because such bans have little effect on gun violence and public safety, and a categorical ban is not the least restrictive means to serve the state's interests in public safety and crime prevention.

The brief of the party we are supporting, the district court's decision, and the draft amicus brief are all attached to this email.

The deadline to join this brief is 4:00 central time on **Thursday, May 22, 2014**.

To join, please contact:

Megan Kirkpatrick
Assistant Solicitor General
mkkirkpatrick@ago.state.al.us
(334) 353-2188

OR

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Tuesday, May 20, 2014 1:12 PM
To: 'Kirkpatrick, Megan'
Cc: ABrasher@ago.state.al.us
Subject: RE: 2nd Amendment Brief in Shew v. Malloy

Megan and Andrew – Montana would like to join this brief.

Please list our Attorney General as "Timothy C. Fox".

General Fox's full address, should you need it, is:

Timothy C. Fox
Attorney General of Montana
P.O. Box 201401
Helena, MT 59620-1401
406-444-2026

Please confirm our join by return email, and if you could forward a copy of the final brief once filed, we would appreciate it.

Thank you,

Lawrence VanDyke
Solicitor General ♦ Montana Department of Justice

215 N. Sanders ♦ P.O. Box 201401
Helena, Montana 59620
T: (406) 444-3442 ♦ F: (406) 444-3549
LVanDyke@mt.gov

From: Kirkpatrick, Megan [<mailto:mkirkpatrick@ago.state.al.us>]
Sent: Friday, May 16, 2014 3:42 PM
To: Kirkpatrick, Megan; Leesa.Thompson@oag.ok.gov; Sarah.Greenwalt@oag.ok.gov; taylorc@ag.state.la.us; Robert.Ellman@azag.gov; Susan.Britton@ag.ky.gov; sean.riley@ag.ky.gov; Pfeifer, Delberta; Allen.Winsor@myfloridalegal.com; RestucciaE@michigan.gov; ESmith@scag.gov; Karen.Bagby@ago.mo.gov; judy.mitchell@wyo.gov; bradford.phelps@arkansasag.gov; VanDyke, Lawrence; andy.oldham@texasattorneygeneral.gov; Julie.M.Blake@wvago.gov; saexeter@utah.gov; pdouglas@utah.gov; delayne.deck@ag.idaho.gov; Katie.Spohn@nebraska.gov; Lynell.Erickson@state.sd.us; Sherri.Wald@state.sd.us; npeterson@LAW.GA.GOV; dbahr@nd.gov; Hafner, Janell M (LAW); Burton, Anastasia
Cc: Brasher, Andrew; Guthrie, Karen
Subject: 2nd Amendment Brief in Shew v. Malloy

All,

Thanks again for joining the amicus brief in *Nojay, et al., v. Cuomo*. Alabama plans to file an almost identical amicus brief in *Shew v. Malloy*, in which the district court applied intermediate scrutiny to uphold the constitutionality of a Connecticut law that bans semiautomatic firearms.

The draft amicus brief and a redline copy showing changes from the *Nojay* brief are attached to this email.

The deadline to join this brief is 4:00 central time on **Thursday, May 22, 2014**.

To join, please contact:

Megan Kirkpatrick
Assistant Solicitor General
mkirkpatrick@ago.state.al.us
(334) 353-2188

OR

Andrew Brasher
Solicitor General
abrasher@ago.state.al.us
(334) 353-2609

Megan Kirkpatrick, Assistant Solicitor General
State of Alabama, Office of Attorney General Luther Strange
501 Washington Avenue
Montgomery, AL 36130
(334) 353-2188

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From: Kirkpatrick, Megan
Sent: Tuesday, May 06, 2014 4:35 PM
To: 'Leesa.Thompson@oag.ok.gov'; 'Sarah.Greenwalt@oag.ok.gov'; 'taylorc@ag.state.la.us'; 'Robert.Ellman@azag.gov'; 'Susan.Britton@ag.ky.gov'; 'sean.riley@ag.ky.gov'; 'Pfeifer, Delberta'; 'Allen.Winsor@myfloridalegal.com'; 'RestucciaE@michigan.gov'; 'ESmith@scag.gov'; 'Karen.Bagby@ago.mo.gov'; 'judy.mitchell@wyo.gov'; 'bradford.phelps@arkansasag.gov'; 'LVanDyke@mt.gov'; 'andy.oldham@texasattorneygeneral.gov'; 'Julie.M.Blake@wvago.gov'; 'saexeter@utah.gov'; 'pdouglas@utah.gov'; 'delayne.deck@ag.idaho.gov'; 'Katie.Spohn@nebraska.gov'; 'Lynell.Erickson@state.sd.us'; 'Sherri.Wald@state.sd.us'; 'npeterson@LAW.GA.GOV'; 'dbahr@nd.gov'; 'Hafner, Janell M (LAW)'; 'Burton, Anastasia'
Cc: Brasher, Andrew; Killough, Lindsey
Subject: Amicus Brief in *Nojay, et al. v. Cuomo*, as filed

Please find attached the amicus brief in *Nojay, et al. v. Cuomo*, as filed in the Second Circuit this afternoon. Thank you for your support.

Megan Kirkpatrick, Assistant Solicitor General
State of Alabama, Office of Attorney General Luther Strange
501 Washington Avenue

Montgomery, AL 36130
(334) 353-2188

Confidentiality Notice: The information contained in this email and the documents attached hereto contain confidential information intended only for the use of the intended recipients. If the reader of the message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of the information contained herein is strictly prohibited. If you have received this communication in error, please immediately notify me by reply email.

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Wednesday, August 28, 2013 11:59 AM
To: Fox, Tim; Mattioli, Mark
Cc: Bennion, Jon; Swanson, Cory; Barnes, John
Subject: FW: Amicus Memo in NRA v. ATF (U.S.)
Attachments: Amicus Memo - NRA v Bureau of ATFE -- 8-27.pdf

Tim and Mark – This is a short-fuse cert-stage amicus join request from Alabama in a Second Amendment case coming out of the Fifth Circuit. The case challenges federal laws that categorically deny 18-21 year olds the ability to buy handguns or handgun ammunition. The Fifth Circuit panel rejected the challenge, holding that (1) the laws do not implicate the Second Amendment, and (2) even if they do, they don't violate it. The NRA is the Petitioner in this case.

I think we should join this brief. I'm not sure I agree with the strategy of bringing this case to the SCOTUS, but I think we want to be on the record as on the side of gun rights (and the NRA). I think that a blanket ban on handgun ownership for all 18-21 year olds probably does violate the original meaning of the second amendment – I would expect that 18 year olds were part of the "militia."

Our deadline is quick – we need to decide by this Friday.

Thanks,

Lawrence

From: Schweitzer, Dan [mailto:DSCHWEITZER@NAAG.ORG]
Sent: Tuesday, August 27, 2013 1:02 PM
To: chris.coppin@cwagweb.org; paul.d.stern@maine.gov; dbahr@nd.gov; JMcIntosh@scag.gov; pam.murphy@doj.nh.gov; eric.tabor@iowa.gov; jknorr@attorneygeneral.gov; james.layton@ago.mo.gov; paula.bickett@azag.gov; charles.mcguigan@state.sd.us; RPartington@riag.ri.gov; crimago@saipan.com; barbara.underwood@ag.ny.gov; Hampton, Andrea; Schweitzer, Dan; sbluestone@nmag.gov; david.raupp@arkansasag.gov; gmorg@ago.state.ms.us; jlee@riag.ri.gov; attorney@samoatelco.com; stephan.finkel@lps.state.nj.us; Girard.D.Lau@hawaii.gov; stevemac@ku.edu; dennis.hansen@arkansasag.gov; basay@atg.state.vt.us; Mary.Williams@doj.state.or.us; gkelley@ncdoj.gov; alanc@atg.wa.gov; alama@nmag.gov; judy.zeprun@state.ma.us; joanne.grace@alaska.gov; jnotz@atg.state.il.us; Gregory.Dauria@ct.gov; anne.edwards@doj.nh.gov; tom.fisher@atg.in.gov; jwhite@ncdoj.gov; whowle@ag.nv.gov; Frances.Grunder@doj.ca.gov; mianf@ago.state.ms.us; ken.rosenstein@alaska.gov; allison.martin@ag.ky.gov; hpizz@ago.state.ms.us; wellsik@doj.state.wi.us; Lee.Davidson@ksag.org; edavis@doj.vi.gov; donna.murasky@dc.gov; ssullivan@oag.state.md.us; jmaddrey@ncdoj.gov; dspence@oag.state.md.us; vlp@wvago.gov; debbie.mcveigh@wyo.gov; Steve.Creaseon@atg.in.gov; kguthrie@ago.state.al.us; andrea.silkowitz@dol.lps.state.nj.us; brian.kane@ag.idaho.gov; Richard.Dearing@ag.ny.gov; katie.spohn@nebraska.gov; rrussell@nmag.gov; mwood@ago.state.ms.us; restucciae@michigan.gov; wbrockman@oag.state.md.us; agesmith@scag.gov; susan.lee@doj.ca.gov; SG@atg.in.gov; todd.kim@dc.gov; delayne.deck@ag.idaho.gov; dan.domenico@state.co.us; mscodro@atg.state.il.us; heather.mcveigh@atg.in.gov; suzanne.gorman@doj.nh.gov; jbhoward@oag.state.md.us; potterkc@doj.state.wi.us; stjohnm@doj.state.wi.us; ed.bedrosian@state.ma.us; john.garry@ag.state.mn.us; brooke.paup@texasattorneygeneral.gov; appeals@ohioattorneygeneral.gov; meanssp@doj.state.wi.us; Sherri.Wald@state.sd.us; adam.aston@texasattorneygeneral.gov; jhughes@atg.state.il.us; david.blake@state.co.us; Segrest, Stuart; susan.britton@ag.ky.gov; john.campbell@ksag.org; jung.kim@dol.lps.state.nj.us; dave.jones@alaska.gov; delberta.pfeifer@ksag.org; perry.zinn-rowthorn@ct.gov; mwebb@ago.state.ms.us; barb.fehrman@ag.state.mn.us; vbeavers@ag.nv.gov; bromano@utah.gov; kris.aillslienger@ksag.org; bob.fagan@msdh.state.ms.us; Eileen.carey@state.ma.us; sean.riley@ag.ky.gov; ashley.harwel@atg.in.gov; dGetchell@oag.state.va.us; anna.joyce@doj.state.or.us; marlene.brown@dol.lps.state.nj.us; peter.michael@wyo.gov;

diane.dewolf@myfloridalegal.com; jonathan.mitchell@oag.state.tx.us; mary.mertz@ohioattorneygeneral.gov; sforney@attorneygeneral.gov; npeterson@law.ga.gov; jneiman@ago.state.al.us; ariel.levinson-waldman@dc.gov; burschj@michigan.gov; Leesa.Thompson@oag.ok.gov; dowker@michigan.gov; frederick.nelson@ohioattorneygeneral.gov; patrick.wyrick@oag.ok.gov; bill.young@ag.tn.gov; Black, Michael; MBrady@oag.state.va.us; Sam Peterson; abrasher@ago.state.al.us; pamela.spang@state.ma.us; andy.oldham@texasattorneygeneral.gov; Jason.pleggenkuhle@ag.state.mn.us; michael.hendershot@ohioattorneygeneral.gov; robyn.bender@ag.ky.gov; laura-jane.weimer@state.co.us; james.adams@state.de.us; Aricka.seales@state.ma.us; wiltonp@ag.state.la.us; lindstroma@michigan.gov; VanDyke, Lawrence; allen.winsor@myfloridalegal.com; christopher.doddrill@wvago.gov; marmercado@justicia.pr.gov; elbert.lin@wvago.gov; Mary.McTaggart@state.de.us; Sarah.Greenwalt@oag.ok.gov; Michael.Francisco@state.co.us
Cc: KTurner@ago.state.al.us
Subject: Amicus Memo in NRA v. ATF (U.S.)

To: Civil Amicus Contacts

Attached is an Amicus Memo describing the amicus brief Alabama is preparing in support of the cert petition filed in *National Rifle Association v. U.S. Bureau of Alcohol, Tobacco, Firearms, and Explosives*, 13-137 (U.S.). The petition seeks review of a Fifth Circuit decision holding that the Second Amendment is not violated by federal laws prohibiting adults under the age of 21 from purchasing handguns and handgun ammunition. The question presented is “[w]hether a nationwide, class-based, categorical ban on meaningful access to the quintessential means to exercise the right to keep and bear arms for self-defense can be reconciled with the Second Amendment, the equal protection guarantee, and this Court’s precedents.”

The turn-around time is very short. Alabama will be circulating a draft brief tomorrow; and the deadline for joining is this Friday. To join, you may contact:

John Neiman
Solicitor General
Office of Alabama Attorney General Luther Strange
501 Washington Avenue
Montgomery, AL 36130
(334) 353-2187
JNeiman@ago.state.al.us

Dan Schweitzer
Supreme Court Counsel
National Association of Attorneys General
2030 M Street, NW, 8th Floor
Washington, DC 20036
(202) 326-6010
(202) 785-0410 - fax
dschweitzer@naag.org

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Wednesday, August 28, 2013 2:35 PM
To: Fox, Tim
Cc: Mattioli, Mark; Bennion, Jon; Swanson, Cory; Barnes, John; Darkenwald, Scott
Subject: RE: Amicus Memo in NRA v. ATF (U.S.)
Attachments: NRA v. BATFE -- draft brief -- 8-28 -- to States.pdf

I can answer some of these:

(1) What do Montana's laws say about 18-21 year olds and guns or ammunition?

- I don't believe Montana has any such laws. Montana law ban carrying of a weapon by a child under the age of 14, unless accompanied by an adult. MCA 45-8-344

(2) What are the policy implications of either supporting or not supporting this amicus brief in light of the high-profile and tragic shooting incidents across the country in recent years?

- I'm not sure there are any *direct* policy implications. Montana and federal laws would still ban carrying of guns in schools, and most 18-21 year olds are out of high school in any event. As far as indirect policy implications – as is the case with most gun issues, I'm sure it depends on your starting assumptions. Folks that think that gun control works will conclude that loosening control here will lead to more gun violence. Folks that think gun control typically only affects otherwise law-abiding citizens will think that allowing 18-21 year olds to lawfully own handguns will likely not increase crime and violence, in schools or otherwise.

(3) What considerations are there in light of our potential for partnering with Superintendent Juneau on the school safety and active shooter training initiatives?

- I don't know about this one, since I haven't been involved with this at all. Jon – do you know?

(4) What media attention, good or bad, has this case generated since it was filed?

- John is going to do some searching today or tomorrow morning to see what, if any, major press this has received. Thanks John!

(5) Is this a matter that we should consult, with the Governor's office on before making a decision? (Note: I would think not, but would be interested in other's views).

- I don't think we need to. Does anyone else think it would be prudent nonetheless?

I've attached the draft brief – which I like. It does point out that Montana law allows 18-20 year-olds to own guns. See n.2. Here is a line from the first page (key soaring rhetoric music):

Adults who are 18, 19, and 20 honorably defend our country when it is at war. These same Americans should be able to defend themselves and their families when they are at home.

I got chills. (Okay, not really, but I wanted to.)

From: Fox, Tim
Sent: Wednesday, August 28, 2013 12:17 PM
To: VanDyke, Lawrence
Cc: Mattioli, Mark; Bennion, Jon; Swanson, Cory; Barnes, John; Darkenwald, Scott
Subject: Re: Amicus Memo in NRA v. ATF (U.S.)

Before I make a decision, can one or more of you address the following questions:

- (1) What do Montana's laws say about 18-21 year olds and guns or ammunition?
- (2) What are the policy implications of either supporting or not supporting this amicus brief in light of the high-profile and tragic shooting incidents across the country in recent years?
- (3) What considerations are there in light of our potential for partnering with Superintendent Juneau on the school safety and active shooter training initiatives?
- (4) What media attention, good or bad, has this case generated since it was filed?
- (5) Is this a matter that we should consult, with the Governor's office on before making a decision? (Note: I would think not, but would be interested in other's views).

Thank you.

Tim

Sent from my iPad

On Aug 28, 2013, at 11:58 AM, "VanDyke, Lawrence" <LVanDyke@mt.gov> wrote:

Tim and Mark – This is a short-fuse cert-stage amicus join request from Alabama in a Second Amendment case coming out of the Fifth Circuit. The case challenges federal laws that categorically deny 18-21 year olds the ability to buy handguns or handgun ammunition. The Fifth Circuit panel rejected the challenge, holding that (1) the laws do not implicate the Second Amendment, and (2) even if they do, they don't violate it. The NRA is the Petitioner in this case.

I think we should join this brief. I'm not sure I agree with the strategy of bringing this case to the SCOTUS, but I think we want to be on the record as on the side of gun rights (and the NRA). I think that a blanket ban on handgun ownership for all 18-21 year olds probably does violate the original meaning of the second amendment – I would expect that 18 year olds were part of the "militia."

Our deadline is quick – we need to decide by this Friday.

Thanks,

Lawrence

From: Schweitzer, Dan [<mailto:DSCHWEITZER@NAAG.ORG>]

Sent: Tuesday, August 27, 2013 1:02 PM

To: chris.coppin@cvagweb.org; paul.d.stern@maine.gov; dbahr@nd.gov; JMcIntosh@scag.gov; pam.murphy@doj.nh.gov; eric.tabor@iowa.gov; jknorr@attorneygeneral.gov; james.layton@ago.mo.gov; paula.bickett@azag.gov; charles.mcquigan@state.sd.us; RPartington@riag.ri.gov; crimago@saipan.com; barbara.underwood@ag.ny.gov; Hampton, Andrea; Schweitzer, Dan; sbluestone@nmag.gov; david.raupp@arkansasag.gov; gmorg@ago.state.ms.us; jlee@riag.ri.gov; attorney@samoatelco.com; stephan.finkel@lps.state.nj.us; Girard.D.Lau@hawaii.gov; stevemac@ku.edu; dennis.hansen@arkansasag.gov; basay@atg.state.vt.us; Mary.Williams@doj.state.or.us; gkelley@ncdoj.gov; alanc@atg.wa.gov; alama@nmag.gov; judy.zeprun@state.ma.us; joanne.grace@alaska.gov; jnotz@atg.state.il.us; Gregory.Dauria@ct.gov; anne.edwards@doj.nh.gov; tom.fisher@atg.in.gov; jwhite@ncdoj.gov; whowle@ag.nv.gov; Frances.Grunder@doj.ca.gov; mianf@ago.state.ms.us; ken.rosenstein@alaska.gov; allison.martin@aq.ky.gov; hpizz@ago.state.ms.us; wellsik@doj.state.wi.us; Lee.Davidson@ksag.org; edavis@doj.vi.gov; donna.murasky@dc.gov; ssullivan@oag.state.md.us; jmaddrey@ncdoj.gov; dspence@oag.state.md.us; vlp@wvago.gov; debbie.mcveigh@wyo.gov; Steve.Creason@atg.in.gov; kguthrie@ago.state.al.us; andrea.silkowitz@dol.lps.state.nj.us; brian.kane@ag.idaho.gov; Richard.Dearing@ag.ny.gov;

katie.spohn@nebraska.gov; rrussell@nmaq.gov; mwood@ago.state.ms.us; restucciae@michigan.gov;
wbrockman@oag.state.md.us; agesmith@scag.gov; susan.lee@doj.ca.gov; SG@atg.in.gov;
todd.kim@dc.gov; delayne.deck@ag.idaho.gov; dan.domenico@state.co.us; mscodro@atg.state.il.us;
heather.mcveigh@atg.in.gov; suzanne.gorman@doj.nh.gov; jbhoward@oag.state.md.us;
potterkc@doj.state.wi.us; stjohnkm@doj.state.wi.us; ed.bedrosian@state.ma.us;
john.garry@ag.state.mn.us; brooke.paup@texasattorneygeneral.gov; appeals@ohioattorneygeneral.gov;
meanssp@doj.state.wi.us; Sherri.Wald@state.sd.us; adam.aston@texasattorneygeneral.gov;
jhughes@atg.state.il.us; david.blake@state.co.us; Segrest, Stuart; susan.britton@ag.ky.gov;
john.campbell@ksag.org; jung.kim@dol.lps.state.nj.us; dave.jones@alaska.gov;
delberta.pfeifer@ksag.org; perry.zinn-rowthorn@ct.gov; mwebb@ago.state.ms.us;
barb.fehrman@ag.state.mn.us; vbeavers@ag.nv.gov; bromano@utah.gov; kris.ailslieger@ksag.org;
bob.fagan@msdh.state.ms.us; Eileen.carey@state.ma.us; sean.riley@ag.ky.gov;
ashley.harwel@atg.in.gov; dGetchell@oag.state.va.us; anna.joyce@doj.state.or.us;
marlene.brown@dol.lps.state.nj.us; peter.michael@wyo.gov; diane.dewolf@myfloridalegal.com;
jonathan.mitchell@oag.state.tx.us; mary.mertz@ohioattorneygeneral.gov; sforney@attorneygeneral.gov;
npeterson@law.ga.gov; jneiman@ago.state.al.us; ariel.levinson-waldman@dc.gov;
burschj@michigan.gov; Leesa.Thompson@oag.ok.gov; dowkerc@michigan.gov;
frederick.nelson@ohioattorneygeneral.gov; patrick.wyrick@oag.ok.gov; bill.young@ag.tn.gov; Black,
Michael; MBrady@oag.state.va.us; Sam Peterson; abrasher@ago.state.al.us; pamela.spang@state.ma.us;
andy.oldham@texasattorneygeneral.gov; Jason.pleggenkuhle@ag.state.mn.us;
michael.hendershot@ohioattorneygeneral.gov; robyn.bender@ag.ky.gov; laura-jane.weimer@state.co.us;
james.adams@state.de.us; Aricka.seales@state.ma.us; wiltonp@ag.state.la.us;
lindstroma@michigan.gov; VanDyke, Lawrence; allen.winsor@myfloridalegal.com;
christopher.dodrill@wvago.gov; marmercado@justicia.pr.gov; elbert.lin@wvago.gov;
Mary.McTaggart@state.de.us; Sarah.Greenwalt@oag.ok.gov; Michael.Franisco@state.co.us
Cc: KTurner@ago.state.al.us

Subject: Amicus Memo in NRA v. ATF (U.S.)

To: Civil Amicus Contacts

Attached is an Amicus Memo describing the amicus brief Alabama is preparing in support of the cert petition filed in *National Rifle Association v. U.S. Bureau of Alcohol, Tobacco, Firearms, and Explosives*, 13-137 (U.S.). The petition seeks review of a Fifth Circuit decision holding that the Second Amendment is not violated by federal laws prohibiting adults under the age of 21 from purchasing handguns and handgun ammunition. The question presented is “[w]hether a nationwide, class-based, categorical ban on meaningful access to the quintessential means to exercise the right to keep and bear arms for self-defense can be reconciled with the Second Amendment, the equal protection guarantee, and this Court’s precedents.”

The turn-around time is very short. Alabama will be circulating a draft brief tomorrow; and the deadline for joining is this Friday. To join, you may contact:

John Neiman
Solicitor General
Office of Alabama Attorney General Luther Strange
501 Washington Avenue
Montgomery, AL 36130
(334) 353-2187
JNeiman@ago.state.al.us

Dan Schweitzer
Supreme Court Counsel
National Association of Attorneys General
2030 M Street, NW, 8th Floor
Washington, DC 20036
(202) 326-6010
(202) 785-0410 - fax
dschweitzer@naag.org

<Amicus Memo - NRA v Bureau of ATFE -- 8-27.pdf>

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From: VanDyke, Lawrence
Sent: Wednesday, May 07, 2014 9:56 AM
To: James, Julie
Cc: Burton, Anastasia; Barnes, John
Subject: FW: Amicus Brief in Nojay, et al. v. Cuomo, as filed
Attachments: Amicus Brief of Alabama etc - 14-36 (2).pdf

FYI – for the binder. Thanks!

From: Kirkpatrick, Megan [<mailto:mkirkpatrick@ago.state.al.us>]
Sent: Tuesday, May 06, 2014 3:35 PM
To: Leesa.Thompson@oag.ok.gov; Sarah.Greenwalt@oag.ok.gov; taylorc@ag.state.la.us; Robert.Ellman@azag.gov; Susan.Britton@ag.ky.gov; sean.riley@ag.ky.gov; Pfeifer, Delberta; Allen.Winsor@myfloridalegal.com; RestucciaE@michigan.gov; ESmith@scag.gov; Karen.Bagby@ago.mo.gov; judy.mitchell@wyo.gov; bradford.phelps@arkansasag.gov; VanDyke, Lawrence; andy.oldham@texasattorneygeneral.gov; Julie.M.Blake@wvago.gov; saexeter@utah.gov; pdouglas@utah.gov; delayne.deck@ag.idaho.gov; Katie.Spohn@nebraska.gov; Lynell.Erickson@state.sd.us; Sherri.Wald@state.sd.us; npeterson@LAW.GA.GOV; dbahr@nd.gov; Hafner, Janell M (LAW); Burton, Anastasia
Cc: Brasher, Andrew; Killough, Lindsey
Subject: Amicus Brief in Nojay, et al. v. Cuomo, as filed

Please find attached the amicus brief in *Nojay, et al. v. Cuomo*, as filed in the Second Circuit this afternoon. Thank you for your support.

Megan Kirkpatrick, Assistant Solicitor General
State of Alabama, Office of Attorney General Luther Strange
501 Washington Avenue
Montgomery, AL 36130
(334) 353-2188

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From: VanDyke, Lawrence
Sent: Friday, August 30, 2013 3:14 PM
To: James, Julie
Cc: Fox, Tim; Barnes, John; Burton, Anastasia
Subject: FW: NRA v ATF - Amicus Brief
Attachments: NRA -- FINAL -- 8-30-13.pdf; Amicus Memo - NRA v Bureau of ATFE -- 8-27.pdf

Julie – For the joinder binder. Thank you!

Tim – 22 states total ended up joining Alabama’s NRA v. ATF brief. Just FYI.

John and Anastasia – Just in case we get media inquiries, you have the brief and memo attached.

Thanks everyone!

From: Guthrie, Karen [<mailto:KarenGuthrie@ago.state.al.us>]
Sent: Friday, August 30, 2013 1:03 PM
To: 'stjohnkm@doj.state.wi.us'; 'Tom.Bates@oag.ok.gov'; 'Heather.McVeigh@atg.in.gov'; 'Marlena.Soto@azag.gov'; 'RestucciaE@michigan.gov'; 'ESmith@scag.gov'; 'Delberta.Pfeifer@ksag.org'; 'elbert.lin@wvago.gov'; 'dave.jones@alaska.gov'; VanDyke, Lawrence; 'jswallow@utah.gov'; 'dbahr@nd.gov'; 'delayne.deck@ag.idaho.gov'; 'npeterson@LAW.GA.GOV'; 'rrussell@nmag.gov'; 'Diane.DeWolf@myfloridalegal.com'; 'Katie.Spohn@nebraska.gov'; 'WiltonP@ag.state.la.us'; 'Lynell.Erickson@state.sd.us'; 'bradford.phelps@arkansasag.gov'; 'dan.domenico@state.co.us'
Cc: Neiman, John
Subject: NRA v ATF - Amicus Brief

Attached is a copy of the final brief. Thanks to all.

Karen Guthrie, ACP
Paralegal
Office of Attorney General Luther Strange
501 Washington Avenue
Montgomery, AL 36130-0152
kguthrie@ago.state.al.us
(334) 353-4708



/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Thursday, August 29, 2013 1:46 PM
To: James, Julie
Cc: Barnes, John; Burton, Anastasia
Subject: FW: Amicus Memo in NRA v. ATF (U.S.)
Attachments: Re: Amicus Memo in NRA v. ATF (U.S.); NRA -- draft brief -- 8-29 -- tables.pdf; Amicus Memo - NRA v Bureau of ATFE -- 8-27.pdf

Julie – We are joining this amicus brief. Thank you!

- Lawrence

From: VanDyke, Lawrence
Sent: Thursday, August 29, 2013 1:44 PM
To: 'Neiman, John'
Cc: ABrasher@ago.state.al.us; Turner, Kevin
Subject: RE: Amicus Memo in NRA v. ATF (U.S.)

John - Montana would like to join this brief. Please list our Attorney General as “Timothy C. Fox”.

General Fox’s full address, should you need it, is:

Timothy C. Fox
Attorney General of Montana
P.O. Box 201401
Helena, MT 59620-1401
406-444-2026

Please confirm our join by return email, and if you could forward a copy of the final brief once filed, we would appreciate it.

Thank you,

Lawrence VanDyke
Solicitor General • Montana Department of Justice

215 N. Sanders • P.O. Box 201401
Helena, Montana 59620
T: (406) 444-3442 • F: (406) 444-3549
LVanDyke@mt.gov

From: Neiman, John [<mailto:JNeiman@ago.state.al.us>]
Sent: Thursday, August 29, 2013 8:17 AM
To: Neiman, John; 'Schweitzer, Dan'; 'chris.coppin@cwagweb.org'; 'paul.d.stern@maine.gov'; 'dbahr@nd.gov'; 'JMcIntosh@scag.gov'; 'pam.murphy@doj.nh.gov'; 'eric.tabor@iowa.gov'; 'jknorr@attorneygeneral.gov'; 'james.layton@ago.mo.gov'; 'paula.bickett@azag.gov'; 'charles.mcguigan@state.sd.us'; 'RPartington@riag.ri.gov'; 'crimago@saipan.com'; 'barbara.underwood@ag.ny.gov'; 'Hampton, Andrea'; 'sbluestone@nmag.gov'; 'david.raupp@arkansasag.gov'; 'gmorg@ago.state.ms.us'; 'jlee@riag.ri.gov'; 'attorney@samoatelco.com';

'stephan.finkel@lps.state.nj.us'; 'Girard.D.Lau@hawaii.gov'; 'stevemac@ku.edu'; 'dennis.hansen@arkansasag.gov';
'basay@atg.state.vt.us'; 'Mary.Williams@doj.state.or.us'; 'gkelley@ncdoj.gov'; 'alanc@atg.wa.gov'; 'alama@nmag.gov';
'judy.zeprun@state.ma.us'; 'joanne.grace@alaska.gov'; 'jnotz@atg.state.il.us'; 'Gregory.Dauria@ct.gov';
'anne.edwards@doj.nh.gov'; 'tom.fisher@atg.in.gov'; 'jwhite@ncdoj.gov'; 'whowie@ag.nv.gov';
'Frances.Grunder@doj.ca.gov'; 'mlanf@ago.state.ms.us'; 'ken.rosenstein@alaska.gov'; 'allison.martin@ag.ky.gov';
'hpizz@ago.state.ms.us'; 'wellsk@doj.state.wi.us'; 'Lee.Davidson@ksag.org'; 'edavis@doj.vi.gov';
'donna.murasky@dc.gov'; 'ssullivan@oag.state.md.us'; 'jmaddrey@ncdoj.gov'; 'dspence@oag.state.md.us';
'vlp@wvago.gov'; 'debbie.mcveigh@wyo.gov'; 'Steve.Creason@atg.in.gov'; Guthrie, Karen;
'andrea.silkowitz@dol.lps.state.nj.us'; 'brian.kane@ag.idaho.gov'; 'Richard.Dearing@ag.ny.gov';
'katie.spohn@nebraska.gov'; 'rrussell@nmag.gov'; Mary Jo Woods; 'restucciae@michigan.gov';
'wbrockman@oag.state.md.us'; 'agesmith@scag.gov'; 'susan.lee@doj.ca.gov'; 'SG@atg.in.gov'; 'todd.kim@dc.gov';
'delayne.deck@ag.idaho.gov'; 'dan.domenico@state.co.us'; 'mscodro@atg.state.il.us'; 'heather.mcveigh@atg.in.gov';
'suzanne.gorman@doj.nh.gov'; 'jbhoward@oag.state.md.us'; 'potterkc@doj.state.wi.us'; 'stjohnkm@doj.state.wi.us';
'ed.bedrosian@state.ma.us'; 'john.garry@ag.state.mn.us'; 'brooke.paup@texasattorneygeneral.gov';
'appeals@ohioattorneygeneral.gov'; 'meanssp@doj.state.wi.us'; 'Sherri.Wald@state.sd.us';
'adam.aston@texasattorneygeneral.gov'; 'jhughes@atg.state.il.us'; 'david.blake@state.co.us'; Segrest, Stuart;
'susan.britton@ag.ky.gov'; 'john.campbell@ksag.org'; 'jung.kim@dol.lps.state.nj.us'; 'dave.jones@alaska.gov';
'delberta.pfeifer@ksag.org'; 'perry.zinn-rowthorn@ct.gov'; 'mwebb@ago.state.ms.us'; 'barb.fehrman@ag.state.mn.us';
'vbeavers@ag.nv.gov'; 'bromano@utah.gov'; 'kris.aillslieger@ksag.org'; 'bob.fagan@msdh.state.ms.us';
'Eileen.carey@state.ma.us'; 'sean.riley@ag.ky.gov'; 'ashley.harwel@atg.in.gov'; 'dGetchell@oag.state.va.us';
'anna.joyce@doj.state.or.us'; 'marlene.brown@dol.lps.state.nj.us'; 'peter.michael@wyo.gov';
'diane.dewolf@myfloridalegal.com'; 'jonathan.mitchell@oag.state.tx.us'; 'mary.mertz@ohioattorneygeneral.gov';
'sforney@attorneygeneral.gov'; 'npeterson@law.ga.gov'; 'ariel.levinson-waldman@dc.gov'; 'burschj@michigan.gov';
'Leesa.Thompson@oag.ok.gov'; 'dowker@michigan.gov'; 'frederick.nelson@ohioattorneygeneral.gov';
'patrick.wyrick@oag.ok.gov'; 'bill.young@ag.tn.gov'; Black, Michael; 'MBrady@oag.state.va.us'; 'Sam Peterson'; Brasher,
Andrew; 'pamela.spang@state.ma.us'; 'andy.oldham@texasattorneygeneral.gov'; 'Jason.pleggenkuhle@ag.state.mn.us';
'michael.hendershot@ohioattorneygeneral.gov'; 'robyn.bender@ag.ky.gov'; 'laura-jane.weimer@state.co.us';
'james.adams@state.de.us'; 'Aricka.seales@state.ma.us'; 'wiltonp@ag.state.la.us'; 'lindstroma@michigan.gov'; VanDyke,
Lawrence; 'allen.winsor@myfloridalegal.com'; 'christopher.dodrill@wvago.gov'; 'marmercado@justicia.pr.gov';
'elbert.lin@wvago.gov'; 'Mary.McTaggart@state.de.us'; 'Sarah.Greenwalt@oag.ok.gov'; 'Michael.Franisco@state.co.us'

Cc: Turner, Kevin

Subject: RE: Amicus Memo in NRA v. ATF (U.S.)

To give everyone an update, we have added a few points, including a string-cite to relevant state constitutional provisions, in response to suggestions from some of you. I've attached a redline and clean version of the current draft. We currently have Alabama, Florida, Louisiana, Nebraska, New Mexico, and South Dakota on the brief. Thanks for your consideration, and if you have any questions or thoughts, don't hesitate to contact me.

John C. Neiman, Jr., Alabama Solicitor General
State of Alabama, Office of Attorney General Luther Strange
501 Washington Avenue
Montgomery, AL 36130
(334) 353-2187
cell: (334) 324-8746

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From: Neiman, John

Sent: Wednesday, August 28, 2013 1:09 PM

To: 'Schweitzer, Dan'; chris.coppin@cwagweb.org; paul.d.stern@maine.gov; dbahr@nd.gov; JMcIntosh@scag.gov; pam.murphy@doj.nh.gov; eric.tabor@iowa.gov; jknorr@attorneygeneral.gov; james.layton@ago.mo.gov; paula.bickett@azag.gov; charles.mcquigan@state.sd.us; RPartington@riag.ri.gov; crimago@saipan.com; barbara.underwood@ag.ny.gov; Hampton, Andrea; sbluestone@nmag.gov; david.raupp@arkansasag.gov; gmorg@ago.state.ms.us; jlee@riag.ri.gov; attorney@samoatelco.com; stephan.finkel@lps.state.nj.us;

Girard.D.Lau@hawaii.gov; stevemac@ku.edu; dennis.hansen@arkansasag.gov; basay@atg.state.vt.us;
Mary.Williams@doj.state.or.us; gkelley@ncdoj.gov; alanc@atg.wa.gov; alama@nmag.gov; judy.zeprun@state.ma.us;
joanne.grace@alaska.gov; jnotz@atg.state.il.us; Gregory.Dauria@ct.gov; anne.edwards@doj.nh.gov;
tom.fisher@atg.in.gov; jwhite@ncdoj.gov; whowle@ag.nv.gov; Frances.Grunder@doj.ca.gov; mianf@ago.state.ms.us;
ken.rosenstein@alaska.gov; allison.martin@ag.ky.gov; hpizz@ago.state.ms.us; wellslk@doj.state.wi.us;
Lee.Davidson@ksag.org; edavis@doj.vi.gov; donna.murasky@dc.gov; ssullivan@oag.state.md.us; jmaddrey@ncdoj.gov;
dspence@oag.state.md.us; vlp@wvago.gov; debbie.mcveigh@wyo.gov; Steve.Creaseon@atg.in.gov; Guthrie, Karen;
andrea.silkowitz@dol.lps.state.nj.us; brian.kane@ag.idaho.gov; Richard.Dearing@ag.ny.gov; katie.spohn@nebraska.gov;
rrussell@nmag.gov; Mary Jo Woods; restucciae@michigan.gov; wbrockman@oag.state.md.us; agesmith@scag.gov;
susan.lee@doj.ca.gov; SG@atg.in.gov; todd.kim@dc.gov; delayne.deck@ag.idaho.gov; dan.domenico@state.co.us;
mscodro@atg.state.il.us; heather.mcveigh@atg.in.gov; suzanne.gorman@doj.nh.gov; jhoward@oag.state.md.us;
potterkc@doj.state.wi.us; stjohnkm@doj.state.wi.us; ed.bedrosian@state.ma.us; john.garry@ag.state.mn.us;
brooke.paup@texasattorneygeneral.gov; appeals@ohioattorneygeneral.gov; meanssp@doj.state.wi.us;
Sherri.Wald@state.sd.us; adam.aston@texasattorneygeneral.gov; jhughes@atg.state.il.us; david.blake@state.co.us;
ssegrest@mt.gov; susan.britton@ag.ky.gov; john.campbell@ksag.org; jung.kim@dol.lps.state.nj.us;
dave.jones@alaska.gov; delberta.pfeifer@ksag.org; perry.zinn-rowthorn@ct.gov; mwebb@ago.state.ms.us;
barb.fehrman@ag.state.mn.us; ybeavers@ag.nv.gov; bromano@utah.gov; kris.ailslieger@ksag.org;
bob.fagan@msdh.state.ms.us; Eileen.carey@state.ma.us; sean.riley@ag.ky.gov; ashley.harwel@atg.in.gov;
dGetchell@oag.state.va.us; anna.joyce@doj.state.or.us; marlene.brown@dol.lps.state.nj.us; peter.michael@wyo.gov;
diane.dewolf@myfloridalegal.com; jonathan.mitchell@oag.state.tx.us; mary.mertz@ohioattorneygeneral.gov;
sforney@attorneygeneral.gov; npeterson@law.ga.gov; ariel.levinson-waldman@dc.gov; burschi@michigan.gov;
Leesa.Thompson@oag.ok.gov; dowker@michigan.gov; frederick.nelson@ohioattorneygeneral.gov;
patrick.wyrick@oag.ok.gov; bill.young@ag.tn.gov; mblack2@mt.gov; MBrady@oag.state.va.us; Sam Peterson; Brasher,
Andrew; pamela.spang@state.ma.us; andy.oldham@texasattorneygeneral.gov; Jason.pleggenkuhle@ag.state.mn.us;
michael.hendershot@ohioattorneygeneral.gov; robyn.bender@ag.ky.gov; laura-jane.weimer@state.co.us;
james.adams@state.de.us; Aricka.seales@state.ma.us; wiltonp@ag.state.la.us; lindstroma@michigan.gov;
LVanDyke@mt.gov; allen.winsor@myfloridalegal.com; christopher.dodrill@wvago.gov; marmercado@justicia.pr.gov;
elbert.lin@wvago.gov; Mary.McTaggart@state.de.us; Sarah.Greenwalt@oag.ok.gov; Michael.Franco@state.co.us
Cc: Turner, Kevin

Subject: RE: Amicus Memo in NRA v. ATF (U.S.)

Everyone, here is the promised (short) amicus supporting the petitioners in this case. We'd ask for joins by 10:30 Eastern on Friday morning. With apologies for the short turn-around time, we appreciate your speedy consideration.

For those who are interested in reviewing the petition and appendix, they are up on SCOTUSBlog at:
<http://sblog.s3.amazonaws.com/wp-content/uploads/2013/08/NRA-petition-13-137.pdf>

John C. Neiman, Jr., Alabama Solicitor General
State of Alabama, Office of Attorney General Luther Strange
501 Washington Avenue
Montgomery, AL 36130
(334) 353-2187
cell: (334) 324-8746

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From: Schweitzer, Dan [mailto:DSCHWEITZER@NAAG.ORG]

Sent: Tuesday, August 27, 2013 2:02 PM

To: chris.coppin@cwagweb.org; paul.d.stern@maine.gov; dbahr@nd.gov; JMcIntosh@scag.gov;
pam.murphy@doj.nh.gov; eric.tabor@iowa.gov; jknorr@attorneygeneral.gov; james.layton@ago.mo.gov;
paula.bickett@azag.gov; charles.mcquigan@state.sd.us; RPartington@riag.ri.gov; crimago@saipan.com;
barbara.underwood@ag.ny.gov; Hampton, Andrea; Schweitzer, Dan; sbluestone@nmag.gov;
david.raupp@arkansasag.gov; gmorg@ago.state.ms.us; jlee@riag.ri.gov; attorney@samoatelco.com;
stephan.finkel@lps.state.nj.us; Girard.D.Lau@hawaii.gov; stevemac@ku.edu; dennis.hansen@arkansasag.gov;

basay@atg.state.vt.us; Mary.Williams@doj.state.or.us; gkelley@ncdoj.gov; alanc@atg.wa.gov; alama@nmag.gov;
judy.zeprun@state.ma.us; joanne.grace@alaska.gov; inotz@atg.state.il.us; Gregory.Dauria@ct.gov;
anne.edwards@doj.nh.gov; tom.fisher@atg.in.gov; jwhite@ncdoj.gov; whowle@ag.nv.gov; Frances.Grunder@doj.ca.gov;
mianf@ago.state.ms.us; ken.rosenstein@alaska.gov; allison.martin@ag.ky.gov; hpizz@ago.state.ms.us;
wellsk@doj.state.wi.us; Lee.Davidson@ksag.org; edavis@doj.vi.gov; donna.murasky@dc.gov;
ssullivan@oag.state.md.us; jmaddrey@ncdoj.gov; dspence@oag.state.md.us; vlp@wvago.gov;
debbie.mcveigh@wyo.gov; Steve.Creason@atg.in.gov; Guthrie, Karen; andrea.silkowitz@dol.lps.state.nj.us;
brian.kane@ag.idaho.gov; Richard.Dearing@ag.ny.gov; katie.spohn@nebraska.gov; rrussell@nmag.gov; Mary Jo Woods;
restucciae@michigan.gov; wbrockman@oag.state.md.us; agesmith@scag.gov; susan.lee@doj.ca.gov; SG@atg.in.gov;
todd.kim@dc.gov; delayne.deck@ag.idaho.gov; dan.domenico@state.co.us; mscodro@atg.state.il.us;
heather.mcveigh@atg.in.gov; suzanne.gorman@doj.nh.gov; jbhoward@oag.state.md.us; potterkc@doj.state.wi.us;
stjohnkm@doj.state.wi.us; ed.bedrosian@state.ma.us; john.garry@ag.state.mn.us;
brooke.paup@texasattorneygeneral.gov; appeals@ohioattorneygeneral.gov; meanssp@doj.state.wi.us;
Sherri.Wald@state.sd.us; adam.aston@texasattorneygeneral.gov; jhughes@atg.state.il.us; david.blake@state.co.us;
ssecrest@mt.gov; susan.britton@ag.ky.gov; john.campbell@ksag.org; jung.kim@dol.lps.state.nj.us;
dave.jones@alaska.gov; delberta.pfeifer@ksag.org; perry.zinn-rowthorn@ct.gov; mwebb@ago.state.ms.us;
barb.fehrman@ag.state.mn.us; vbeavers@ag.nv.gov; bromano@utah.gov; kris.aillsieger@ksag.org;
bob.fagan@msdh.state.ms.us; Eileen.carey@state.ma.us; sean.riley@ag.ky.gov; ashley.harwel@atg.in.gov;
dGetchell@oag.state.va.us; anna.joyce@doj.state.or.us; marlene.brown@dol.lps.state.nj.us; peter.michael@wyo.gov;
diane.dewolf@myfloridalegal.com; jonathan.mitchell@oag.state.tx.us; mary.mertz@ohioattorneygeneral.gov;
sforney@attorneygeneral.gov; npeterson@law.ga.gov; Neiman, John; ariel.levinson-waldman@dc.gov;
burschj@michigan.gov; Leesa.Thompson@oag.ok.gov; dowker@kentucky.gov; frederick.nelson@ohioattorneygeneral.gov; patrick.wyrick@oag.ok.gov; bill.young@ag.tn.gov; mblack2@mt.gov;
MBrady@oag.state.va.us; Sam Peterson; Brasher, Andrew; pamela.spang@state.ma.us;
andy.oldham@texasattorneygeneral.gov; Jason.pleggenkuhle@ag.state.mn.us;
michael.hendershot@ohioattorneygeneral.gov; robyn.bender@ag.ky.gov; laura-jane.weimer@state.co.us;
james.adams@state.de.us; Aricka.seales@state.ma.us; wiltonp@ag.state.la.us; lindstroma@michigan.gov;
LVanDyke@mt.gov; allen.winsor@myfloridalegal.com; christopher.dodrill@wvago.gov; marmercado@justicia.pr.gov;
elbert.lin@wvago.gov; Mary.McTaggart@state.de.us; Sarah.Greenwalt@oag.ok.gov; Michael.Franco@state.co.us

Cc: Turner, Kevin

Subject: Amicus Memo in NRA v. ATF (U.S.)

To: Civil Amicus Contacts

Attached is an Amicus Memo describing the amicus brief Alabama is preparing in support of the cert petition filed in *National Rifle Association v. U.S. Bureau of Alcohol, Tobacco, Firearms, and Explosives*, 13-137 (U.S.). The petition seeks review of a Fifth Circuit decision holding that the Second Amendment is not violated by federal laws prohibiting adults under the age of 21 from purchasing handguns and handgun ammunition. The question presented is “[w]hether a nationwide, class-based, categorical ban on meaningful access to the quintessential means to exercise the right to keep and bear arms for self-defense can be reconciled with the Second Amendment, the equal protection guarantee, and this Court’s precedents.”

The turn-around time is very short. Alabama will be circulating a draft brief tomorrow; and the deadline for joining is this Friday. To join, you may contact:

John Neiman
Solicitor General
Office of Alabama Attorney General Luther Strange
501 Washington Avenue
Montgomery, AL 36130
(334) 353-2187
JNeiman@ago.state.al.us

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Wednesday, August 28, 2013 5:27 PM
To: Mattioli, Mark; Fox, Tim
Cc: Bennion, Jon; Swanson, Cory; Barnes, John; Darkenwald, Scott
Subject: RE: Amicus Memo in NRA v. ATF (U.S.)

The Fifth Circuit held the conduct at issue didn't fall within the scope of the 2nd Amendment because any "longstanding, presumptively lawful regulatory measure ... would likely fall outside the ambit of the Second Amendment" entirely. And "[i]n the view of at least some members of the founding generation, disarming select groups for the sake of public safety was compatible with the right to arms specifically and with the idea of liberty generally" – namely, slaves.

So I guess the court's argument was that we should be able to disarm 18-20 year olds now because they disarmed slaves at the founding? Incredible. I wonder that they didn't see the irony in that argument.

From: Mattioli, Mark
Sent: Wednesday, August 28, 2013 5:13 PM
To: VanDyke, Lawrence; Fox, Tim
Cc: Bennion, Jon; Swanson, Cory; Barnes, John; Darkenwald, Scott
Subject: RE: Amicus Memo in NRA v. ATF (U.S.)

Although many have pointed to social science research suggesting that younger adults are more impulsive because the brain is not completely formed until about age 25, I agree with Lawrence's comments and concur that we should join.

Lawrence, what was the basis for the Fifth Circuit's determination that the Second Amendment was not implicated?

Mark

From: VanDyke, Lawrence
Sent: Wednesday, August 28, 2013 2:35 PM
To: Fox, Tim
Cc: Mattioli, Mark; Bennion, Jon; Swanson, Cory; Barnes, John; Darkenwald, Scott
Subject: RE: Amicus Memo in NRA v. ATF (U.S.)

I can answer some of these:

(1) What do Montana's laws say about 18-21 year olds and guns or ammunition?

- I don't believe Montana has any such laws. Montana law ban carrying of a weapon by a child under the age of 14, unless accompanied by an adult. MCA 45-8-344

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conclude that loosening control here will lead to more gun violence. Folks that think gun control typically only affects otherwise law-abiding citizens will think that allowing 18-21 year olds to lawfully own handguns will likely not increase crime and violence, in schools or otherwise.

(3) What considerations are there in light of our potential for partnering with Superintendent Juneau on the school safety and active shooter training initiatives?

- I don't know about this one, since I haven't been involved with this at all. Jon – do you know?

(4) What media attention, good or bad, has this case generated since it was filed?

- John is going to do some searching today or tomorrow morning to see what, if any, major press this has received. Thanks John!

(5) Is this a matter that we should consult, with the Governor's office on before making a decision? (Note: I would think not, but would be interested in other's views).

- I don't think we need to. Does anyone else think it would be prudent nonetheless?

I've attached the draft brief – which I like. It does point out that Montana law allows 18-20 year-olds to own guns. See n.2. Here is a line from the first page (key soaring rhetoric music):

Adults who are 18, 19, and 20 honorably defend our country when it is at war. These same Americans should be able to defend themselves and their families when they are at home.

I got chills. (Okay, not really, but I wanted to.)

From: Fox, Tim

Sent: Wednesday, August 28, 2013 12:17 PM

To: VanDyke, Lawrence

Cc: Mattioli, Mark; Bennion, Jon; Swanson, Cory; Barnes, John; Darkenwald, Scott

Subject: Re: Amicus Memo in NRA v. ATF (U.S.)

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Thank you.

Tim

Sent from my iPad

On Aug 28, 2013, at 11:58 AM, "VanDyke, Lawrence" <LVanDyke@mt.gov> wrote:

Tim and Mark – This is a short-fuse cert-stage amicus join request from Alabama in a Second Amendment case coming out of the Fifth Circuit. The case challenges federal laws that categorically deny 18-21 year olds the ability to buy handguns or handgun ammunition. The Fifth Circuit panel

rejected the challenge, holding that (1) the laws do not implicate the Second Amendment, and (2) even if they do, they don't violate it. The NRA is the Petitioner in this case.

I think we should join this brief: I'm not sure I agree with the strategy of bringing this case to the SCOTUS, but I think we want to be on the record as on the side of gun rights (and the NRA). I think that a blanket ban on handgun ownership for all 18-21 year olds probably does violate the original meaning of the second amendment – I would expect that 18 year olds were part of the "militia."

Our deadline is quick – we need to decide by this Friday.

Thanks,

Lawrence

From: Schweitzer, Dan [mailto:DSCHWEITZER@NAAG.ORG]

Sent: Tuesday, August 27, 2013 1:02 PM

To: chris.coppin@cwagweb.org; paul.d.stern@maine.gov; dbahr@nd.gov; JMcIntosh@scag.gov; pam.murphy@doj.nh.gov; eric.tabor@iowa.gov; iknorr@attorneygeneral.gov; james.layton@ago.mo.gov; paula.bickett@azag.gov; charles.mcguigan@state.sd.us; RPartington@riag.ri.gov; crimago@saipan.com; barbara.underwood@ag.ny.gov; Hampton, Andrea; Schweitzer, Dan; sbluestone@nmag.gov; david.raupp@arkansasag.gov; gmorg@ago.state.ms.us; jlee@riag.ri.gov; attorney@samoatelco.com; stephan.finkel@lps.state.nj.us; Girard.D.Lau@hawaii.gov; stevemac@ku.edu; dennis.hansen@arkansasag.gov; basay@atg.state.vt.us; Mary.Williams@doj.state.or.us; gkelley@ncdoj.gov; alanc@atg.wa.gov; alama@nmag.gov; judy.zepun@state.ma.us; joanne.grace@alaska.gov; jnotz@atg.state.il.us; Gregory.Dauria@ct.gov; anne.edwards@doj.nh.gov; tom.fisher@atg.in.gov; jwhite@ncdoj.gov; whowie@ag.nv.gov; Frances.Grunder@doj.ca.gov; mianf@ago.state.ms.us; ken.rosenstein@alaska.gov; allison.martin@ag.ky.gov; hpizz@ago.state.ms.us; wellsk@doj.state.wi.us; Lee.Davidson@ksag.org; edavis@doj.vi.gov; donna.murasky@dc.gov; ssullivan@oag.state.md.us; jmaddrey@ncdoj.gov; dspence@oag.state.md.us; vlp@wvago.gov; debbie.mcveigh@wyo.gov; Steve.Creazon@atg.in.gov; kguthrie@ago.state.al.us; andrea.silkowitz@dol.lps.state.nj.us; brian.kane@ag.idaho.gov; Richard.Dearing@ag.ny.gov; katie.spohn@nebraska.gov; rrussell@nmag.gov; mwood@ago.state.ms.us; restucciae@michigan.gov; wbrockman@oag.state.md.us; agesmith@scag.gov; susan.lee@doj.ca.gov; SG@atg.in.gov; todd.kim@dc.gov; delayne.deck@ag.idaho.gov; dan.domenico@state.co.us; mscodro@atg.state.il.us; heather.mcveigh@atg.in.gov; suzanne.gorman@doj.nh.gov; jbhoward@oag.state.md.us; potterkc@doj.state.wi.us; stjohnkm@doj.state.wi.us; ed.bedrosian@state.ma.us; john.garry@ag.state.mn.us; brooke.paup@texasattorneygeneral.gov; appeals@ohioattorneygeneral.gov; meanssp@doj.state.wi.us; Sherri.Wald@state.sd.us; adam.aston@texasattorneygeneral.gov; jhughes@atg.state.il.us; david.blake@state.co.us; Segrest, Stuart; susan.britton@ag.ky.gov; john.campbell@ksag.org; jung.kim@dol.lps.state.nj.us; dave.jones@alaska.gov; delberta.pfeifer@ksag.org; perry.zinn-rowthorn@ct.gov; mwebb@ago.state.ms.us; barb.fehrman@ag.state.mn.us; ybeavers@ag.nv.gov; bromano@utah.gov; kris.ailsliieger@ksag.org; bob.fagan@msdh.state.ms.us; Eileen.carey@state.ma.us; sean.riley@ag.ky.gov; ashley.harwei@atg.in.gov; dGetchell@oag.state.va.us; anna.joyce@doj.state.or.us; marlene.brown@dol.lps.state.nj.us; peter.michael@wyo.gov; diane.dewolf@myfloridalegal.com; jonathan.mitchell@oag.state.tx.us; mary.mertz@ohioattorneygeneral.gov; sforney@attorneygeneral.gov; npeterson@law.ga.gov; jneiman@ago.state.al.us; ariel.levinson-waldman@dc.gov; burschj@michigan.gov; Leesa.Thompson@oag.ok.gov; dowker@michigan.gov; frederick.nelson@ohioattorneygeneral.gov; patrick.wyrick@oag.ok.gov; bill.yung@ag.tn.gov; Black, Michael; MBrady@oag.state.va.us; Sam Peterson; abrasher@ago.state.al.us; pamela.spang@state.ma.us; andy.oldham@texasattorneygeneral.gov; Jason.pleggenkuhle@ag.state.mn.us; michael.hendershot@ohioattorneygeneral.gov; robyn.bender@ag.ky.gov; laura-jane.weimer@state.co.us; james.adams@state.de.us; Aricka.seales@state.ma.us; wiltonp@ag.state.la.us; lindstroma@michigan.gov; VanDyke, Lawrence; allen.winsor@myfloridalegal.com; christopher.dodrigill@wvago.gov; marmercado@justicia.pr.gov; elbert.lin@wvago.gov;

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Cc: KTurner@ago.state.al.us
Subject: Amicus Memo in NRA v. ATF (U.S.)

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Dan Schweitzer
Supreme Court Counsel
National Association of Attorneys General
2030 M Street, NW, 8th Floor
Washington, DC 20036
(202) 326-6010
(202) 785-0410 - fax
dschweitzer@naag.org

<Amicus Memo - NRA v Bureau of ATFE -- 8-27.pdf>

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From: VanDyke, Lawrence
Sent: Wednesday, August 28, 2013 5:20 PM
To: Fox, Tim
Cc: Mattioli, Mark; Bennion, Jon; Swanson, Cory; Barnes, John; Darkenwald, Scott
Subject: RE: Amicus Memo in NRA v. ATF (U.S.)
Attachments: NRA-petition-13-137.pdf

Some more information on this. Cooper and Kirk (a very well-respected DC appellate boutique – they represented the Petitioners in the Prop 8 litigation, for example) and Paul Clement are both on the petition (attached). So these are heavy hitters in the SCOTUS.

Also – I did not realize this before, but while federal laws ban *sales* of handguns to 18-20 year olds, they don't ban possession, or transfers (such as gifts from parents), or even purchases from non-businesses. So like many gun laws, it isn't even clear they are minimally rationale; it is tough to argue they would meet any kind of heightened scrutiny. Basically, the feds are telling 18-20 year-olds that they can only buy a gun if they do so in a way that avoids a background check.

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Dan Schweitzer
Supreme Court Counsel
National Association of Attorneys General
2030 M Street, NW, 8th Floor
Washington, DC 20036
(202) 326-6010
(202) 785-0410 - fax
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From: VanDyke, Lawrence
Sent: Wednesday, February 05, 2014 1:17 PM
To: Fox, Tim; Mattioli, Mark
Cc: Darkenwald, Scott; Bennion, Jon; Barnes, John; Swanson, Cory
Subject: FW: Amicus Memo in Drake v. Jerejian (U.S.) - Second Amendment case
Attachments: Amicus Memo - Cert Stage.pdf; News release: Second Amendment Rights / DRAFT; RE: Update on Amicus Brief in Kachalsky v. Cacace, No. 12-845; Re: Amicus Memo in Kachalsky v. Cacaces (U.S.) -- Second Amendment case

Wyoming is asking us to join their multistate cert-stage SCOTUS amicus brief asking the Court to grant and overturn a Third Circuit decision upholding against a 2nd Amendment challenge a New Jersey law that only allows carrying of a handgun outside the home upon a showing of "justifiable need"—i.e., a showing of urgent necessity supported by a history of specific threats or previous attacks. This case is very similar to one in which we joined the cert-stage amicus brief almost a year ago challenging a similar New York law (the Court denied cert in that case). I've attached the draft press release and another email regarding the New York case, which shows our reasons for joining that one.

For the same reasons we joined the amicus brief in a very similar case a year ago, I recommend that we DO join this brief. The join deadline is first thing this next Monday morning, February 10th – so effectively COB this Friday.

From: Schweitzer, Dan [<mailto:DSCHWEITZER@NAAG.ORG>]
Sent: Wednesday, February 05, 2014 8:07 AM
To:
Cc: brittany.zielke@wyo.gov
Subject: Amicus Memo in Drake v. Jerejian (U.S.) - Second Amendment case

To: Civil Amicus Contacts

Attached is an Amicus Memo describing the amicus brief Wyoming is preparing in support of the cert petition filed in *Drake v. Jerejian*, 13-827 (U.S.). The petition seeks review of a Third Circuit decision that upheld against a Second Amendment challenge a New Jersey law that allows an individual to carry a handgun outside the home only if he shows a "justifiable need," which requires demonstration of urgent necessity evidenced by specific threats or previous attacks.

Dan Schweitzer
Supreme Court Counsel
National Association of Attorneys General
2030 M Street, NW, 8th Floor
Washington, DC 20036
(202) 326-6010
(202) 785-0410 - fax
dschweitzer@naag.org

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Tuesday, January 14, 2014 10:04 AM
To: 'Alan Gura'
Subject: RE: Amicus brief on petition in Drake v. Jerejian

Alan – Thank you for reaching out. Although I would expect General Fox would look very closely at joining a multi-state amicus brief in support of your petition, we would not be able to author it. I am the only attorney in the “solicitor’s office” here, and I don’t have the capacity for something like this right now. I just filed a cert petition last week, which pushed a lot of work in my other, ongoing cases into this month. So while this sounds like a very interesting and important case, I apologize that we don’t have the ability to take the lead pen on this right now.

Feel free to call if you would like to discuss further.

Sincerely,

Lawrence VanDyke
Solicitor General • Montana Department of Justice

215 N. Sanders • P.O. Box 201401
Helena, Montana 59620
T: (406) 444-3442 • F: (406) 444-3549
LVanDyke@mt.gov

From: Alan Gura [<mailto:alan@gurapossessky.com>]
Sent: Monday, January 13, 2014 1:18 PM
To: VanDyke, Lawrence
Subject: Amicus brief on petition in Drake v. Jerejian

Dear Mr. VanDyke,

Andrew Oldham at the Texas SG's office recommended I contact you regarding our cert petition in Drake v. Jerejian, which I've taken the liberty of attaching.

In Drake, a divided Third Circuit panel upheld New Jersey's law requiring that people prove a "justifiable need" to exercise the right to bear arms. Incredibly, the panel majority held that carrying handguns for self-defense falls outside of the Second Amendment's protection. And in any event, because the legislature was unaware of such a right, the state would not be required to justify the constitutionality of such a restriction with any sort of evidence or legislative finding. We lost the en banc vote 8-4.

We're seeking amicus support from the states for our petition. While we believe that any number of states might sign on to such an amicus brief, we've thus far not been able to obtain a commitment to write. Might Montana be interested in taking the lead on this? The petition is not yet showing on the court's docket, so the brief is due in approximately 30 days.

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: Schweitzer, Dan <DSCHWEITZER@NAAG.ORG>
Sent: Wednesday, February 05, 2014 8:07 AM
To: chris.coppin@cwagweb.org; paul.d.stern@maine.gov; dbahr@nd.gov;
peter.sacks@ago.state.ma.us; kmunro@ag.nv.gov; JMcIntosh@scag.gov;
pam.murphy@doj.nh.gov; eric.tabor@iowa.gov; jknorr@attorneygeneral.gov;
margaret.chapple@ct.gov; james.layton@ago.mo.gov; paula.bickett@azag.gov;
charles.mcguigan@state.sd.us; RPartington@riag.ri.gov; crimago@saipan.com;
Edward.Dumont@doj.ca.gov; barbara.underwood@ag.ny.gov; Hampton, Andrea;
Schweitzer, Dan; sbluestone@nmag.gov; david.raupp@arkansasag.gov;
gmorg@ago.state.ms.us; jlee@riag.ri.gov; attorney@samoatelco.com;
stephan.finkel@lps.state.nj.us; Girard.D.Lau@hawaii.gov; stevemac@ku.edu;
basay@atg.state.vt.us; fred.boss@doj.state.or.us; gkelley@ncdoj.gov; alanc@atg.wa.gov;
Joe.Whalen@ag.tn.gov; alama@nmag.gov; judy.zeprun@state.ma.us;
robert.ellman@azag.gov; joanne.grace@alaska.gov; jnotz@atg.state.il.us;
Gregory.Dauria@ct.gov; anne.edwards@doj.nh.gov; tom.fisher@atg.in.gov;
jwhite@ncdoj.gov; whowle@ag.nv.gov; Frances.Grunder@doj.ca.gov;
mlanf@ago.state.ms.us; ken.rosenstein@alaska.gov; allison.martin@ag.ky.gov;
hpizz@ago.state.ms.us; wellslk@doj.state.wi.us; Lee.Davidson@ksag.org;
edavis@doj.vi.gov; ssullivan@oag.state.md.us; jmaddrey@ncdoj.gov;
dspence@oag.state.md.us; vicki.l.pendell@wvago.gov; sraphael@oag.state.va.us;
judy.mitchell@wyo.gov; Steve.Crean@atg.in.gov; andrea.silkowitz@dol.lps.state.nj.us;
brian.kane@ag.idaho.gov; Richard.Dearing@ag.ny.gov; katie.spohn@nebraska.gov;
rrussell@nmag.gov; mwood@ago.state.ms.us; restucciae@michigan.gov;
wbrockman@oag.state.md.us; agesmith@scag.gov; susan.lee@doj.ca.gov;
todd.kim@dc.gov; delayne.deck@ag.idaho.gov; dan.domenico@state.co.us;
heather.mcveigh@atg.in.gov; susanne.gorman@doj.nh.gov; jbhoward@oag.state.md.us;
potterkc@doj.state.wi.us; stjohnkm@doj.state.wi.us; ed.bedrosian@state.ma.us;
john.garry@ag.state.mn.us; brooke.paup@texasattorneygeneral.gov;
appeals@ohioattorneygeneral.gov; Sherri.Wald@state.sd.us;
adam.aston@texasattorneygeneral.gov; jhughes@atg.state.il.us;
david.blake@state.co.us; Segrest, Stuart; susan.britton@ag.ky.gov;
janell.hafner@alaska.gov; john.campbell@ksag.org; jung.kim@dol.lps.state.nj.us;
delberta.pfeifer@ksag.org; perry.zinn-rowthorn@ct.gov; jfishburn@ag.nv.gov;
mwebb@ago.state.ms.us; barb.fehrman@ag.state.mn.us; vbeavers@ag.nv.gov;
bromano@utah.gov; kris.aillsieger@ksag.org; david.curran@arkansasag.gov;
bob.fagan@msdh.state.ms.us; sean.riley@ag.ky.gov; ashley.harwel@atg.in.gov;
anna.joyce@doj.state.or.us; marlene.brown@dol.lps.state.nj.us;
diane.dewolf@myfloridalegal.com; jonathan.mitchell@oag.state.tx.us;
mary.mertz@ohioattorneygeneral.gov; sforney@attorneygeneral.gov;
npeterson@law.ga.gov; ariel.levinson-waldman@dc.gov; Leesa.Thompson@oag.ok.gov;
dowkerc@michigan.gov; frederick.nelson@ohioattorneygeneral.gov;
patrick.wyrick@oag.ok.gov; Black, Michael; MBrady@oag.state.va.us;
steven.wu@ag.ny.gov; Sam Peterson; abrasher@ago.state.al.us;
andy.oldham@texasattorneygeneral.gov;
michael.hendershot@ohioattorneygeneral.gov; jeffrey.thompson@iowa.gov;
robyn.bender@ag.ky.gov; laura-jane.weimer@state.co.us; james.adams@state.de.us;
Aricka.seales@state.ma.us; wiltonp@ag.state.la.us; lindstroma@michigan.gov; VanDyke,
Lawrence; allen.winsor@myfloridalegal.com; christopher.doddrill@wvago.gov;
marmercado@justicia.pr.gov; elbert.lin@wvago.gov; Mary.McTaggart@state.de.us;
Sarah.Greenwalt@oag.ok.gov; Michael.Franco@state.co.us;

To: Eric.Murphy@ohioattorneygeneral.gov; john.knepper@wyo.gov;
mkirkpatrick@ago.state.al.us; craig.konnoth@doj.ca.gov; lkillough@ago.state.al.us;
Loren.AliKhan@dc.gov; lenningtondp@doj.state.wi.us; jacob.campion@ag.state.mn.us;
Schlichting, Melissa; Osvaldo.Vazquez@myflorida.egal.com;
Michael.Casper@doj.state.or.us; deidra.shannon@doj.ca.gov; tcox@oag.state.va.us;
cshapiro@atg.state.il.us

Cc: brittany.zielke@wyo.gov

Subject: Amicus Memo in Drake v. Jerejian (U.S.) - Second Amendment case

Attachments: Amicus Memo - Cert Stage.pdf

Follow Up Flag: Follow up

Flag Status: Flagged

To: Civil Amicus Contacts

Attached is an Amicus Memo describing the amicus brief Wyoming is preparing in support of the cert petition filed in *Drake v. Jerejian*, 13-827 (U.S.). The petition seeks review of a Third Circuit decision that upheld against a Second Amendment challenge a New Jersey law that allows an individual to carry a handgun outside the home only if he shows a "justifiable need," which requires demonstration of urgent necessity evidenced by specific threats or previous attacks.

13

Dan Schweitzer
Supreme Court Counsel
National Association of Attorneys General
2030 M Street, NW, 8th Floor
Washington, DC 20036
(202) 326-6010
(202) 785-0410 - fax
dschweitzer@naag.org

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Wednesday, February 05, 2014 1:17 PM
To: Fox, Tim; Mattioli, Mark
Cc: Darkenwald, Scott; Bennion, Jon; Barnes, John; Swanson, Cory
Subject: FW: Amicus Memo in Drake v. Jerejian (U.S.) - Second Amendment case
Attachments: Amicus Memo - Cert Stage.pdf; News release: Second Amendment Rights / DRAFT; RE: Update on Amicus Brief in Kachalsky v. Cacace, No. 12-845; Re: Amicus Memo in Kachalsky v. Cacaces (U.S.) -- Second Amendment case

Wyoming is asking us to join their multistate cert-stage SCOTUS amicus brief asking the Court to grant and overturn a Third Circuit decision upholding against a 2nd Amendment challenge a New Jersey law that only allows carrying of a handgun outside the home upon a showing of "justifiable need"—i.e., a showing of urgent necessity supported by a history of specific threats or previous attacks. This case is very similar to one in which we joined the cert-stage amicus brief almost a year ago challenging a similar New York law (the Court denied cert in that case). I've attached the draft press release and another email regarding the New York case, which shows our reasons for joining that one.

For the same reasons we joined the amicus brief in a very similar case a year ago, I recommend that we DO join this brief. The join deadline is first thing this next Monday morning, February 10th – so effectively COB this Friday.

From: Schweitzer, Dan [<mailto:DSCHWEITZER@NAAG.ORG>]
Sent: Wednesday, February 05, 2014 8:07 AM
To:
Cc: brittany.zielke@wyo.gov
Subject: Amicus Memo in Drake v. Jerejian (U.S.) - Second Amendment case

To: Civil Amicus Contacts

Attached is an Amicus Memo describing the amicus brief Wyoming is preparing in support of the cert petition filed in *Drake v. Jerejian*, 13-827 (U.S.). The petition seeks review of a Third Circuit decision that upheld against a Second Amendment challenge a New Jersey law that allows an individual to carry a handgun outside the home only if he shows a "justifiable need," which requires demonstration of urgent necessity evidenced by specific threats or previous attacks.

Dan Schweitzer
Supreme Court Counsel
National Association of Attorneys General
2030 M Street, NW, 8th Floor
Washington, DC 20036
(202) 326-6010
(202) 785-0410 - fax
dschweitzer@naag.org

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: Mattioli, Mark
Sent: Wednesday, February 05, 2014 1:20 PM
To: VanDyke, Lawrence; Fox, Tim
Cc: Darkenwald, Scott; Bennion, Jon; Barnes, John; Swanson, Cory
Subject: RE: Amicus Memo in Drake v. Jerejian (U.S.) - Second Amendment case

I agree with Lawrence that we should join this cert-stage brief.

From: VanDyke, Lawrence
Sent: Wednesday, February 05, 2014 1:17 PM
To: Fox, Tim; Mattioli, Mark
Cc: Darkenwald, Scott; Bennion, Jon; Barnes, John; Swanson, Cory
Subject: FW: Amicus Memo in Drake v. Jerejian (U.S.) - Second Amendment case

Wyoming is asking us to join their multistate cert-stage SCOTUS amicus brief asking the Court to grant and overturn a Third Circuit decision upholding against a 2nd Amendment challenge a New Jersey law that only allows carrying of a handgun outside the home upon a showing of "justifiable need"—i.e., a showing of urgent necessity supported by a history of specific threats or previous attacks. This case is very similar to one in which we joined the cert-stage amicus brief almost a year ago challenging a similar New York law (the Court denied cert in that case). I've attached the draft press release and another email regarding the New York case, which shows our reasons for joining that one.

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From: Schweitzer, Dan [<mailto:DSCHWEITZER@NAAG.ORG>]
Sent: Wednesday, February 05, 2014 8:07 AM
To:
Cc: brittany.zielke@wyo.gov
Subject: Amicus Memo in Drake v. Jerejian (U.S.) - Second Amendment case

To: Civil Amicus Contacts

Attached is an Amicus Memo describing the amicus brief Wyoming is preparing in support of the cert petition filed in *Drake v. Jerejian*, 13-827 (U.S.). The petition seeks review of a Third Circuit decision that upheld against a Second Amendment challenge a New Jersey law that allows an individual to carry a handgun outside the home only if he shows a "justifiable need," which requires demonstration of urgent necessity evidenced by specific threats or previous attacks.

Dan Schweitzer
Supreme Court Counsel
National Association of Attorneys General
2030 M Street, NW, 8th Floor
Washington, DC 20036
(202) 326-6010

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Tuesday, November 19, 2013 1:20 PM
To: Fox, Tim; Mattioli, Mark
Subject: FW: Amicus Memo in Abramski v. United States (U.S.)
Attachments: WV Abramski v. US amicus memo (circ).doc; ATT00001.htm

Tim and Mark – This is an interesting merits-stage SCOTUS join request from West Virginia. I recommend that we DO JOIN this brief. The join deadline is Monday, December 2.

Federal law prohibits “straw-man” firearms purchases from gun dealers—that is, buying a gun just to sell it to someone else. The way this is done is by asking purchasers whether they are the “actual buyer” of the firearm, coupled with criminal sanctions for false statements that are “material to the lawfulness of the sale.” Everyone agrees that if someone is buying a gun for another who cannot legally purchase the gun, failure to disclose the “actual buyer” is “material to the lawfulness of the sale” (since the sale would be unlawful if made directly to the ultimate purchaser). But courts have split on whether failure to disclose the ultimate buyer is “material to the lawfulness of the sale” when the ultimate buyer could lawfully buy the gun directly himself.

There are various reasons somebody might do a straw-purchase for someone who could lawfully buy the gun himself. Here, the buyer was former law enforcement who was eligible for a special firearms discount, and he bought the discounted gun for his uncle (who was not law enforcement). Other folks don’t like the fact that if you buy a gun from a dealer there is a permanent record of the sale, whereas if you a gun from a private individual there is no permanent record.

In this case, the Fourth Circuit sided with the ATF and held that the buyer was criminally liable. The SCOTUS has granted cert. West Virginia’s brief will provide several reasons that states have a special interest in having the SCOTUS reverse the conviction. I think those reasons are compelling and apply with special force to Montana.

First, a few states, including West Virginia and Montana, have chosen not to regulate gun sales at the state level, either from dealers or between private citizens. By taking an expansive view of the federal statute that effectively prohibits “straw-purchases” on behalf of gun-eligible citizens, the federal government is once again encroaching on the prerogative of states to decide how much to regulate these types of sales. The policy choices of gun friendly and freedom friendly states like West Virginia and Montana have been unilaterally overridden by another federal agency’s overbroad reading of its statutory authority. Montana, because of its choice not to regulate private sales at all, is especially effected.

Second, the ATF is in some ways trying to have it both ways. You may recall that in the recent New York case the ATF argued that its ban on 18-20 year-olds “buying” a handgun was unproblematic under the Second Amendment because nothing prevents a parent or friend over 21 from simply buying a gun for them and then “gifting” it to them. It is difficult to see how a “straw-man” purchase that buys a gun for someone else who cannot lawfully buy it himself should be legal or consistent with the statutory language, if buying a gun for someone else who *can* lawfully buy it himself is not.

From: Fowler, C Mark
Sent: Thursday, November 14, 2013 10:10 AM
To: VanDyke, Lawrence
Subject: Fwd: Amicus Memo in Abramski v. United States (U.S.)

Lawrence:

Is this something you would prefer to write the memo on and submit to Tim? Let me know. Otherwise, one of my bureau attorneys world handle this.

Sincerely,

Mark

Begin forwarded message:

From: "Schweitzer, Dan" <DSCHWEITZER@NAAG.ORG>
Date: November 14, 2013 at 10:04:52 AM MST
To:
Cc: Julie Blake <jmb@wvago.gov>
Subject: Amicus Memo in Abramski v. United States (U.S.)

To: Criminal Amicus Contacts
From: Julie Blake, Assistant Attorney General, West Virginia

Attached is a memo about an amicus brief West Virginia will be filing in support of the petitioner in Abramski v. United States, 12-1493, a merits case in the Supreme Court.

This case concerns a federal criminal statute prohibiting false statements connected to gun sales. The Fourth Circuit adopted the United States's interpretation of the statute and held that a former police officer who purchased a gun with the intent to re-sell the gun to his uncle made a prohibited false statement when he said he was the actual purchaser of the gun. Both the former police officer and his uncle were legally permitted to buy and own guns. The effect of this holding is to create a partial ban on private gun sales, even though federal law and many state laws otherwise allow private sales between law-abiding citizens.

The brief will argue that the Executive Branch's position is inconsistent with the plain text of the statute, infringes on an area of law left to the States, and raises serious constitutional concerns. The brief will be circulated on November 25 and sign-on's will be due on December 2.

Dan Schweitzer
Supreme Court Counsel
National Association of Attorneys General
2030 M Street, NW, 8th Floor
Washington, DC 20036
(202) 326-6010
(202) 785-0410 - fax

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Friday, October 18, 2013 2:09 PM
To: 'Elbert Lin'
Subject: RE: Abramski (gun case)
Attachments: NRA -- draft brief -- 8-29 -- tables.pdf; Amicus Memo - NRA v Bureau of ATFE -- 8-27.pdf

Elbert – I haven't really given the case much thought. Since it involves guns, I would think there is a good chance we might join it if someone writes a brief. But I haven't thought deeply about whether Montana as a state would want to take a position in favor of "straw" purchases; basically, I'm not sure what General Fox's take on that would be.

If I recall correctly, though, wasn't the ATF arguing in the NRA v. ATF case (draft petition and NAAG memo for that case attached) that the 21 year old age limit for handgun *purchases* was okay, in part, because since it wasn't illegal for an 18 year old to own or possess a gun, so they could just have someone else purchase it for them? I recall thinking that was kinda strange in light of their position on straw purchases generally. Not sure how, if at all, that play into your thoughts on the *Abramski* case.

From: Elbert Lin [<mailto:elbert.lin@wvago.gov>]
Sent: Friday, October 18, 2013 8:04 AM
To: ABrasher@ago.state.al.us; npeterson@law.ga.gov; BurschJ@michigan.gov; VanDyke, Lawrence; andy.oldham@texasattorneygeneral.gov
Subject: Abramski (gun case)

Folks:

Quick question -- we have been looking at writing an amicus brief in support of petitioner in *Abramski v United States*, the case involving the "straw man" purchaser prohibition and whether it should extend to straw man purchases for people who otherwise *would* themselves be eligible to purchase firearms. SCOTUS granted cert this week. Is this case on anyone else's radar screen?

Thanks,
EL

Elbert Lin
Solicitor General
Office of the West Virginia Attorney General
1900 Kanawha Boulevard, East
Room 26-E
Charleston, WV 25305
Phone: 304-558-2021
Fax: 304-558-0140

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Monday, December 02, 2013 9:41 AM
To: James, Julie
Cc: Barnes, John; Burton, Anastasia
Subject: FW: WV Amicus Brief in Abramski v. US (SCT Merits)
Attachments: RE: Amicus Memo in Abramski v. United States (U.S.); RE: WV Amicus Brief in Abramski v. US (SCT Merits)

FYI – for the binder. We are joining this amicus brief, which is described in the first attached email.

Thanks,

Lawrence

From: VanDyke, Lawrence
Sent: Monday, December 02, 2013 9:39 AM
To: 'Julie Marie Blake'
Cc: Elbert Lin
Subject: RE: WV Amicus Brief in Abramski v. US (SCT Merits)

Julie and Elbert - Montana would like to join this brief.

Please list our Attorney General as "Timothy C. Fox".

General Fox's full address, should you need it, is:

Timothy C. Fox
Attorney General of Montana
P.O. Box 201401
Helena, MT 59620-1401
406-444-2026

Please confirm our join by return email, and if you could forward a copy of the final brief once filed, we would appreciate it.

Thank you,

Lawrence VanDyke
Solicitor General • Montana Department of Justice

215 N. Sanders • P.O. Box 201401
Helena, Montana 59620
T: (406) 444-3442 • F: (406) 444-3549
LVanDyke@mt.gov

From: Julie Marie Blake [<mailto:Julie.M.Blake@wvago.gov>]
Sent: Wednesday, November 27, 2013 1:32 PM
To: Julie Marie Blake

Cc: Elbert Lin

Subject: RE: WV Amicus Brief in Abramski v. US (SCT Merits)

Attached is a revised version of the WV amicus brief in Abramski v. United States (US Supreme Court – merits).

As you can see from the redline, we made the changes to the Second Amendment section (Part III). Our goal was to make this brief acceptable to a broader group of states, including states that restrict gun access for 18-21 year olds. We do not think our point loses any emphasis for the changes.

We very much hope to have a large group of states on the brief. Right now, four states have joined the brief, including Texas, South Carolina, and Kansas.

Please do not hesitate to contact us if you have any questions.

Best,

Julie Marie Blake

Assistant Attorney General
Office of the West Virginia Attorney General
State Capitol Building 1, Room 26-E
1900 Kanawha Boulevard East
Charleston, WV 25305
Phone: 304.558.2021

From: Julie Marie Blake

Sent: Tuesday, November 26, 2013 11:47 AM

To: Julie Marie Blake

Cc: Elbert Lin

Subject: WV Amicus Brief in Abramski v. US (SCT Merits)

Attached is an amicus brief WV plans to file in the US Supreme Court next week in a merits case.

The brief argues that the federal government's expansive interpretation of a federal firearms statute raises serious federalism and Second Amendment concerns.

We wanted to make sure you were aware of our brief because it went out yesterday through NAAG to the criminal amicus contacts only. We would very much welcome your AG on the brief.

Sign-on's are due next Monday Dec. 2.

Best,

Julie Marie Blake

Assistant Attorney General
Office of the West Virginia Attorney General
State Capitol Building 1, Room 26-E
1900 Kanawha Boulevard East
Charleston, WV 25305
Phone: 304.558.2021

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Wednesday, November 27, 2013 2:03 PM
To: Fox, Tim
Cc: Mattioli, Mark
Subject: Re: Amicus Memo in Abramski v. United States (U.S.)

Will do. Thanks Tim, and have a great Thanksgiving.

Sent from my iPhone

On Nov 27, 2013, at 3:51 PM, "Fox, Tim" <TimFox@mt.gov> wrote:

I agree that we DO JOIN this brief. Please notify the appropriate person at NAAG that Montana will join.
Thank you Lawrence.

Tim Fox
Attorney General
State of Montana
215 N. Sanders Street
Helena, MT 59601
Tel.: 406-444-2026
Fax: 406-444-3549
E-Mail: timfox@mt.gov
Website: www.doi.mt.gov

<image001.jpg>

This message may be confidential, privileged or otherwise protected by the attorney-client, work-product immunity or other legal rules. If you have received it by mistake, please let us know by email reply and delete it from your system. If confidentiality or applicable privilege applies to this message, you may not forward, copy or otherwise disseminate this message, or disclose its contents, to anyone.

From: VanDyke, Lawrence
Sent: Tuesday, November 26, 2013 1:20 PM
To: Fox, Tim; Mattioli, Mark
Subject: Fwd: Amicus Memo in Abramski v. United States (U.S.)

Tim and Mark - just a reminder about this amicus join request. The join deadline is this Monday.

Sent from my iPhone

Begin forwarded message:

From: "VanDyke, Lawrence" <LVanDyke@mt.gov>
Date: November 19, 2013 at 3:19:48 PM EST
To: "Fox, Tim" <TimFox@mt.gov>, "Mattioli, Mark" <mmattioli@mt.gov>
Subject: FW: Amicus Memo in Abramski v. United States (U.S.)

Tim and Mark – This is an interesting merits-stage SCOTUS join request from West Virginia. **I recommend that we DO JOIN this brief.** The join **deadline** is Monday, December 2.

Federal law prohibits “straw-man” firearms purchases from gun dealers—that is, buying a gun just to sell it to someone else. The way this is done is by asking purchasers whether they are the “actual buyer” of the firearm, coupled with criminal sanctions for false statements that are “material to the lawfulness of the sale.” Everyone agrees that if someone is buying a gun for another who cannot legally purchase the gun, failure to disclose the “actual buyer” is “material to the lawfulness of the sale” (since the sale would be unlawful if made directly to the ultimate purchaser). But courts have split on whether failure to disclose the ultimate buyer is “material to the lawfulness of the sale” when the ultimate buyer could lawfully buy the gun directly himself.

There are various reasons somebody might do a straw-purchase for someone who could lawfully buy the gun himself. Here, the buyer was former law enforcement who was eligible for a special firearms discount, and he bought the discounted gun for his uncle (who was not law enforcement). Other folks don’t like the fact that if you buy a gun from a dealer there is a permanent record of the sale, whereas if you a gun from a private individual there is no permanent record.

In this case, the Fourth Circuit sided with the ATF and held that the buyer was criminally liable. The SCOTUS has granted cert. West Virginia’s brief will provide several reasons that states have a special interest in having the SCOTUS reverse the conviction. I think those reasons are compelling and apply with special force to Montana.

First, a few states, including West Virginia and Montana, have chosen not to regulate gun sales at the state level, either from dealers or between private citizens. By taking an expansive view of the federal statute that effectively prohibits “straw-purchases” on behalf of gun-eligible citizens, the federal government is once again encroaching on the prerogative of states to decide how much to regulate these types of sales. The policy choices of gun friendly and freedom friendly states like West Virginia and Montana have been unilaterally overridden by another federal agency’s overbroad reading of its statutory authority. Montana, because of its choice not to regulate private sales at all, is especially effected.

Second, the ATF is in some ways trying to have it both ways. You may recall that in the recent New York case the ATF argued that its ban on 18-20 year-olds “buying” a handgun was unproblematic under the Second Amendment because nothing prevents a parent or friend over 21 from simply buying a gun for them and then “gifting” it to them. It is difficult to see how a “straw-man” purchase that buys a gun for someone else who cannot lawfully buy it himself should be legal or consistent with the statutory language, if buying a gun for someone else who *can* lawfully buy it himself is not.

From: Fowler, C Mark
Sent: Thursday, November 14, 2013 10:10 AM
To: VanDyke, Lawrence
Subject: Fwd: Amicus Memo in Abramski v. United States (U.S.)

Lawrence:

Is this something you would prefer to write the memo on and submit to Tim? Let

me know. Otherwise, one of my bureau attorneys world handle this.

Sincerely,

Mark

Begin forwarded message:

From: "Schweitzer, Dan" <DSCHWEITZER@NAAG.ORG>
Date: November 14, 2013 at 10:04:52 AM MST
To:
Cc: Julie Blake <jmb@wvago.gov>
Subject: Amicus Memo in Abramski v. United States (U.S.)

To: Criminal Amicus Contacts
From: Julie Blake, Assistant Attorney General, West Virginia

Attached is a memo about an amicus brief West Virginia will be filing in support of the petitioner in Abramski v. United States, 12-1493, a merits case in the Supreme Court.

This case concerns a federal criminal statute prohibiting false statements connected to gun sales. The Fourth Circuit adopted the United States's interpretation of the statute and held that a former police officer who purchased a gun with the intent to re-sell the gun to his uncle made a prohibited false statement when he said he was the actual purchaser of the gun. Both the former police officer and his uncle were legally permitted to buy and own guns. The effect of this holding is to create a partial ban on private gun sales, even though federal law and many state laws otherwise allow private sales between law-abiding citizens.

The brief will argue that the Executive Branch's position is inconsistent with the plain text of the statute, infringes on an area of law left to the States, and raises serious constitutional concerns. The brief will be circulated on November 25 and sign-on's will be due on December 2.

*

Dan Schweitzer
Supreme Court Counsel
National Association of Attorneys General
2030 M Street, NW, 8th Floor

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Tuesday, November 26, 2013 1:20 PM
To: Fox, Tim; Mattioli, Mark
Subject: Fwd: Amicus Memo in Abramski v. United States (U.S.)
Attachments: WV Abramski v. US amicus memo (circ).doc; ATT0001.htm

Tim and Mark - just a reminder about this amicus join request. The join deadline is this Monday.

Sent from my iPhone

Begin forwarded message:

From: "VanDyke, Lawrence" <LVanDyke@mt.gov>
Date: November 19, 2013 at 3:19:48 PM EST
To: "Fox, Tim" <TimFox@mt.gov>, "Mattioli, Mark" <mmattioli@mt.gov>
Subject: FW: Amicus Memo in Abramski v. United States (U.S.)

Tim and Mark – This is an interesting merits-stage SCOTUS join request from West Virginia. I recommend that we DO JOIN this brief. The join deadline is Monday, December 2.

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First, a few states, including West Virginia and Montana, have chosen not to regulate gun sales at the state level, either from dealers or between private citizens. By taking an expansive view of the federal statute that effectively prohibits “straw-purchases” on behalf of gun-eligible citizens, the federal government is once again encroaching on the prerogative of states to decide how much to regulate these types of sales. The policy choices of gun friendly and freedom friendly states like West Virginia and Montana have been unilaterally overridden by another federal agency’s overbroad reading of its statutory authority. Montana, because of its choice not to regulate private sales at all, is especially effected.

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From: Fowler, C Mark
Sent: Thursday, November 14, 2013 10:10 AM
To: VanDyke, Lawrence
Subject: Fwd: Amicus Memo in Abramski v. United States (U.S.)

Lawrence:

Is this something you would prefer to write the memo on and submit to Tim? Let me know. Otherwise, one of my bureau attorneys would handle this.

Sincerely,

Mark

Begin forwarded message:

From: "Schweitzer, Dan" <DSCHWEITZER@NAAG.ORG>
Date: November 14, 2013 at 10:04:52 AM MST
To:
Cc: Julie Blake <jmb@wvago.gov>
Subject: Amicus Memo in Abramski v. United States (U.S.)

To: Criminal Amicus Contacts
From: Julie Blake, Assistant Attorney General, West Virginia

Attached is a memo about an amicus brief West Virginia will be filing in support of the petitioner in Abramski v. United States, 12-1493, a merits case in the Supreme Court.

This case concerns a federal criminal statute prohibiting false statements connected to gun sales. The Fourth Circuit adopted the United States's interpretation of the statute and held that a former police officer who purchased a gun with the intent to re-sell the gun to his uncle made a prohibited false statement when he said he was the actual purchaser of the gun. Both the former police officer and his uncle were legally permitted to buy and own guns. The effect of this holding is to create a partial ban on private gun sales, even though federal law and many state laws otherwise allow private sales between law-abiding citizens.

The brief will argue that the Executive Branch's position is inconsistent with the plain text of the statute, infringes on an area of law left to the States, and raises serious constitutional concerns. The brief will be circulated on November 25 and

sign-on's will be due on December 2.

Dan Schweitzer
Supreme Court Counsel
National Association of Attorneys General
2030 M Street, NW, 8th Floor
Washington, DC 20036
(202) 326-6010
(202) 785-0410 - fax
dschweitzer@naag.org

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Monday, December 02, 2013 9:39 AM
To: 'Julie Marie Blake'
Cc: Elbert Lin
Subject: RE: WV Amicus Brief in Abramski v. US (SCT Merits)

Julie and Elbert - Montana would like to join this brief.

Please list our Attorney General as "Timothy C. Fox".

General Fox's full address, should you need it, is:

Timothy C. Fox
Attorney General of Montana
P.O. Box 201401
Helena, MT 59620-1401
406-444-2026

Please confirm our join by return email, and if you could forward a copy of the final brief once filed, we would appreciate it.

Thank you,

Lawrence VanDyke
Solicitor General ♦ Montana Department of Justice

215 N. Sanders ♦ P.O. Box 201401
Helena, Montana 59620
T: (406) 444-3442 ♦ F: (406) 444-3549
LVanDyke@mt.gov

From: Julie Marie Blake [<mailto:Julie.M.Blake@wvago.gov>]
Sent: Wednesday, November 27, 2013 1:32 PM
To: Julie Marie Blake
Cc: Elbert Lin
Subject: RE: WV Amicus Brief in Abramski v. US (SCT Merits)

Attached is a revised version of the WV amicus brief in Abramski v. United States (US Supreme Court – merits).

As you can see from the redline, we made the changes to the Second Amendment section (Part III). Our goal was to make this brief acceptable to a broader group of states, including states that restrict gun access for 18-21 year olds. We do not think our point loses any emphasis for the changes.

We very much hope to have a large group of states on the brief. Right now, four states have joined the brief, including Texas, South Carolina, and Kansas.

Please do not hesitate to contact us if you have any questions.

Best,

Julie Marie Blake

Assistant Attorney General
Office of the West Virginia Attorney General
State Capitol Building 1, Room 26-E
1900 Kanawha Boulevard East
Charleston, WV 25305
Phone: 304.558.2021

From: Julie Marie Blake
Sent: Tuesday, November 26, 2013 11:47 AM
To: Julie Marie Blake
Cc: Elbert Lin
Subject: WV Amicus Brief in Abramski v. US (SCT Merits)

Attached is an amicus brief WV plans to file in the US Supreme Court next week in a merits case.

The brief argues that the federal government's expansive interpretation of a federal firearms statute raises serious federalism and Second Amendment concerns.

We wanted to make sure you were aware of our brief because it went out yesterday through NAAG to the criminal amicus contacts only. We would very much welcome your AG on the brief.

Sign-on's are due next Monday Dec. 2.

Best,

Julie Marie Blake

Assistant Attorney General
Office of the West Virginia Attorney General
State Capitol Building 1, Room 26-E
1900 Kanawha Boulevard East
Charleston, WV 25305
Phone: 304.558.2021

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Thursday, February 07, 2013 1:03 PM
To: Fox, Tim; Mattioli, Mark
Cc: Barnes, John
Subject: FW: Amicus Memo in Hollingsworth v. Perry (U.S.) -- Prop 8 Case -- Supporting Respondents
Attachments: Perry Amicus Memo.pdf

In the *Perry* case (i.e., the Prop 8 case before SCOTUS), the different states are filing amicus briefs on both sides of that case. We joined the brief arguing that Prop 8, which defines marriage as between a man and woman, is constitutional. This brief argues the opposite – that Prop 8 is unconstitutional. We obviously won't be joining this one, given that we joined the other, but I wanted to bring it to your attention.

- Lawrence

From: Schweitzer, Dan [<mailto:DSCHWEITZER@NAAG.ORG>]
Sent: Thursday, February 07, 2013 12:25 PM
To: chris.coppin@cwagweb.org; paul.d.stern@maine.gov; dbahr@nd.gov; agjwmcinto@scag.gov; pam.murphy@doj.nh.gov; eric.tabor@iowa.gov; jknorr@attorneygeneral.gov; james.layton@ago.mo.gov; paula.bickett@azag.gov; charles.mcquigan@state.sd.us; RPartington@riag.ri.gov; crimago@saipan.com; barbara.underwood@ag.ny.gov; Hampton, Andrea; Schweitzer, Dan; sbluestone@nmag.gov; david.raupp@arkansasag.gov; gmorg@ago.state.ms.us; jlee@riag.ri.gov; attorney@samoatelco.com; stephan.finkel@lps.state.nj.us; Girard.D.Lau@hawaii.gov; stevemac@ku.edu; dennis.hansen@arkansasag.gov; darylrobinson@law.ga.gov; basav@atg.state.vt.us; Mary.Williams@doj.state.or.us; gkelley@ncdoj.gov; alanc@atg.wa.gov; alama@nmag.gov; judy.zeprun@state.ma.us; joanne.grace@alaska.gov; jnotz@atg.state.il.us; mcgimseyr@ag.state.la.us; Gregory.Dauria@ct.gov; anne.edwards@doj.nh.gov; tom.fisher@atg.in.gov; jwhite@ncdoj.gov; whowle@ag.nv.gov; Frances.Grunder@doj.ca.gov; mianf@ago.state.ms.us; ken.rosenstein@alaska.gov; allison.martin@ag.ky.gov; hpizz@ago.state.ms.us; wellslk@doj.state.wi.us; Lee.Davidson@ksag.org; edavis@doj.vi.gov; donna.murasky@dc.gov; ssullivan@oag.state.md.us; jmaddrey@ncdoj.gov; dspence@oag.state.md.us; vlp@wvago.gov; debbie.jourgensen@wyo.gov; Steve.Creason@atg.in.gov; jafarshiee@ago.state.al.us; andrea.silkowitz@dol.lps.state.nj.us; brian.kane@ag.idaho.gov; Richard.Dearing@ag.ny.gov; katie.spohn@nebraska.gov; rrussell@nmag.gov; mwood@ago.state.ms.us; restucciae@michigan.gov; wbrockman@oag.state.md.us; agesmith@scag.gov; susan.lee@doj.ca.gov; SG@atg.in.gov; todd.kim@dc.gov; delayne.deck@ag.idaho.gov; dan.domenico@state.co.us; mscodro@atg.state.il.us; heather.mcveigh@atg.in.gov; suzanne.gorman@doj.nh.gov; jbhoward@oag.state.md.us; potterkc@doj.state.wi.us; stjohnkm@doj.state.wi.us; ed.bedrosian@state.ma.us; john.garry@ag.state.mn.us; Barbara.Durham@myfloridalegal.com; brooke.paup@texasattorneygeneral.gov; meanssp@doj.state.wi.us; Sherri.Wald@state.sd.us; adam.aston@texasattorneygeneral.gov; jhughes@atg.state.il.us; david.blake@state.co.us; Segrest, Stuart; susan.britton@ag.ky.gov; john.campbell@ksag.org; jung.kim@dol.lps.state.nj.us; dave.iones@alaska.gov; delberta.pfeifer@ksag.org; perry.zinn-rowthorn@ct.gov; mwebb@ago.state.ms.us; barb.fehrman@ag.state.mn.us; vbeavers@ag.nv.gov; bromano@utah.gov; timothy.osterhaus@myfloridalegal.com; kris.aillslieger@ksag.org; Alexandra.Schimmer@ohioattorneygeneral.gov; bob.fagan@msdh.state.ms.us; Eileen.carey@state.ma.us; sean.riley@ag.ky.gov; ashley.harwel@atg.in.gov; dGetchell@oag.state.va.us; anna.joyce@doj.state.or.us; marlene.brown@dol.lps.state.nj.us; peter.michael@wyo.gov; diane.dewolf@myfloridalegal.com; jonathan.mitchell@oag.state.tx.us; mary.mertz@ohioattorneygeneral.gov; sforney@attorneygeneral.gov; npeterson@law.ga.gov; jneiman@ago.state.al.us; ariel.levinson-waldman@dc.gov; burschj@michigan.gov; Leesa.Thompson@oag.ok.gov; dowkerc@michigan.gov; frederick.nelson@ohioattorneygeneral.gov; patrick.wyrick@oag.ok.gov; bill.young@ag.tn.gov; Black, Michael; MBrady@oag.state.va.us; Sam Peterson; abrasher@ago.state.al.us; pamela.spang@state.ma.us; kguthrie@ago.state.al.us; andy.oldham@texasattorneygeneral.gov; Jason.pleggenkuhle@ag.state.mn.us; Fred.Yarger@state.co.us; robyn.bender@ag.ky.gov; laura-jane.weimer@state.co.us; james.adams@state.de.us; Aricka.seales@state.ma.us; Wilton, Patricia; pamela.webster@state.de.us; VanDyke, Lawrence; allen.winsor@myfloridalegal.com;

christopher.dodrig@wvago.gov; mamercado@justicia.gobierno.pr

Cc: Jonathan.Miller@State.MA.US

Subject: Amicus Memo in Hollingsworth v. Perry (U.S.) -- Prop 8 Case -- Supporting Respondents

To: Civil Amicus Contacts

Attached is an Amicus Memo describing the amicus brief Massachusetts is preparing in support of respondents on the merits in *Hollingsworth v. Perry*, No. 12-144 (the Proposition 8 case). The brief argues that Proposition 8 -- which defines marriage in California as only being between a man and a woman -- is unconstitutional.

[Please note that a group of states filed an amicus brief supporting petitioners in this case.]

Dan Schweitzer
Supreme Court Counsel
National Association of Attorneys General
2030 M Street, NW, 8th Floor
Washington, DC 20036
(202) 326-6010
(202) 785-0410 - fax
dschweitzer@naag.org

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Wednesday, January 23, 2013 6:29 PM
To: 'Tom.Fisher@atg.in.gov'
Subject: FW: Amicus Brief in Hollingsworth v. Perry (U.S.) -- Prop 8 case
Attachments: Perry Amicus Memo - Merits-1-22-13.pdf; Hollingsworth - Amicus Brief 1-22-13.pdf

Tom - Montana would like to join this brief. Please list our Attorney General as "Timothy C. Fox".

General Fox's full address, should you need it, is:

Timothy C. Fox
Attorney General of Montana
P.O. Box 201401
Helena, MT 59620-1401
406-444-2026

Please confirm our join by return email, and if you could forward a copy of the final brief once filed, we would appreciate it.

Sincerely,

Lawrence VanDyke
Solicitor General ♦ Montana Department of Justice

215 N. Sanders ♦ P.O. Box 201401
Helena, Montana 59620
T: (406) 444-3442 ♦ F: (406) 444-3549
LVanDyke@mt.gov

-----Original Message-----

From: Schweitzer, Dan [mailto:DSCHWEITZER@NAAG.ORG]
Sent: Tuesday, January 22, 2013 10:03 AM
To: chris.coppin@cwagweb.org; paul.d.stern@maine.gov; dbahr@nd.gov; agjwmcinto@scag.gov; pam.murphy@doj.nh.gov; eric.tabor@iowa.gov; jknorr@attorneygeneral.gov; james.layton@ago.mo.gov; paula.bickett@azag.gov; charles.mcguigan@state.sd.us; RPartington@riag.ri.gov; crimago@saipan.com; barbara.underwood@ag.ny.gov; Hampton, Andrea; Schweitzer, Dan; sbluestone@nmag.gov; david.raupp@arkansasag.gov; gmorg@ago.state.ms.us; jlee@riag.ri.gov; attorney@samoatelco.com; stephan.finkel@lps.state.nj.us; Girard.D.Lau@hawaii.gov; stevemac@ku.edu; dennis.hansen@arkansasag.gov; drobinson@law.ga.gov; hughesafran@hotmail.com; basay@atg.state.vt.us; Mary.Williams@doj.state.or.us; gkelley@ncdoj.gov; alanc@atg.wa.gov; alama@nmag.gov; judy.zeprun@state.ma.us; joanne.grace@alaska.gov; jnotz@atg.state.il.us; mcgimseyr@ag.state.la.us; Gregory.Dauria@ct.gov; anne.edwards@doj.nh.gov; tom.fisher@atg.in.gov; jwhite@ncdoj.gov; howle@ag.nv.gov; Frances.Grunder@doj.ca.gov; mlanf@ago.state.ms.us; ken.rosenstein@alaska.gov; allison.martin@ag.ky.gov; hpizz@ago.state.ms.us; wellslk@doj.state.wi.us; Lee.Davidson@ksag.org; edavis@doj.vi.gov; donna.murasky@dc.gov; ssullivan@oag.state.md.us; jmaddrey@ncdoj.gov; dspence@oag.state.md.us; wjy@wvago.gov; debbie.jourgensen@wyo.gov; Steve.Creason@atg.in.gov; jafarshee@ago.state.al.us; andrea.silkowitz@dol.lps.state.nj.us; brian.kane@ag.idaho.gov; Richard.Dearing@ag.ny.gov;

katie.spohn@nebraska.gov; rrussell@nmag.gov; mwood@ago.state.ms.us; hunterg@atg.wa.gov;
restucciae@michigan.gov; wbrockman@oag.state.md.us; agesmith@scag.gov; susan.lee@doj.ca.gov; SG@atg.in.gov;
todd.kim@dc.gov; delayne.deck@ag.idaho.gov; dan.domenico@state.co.us; mscodro@atg.state.il.us;
heather.mcveigh@atg.in.gov; suzanne.gorman@doj.nh.gov; jbhoward@oag.state.md.us; potterkc@doj.state.wi.us;
stjohnkm@doj.state.wi.us; ed.bedrosian@state.ma.us; john.garry@ag.state.mn.us;
Barbara.Durham@myfloridalegal.com; brooke.paup@texasattorneygeneral.gov; meanssp@doj.state.wi.us;
Sherri.Wald@state.sd.us; adam.aston@texasattorneygeneral.gov; jhughes@atg.state.il.us; david.blake@state.co.us;
Segrest, Stuart; susan.britton@ag.ky.gov; john.campbell@ksag.org; jung.kim@dol.lps.state.nj.us;
dave.jones@alaska.gov; delberta.pfeifer@ksag.org; perry.zinn-rowthorn@ct.gov; mwebb@ago.state.ms.us;
barb.fehrman@ag.state.mn.us; vbeavers@ag.nv.gov; bromano@utah.gov; timothy.osterhaus@myfloridalegal.com;
kris.ailsieger@ksag.org; Alexandra.Schimmer@ohioattorneygeneral.gov; bob.fagan@msdh.state.ms.us;
Eileen.carey@state.ma.us; sean.riley@ag.ky.gov; ashley.harwel@atg.in.gov; dGetchell@oag.state.va.us;
anna.joyce@doj.state.or.us; marlene.brown@dol.lps.state.nj.us; peter.michael@wyo.gov;
diane.dewolf@myfloridalegal.com; jonathan.mitchell@oag.state.tx.us; mary.mertz@ohioattorneygeneral.gov;
sforney@attorneygeneral.gov; npeterson@law.ga.gov; jneiman@ago.state.al.us; ariel.levinson-waldman@dc.gov;
burschj@michigan.gov; Dave.Cole@azag.gov; Leesa.Thompson@oag.ok.gov; dowkerc@michigan.gov;
lkelly@attorneygeneral.gov; frederick.nelson@ohioattorneygeneral.gov; patrick.wyrick@oag.ok.gov;
bill.young@ag.tn.gov; Black, Michael; MBrady@oag.state.va.us; Sam Peterson; abrasher@ago.state.al.us;
pamela.spang@state.ma.us; luisroman@justice.com; kguthrie@ago.state.al.us;
andy.oldham@texasattorneygeneral.gov; Jason.pleggenkuhle@ag.state.mn.us; Fred.Yarger@state.co.us;
robyn.bender@ag.ky.gov; laura-jane.weimer@state.co.us; james.adams@state.de.us; Aricka.seales@state.ma.us;
Wilton, Patricia; pamela.webster@state.de.us; VanDyke, Lawrence; christopher.doddrill@wvago.gov
Subject: Amicus Brief in Hollingsworth v. Perry (U.S.) -- Prop 8 case

To: Civil Amicus Contacts

Attached is an amicus brief prepared by Indiana and Virginia in support of the petitioners on the merits in Hollingsworth v. Perry, No. 12-144 (the Proposition 8 case). The brief argues that Proposition 8 -- which defines marriage in California as only being between a man and a woman -- is constitutional. (The Amicus Memo is also attached.)

[Please note that an amicus memo and brief will be circulated at a later date in support of respondents in this case.]

The deadline for joining the brief is January 28, 2013 at 5 pm EST. To join, you may contact:

Tom Fisher
Indiana Solicitor General
(317) 232-6255
Tom.Fisher@atg.in.gov<mailto:Tom.Fisher@atg.in.gov>

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Friday, January 25, 2013 4:02 PM
To: 'Fisher, Tom'
Subject: RE: Amicus Brief in Hollingsworth v. Perry (U.S.) -- Prop 8 case

Thanks Tom. I thought it was, like your Prop-8 brief, very well written and persuasive. I've sent my analysis and recommendation to General Fox, and I expect I should hear back by Monday morning.

Have a great weekend!

Lawrence

-----Original Message-----

From: Fisher, Tom [mailto:Tom.Fisher@atg.in.gov]
Sent: Friday, January 25, 2013 3:54 PM
To: VanDyke, Lawrence
Subject: RE: Amicus Brief in Hollingsworth v. Perry (U.S.) -- Prop 8 case

Lawrence--

Just wanted to check in re Windsor, the DOMA case. Any questions I can answer at this point? So far we have AK, AL, IN, GA, SC, and VA on it.

Thanks.

TMF

From: VanDyke, Lawrence [LVanDyke@mt.gov]
Sent: Wednesday, January 23, 2013 8:28 PM
To: Fisher, Tom
Subject: FW: Amicus Brief in Hollingsworth v. Perry (U.S.) -- Prop 8 case

Tom - Montana would like to join this brief. Please list our Attorney General as "Timothy C. Fox".

General Fox's full address, should you need it, is:

Timothy C. Fox

Attorney General of Montana

P.O. Box 201401

Helena, MT 59620-1401

406-444-2026

Please confirm our join by return email, and if you could forward a copy of the final brief once filed, we would appreciate it.

Sincerely,

Lawrence VanDyke
Solicitor General • Montana Department of Justice

215 N. Sanders • P.O. Box 201401
Helena, Montana 59620
T: (406) 444-3442 • F: (406) 444-3549
LVanDyke@mt.gov<mailto:LVanDyke@mt.gov>

-----Original Message-----

From: Schweitzer, Dan [mailto:DSCHWEITZER@NAAG.ORG]

Sent: Tuesday, January 22, 2013 10:03 AM

To: chris.coppin@cwagweb.org; paul.d.stern@maine.gov; dbahr@nd.gov; agjwmcinto@scag.gov; pam.murphy@doj.nh.gov; eric.tabor@iowa.gov; jknorr@attorneygeneral.gov; james.layton@ago.mo.gov; paula.bickett@azag.gov; charles.mcguigan@state.sd.us; RPartington@riag.ri.gov; crimago@saipan.com; barbara.underwood@ag.ny.gov; Hampton, Andrea; Schweitzer, Dan; sbluestone@nmag.gov; david.raupp@arkansasag.gov; gmorg@ago.state.ms.us; jlee@riag.ri.gov; attorney@samoatelco.com; stephan.finkel@lps.state.nj.us; Girard.D.Lau@hawaii.gov; stevemac@ku.edu; dennis.hansen@arkansasag.gov; drobinson@law.ga.gov; hughesafran@hotmail.com; basay@atg.state.vt.us; Mary.Williams@doj.state.or.us; gkelley@ncdoj.gov; alanc@atg.wa.gov; alama@nmag.gov; judy.zeprun@state.ma.us; joanne.grace@alaska.gov; jnotz@atg.state.il.us; mcgimseyr@ag.state.la.us; Gregory.Dauria@ct.gov; anne.edwards@doj.nh.gov; tom.fisher@atg.in.gov; jwhite@ncdoj.gov; whowle@ag.nv.gov; Frances.Grunder@doj.ca.gov; mianf@ago.state.ms.us; ken.rosenstein@alaska.gov; allison.martin@ag.ky.gov; hpizz@ago.state.ms.us; wellsik@doj.state.wi.us; Lee.Davidson@ksag.org; edavis@doj.vi.gov; donna.murasky@dc.gov; ssullivan@oag.state.md.us; jmaddrey@ncdoj.gov; dspence@oag.state.md.us; wjy@wvago.gov; debbie.jourgensen@wyo.gov; Steve.Creaseon@atg.in.gov; jafarshee@ago.state.al.us; andrea.silkowitz@dol.lps.state.nj.us; brian.kane@ag.idaho.gov; Richard.Dearing@ag.ny.gov; katie.spohn@nebraska.gov; rrussell@nmag.gov; mwood@ago.state.ms.us; hunterg@atg.wa.gov; restucciae@michigan.gov; wbrockman@oag.state.md.us; agesmith@scag.gov; susan.lee@doj.ca.gov; SG@atg.in.gov; todd.kim@dc.gov; delayne.deck@ag.idaho.gov; dan.domenico@state.co.us; mscodro@atg.state.il.us; heather.mcveigh@atg.in.gov; susanne.gorman@doj.nh.gov; jbhoward@oag.state.md.us; potterkc@doj.state.wi.us; stjohnm@doj.state.wi.us; ed.bedrosian@state.ma.us; john.garry@ag.state.mn.us; Barbara.Durham@myfloridalegal.com; brooke.paup@texasattorneygeneral.gov; meanssp@doj.state.wi.us; Sherri.Wald@state.sd.us; adam.aston@texasattorneygeneral.gov; jhughes@atg.state.il.us; david.blake@state.co.us; Segrest, Stuart; susan.britton@ag.ky.gov; john.campbell@ksag.org; jung.kim@dol.lps.state.nj.us; dave.jones@alaska.gov; delberta.pfeifer@ksag.org; perry.zinn-rowthorn@ct.gov; mwebb@ago.state.ms.us;

barb.fehrman@ag.state.mn.us; vbeavers@ag.nv.gov; bromano@utah.gov; timothy.osterhaus@myfloridalegal.com;
kris.ailsliager@ksag.org; Alexandra.Schimmer@ohioattorneygeneral.gov; bob.fagan@msdh.state.ms.us;
Eileen.carey@state.ma.us; sean.riley@ag.ky.gov; ashley.harwel@atg.in.gov; dGetchell@oag.state.va.us;
anna.joyce@doj.state.or.us; marlene.brown@dol.lps.state.nj.us; peter.michael@wyo.gov;
diane.dewolf@myfloridalegal.com; jonathan.mitchell@oag.state.tx.us; mary.mertz@ohioattorneygeneral.gov;
sforney@attorneygeneral.gov; npeterson@law.ga.gov; jneiman@ago.state.al.us; ariel.levinson-waldman@dc.gov;
burschj@michigan.gov; Dave.Cole@azag.gov; Leesa.Thompson@oag.ok.gov; dowkerc@michigan.gov;
lkelly@attorneygeneral.gov; frederick.nelson@ohioattorneygeneral.gov; patrick.wyrick@oag.ok.gov;
bill.young@ag.tn.gov; Black, Michael; MBrady@oag.state.va.us; Sam Peterson; abrasher@ago.state.al.us;
pamela.spang@state.ma.us; luisroman@justice.com; kguthrie@ago.state.al.us;
andy.oldham@texasattorneygeneral.gov; Jason.pleggenkuhle@ag.state.mn.us; Fred.Yarger@state.co.us;
robyn.bender@ag.ky.gov; laura-jane.weimer@state.co.us; james.adams@state.de.us; Aricka.seales@state.ma.us;
Wilton, Patricia; pamela.webster@state.de.us; VanDyke, Lawrence; christopher.dodrill@wvago.gov
Subject: Amicus Brief in Hollingsworth v. Perry (U.S.) – Prop 8 case

To: Civil Amicus Contacts

Attached is an amicus brief prepared by Indiana and Virginia in support of the petitioners on the merits in Hollingsworth v. Perry, No. 12-144 (the Proposition 8 case). The brief argues that Proposition 8 -- which defines marriage in California as only being between a man and a woman -- is constitutional. (The Amicus Memo is also attached.)

[Please note that an amicus memo and brief will be circulated at a later date in support of respondents in this case.]

The deadline for joining the brief is January 28, 2013 at 5 pm EST. To join, you may contact:

Tom Fisher

Indiana Solicitor General

(317) 232-6255

Tom.Fisher@atg.in.gov<mailto:Tom.Fisher@atg.in.gov><mailto:Tom.Fisher@atg.in.gov%3cmailto:Tom.Fisher@atg.in.gov
>>

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/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Thursday, January 10, 2013 11:02 AM
To: Mattioli, Mark; Fox, Tim
Cc: Darkenwald, Scott; Bennion, Jon; Barnes, John; James, Julie
Subject: RE: Amicus Join Request - Hollingsworth v. Perry (U.S.) -- Prop 8 case

I talked with the assistant SG of Michigan, who is a friend, and he confirmed this morning that the draft is all but done at this point – there really isn't much we could offer as an additional author.

But more broadly on this: there is a well-established set of procedures and traditions that basically govern these state amicus briefs, especially in major SCOTUS cases, and it is mostly coordinated through the NAAG. The higher profile a case is, the earlier that states (usually those with significant SG offices or departments, like Texas, Indiana, and Alabama) tend to "claim" authorship for the upcoming states' amicus brief. Once a state is the first to claim an amicus in a case (or at least one making certain arguments – sometimes different states will be on different sides of the issue), traditionally they have the privilege of writing it and other states that generally agree with the position will simply join it. Of course, those joining states are welcome to make small suggestions or object to part of the draft (much like justices joining an opinion). But the whole system is set up to encourage states with generally the same position to all join one, well-written brief, instead of submitting multiple briefs on the same or similar issues. I've had multiple SCOTUS clerks tell me that the justices do not read most amicus briefs, so arguably the number of states on the cover is often more important than the contents of the brief.

The reason the *Perry* case has three authoring states isn't because three were needed to share the workload; it is because this is a very high profile case and either it wasn't clear which state had "first dibs" on the traditional-marriage-side amicus, or this was politically important enough that a few additional states were able, early on, to convince the first-mover state (probably Indiana) to let them share authorship credit. Mark is right that roughly 30 states have marriage amendments, and even more have marriage-protection statutes, so most states were pretty similarly situated on this issue.

In short – states need to claim "authorship" for SCOTUS amicus briefs through NAAG pretty early on, and the more high profile a case is, the earlier it is taken. As you can imagine, states with substantial SG staffs tend to "claim" and author most of the amicus briefs, both because they have the staff to do it, and just as important, because they have the resources to identify early on key cases that are trickling up through the system.

Hopefully this is helpful in understanding the process. I'd be happy to swing by to discuss if anyone wants to know more.

- Lawrence

From: Mattioli, Mark
Sent: Thursday, January 10, 2013 9:53 AM
To: Fox, Tim; VanDyke, Lawrence
Cc: Darkenwald, Scott; Bennion, Jon; Barnes, John; James, Julie
Subject: RE: Amicus Join Request - Hollingsworth v. Perry (U.S.) -- Prop 8 case

There are already three states working on the brief. In my experience it's very difficult to coordinate the work of three attorneys, let alone four. I think Indiana, Virginia, and Michigan will adequately represent the interests of states like Montana. Aren't there about 30 states with marriage amendments like Montana's?

I recommend that we join. I recommend against our being a fourth author of the brief.

Mark

From: Fox, Tim
Sent: Wednesday, January 09, 2013 3:37 PM
To: VanDyke, Lawrence
Cc: Darkenwald, Scott; Mattioli, Mark; Bennion, Jon; Barnes, John; James, Julie
Subject: RE: Amicus Join Request - Hollingsworth v. Perry (U.S.) -- Prop 8 case

Thanks Lawrence,

Is there any chance that we can get in on, if not the ground floor, at least the next level in the genesis of this amicus brief? By that I mean "do we have to wait to see the draft brief, or can I contact the principle author/lead state(s) and get more involved now?" I'm fine with waiting to see what the amicus brief says, but I'd rather have a hand in drafting it. This is particularly important because of our Montana Constitution's provision on marriage. What are your thoughts?

Tim

From: VanDyke, Lawrence
Sent: Wednesday, January 09, 2013 3:09 PM
To: Fox, Tim
Cc: Darkenwald, Scott; Mattioli, Mark; Bennion, Jon; Barnes, John; James, Julie
Subject: Amicus Join Request - Hollingsworth v. Perry (U.S.) -- Prop 8 case

Tim:

Sometime around Tuesday, January 22, the states of Indiana, Michigan, and Virginia will be circulating a draft SCOTUS amicus brief in support of the petitioners in the *Hollingsworth v. Perry* (California Prop. 8) case. This is the case appealing the Ninth Circuit's decision that California's constitutional amendment defining marriage as between a man and a woman is unconstitutional. The three authoring states are soliciting other states to join their brief. **The deadline for joining will be 5 pm ET, Monday, January 28th.**

The attached memo circulated through the NAAG briefly describes the arguments the states plan to make, and the states' interests asserted. I will circulate the draft brief once I get it, but I'm giving you an earlier heads-up in case you wish to discuss it sooner.

Lawrence

-----Original Message-----

From: Schweitzer, Dan [mailto:DSCHWEITZER@NAAG.ORG]
Sent: Thursday, December 20, 2012 2:38 PM
To: chris.coppin@cwagweb.org; paul.d.stern@maine.gov; dbahr@nd.gov; agjwmcinto@scag.gov; pam.murphy@doj.nh.gov; eric.tabor@iowa.gov; jknorr@attorneygeneral.gov; james.layton@ago.mo.gov; paula.bickett@azag.gov; charles.mcguigan@state.sd.us; RPartington@riag.ri.gov; manuel.medeiros@doj.ca.gov; crimago@saipan.com; barbara.underwood@ag.ny.gov; Hampton, Andrea; Schweitzer, Dan; sbluestone@nmag.gov; david.raupp@arkansasag.gov; gmorg@ago.state.ms.us; jlee@riag.ri.gov; attorney@samoatelco.com; stephan.finkel@lps.state.nj.us; Girard.D.Lau@hawaii.gov; stevemac@ku.edu; dennis.hansen@arkansasag.gov; d robinson@law.ga.gov; hughesafran@hotmail.com; james.smith@nebraska.gov; basay@atg.state.vt.us; Mary.Williams@doj.state.or.us; gkelley@ncdoj.gov;

alanc@atg.wa.gov; alama@nmag.gov; judy.zeprun@state.ma.us; joanne.grace@alaska.gov;
jnotz@atg.state.il.us; mcgimseyr@ag.state.la.us; Gregory.Dauria@ct.gov; anne.edwards@doj.nh.gov;
tom.fisher@atg.in.gov; jwhite@ncdoj.gov; howle@ag.nv.gov; Frances.Grunder@doj.ca.gov;
mianf@ago.state.ms.us; ken.rosenstein@alaska.gov; allison.martin@ag.ky.gov; hpizz@ago.state.ms.us;
wellslk@doj.state.wi.us; Lee.Davidson@ksag.org; edavis@doj.vi.gov; donna.murasky@dc.gov;
ssullivan@oag.state.md.us; jmaddrey@ncdoj.gov; dspence@oag.state.md.us; wjy@wvago.gov;
debbie.jourgensen@wyo.gov; Steve.Creason@atg.in.gov; jafarshee@ago.state.al.us;
andrea.silkowitz@dol.lps.state.nj.us; brian.kane@ag.idaho.gov; Richard.Dearing@ag.ny.gov;
katie.spohn@nebraska.gov; russell@nmag.gov; hunterg@atg.wa.gov; restucciae@michigan.gov;
wbrockman@oag.state.md.us; agesmith@scag.gov; lawrence.lewis@state.de.us; SG@atg.in.gov;
todd.kim@dc.gov; delayne.deck@ag.idaho.gov; dan.domenico@state.co.us; mcodro@atg.state.il.us;
heather.mcveigh@atg.in.gov; jbhoward@oag.state.md.us; potterkc@doj.state.wi.us; stjohnkm@doj.state.wi.us;
ed.bedrosian@state.ma.us; john.garry@ag.state.mn.us; Barbara.Durham@myfloridalegal.com;
brooke.paup@texasattorneygeneral.gov; meanssp@doj.state.wi.us; Sherri.Wald@state.sd.us;
adam.aston@texasattorneygeneral.gov; jhughes@atg.state.il.us; david.blake@state.co.us; Segrest, Stuart;
susan.britton@ag.ky.gov; john.campbell@ksag.org; ian.mcconnel@state.de.us; jung.kim@dol.lps.state.nj.us;
dave.jones@alaska.gov; delberta.pfeifer@ksag.org; perry.zinn-rowthorn@ct.gov; mwebb@ago.state.ms.us;
barb.fehrman@ag.state.mn.us; vbeavers@ag.nv.gov; bromano@utah.gov;
timothy.osterhaus@myfloridalegal.com; kris.ailsliieger@ksag.org;
Alexandra.Schimmer@ohioattorneygeneral.gov; Katrina.barbour@state.de.us; bob.fagan@msdh.state.ms.us;
Eileen.carey@state.ma.us; sean.riley@ag.ky.gov; ashley.harwel@atg.in.gov; dGetchell@oag.state.va.us;
Ruckman, Stephen; anna.joyce@doj.state.or.us; marlene.brown@dol.lps.state.nj.us; peter.michael@wyo.gov;
bergethonr@ag.state.la.us; diane.dewolf@myfloridalegal.com; jonathan.mitchell@oag.state.tx.us;
mary.mertz@ohioattorneygeneral.gov; sforney@attorneygeneral.gov; npeterson@law.ga.gov;
jneiman@ago.state.al.us; ariel.levinson-waldman@dc.gov; burschj@michigan.gov; Dave.Cole@azag.gov;
Leesa.Thompson@oag.ok.gov; dowkerc@michigan.gov; lkelly@attorneygeneral.gov;
patrick.wyrick@oag.ok.gov; bill.young@ag.tn.gov; Black, Michael; MBrady@oag.state.va.us; Sam Peterson;
abrasher@ago.state.al.us; pamela.spang@state.ma.us; luisroman@justice.com; kguthrie@ago.state.al.us;
andy.oldham@texasattorneygeneral.gov; Jason.pleggenkuhle@ag.state.mn.us; Fred.Yarger@state.co.us;
robyn.bender@ag.ky.gov; laura-jane.weimer@state.co.us; james.adams@state.de.us;
Aricka.seales@state.ma.us

Subject: Amicus Memo in Hollingsworth v. Perry (U.S.) -- Prop 8 case

To: Civil Amicus Contacts

Attached is an Amicus Memo seeking support for an amicus brief being written by Indiana, Michigan and Virginia in support of the petitioners on the merits in Hollingsworth v. Perry, No. 12-144 (the Proposition 8 case). The brief is not yet ready, and is not due until January 29, but they want to circulate the memorandum now so that states have plenty of notice that it is coming.

[Please note that an amicus memo and brief will be circulated at a later date in support of respondents in this case.]

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Tuesday, July 16, 2013 9:57 AM
To: Fox, Tim; Darkenwald, Scott; Mattioli, Mark
Cc: Bennion, Jon; Swanson, Cory; Barnes, John
Subject: FW: Gay couples file new lawsuit seeking benefits

The Donaldson plaintiffs have filed their new complaint in the same-sex benefits case.

-----Original Message-----

From: Swanson, Cory
Sent: Tuesday, July 16, 2013 6:11 AM
To: VanDyke, Lawrence
Subject: Gay couples file new lawsuit seeking benefits

http://m.billingsgazette.com/news/state-and-regional/montana/gay-couples-file-new-lawsuit-seeking-benefits/article_c5a859f9-ff79-516e-b26e-dde9547db6ce.html?mobile_touch=true

Sent from my iPhone

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Friday, January 31, 2014 9:24 AM
To: Mattioli, Mark
Cc: Darkenwald, Scott
Subject: RE: Notice of Withdrawal

Sounds good – thanks.

From: Mattioli, Mark
Sent: Friday, January 31, 2014 9:23 AM
To: VanDyke, Lawrence
Cc: Darkenwald, Scott
Subject: RE: Notice of Withdrawal

I talked to him. My understanding is that he will file a notice of substitution of counsel, so your signature won't be required.

From: VanDyke, Lawrence
Sent: Friday, January 31, 2014 9:21 AM
To: Mattioli, Mark
Cc: Darkenwald, Scott
Subject: FW: Notice of Withdrawal

Mark – I'm fine with signing this if you think that's best under the circumstances. I'm not sold on Mike's rationale below (which was the first time I'd heard it), and even if a notice of withdrawal were required, I think it might make the most sense to file one along with the notices I'll file in my other cases when I leave to avoid premature questions and confusion. But if filing this now helps avoid problems with Mike, and you think it's the best thing to do, I'm happy to do so. Just let me know. Thanks.

From: Black, Michael
Sent: Thursday, January 30, 2014 3:38 PM
To: Mattioli, Mark
Cc: VanDyke, Lawrence; Darkenwald, Scott
Subject: FW: Notice of Withdrawal

Mark:

I am happy to discuss this further with you, but any disagreement over this is just plain silly.

Mr. VanDyke and the attorneys who continue to represent the State have a professional and statutory obligation to file a notice of withdrawal for Mr. VanDyke. It has been a common practice for attorneys from this office to withdraw from cases when their involvement has ceased, and we have made big deal about other attorneys failing to comply with statutory rules on withdrawal in cases before Judge Sherlock.

Mr. VanDyke has been lead counsel on this case for the last year, and the Plaintiffs were informed he was lead counsel a year ago. He has been in charge of this case for a year.

Mr. VanDyke has appeared as attorney for the State as reflected in the attached order, and his appearance is probably reflected in other court filings. Withdrawal is required pursuant to MCA §§ 37-61-403 and 37-61-404, found at <http://leg.mt.gov/bills/mca/37/61/37-61-403.htm> and <http://leg.mt.gov/bills/mca/37/61/37-61-404.htm>

Calling the clerk of court is not a substitute for complying with the statute.

Mike

From: Black, Michael
Sent: Thursday, January 30, 2014 11:20 AM
To: VanDyke, Lawrence; Holnbeck, Beverly
Cc: Cochenour, Matt
Subject: RE: Notice of Withdrawal

It is necessary. If you decline to sign it, I'll sign it for you.

From: VanDyke, Lawrence
Sent: Thursday, January 30, 2014 11:17 AM
To: Black, Michael; Holnbeck, Beverly
Cc: Cochenour, Matt
Subject: RE: Notice of Withdrawal

I don't think this is necessary. I never entered an appearance in Donaldson. I attended the scheduling conference with Mike, and my name was signed to the discovery responses, but those were not filed with the Court. I called the clerk's office, and as best they could tell I am not listed on the docket as a counsel of record. She told me I didn't need to file a motion to withdraw, and that doing so would likely just confuse things.

Thank you, though. And let me know if you think differently.

From: Black, Michael
Sent: Thursday, January 30, 2014 10:35 AM
To: Holnbeck, Beverly
Cc: VanDyke, Lawrence; Cochenour, Matt
Subject: FW: Notice of Withdrawal

Bev:

Thank you. I modified the caption and signature block to remove counsel. Would you please print on bond and give to Mr. VanDyke or put in his box for his signature. I want to file this by the end of the week. Thank you.

Mike

From: Holnbeck, Beverly
Sent: Thursday, January 30, 2014 10:16 AM
To: Black, Michael
Subject: Notice of Withdrawal

In LJV directory: J:\LJV\Donaldson II 11-0027\Drafts\2014-01-30 Not of Withdrawal-Van Dyke.doc. Do you want me to move that folder back to you?

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Monday, January 27, 2014 10:47 AM
To: Black, Michael; Cochenour, Matt
Cc: Mattioli, Mark
Subject: RE: Donaldson, et al. v. State
Attachments: RE: Donaldson, et al. v. State

No – The only communication I had with Ben was the attached email, which you were copied on. That is it. I have not reviewed or addressed their discovery letter, nor communicated further about the requested meet-and-confer about experts, stipulations, etc.

From: Black, Michael
Sent: Monday, January 27, 2014 10:43 AM
To: VanDyke, Lawrence; Cochenour, Matt
Cc: Mattioli, Mark
Subject: RE: Donaldson, et al. v. State

The question is: what have you done? Did you take care of this?

From: VanDyke, Lawrence
Sent: Monday, January 27, 2014 10:39 AM
To: Black, Michael; Cochenour, Matt
Subject: RE: Donaldson, et al. v. State

This is something you need to discuss with Mark. I am not going to be involved with Donaldson going forward.

From: Black, Michael
Sent: Monday, January 27, 2014 10:28 AM
To: Cochenour, Matt; VanDyke, Lawrence
Subject: RE: Donaldson, et al. v. State

Lawrence:

I have not heard back from you regarding discovery issues in this case, so there is nothing outstanding for me to address in this regard. I assume you have resolved any outstanding issues with Plaintiffs' counsel.

Mike

From: Cochenour, Matt
Sent: Thursday, January 23, 2014 8:58 AM
To: VanDyke, Lawrence; Black, Michael
Subject: RE: Donaldson, et al. v. State

Hi Lawrence,

I had a phone message from Ben Alke regarding Donaldson. It wasn't a detailed message, but I assume he wants to discuss the meet/confer letter and amending complaint. He is in depositions today, but will call back tomorrow.

Thanks,

Matt

From: VanDyke, Lawrence
Sent: Friday, January 10, 2014 7:50 AM
To: Black, Michael
Cc: Cochenour, Matt
Subject: RE: Donaldson, et al. v. State

Thanks Mike. It would be very helpful for me to have yours and Matt's thoughts in developing a response. And I think it would be good for you to attend the meet and confer with me. Is there sometime next week that you and Matt can block out an hour or two to discuss the contents of the letter with me?

From: Black, Michael
Sent: Wednesday, January 08, 2014 10:10 AM
To: VanDyke, Lawrence
Cc: Cochenour, Matt
Subject: FW: Donaldson, et al. v. State

I will defer to you on this, as lead counsel on this case, regarding any response to Plaintiffs. I realize Mark and I assisted Matt with the discovery responses because you were out of the office, but I see no need to wade into this at this time. I believe Matt should be looking to you as well. Thanks.

From: Karen Schultz [<mailto:kschultz@Goetzlawfirm.com>]
Sent: Thursday, January 02, 2014 4:34 PM
To: Black, Michael; VanDyke, Lawrence; Cochenour, Matt
Cc: Ben Alke; JimT@aclumontana.org; Krystel Holden (krystelp@aclumontana.org); 'Borenstein, Ruth N.' (RBorenstein@mofo.com); splunkett@mofo.com; eregier@mofo.com; aruiz@mofo.com; Egill@aclunc.org
Subject: Donaldson, et al. v. State

Please see the attached letter of today from Ben Alke. The letter was also mailed to you today.

Karen Schultz, Legal Assistant
Goetz, Baldwin & Geddes, P. C.
35 North Grand (zip code - 59715)
P. O. Box 6580
Bozeman, MT 59771-6580
Ph: (406) 587-0618
Fax: (406) 587-5144

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Friday, November 22, 2013 10:33 AM
To: Mattioli, Mark
Subject: RE: Donaldson - Discovery Responses



-----Original Message-----

From: Mattioli, Mark

Sent: Friday, November 22, 2013 9:18 AM
To: VanDyke, Lawrence
Subject: Re: Donaldson - Discovery Responses

Lawrence, I will handle while you are gone. Do you whether the info Matt was expecting from the agencies arrived? I have a meeting with Tim and Melissa at 1:30 but will discuss with Matt afterwards.

Mark

Sent from my iPhone

On Nov 21, 2013, at 3:46 PM, "VanDyke, Lawrence" <LVanDyke@mt.gov> wrote:

> Mark – I really need to talk to you about the Donaldson discovery responses tomorrow before I leave if at all possible (the earlier in the day the better). They are due next Wednesday, while I'm gone on vacation, and Matt sent me this email today with a mostly complete draft of the responses (I gave him my thoughts and suggestions on an earlier, less complete draft), but still a significant amount of work needs to be done before they are final. I reviewed this draft, the completed parts of which are very good, and gave him my few edits. He told me, however, that he expects me to complete the draft. He is clearly frustrated with me because I am the "lead attorney" on this case and he believes I should have done more (and should complete and serve) these discovery responses.

>
> My understanding, from over a month ago when I was reassigned the Donaldson case, was that Matt was going to address this discovery. When you reassigned the case to me, I was very concerned about how I could complete this discovery by the deadline given my other commitments. You said that Matt could help. I had a meeting with Mark and Matt, where it was obvious to me that Matt wasn't too excited about responding to these discovery requests. But I told him I was too busy to draft them, and asked him to take the lead. He completed a partial draft that I reviewed, and then he got a 30 day extension from the plaintiffs. Then today he sent me a more complete draft, apparently expecting me to finish it. But I had told Matt, as far back as when he was asking for the extension, that I would be gone the entire week of Thanksgiving. It simply is not reasonable for him to send me an unfinished draft on noon Thursday expecting me to complete it when he knew I was going to be gone the entire next week.

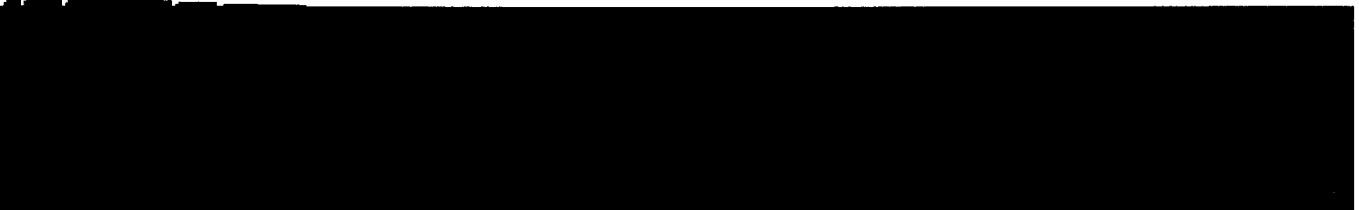
>
> I need to spend most of the time before I leave for vacation tomorrow coordinating collection of discovery to respond to Judge Sherlock's discovery order in the MIJA case. I simply don't have the time to finish these Donaldson discovery responses.

>
> Thank you, Mark. Feel free to call me at the office (406-444-3442) or cell (817-403-2798) to discuss while you are traveling if you like. Sorry to bother you with this – I don't want to but the timeline here is very tight and I don't want to inadvertently blow a deadline in Donaldson.

>
> From: Cochenour, Matt
> Sent: Thursday, November 21, 2013 11:14 AM
> To: VanDyke, Lawrence
> Subject: Donaldson - Discovery Responses

>
> Hi Lawrence,

>





> Thanks,

> Matt

>

>

>

> <2013-11-21 D's Response to First Discovery Requests_DRAFT.rtf>

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Monday, February 10, 2014 2:03 PM
To: James, Julie
Cc: Barnes, John; Burton, Anastasia
Subject: FW: Kitchen v Herbert (13-4178) and Bishop v Smith (14-5003, 14-5006)
Attachments: Amicus brief of Indiana et al.pdf

For the binder – States’ amicus brief we joined in the 10th Circuit supporting Oklahoma’s and Utah’s traditional marriage laws.

Thanks.

From: Stickle, Julie [<mailto:Julie.Stickle@atg.in.gov>]
Sent: Monday, February 10, 2014 2:00 PM
To: 'delayne.deck@ag.idaho.gov'; 'esmith@scag.gov'; 'katie.spohn@nebraska.gov'; 'dan.domenico@state.co.us'; 'patrick.wyrick@oag.ok.gov'; VanDyke, Lawrence; 'abrasher@ago.state.al.us'; 'janell.hafner@alaska.gov'; 'marlena.soto@azag.gov'
Cc: Fisher, Tom
Subject: Kitchen v Herbert (13-4178) and Bishop v Smith (14-5003, 14-5006)

Attached is a copy of the Amicus Brief as filed in the 10th Circuit today. Paper copies will be mailed to you as well.

Thank you for joining.

Julianne Stickle
Administrative Assistant to the Solicitor General
302 W. Washington Street
IGCS - Fifth Floor
Indianapolis, IN 46204
317-233-8292
317-232-7979 Fax
julie.stickle@atg.in.gov

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/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Thursday, January 23, 2014 1:49 PM
To: James, Julie
Cc: Barnes, John; Burton, Anastasia
Subject: FW: Beverly Sevcik et al. v. Brian Sandoval, et al., No. 12-17668
Attachments: Re: Beverly Sevcik et al. v. Brian Sandoval, et al., No. 12-17668; Beverly Sevcik et al. v. Brian Sandoval, et al., No. 12-17668

FYI – for the binder. We will be joining this Ninth Circuit states’ amicus brief.

Thanks!

From: VanDyke, Lawrence
Sent: Thursday, January 23, 2014 1:48 PM
To: 'Stickle, Julie'; Tom.Fisher@atg.in.gov
Subject: RE: Beverly Sevcik et al. v. Brian Sandoval, et al., No. 12-17668

Tom and Julie – thank you for the opportunity to join this brief. Montana would like to join.

Please list our Attorney General as “Timothy C. Fox”.

General Fox’s full address, should you need it, is:

Timothy C. Fox
Attorney General of Montana
P.O. Box 201401
Helena, MT 59620-1401
406-444-2026

Please confirm our join by return email, and if you could forward a copy of the final brief once filed, we would appreciate it.

Thank you again,

Lawrence VanDyke
Solicitor General • Montana Department of Justice

215 N. Sanders • P.O. Box 201401
Helena, Montana 59620
T: (406) 444-3442 • F: (406) 444-3549
LVanDyke@mt.gov

From: Stickle, Julie [<mailto:Julie.Stickle@atg.in.gov>]
Sent: Wednesday, January 22, 2014 4:04 PM
To: jneiman@ago.state.al.us; joanne.grace@alaska.gov; Dave.jones@alaska.gov; paula.bickett@azag.gov; daniel.domenico@state.co.us; Osvaldo.Vazquez@myfloridalegal.com; allen.winsor@myfloridalegal.com; npeterson@law.ga.gov; brian.kane@ag.idaho.gov; delayne.deck@ag.idaho.gov; Kris.Ailsliieger@ksag.org;

wiltonp@ag.state.la.us; restucciae@michigan.gov; VanDyke, Lawrence; Black, Michael; katie.spohn@nebraska.gov; appeals@ohioattorneygeneral.gov; mary.mertz@ohioattorneygeneral.gov; frederick.nelson@ohioattorneygeneral.gov; Eric.Murphy@ohioattorneygeneral.gov; patrick.wyrick@oag.ok.gov; Leesa.thompson@oag.ok.gov; jknorr@attorneygeneral.gov; JMcIntosh@scag.gov; Sherri.Wald@state.sd.us; jonathan.mitchell@oag.state.tx.us; bromano@utah.gov; vlp@wvago.gov; christopher.dodrill@wvago.gov; elbert.lin@wvago.gov; wellsik@doj.state.wi.us; potterkc@doj.state.wi.us; stjohnkm@doj.state.wi.us; lenningtondp@doj.state.wi.us; peter.michael@wyo.gov

Cc: Fisher, Tom

Subject: Beverly Sevcik et al. v. Brian Sandoval, et al., No. 12-17668

To Amicus Contacts in Selected States:

Attached for your consideration are a formal amicus memo and an *amicus curiae* brief to be filed in the Ninth Circuit in support of Nevada Governor Brian Sandoval in *Beverly Sevcik et al. v. Brian Sandoval, et al.*, No. 12-17668. The district court, per Judge Robert C. Jones, upheld Nevada's traditional definition of marriage against a Fourteenth Amendment challenge. 911 F. Supp. 2d 996 (D. Nev. 2013).

This *amicus* brief supports and defends Nevada's traditional definition of marriage and is similar in many respects to multi-state amicus briefs Indiana, Virginia, and Michigan have co-authored in the past in other marriage cases, such as *Hollingsworth v. Perry*.

The brief is due on Tuesday, January 28, but to ensure plenty of time for final formatting we would like to get sign-ons by close of business Monday, January 27.

If you have questions or wish to join, please contact me or my assistant, Julie Stickle.

Thanks very much for your consideration.

Thomas M. Fisher
Solicitor General
Office of the Attorney General
State of Indiana

Indiana Government Center South, Fifth Floor
302 West Washington Street
Indianapolis, Indiana 46204
tom.fisher@atg.in.gov
T: 317.232.6255 | F: 317.232.7979

Julianne Stickle
Administrative Assistant to the Solicitor General
302 W. Washington Street
IGCS - Fifth Floor
Indianapolis, IN 46204
317-233-8292
317-232-7979 Fax
julie.stickle@atg.in.gov

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/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Thursday, January 23, 2014 1:54 PM
To: Fox, Tim
Cc: Mattioli, Mark; Darkenwald, Scott; Bennion, Jon; Swanson, Cory; Barnes, John
Subject: RE: Beverly Sevcik et al. v. Brian Sandoval, et al., No. 12-17668

[REDACTED]

From: Fox, Tim
Sent: Thursday, January 23, 2014 1:46 PM
To: VanDyke, Lawrence
Cc: Mattioli, Mark; Darkenwald, Scott; Bennion, Jon; Swanson, Cory; Barnes, John
Subject: Re: Beverly Sevcik et al. v. Brian Sandoval, et al., No. 12-17668

[REDACTED]

Sent from my iPhone

On Jan 23, 2014, at 1:13 PM, "VanDyke, Lawrence" <LVanDyke@mt.gov> wrote:

[REDACTED]

- Lawrence

From: Stickle, Julie [<mailto:Julie.Stickle@atg.in.gov>]
Sent: Wednesday, January 22, 2014 4:04 PM
To: jneiman@ago.state.al.us; joanne.grace@alaska.gov; Dave.jones@alaska.gov; paula.bickett@azag.gov; daniel.domenico@state.co.us; Osvaldo.Vazquez@myfloridalegal.com; allen.winsor@myfloridalegal.com; npeterson@law.ga.gov; brian.kane@ag.idaho.gov; delayne.deck@ag.idaho.gov; Kris.Aiisliieger@ksag.org; wiltonp@ag.state.la.us; restucciae@michigan.gov; VanDyke, Lawrence; Black, Michael; katie.spohn@nebraska.gov; appeals@ohioattorneygeneral.gov; mary.mertz@ohioattorneygeneral.gov; frederick.nelson@ohioattorneygeneral.gov; Eric.Murphy@ohioattorneygeneral.gov; patrick.wyrick@oag.ok.gov; Leesa.thompson@oag.ok.gov;

jk norr@attorneygeneral.gov; JMcIntosh@scag.gov; Sherri.Wald@state.sd.us;
jonathan.mitchell@oag.state.tx.us; bromano@utah.gov; vlp@wvago.gov; christopher.dodrigill@wvago.gov;
elbert.lin@wvago.gov; wellsik@doj.state.wi.us; potterkc@doj.state.wi.us; stjohnkm@doj.state.wi.us;
lenningtondp@doj.state.wi.us; peter.michael@wyo.gov

Cc: Fisher, Tom

Subject: Beverly Sevcik et al. v. Brian Sandoval, et al., No. 12-17668

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Thanks very much for your consideration.

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Solicitor General
Office of the Attorney General
State of Indiana

Indiana Government Center South, Fifth Floor
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Indianapolis, Indiana 46204
tom.fisher@atg.in.gov
T: 317.232.6255 | F: 317.232.7979

Julianne Stickle
Administrative Assistant to the Solicitor General
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julie.stickle@atg.in.gov

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<Sevcik Amicus brief of Indiana et al.pdf>

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: Stickle, Julie <Julie.Stickle@atg.in.gov>
Sent: Thursday, May 15, 2014 9:04 AM
To: 'janell.hafner@alaska.gov'; VanDyke, Lawrence; 'esmith@scag.gov'; Erickson, Lynell (Lynell.Erickson@state.sd.us); 'bromano@utah.gov'; 'delayne.deck@ag.idaho.gov'; 'dan.domenico@state.co.us'; paula.bickett@azag.gov; 'abrasher@ago.state.al.us'; wiltonp@ag.state.la.us
Subject: 14-1341 April DeBoer, et al v. Richard Snyder, et al
Attachments: Amicus Brief of Indiana and 10 other states.pdf

Attached is the brief as filed. The court did not require that we send paper copies, but if you need one for your files, please let me know. I can easily have one printed and sent to you. Thanks.

Julianne Stickle
Administrative Assistant to the Solicitor General
302 W. Washington Street
IGCS - Fifth Floor
Indianapolis, IN 46204
317-233-8292
317-232-7979 Fax
julie.stickle@atg.in.gov

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/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: Stickle, Julie <Julie.Stickle@atg.in.gov>
Sent: Tuesday, May 13, 2014 12:18 PM
To: abrasher@ago.state.al.us; mkirkpatrick@ago.state.al.us; joanne.grace@alaska.gov; Dave.jones@alaska.gov; paula.bickett@azag.gov; dan.domenico@state.co.us; brian.kane@ag.idaho.gov; delayne.deck@ag.idaho.gov; wiltonp@ag.state.la.us; VanDyke, Lawrence; katie.spohn@nebraska.gov; patrick.wyrick@oag.ok.gov; Leesa.thompson@oag.ok.gov; JMcIntosh@scag.gov; Sherri.Wald@state.sd.us; jonathan.mitchell@oag.state.tx.us; bromano@utah.gov; vip@wvago.gov; christopher.dodrill@wvago.gov; elbert.lin@wvago.gov; peter.michael@wyo.gov; Jeff.Chanay@ag.ks.gov
Cc: Fisher, Tom
Subject: April DeBoer, et al. v. Richard Snyder, et al., No. 14-1341
Attachments: DeBoer - Amicus memo.pdf; DeBoer -Amicus brief of Indiana et al.pdf

To Amicus Contacts in Selected States:

Attached is an amicus curiae brief to be filed in the Sixth Circuit in April DeBoer, et al. v. Richard Snyder, et al., No. 14-1341.

The brief supports Defendants/Appellants as they seek reversal of a district court ruling invalidating Michigan's traditional definition of marriage. It is very similar to the ones Indiana recently filed (joined by many of your states) in the Ninth Circuit in Beverly Sevcik et al. v. Brian Sandoval, et al., No. 12-17668; in the Tenth Circuit in Derek Kitchen, et al. v. Gary Herbert, et al., No. 13-4178 and Mary Bishop, et al. v. Sally Howe Smith, et al., Nos. 14-5003, & 14-5006 and in the Fourth Circuit in Timothy Bostic, et al. v. George E. Schaefer, III, et al., No. 14-1167.

The DeBoer brief is due on Wednesday, May 14, and we can take joiners until noon that day.

If you have questions or wish to join, please contact Tom Fisher at tom.fisher@atg.in.gov.

Thanks very much for your consideration.

Julianne Stickle
Administrative Assistant to the Solicitor General
302 W. Washington Street
IGCS - Fifth Floor
Indianapolis, IN 46204
317-233-8292
317-232-7979 Fax
julie.stickle@atg.in.gov

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From: VanDyke, Lawrence
Sent: Tuesday, May 13, 2014 5:22 PM
To: James, Julie
Cc: Barnes, John; Burton, Anastasia
Subject: FW: April DeBoer, et al. v. Richard Snyder, et al., No. 14-1341

FYI – for the binder. Tim told me orally that we should join this.

John and Anastasia – this is another brief defending the traditional definition of marriage. As in the past, we may get a press inquiry or two about this. The brief will be filed tomorrow some time (afternoon?).

Thanks!

From: VanDyke, Lawrence
Sent: Tuesday, May 13, 2014 5:20 PM
To: 'Stickle, Julie'
Cc: Tom.Fisher@atg.in.gov
Subject: RE: April DeBoer, et al. v. Richard Snyder, et al., No. 14-1341

Julie and Tom –

Montana would like to join this brief.

Please list our Attorney General as “Timothy C. Fox”.

General Fox’s full address, should you need it, is:

Timothy C. Fox
Attorney General of Montana
P.O. Box 201401
Helena, MT 59620-1401
406-444-2026

Please confirm our join by return email, and if you could forward a copy of the final brief once filed, we would appreciate it.

Thank you again,

Lawrence VanDyke
Solicitor General ♦ Montana Department of Justice

215 N. Sanders ♦ P.O. Box 201401
Helena, Montana 59620
T: (406) 444-3442 ♦ F: (406) 444-3549
LVanDyke@mt.gov

From: Stickle, Julie [<mailto:Julie.Stickle@atg.in.gov>]
Sent: Tuesday, May 13, 2014 12:18 PM

To: abrasher@ago.state.al.us; [mkirkpatrick@ago.state.al.us](mailto:mkirpatrick@ago.state.al.us); joanne.grace@alaska.gov; Dave.jones@alaska.gov; paula.bickett@azag.gov; dan.domenico@state.co.us; brian.kane@ag.idaho.gov; delayne.deck@ag.idaho.gov; wiltonp@ag.state.la.us; VanDyke, Lawrence; katie.spohn@nebraska.gov; patrick.wyrick@oag.ok.gov; Leesa.thompson@oag.ok.gov; JMcIntosh@scag.gov; Sherri.Wald@state.sd.us; jonathan.mitchell@oag.state.tx.us; bromano@utah.gov; vlp@wvago.gov; christopher.dodrill@wvago.gov; elbert.lin@wvago.gov; peter.michael@wyo.gov; Jeff.Chanay@ag.ks.gov

Cc: Fisher, Tom

Subject: April DeBoer, et al. v. Richard Snyder, et al., No. 14-1341

To Amicus Contacts in Selected States:

Attached is an amicus curiae brief to be filed in the Sixth Circuit in April DeBoer, et al. v. Richard Snyder, et al., No. 14-1341.

The brief supports Defendants/Appellants as they seek reversal of a district court ruling invalidating Michigan's traditional definition of marriage. It is very similar to the ones Indiana recently filed (joined by many of your states) in the Ninth Circuit in Beverly Sevcik et al. v. Brian Sandoval, et al., No. 12-17668; in the Tenth Circuit in Derek Kitchen, et al. v. Gary Herbert, et al., No. 13-4178 and Mary Bishop, et al. v. Sally Howe Smith, et al., Nos. 14-5003, & 14-5006 and in the Fourth Circuit in Timothy Bostic, et al. v. George E. Schaefer, III, et al., No. 14-1167.

The DeBoer brief is due on Wednesday, May 14, and we can take joiners until noon that day.

If you have questions or wish to join, please contact Tom Fisher at tom.fisher@atg.in.gov.

Thanks very much for your consideration.

Julianne Stickle
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julie.stickle@atg.in.gov

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From: VanDyke, Lawrence
Sent: Tuesday, May 13, 2014 5:25 PM
To: James, Julie
Cc: Barnes, John; Burton, Anastasia
Subject: FW: April DeBoer, et al. v. Richard Snyder, et al., No. 14-1341
Attachments: FW: April DeBoer, et al. v. Richard Snyder, et al., No. 14-1341

Julie, John, and Anastasia – here is Tim’s confirmation we should join. And I just realized that the earlier email I sent didn’t have the draft brief or amicus memo attached. This one does (in the attached email). Thanks again!

From: Fox, Tim
Sent: Tuesday, May 13, 2014 5:23 PM
To: VanDyke, Lawrence
Subject: RE: April DeBoer, et al. v. Richard Snyder, et al., No. 14-1341

I agree that we DO JOIN this brief.

Tim Fox
Attorney General
State of Montana
215 N. Sanders Street
Helena, MT 59601
Tel.: 406-444-2026
Fax: 406-444-3549
E-Mail: timfox@mt.gov
Website: www.doj.mt.gov



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From: VanDyke, Lawrence
Sent: Tuesday, May 13, 2014 4:32 PM
To: Fox, Tim
Subject: FW: April DeBoer, et al. v. Richard Snyder, et al., No. 14-1341

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: Fisher, Tom <Tom.Fisher@atg.in.gov>
Sent: Wednesday, May 14, 2014 6:55 AM
To: VanDyke, Lawrence; Stickle, Julie
Subject: RE: April DeBoer, et al. v. Richard Snyder, et al., No. 14-1341

Got it, Lawrence, thanks much!

TMF

From: VanDyke, Lawrence [<mailto:LVanDyke@mt.gov>]
Sent: Tuesday, May 13, 2014 7:20 PM
To: Stickle, Julie
Cc: Fisher, Tom
Subject: RE: April DeBoer, et al. v. Richard Snyder, et al., No. 14-1341

Julie and Tom –

Montana would like to join this brief.

Please list our Attorney General as “Timothy C. Fox”.

General Fox’s full address, should you need it, is:

Timothy C. Fox
Attorney General of Montana
P.O. Box 201401
Helena, MT 59620-1401
406-444-2026

Please confirm our join by return email, and if you could forward a copy of the final brief once filed, we would appreciate it.

Thank you again,

Lawrence VanDyke
Solicitor General • Montana Department of Justice

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Leesa.thompson@oag.ok.gov; JMcIntosh@scag.gov; Sherri.Wald@state.sd.us; jonathan.mitchell@oag.state.tx.us;
bromano@utah.gov; vlp@wvago.gov; christopher.dodrill@wvago.gov; elbert.lin@wvago.gov; peter.michael@wyo.gov;
Jeff.Chanay@ag.ks.gov

Cc: Fisher, Tom

Subject: April DeBoer, et al. v. Richard Snyder, et al., No. 14-1341

To Amicus Contacts in Selected States:

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P.O. Box 201401
Helena, MT 59620-1401
406-444-2026

Please confirm our join by return email, and if you could forward a copy of the final brief once filed, we would appreciate it.

Thank you again,

Lawrence VanDyke
Solicitor General • Montana Department of Justice

215 N. Sanders • P.O. Box 201401
Helena, Montana 59620
T: (406) 444-3442 • F: (406) 444-3549
LVanDyke@mt.gov

From: Stickle, Julie [<mailto:Julie.Stickle@atg.in.gov>]
Sent: Tuesday, May 13, 2014 12:18 PM
To: abrasher@ago.state.al.us; [mkirkpatrick@ago.state.al.us](mailto:mkirpatrick@ago.state.al.us); joanne.grace@alaska.gov; Dave.jones@alaska.gov; paula.bickett@azag.gov; dan.domenico@state.co.us; brian.kane@ag.idaho.gov; delayne.deck@ag.idaho.gov; wiltonp@ag.state.la.us; VanDyke, Lawrence; katie.spohn@nebraska.gov; patrick.wyrick@oag.ok.gov; Leesa.thompson@oag.ok.gov; JMcIntosh@scag.gov; Sherri.Wald@state.sd.us; jonathan.mitchell@oag.state.tx.us; bromano@utah.gov; vlp@wvago.gov; christopher.dodrill@wvago.gov; elbert.lin@wvago.gov; peter.michael@wyo.gov; Jeff.Chanay@ag.ks.gov
Cc: Fisher, Tom
Subject: April DeBoer, et al. v. Richard Snyder, et al., No. 14-1341

To Amicus Contacts in Selected States:

Attached is an amicus curiae brief to be filed in the Sixth Circuit in April DeBoer, et al. v. Richard Snyder, et al., No. 14-1341.

The brief supports Defendants/Appellants as they seek reversal of a district court ruling invalidating Michigan's traditional definition of marriage. It is very similar to the ones Indiana recently filed (joined by many of your states) in the Ninth Circuit in Beverly Sevcik et al. v. Brian Sandoval, et al., No. 12-17668; in the Tenth Circuit in Derek Kitchen, et al. v. Gary Herbert, et al., No. 13-4178 and Mary Bishop, et al. v. Sally Howe Smith, et al., Nos. 14-5003, & 14-5006 and in the Fourth Circuit in Timothy Bostic, et al. v. George E. Schaefer, III, et al., No. 14-1167.

The DeBoer brief is due on Wednesday, May 14, and we can take joiners until noon that day.

If you have questions or wish to join, please contact Tom Fisher at tom.fisher@atg.in.gov.

Thanks very much for your consideration.

Julianne Stickle
Administrative Assistant to the Solicitor General
302 W. Washington Street
IGCS - Fifth Floor
Indianapolis, IN 46204
317-233-8292
317-232-7979 Fax
julie.stickle@atg.in.gov

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From: Fox, Tim
Sent: Tuesday, May 13, 2014 5:23 PM
To: VanDyke, Lawrence
Subject: RE: April DeBoer, et al. v. Richard Snyder, et al., No. 14-1341

I agree that we DO JOIN this brief.

Tim Fox
Attorney General
State of Montana
215 N. Sanders Street
Helena, MT 59601
Tel.: 406-444-2026
Fax: 406-444-3549
E-Mail: timfox@mt.gov
Website: www.doj.mt.gov



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From: VanDyke, Lawrence
Sent: Tuesday, May 13, 2014 4:32 PM
To: Fox, Tim
Subject: FW: April DeBoer, et al. v. Richard Snyder, et al., No. 14-1341

Tim – just a courtesy reminder on this. I'm not sure why they only sent it to us a day before it was due, but there is a very short fuse on this one. I wanted to point that out so we don't inadvertently blow the deadline.

Thanks!

From: VanDyke, Lawrence
Sent: Tuesday, May 13, 2014 12:48 PM
To: Fox, Tim; Mattioli, Mark; Bennion, Jon; Swanson, Cory; Barnes, John
Subject: FW: April DeBoer, et al. v. Richard Snyder, et al., No. 14-1341

- Lawrence

From: Stickle, Julie [<mailto:Julie.Stickle@atg.in.gov>]

Sent: Tuesday, May 13, 2014 12:18 PM

To: abrasher@ago.state.al.us; mkirkpatrick@ago.state.al.us; joanne.grace@alaska.gov; Dave.jones@alaska.gov; paula.bickett@azag.gov; dan.domenico@state.co.us; brian.kane@ag.idaho.gov; delayne.deck@ag.idaho.gov; wiltonp@ag.state.la.us; VanDyke, Lawrence; katie.spohn@nebraska.gov; patrick.wyrick@oag.ok.gov; Leesa.thompson@oag.ok.gov; JMcIntosh@scag.gov; Sherri.Wald@state.sd.us; jonathan.mitchell@oag.state.tx.us; bromano@utah.gov; vlp@wvago.gov; christopher.dodrigill@wvago.gov; elbert.lin@wvago.gov; peter.michael@wyo.gov; Jeff.Chanay@ag.ks.gov

Cc: Fisher, Tom

Subject: April DeBoer, et al. v. Richard Snyder, et al., No. 14-1341

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From: VanDyke, Lawrence
Sent: Monday, January 28, 2013 9:24 AM
To: 'Fisher, Tom'
Subject: RE: Amicus Brief in United States v. Windsor (U.S.) - DOMA case

Thank you!

From: Stickle, Julie [mailto:Julie.Stickle@atg.in.gov] **On Behalf Of** Fisher, Tom
Sent: Monday, January 28, 2013 9:21 AM
To: VanDyke, Lawrence
Subject: RE: Amicus Brief in United States v. Windsor (U.S.) - DOMA case

Thank you. We have added Montana to the brief. Here is a list of states for each brief:

Perry: Alabama, Alaska, Colorado, Georgia, Indiana, Montana, Nebraska, South Carolina, Texas, Wisconsin

Windsor: Alabama, Alaska, Georgia, Indiana, Montana, South Carolina, Virginia

From: VanDyke, Lawrence [mailto:LVanDyke@mt.gov]
Sent: Monday, January 28, 2013 11:13 AM
To: Fisher, Tom
Subject: FW: Amicus Brief in United States v. Windsor (U.S.) - DOMA case

Tom - Montana would like to join this brief. Please list our Attorney General as "Timothy C. Fox".

General Fox's full address, should you need it, is:

Timothy C. Fox
Attorney General of Montana
P.O. Box 201401
Helena, MT 59620-1401
Phone: 406-444-2026

Please confirm our join by return email, and if you could forward a copy of the final brief once filed, we would appreciate it.

Also, if you could provide a list of all of the other joining states at this time, for both this brief and the brief in the *Perry* case, we would appreciate it.

Sincerely,

Lawrence VanDyke
Solicitor General • Montana Department of Justice

215 N. Sanders ♦ P.O. Box 201401
Helena, Montana 59620
T: (406) 444-3442 ♦ F: (406) 444-3549
LVanDyke@mt.gov

-----Original Message-----

From: Schweitzer, Dan [<mailto:DSCHWEITZER@NAAG.ORG>]

Sent: Wednesday, January 23, 2013 11:38 AM

To: chris.coppin@cwagweb.org; paul.d.stern@maine.gov; dbahr@nd.gov; agjwmcinto@scag.gov;
pam.murphy@doj.nh.gov; eric.tabor@iowa.gov; jknorr@attorneygeneral.gov; james.layton@ago.mo.gov;
paula.bickett@azag.gov; charles.mcguigan@state.sd.us; RPartington@riag.ri.gov; crimago@saipan.com;
barbara.underwood@ag.ny.gov; Hampton, Andrea; Schweitzer, Dan; sbluestone@nmag.gov;
david.raupp@arkansasag.gov; gmorg@ago.state.ms.us; jlee@riag.ri.gov; attorney@samoatelco.com;
stephan.finkel@lps.state.nj.us; Girard.D.Lau@hawaii.gov; stevemac@ku.edu; dennis.hansen@arkansasag.gov;
drobinson@law.ga.gov; hughesafran@hotmail.com; basay@atg.state.vt.us; Mary.Williams@doj.state.or.us;
gkelley@ncdoj.gov; alanc@atg.wa.gov; alama@nmag.gov; judy.zeprun@state.ma.us; joanne.grace@alaska.gov;
jnotz@atg.state.il.us; mcgimseyr@ag.state.la.us; Gregory.Dauria@ct.gov; anne.edwards@doj.nh.gov;
tom.fisher@atg.in.gov; jwhite@ncdoj.gov; whowle@ag.nv.gov; Frances.Grunder@doj.ca.gov; mlanf@ago.state.ms.us;
ken.rosenstein@alaska.gov; allison.martin@ag.kv.gov; hpizz@ago.state.ms.us; wellsik@doj.state.wi.us;
Lee.Davidson@ksag.org; edavis@doj.vi.gov; donna.murasky@dc.gov; ssullivan@oag.state.md.us; jmaddrey@ncdoj.gov;
dspence@oag.state.md.us; wjy@wvago.gov; debbie.jourgensen@wyo.gov; Steve.Creason@atg.in.gov;
jafarshee@ago.state.al.us; andrea.silkowitz@dol.lps.state.nj.us; brian.kane@ag.idaho.gov; Richard.Dearing@ag.ny.gov;
katie.spohn@nebraska.gov; rrussell@nmag.gov; mwood@ago.state.ms.us; hunterg@atg.wa.gov;
restucciae@michigan.gov; wbrockman@oag.state.md.us; agesmith@scag.gov; susan.lee@doj.ca.gov; SG@atg.in.gov;
todd.kim@dc.gov; delayne.deck@ag.idaho.gov; dan.domenico@state.co.us; mscodro@atg.state.il.us;
heather.mcveigh@atg.in.gov; suzanne.gorman@doj.nh.gov; jbhoward@oag.state.md.us; potterkc@doj.state.wi.us;
stjohnkm@doj.state.wi.us; ed.bedrosian@state.ma.us; john.garry@ag.state.mn.us;
Barbara.Durham@myfloridalegal.com; brooke.paup@texasattorneygeneral.gov; meanssp@doj.state.wi.us;
Sherri.Wald@state.sd.us; adam.aston@texasattorneygeneral.gov; jhughes@atg.state.il.us; david.blake@state.co.us;
Segrest, Stuart; susan.britton@ag.ky.gov; john.campbell@ksag.org; jung.kim@dol.lps.state.nj.us;
dave.jones@alaska.gov; delberta.pfeifer@ksag.org; perry.zinn-rowthorn@ct.gov; mwebb@ago.state.ms.us;
barb.fehrman@ag.state.mn.us; vbeavers@ag.nv.gov; bromano@utah.gov; timothy.osterhaus@myfloridalegal.com;
kris.ailslieger@ksag.org; Alexandra.Schimmer@ohioattorneygeneral.gov; bob.fagan@msdh.state.ms.us;
Eileen.carey@state.ma.us; sean.riley@ag.ky.gov; ashley.harwel@atg.in.gov; dGetchell@oag.state.va.us;
anna.joyce@doj.state.or.us; marlene.brown@dol.lps.state.nj.us; peter.michael@wyo.gov;
diane.dewolf@myfloridalegal.com; jonathan.mitchell@oag.state.tx.us; mary.mertz@ohioattorneygeneral.gov;
sforney@attorneygeneral.gov; npeterson@law.ga.gov; jneiman@ago.state.al.us; ariel.levinson-waldman@dc.gov;
burschj@michigan.gov; Dave.Cole@azag.gov; Leesa.Thompson@oag.ok.gov; dowker@doj.state.mi.us;
lkelly@attorneygeneral.gov; frederick.nelson@ohioattorneygeneral.gov; patrick.wyrick@oag.ok.gov;
bill.young@ag.tn.gov; Black, Michael; MBrady@oag.state.va.us; Sam Peterson; abrasher@ago.state.al.us;
pamela.spang@state.ma.us; luisroman@justice.com; kguthrie@ago.state.al.us;
andy.oldham@texasattorneygeneral.gov; Jason.pleggenkuhle@ag.state.mn.us; Fred.Yarger@state.co.us;
robyn.bender@ag.ky.gov; laura-jane.weimer@state.co.us; james.adams@state.de.us; Aricka.seales@state.ma.us;
Wilton, Patricia; pamela.webster@state.de.us; VanDyke, Lawrence; christopher.dodrill@wvago.gov

To: Civil Amicus Contacts

Attached is an amicus brief prepared by Indiana in support of defendant-intervenor Bipartisan Legal Advisory Group on the merits in *United States v. Windsor*, 12-144 (U.S.) (the Defense of Marriage Act case). The brief argues that Section 3 of DOMA -- which provides that for purposes of federal law, including the provision of federal benefits, "marriage" means only a legal union between a man and a woman -- is constitutional. (The Amicus Memo is also attached.)

[Please note that an amicus memo and brief will be circulated at a later date arguing that DOMA is unconstitutional.]

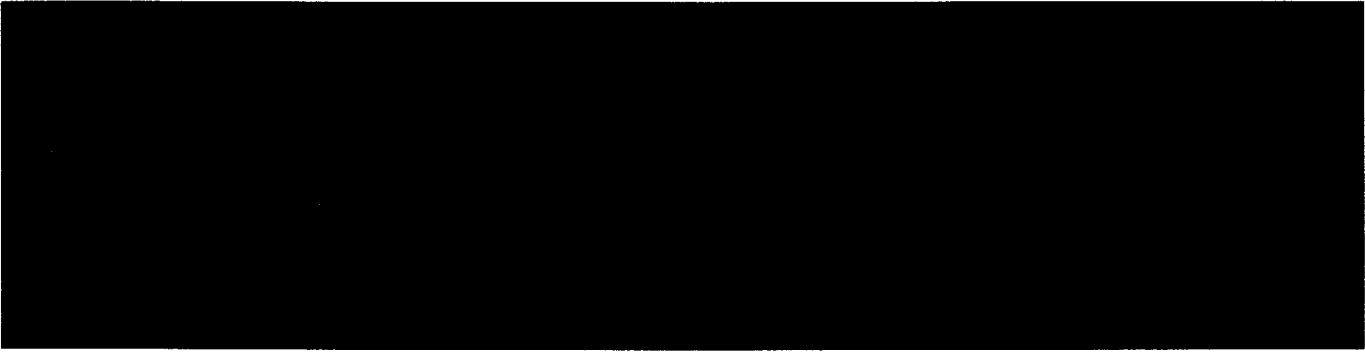
The deadline for joining the brief is January 28, 2013 at 5 pm EST. To join, you may contact:

Tom Fisher
Indiana Solicitor General
(317) 232-6255
Tom.Fisher[atg.in.gov]<mailto:Tom.Fisher[atg.in.gov]>

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From: VanDyke, Lawrence
Sent: Tuesday, April 01, 2014 11:17 AM
To: Fox, Tim
Cc: Mattioli, Mark; Bennion, Jon; Swanson, Cory; Barnes, John
Subject: FW: Timothy Bostic, et al. v. George E. Schaefer, III, et al., No. 14-1167
Attachments: Amicus Memo.doc; Bostic -Amicus brief of Indiana et al - distribution draft.pdf



From: Stickle, Julie [[mailto:Julie.Stickle\[atg.in.gov\]](mailto:Julie.Stickle[atg.in.gov])]
Sent: Tuesday, April 01, 2014 10:46 AM
To: Stickle, Julie
Cc: Fisher, Tom
Subject: Timothy Bostic, et al. v. George E. Schaefer, III, et al., No. 14-1167

To Amicus Contacts in Selected States:

Attached is an *amicus curiae* brief to be filed in the Fourth Circuit in *Timothy Bostic, et al. v. George E. Schaefer, III, et al.*, No. 14-1167.

The brief supports Defendants/Appellants as they seek reversal of a district court ruling invalidating Virginia's traditional definition of marriage under the Fourteenth Amendment. It is very similar to the ones Indiana (joined by many of your states) recently filed in the Ninth Circuit in *Beverly Sevcik et al. v. Brian Sandoval, et al.*, No. 12-17668 and in the Tenth Circuit in *Derek Kitchen, et al. v. Gary Herbert, et al.*, No. 13-4178 and *Mary Bishop, et al. v. Sally Howe Smith, et al.*, Nos. 14-5003, & 14-5006.

The *Bostic* brief is due on Friday, April 4, and we can take joiners until noon that day.

If you have questions or wish to join, please contact Tom Fisher at [tom.fisher\[atg.in.gov\]](mailto:tom.fisher[atg.in.gov]).

Thanks very much for your consideration.

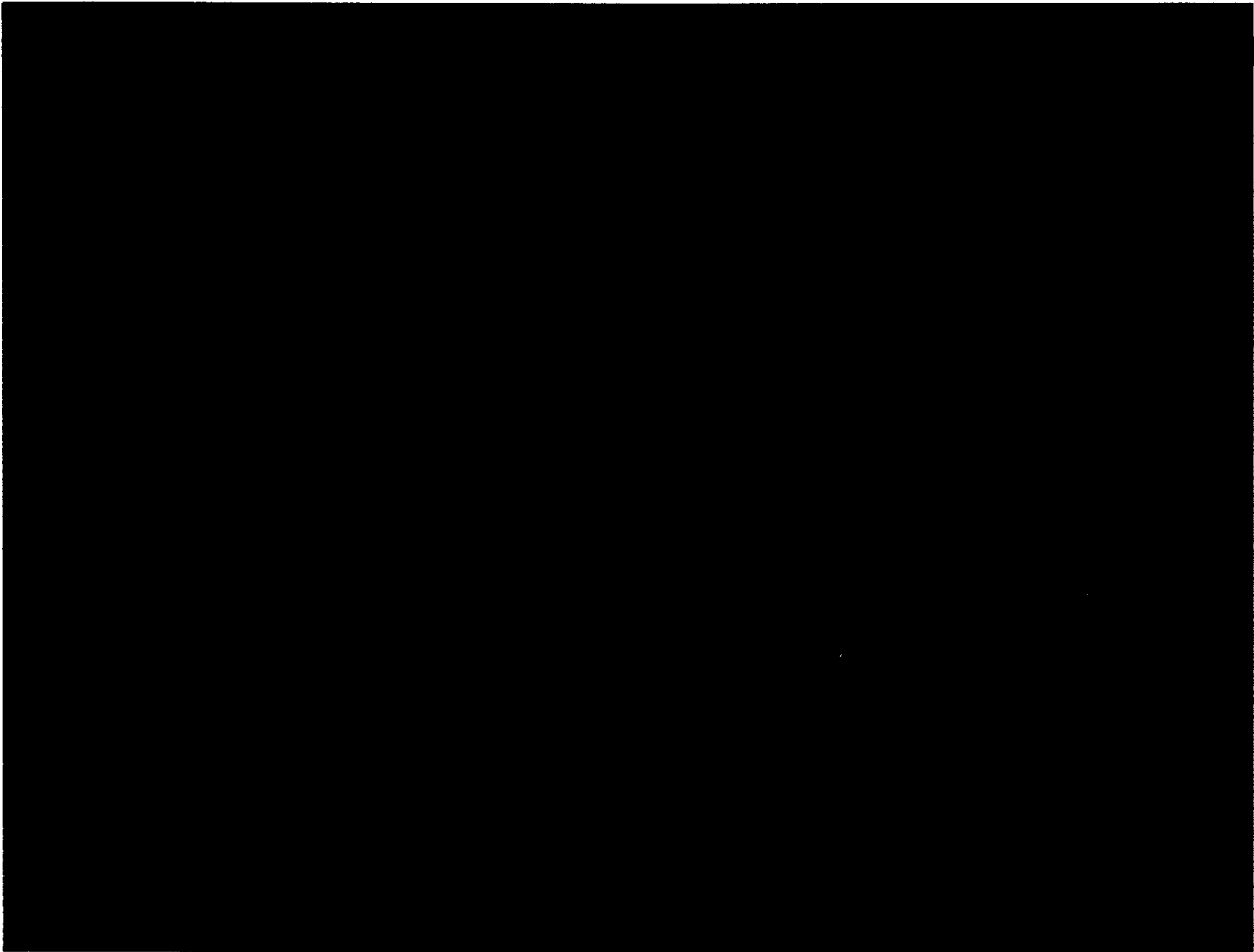
Julianne Stickle
Administrative Assistant to the Solicitor General
302 W. Washington Street
IGCS - Fifth Floor
Indianapolis, IN 46204
317-233-8292
317-232-7979 Fax

julie.stickle@atg.in.gov

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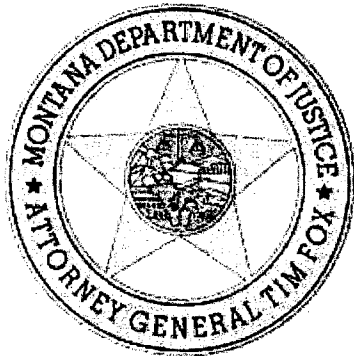
From: VanDyke, Lawrence
Sent: Friday, April 04, 2014 10:24 AM
To: Fox, Tim
Cc: Mattioli, Mark; Bennion, Jon; Swanson, Cory; Barnes, John
Subject: RE: Timothy Bostic, et al. v. George E. Schaefer, III, et al., No. 14-1167



From: Fox, Tim
Sent: Friday, April 04, 2014 9:59 AM
To: VanDyke, Lawrence
Cc: Mattioli, Mark; Bennion, Jon; Swanson, Cory; Barnes, John
Subject: RE: Timothy Bostic, et al. v. George E. Schaefer, III, et al., No. 14-1167



Attorney General
State of Montana
215 N. Sanders Street
Helena, MT 59601
Tel.: 406-444-2026
Fax: 406-444-3549
E-Mail: timfox@mt.gov
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To: Fox, Tim
Cc: Mattioli, Mark; Bennion, Jon; Swanson, Cory; Barnes, John
Subject: FW: Timothy Bostic, et al. v. George E. Schaefer, III, et al., No. 14-1167
Attachments: Amicus Memo.doc; Bostic -Amicus brief of Indiana et al - distribution draft.pdf

From: Black, Michael
Sent: Tuesday, April 01, 2014 11:30 AM
To: Mattioli, Mark
Cc: VanDyke, Lawrence; Cochenour, Matt
Subject: FW: Timothy Bostic, et al. v. George E. Schaefer, III, et al., No. 14-1167

From: Stickle, Julie [<mailto:Julie.Stickle@atg.in.gov>]
Sent: Tuesday, April 01, 2014 10:46 AM
To: Stickle, Julie
Cc: Fisher, Tom
Subject: Timothy Bostic, et al. v. George E. Schaefer, III, et al., No. 14-1167

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317-233-8292
317-232-7979 Fax
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From: VanDyke, Lawrence
Sent: Friday, April 04, 2014 10:30 AM
To: James, Julie
Cc: Barnes, John; Burton, Anastasia
Subject: FW: Timothy Bostic, et al. v. George E. Schaefer, III, et al., No. 14-1167
Attachments: RE: Timothy Bostic, et al. v. George E. Schaefer, III, et al., No. 14-1167; RE: Timothy Bostic, et al. v. George E. Schaefer, III, et al., No. 14-1167; Timothy Bostic, et al. v. George E. Schaefer, III, et al., No. 14-1167

Julie – for the binder.

John and Anastasia – this brief is in a case about the constitutionality of the traditional definition of marriage, so it is possible you might get inquiries or there may be press.

From: VanDyke, Lawrence
Sent: Friday, April 04, 2014 10:25 AM
To: 'Stickle, Julie'
Cc: Fisher, Tom
Subject: RE: Timothy Bostic, et al. v. George E. Schaefer, III, et al., No. 14-1167

Julie and Tim – Montana would like to join this brief.

Please list our Attorney General as “Timothy C. Fox”.

General Fox’s full address, should you need it, is:

Timothy C. Fox
Attorney General of Montana
P.O. Box 201401
Helena, MT 59620-1401
406-444-2026

Please confirm our join by return email, and if you could forward a copy of the final brief once filed, we would appreciate it.

Thank you again,

Lawrence VanDyke
Solicitor General ♦ Montana Department of Justice

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Helena, Montana 59620
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If you have questions or wish to join, please contact Tom Fisher at tom.fisher@atg.in.gov.

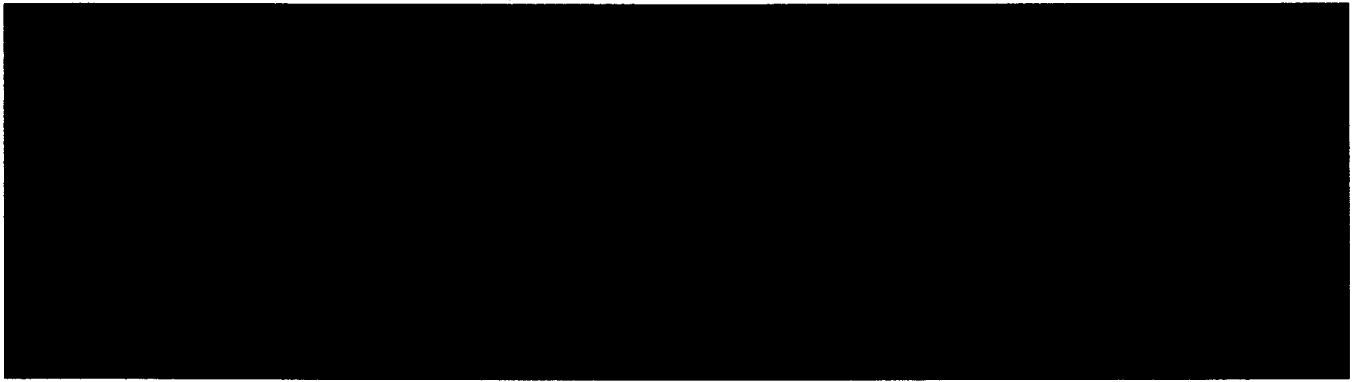
Thanks very much for your consideration.

Julianne Stickle
Administrative Assistant to the Solicitor General
302 W. Washington Street
IGCS - Fifth Floor
Indianapolis, IN 46204
317-233-8292
317-232-7979 Fax
julie.stickle@atg.in.gov

NOTICE: This communication may contain privileged or other confidential information. If you have received it in error, please advise the sender by reply email and immediately delete the message and any attachments without copying or disclosing the contents. Thank you.

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: Black, Michael
Sent: Tuesday, April 01, 2014 11:30 AM
To: Mattioli, Mark
Cc: VanDyke, Lawrence; Cochenour, Matt
Subject: FW: Timothy Bostic, et al. v. George E. Schaefer, III, et al., No. 14-1167
Attachments: Amicus Memo.doc; Bostic -Amicus brief of Indiana et al - distribution draft.pdf



From: Stickle, Julie [<mailto:Julie.Stickle@atg.in.gov>]
Sent: Tuesday, April 01, 2014 10:46 AM
To: Stickle, Julie
Cc: Fisher, Tom
Subject: Timothy Bostic, et al. v. George E. Schaefer, III, et al., No. 14-1167

To Amicus Contacts in Selected States:

Attached is an *amicus curiae* brief to be filed in the Fourth Circuit in *Timothy Bostic, et al. v. George E. Schaefer, III, et al.*, No. 14-1167.

The brief supports Defendants/Appellants as they seek reversal of a district court ruling invalidating Virginia's traditional definition of marriage under the Fourteenth Amendment. It is very similar to the ones Indiana (joined by many of your states) recently filed in the Ninth Circuit in *Beverly Sevcik et al. v. Brian Sandoval, et al.*, No. 12-17668 and in the Tenth Circuit in *Derek Kitchen, et al. v. Gary Herbert, et al.*, No. 13-4178 and *Mary Bishop, et al. v. Sally Howe Smith, et al.*, Nos. 14-5003, & 14-5006.

The *Bostic* brief is due on Friday, April 4, and we can take joiners until noon that day.

If you have questions or wish to join, please contact Tom Fisher at tom.fisher@atg.in.gov.

Thanks very much for your consideration.

Julianne Stickle
Administrative Assistant to the Solicitor General
302 W. Washington Street
IGCS - Fifth Floor
Indianapolis, IN 46204
317-233-8292

317-232-7979 Fax
julie.stickle@ata.in.gov

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/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Friday, April 04, 2014 10:25 AM
To: 'Stickle, Julie'
Cc: Fisher, Tom
Subject: RE: Timothy Bostic, et al. v. George E. Schaefer, III, et al., No. 14-1167

Julie and Tim – Montana would like to join this brief.

Please list our Attorney General as "Timothy C. Fox".

General Fox's full address, should you need it, is:

Timothy C. Fox
Attorney General of Montana
P.O. Box 201401
Helena, MT 59620-1401
406-444-2026

Please confirm our join by return email, and if you could forward a copy of the final brief once filed, we would appreciate it.

Thank you again,

Lawrence VanDyke
Solicitor General ♦ Montana Department of Justice

215 N. Sanders ♦ P.O. Box 201401
Helena, Montana 59620
T: (406) 444-3442 ♦ F: (406) 444-3549
LVanDyke@mt.gov

From: Stickle, Julie [<mailto:Julie.Stickle@atg.in.gov>]
Sent: Tuesday, April 01, 2014 10:46 AM
To: Stickle, Julie
Cc: Fisher, Tom
Subject: Timothy Bostic, et al. v. George E. Schaefer, III, et al., No. 14-1167

To Amicus Contacts in Selected States:

Attached is an *amicus curiae* brief to be filed in the Fourth Circuit in *Timothy Bostic, et al. v. George E. Schaefer, III, et al.*, No. 14-1167.

The brief supports Defendants/Appellants as they seek reversal of a district court ruling invalidating Virginia's traditional definition of marriage under the Fourteenth Amendment. It is very similar to the ones Indiana (joined by many of your states) recently filed in the Ninth Circuit in *Beverly Sevcik et al. v. Brian Sandoval, et al.*, No. 12-17668 and in the Tenth Circuit in *Derek Kitchen, et al. v. Gary Herbert, et al.*, No. 13-4178 and *Mary Bishop, et al. v. Sally Howe Smith, et al.*, Nos. 14-5003, & 14-5006.

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If you have questions or wish to join, please contact Tom Fisher at tom.fisher@atg.in.gov.

Thanks very much for your consideration.

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Administrative Assistant to the Solicitor General
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IGCS - Fifth Floor
Indianapolis, IN 46204
317-233-8292
317-232-7979 Fax
julie.stickle@atg.in.gov

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/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: Fisher, Tom <Tom.Fisher@atg.in.gov>
Sent: Friday, April 04, 2014 10:26 AM
To: VanDyke, Lawrence; Stickle, Julie
Subject: RE: Timothy Bostic, et al. v. George E. Schaefer, III, et al., No. 14-1167

Outstanding, Lawrence, thanks so much!

TMF

From: VanDyke, Lawrence [<mailto:LVanDyke@mt.gov>]
Sent: Friday, April 04, 2014 12:25 PM
To: Stickle, Julie
Cc: Fisher, Tom
Subject: RE: Timothy Bostic, et al. v. George E. Schaefer, III, et al., No. 14-1167

Julie and Tim – Montana would like to join this brief.

Please list our Attorney General as “Timothy C. Fox”.

General Fox’s full address, should you need it, is:

Timothy C. Fox
Attorney General of Montana
P.O. Box 201401
Helena, MT 59620-1401
406-444-2026

Please confirm our join by return email, and if you could forward a copy of the final brief once filed, we would appreciate it.

Thank you again,

Lawrence VanDyke
Solicitor General ♦ Montana Department of Justice

215 N. Sanders ♦ P.O. Box 201401
Helena, Montana 59620
T: (406) 444-3442 ♦ F: (406) 444-3549
LVanDyke@mt.gov

From: Stickle, Julie [<mailto:Julie.Stickle@atg.in.gov>]
Sent: Tuesday, April 01, 2014 10:46 AM
To: Stickle, Julie
Cc: Fisher, Tom
Subject: Timothy Bostic, et al. v. George E. Schaefer, III, et al., No. 14-1167

To Amicus Contacts in Selected States:

Attached is an *amicus curiae* brief to be filed in the Fourth Circuit in *Timothy Bostic, et al. v. George E. Schaefer, III, et al.*, No. 14-1167.

The brief supports Defendants/Appellants as they seek reversal of a district court ruling invalidating Virginia's traditional definition of marriage under the Fourteenth Amendment. It is very similar to the ones Indiana (joined by many of your states) recently filed in the Ninth Circuit in *Beverly Sevcik et al. v. Brian Sandoval, et al.*, No. 12-17668 and in the Tenth Circuit in *Derek Kitchen, et al. v. Gary Herbert, et al.*, No. 13-4178 and *Mary Bishop, et al. v. Sally Howe Smith, et al.*, Nos. 14-5003, & 14-5006.

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/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Monday, March 24, 2014 9:45 AM
To: Fox, Tim; Mattioli, Mark
Cc: Bennion, Jon; Swanson, Cory; Barnes, John
Subject: FW: Amicus Memo in Mount Soledad Memorial Association v. Trunk (U.S.) - Cert stage
Attachments: 2014 NAAG memo.pdf

Tim - Texas is asking us to join their cert-stage amicus brief supporting the Mount Soledad Memorial Association in asking the Court to grant cert. **I recommend that we DO JOIN this cert petition.** The deadline for joining is effectively Friday, April 4th.

This case involves the Ninth Circuit ruling that a cross veterans memorial near San Diego violates the Establishment Clause. After the Ninth Circuit issued that ruling some time ago, the parties sought cert and Montana joined a multi-state cert-stage amicus brief urging the Court to grant cert. There were still some unresolved issues in the case, though. The Court denied cert but Justice Alito issued an opinion stating that this case presents important and timely questions, but that it would be better reviewed after it had a final judgment. The case went back down to the district court, which, consistent with the Ninth Circuit decision, issued final judgment against the cross. The parties are now asking the Court to grant cert directly from the district court decision, since the prior Ninth Circuit decision makes appeal to the Ninth Circuit fruitless.

This case presents the same type of establishment clause questions presented in Town of Greece, Elmbrook School District, the earlier iteration of this case, and other cert-stage amicus briefs we've joined. So I recommend we join this one too.

Thanks.

-----Original Message-----

From: Schweitzer, Dan [<mailto:DSCHWEITZER@NAAG.ORG>]
Sent: Friday, March 21, 2014 8:04 AM
To:
Subject: Amicus Memo in Mount Soledad Memorial Association v. Trunk (U.S.) - Cert stage

To: Civil Amicus Contacts
From: Adam Aston, Principal Deputy Solicitor General, Texas

The Mount Soledad Memorial Association has filed a petition for writ of certiorari before judgment to the Ninth Circuit in Mount Soledad Memorial Association v. Trunk, et al., No. 13-1061, a case involving an Establishment Clause challenge to the inclusion of a cross in a veterans memorial that has stood for decades near San Diego, California. The States' amicus brief supporting this cert petition will argue that this case presents an appropriate vehicle for the Supreme Court to provide much-needed clarity to the Court's Establishment Clause jurisprudence.

The need for clarity in that jurisprudence is an issue upon which a large group of States have found agreement. Twenty-Nine States have joined one or more recent amicus briefs urging the Supreme Court to take up that question (City of San Diego, et al. v. Trunk, No. 11-998; Elmbrook School District v. Doe, No. 12-755; and Town of Greece v. Galloway, No. 12-696): Alabama, Alaska, Arizona, Arkansas, Colorado, Florida, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Montana, Nebraska, New Hampshire, New Mexico, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, West Virginia, and Wisconsin.

Dan Schweitzer
Supreme Court Counsel
National Association of Attorneys General
2030 M Street, NW, 8th Floor
Washington, DC 20036
(202) 326-6010
(202) 785-0410 - fax
dschweitzer@naag.org<mailto:dschweitzer@naag.org>

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Monday, March 31, 2014 3:18 PM
To: Aston, Adam (adam.aston@texasattorneygeneral.gov)
Subject: FW: Amicus Brief in Mount Soledad Memorial Association v. Trunk (U.S.) - Cert stage
Attachments: Mt.Soledad_NAAGdraft.pdf

Just a reminder, Adam, that Montana would like to join this brief.

Thank you,

Lawrence

-----Original Message-----

From: Schweitzer, Dan [mailto:DSCHWEITZER@NAAG.ORG]
Sent: Monday, March 31, 2014 3:05 PM
To: ccoppin@nmag.gov; paul.d.stern@maine.gov; dbahr@nd.gov; peter.sacks@ago.state.ma.us; kmunro@ag.nv.gov; JMcIntosh@scag.gov; pam.murphy@doj.nh.gov; eric.tabor@iowa.gov; jknorr@attorneygeneral.gov; margaret.chapple@ct.gov; james.layton@ago.mo.gov; paula.bickett@azag.gov; charles.mcguigan@state.sd.us; RPartington@riag.ri.gov; crimago@saipan.com; Edward.Dumont@doj.ca.gov; barbara.underwood@ag.ny.gov; Hampton, Andrea; Schweitzer, Dan; sbluestone@nmag.gov; david.raupp@arkansasag.gov; gmorg@ago.state.ms.us; jlee@riag.ri.gov; attorney@samoatelco.com; stephan.finkel@lps.state.nj.us; Girard.D.Lau@hawaii.gov; stevemac@ku.edu; basay@atg.state.vt.us; fred.boss@doj.state.or.us; gkelley@ncdoj.gov; alanc@atg.wa.gov; Joe.Whalen@ag.tn.gov; alama@nmag.gov; judy.zeprun@state.ma.us; robert.ellman@azag.gov; joanne.grace@alaska.gov; jnotz@atg.state.il.us; Gregory.Dauria@ct.gov; anne.edwards@doj.nh.gov; tom.fisher@atg.in.gov; jwhite@ncdoj.gov; whowle@ag.nv.gov; Frances.Grunder@doj.ca.gov; mlanf@ago.state.ms.us; ken.rosenstein@alaska.gov; allison.martin@ag.ky.gov; gibsoncj@doj.state.wi.us; hpizz@ago.state.ms.us; wellslk@doj.state.wi.us; Lee.Davidson@ag.ks.gov; edavis@doj.vi.gov; ssullivan@oag.state.md.us; jmaddrey@ncdoj.gov; dspence@oag.state.md.us; vicki.l.pendell@wvago.gov; sraphael@oag.state.va.us; judy.mitchell@wyo.gov; Steve.Creason@atg.in.gov; andrea.silkowitz@dol.lps.state.nj.us; brian.kane@ag.idaho.gov; Richard.Dearing@ag.ny.gov; katie.spohn@nebraska.gov; rrussell@nmag.gov; mwood@ago.state.ms.us; restucciae@michigan.gov; wbrockman@oag.state.md.us; agesmith@scag.gov; susan.lee@doj.ca.gov; todd.kim@dc.gov; delayne.deck@ag.idaho.gov; dan.domenico@state.co.us; heather.mcveigh@atg.in.gov; suzanne.gorman@doj.nh.gov; jbhoward@oag.state.md.us; potterkc@doj.state.wi.us; stjohnm@doj.state.wi.us; ed.bedrosian@state.ma.us; john.garry@ag.state.mn.us; brooke.paup@texasattorneygeneral.gov; appeals@ohioattorneygeneral.gov; Sherri.Wald@state.sd.us; adam.aston@texasattorneygeneral.gov; jhughes@atg.state.il.us; david.blake@state.co.us; Segrest, Stuart; susan.britton@ag.ky.gov; janell.hafner@alaska.gov; john.campbell@ag.ks.gov; jung.kim@dol.lps.state.nj.us; delberta.pfeifer@ag.ks.gov; perry.zinn-rowthorn@ct.gov; jfishburn@ag.nv.gov; mwebb@ago.state.ms.us; barb.fehrman@ag.state.mn.us; vbeavers@ag.nv.gov; bromano@utah.gov; kris.aillsliager@ag.ks.gov; david.curran@arkansasag.gov; bob.fagan@msdh.state.ms.us; sean.riley@ag.ky.gov; ashley.harwel@atg.in.gov; anna.joyce@doj.state.or.us; marlene.brown@dol.lps.state.nj.us; diane.dewolf@myfloridalegal.com; jonathan.mitchell@oag.state.tx.us; mary.mertz@ohioattorneygeneral.gov; sforney@attorneygeneral.gov; npeterson@law.ga.gov; ariel.levinson-waldman@dc.gov; Leesa.Thompson@oag.ok.gov; dowkerc@michigan.gov; frederick.nelson@ohioattorneygeneral.gov; patrick.wyrick@oag.ok.gov; Black, Michael; steven.wu@ag.ny.gov; Sam Peterson; abrasher@ago.state.al.us; andy.oldham@texasattorneygeneral.gov; michael.hendershot@ohioattorneygeneral.gov; jeffrey.thompson@iowa.gov; robyn.bender@ag.ky.gov; laura-jane.weimer@state.co.us; james.adams@state.de.us; Aricka.seales@state.ma.us; wiltonp@ag.state.la.us; lindstroma@michigan.gov; VanDyke, Lawrence; allen.winsor@myfloridalegal.com; christopher.dodrill@wvago.gov; marmercado@justicia.pr.gov; elbert.lin@wvago.gov; Mary.McTaggart@state.de.us; Sarah.Greenwalt@oag.ok.gov;

Michael.Francisco@state.co.us; Eric.Murphy@ohioattorneygeneral.gov; john.knepper@wyo.gov; mkirkpatrick@ago.state.al.us; craig.konnoth@doj.ca.gov; lkillough@ago.state.al.us; Loren.AliKhan@dc.gov; lenningtondp@doj.state.wi.us; jacob.campion@ag.state.mn.us; Schlichting, Melissa; Osvaldo.Vazquez@myfloridalegal.com; Michael.Casper@doj.state.or.us; deidra.shannon@doj.ca.gov; tcox@oag.state.va.us; cshapiro@atg.state.il.us; ktaylor@oag.state.va.us; whelanmf@doj.state.wi.us; samuelsonc@doj.state.wi.us
Subject: Amicus Brief in Mount Soledad Memorial Association v. Trunk (U.S.) - Cert stage

To: Civil Amicus Contacts

Attached is the draft amicus brief Texas has prepared in support of the cert petition filed by The Mount Soledad Memorial Association in Mount Soledad Memorial Association v. Trunk, 13-1061 (U.S.). The case involves an Establishment Clause challenge to the inclusion of a cross in a veterans memorial that has stood for decades near San Diego, California.

The sign-on deadline is next Monday (April 7) at 10:00 am (central). To join, you may contact:

Adam W. Aston
Principal Deputy Solicitor General
Phone: 512 936-0596
Fax number: 512 474-2697
Email: adam.aston@texasattorneygeneral.gov

-----Original Message-----

From: Schweitzer, Dan [mailto:DSCHWEITZER@NAAG.ORG]
Sent: Friday, March 21, 2014 9:04 AM
Subject: Amicus Memo in Mount Soledad Memorial Association v. Trunk (U.S.) - Cert stage

To: Civil Amicus Contacts
From: Adam Aston, Principal Deputy Solicitor General, Texas

The Mount Soledad Memorial Association has filed a petition for writ of certiorari before judgment to the Ninth Circuit in Mount Soledad Memorial Association v. Trunk, et al., No. 13-1061, a case involving an Establishment Clause challenge to the inclusion of a cross in a veterans memorial that has stood for decades near San Diego, California. The States' amicus brief supporting this cert petition will argue that this case presents an appropriate vehicle for the Supreme Court to provide much-needed clarity to the Court's Establishment Clause jurisprudence.

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Dan Schweitzer

Supreme Court Counsel
National Association of Attorneys General
2030 M Street, NW, 8th Floor
Washington, DC 20036
(202) 326-6010
(202) 785-0410 - fax
dschweitzer@naag.org<mailto:dschweitzer@naag.org>

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Monday, April 07, 2014 3:30 PM
To: James, Julie
Cc: Barnes, John; Burton, Anastasia
Subject: FW: 13-1061; Mt. Soledad Memorial Association v. Steve Trunk, et al.
Attachments: 13-1061_Mt. Soledad_State of Tx, et al. Amicus Brief_Final.pdf

FYI – For the binder. Thank you!

From: Rosales, Sylvia [<mailto:sylvia.rosales@texasattorneygeneral.gov>]
Sent: Monday, April 07, 2014 3:14 PM
To: delayne.deck@ag.idaho.gov; Dan.Domenico@state.co.us; ashley.harwel@atg.in.gov; VanDyke, Lawrence; Delberta.Pfeifer@ag.ks.gov; eric.murphy@ohioattorneygeneral.gov; ESmith@scag.gov; MWEBB@ago.state.ms.us; dbahr@nd.gov; Lynell.Erickson@state.sd.us; Misha.Tseytlin@wvago.gov; janell.hafner@alaska.gov; ABrasher@ago.state.al.us; leesa.thompson@oag.ok.gov; allen.winsor@myfloridalegal.com; RestucciaE@michigan.gov; wellsik@DOJ.STATE.WI.US; Katie.Spohn@nebraska.gov
Cc: Aston, Adam
Subject: 13-1061; Mt. Soledad Memorial Association v. Steve Trunk, et al.

Please see the attached brief of the State of Texas, et al. as Amici Curiae in Support of Petitioner, which is being filed today in the U.S. Supreme Court.

Thank you.

Sylvia Rosales
Legal Secretary for
Adam Aston
(512) 936-1821

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: Schweitzer, Dan <DSCHWEITZER@NAAG.ORG>
Sent: Friday, March 21, 2014 8:04 AM
To: ccoppin@nmag.gov; paul.d.stern@maine.gov; dbahr@nd.gov; peter.sacks@ago.state.ma.us; kmunro@ag.nv.gov; JMcIntosh@scag.gov; pam.murphy@doj.nh.gov; eric.tabor@iowa.gov; jknorr@attorneygeneral.gov; margaret.chapple@ct.gov; james.layton@ago.mo.gov; paula.bickett@azag.gov; charles.mcguigan@state.sd.us; RPartington@riag.ri.gov; crimago@saipan.com; Edward.Dumont@doj.ca.gov; barbara.underwood@ag.ny.gov; Hampton, Andrea; Schweitzer, Dan; sbluestone@nmag.gov; david.raupp@arkansasag.gov; gmorg@ago.state.ms.us; jlee@riag.ri.gov; attorney@samoatelco.com; stephan.finkel@lps.state.nj.us; Girard.D.Lau@hawaii.gov; stevemac@ku.edu; basay@atg.state.vt.us; fred.boss@doj.state.or.us; gkelley@ncdoj.gov; alanc@atg.wa.gov; Joe.Whalen@ag.tn.gov; alama@nmag.gov; judy.zeprun@state.ma.us; robert.ellman@azag.gov; joanne.grace@alaska.gov; jnotz@atg.state.il.us; Gregory.Dauria@ct.gov; anne.edwards@doj.nh.gov; tom.fisher@atg.in.gov; jwhite@ncdoj.gov; whowle@ag.nv.gov; Frances.Grunder@doj.ca.gov; mlanf@ago.state.ms.us; ken.rosenstein@alaska.gov; allison.martin@ag.ky.gov; gibsoncj@doj.state.wi.us; hpizz@ago.state.ms.us; wellslk@doj.state.wi.us; Lee.Davidson@ag.ks.gov; edavis@doj.vi.gov; ssullivan@oag.state.md.us; jmaddrey@ncdoj.gov; dspence@oag.state.md.us; vicki.l.pendell@wvago.gov; sraphael@oag.state.va.us; judy.mitchell@wyo.gov; Steve.Creaseon@atg.in.gov; andrea.silkowitz@dol.lps.state.nj.us; brian.kane@ag.idaho.gov; Richard.Dearing@ag.ny.gov; katie.spohn@nebraska.gov; rrusell@nmag.gov; mwood@ago.state.ms.us; restucciae@michigan.gov; wbrockman@oag.state.md.us; agesmith@scag.gov; susan.lee@doj.ca.gov; todd.kim@dc.gov; delayne.deck@ag.idaho.gov; dan.domenico@state.co.us; heather.mcveigh@atg.in.gov; suzanne.gorman@doj.nh.gov; jbhoward@oag.state.md.us; potterkc@doj.state.wi.us; stjohnm@doj.state.wi.us; ed.bedrosian@state.ma.us; john.garry@ag.state.mn.us; brooke.paup@texasattorneygeneral.gov; appeals@ohioattorneygeneral.gov; Sherri.Wald@state.sd.us; adam.aston@texasattorneygeneral.gov; jhughes@atg.state.il.us; david.blake@state.co.us; Segrest, Stuart; susan.britton@ag.ky.gov; janell.hafner@alaska.gov; john.campbell@ag.ks.gov; jung.kim@dol.lps.state.nj.us; delberta.pfeifer@ag.ks.gov; perry.zinn-rowthorn@ct.gov; jfishburn@ag.nv.gov; mwebb@ago.state.ms.us; barb.fehrman@ag.state.mn.us; vbeavers@ag.nv.gov; bromano@utah.gov; kris.ailsliieger@ag.ks.gov; david.curran@arkansasag.gov; bob.fagan@msdh.state.ms.us; sean.riley@ag.ky.gov; ashley.harwel@atg.in.gov; anna.joyce@doj.state.or.us; marlene.brown@dol.lps.state.nj.us; diane.dewolf@myfloridalegal.com; jonathan.mitchell@oag.state.tx.us; mary.mertz@ohioattorneygeneral.gov; sforney@attorneygeneral.gov; npeterson@law.ga.gov; ariel.levinson-waldman@dc.gov; Leesa.Thompson@oag.ok.gov; dowkerc@michigan.gov; frederick.nelson@ohioattorneygeneral.gov; patrick.wyrick@oag.ok.gov; Black, Michael; steven.wu@ag.ny.gov; Sam Peterson; abrasher@ago.state.al.us; andy.oldham@texasattorneygeneral.gov; michael.hendershot@ohioattorneygeneral.gov; jeffrey.thompson@iowa.gov; robyn.bender@ag.ky.gov; laura-jane.weimer@state.co.us; james.adams@state.de.us; Aricka.seales@state.ma.us; wiltontp@ag.state.la.us; lindstroma@michigan.gov; VanDyke, Lawrence; allen.winsor@myfloridalegal.com; christopher.doddrill@wvago.gov; marmercado@justicia.pr.gov; elbert.lin@wvago.gov; Mary.McTaggart@state.de.us; Sarah.Greenwalt@oag.ok.gov; Michael.Franco@state.co.us;

To: Eric.Murphy@ohioattorneygeneral.gov; john.knepper@wyo.gov;
mkirkpatrick@ago.state.al.us; craig.konnoth@doj.ca.gov; lkillough@ago.state.al.us;
Loren.AliKhan@dc.gov; lenningtondp@doj.state.wi.us; jacob.campion@ag.state.mn.us;
Schlichting, Melissa; Osvaldo.Vazquez@myfloridalegal.com;
Michael.Casper@doj.state.or.us; deidra.shannon@doj.ca.gov; tcox@oag.state.va.us;
cshapiro@atg.state.il.us

Subject: Amicus Memo in Mount Soledad Memorial Association v. Trunk (U.S.) - Cert stage

Attachments: 2014 NAAG memo.pdf

To: Civil Amicus Contacts
From: Adam Aston, Principal Deputy Solicitor General, Texas

The Mount Soledad Memorial Association has filed a petition for writ of certiorari before judgment to the Ninth Circuit in Mount Soledad Memorial Association v. Trunk, et al., No. 13-1061, a case involving an Establishment Clause challenge to the inclusion of a cross in a veterans memorial that has stood for decades near San Diego, California. The States' amicus brief supporting this cert petition will argue that this case presents an appropriate vehicle for the Supreme Court to provide much-needed clarity to the Court's Establishment Clause jurisprudence.

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Dan Schweitzer
Supreme Court Counsel
National Association of Attorneys General
2030 M Street, NW, 8th Floor
Washington, DC 20036
(202) 326-6010
(202) 785-0410 - fax
dschweitzer@naag.org<mailto:dschweitzer@naag.org>

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Monday, March 31, 2014 3:18 PM
To: Aston, Adam (adam.aston@texasattorneygeneral.gov)
Subject: FW: Amicus Brief in Mount Soledad Memorial Association v. Trunk (U.S.) - Cert stage
Attachments: Mt.Soledad_NAAGdraft.pdf

Just a reminder, Adam, that Montana would like to join this brief.

Thank you,

Lawrence

-----Original Message-----

From: Schweitzer, Dan [mailto:DSCHWEITZER@NAAG.ORG]
Sent: Monday, March 31, 2014 3:05 PM
To: ccoppin@nmag.gov; paul.d.stern@maine.gov; dbahr@nd.gov; peter.sacks@ago.state.ma.us; kmunro@ag.nv.gov; JMclintosh@scag.gov; pam.murphy@doj.nh.gov; eric.tabor@iowa.gov; jknorr@attorneygeneral.gov; margaret.chapple@ct.gov; james.layton@ago.mo.gov; paula.bickett@azag.gov; charles.mcguigan@state.sd.us; RPartington@riag.ri.gov; crimago@saipan.com; Edward.Dumont@doj.ca.gov; barbara.underwood@ag.ny.gov; Hampton, Andrea; Schweitzer, Dan; sbluestone@nmag.gov; david.raupp@arkansasag.gov; gmorg@ago.state.ms.us; jlee@riag.ri.gov; attorney@samoatelco.com; stephan.finkel@lps.state.nj.us; Girard.D.Lau@hawaii.gov; stevemac@ku.edu; basay@atg.state.vt.us; fred.boss@doj.state.or.us; gkelley@ncdoj.gov; alanc@atg.wa.gov; Joe.Whalen@ag.tn.gov; alama@nmag.gov; judy.zeprun@state.ma.us; robert.ellman@azag.gov; joanne.grace@alaska.gov; jnotz@atg.state.il.us; Gregory.Dauria@ct.gov; anne.edwards@doj.nh.gov; tom.fisher@atg.in.gov; jwhite@ncdoj.gov; howle@ag.nv.gov; Frances.Grunder@doj.ca.gov; mlanf@ago.state.ms.us; ken.rosenstein@alaska.gov; allison.martin@ag.ky.gov; gibsoncj@doj.state.wi.us; hpizz@ago.state.ms.us; wellsik@doj.state.wi.us; Lee.Davidson@ag.ks.gov; edavis@doj.vi.gov; ssullivan@oag.state.md.us; jmaddrey@ncdoj.gov; dspence@oag.state.md.us; vicki.l.pendell@wvago.gov; sraphael@oag.state.va.us; judy.mitchell@wyo.gov; Steve.Creason@atg.in.gov; andrea.silkowitz@dol.lps.state.nj.us; brian.kane@ag.idaho.gov; Richard.Dearing@ag.ny.gov; katie.spohn@nebraska.gov; rrussell@nmag.gov; mwood@ago.state.ms.us; restucciae@michigan.gov; wbrockman@oag.state.md.us; agesmith@scag.gov; susan.lee@doj.ca.gov; todd.kim@dc.gov; delayne.deck@ag.idaho.gov; dan.domenico@state.co.us; heather.mcveigh@atg.in.gov; suzanne.gorman@doj.nh.gov; jbhoward@oag.state.md.us; potterkc@doj.state.wi.us; stjohnkm@doj.state.wi.us; ed.bedrosian@state.ma.us; john.garry@ag.state.mn.us; brooke.paup@texasattorneygeneral.gov; appeals@ohioattorneygeneral.gov; Sherri.Wald@state.sd.us; adam.aston@texasattorneygeneral.gov; jhughes@atg.state.il.us; david.blake@state.co.us; Segrest, Stuart; susan.britton@ag.ky.gov; janell.hafner@alaska.gov; john.campbell@ag.ks.gov; jung.kim@dol.lps.state.nj.us; delberta.pfeifer@ag.ks.gov; perry.zinn-rowthorn@ct.gov; jfishburn@ag.nv.gov; mwebb@ago.state.ms.us; barb.fehrman@ag.state.mn.us; vbeavers@ag.nv.gov; bromano@utah.gov; kris.aillsliieger@ag.ks.gov; david.curran@arkansasag.gov; bob.fagan@msdh.state.ms.us; sean.riley@ag.ky.gov; ashley.harwel@atg.in.gov; anna.joyce@doj.state.or.us; marlene.brown@dol.lps.state.nj.us; diane.dewolf@myfloridalegal.com; jonathan.mitchell@oag.state.tx.us; mary.mertz@ohioattorneygeneral.gov; sforney@attorneygeneral.gov; npeterson@law.ga.gov; ariel.levinson-waldman@dc.gov; Leesa.Thompson@oag.ok.gov; dowkerc@michigan.gov; frederick.nelson@ohioattorneygeneral.gov; patrick.wyrick@oag.ok.gov; Black, Michael; steven.wu@ag.ny.gov; Sam Peterson; abrasher@ago.state.al.us; andy.oldham@texasattorneygeneral.gov; michael.hendershot@ohioattorneygeneral.gov; jeffrey.thompson@iowa.gov; robyn.bender@ag.ky.gov; laura-jane.weimer@state.co.us; james.adams@state.de.us; Aricka.seales@state.ma.us; wiltonp@ag.state.la.us; lindstroma@michigan.gov; VanDyke, Lawrence; allen.winsor@myfloridalegal.com; christopher.dodrigill@wvago.gov; marmercado@justicia.pr.gov; elbert.lin@wvago.gov; Mary.McTaggart@state.de.us; Sarah.Greenwalt@oag.ok.gov;

Michael.Francisco@state.co.us; Eric.Murphy@ohioattorneygeneral.gov; john.knepper@wyo.gov;
mkirkpatrick@ago.state.al.us; craig.konnoth@doj.ca.gov; lkillough@ago.state.al.us; Loren.AliKhan@dc.gov;
lenningtondp@doj.state.wi.us; jacob.campion@ag.state.mn.us; Schlichting, Melissa;
Osvaldo.Vazquez@myfloridalegal.com; Michael.Casper@doj.state.or.us; deidra.shannon@doj.ca.gov;
tcox@oag.state.va.us; cshapiro@atg.state.il.us; ktaylor@oag.state.va.us; whelanmf@doj.state.wi.us;
samuelsontc@doj.state.wi.us

Subject: Amicus Brief in Mount Soledad Memorial Association v. Trunk (U.S.) - Cert stage

To: Civil Amicus Contacts

Attached is the draft amicus brief Texas has prepared in support of the cert petition filed by The Mount Soledad Memorial Association in Mount Soledad Memorial Association v. Trunk, 13-1061 (U.S.). The case involves an Establishment Clause challenge to the inclusion of a cross in a veterans memorial that has stood for decades near San Diego, California.

The sign-on deadline is next Monday (April 7) at 10:00 am (central). To join, you may contact:

Adam W. Aston
Principal Deputy Solicitor General
Phone: 512 936-0596
Fax number: 512 474-2697
Email: adam.aston@texasattorneygeneral.gov

-----Original Message-----

From: Schweitzer, Dan [mailto:DSCHWEITZER@NAAG.ORG]
Sent: Friday, March 21, 2014 9:04 AM
Subject: Amicus Memo in Mount Soledad Memorial Association v. Trunk (U.S.) - Cert stage

To: Civil Amicus Contacts
From: Adam Aston, Principal Deputy Solicitor General, Texas

The Mount Soledad Memorial Association has filed a petition for writ of certiorari before judgment to the Ninth Circuit in Mount Soledad Memorial Association v. Trunk, et al., No. 13-1061, a case involving an Establishment Clause challenge to the inclusion of a cross in a veterans memorial that has stood for decades near San Diego, California. The States' amicus brief supporting this cert petition will argue that this case presents an appropriate vehicle for the Supreme Court to provide much-needed clarity to the Court's Establishment Clause jurisprudence.

The need for clarity in that jurisprudence is an issue upon which a large group of States have found agreement. Twenty-Nine States have joined one or more recent amicus briefs urging the Supreme Court to take up that question (City of San Diego, et al. v. Trunk, No. 11-998; Elmbrook School District v. Doe, No. 12-755; and Town of Greece v. Galloway, No. 12-696): Alabama, Alaska, Arizona, Arkansas, Colorado, Florida, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Montana, Nebraska, New Hampshire, New Mexico, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, West Virginia, and Wisconsin.

Dan Schweitzer

Supreme Court Counsel
National Association of Attorneys General
2030 M Street, NW, 8th Floor
Washington, DC 20036
(202) 326-6010
(202) 785-0410 - fax
dschweitzer@naag.org<mailto:dschweitzer@naag.org>

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Monday, March 24, 2014 9:45 AM
To: Fox, Tim; Mattioli, Mark
Cc: Bennion, Jon; Swanson, Cory; Barnes, John
Subject: FW: Amicus Memo in Mount Soledad Memorial Association v. Trunk (U.S.) - Cert stage
Attachments: 2014 NAAG memo.pdf

Tim - Texas is asking us to join their cert-stage amicus brief supporting the Mount Soledad Memorial Association in asking the Court to grant cert. **I recommend that we DO JOIN this cert petition.** The deadline for joining is effectively Friday, April 4th.

This case involves the Ninth Circuit ruling that a cross veterans memorial near San Diego violates the Establishment Clause. After the Ninth Circuit issued that ruling some time ago, the parties sought cert and Montana joined a multi-state cert-stage amicus brief urging the Court to grant cert. There were still some unresolved issues in the case, though. The Court denied cert but Justice Alito issued an opinion stating that this case presents important and timely questions, but that it would be better reviewed after it had a final judgment. The case went back down to the district court, which, consistent with the Ninth Circuit decision, issued final judgment against the cross. The parties are now asking the Court to grant cert directly from the district court decision, since the prior Ninth Circuit decision makes appeal to the Ninth Circuit fruitless.

This case presents the same type of establishment clause questions presented in Town of Greece, Elmbrook School District, the earlier iteration of this case, and other cert-stage amicus briefs we've joined. So I recommend we join this one too.

Thanks.

-----Original Message-----

From: Schweitzer, Dan [<mailto:DSCHWEITZER@NAAG.ORG>]
Sent: Friday, March 21, 2014 8:04 AM
To:
Subject: Amicus Memo in Mount Soledad Memorial Association v. Trunk (U.S.) - Cert stage

To: Civil Amicus Contacts
From: Adam Aston, Principal Deputy Solicitor General, Texas

The Mount Soledad Memorial Association has filed a petition for writ of certiorari before judgment to the Ninth Circuit in Mount Soledad Memorial Association v. Trunk, et al., No. 13-1061, a case involving an Establishment Clause challenge to the inclusion of a cross in a veterans memorial that has stood for decades near San Diego, California. The States' amicus brief supporting this cert petition will argue that this case presents an appropriate vehicle for the Supreme Court to provide much-needed clarity to the Court's Establishment Clause jurisprudence.

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Dan Schweitzer
Supreme Court Counsel
National Association of Attorneys General
2030 M Street, NW, 8th Floor
Washington, DC 20036
(202) 326-6010
(202) 785-0410 - fax
dschweitzer@naag.org<mailto:dschweitzer@naag.org>

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Monday, March 24, 2014 12:32 PM
To: Aston, Adam (adam.aston@texasattorneygeneral.gov)
Subject: FW: Amicus Memo in Mount Soledad Memorial Association v. Trunk (U.S.) - Cert stage
Attachments: 2014 NAAG memo.pdf

Adam – I hope you are doing great. Usually I don't send our "join" emails until after I've read the draft brief, but the combination of my trust in the exceptional work your office always produces, and the fact that I'm so busy right now that I'm worried I might forget to send a join email later, causes me to just send our join now. So while I plan to look the draft over when we get it, unless you hear otherwise from me again ...

Montana would like to join this brief. Thank you for the opportunity.

Please list our Attorney General as "Timothy C. Fox".

General Fox's full address, should you need it, is:

Timothy C. Fox
Attorney General of Montana
P.O. Box 201401
Helena, MT 59620-1401
406-444-2026

Please confirm our join by return email, and if you could forward a copy of the final brief once filed, we would appreciate it.

Thank you again,

Lawrence VanDyke
Solicitor General ♦ Montana Department of Justice

215 N. Sanders ♦ P.O. Box 201401
Helena, Montana 59620
T: (406) 444-3442 ♦ F: (406) 444-3549
LVanDyke@mt.gov

-----Original Message-----

From: Schweitzer, Dan (<mailto:DSCHWEITZER@NAAG.ORG>)
Sent: Friday, March 21, 2014 8:04 AM
To:
Subject: Amicus Memo in Mount Soledad Memorial Association v. Trunk (U.S.) - Cert stage

To: Civil Amicus Contacts
From: Adam Aston, Principal Deputy Solicitor General, Texas

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Dan Schweitzer
Supreme Court Counsel
National Association of Attorneys General
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dschweitzer@naag.org<mailto:dschweitzer@naag.org>

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: Aston, Adam <adam.aston@texasattorneygeneral.gov>
Sent: Monday, March 31, 2014 3:46 PM
To: VanDyke, Lawrence
Subject: RE: Amicus Brief in Mount Soledad Memorial Association v. Trunk (U.S.) - Cert stage

Yes, General Fox is our first addition. Thanks.

-----Original Message-----

From: VanDyke, Lawrence [mailto:LVanDyke@mt.gov]
Sent: Monday, March 31, 2014 4:18 PM
To: Aston, Adam
Subject: FW: Amicus Brief in Mount Soledad Memorial Association v. Trunk (U.S.) - Cert stage

Just a reminder, Adam, that Montana would like to join this brief.

Thank you,

Lawrence

-----Original Message-----

From: Schweitzer, Dan [mailto:DSCHWEITZER@NAAG.ORG]
Sent: Monday, March 31, 2014 3:05 PM
To: ccoppin@nmag.gov; paul.d.stern@maine.gov; dbahr@nd.gov; peter.sacks@ago.state.ma.us; kmunro@ag.nv.gov; JMclIntosh@scag.gov; pam.murphy@doj.nh.gov; eric.tabor@iowa.gov; jknorr@attorneygeneral.gov; margaret.chapple@ct.gov; james.layton@ago.mo.gov; paula.bickett@azag.gov; charles.mcguigan@state.sd.us; RPartington@riag.ri.gov; crimago@saipan.com; Edward.Dumont@doj.ca.gov; barbara.underwood@ag.ny.gov; Hampton, Andrea; Schweitzer, Dan; sbluestone@nmag.gov; david.raupp@arkansasag.gov; gmorg@ago.state.ms.us; jlee@riag.ri.gov; attorney@samoatelco.com; stephan.finkel@lps.state.nj.us; Girard.D.Lau@hawaii.gov; stevemac@ku.edu; basay@atg.state.vt.us; fred.boss@doj.state.or.us; gkelley@ncdoj.gov; alanc@atg.wa.gov; Joe.Whalen@ag.tn.gov; alama@nmag.gov; judy.zeprun@state.ma.us; robert.ellman@azag.gov; joanne.grace@alaska.gov; jnotz@atg.state.il.us; Gregory.Dauria@ct.gov; anne.edwards@doj.nh.gov; tom.fisher@atg.in.gov; jwhite@ncdoj.gov; howle@ag.nv.gov; Frances.Grunder@doj.ca.gov; mlanf@ago.state.ms.us; ken.rosenstein@alaska.gov; allison.martin@ag.ky.gov; gibsoncj@doj.state.wi.us; hpizz@ago.state.ms.us; wellsik@doj.state.wi.us; Lee.Davidson@ag.ks.gov; edavis@doj.vi.gov; ssullivan@oag.state.md.us; jmaddrey@ncdoj.gov; dspence@oag.state.md.us; vicki.l.pendell@wvago.gov; sraphael@oag.state.va.us; judy.mitchell@wyo.gov; Steve.Creaseon@atg.in.gov; andrea.silkowitz@dol.lps.state.nj.us; brian.kane@ag.idaho.gov; Richard.Dearing@ag.ny.gov; katie.spohn@nebraska.gov; rrussell@nmag.gov; mwood@ago.state.ms.us; restucciae@michigan.gov; wbrockman@oag.state.md.us; agesmith@scag.gov; susan.lee@doj.ca.gov; todd.kim@dc.gov; delayne.deck@ag.idaho.gov; dan.domenico@state.co.us; heather.mcveigh@atg.in.gov; suzanne.gorman@doj.nh.gov; jbhoward@oag.state.md.us; potterkc@doj.state.wi.us; stjohnkm@doj.state.wi.us; ed.bedrosian@state.ma.us; john.garry@ag.state.mn.us; brooke.paup@texasattorneygeneral.gov; appeals@ohioattorneygeneral.gov; Sherri.Wald@state.sd.us; adam.aston@texasattorneygeneral.gov; jhughes@atg.state.il.us; david.blake@state.co.us; Segrest, Stuart; susan.britton@ag.ky.gov; janell.hafner@alaska.gov; john.campbell@ag.ks.gov; jung.kim@dol.lps.state.nj.us; delberta.pfeifer@ag.ks.gov; perry.zinn-rowthorn@ct.gov; jfishburn@ag.nv.gov; mwebb@ago.state.ms.us; barb.fehrman@ag.state.mn.us; vbeavers@ag.nv.gov; bromano@utah.gov; kris.aillslienger@ag.ks.gov; david.curran@arkansasag.gov; bob.fagan@msdh.state.ms.us; sean.riley@ag.ky.gov; ashley.harwel@atg.in.gov; anna.joyce@doj.state.or.us; marlene.brown@dol.lps.state.nj.us; diane.dewolf@myfloridalegal.com; jonathan.mitchell@oag.state.tx.us; mary.mertz@ohioattorneygeneral.gov;

sforney@attorneygeneral.gov; npeterson@law.ga.gov; ariel.levinson-waldman@dc.gov; Leesa.Thompson@oag.ok.gov; dowker@michigan.gov; frederick.nelson@ohioattorneygeneral.gov; patrick.wyrick@oag.ok.gov; Black, Michael; steven.wu@ag.ny.gov; Sam Peterson; abrasher@ago.state.al.us; andy.oldham@texasattorneygeneral.gov; michael.hendershot@ohioattorneygeneral.gov; jeffrey.thompson@iowa.gov; robyn.bender@ag.ky.gov; laura-jane.weimer@state.co.us; james.adams@state.de.us; Aricka.seales@state.ma.us; wiltonp@ag.state.la.us; lindstroma@michigan.gov; VanDyke, Lawrence; allen.winsor@myfloridalegal.com; christopher.dodrill@wvago.gov; marmercado@justicia.pr.gov; elbert.lin@wvago.gov; Mary.McTaggart@state.de.us; Sarah.Greenwalt@oag.ok.gov; Michael.Franisco@state.co.us; Eric.Murphy@ohioattorneygeneral.gov; john.knepper@wyo.gov; mkirkpatrick@ago.state.al.us; craig.konnoth@doj.ca.gov; lkillough@ago.state.al.us; Loren.AliKhan@dc.gov; lenningtondp@doj.state.wi.us; jacob.campion@ag.state.mn.us; Schlichting, Melissa; Osvaldo.Vazquez@myfloridalegal.com; Michael.Casper@doj.state.or.us; deidra.shannon@doj.ca.gov; tcox@oag.state.va.us; cshapiro@atg.state.il.us; ktaylor@oag.state.va.us; whelanmf@doj.state.wi.us; samuelsonc@doj.state.wi.us

Subject: Amicus Brief in Mount Soledad Memorial Association v. Trunk (U.S.) - Cert stage

To: Civil Amicus Contacts

Attached is the draft amicus brief Texas has prepared in support of the cert petition filed by The Mount Soledad Memorial Association in Mount Soledad Memorial Association v. Trunk, 13-1061 (U.S.). The case involves an Establishment Clause challenge to the inclusion of a cross in a veterans memorial that has stood for decades near San Diego, California.

The sign-on deadline is next Monday (April 7) at 10:00 am (central). To join, you may contact:

Adam W. Aston
Principal Deputy Solicitor General
Phone: 512 936-0596
Fax number: 512 474-2697
Email: adam.aston@texasattorneygeneral.gov

-----Original Message-----

From: Schweitzer, Dan [mailto:DSCHWEITZER@NAAG.ORG]
Sent: Friday, March 21, 2014 9:04 AM
Subject: Amicus Memo in Mount Soledad Memorial Association v. Trunk (U.S.) - Cert stage

To: Civil Amicus Contacts
From: Adam Aston, Principal Deputy Solicitor General, Texas

The Mount Soledad Memorial Association has filed a petition for writ of certiorari before judgment to the Ninth Circuit in Mount Soledad Memorial Association v. Trunk, et al., No. 13-1061, a case involving an Establishment Clause challenge to the inclusion of a cross in a veterans memorial that has stood for decades near San Diego, California. The States' amicus brief supporting this cert petition will argue that this case presents an appropriate vehicle for the Supreme Court to provide much-needed clarity to the Court's Establishment Clause jurisprudence.

The need for clarity in that jurisprudence is an issue upon which a large group of States have found agreement. Twenty-Nine States have joined one or more recent amicus briefs urging the Supreme Court to take up that question (City of San Diego, et al. v. Trunk, No. 11-998; Elmbrook School District v. Doe, No. 12-755; and Town of Greece v. Galloway, No. 12-696): Alabama, Alaska, Arizona, Arkansas, Colorado, Florida, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Montana, Nebraska, New Hampshire, New Mexico, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, West Virginia, and Wisconsin.

Dan Schweitzer
Supreme Court Counsel
National Association of Attorneys General
2030 M Street, NW, 8th Floor
Washington, DC 20036
(202) 326-6010
(202) 785-0410 - fax
dschweitzer@naag.org<mailto:dschweitzer@naag.org>

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: Aston, Adam <adam.aston@texasattorneygeneral.gov>
Sent: Friday, April 04, 2014 10:57 AM
To: Schweitzer, Dan; ccoppin@nmag.gov; paul.d.stern@maine.gov; dbahr@nd.gov; peter.sacks@ago.state.ma.us; kmunro@ag.nv.gov; JMcIntosh@scag.gov; pam.murphy@doj.nh.gov; eric.tabor@iowa.gov; jknorr@attorneygeneral.gov; margaret.chapple@ct.gov; james.layton@ago.mo.gov; paula.bickett@azag.gov; charles.mcguigan@state.sd.us; RPartington@riag.ri.gov; crimago@saipan.com; Edward.Dumont@doj.ca.gov; barbara.underwood@ag.ny.gov; Hampton, Andrea; sbluestone@nmag.gov; david.raupp@arkansasag.gov; gmorg@ago.state.ms.us; jlee@riag.ri.gov; attorney@samoatelco.com; stephan.finkel@lps.state.nj.us; Girard.D.Lau@hawaii.gov; stevemac@ku.edu; basay@atg.state.vt.us; fred.boss@doj.state.or.us; gkelley@ncdoj.gov; alanc@atg.wa.gov; Joe.Whalen@ag.tn.gov; alama@nmag.gov; judy.zeprun@state.ma.us; robert.ellman@azag.gov; joanne.grace@alaska.gov; jnotz@atg.state.il.us; Gregory.Dauria@ct.gov; anne.edwards@doj.nh.gov; tom.fisher@atg.in.gov; jwhite@ncdoj.gov; whowle@ag.nv.gov; Frances.Grunder@doj.ca.gov; mlanf@ago.state.ms.us; ken.rosenstein@alaska.gov; allison.martin@ag.ky.gov; gibsoncj@doj.state.wi.us; hpizz@ago.state.ms.us; wellsik@doj.state.wi.us; Lee.Davidson@ag.ks.gov; edavis@doj.vi.gov; ssullivan@oag.state.md.us; jmaddrey@ncdoj.gov; dspence@oag.state.md.us; vicki.l.pendell@wvago.gov; sraphael@oag.state.va.us; judy.mitchell@wyo.gov; Steve.Creason@atg.in.gov; andrea.silkowitz@dol.lps.state.nj.us; brian.kane@ag.idaho.gov; Richard.Dearing@ag.ny.gov; katie.spohn@nebraska.gov; rrusell@nmag.gov; mwood@ago.state.ms.us; restucciae@michigan.gov; wbrockman@oag.state.md.us; agesmith@scag.gov; susan.lee@doj.ca.gov; todd.kim@dc.gov; delayne.deck@ag.idaho.gov; dan.domenico@state.co.us; heather.mcveigh@atg.in.gov; suzanne.gorman@doj.nh.gov; jbhoward@oag.state.md.us; potterkc@doj.state.wi.us; stjohnm@doj.state.wi.us; ed.bedrosian@state.ma.us; john.garry@ag.state.mn.us; Paup, Brooke; appeals@ohioattorneygeneral.gov; Sherri.Wald@state.sd.us; jhughes@atg.state.il.us; david.blake@state.co.us; Segrest, Stuart; susan.britton@ag.ky.gov; janell.hafner@alaska.gov; john.campbell@ag.ks.gov; jung.kim@dol.lps.state.nj.us; delberta.pfeifer@ag.ks.gov; perry.zinn-rowthorn@ct.gov; jfishburn@ag.nv.gov; mwebb@ago.state.ms.us; barb.fehrman@ag.state.mn.us; vbeavers@ag.nv.gov; bromano@utah.gov; kris.ailsieger@ag.ks.gov; david.curran@arkansasag.gov; bob.fagan@msdh.state.ms.us; sean.riley@ag.ky.gov; ashley.harwel@atg.in.gov; anna.joyce@doj.state.or.us; marlene.brown@dol.lps.state.nj.us; diane.dewolf@myfloridalegal.com; Mitchell, Jonathan; mary.mertz@ohioattorneygeneral.gov; sforney@attorneygeneral.gov; npeterson@law.ga.gov; ariel.levinson-waldman@dc.gov; Leesa.Thompson@oag.ok.gov; dowkerc@michigan.gov; frederick.nelson@ohioattorneygeneral.gov; patrick.wyrick@oag.ok.gov; Black, Michael; steven.wu@ag.ny.gov; Sam Peterson; abrasher@ago.state.al.us; Oldham, Andy; michael.hendershot@ohioattorneygeneral.gov; jeffrey.thompson@iowa.gov; robyn.bender@ag.ky.gov; laura-jane.weimer@state.co.us; james.adams@state.de.us; Aricka.seales@state.ma.us; wiltonp@ag.state.la.us; lindstroma@michigan.gov; VanDyke, Lawrence; allen.winsor@myfloridalegal.com; christopher.dodrigill@wvago.gov; marmercado@justicia.pr.gov; elbert.lin@wvago.gov; Mary.McTaggart@state.de.us; Sarah.Greenwalt@oag.ok.gov; Michael.Franisco@state.co.us; Eric.Murphy@ohioattorneygeneral.gov; john.knepper@wyo.gov; mkirkpatrick@ago.state.al.us; craig.konnoth@doj.ca.gov; lkillough@ago.state.al.us;

To: Loren.AliKhan@dc.gov; lenningtondp@doj.state.wi.us; jacob.campion@ag.state.mn.us; Schlichting, Melissa; Osvaldo.Vazquez@myfloridalegal.com; Michael.Casper@doj.state.or.us; deidra.shannon@doj.ca.gov; tcox@oag.state.va.us; cshapiro@atg.state.il.us; ktaylor@oag.state.va.us; whelanmf@doj.state.wi.us; samuelsontc@doj.state.wi.us

Subject: RE: Amicus Brief in Mount Soledad Memorial Association v. Trunk (U.S.) - Cert stage

Attachments: 13-1061_Amicus Brief_04-04-14.pdf

Counsel:

Good morning. Attached is an updated draft of the States' amicus brief in the Mt. Soledad case. At this time, there are 9 States on the brief:

TEXAS, INDIANA, KANSAS, MISSISSIPPI, MONTANA, NORTH DAKOTA, OHIO, SOUTH CAROLINA, AND SOUTH DAKOTA

Texas can accept sign-ons until 10:00 am (central) on Monday. Thanks for your consideration.

Adam

Adam W. Aston
Principal Deputy Solicitor General
Office of the Attorney General of Texas
P.O. Box 12548 (MC 059)
Austin, TX 78711-2548
[Tel.] (512) 936-0596
[Fax] (512) 474-2697
Adam.Aston@oag.state.tx.us

-----Original Message-----

From: Schweitzer, Dan [mailto:DSCHWEITZER@NAAG.ORG]

Sent: Monday, March 31, 2014 4:05 PM

To: ccoppin@nmag.gov; paul.d.stern@maine.gov; dbahr@nd.gov; peter.sacks@ago.state.ma.us; kmunro@ag.nv.gov; JMclntosh@scag.gov; pam.murphy@doj.nh.gov; eric.tabor@iowa.gov; jknorr@attorneygeneral.gov; margaret.chapple@ct.gov; james.layton@ago.mo.gov; paula.bickett@azag.gov; charles.mcguigan@state.sd.us; RPartington@riag.ri.gov; crimago@saipan.com; Edward.Dumont@doj.ca.gov; barbara.underwood@ag.ny.gov; Hampton, Andrea; Schweitzer, Dan; sbluestone@nmag.gov; david.raupp@arkansasag.gov; gmorg@ago.state.ms.us; jlee@riag.ri.gov; attorney@samoatelco.com; stephan.finkel@lps.state.nj.us; Girard.D.Lau@hawaii.gov; stevemac@ku.edu; basay@atg.state.vt.us; fred.boss@doj.state.or.us; gkelley@ncdoj.gov; alanc@atg.wa.gov; Joe.Whalen@ag.tn.gov; alama@nmag.gov; judy.zeprun@state.ma.us; robert.ellman@azag.gov; joanne.grace@alaska.gov; jnotz@atg.state.il.us; Gregory.Dauria@ct.gov; anne.edwards@doj.nh.gov; tom.fisher@atg.in.gov; jwhite@ncdoj.gov; whowle@ag.nv.gov; Frances.Grunder@doj.ca.gov; mlanf@ago.state.ms.us; ken.rosenstein@alaska.gov; allison.martin@ag.ky.gov; gibsoncj@doj.state.wi.us; hpizz@ago.state.ms.us; wellslk@doj.state.wi.us; Lee.Davidson@ag.ks.gov; edavis@doj.vi.gov; ssullivan@oag.state.md.us; jmaddrey@ncdoj.gov; dspence@oag.state.md.us; vicki.l.pendell@wvago.gov; sraphael@oag.state.va.us; judy.mitchell@wyo.gov; Steve.Creaseon@atg.in.gov; andrea.silkowitz@dol.lps.state.nj.us; brian.kane@ag.idaho.gov; Richard.Dearing@ag.ny.gov; katie.spohn@nebraska.gov; rrussell@nmag.gov; mwood@ago.state.ms.us; restucciae@michigan.gov; wbrockman@oag.state.md.us; agesmith@scag.gov; susan.lee@doj.ca.gov; todd.kim@dc.gov; delayne.deck@ag.idaho.gov; dan.domenico@state.co.us; heather.mcveigh@atg.in.gov; susanne.gorman@doj.nh.gov; jbhoward@oag.state.md.us; potterkc@doj.state.wi.us; stjohnkm@doj.state.wi.us; ed.bedrosian@state.ma.us; john.garry@ag.state.mn.us; Paup, Brooke; appeals@ohioattorneygeneral.gov; Sherri.Wald@state.sd.us; Aston, Adam; jhughes@atg.state.il.us; david.blake@state.co.us; ssecrest@mt.gov; susan.britton@ag.ky.gov;

janell.hafner@alaska.gov; john.campbell@ag.ks.gov; jung.kim@dol.lps.state.nj.us; delberta.pfeifer@ag.ks.gov; perry.zinn-rowthorn@ct.gov; jfishburn@ag.nv.gov; mwebb@ago.state.ms.us; barb.fehrman@ag.state.mn.us; vbeavers@ag.nv.gov; bromano@utah.gov; kris.aillsieger@ag.ks.gov; david.curran@arkansasag.gov; bob.fagan@msdh.state.ms.us; sean.riley@ag.ky.gov; ashley.harwel@atg.in.gov; anna.joyce@doj.state.or.us; marlene.brown@dol.lps.state.nj.us; diane.dewolf@myfloridalegal.com; Mitchell, Jonathan; mary.mertz@ohioattorneygeneral.gov; sforney@attorneygeneral.gov; npeterson@law.ga.gov; ariel.levinson-waldman@dc.gov; Leesa.Thompson@oag.ok.gov; dowkerc@michigan.gov; frederick.nelson@ohioattorneygeneral.gov; patrick.wyrick@oag.ok.gov; mblack2@mt.gov; steven.wu@ag.ny.gov; Sam Peterson; abrasher@ago.state.al.us; Oldham, Andy; michael.hendershot@ohioattorneygeneral.gov; jeffrey.thompson@iowa.gov; robyn.bender@ag.ky.gov; laura-jane.weimer@state.co.us; james.adams@state.de.us; Aricka.seales@state.ma.us; wiltonp@ag.state.la.us; lindstroma@michigan.gov; LVanDyke@mt.gov; allen.winsor@myfloridalegal.com; christopher.dodrigill@wvago.gov; marmercado@justicia.pr.gov; elbert.lin@wvago.gov; Mary.McTaggart@state.de.us; Sarah.Greenwalt@oag.ok.gov; Michael.Francisco@state.co.us; Eric.Murphy@ohioattorneygeneral.gov; john.knepper@wyo.gov; mkirkpatrick@ago.state.al.us; craig.konnoth@doj.ca.gov; lkillough@ago.state.al.us; Loren.AliKhan@dc.gov; lenningtondp@doj.state.wi.us; jacob.campion@ag.state.mn.us; MSchlichting@mt.gov; Osvaldo.Vazquez@myfloridalegal.com; Michael.Casper@doj.state.or.us; deidra.shannon@doj.ca.gov; tcox@oag.state.va.us; cshapiro@atg.state.il.us; ktaylor@oag.state.va.us; whelanmf@doj.state.wi.us; samuelsonstc@doj.state.wi.us

Subject: Amicus Brief in Mount Soledad Memorial Association v. Trunk (U.S.) - Cert stage

To: Civil Amicus Contacts

Attached is the draft amicus brief Texas has prepared in support of the cert petition filed by The Mount Soledad Memorial Association in Mount Soledad Memorial Association v. Trunk, 13-1061 (U.S.). The case involves an Establishment Clause challenge to the inclusion of a cross in a veterans memorial that has stood for decades near San Diego, California.

The sign-on deadline is next Monday (April 7) at 10:00 am (central). To join, you may contact:

Adam W. Aston
Principal Deputy Solicitor General
Phone: 512 936-0596
Fax number: 512 474-2697
Email: adam.aston@texasattorneygeneral.gov

-----Original Message-----

From: Schweitzer, Dan [mailto:DSCHWEITZER@NAAG.ORG]
Sent: Friday, March 21, 2014 9:04 AM
Subject: Amicus Memo in Mount Soledad Memorial Association v. Trunk (U.S.) - Cert stage

To: Civil Amicus Contacts
From: Adam Aston, Principal Deputy Solicitor General, Texas

The Mount Soledad Memorial Association has filed a petition for writ of certiorari before judgment to the Ninth Circuit in Mount Soledad Memorial Association v. Trunk, et al., No. 13-1061, a case involving an Establishment Clause challenge to the inclusion of a cross in a veterans memorial that has stood for decades near San Diego, California. The States' amicus brief supporting this cert petition will argue that this case presents an appropriate vehicle for the Supreme Court to provide much-needed clarity to the Court's Establishment Clause jurisprudence.

The need for clarity in that jurisprudence is an issue upon which a large group of States have found agreement. Twenty-Nine States have joined one or more recent amicus briefs urging the Supreme Court to take up that question (City of San Diego, et al. v. Trunk, No. 11-998; Elmbrook School District v. Doe, No. 12-755; and Town of Greece v. Galloway, No. 12-696): Alabama, Alaska, Arizona, Arkansas, Colorado, Florida, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Montana, Nebraska, New Hampshire, New Mexico, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, West Virginia, and Wisconsin.

Dan Schweitzer
Supreme Court Counsel
National Association of Attorneys General
2030 M Street, NW, 8th Floor
Washington, DC 20036
(202) 326-6010
(202) 785-0410 - fax
dschweitzer@naag.org<mailto:dschweitzer@naag.org>

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: Fox, Tim
Sent: Monday, March 24, 2014 11:51 AM
To: VanDyke, Lawrence; Mattioli, Mark
Cc: Bennion, Jon; Swanson, Cory; Barnes, John
Subject: RE: Amicus Memo in Mount Soledad Memorial Association v. Trunk (U.S.) - Cert stage

Thank you Lawrence. I agree that WE DO JOIN. Tim

Tim Fox
Attorney General
State of Montana
215 N. Sanders Street
Helena, MT 59601
Tel.: 406-444-2026
Fax: 406-444-3549
E-Mail: timfox@mt.gov
Website: www.doi.mt.gov



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From: VanDyke, Lawrence
Sent: Monday, March 24, 2014 9:45 AM
To: Fox, Tim; Mattioli, Mark
Cc: Bennion, Jon; Swanson, Cory; Barnes, John
Subject: FW: Amicus Memo in Mount Soledad Memorial Association v. Trunk (U.S.) - Cert stage

Tim - Texas is asking us to join their cert-stage amicus brief supporting the Mount Soledad Memorial Association in asking the Court to grant cert. **I recommend that we DO JOIN this cert petition.** The deadline for joining is effectively Friday, April 4th.

This case involves the Ninth Circuit ruling that a cross veterans memorial near San Diego violates the Establishment Clause. After the Ninth Circuit issued that ruling some time ago, the parties sought cert and Montana joined a multi-state cert-stage amicus brief urging the Court to grant cert. There were still some unresolved issues in the case, though. The Court denied cert but Justice Alito issued an opinion stating that this case presents important and timely questions, but that it would be better reviewed after it had a final judgment. The case went back down to the district

court, which, consistent with the Ninth Circuit decision, issued final judgment against the cross. The parties are now asking the Court to grant cert directly from the district court decision, since the prior Ninth Circuit decision makes appeal to the Ninth Circuit fruitless.

This case presents the same type of establishment clause questions presented in Town of Greece, Elmbrook School District, the earlier iteration of this case, and other cert-stage amicus briefs we've joined. So I recommend we join this one too.

Thanks.

-----Original Message-----

From: Schweitzer, Dan [mailto:DSCHWEITZER@NAAG.ORG]

Sent: Friday, March 21, 2014 8:04 AM

To:

Subject: Amicus Memo in Mount Soledad Memorial Association v. Trunk (U.S.) - Cert stage

To: Civil Amicus Contacts

From: Adam Aston, Principal Deputy Solicitor General, Texas

The Mount Soledad Memorial Association has filed a petition for writ of certiorari before judgment to the Ninth Circuit in Mount Soledad Memorial Association v. Trunk, et al., No. 13-1061, a case involving an Establishment Clause challenge to the inclusion of a cross in a veterans memorial that has stood for decades near San Diego, California. The States' amicus brief supporting this cert petition will argue that this case presents an appropriate vehicle for the Supreme Court to provide much-needed clarity to the Court's Establishment Clause jurisprudence.

The need for clarity in that jurisprudence is an issue upon which a large group of States have found agreement. Twenty-Nine States have joined one or more recent amicus briefs urging the Supreme Court to take up that question (City of San Diego, et al. v. Trunk, No. 11-998; Elmbrook School District v. Doe, No. 12-755; and Town of Greece v. Galloway, No. 12-696): Alabama, Alaska, Arizona, Arkansas, Colorado, Florida, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Montana, Nebraska, New Hampshire, New Mexico, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, West Virginia, and Wisconsin.

Dan Schweitzer
Supreme Court Counsel
National Association of Attorneys General
2030 M Street, NW, 8th Floor
Washington, DC 20036
(202) 326-6010
(202) 785-0410 - fax
dschweitzer@naag.org<mailto:dschweitzer@naag.org>

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Thursday, December 05, 2013 9:52 AM
To: Fox, Tim; Mattioli, Mark
Subject: FW: Cert Stage Amicus Brief in Elane Photography v. Willock (U.S.)
Attachments: Amicus Memo - Cert Stage--Elane Photography.pdf; Elane-Photo-petition.pdf; Elane Photo v Willock--Cert-Stage-Amicus-Draft-circulation version.pdf; FW: Cert Stage Amicus Memo in Elane Photography v. Willock (U.S.)

Tim and Mark – Attached is the draft cert-stage SCOTUS amicus brief Alabama is asking state’s join in the New Mexico case involving a photographer who was punished because she refused to photograph a commitment ceremony between two women. As I recommended several weeks ago (I’ve pasted my recommendation below), **I strongly recommend we DO JOIN this brief.** In fact, I worked with Andrew Brasher in the Alabama SG’s office to revise the intro to this brief to make it stronger. **Deadline for joining is next Friday, December 13.**

My earlier recommendation:

Tim and Mark – This is a petition stage amicus SCOTUS amicus brief join request from Arizona. Arizona is filing an amicus brief in support of Elane Photography, the business of the New Mexico woman who refused to act as the photographer for a same-sex commitment ceremony. I think this is an important case for the future of religious freedom in America, and so I **recommend that we DO JOIN this case.** The **join deadline is Friday, December 13.**

A professional photographer in New Mexico was asked to photograph a same-sex commitment ceremony, and she politely refused. A complaint was filed with the New Mexico Human Rights Commission, which ruled against the photographer notwithstanding her argument that the First Amendment’s prohibition on compelled speech was violated by the ruling. The New Mexico Supreme Court upheld the ruling. One of the concurring justices acknowledged that the photographer and her husband “now are compelled by law to compromise the very religious beliefs that inspire their lives,” but went on to conclude that “this case teaches that at some point in our lives all of us must compromise, if only a little, to accommodate the contrasting values of others [this] is the price of citizenship.”

This is an important case because there is a fairly obvious collision course between religious freedom and gay rights, and this case (because it is an extreme case) could be very important in establishing that gay rights cannot always trump religious liberty. In the CLS v. Martinez case, a small Christian student group at Hastings Law School was told they could not be part of the school’s community because of their position on homosexual issues. The Supreme Court ruled against the Christian student group (and against religious freedom). I think this case could be a counterbalance to the CLS case.

Alabama’s brief makes three points in support of cert: (1) States can prohibit invidious discrimination, but they don’t generally have a right to compel people to speak, and photography (unlike, say, catering) is quintessentially speech – i.e., creating a message; (2) this is a particularly far-reaching application of a state’s anti-discrimination law, since the photographer here doesn’t even object to working with homosexual clients; she just doesn’t want to create photographs that express approval or validation of a same-sex commitment ceremony; and (3) there is a looming conflict between religious liberty and sexual orientation antidiscrimination laws, which the Court should address now.

From: Brasher, Andrew [mailto:ABrasher@ago.state.al.us]
Sent: Thursday, December 05, 2013 9:43 AM

To:
Subject: Cert Stage Amicus Brief in *Elane Photography v. Willock* (U.S.)

All,

Attached is an Amicus Brief that Alabama has prepared in support of the cert petition in *Elane Photography v. Willock*, 13-585 (U.S.). The cert petition and amicus memo are also attached. The petition seeks review of a decision by the New Mexico Supreme holding that a business offering wedding photography services violated the New Mexico Human Rights Act when it refused to photograph a commitment ceremony between two women. The question presented is "Whether applying a state public-accommodations statute to require a photographer to create expressive images and picture-books conveying messages that conflict with her religious beliefs violates the First Amendment's ban on compelled speech."

The deadline to join this brief is **December 13 at 9am Central Time.**

To join please contact:

Andrew Brasher
Deputy Solicitor General
Office of Alabama Attorney General Luther Strange
Direct: 334-353-2609
abrasher@ago.state.al.us

Andrew Brasher
Deputy Solicitor General
Office of Alabama Attorney General Luther Strange
Direct: 334-353-2609
Fax: 334-242-4891

From: Schweitzer, Dan [<mailto:DSCHWEITZER@NAAG.ORG>]

Sent: Thursday, November 14, 2013 10:39 AM

To: chris.coppin@cwagweb.org; paul.d.stern@maine.gov; dbahr@nd.gov; peter.sacks@ago.state.ma.us; kmunro@ag.nv.gov; JMcIntosh@scag.gov; pam.murphy@doj.nh.gov; eric.tabor@iowa.gov; jknorr@attorneygeneral.gov; margaret.chapple@ct.gov; james.layton@ago.mo.gov; paula.bickett@azag.gov; charles.mcquigan@state.sd.us; RPartington@riag.ri.gov; crimago@saipan.com; barbara.underwood@ag.ny.gov; Hampton, Andrea; Schweitzer, Dan; sbluestone@nmag.gov; david.raupp@arkansasag.gov; gmorg@ago.state.ms.us; jlee@riag.ri.gov; attorney@samoatelco.com; stephan.finkel@ips.state.nj.us; Girard.D.Lau@hawaii.gov; stevemac@ku.edu; dennis.hansen@arkansasag.gov; basay@atg.state.vt.us; Mary.Williams@doj.state.or.us; gkelley@ncdoj.gov; alanc@atg.wa.gov; alama@nmag.gov; judy.zepun@state.ma.us; joanne.grace@alaska.gov; jnotz@atg.state.il.us; Gregory.Dauria@ct.gov; anne.edwards@doj.nh.gov; tom.fisher@atg.in.gov; jwhite@ncdoj.gov; howle@ag.nv.gov; Frances.Grunder@doj.ca.gov; mianf@ago.state.ms.us; ken.rosenstein@alaska.gov; allison.martin@ag.ky.gov; hpizz@ago.state.ms.us; wellsik@doj.state.wi.us; Lee.Davidson@ksag.org; edavis@doj.vi.gov; ssullivan@oag.state.md.us; jmaddrey@ncdoj.gov; dspence@oag.state.md.us; vlp@wvago.gov; judy.mitchell@wyo.gov; Steve.Creaseon@atg.in.gov; Guthrie, Karen; andrea.silkowitz@dol.lps.state.nj.us; brian.kane@ag.idaho.gov; Richard.Dearing@ag.ny.gov; katie.spohn@nebraska.gov; rrussell@nmag.gov; Mary Jo Woods; restucciae@michigan.gov; wbrockman@oag.state.md.us; agesmith@scag.gov; Susan.lee@doj.ca.gov; SG@atg.in.gov; todd.kim@dc.gov; delayne.deck@ag.idaho.gov; dan.domenico@state.co.us; mscodro@atg.state.il.us; heather.mcveigh@atg.in.gov; suzanne.gorman@doj.nh.gov; jbhoward@oag.state.md.us; potterkc@doj.state.wi.us; stjohnkm@doj.state.wi.us; ed.bedrosian@state.ma.us; john.garry@ag.state.mn.us; brooke.paup@texasattorneygeneral.gov; appeals@ohioattorneygeneral.gov; Sherri.Wald@state.sd.us; adam.aston@texasattorneygeneral.gov; jhughes@atg.state.il.us; david.blake@state.co.us; ssegrest@mt.gov; susan.britton@ag.ky.gov; john.campbell@ksag.org; jung.kim@dol.lps.state.nj.us; dave.jones@alaska.gov; delberta.pfeifer@ksag.org; perry.zinn-rowthorn@ct.gov; jfishburn@ag.nv.gov; mwebb@ago.state.ms.us; barb.fehrman@ag.state.mn.us; vbeavers@ag.nv.gov; bromano@utah.gov; kris.ailslieger@ksag.org; bob.fagan@msdh.state.ms.us; Eileen.carey@state.ma.us;

sean.riley@ag.ky.gov; ashley.harwel@atg.in.gov; dGetchell@oag.state.va.us; anna.joyce@doj.state.or.us;
marlene.brown@dol.lps.state.nj.us; peter.michael@wyo.gov; diane.dewolf@myfloridalegal.com;
jonathan.mitchell@oag.state.tx.us; mary.mertz@ohioattorneygeneral.gov; sforney@attorneygeneral.gov;
npeterson@law.ga.gov; Neiman, John; ariel.levinson-waldman@dc.gov; burschj@michigan.gov;
Leesa.Thompson@oag.ok.gov; dowkerc@michigan.gov; frederick.nelson@ohioattorneygeneral.gov;
patrick.wyrick@oag.ok.gov; bill.young@ag.tn.gov; mblack2@mt.gov; MBrady@oag.state.va.us; steven.wu@ag.ny.gov;
Sam Peterson; Brasher, Andrew; pamela.spang@state.ma.us; andy.oldham@texasattorneygeneral.gov;
Jason.pleggenkuhle@ag.state.mn.us; michael.hendershot@ohioattorneygeneral.gov; robyn.bender@ag.ky.gov; laura-jane.weimer@state.co.us;
james.adams@state.de.us; Aricka.seales@state.ma.us; wiltonp@ag.state.la.us;
lindstroma@michigan.gov; LVanDyke@mt.gov; allen.winsor@myfloridalegal.com; christopher.doddrill@wvago.gov;
marmercado@justicia.pr.gov; elbert.lin@wvago.gov; Mary.McTaggart@state.de.us; Sarah.Greenwalt@oag.ok.gov;
Michael.Francisco@state.co.us; Eric.Murphy@ohioattorneygeneral.gov; Killough, Lindsey; Loren.AliKhan@dc.gov
Subject: Cert Stage Amicus Memo in *Elane Photography v. Willock* (U.S.)

To: Civil Amicus Contacts

Attached is an Amicus Memo describing the amicus brief Alabama is preparing in support of the cert petition in *Elane Photography v. Willock*, 13-585 (U.S.). The cert petition is also attached. The petition seeks review of a decision by the New Mexico Supreme holding that a business offering wedding photography services violated the New Mexico Human Rights Act when it refused to photograph a commitment ceremony between two women. The question presented is "Whether applying a state public-accommodations statute to require a photographer to create expressive images and picture-books conveying messages that conflict with her religious beliefs violates the First Amendment's ban on compelled speech."

 Dan Schweitzer
 Supreme Court Counsel
 National Association of Attorneys General
 2030 M Street, NW, 8th Floor
 Washington, DC 20036
 (202) 326-6010
 (202) 785-0410 - fax
dschweitzer@naag.org

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Friday, October 11, 2013 10:38 AM
To: James, Julie
Cc: Barnes, John; Burton, Anastasia
Subject: FW: Amicus Brief -- Conestoga v. Sebelius (U.S.) - Due 10/18
Attachments: Conestoga Amicus (10-11-13).docx; Conestoga -- Amicus Memo.doc; Re: Amicus Join Request - ACA conscience cases

FYI – For the binder. We will be joining this SCOTUS amicus brief.

Thank you!

From: VanDyke, Lawrence
Sent: Friday, October 11, 2013 10:36 AM
To: 'restucciae@michigan.gov'
Cc: Bursch, John (AG) (BurschJ@michigan.gov); Frederick Nelson; Eric Murphy (Eric.Murphy@ohioattorneygeneral.gov)
Subject: FW: Amicus Brief -- Conestoga v. Sebelius (U.S.) - Due 10/18

Eric - This is a great brief, and Montana would like to join.

Please list our Attorney General as "Timothy C. Fox".

General Fox's full address, should you need it, is:

Timothy C. Fox
Attorney General of Montana
P.O. Box 201401
Helena, MT 59620-1401
406-444-2026

Please confirm our join by return email, and if you could forward a copy of the final brief once filed, we would appreciate it.

Thank you,

Lawrence VanDyke
Solicitor General ♦ Montana Department of Justice

215 N. Sanders ♦ P.O. Box 201401
Helena, Montana 59620
T: (406) 444-3442 ♦ F: (406) 444-3549
LVanDyke@mt.gov

-----Original Message-----

From: Schweitzer, Dan [<mailto:DSCHWEITZER@NAAG.ORG>]
Sent: Friday, October 11, 2013 9:39 AM
To:
Subject: Amicus Brief -- Conestoga v. Sebelius (U.S.) - Due 10/18

To: Civil Amicus Contacts

Attached is an amicus brief prepared by Michigan and Ohio in support of the plaintiffs' petition for certiorari in *Conestoga Wood Specialties Corp. v. Sebelius* (U.S.). [California is writing an amicus brief supporting a cert petition filed by the United States in a case raising the same issue]

Under review is a Third Circuit decision holding that a secular, for-profit corporation cannot engage in religious exercise under the First Amendment and the Religious Freedom Restoration Act. The Third Circuit rejected the claim of a Mennonite family that regulations from the employer mandate under the Affordable Care Act violated their religious principles in operating their family-owned, wood-making business.

The amicus brief argues that the a closely-held, family-owned business falls within the religious protections of the RFRA, explaining that the statute does not distinguish between for-profit and not-for-profit corporations.

Sign-ons are due by the close of business, October 18, 2013. The contact persons for sign-ons are from Michigan:

B. Eric Restuccia
Michigan Deputy Solicitor General
P.O. Box 30212
Lansing, Michigan 48909
Office: (517) 373-1124
Facsimile: (517) 373-3042
Email: restucciae@michigan.gov

or

John J. Bursch
Michigan Solicitor General
P.O. Box 30212
Lansing, Michigan 48909
Office: (517) 373-1124
Facsimile: (517) 373-3042
Email: burschj@michigan.gov

With questions on the brief, please communicate with them or with the contact persons from the Ohio Attorney General's Office: Fred Nelson (614.728.4947; frederick.nelson@ohioattorneygeneral.gov) or Eric Murphy (614.995.2273; eric.murphy@ohioattorneygeneral.gov).

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Tuesday, January 21, 2014 9:41 AM
To: Fox, Tim; Mattioli, Mark
Subject: FW: Amicus Brief in Hobby Lobby (No. 13-354) and Conestoga (No. 13-356) - Due 1/27 (10 am) (EST)
Attachments: Conestoga and HL merits Amicus (1-21-14).docx; Re: Amicus Join Request - ACA conscience cases

Tim and Mark – Michigan and Ohio are asking us to join their merits-stage SCOTUS amicus brief in support of Hobby Lobby and Conestoga in their conscience-based challenge to the Obamacare contraceptive mandate. We joined their cert-stage brief (my recommendation and Tim's approval to join are in the attached email). For the same reasons we joined the cert-stage brief, **I recommend that we DO JOIN this brief.** The deadline for joining is effectively this Friday, Jan. 24.

Thanks,

Lawrence

-----Original Message-----

From: Schweitzer, Dan [<mailto:DSCHWEITZER@NAAG.ORG>]

Sent: Tuesday, January 21, 2014 8:01 AM

To:

Subject: Amicus Brief in Hobby Lobby (No. 13-354) and Conestoga (No. 13-356) - Due 1/27 (10 am) (EST)

To: Civil Amicus Contacts

From: Michigan and Ohio

Attached is an amicus brief prepared by Michigan and Ohio in support of the family-owned businesses on the merits in *Sebelius v. Hobby Lobby (U.S.)* and *Conestoga Wood Specialties Corp. v. Sebelius (U.S.)*.

[California is writing an amicus brief supporting the United States.]

Under review is the question whether a for-profit corporation ever can engage in religious exercise under the Religious Freedom Restoration Act. The Tenth Circuit concluded that they can for the religious owners of Hobby Lobby, while the Third Circuit rejected the claim of a Mennonite family that regulations from the employer mandate promulgated under the Affordable Care Act violated their religious principles in operating their family-owned, wood-making business.

The amicus brief argues that a closely-held, family-owned business can fall within the religious protections of the RFRA, explaining that the statute does not distinguish between for-profit and not-for-profit corporations, and also argues that the HHS Mandate imposes a substantial burden on the free exercise of these family-owned businesses under RFRA without a compelling justification when so many other businesses are already exempted from the Mandate.

Sign-ons are due by Monday, January 27, 2014 at 10 am (Eastern Standard Time). The contact persons for sign-ons are from Michigan:

B. Eric Restuccia

Michigan Deputy Solicitor General

P.O. Box 30212

Lansing, Michigan 48909

Office: (517) 373-1124

Facsimile: (517) 373-3042

Email: restucciae@michigan.gov<<mailto:restucciae@michigan.gov>>

or

Aaron D. Lindstrom

Michigan Solicitor General

P.O. Box 30212

Lansing, Michigan 48909

Office: (517) 373-1124

Facsimile: (517) 373-3042

Email: lindstorma@michigan.gov

With questions on the brief, please communicate with them or with the contact persons from the Ohio Attorney General's Office: Fred Nelson (614.728.4947; frederick.nelson@ohioattorneygeneral.gov<<mailto:frederick.nelson@ohioattorneygeneral.gov>>) or Eric Murphy (614.995.2273; eric.murphy@ohioattorneygeneral.gov<<mailto:eric.murphy@ohioattorneygeneral.gov>>).

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Tuesday, January 21, 2014 11:54 AM
To: James, Julie
Cc: Barnes, John; Burton, Anastasia
Subject: FW: Amicus Brief in Hobby Lobby (No. 13-354) and Conestoga (No. 13-356) - Due 1/27 (10 am) (EST)
Attachments: Conestoga and HL merits Amicus (1-21-14).docx; RE: Amicus Brief in Hobby Lobby (No. 13-354) and Conestoga (No. 13-356) - Due 1/27 (10 am) (EST)

For the binder.

We will be joining this SCOTUS amicus brief in the Hobby Lobby and Conestoga cases, which involve conscience-based challenges to Obamacare's contraceptive mandate. Brief will be filed next week (I think Monday or Tuesday, but I'm not sure).

From: VanDyke, Lawrence
Sent: Tuesday, January 21, 2014 11:51 AM
To: lindstroma@michigan.gov; restucciae@michigan.gov
Subject: FW: Amicus Brief in Hobby Lobby (No. 13-354) and Conestoga (No. 13-356) - Due 1/27 (10 am) (EST)

Aaron and Eric – thank you for the opportunity to join this brief. Montana would like to join.

Please list our Attorney General as "Timothy C. Fox".

General Fox's full address, should you need it, is:

Timothy C. Fox
Attorney General of Montana
P.O. Box 201401
Helena, MT 59620-1401
406-444-2026

Please confirm our join by return email, and if you could forward a copy of the final brief once filed, we would appreciate it.

Thank you again,

Lawrence VanDyke
Solicitor General ♦ Montana Department of Justice

215 N. Sanders ♦ P.O. Box 201401
Helena, Montana 59620
T: (406) 444-3442 ♦ F: (406) 444-3549
LVanDyke@mt.gov

-----Original Message-----

From: Schweitzer, Dan [<mailto:DSCHWEITZER@NAAG.ORG>]
Sent: Tuesday, January 21, 2014 8:01 AM

To:
Subject: Amicus Brief in Hobby Lobby (No. 13-354) and Conestoga (No. 13-356) - Due 1/27 (10 am) (EST)

To: Civil Amicus Contacts
From: Michigan and Ohio

Attached is an amicus brief prepared by Michigan and Ohio in support of the family-owned businesses on the merits in *Sebelius v. Hobby Lobby (U.S.)* and *Conestoga Wood Specialties Corp. v. Sebelius (U.S.)*.

[California is writing an amicus brief supporting the United States.]

Under review is the question whether a for-profit corporation ever can engage in religious exercise under the Religious Freedom Restoration Act. The Tenth Circuit concluded that they can for the religious owners of Hobby Lobby, while the Third Circuit rejected the claim of a Mennonite family that regulations from the employer mandate promulgated under the Affordable Care Act violated their religious principles in operating their family-owned, wood-making business.

The amicus brief argues that a closely-held, family-owned business can fall within the religious protections of the RFRA, explaining that the statute does not distinguish between for-profit and not-for-profit corporations, and also argues that the HHS Mandate imposes a substantial burden on the free exercise of these family-owned businesses under RFRA without a compelling justification when so many other businesses are already exempted from the Mandate.

Sign-ons are due by Monday, January 27, 2014 at 10 am (Eastern Standard Time). The contact persons for sign-ons are from Michigan:

B. Eric Restuccia

Michigan Deputy Solicitor General

P.O. Box 30212

Lansing, Michigan 48909

Office: (517) 373-1124

Facsimile: (517) 373-3042

Email: restucciae@michigan.gov<<mailto:restucciae@michigan.gov>>

or

Aaron D. Lindstrom

Michigan Solicitor General

P.O. Box 30212

Lansing, Michigan 48909

Office: (517) 373-1124

Facsimile: (517) 373-3042

Email: lindstorma@michigan.gov

With questions on the brief, please communicate with them or with the contact persons from the Ohio Attorney General's Office: Fred Nelson (614.728.4947; frederick.nelson@ohioattorneygeneral.gov<<mailto:frederick.nelson@ohioattorneygeneral.gov>>) or Eric Murphy (614.995.2273; eric.murphy@ohioattorneygeneral.gov<<mailto:eric.murphy@ohioattorneygeneral.gov>>).

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Friday, January 31, 2014 9:09 AM
To: James, Julie
Cc: Barnes, John; Burton, Anastasia
Subject: FW: Nos. 13-354;13-356; bsac States of Michigan, Ohio and 18 other States
Attachments: Nos. 13-354, 13-356; bsac State of Michigan.pdf

FYI – For the binder. The SCOTUS amicus brief we joined in the contraceptive mandate cases.

From: Dowker, Cristina (AG) [<mailto:DowkerC@michigan.gov>]
Sent: Friday, January 31, 2014 6:00 AM
To: Abrasher@ago.state.al.us; dave.jones@alaska.gov; Paula.Brickett@agaz.gov; Dan.Domenico@state.co.us; Allen.Winsor@myfloridalegal.com; npeterson@LAW.GA.GOV; delayne.deck@ag.idaho.gov; Delberta.Pfeifer@ksag.org; WiltonP@ag.state.la.us; VanDyke, Lawrence; Katie.Spohn@nebraska.gov; dbahr@nd.gov; Agesmith@scag.gov; Lynell.Erickson@state.sd.us; jonathan.mitchell@texasattorneygeneral.gov; Bromano@utah.gov; Julie.M.Blake@wvago.gov; lenningtondp@doj.state.wi.us
Cc: Restuccia, Eric (AG)
Subject: Nos. 13-354;13-356; bsac States of Michigan, Ohio and 18 other States

Attached is the PDF copy of the Brief of *Amici Curiae* States of Michigan, Ohio, and 18 Other States for Conestoga, Hobby Lobby, Mardel in *Kathleen Sebelius, et al v. Hobby Lobby Stores, Inc., et al* and *Conestoga Wood Specialties Corp., et al v. Kathleen Sebelius, et al*, United States Supreme Court Nos. 13-354 and 13-356 which was filed on Tuesday. A hard copy will follow by mail.

Thank you for your support,

Cristy Dowker
Division Head Secretary
Solicitor General Division
Michigan Department of Attorney General
517-373-1124 (Main)
517-335-2768 (Direct)

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Friday, February 01, 2013 10:59 AM
To: Swanson, Cory
Subject: RE: WSJ NEWS ALERT: Obama Proposes New Contraception Rules

Thanks for forwarding. These are the new rules applicable to non-church religious orgs. I'm not sure if this is considered a "win" by the religious orgs or not – we'll have to see what they think. But at most it is half a loaf – there is no exception or special treatment for for-profit religious employers, so the Hobby Lobby cases will continue on for sure.

From: Swanson, Cory
Sent: Friday, February 01, 2013 10:37 AM
To: VanDyke, Lawrence
Subject: FW: WSJ NEWS ALERT: Obama Proposes New Contraception Rules

Does this mean the good guys won?

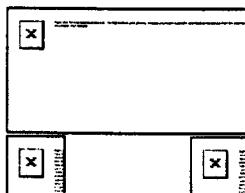
Cory J. Swanson
Assistant Attorney General
Montana Department of Justice
Ph: 406-444-5774

THE WALL STREET JOURNAL News Alert

Obama Proposes New Contraception Rules

The Obama administration outlined options for letting religious universities, hospitals and charities opt out of the contraception requirements in the health-care law. The proposals include a plan to create separate insurance policies for contraception coverage for the employees of certain religious organizations. The White House has been trying for more than a year to find a compromise to a standoff with religious groups over requirements in the health overhaul law that most employers fully cover birth control in their workers' insurance plans.

See More Coverage »



/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: Emory Smith <ESmith@scag.gov>
Sent: Tuesday, March 25, 2014 10:44 AM
To: Restuccia, Eric (AG); Schweitzer, Dan; chris.coppin@cwagweb.org; paul.d.stern@maine.gov; dbahr@nd.gov; peter.sacks@ago.state.ma.us; kmunro@ag.nv.gov; John McIntosh; pam.murphy@doj.nh.gov; eric.tabor@iowa.gov; jknorr@attorneygeneral.gov; margaret.chapple@ci.gov; james.layton@ago.mo.gov; paula.bickett@azag.gov; charles.mcguigan@state.sd.us; RPartington@riag.ri.gov; crimago@saipan.com; barbara.underwood@ag.ny.gov; Hampton, Andrea; sbluestone@nmag.gov; david.raupp@arkansasag.gov; gmorg@ago.state.ms.us; jlee@riag.ri.gov; attorney@samoatelco.com; stephan.finkel@lps.state.nj.us; Girard.D.Lau@hawaii.gov; stevemac@ku.edu; dennis.hansen@arkansasag.gov; basay@atg.state.vt.us; fred.boss@doj.state.or.us; gkelley@ncdoj.gov; alanc@atg.wa.gov; Joe.Whalen@ag.tn.gov; alama@nmag.gov; judy.zeprun@state.ma.us; joanne.grace@alaska.gov; jnotz@atg.state.il.us; Gregory.Dauria@ct.gov; anne.edwards@doj.nh.gov; tom.fisher@atg.in.gov; jwhite@ncdoj.gov; whowle@ag.nv.gov; Frances.Grunder@doj.ca.gov; mlanf@ago.state.ms.us; ken.rosenstein@alaska.gov; allison.martin@ag.ky.gov; hpizz@ago.state.ms.us; wellsik@doj.state.wi.us; Lee.Davidson@ksag.org; edavis@doj.vi.gov; ssullivan@oag.state.md.us; jmaddrey@ncdoj.gov; dspence@oag.state.md.us; vlp@wvago.gov; judy.mitchell@wyo.gov; Steve.Creason@atg.in.gov; andrea.silkowitz@dol.lps.state.nj.us; brian.kane@ag.idaho.gov; Richard.Dearing@ag.ny.gov; katie.spohn@nebraska.gov; rrussell@nmag.gov; mwood@ago.state.ms.us; wbrockman@oag.state.md.us; susan.lee@doj.ca.gov; SG@atg.in.gov; todd.kim@dc.gov; delayne.deck@ag.idaho.gov; dan.domenico@state.co.us; mscodro@atg.state.il.us; heather.mcveigh@atg.in.gov; suzanne.gorman@doj.nh.gov; jbhoward@oag.state.md.us; potterkc@doj.state.wi.us; stjohnkm@doj.state.wi.us; ed.bedrosian@state.ma.us; john.garry@ag.state.mn.us; brooke.paup@texasattorneygeneral.gov; appeals@ohioattorneygeneral.gov; Sherri.Wald@state.sd.us; adam.aston@texasattorneygeneral.gov; jhughes@atg.state.il.us; david.blake@state.co.us; Segrest, Stuart; susan.britton@ag.ky.gov; john.campbell@ksag.org; jung.kim@dol.lps.state.nj.us; dave.jones@alaska.gov; delberta.pfeifer@ksag.org; perry.zinn-rowthorn@ct.gov; jfishburn@ag.nv.gov; mwebb@ago.state.ms.us; barb.fehrman@ag.state.mn.us; vbeavers@ag.nv.gov; bromano@utah.gov; kris.ailsieger@ksag.org; bob.fagan@msdh.state.ms.us; sean.riley@ag.ky.gov; ashley.harwel@atg.in.gov; dGetchell@oag.state.va.us; anna.joyce@doj.state.or.us; marlene.brown@dol.lps.state.nj.us; peter.michael@wyo.gov; diane.dewolf@myfloridalegal.com; jonathan.mitchell@oag.state.tx.us; mary.mertz@ohioattorneygeneral.gov; sforney@attorneygeneral.gov; npeterson@law.ga.gov; jneiman@ago.state.al.us; ariel.levinson-waldman@dc.gov; Bursch, John (AG); Leesa.Thompson@oag.ok.gov; Dowker, Cristina (AG); frederick.nelson@ohioattorneygeneral.gov; patrick.wyrick@oag.ok.gov; Black, Michael; MBrady@oag.state.va.us; steven.wu@ag.ny.gov; Sam Peterson; abrasher@ago.state.al.us; andy.oldham@texasattorneygeneral.gov; michael.hendershot@ohioattorneygeneral.gov; robyn.bender@ag.ky.gov; laura-jane.weimer@state.co.us; james.adams@state.de.us; Aricka.seales@state.ma.us; wiltonp@ag.state.la.us; Lindstrom, Aaron (AG); VanDyke, Lawrence; allen.winsor@myfloridalegal.com; christopher.dodrill@wvago.gov; marmercado@justicia.pr.gov; elbert.lin@wvago.gov; Mary.McTaggart@state.de.us; Sarah.Greenwalt@oag.ok.gov; Michael.Francisco@state.co.us;

To: Eric.Murphy@ohioattorneygeneral.gov; mkirkpatrick@ago.state.al.us; lkillough@ago.state.al.us; Loren.AliKhan@dc.gov; lenningtondp@doj.state.wi.us; jacob.campion@ag.state.mn.us; Schlichting, Melissa; Osvaldo.Vazquez@myfloridalegal.com; sraphael@oag.state.va.us; Edward.dumont@doj.ca.gov

Cc: Lindstrom, Aaron (AG); Frederick Nelson (Frederick.Nelson@ohioattorneygeneral.gov); Eric Murphy (Eric.Murphy@ohioattorneygeneral.gov)

Subject: RE: Amicus Brief in Hobby Lobby (No. 13-354) and Conestoga (No. 13-356) - Due 1/27 (10 am) (EST)

Thank you to those who have sent me this brief. I didn't mean to email this request to all of you but clicked "reply all" which I usually avoid doing. Sorry to inconvenience any of you.

Emory Smith

-----Original Message-----

From: Emory Smith

Sent: Tuesday, March 25, 2014 10:51 AM

To: 'Restuccia, Eric (AG)'; Schweitzer, Dan; chris.coppin@cwagweb.org; paul.d.stern@maine.gov; dbahr@nd.gov; peter.sacks@ago.state.ma.us; kmunro@ag.nv.gov; John McIntosh; pam.murphy@doj.nh.gov; eric.tabor@iowa.gov; jknorr@attorneygeneral.gov; margaret.chapple@ct.gov; james.layton@ago.mo.gov; paula.bickett@azag.gov; charles.mcguigan@state.sd.us; RPartington@riag.ri.gov; crimago@saipan.com; barbara.underwood@ag.ny.gov; Hampton, Andrea; sbloestone@nmag.gov; david.raupp@arkansasag.gov; gmorg@ago.state.ms.us; jlee@riag.ri.gov; attorney@samoatelco.com; stephan.finkel@lps.state.nj.us; Girard.D.Lau@hawaii.gov; stevemac@ku.edu; dennis.hansen@arkansasag.gov; basay@atg.state.vt.us; fred.boss@doj.state.or.us; gkelley@ncdoj.gov; alanc@atg.wa.gov; Joe.Whalen@ag.tn.gov; alama@nmag.gov; judy.zeprun@state.ma.us; joanne.grace@alaska.gov; jnotz@atg.state.il.us; Gregory.Dauria@ct.gov; anne.edwards@doj.nh.gov; tom.fisher@atg.in.gov; jwhite@ncdoj.gov; howle@ag.nv.gov; Frances.Grunder@doj.ca.gov; mlanf@ago.state.ms.us; ken.rosenstein@alaska.gov; allison.martin@ag.ky.gov; hpizz@ago.state.ms.us; wellsik@doj.state.wi.us; Lee.Davidson@ksag.org; edavis@doj.vi.gov; ssullivan@oag.state.md.us; jmaddrey@ncdoj.gov; dspence@oag.state.md.us; vlp@wvago.gov; judy.mitchell@wyo.gov; Steve.Creaseon@atg.in.gov; andrea.silkowitz@dol.lps.state.nj.us; brian.kane@ag.idaho.gov; Richard.Dearing@ag.ny.gov; katie.spohn@nebraska.gov; rrussell@nmag.gov; mwood@ago.state.ms.us; wbrockman@oag.state.md.us; susan.lee@doj.ca.gov; SG@atg.in.gov; todd.kim@dc.gov; delayne.deck@ag.idaho.gov; dan.domenico@state.co.us; mscodro@atg.state.il.us; heather.mcveigh@atg.in.gov; suzanne.gorman@doj.nh.gov; jbhoward@oag.state.md.us; potterkc@doj.state.wi.us; stjohnkm@doj.state.wi.us; ed.bedrosian@state.ma.us; john.garry@ag.state.mn.us; brooke.paup@texasattorneygeneral.gov; appeals@ohioattorneygeneral.gov; Sherri.Wald@state.sd.us; adam.aston@texasattorneygeneral.gov; jhughes@atg.state.il.us; david.blake@state.co.us; ssegrest@mt.gov; susan.britton@ag.ky.gov; john.campbell@ksag.org; jung.kim@dol.lps.state.nj.us; dave.jones@alaska.gov; delberta.pfeifer@ksag.org; perry.zinn-rowthorn@ct.gov; jfishburn@ag.nv.gov; mwebb@ago.state.ms.us; barb.fehrman@ag.state.mn.us; vbeavers@ag.nv.gov; bromano@utah.gov; kris.aillsliager@ksag.org; bob.fagan@msdh.state.ms.us; sean.riley@ag.ky.gov; ashley.harwel@atg.in.gov; dGetchell@oag.state.va.us; anna.joyce@doj.state.or.us; marlene.brown@dol.lps.state.nj.us; peter.michael@wyo.gov; diane.dewolf@myfloridalegal.com; jonathan.mitchell@oag.state.tx.us; mary.mertz@ohioattorneygeneral.gov; sforney@attorneygeneral.gov; npeterson@law.ga.gov; jneiman@ago.state.al.us; ariel.levinson-waldman@dc.gov; Bursch, John (AG); Leesa.Thompson@oag.ok.gov; Dowker, Cristina (AG); frederick.nelson@ohioattorneygeneral.gov; patrick.wyrick@oag.ok.gov; mblack2@mt.gov; MBrady@oag.state.va.us; steven.wu@ag.ny.gov; Sam Peterson; abrasher@ago.state.al.us; andy.oldham@texasattorneygeneral.gov; michael.hendershot@ohioattorneygeneral.gov; robyn.bender@ag.ky.gov; laura-jane.weimer@state.co.us; james.adams@state.de.us; Aricka.seales@state.ma.us; wiltonp@ag.state.la.us; Lindstrom, Aaron (AG); LVanDyke@mt.gov; allen.winsor@myfloridalegal.com;

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Cc: Lindstrom, Aaron (AG); Frederick Nelson (Frederick.Nelson@ohioattorneygeneral.gov); Eric Murphy (Eric.Murphy@ohioattorneygeneral.gov)
Subject: RE: Amicus Brief in Hobby Lobby (No. 13-354) and Conestoga (No. 13-356) - Due 1/27 (10 am) (EST)

Eric, do you have a pdf of the final brief as filed?

Thanks.

Emory

J. Emory Smith, Jr.
Deputy Solicitor General
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
803-734-3642 Direct

-----Original Message-----

From: Restuccia, Eric (AG) [mailto:RestucciaE@michigan.gov]
Sent: Friday, January 24, 2014 11:50 AM
To: Schweitzer, Dan; chris.coppin@cwagweb.org; paul.d.stern@maine.gov; dbahr@nd.gov; peter.sacks@ago.state.ma.us; kmunro@ag.nv.gov; John McIntosh; pam.murphy@doj.nh.gov; eric.tabor@iowa.gov; jknorr@attorneygeneral.gov; margaret.chapple@ct.gov; james.layton@ago.mo.gov; paula.bickett@azag.gov; charles.mcguigan@state.sd.us; RPartington@riag.ri.gov; crimago@saipan.com; barbara.underwood@ag.ny.gov; Hampton, Andrea; sbluestone@nmag.gov; david.raupp@arkansasag.gov; gmorg@ago.state.ms.us; jlee@riag.ri.gov; attorney@samoatelco.com; stephan.finkel@lps.state.nj.us; Girard.D.Lau@hawaii.gov; stevemac@ku.edu; dennis.hansen@arkansasag.gov; basay@atg.state.vt.us; fred.boss@doj.state.or.us; gkelley@ncdoj.gov; alanc@atg.wa.gov; Joe.Whalen@ag.tn.gov; alama@nmag.gov; judy.zeprun@state.ma.us; joanne.grace@alaska.gov; jnotz@atg.state.il.us; Gregory.Dauria@ct.gov; anne.edwards@doj.nh.gov; tom.fisher@atg.in.gov; jwhite@ncdoj.gov; whowle@ag.nv.gov; Frances.Grunder@doj.ca.gov; mlanf@ago.state.ms.us; ken.rosenstein@alaska.gov; allison.martin@ag.ky.gov; hpizz@ago.state.ms.us; wellslk@doj.state.wi.us; Lee.Davidson@ksag.org; edavis@doj.vi.gov; ssullivan@oag.state.md.us; jmaddrey@ncdoj.gov; dspence@oag.state.md.us; vlp@wvago.gov; judy.mitchell@wyo.gov; Steve.Creaseon@atg.in.gov; andrea.silkowitz@dol.lps.state.nj.us; brian.kane@ag.idaho.gov; Richard.Dearing@ag.ny.gov; katie.spohn@nebraska.gov; rrussell@nmag.gov; mwood@ago.state.ms.us; wbrockman@oag.state.md.us; Emory Smith; susan.lee@doj.ca.gov; SG@atg.in.gov; todd.kim@dc.gov; delayne.deck@ag.idaho.gov; dan.domenico@state.co.us; mscodro@atg.state.il.us; heather.mcveigh@atg.in.gov; suzanne.gorman@doj.nh.gov; jbhoward@oag.state.md.us; potterkc@doj.state.wi.us; stjohnm@doj.state.wi.us; ed.bedrosian@state.ma.us; john.garry@ag.state.mn.us; brooke.paup@texasattorneygeneral.gov; appeals@ohioattorneygeneral.gov; Sherri.Wald@state.sd.us; adam.aston@texasattorneygeneral.gov; jhughes@atg.state.il.us; david.blake@state.co.us; ssegrest@mt.gov; susan.britton@ag.ky.gov; john.campbell@ksag.org; jung.kim@dol.lps.state.nj.us; dave.jones@alaska.gov; delberta.pfeifer@ksag.org; perry.zinn-rowthorn@ct.gov; jfishburn@ag.nv.gov; mwebb@ago.state.ms.us; barb.fehrman@ag.state.mn.us; vbeavers@ag.nv.gov; bromano@utah.gov; kris.aillsliieger@ksag.org; bob.fagan@msdh.state.ms.us; sean.riley@ag.ky.gov; ashley.harwel@atg.in.gov; dGetchell@oag.state.va.us; anna.joyce@doj.state.or.us; marlene.brown@dol.lps.state.nj.us; peter.michael@wyo.gov;

diane.dewolf@myfloridalegal.com; jonathan.mitchell@oag.state.tx.us; mary.mertz@ohioattorneygeneral.gov; sforney@attorneygeneral.gov; npeterson@law.ga.gov; jneiman@ago.state.al.us; ariel.levinson-waldman@dc.gov; Bursch, John (AG); Leesa.Thompson@oag.ok.gov; Dowker, Cristina (AG); frederick.nelson@ohioattorneygeneral.gov; patrick.wyrick@oag.ok.gov; mblack2@mt.gov; MBrady@oag.state.va.us; steven.wu@ag.ny.gov; Sam Peterson; abrasher@ago.state.al.us; andy.oldham@texasattorneygeneral.gov; michael.hendershot@ohioattorneygeneral.gov; robyn.bender@ag.ky.gov; laura-jane.weimer@state.co.us; james.adams@state.de.us; Aricka.seales@state.ma.us; wiltonp@ag.state.la.us; Lindstrom, Aaron (AG); LVanDyke@mt.gov; allen.winsor@myfloridalegal.com; christopher.dodrigill@wvago.gov; marmercado@justicia.pr.gov; elbert.lin@wvago.gov; Mary.McTaggart@state.de.us; Sarah.Greenwalt@oag.ok.gov; Michael.Franco@state.co.us; Eric.Murphy@ohioattorneygeneral.gov; mkirkpatrick@ago.state.al.us; lkillough@ago.state.al.us; Loren.AliKhan@dc.gov; lenningtondp@doj.state.wi.us; jacob.campion@ag.state.mn.us; MSchlichting@mt.gov; Osvaldo.Vazquez@myfloridalegal.com; sraphael@oag.state.va.us; Edward.dumont@doj.ca.gov
Cc: Lindstrom, Aaron (AG); Frederick Nelson (Frederick.Nelson@ohioattorneygeneral.gov); Eric Murphy (Eric.Murphy@ohioattorneygeneral.gov)
Subject: RE: Amicus Brief in Hobby Lobby (No. 13-354) and Conestoga (No. 13-356) - Due 1/27 (10 am) (EST)

This is just a reminder that the sign-ons for the amicus brief on religious liberty prepared by Michigan and Ohio in support of the family-owned businesses in Hobby Lobby and Conestoga are due by Monday, January 27, 2014 at 10 am Eastern time.

There are currently thirteen states joined (including sponsors): Michigan, Ohio, Alabama, Alaska, Colorado, Georgia, Idaho, Nebraska, South Carolina, South Dakota, Texas, West Virginia, and Wyoming.

-----Original Message-----

From: Schweitzer, Dan [mailto:DSCHWEITZER@NAAG.ORG]

Sent: Tuesday, January 21, 2014 10:01 AM

To: [List]

Subject: Amicus Brief in Hobby Lobby (No. 13-354) and Conestoga (No. 13-356) - Due 1/27 (10 am) (EST)

To: Civil Amicus Contacts

From: Michigan and Ohio

Attached is an amicus brief prepared by Michigan and Ohio in support of the family-owned businesses on the merits in *Sebelius v. Hobby Lobby (U.S.)* and *Conestoga Wood Specialties Corp. v. Sebelius (U.S.)*.

[California is writing an amicus brief supporting the United States.]

Under review is the question whether a for-profit corporation ever can engage in religious exercise under the Religious Freedom Restoration Act. The Tenth Circuit concluded that they can for the religious owners of Hobby Lobby, while the Third Circuit rejected the claim of a Mennonite family that regulations from the employer mandate promulgated under the Affordable Care Act violated their religious principles in operating their family-owned, wood-making business.

The amicus brief argues that a closely-held, family-owned business can fall within the religious protections of the RFRA, explaining that the statute does not distinguish between for-profit and not-for-profit corporations, and also argues that the HHS Mandate imposes a substantial burden on the free exercise of these family-owned businesses under RFRA without a compelling justification when so many other businesses are already exempted from the Mandate.

Sign-ons are due by Monday, January 27, 2014 at 10 am (Eastern Standard Time). The contact persons for sign-ons are from Michigan:

B. Eric Restuccia

Michigan Deputy Solicitor General

P.O. Box 30212

Lansing, Michigan 48909

Office: (517) 373-1124

Facsimile: (517) 373-3042

Email: restucciae@michigan.gov<<mailto:restucciae@michigan.gov>>

or

Aaron D. Lindstrom

Michigan Solicitor General

P.O. Box 30212

Lansing, Michigan 48909

Office: (517) 373-1124

Facsimile: (517) 373-3042

Email: lindstorma@michigan.gov

With questions on the brief, please communicate with them or with the contact persons from the Ohio Attorney General's Office: Fred Nelson (614.728.4947);

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: Emory Smith <ESmith@scag.gov>
Sent: Tuesday, March 25, 2014 8:50 AM
To: Restuccia, Eric (AG); Schweitzer, Dan; chris.coppin@cwagweb.org; paul.d.stern@maine.gov; dbahr@nd.gov; peter.sacks@ago.state.ma.us; kmunro@ag.nv.gov; John McIntosh; pam.murphy@doj.nh.gov; eric.tabor@iowa.gov; jknorr@attorneygeneral.gov; margaret.chapple@ct.gov; james.layton@ago.mo.gov; paula.bickett@azag.gov; charles.mcguigan@state.sd.us; RPartington@riag.ri.gov; crimago@saipan.com; barbara.underwood@ag.ny.gov; Hampton, Andrea; sbluestone@nmag.gov; david.raupp@arkansasag.gov; gmorg@ago.state.ms.us; jlee@riag.ri.gov; attorney@samoatelco.com; stephan.finkel@lps.state.nj.us; Girard.D.Lau@hawaii.gov; stevemac@ku.edu; dennis.hansen@arkansasag.gov; basay@atg.state.vt.us; fred.boss@doj.state.or.us; gkelley@ncdoj.gov; alanc@atg.wa.gov; Joe.Whalen@ag.tn.gov; alama@nmag.gov; judy.zeprun@state.ma.us; joanne.grace@alaska.gov; jnotz@atg.state.il.us; Gregory.Dauria@ct.gov; anne.edwards@doj.nh.gov; tom.fisher@atg.in.gov; jwhite@ncdoj.gov; whowle@ag.nv.gov; Frances.Grunder@doj.ca.gov; mlanf@ago.state.ms.us; ken.rosenstein@alaska.gov; allison.martin@ag.ky.gov; hpizz@ago.state.ms.us; wellsik@doj.state.wi.us; Lee.Davidson@ksag.org; edavis@doj.vi.gov; ssullivan@oag.state.md.us; jmaddrey@ncdoj.gov; dspence@oag.state.md.us; vlp@wvago.gov; judy.mitchell@wyo.gov; Steve.Creason@atg.in.gov; andrea.silkowitz@dol.lps.state.nj.us; brian.kane@ag.idaho.gov; Richard.Dearing@ag.ny.gov; katie.spohn@nebraska.gov; rrussell@nmag.gov; mwood@ago.state.ms.us; wbrockman@oag.state.md.us; susan.lee@doj.ca.gov; SG@atg.in.gov; todd.kim@dc.gov; delayne.deck@ag.idaho.gov; dan.domenico@state.co.us; mscodro@atg.state.il.us; heather.mcveigh@atg.in.gov; suzanne.gorman@doj.nh.gov; jbhoward@oag.state.md.us; potterkc@doj.state.wi.us; stjohnkm@doj.state.wi.us; ed.bedrosian@state.ma.us; john.garry@ag.state.mn.us; brooke.paup@texasattorneygeneral.gov; appeals@ohioattorneygeneral.gov; Sherri.Wald@state.sd.us; adam.aston@texasattorneygeneral.gov; jhughes@atg.state.il.us; david.blake@state.co.us; Segrest, Stuart; susan.britton@ag.ky.gov; john.campbell@ksag.org; jung.kim@dol.lps.state.nj.us; dave.jones@alaska.gov; delberta.pfeifer@ksag.org; perry.zinn-rowthorn@ct.gov; jfishburn@ag.nv.gov; mwebb@ago.state.ms.us; barb.fehrman@ag.state.mn.us; vbeavers@ag.nv.gov; bromano@utah.gov; kris.aillsieger@ksag.org; bob.fagan@msdh.state.ms.us; sean.riley@ag.ky.gov; ashley.harwel@atg.in.gov; dGetchell@oag.state.va.us; anna.joyce@doj.state.or.us; marlene.brown@dol.lps.state.nj.us; peter.michael@wyo.gov; diane.dewolf@myfloridalegal.com; jonathan.mitchell@oag.state.tx.us; mary.mertz@ohioattorneygeneral.gov; sforney@attorneygeneral.gov; npeterson@law.ga.gov; jneiman@ago.state.al.us; ariel.levinson-waldman@dc.gov; Bursch, John (AG); Leesa.Thompson@oag.ok.gov; Dowker, Cristina (AG); frederick.nelson@ohioattorneygeneral.gov; patrick.wyrick@oag.ok.gov; Black, Michael; MBrady@oag.state.va.us; steven.wu@ag.ny.gov; Sam Peterson; abrasher@ago.state.al.us; andy.oldham@texasattorneygeneral.gov; michael.hendershot@ohioattorneygeneral.gov; robyn.bender@ag.ky.gov; laura-jane.weimer@state.co.us; james.adams@state.de.us; Aricka.seales@state.ma.us; wiltonp@ag.state.la.us; Lindstrom, Aaron (AG); VanDyke, Lawrence; allen.winsor@myfloridalegal.com; christopher.dodrigill@wvago.gov; marmercado@justicia.pr.gov; elbert.lin@wvago.gov; Mary.McTaggart@state.de.us; Sarah.Greenwalt@oag.ok.gov; Michael.Francisco@state.co.us;

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Osvaldo.Vazquez@myfloridalegal.com; sraphael@oag.state.va.us;
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Cc: Lindstrom, Aaron (AG); Frederick Nelson (Frederick.Nelson@ohioattorneygeneral.gov);
Eric Murphy (Eric.Murphy@ohioattorneygeneral.gov)

Subject: RE: Amicus Brief in Hobby Lobby (No. 13-354) and Conestoga (No. 13-356) - Due 1/27
(10 am) (EST)

Eric, do you have a pdf of the final brief as filed?

Thanks.

Emory

J. Emory Smith, Jr.
Deputy Solicitor General
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
803-734-3642 Direct

-----Original Message-----

From: Restuccia, Eric (AG) [mailto:RestucciaE@michigan.gov]

Sent: Friday, January 24, 2014 11:50 AM

To: Schweitzer, Dan; chris.coppin@cwagweb.org; paul.d.stern@maine.gov; dbahr@nd.gov;
peter.sacks@ago.state.ma.us; kmunro@ag.nv.gov; John McIntosh; pam.murphy@doj.nh.gov; eric.tabor@iowa.gov;
jknorr@attorneygeneral.gov; margaret.chapple@ct.gov; james.layton@ago.mo.gov; paula.bickett@azag.gov;
charles.mcguigan@state.sd.us; RPartington@riag.ri.gov; crimago@saipan.com; barbara.underwood@ag.ny.gov;
Hampton, Andrea; sbluestone@nmag.gov; david.raupp@arkansasag.gov; gmorg@ago.state.ms.us; jlee@riag.ri.gov;
attorney@samoatelco.com; stephan.finkel@lps.state.nj.us; Girard.D.Lau@hawaii.gov; stevemac@ku.edu;
dennis.hansen@arkansasag.gov; basay@atg.state.vt.us; fred.boss@doj.state.or.us; gkelley@ncdoj.gov;
alanc@atg.wa.gov; Joe.Whalen@ag.tn.gov; alama@nmag.gov; judy.zeprun@state.ma.us; joanne.grace@alaska.gov;
jnotz@atg.state.il.us; Gregory.Dauria@ct.gov; anne.edwards@doj.nh.gov; tom.fisher@atg.in.gov; jwhite@ncdoj.gov;
whowle@ag.nv.gov; Frances.Grunder@doj.ca.gov; mlanf@ago.state.ms.us; ken.rosenstein@alaska.gov;
allison.martin@ag.ky.gov; hpizz@ago.state.ms.us; wellsik@doj.state.wi.us; Lee.Davidson@ksag.org; edavis@doj.vi.gov;
ssullivan@oag.state.md.us; jmaddrey@ncdoj.gov; dspence@oag.state.md.us; vlp@wvago.gov; judy.mitchell@wyo.gov;
Steve.Creaseon@atg.in.gov; andrea.silkowitz@dol.lps.state.nj.us; brian.kane@ag.idaho.gov; Richard.Dearing@ag.ny.gov;
katie.spohn@nebraska.gov; rrussell@nmag.gov; mwood@ago.state.ms.us; wbrockman@oag.state.md.us; Emory Smith;
susan.lee@doj.ca.gov; SG@atg.in.gov; todd.kim@dc.gov; delayne.deck@ag.idaho.gov; dan.domenico@state.co.us;
mscodro@atg.state.il.us; heather.mcveigh@atg.in.gov; suzanne.gorman@doj.nh.gov; jbhoward@oag.state.md.us;
potterkc@doj.state.wi.us; stjohkm@doj.state.wi.us; ed.bedrosian@state.ma.us; john.garry@ag.state.mn.us;
brooke.paup@texasattorneygeneral.gov; appeals@ohioattorneygeneral.gov; Sherri.Wald@state.sd.us;
adam.aston@texasattorneygeneral.gov; jhughes@atg.state.il.us; david.blake@state.co.us; ssegrest@mt.gov;
susan.britton@ag.ky.gov; john.campbell@ksag.org; jung.kim@dol.lps.state.nj.us; dave.jones@alaska.gov;
delberta.pfeifer@ksag.org; perry.zinn-rowthorn@ct.gov; jfishburn@ag.nv.gov; mwebb@ago.state.ms.us;
barb.fehrman@ag.state.mn.us; vbeavers@ag.nv.gov; bromano@utah.gov; kris.ailsieger@ksag.org;

bob.fagan@msdh.state.ms.us; sean.riley@ag.ky.gov; ashley.harwel@atg.in.gov; dGetchell@oag.state.va.us;
anna.joyce@doj.state.or.us; marlene.brown@dol.lps.state.nj.us; peter.michael@wyo.gov;
diane.dewolf@myfloridalegal.com; jonathan.mitchell@oag.state.tx.us; mary.mertz@ohioattorneygeneral.gov;
sforney@attorneygeneral.gov; npeterson@law.ga.gov; jneiman@ago.state.al.us; ariel.levinson-waldman@dc.gov;
Bursch, John (AG); Leesa.Thompson@oag.ok.gov; Dowker, Cristina (AG); frederick.nelson@ohioattorneygeneral.gov;
patrick.wyrick@oag.ok.gov; mblack2@mt.gov; MBrady@oag.state.va.us; steven.wu@ag.ny.gov; Sam Peterson;
abrasher@ago.state.al.us; andy.oldham@texasattorneygeneral.gov; michael.hendershot@ohioattorneygeneral.gov;
robyn.bender@ag.ky.gov; laura-jane.weimer@state.co.us; james.adams@state.de.us; Aricka.seales@state.ma.us;
wiltonp@ag.state.la.us; Lindstrom, Aaron (AG); LVanDyke@mt.gov; allen.winsor@myfloridalegal.com;
christopher.dodrill@wvago.gov; marmercado@justicia.pr.gov; elbert.lin@wvago.gov; Mary.McTaggart@state.de.us;
Sarah.Greenwalt@oag.ok.gov; Michael.Franco@state.co.us; Eric.Murphy@ohioattorneygeneral.gov;
mkirkpatrick@ago.state.al.us; lkillough@ago.state.al.us; Loren.AliKhan@dc.gov; lenningtondp@doj.state.wi.us;
jacob.campion@ag.state.mn.us; MSchlichting@mt.gov; Osvaldo.Vazquez@myfloridalegal.com;
sraphael@oag.state.va.us; Edward.dumont@doj.ca.gov
Cc: Lindstrom, Aaron (AG); Frederick Nelson (Frederick.Nelson@ohioattorneygeneral.gov); Eric Murphy
(Eric.Murphy@ohioattorneygeneral.gov)
Subject: RE: Amicus Brief in Hobby Lobby (No. 13-354) and Conestoga (No. 13-356) - Due 1/27 (10 am) (EST)

This is just a reminder that the sign-ons for the amicus brief on religious liberty prepared by Michigan and Ohio in support of the family-owned businesses in Hobby Lobby and Conestoga are due by Monday, January 27, 2014 at 10 am Eastern time.

There are currently thirteen states joined (including sponsors): Michigan, Ohio, Alabama, Alaska, Colorado, Georgia, Idaho, Nebraska, South Carolina, South Dakota, Texas, West Virginia, and Wyoming.

-----Original Message-----

From: Schweitzer, Dan [mailto:DSCHWEITZER@NAAG.ORG]
Sent: Tuesday, January 21, 2014 10:01 AM
To: [List]
Subject: Amicus Brief in Hobby Lobby (No. 13-354) and Conestoga (No. 13-356) - Due 1/27 (10 am) (EST)

To: Civil Amicus Contacts
From: Michigan and Ohio

Attached is an amicus brief prepared by Michigan and Ohio in support of the family-owned businesses on the merits in *Sebelius v. Hobby Lobby (U.S.)* and *Conestoga Wood Specialties Corp. v. Sebelius (U.S.)*.

[California is writing an amicus brief supporting the United States.]

Under review is the question whether a for-profit corporation ever can engage in religious exercise under the Religious Freedom Restoration Act. The Tenth Circuit concluded that they can for the religious owners of Hobby Lobby, while the Third Circuit rejected the claim of a Mennonite family that regulations from the employer mandate promulgated under the Affordable Care Act violated their religious principles in operating their family-owned, wood-making business.

The amicus brief argues that a closely-held, family-owned business can fall within the religious protections of the RFRA, explaining that the statute does not distinguish between for-profit and not-for-profit corporations, and also argues that the HHS Mandate imposes a substantial burden on the free exercise of these family-owned businesses under RFRA without a compelling justification when so many other businesses are already exempted from the Mandate.

Sign-ons are due by Monday, January 27, 2014 at 10 am (Eastern Standard Time). The contact persons for sign-ons are from Michigan:

B. Eric Restuccia

Michigan Deputy Solicitor General

P.O. Box 30212

Lansing, Michigan 48909

Office: (517) 373-1124

Facsimile: (517) 373-3042

Email: restucciae@michigan.gov<mailto:restucciae@michigan.gov>

or

Aaron D. Lindstrom

Michigan Solicitor General

P.O. Box 30212

Lansing, Michigan 48909

Office: (517) 373-1124

Facsimile: (517) 373-3042

Email: lindstorma@michigan.gov

With questions on the brief, please communicate with them or with the contact persons from the Ohio Attorney General's Office: Fred Nelson (614.728.4947; frederick.nelson@ohioattorneygeneral.gov<<mailto:frederick.nelson@ohioattorneygeneral.gov>>) or Eric Murphy (614.995.2273; eric.murphy@ohioattorneygeneral.gov<<mailto:eric.murphy@ohioattorneygeneral.gov>>).

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Monday, September 23, 2013 11:05 AM
To: Fox, Tim; Mattioli, Mark
Cc: Darkenwald, Scott; Bennion, Jon; Swanson, Cory; Barnes, John
Subject: Amicus Join Request - ACA conscience cases
Attachments: Amicus Memo -- Conestoga v. Sebelius (U.S.); Amicus Memo in Sebelius v. Hobby Lobby (U.S.)

We have received dueling cert-stage amicus join requests related to the ACA contraception mandate litigation. You may recall that Hobby Lobby has been involved in litigation against the feds saying that Obamacare's contraception mandate, as applied to them (a for-profit religious employer), violates their religious rights protected under the Religious Freedom Restoration Act (RFRA). Hobby Lobby won in the 10th Circuit, and the feds are seeking cert. Conestoga Wood Specialties, another for-profit company owned by Mennonites, filed a similar suit, and *lost* in the 3rd Circuit. They too are seeking cert.

California is filing a states' amicus brief in support of the feds in the Hobby Lobby case. Michigan and Ohio are filing a states' amicus brief in support of Conestoga. They obviously take opposing positions in a clear cert-split. **I recommend that we join the Michigan/Ohio brief.** Our decision is due Friday, Oct. 18.

We should all be familiar with the arguments, since we talked about trying to file a Hobby Lobby-type challenge months ago. If you need a refresher, read Conestoga memo in the attached email. The only concerns I had initially was whether the arguments being made in the Conestoga case could be taken as inconsistent with our position(s) in the Hutterite litigation – specifically, if they might be making some sort of broad *Hosanna-Tabor* type argument. I called my friends in Michigan and was assured they are not – they will be focusing on the RFRA standard, which is far afield from our Hutterite case.

The only other angle that we should be aware of is that in all these cases, the feds are basically arguing that corporations should not have religious liberty rights. This is obviously somewhat akin to many Montanan's beloved "corporations are not people" argument. But, practically speaking, neither Hobby Lobby (which is a quintessential "religious" company) nor Conestoga (which is a closely held woodworking company owned by Mennonites) are the type of huge, impersonal corporations that the "corporations-aren't-people" crowd likes to villainize.

We'll have some time to review the actual draft brief before it is filed, which I will do to make sure there isn't anything that directly undercuts us in the Hutterite case or it otherwise objectionable.

Thanks,

Lawrence VanDyke
Solicitor General • Montana Department of Justice

215 N. Sanders • P.O. Box 201401
Helena, Montana 59620
T: (406) 444-3442 • F: (406) 444-3549
LVanDyke@mt.gov

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Thursday, January 17, 2013 10:41 AM
To: Fox, Tim
Cc: Darkenwald, Scott; Mattioli, Mark; Bennion, Jon; Swanson, Cory; Barnes, John
Subject: Amicus Memo (cert stage) in Elmbrook School District v. Doe (U.S.)
Attachments: Elmbrook NAAG memo.docx

Recommendation: I recommend that we do join this amicus brief, even though it is only a cert-stage brief.

Decision Deadline: 9:30 am on Tuesday, January 22

Analysis: This amicus brief supports the Elmbrook School District's attempt to have the Court review a decision of the en banc Seventh Circuit. That court held the school could not hold its graduation ceremony in a church building, because of the "sheer religiosity of the space," notwithstanding that the decision was made for secular reasons (air-conditioning, adequate seating, and sufficient parking), and that the graduation ceremony had no religious content. This is a very troubling decision that literally excludes a church from the "public square," simply because it is a church. This another example of interpreting the First Amendment to require discrimination *against* religion – a hold-over from the Warren court that, thankfully, a majority of the Court has moved away from in recent years (emphasizing neutrality).

Special Request: Texas (the drafters of the brief) have asked other joining states to provide examples of any recent government use of churches in their states (e.g., polling places in the 2012 election, aid stations, etc.). Anyone have ideas of how I could get examples for Montana?

From: Schweitzer, Dan [mailto:DSCHWEITZER@NAAG.ORG]
Sent: Wednesday, January 16, 2013 12:46 PM
To: chris.coppin@cwagweb.org; paul.d.stern@maine.gov; dbahr@nd.gov; agjwmcinto@scag.gov; pam.murphy@doj.nh.gov; eric.tabor@iowa.gov; jknorr@attorneygeneral.gov; james.layton@ago.mo.gov; paula.bickett@azag.gov; charles.mcguigan@state.sd.us; RPartington@riag.ri.gov; crimago@saipan.com; barbara.underwood@ag.ny.gov; Hampton, Andrea; Schweitzer, Dan; sbluestone@nmag.gov; david.raupp@arkansasag.gov; gmorg@ago.state.ms.us; jlee@riag.ri.gov; attorney@samoatelco.com; stephan.finkel@lps.state.nj.us; Girard.D.Lau@hawaii.gov; stevemac@ku.edu; dennis.hansen@arkansasag.gov; drobinson@law.ga.gov; hughesafran@hotmail.com; basay@atg.state.vt.us; Mary.Williams@doj.state.or.us; gkelley@ncdoj.gov; alanc@atg.wa.gov; alama@nmag.gov; judy.zeprun@state.ma.us; joanne.grace@alaska.gov; jnotz@atg.state.il.us; mcgimseyr@ag.state.la.us; Gregory.Dauria@ct.gov; anne.edwards@doj.nh.gov; tom.fisher@atg.in.gov; jwhite@ncdoj.gov; whowle@ag.nv.gov; Frances.Grunder@doj.ca.gov; mlanf@ago.state.ms.us; ken.rosenstein@alaska.gov; allison.martin@ag.ky.gov; hpizz@ago.state.ms.us; wellsik@doj.state.wi.us; Lee.Davidson@ksag.org; edavis@doj.vi.gov; donna.murasky@dc.gov; ssullivan@oag.state.md.us; jmaddrey@ncdoj.gov; dspence@oag.state.md.us; wjy@wvago.gov; debbie.jourgensen@wyo.gov; Steve.Creason@atg.in.gov; jafarshee@ago.state.al.us; andrea.silkowitz@dol.lps.state.nj.us; brian.kane@ag.idaho.gov; Richard.Dearing@ag.ny.gov; katie.spohn@nebraska.gov; rrussell@nmag.gov; mwood@ago.state.ms.us; hunterg@atg.wa.gov; restucciae@michigan.gov; wbrockman@oag.state.md.us; agesmith@scag.gov; susan.lee@doj.ca.gov; SG@atg.in.gov; todd.kim@dc.gov; delayne.deck@ag.idaho.gov; dan.domenico@state.co.us; mscodro@atg.state.il.us; heather.mcveigh@atg.in.gov; suzanne.gorman@doj.nh.gov; jbhoward@oag.state.md.us; potterkc@doj.state.wi.us; stjohnm@doj.state.wi.us; ed.bedrosian@state.ma.us; john.garry@ag.state.mn.us; Barbara.Durham@myfloridalegal.com; brooke.paup@texasattorneygeneral.gov; meanssp@doj.state.wi.us; Sherri.Wald@state.sd.us; adam.aston@texasattorneygeneral.gov; jhughes@atg.state.il.us; david.blake@state.co.us; Segrest, Stuart; susan.britton@ag.ky.gov; john.campbell@ksag.org; jung.kim@dol.lps.state.nj.us; dave.jones@alaska.gov; delberta.pfeifer@ksag.org; perry.zinn-rowthorn@ct.gov; mwebb@ago.state.ms.us; barb.fehrman@ag.state.mn.us; vbeavers@ag.nv.gov; bromano@utah.gov; timothy.osterhaus@myfloridalegal.com; kris.aillslieger@ksag.org; Alexandra.Schimmer@ohioattorneygeneral.gov; bob.fagan@msdh.state.ms.us; Eileen.carey@state.ma.us; sean.riley@ag.ky.gov; ashley.harwel@atg.in.gov; dGetchell@oag.state.va.us; anna.joyce@doj.state.or.us;

marlene.brown@dol.lps.state.nj.us; peter.michael@wyo.gov; diane.dewolf@myfloridalegal.com;
jonathan.mitchell@oag.state.tx.us; mary.mertz@ohioattorneygeneral.gov; sforney@attorneygeneral.gov;
npeterson@law.ga.gov; jneiman@ago.state.al.us; ariel.levinson-waldman@dc.gov; burschj@michigan.gov;
Dave.Cole@azag.gov; Leesa.Thompson@oag.ok.gov; dowkerc@michigan.gov; frederick.nelson@ohioattorneygeneral.gov;
patrick.wyrick@oag.ok.gov; bill.young@ag.tn.gov; Black, Michael; MBrady@oag.state.va.us; Sam Peterson;
abrasher@ago.state.al.us; pamela.spang@state.ma.us; luisroman@justice.com; kguthrie@ago.state.al.us;
andy.oldham@texasattorneygeneral.gov; Jason.pleggenkuhle@ag.state.mn.us; Fred.Yarger@state.co.us;
robyn.bender@ag.ky.gov; laura-jane.weimer@state.co.us; james.adams@state.de.us; Aricka.seales@state.ma.us; Wilton,
Patricia; pamela.webster@state.de.us; VanDyke, Lawrence
Cc: adam.aston@texasattorneygeneral.gov
Subject: Amicus Memo (cert stage) in Elmbrook School District v. Doe (U.S.)

To: Civil Amicus Contacts
From: Adam W. Aston, Principal Deputy Solicitor General of Texas

The attached Amicus Memo describes an amicus brief Texas is preparing in support of the cert petition filed in *Elmbrook School District v. Doe*, 12-755 (U.S.). Elmbrook School District is seeking certiorari review from an en banc Seventh Circuit decision holding that the district's rental of a church for high school graduations violated the Establishment Clause, even though it was undisputed that the decision was made for non-religious reasons and the graduation ceremonies had no religious content. According to the Seventh Circuit, the "sheer religiosity of the space" was dispositive both as to the endorsement and coercion of religion.

The States' brief is due on January 22, and we can accept sign-ons until 10:30 a.m. that day. Additionally, we would like joining States to provide any available information regarding recent government uses of church space (ex. polling locations during the 2012 general elections, as aid stations during recent hurricanes and other emergencies, etc.).

Adam W. Aston
Principal Deputy Solicitor General
Office of the Attorney General of Texas
P.O. Box 12548 (MC 059)
Austin, TX 78711-2548
[Tel.] (512) 936-0596
[Fax] (512) 474-2697
Adam.Aston@oag.state.tx.us

Dan Schweitzer
Supreme Court Counsel
National Association of Attorneys General
2030 M Street, NW, 8th Floor
Washington, DC 20036
(202) 326-6010
(202) 785-0410 - fax
dschweitzer@naag.org

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Thursday, January 17, 2013 3:38 PM
To: Aston, Adam (adam.aston@texasattorneygeneral.gov)
Subject: FW: Amicus Memo (cert stage) in Elmbrook School District v. Doe (U.S.)
Attachments: 2012GenElectionPollList 10.23.2012.xlsx

Adam – We intend to join this brief, subject to review of the final draft. It is a very important issue, and we appreciate the opportunity to join.

Attached is a spreadsheet of all of Montana's polling places this last election. I am told that it was available online until this morning, when it was removed to make space for other things on our Secretary of State's website. You will see that churches served as polling places in multiple locations. I hope this is helpful, and if you have any questions please let me know.

Thank you again, and I look forward to seeing the draft.

Lawrence VanDyke
Solicitor General • Montana Department of Justice

215 N. Sanders • P.O. Box 201401
Helena, Montana 59620
T: (406) 444-3442 • F: (406) 444-3549
LVanDyke@mt.gov

From: Schweitzer, Dan [mailto:DSCHWEITZER@NAAG.ORG]
Sent: Wednesday, January 16, 2013 12:46 PM
To: chris.coppin@cwagweb.org; paul.d.stern@maine.gov; dbahr@nd.gov; agjwmcinto@scag.gov; pam.murphy@doj.nh.gov; eric.tabor@iowa.gov; jknorr@attorneygeneral.gov; james.layton@ago.mo.gov; paula.bickett@azag.gov; charles.mcguigan@state.sd.us; RPartington@riag.ri.gov; crimago@saipan.com; barbara.underwood@ag.ny.gov; Hampton, Andrea; Schweitzer, Dan; sbluestone@nmag.gov; david.raupp@arkansasag.gov; gmorg@ago.state.ms.us; jlee@riag.ri.gov; attorney@samoatelco.com; stephan.finkel@lps.state.nj.us; Girard.D.Lau@hawaii.gov; stevemac@ku.edu; dennis.hansen@arkansasag.gov; drobinson@law.ga.gov; hughesafran@hotmail.com; basay@atg.state.vt.us; Mary.Williams@doj.state.or.us; gkelley@ncdoj.gov; alanc@atg.wa.gov; alama@nmag.gov; judy.zeprun@state.ma.us; joanne.grace@alaska.gov; jnotz@atg.state.il.us; mcgimseyr@ag.state.la.us; Gregory.Dauria@ct.gov; anne.edwards@doj.nh.gov; tom.fisher@atg.in.gov; jwhite@ncdoj.gov; whowie@ag.nv.gov; Frances.Grunder@doj.ca.gov; mlanf@ago.state.ms.us; ken.rosenstein@alaska.gov; allison.martin@ag.ky.gov; hpizz@ago.state.ms.us; wells@doj.state.wi.us; Lee.Davidson@ksag.org; edavis@doj.vi.gov; donna.murasky@dc.gov; ssullivan@oag.state.md.us; jmaddrey@ncdoj.gov; dspence@oag.state.md.us; wjy@wvago.gov; debbie.jourgensen@wyo.gov; Steve.Creazon@atg.in.gov; jafarshee@ago.state.al.us; andrea.silkowitz@dol.lps.state.nj.us; brian.kane@ag.idaho.gov; Richard.Dearing@ag.ny.gov; katie.spohn@nebraska.gov; rrussell@nmag.gov; mwood@ago.state.ms.us; hunterg@atg.wa.gov; restucciae@michigan.gov; wbrockman@oag.state.md.us; agesmith@scag.gov; susan.lee@doj.ca.gov; SG@atg.in.gov; todd.kim@dc.gov; delayne.deck@ag.idaho.gov; dan.domenico@state.co.us; mscodro@atg.state.il.us; heather.mcveigh@atg.in.gov; suzanne.gorman@doj.nh.gov; jbhoward@oag.state.md.us; potterkc@doj.state.wi.us; stjohnm@doj.state.wi.us; ed.bedrosian@state.ma.us; john.garry@ag.state.mn.us; Barbara.Durham@myfloridalegal.com; brooke.paup@texasattorneygeneral.gov; meanssp@doj.state.wi.us; Sherri.Wald@state.sd.us; adam.aston@texasattorneygeneral.gov; jhughes@atg.state.il.us; david.blake@state.co.us; Segrest, Stuart; susan.britton@ag.ky.gov; john.campbell@ksag.org; jung.kim@dol.lps.state.nj.us; dave.jones@alaska.gov; delberta.pfeifer@ksag.org; perry.zinn-rowthorn@ct.gov; mwebb@ago.state.ms.us; barb.fehrman@ag.state.mn.us;

vbeavers@ag.nv.gov; bromano@utah.gov; timothy.osterhaus@myfloridalegal.com; kris.ailsieger@ksag.org; Alexandra.Schimmer@ohioattorneygeneral.gov; bob.fagan@msdh.state.ms.us; Eileen.carey@state.ma.us; sean.riley@ag.ky.gov; ashley.harwel@atg.in.gov; dGetchell@oag.state.va.us; anna.joyce@doj.state.or.us; marlene.brown@dol.lps.state.nj.us; peter.michael@wyo.gov; diane.dewolf@myfloridalegal.com; jonathan.mitchell@oag.state.tx.us; mary.mertz@ohioattorneygeneral.gov; sforney@attorneygeneral.gov; npeterson@law.ga.gov; jneiman@ago.state.al.us; ariel.levinson-waldman@dc.gov; burschj@michigan.gov; Dave.Cole@azag.gov; Leesa.Thompson@oag.ok.gov; dowker@michigan.gov; frederick.nelson@ohioattorneygeneral.gov; patrick.wyrick@oag.ok.gov; bill.young@ag.tn.gov; Black, Michael; MBrady@oag.state.va.us; Sam Peterson; abrasher@ago.state.al.us; pamela.spang@state.ma.us; luisroman@justice.com; kguthrie@ago.state.al.us; andy.oldham@texasattorneygeneral.gov; Jason.pleggenkuhle@ag.state.mn.us; Fred.Yarger@state.co.us; robyn.bender@ag.ky.gov; laura-jane.weimer@state.co.us; james.adams@state.de.us; Aricka.seales@state.ma.us; Wilton, Patricia; pamela.webster@state.de.us; VanDyke, Lawrence

Cc: adam.aston@texasattorneygeneral.gov

Subject: Amicus Memo (cert stage) in *Elmbrook School District v. Doe* (U.S.)

To: Civil Amicus Contacts

From: Adam W. Aston, Principal Deputy Solicitor General of Texas

The attached Amicus Memo describes an amicus brief Texas is preparing in support of the cert petition filed in *Elmbrook School District v. Doe*, 12-755 (U.S.). Elmbrook School District is seeking certiorari review from an en banc Seventh Circuit decision holding that the district's rental of a church for high school graduations violated the Establishment Clause, even though it was undisputed that the decision was made for non-religious reasons and the graduation ceremonies had no religious content. According to the Seventh Circuit, the "sheer religiosity of the space" was dispositive both as to the endorsement and coercion of religion.

The States' brief is due on January 22, and we can accept sign-ons until 10:30 a.m. that day. Additionally, we would like joining States to provide any available information regarding recent government uses of church space (ex. polling locations during the 2012 general elections, as aid stations during recent hurricanes and other emergencies, etc.).

Adam W. Aston
Principal Deputy Solicitor General
Office of the Attorney General of Texas
P.O. Box 12548 (MC 059)
Austin, TX 78711-2548
[Tel.] (512) 936-0596
[Fax] (512) 474-2697
Adam.Aston@oag.state.tx.us

Dan Schweitzer
Supreme Court Counsel
National Association of Attorneys General
2030 M Street, NW, 8th Floor
Washington, DC 20036
(202) 326-6010
(202) 785-0410 - fax
dschweitzer@naag.org

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Thursday, January 17, 2013 3:45 PM
To: Fox, Tim
Cc: Darkenwald, Scott; Mattioli, Mark; Bennion, Jon; Swanson, Cory; Barnes, John; James, Julie
Subject: RE: Amicus Memo (cert stage) in Elmbrook School District v. Doe (U.S.)

It turns out that Montana does use churches as polling places in various locations. I obtained a spreadsheet of all of our polling places from the Secretary of State's office (the spreadsheet was apparently available online until this morning, when it was taken down post-election to make room for other things, so it is a public document). I forwarded that spreadsheet to Texas so they can use Montana as an example in the brief.

From: Fox, Tim
Sent: Thursday, January 17, 2013 1:39 PM
To: VanDyke, Lawrence
Cc: Darkenwald, Scott; Mattioli, Mark; Bennion, Jon; Swanson, Cory; Barnes, John
Subject: Re: Amicus Memo (cert stage) in Elmbrook School District v. Doe (U.S.)

I agree that we DO join. Thank you. Tim

Sent from my iPhone

On Jan 17, 2013, at 11:41 AM, "VanDyke, Lawrence" <LVanDyke@mt.gov> wrote:

Recommendation: I recommend that we do join this amicus brief, even though it is only a cert-stage brief.

Decision Deadline: 9:30 am on Tuesday, January 22

Analysis: This amicus brief supports the Elmbrook School District's attempt to have the Court review a decision of the en banc Seventh Circuit. That court held the school could not hold its graduation ceremony in a church building, because of the "sheer religiosity of the space," notwithstanding that the decision was made for secular reasons (air-conditioning, adequate seating, and sufficient parking), and that the graduation ceremony had no religious content. This is a very troubling decision that literally excludes a church from the "public square," simply because it is a church. This another example of interpreting the First Amendment to require discrimination *against* religion – a hold-over from the Warren court that, thankfully, a majority of the Court has moved away from in recent years (emphasizing neutrality).

Special Request: Texas (the drafters of the brief) have asked other joining states to provide examples of any recent government use of churches in their states (e.g., polling places in the 2012 election, aid stations, etc.). Anyone have ideas of how I could get examples for Montana?

From: Schweitzer, Dan [<mailto:DSCHWEITZER@NAAG.ORG>]
Sent: Wednesday, January 16, 2013 12:46 PM
To: chris.coppin@cwagweb.org; paul.d.stern@maine.gov; dbahr@nd.gov; agjwmcinto@scag.gov; pam.murphy@doj.nh.gov; eric.tabor@iowa.gov; jknorr@attorneygeneral.gov; james.layton@ago.mo.gov; paula.bickett@azag.gov; charles.mcguigan@state.sd.us; RPartington@riag.ri.gov; crimago@saipan.com; barbara.underwood@ag.ny.gov; Hampton, Andrea; Schweitzer, Dan; sbluestone@nmag.gov;

david.raupp@arkansasag.gov; gmorg@ago.state.ms.us; jlee@riag.ri.gov; attorney@samoatelco.com;
stephan.finkel@lps.state.nj.us; Girard.D.Lau@hawaii.gov; stevemac@ku.edu;
dennis.hansen@arkansasag.gov; drobinson@law.qa.gov; hughesafran@hotmail.com;
basay@atg.state.vt.us; Mary.Williams@doj.state.or.us; gkelley@ncdoj.gov; rlanc@atg.wa.gov;
alama@nmag.gov; judy.zeprun@state.ma.us; joanne.grace@alaska.gov; jnotz@atg.state.il.us;
mcgimseyr@ag.state.la.us; Gregory.Dauria@ct.gov; anne.edwards@doj.nh.gov; tom.fisher@atg.in.gov;
jwhite@ncdoj.gov; whowle@ag.nv.gov; Frances.Grunder@doj.ca.gov; mlanf@ago.state.ms.us;
ken.rosenstein@alaska.gov; allison.martin@ag.ky.gov; hpizz@ago.state.ms.us; wellsik@doj.state.wi.us;
Lee.Davidson@ksag.org; edavis@doj.vi.gov; donna.murasky@dc.gov; ssullivan@oag.state.md.us;
jmaddrey@ncdoj.gov; dspence@oag.state.md.us; wjy@wvago.gov; debbie.jourgensen@wyo.gov;
Steve.Creaseon@atg.in.gov; jafarshee@ago.state.al.us; andrea.silkowitz@dol.lps.state.nj.us;
brian.kane@ag.idaho.gov; Richard.Dearing@ag.ny.gov; katie.spohn@nebraska.gov; russell@nmag.gov;
mwood@ago.state.ms.us; hunterg@atg.wa.gov; restucciae@michigan.gov;
wbrockman@oag.state.md.us; agesmith@scaq.gov; susan.lee@doj.ca.gov; SG@atg.in.gov;
todd.kim@dc.gov; delayne.deck@ag.idaho.gov; dan.domenico@state.co.us; mscodro@atg.state.il.us;
heather.mcveigh@atg.in.gov; suzanne.gorman@doj.nh.gov; jbhoward@oag.state.md.us;
potterkc@doj.state.wi.us; stjohnkm@doj.state.wi.us; ed.bedrosian@state.ma.us;
john.garry@ag.state.mn.us; Barbara.Durham@myfloridalegal.com;
brooke.paup@texasattorneygeneral.gov; meanssp@doj.state.wi.us; Sherri.Wald@state.sd.us;
adam.aston@texasattorneygeneral.gov; jhughes@atg.state.il.us; david.blake@state.co.us; Segrest,
Stuart; susan.britton@ag.ky.gov; john.campbell@ksag.org; jung.kim@dol.lps.state.nj.us;
dave.jones@alaska.gov; delberta.pfeifer@ksag.org; perry.zinn-rowthorn@ct.gov;
mwebb@ago.state.ms.us; barb.fehrman@ag.state.mn.us; vbeavers@ag.nv.gov; bromano@utah.gov;
timothy.osterhaus@myfloridalegal.com; kris.aillsieger@ksag.org;
Alexandra.Schimmer@ohioattorneygeneral.gov; bob.fagan@msdh.state.ms.us;
Eileen.carey@state.ma.us; sean.riley@ag.ky.gov; ashley.harwel@atg.in.gov; dGetchell@oag.state.va.us;
anna.joyce@doj.state.or.us; marlene.brown@dol.lps.state.nj.us; peter.michael@wyo.gov;
diane.dewolf@myfloridalegal.com; jonathan.mitchell@oag.state.tx.us;
mary.mertz@ohioattorneygeneral.gov; sforney@attorneygeneral.gov; npeterson@law.qa.gov;
jneiman@ago.state.al.us; ariel.levinson-waldman@dc.gov; burschj@michigan.gov; Dave.Cole@azag.gov;
Leesa.Thompson@oag.ok.gov; dowker@chicago.gov; frederick.nelson@ohioattorneygeneral.gov;
patrick.wyrick@oag.ok.gov; bill.young@ag.tn.gov; Black, Michael; MBrady@oag.state.va.us; Sam
Peterson; abrasher@ago.state.al.us; pamela.spang@state.ma.us; luisroman@justice.com;
kguthrie@ago.state.al.us; andy.oldham@texasattorneygeneral.gov; Jason.pleggenkuhle@ag.state.mn.us;
Fred.Yarger@state.co.us; robyn.bender@ag.ky.gov; laura-jane.weimer@state.co.us;
james.adams@state.de.us; Aricka.seales@state.ma.us; Wilton, Patricia; pamela.webster@state.de.us;
VanDyke, Lawrence

Cc: adam.aston@texasattorneygeneral.gov

Subject: Amicus Memo (cert stage) in *Elmbrook School District v. Doe* (U.S.)

To: Civil Amicus Contacts

From: Adam W. Aston, Principal Deputy Solicitor General of Texas

The attached Amicus Memo describes an amicus brief Texas is preparing in support of the cert petition filed in *Elmbrook School District v. Doe*, 12-755 (U.S.). Elmbrook School District is seeking certiorari review from an en banc Seventh Circuit decision holding that the district's rental of a church for high school graduations violated the Establishment Clause, even though it was undisputed that the decision was made for non-religious reasons and the graduation ceremonies had no religious content. According to the Seventh Circuit, the "sheer religiosity of the space" was dispositive both as to the endorsement and coercion of religion.

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Principal Deputy Solicitor General
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Dan Schweitzer
Supreme Court Counsel
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2030 M Street, NW, 8th Floor
Washington, DC 20036
(202) 326-6010
(202) 785-0410 - fax
dschweitzer@naag.org

<Elmbrook NAAG memo.docx>

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Tuesday, June 25, 2013 9:19 AM
To: 'Heather.McVeigh@atg.in.gov'; Aston, Adam (adam.aston@texasattorneygeneral.gov)
Subject: Town of Greece v. Galloway - Merits Amicus Brief - response to information request

Heather and Adam – One of our interns researched the issue of the Montana legislature’s prayer practices in response to your information request. Her findings are laid out below. Most of it is simply based on talking with our legislative staff—it doesn’t appear there is much in the way of written law or guidance on this in Montana. Hopefully this helps.

Montana expects to be joining the amicus brief—we look forward to seeing you draft. Thanks for all your work on this.

Lawrence VanDyke
Solicitor General ♦ Montana Department of Justice

215 N. Sanders ♦ P.O. Box 201401
Helena, Montana 59620
T: (406) 444-3442 ♦ F: (406) 444-3549
LVanDyke@mt.gov

From: Wagner, Jessica
Sent: Monday, June 24, 2013 5:50 PM
To: VanDyke, Lawrence
Subject: Montana Legislative Prayer

Hi Lawrence,

Here’s the information about prayer in the Montana legislature that you requested. The following details are based primarily on conversations I had with Susan Fox, the Executive Director of Legislative Services, and Marilyn Miller, the Secretary of the Senate and former Clerk of the House. I also consulted the Rules of the Montana Legislature, Montana code, and Senate Journals.

Both the Montana House and Senate have a tradition of opening each day of the legislative session with prayer. The President of the Senate appoints a chaplain who is subject to the confirmation of the Senate under Montana law. *See* Mont. Code Ann. § 5-2-221(5). The chaplain leads the Senate in prayer unless he is absent, in which case he arranges for a local minister to lead the Senate in prayer, or in a rare instance a member may be called upon to give the invocation. In the House, the prayer is given by members who volunteer. Prayer in the House follows the religious affiliation of the representative offering it, and the invocations have ranged from Christian to Native American to New Age. There are no legislative guidelines for prayers in either chamber, nor is there any pre-screening of prayer contents.

The prayer practices are rooted in tradition. The Rules of the Montana Legislature only mention prayer once in passing (“[a]fter prayer, roll call, and report on the journal the order of business of the Senate is as follows ...” S50-20 (2013)).

Interestingly enough Mont. Code Ann. § 5-2-221(5) appears to make appointment of a chaplain mandatory for both chambers: “A secretary of the senate, sergeant at arms, and chaplain must be appointed by the president subject to confirmation by the senate, and a chief clerk of the house, sergeant at arms, and chaplain must be appointed by the speaker subject to confirmation by the house.” However, under the House Rules, this appointment becomes discretionary: “[t]he Speaker shall appoint a Chief Clerk and Sergeant-at-Arms and *may* appoint a Chaplain, subject to confirmation of the House (section 5-2-221, MCA),” H10-90 (2013) (emphasis added). The House has not appointed a chaplain in recent history, if ever. The Senate chaplain is paid.

Best,

Jessica

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Monday, June 24, 2013 6:29 PM
To: Wagner, Jessica
Subject: RE: Montana Legislative Prayer

Thank you, Jessica. Very helpful (and fast) research, and we are delighted that you're spending the summer with us. Glad you had a good day!

From: Wagner, Jessica
Sent: Monday, June 24, 2013 5:50 PM
To: VanDyke, Lawrence
Subject: Montana Legislative Prayer

Hi Lawrence,

Here's the information about prayer in the Montana legislature that you requested. The following details are based primarily on conversations I had with Susan Fox, the Executive Director of Legislative Services, and Marilyn Miller, the Secretary of the Senate and former Clerk of the House. I also consulted the Rules of the Montana Legislature, Montana code, and Senate Journals.

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The House has not appointed a chaplain in recent history, if ever. The Senate chaplain is paid.

I've also been researching how to bring parental rights as a defense in the Planned Parenthood case. So far, I've found a lot about *parens patriae*, which requires the state to have a quasi-sovereign interest that citizens can't effectively bring on their own behalf, but I haven't found much about defenses. There is one Supreme Court

case, Massachusetts v. Mellon, 262 U.S. 447, 485-86 (1923), which says that “[w]hile the state, under some circumstances, may sue in that capacity for the protection of its citizens, it is no part of its duty or power to enforce their rights in respect of their relations with the federal government.” I need to do a lot more research here, and I’ll keep you posted.

Thanks again for everything! I’ve really enjoyed my first day.

Best,

Jessica

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Monday, June 24, 2013 9:39 AM
To: Wagner, Jessica
Subject: FW: Amicus Memo in Town of Greece v. Galloway (U.S.)
Attachments: Galloway Amicus Memo (Merits) (6-17-13).doc

From: Schweitzer, Dan [<mailto:DSCHWEITZER@NAAG.ORG>]
Sent: Monday, June 17, 2013 8:05 AM
To: chris.coppin@cwagweb.org; paul.d.stern@maine.gov; dbahr@nd.gov; JMcIntosh@scaq.gov; pam.murphy@doj.nh.gov; eric.tabor@iowa.gov; jknorr@attorneygeneral.gov; james.layton@ago.mo.gov; paula.bickett@azag.gov; charles.mcguigan@state.sd.us; RPartington@riag.ri.gov; crimago@saipan.com; barbara.underwood@ag.ny.gov; Hampton, Andrea; Schweitzer, Dan; sbluestone@nmaq.gov; david.raupp@arkansasag.gov; gmorg@ago.state.ms.us; jlee@riag.ri.gov; attorney@samoatelco.com; stephan.finkel@lps.state.nj.us; Girard.D.Lau@hawaii.gov; stevemac@ku.edu; dennis.hansen@arkansasag.gov; basay@atg.state.vt.us; Mary.Williams@doj.state.or.us; gkelley@ncdoj.gov; alanc@atg.wa.gov; alama@nmaq.gov; judy.zeprun@state.ma.us; joanne.grace@alaska.gov; jnotz@atg.state.il.us; Gregory.Dauria@ct.gov; anne.edwards@doj.nh.gov; tom.fisher@atg.in.gov; jwhite@ncdoj.gov; whowie@ag.nv.gov; Frances.Grunder@doj.ca.gov; mianf@ago.state.ms.us; ken.rosenstein@alaska.gov; allison.martin@ag.ky.gov; hpizz@ago.state.ms.us; wellsik@doj.state.wi.us; Lee.Davidson@ksag.org; edavis@doj.vi.gov; donna.murasky@dc.gov; ssullivan@oag.state.md.us; jmaddrey@ncdoj.gov; dspence@oag.state.md.us; vlp@wvago.gov; debbie.mcveigh@wyo.gov; Steve.Creaseon@atg.in.gov; jafarshee@ago.state.al.us; andrea.silkowitz@dol.lps.state.nj.us; brian.kane@ag.idaho.gov; Richard.Dearing@ag.ny.gov; katie.spohn@nebraska.gov; rrussell@nmaq.gov; mwood@ago.state.ms.us; restucciae@michigan.gov; wbrockman@oag.state.md.us; agesmith@scaq.gov; susan.lee@doj.ca.gov; SG@atg.in.gov; todd.kim@dc.gov; delayne.deck@ag.idaho.gov; dan.domenico@state.co.us; mscodro@atg.state.il.us; heather.mcveigh@atg.in.gov; suzanne.gorman@doj.nh.gov; jbhoward@oag.state.md.us; potterkc@doj.state.wi.us; stjohnkm@doj.state.wi.us; ed.bedrosian@state.ma.us; john.garry@ag.state.mn.us; Barbara.Durham@myfloridalegal.com; brooke.paup@texasattorneygeneral.gov; meanssp@doj.state.wi.us; Sherr.Wald@state.sd.us; adam.aston@texasattorneygeneral.gov; jhughes@atg.state.il.us; david.blake@state.co.us; Segrest, Stuart; susan.britton@ag.ky.gov; john.campbell@ksag.org; jung.kim@dol.lps.state.nj.us; dave.jones@alaska.gov; delberta.pfeifer@ksag.org; perry.zinn-rowthorn@ct.gov; mwebb@ago.state.ms.us; barb.fehrman@ag.state.mn.us; vbeavers@ag.nv.gov; bromano@utah.gov; kris.ailsliager@ksag.org; gregory.mchugh@dol.lps.state.nj.us; Alexandra.Schimmer@ohioattorneygeneral.gov; bob.fagan@msdh.state.ms.us; Eileen.carey@state.ma.us; sean.riley@ag.ky.gov; ashley.harwel@atg.in.gov; dGetchell@oag.state.va.us; anna.joyce@doj.state.or.us; marlene.brown@dol.lps.state.nj.us; peter.michael@wyo.gov; diane.dewolf@myfloridalegal.com; jonathan.mitchell@oag.state.tx.us; mary.mertz@ohioattorneygeneral.gov; sforney@attorneygeneral.gov; npeterson@law.ga.gov; jneiman@ago.state.al.us; ariel.levinson-waldman@dc.gov; burschi@michigan.gov; Leesa.Thompson@oag.ok.gov; dowkerc@michigan.gov; frederick.nelson@ohioattorneygeneral.gov; patrick.wyrick@oag.ok.gov; bill.young@ag.tn.gov; Black, Michael; MBrady@oag.state.va.us; Sam Peterson; abrasher@ago.state.al.us; pamela.spang@state.ma.us; kguthrie@ago.state.al.us; andy.oldham@texasattorneygeneral.gov; Jason.pleggenkuhle@ag.state.mn.us; Fred.Yarger@state.co.us; michael.hendershot@ohioattorneygeneral.gov; robyn.bender@ag.ky.gov; laura-jane.weimer@state.co.us; james.adams@state.de.us; Aricka.seales@state.ma.us; wiltonp@ag.state.la.us; lindstroma@michigan.gov; Goldstein, Seth; VanDyke, Lawrence; allen.winsor@myfloridalegal.com; christopher.dodrill@wvago.gov; marmercado@justicia.pr.gov; Mary.McTaggart@state.de.us
Subject: Amicus Memo in Town of Greece v. Galloway (U.S.)

To: Civil Amicus Contacts

Attached is an amicus memo for a merits-stage brief in support of petitioner that will be offered jointly by Indiana and Texas in *Town of Greece, New York v. Susan Galloway, et al.*, No. 12-696 (U.S.). The issue is

whether a legislative prayer practice violates the Establishment Clause notwithstanding the absence of discrimination in the selection of prayer-givers or forbidden exploitation of the prayer opportunity.

The brief itself will be ready for circulation in late July. Please note that there is an information request in the memo.

Dan Schweitzer
Supreme Court Counsel
National Association of Attorneys General
2030 M Street, NW, 8th Floor
Washington, DC 20036
(202) 326-6010
(202) 785-0410 - fax
dschweitzer@naag.org

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Monday, July 29, 2013 2:41 PM
To: 'Heather.McVeigh@atg.in.gov'
Subject: FW: Amicus Brief in Town of Greece v. Galloway (U.S.)
Attachments: Town of Greece v. Galloway Merits-Stage Amicus.pdf; Town of Greece v. Galloway Amicus Memo (Merits).pdf; 134 - Certified Opinion.pdf

Heather - Montana would like to join this brief. Please list our Attorney General as "Timothy C. Fox".

General Fox's full address, should you need it, is:

Timothy C. Fox
Attorney General of Montana
P.O. Box 201401
Helena, MT 59620-1401
406-444-2026

Please confirm our join by return email, and if you could forward a copy of the final brief once filed, we would appreciate it.

Sincerely,

Lawrence VanDyke
Solicitor General ♦ Montana Department of Justice

215 N. Sanders ♦ P.O. Box 201401
Helena, Montana 59620
T: (406) 444-3442 ♦ F: (406) 444-3549
LVanDyke@mt.gov

From: Schweitzer, Dan [mailto:DSCHWEITZER@NAAG.ORG]

Sent: Monday, July 29, 2013 1:06 PM

To: chris.coppin@cwagweb.org; paul.d.stern@maine.gov; dbahr@nd.gov; JMcIntosh@scag.gov; pam.murphy@doj.nh.gov; eric.tabor@iowa.gov; jknorr@attorneygeneral.gov; james.layton@ago.mo.gov; paula.bickett@azag.gov; charles.mcguigan@state.sd.us; RPartington@riag.ri.gov; crimago@saipan.com; barbara.underwood@ag.ny.gov; Hampton, Andrea; Schweitzer, Dan; sbluestone@nmag.gov; david.raupp@arkansasag.gov; gmorg@ago.state.ms.us; jlee@riag.ri.gov; attorney@samoatelco.com; stephan.finkel@lps.state.nj.us; Girard.D.Lau@hawaii.gov; stevemac@ku.edu; dennis.hansen@arkansasag.gov; basay@atg.state.vt.us; Mary.Williams@doj.state.or.us; gkelley@ncdoj.gov; alanc@atg.wa.gov; alama@nmag.gov; judy.zeprun@state.ma.us; joanne.grace@alaska.gov; jnotz@atg.state.il.us; Gregory.Dauria@ct.gov; anne.edwards@doj.nh.gov; tom.fisher@atg.in.gov; jwhite@ncdoj.gov; whowle@ag.nv.gov; Frances.Grunder@doj.ca.gov; mlanf@ago.state.ms.us; ken.rosenstein@alaska.gov; allison.martin@ag.ky.gov; hpizz@ago.state.ms.us; wellsik@doj.state.wi.us; Lee.Davidson@ksag.org; edavis@doj.vi.gov; donna.murasky@dc.gov; ssullivan@oag.state.md.us; jmaddrey@ncdoj.gov; dspence@oag.state.md.us; vlp@wvago.gov; debbie.mcveigh@wyo.gov; Steve.Creaseon@atg.in.gov; jafarshee@ago.state.al.us; andrea.silkowitz@dol.lps.state.nj.us; brian.kane@ag.idaho.gov; Richard.Dearing@ag.ny.gov; katie.spohn@nebraska.gov; rrussell@nmag.gov; mwood@ago.state.ms.us; restucciae@michigan.gov; wbrockman@oag.state.md.us; agesmith@scag.gov; susan.lee@doj.ca.gov; SG@atg.in.gov; todd.kim@dc.gov; delayne.deck@ag.idaho.gov; dan.domenico@state.co.us; mscodro@atg.state.il.us; heather.mcveigh@atg.in.gov; suzanne.gorman@doj.nh.gov; jbhoward@oag.state.md.us;

potterkc@doj.state.wi.us; stjohnkm@doj.state.wi.us; ed.bedrosian@state.ma.us; john.garry@ag.state.mn.us; Barbara.Durham@myfloridalegal.com; brooke.paup@texasattorneygeneral.gov; meanssp@doj.state.wi.us; Sherri.Wald@state.sd.us; adam.aston@texasattorneygeneral.gov; jhughes@atg.state.il.us; david.blake@state.co.us; Segrest, Stuart; susan.britton@ag.ky.gov; john.campbell@ksag.org; jung.kim@dol.lps.state.nj.us; dave.jones@alaska.gov; delberta.pfeifer@ksag.org; perry.zinn-rowthorn@ct.gov; mwebb@ago.state.ms.us; barb.fehrman@ag.state.mn.us; vbeavers@ag.nv.gov; bromano@utah.gov; kris.aillsieger@ksag.org; Alexandra.Schimmer@ohioattorneygeneral.gov; bob.fagan@msdh.state.ms.us; Eileen.carey@state.ma.us; sean.riley@ag.ky.gov; ashley.harwel@atg.in.gov; dGetchell@oag.state.va.us; anna.joyce@doj.state.or.us; marlene.brown@dol.lps.state.nj.us; peter.michael@wyo.gov; diane.dewolf@myfloridalegal.com; jonathan.mitchell@oag.state.tx.us; mary.mertz@ohioattorneygeneral.gov; sformey@attorneygeneral.gov; npeterson@law.ga.gov; jneiman@ago.state.al.us; ariel.levinson-waldman@dc.gov; burschj@michigan.gov; Leesa.Thompson@oag.ok.gov; dowkerc@michigan.gov; frederick.nelson@ohioattorneygeneral.gov; patrick.wyrick@oag.ok.gov; bill.young@ag.tn.gov; Black, Michael; MBrady@oag.state.va.us; Sam Peterson; abrasher@ago.state.al.us; pamela.spang@state.ma.us; kguthrie@ago.state.al.us; andy.oldham@texasattorneygeneral.gov; Jason.pleggenkuhle@ag.state.mn.us; michael.hendershot@ohioattorneygeneral.gov; robyn.bender@ag.ky.gov; laura-jane.weimer@state.co.us; james.adams@state.de.us; Aricka.seales@state.ma.us; wiltonp@ag.state.la.us; lindstroma@michigan.gov; VanDyke, Lawrence; allen.winsor@myfloridalegal.com; christopher.dodrill@wvago.gov; marmercado@justicia.pr.gov; elbert.lin@wvago.gov; Mary.McTaggart@state.de.us

Subject: Amicus Brief in Town of Greece v. Galloway (U.S.)

To: Civil Amicus Contacts

Attached is a draft merits-stage amicus brief in support of petitioner by Indiana and Texas in *Town of Greece, New York v. Susan Galloway*, 12-696 (U.S.). The issue is whether a legislative prayer practice violates the Establishment Clause notwithstanding the absence of discrimination in the selection of prayer-givers or forbidden exploitation of the prayer opportunity. (Also attached is the Amicus Memo and the lower court opinion.)

The deadline for joining the brief is August 1, 2013 at 5 pm EDT. To join, you may contact:

Heather Hagan McVeigh
Deputy Solicitor General
Office of the Indiana Attorney General
Indiana Government Center South, 5th Floor
302 West Washington Street
Indianapolis, Indiana 46204
Heather.McVeigh@atg.in.gov
T: 317.234.4918 | F: 317.232.7979

Dan Schweitzer
Supreme Court Counsel
National Association of Attorneys General
2030 M Street, NW, 8th Floor
Washington, DC 20036
(202) 326-6010
(202) 785-0410 - fax
dschweitzer@naag.org

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Monday, June 17, 2013 11:58 AM
To: Fox, Tim; Mattioli, Mark
Subject: FW: Amicus Memo in Town of Greece v. Galloway (U.S.)
Attachments: Galloway Amicus Memo (Merits) (6-17-13).doc

Tim and Mark – This is an amicus join request for the merits-stage in the *Town of Greece v. Galloway* case – the legislative prayer case. You will recall that we joined the cert-stage amicus brief on this – in fact, it was the first brief Tim joined (on his first day in office). I assume we will want to join the merits stage brief on this. Our decision will be due in late July – I just wanted to give you a heads up.

Indiana is asking for information about states' legislative prayer practices. If it works for you, I'll have one of the Blackstone fellows look into that when they get back next week.

From: Schweitzer, Dan [mailto:DSCHWEITZER@NAAG.ORG]
Sent: Monday, June 17, 2013 8:05 AM
To: chris.coppin@cwagweb.org; paul.d.stern@maine.gov; dbahr@nd.gov; JMcIntosh@scag.gov; pam.murphy@doj.nh.gov; eric.tabor@iowa.gov; jknorr@attorneygeneral.gov; james.layton@ago.mo.gov; paula.bickett@azag.gov; charles.mcguigan@state.sd.us; RPartington@riag.ri.gov; crimago@saipan.com; barbara.underwood@ag.ny.gov; Hampton, Andrea; Schweitzer, Dan; sbluestone@nmag.gov; david.raupp@arkansasag.gov; gmorg@ago.state.ms.us; jlee@riag.ri.gov; attorney@samoatelco.com; stephan.finkel@lps.state.nj.us; Girard.D.Lau@hawaii.gov; stevemac@ku.edu; dennis.hansen@arkansasag.gov; basay@atg.state.vt.us; Mary.Williams@doj.state.or.us; gkelley@ncdoj.gov; alanc@atg.wa.gov; alama@nmag.gov; judy.zepun@state.ma.us; joanne.grace@alaska.gov; jnotz@atg.state.il.us; Gregory.Dauria@ct.gov; anne.edwards@doj.nh.gov; tom.fisher@atg.in.gov; jwhite@ncdoj.gov; whowle@ag.nv.gov; Frances.Grunder@doj.ca.gov; mianf@ago.state.ms.us; ken.rosenstein@alaska.gov; allison.martin@ag.ky.gov; hpizz@ago.state.ms.us; wellsik@doj.state.wi.us; Lee.Davidson@ksag.org; edavis@doj.vi.gov; donna.murasky@dc.gov; ssullivan@oag.state.md.us; jmaddrey@ncdoj.gov; dspence@oag.state.md.us; vlp@wvago.gov; debbie.mcveigh@wyo.gov; Steve.Creaseon@atg.in.gov; jafarshee@ago.state.al.us; andrea.silkowitz@dol.lps.state.nj.us; brian.kane@ag.idaho.gov; Richard.Dearing@ag.ny.gov; katie.spohn@nebraska.gov; rrussell@nmag.gov; mwood@ago.state.ms.us; restucciae@michigan.gov; wbrockman@oag.state.md.us; agesmith@scag.gov; susan.lee@doj.ca.gov; SG@atg.in.gov; todd.kim@dc.gov; delayne.deck@ag.idaho.gov; dan.domenico@state.co.us; mscodro@atg.state.il.us; heather.mcveigh@atg.in.gov; suzanne.gorman@doj.nh.gov; jbhoward@oag.state.md.us; potterkc@doj.state.wi.us; stjohnkm@doj.state.wi.us; ed.bedrosian@state.ma.us; john.garry@ag.state.mn.us; Barbara.Durham@myfloridalegal.com; brooke.paup@texasattorneygeneral.gov; meanssp@doj.state.wi.us; Sherri.Wald@state.sd.us; adam.aston@texasattorneygeneral.gov; jhughes@atg.state.il.us; david.blake@state.co.us; Segrest, Stuart; susan.britton@ag.ky.gov; john.campbell@ksag.org; jung.kim@dol.lps.state.nj.us; dave.jones@alaska.gov; delberta.pfeifer@ksag.org; perry.zinn-rowthorn@ct.gov; mwebb@ago.state.ms.us; barb.fehrman@ag.state.mn.us; vbeavers@ag.nv.gov; bromano@utah.gov; kris.ailsliager@ksag.org; gregory.mchugh@dol.lps.state.nj.us; Alexandra.Schimmer@ohioattorneygeneral.gov; bob.fagan@msdh.state.ms.us; Eileen.carey@state.ma.us; sean.riley@ag.ky.gov; ashley.harwel@atg.in.gov; dGetchell@oag.state.va.us; anna.joyce@doj.state.or.us; marlene.brown@dol.lps.state.nj.us; peter.michael@wyo.gov; diane.dewolf@myfloridalegal.com; jonathan.mitchell@oag.state.tx.us; mary.mertz@ohioattorneygeneral.gov; sforney@attorneygeneral.gov; npeterson@law.ga.gov; jneiman@ago.state.al.us; ariel.levinson-waldman@dc.gov; burschj@michigan.gov; Leesa.Thompson@oag.ok.gov; dowkerc@michigan.gov; frederick.nelson@ohioattorneygeneral.gov; patrick.wyrick@oag.ok.gov; bill.young@ag.tn.gov; Black, Michael; MBrady@oag.state.va.us; Sam Peterson; abrasher@ago.state.al.us; pamela.spang@state.ma.us; kguthrie@ago.state.al.us; andy.oldham@texasattorneygeneral.gov; Jason.pleggenkuhle@ag.state.mn.us; Fred.Yarger@state.co.us; michael.hendershot@ohioattorneygeneral.gov; robyn.bender@ag.ky.gov; laura-jane.weimer@state.co.us; james.adams@state.de.us; Aricka.seales@state.ma.us; wiltonp@ag.state.la.us; lindstroma@michigan.gov; Goldstein, Seth; VanDyke, Lawrence; allen.winsor@myfloridalegal.com;

christopher.dodrigill@wvago.gov; marmercado@justicia.pr.gov; Mary.McTaggart@state.de.us
Subject: Amicus Memo in *Town of Greece v. Galloway* (U.S.)

To: Civil Amicus Contacts

Attached is an amicus memo for a merits-stage brief in support of petitioner that will be offered jointly by Indiana and Texas in *Town of Greece, New York v. Susan Galloway, et al.*, No. 12-696 (U.S.). The issue is whether a legislative prayer practice violates the Establishment Clause notwithstanding the absence of discrimination in the selection of prayer-givers or forbidden exploitation of the prayer opportunity.

The brief itself will be ready for circulation in late July. Please note that there is an information request in the memo.

Dan Schweitzer
Supreme Court Counsel
National Association of Attorneys General
2030 M Street, NW, 8th Floor
Washington, DC 20036
(202) 326-6010
(202) 785-0410 - fax
dschweitzer@naag.org

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Monday, May 20, 2013 12:28 PM
To: Fox, Tim; Mattioli, Mark; Barnes, John
Subject: FW: Supreme Court Action -- 5/20/13

The SCOTUS granted review in the Town of Greece case today. This was the legislative prayer amicus brief that Tim joined on his first day in office. Way to pick 'em!

From: Schweitzer, Dan [mailto:DSCHWEITZER@NAAG.ORG]
Sent: Monday, May 20, 2013 10:27 AM
To: Schweitzer, Dan
Subject: Supreme Court Action -- 5/20/13

To: Amicus Contacts, Working Group Members, and Others

Earlier today, the Court issued four opinions and an order list in which it granted certiorari in five cases and denied certiorari in about 120 cases. (The opinions can be found at <http://www.supremecourt.gov/opinions/slipopinions.aspx>.)

Opinions:

1. *City of Arlington, Texas v. FCC*, 11-1545. By a 6-3 vote, the Court held that "an agency's interpretation of a statutory ambiguity that concerns the scope of its regulatory authority (that is, its jurisdiction) is entitled to deference under *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984)." The Court reasoned that "the distinction between 'jurisdictional' and 'nonjurisdictional' interpretations is a mirage and that "the question — whether framed as an incorrect application of agency authority or an assertion of authority not conferred — is always whether the agency has gone beyond what Congress has permitted it to do."
2. *Metrish v. Lancaster*, 12-547. In *People v. Carpenter*, 627 N.W.2d 276 (2001), the Michigan Supreme Court construed a state statute as not authorizing a "diminished capacity" defense — even though the state intermediate appellate court had consistently recognized the defense. Here, the Michigan Court of Appeals held that *Carpenter* applied retroactively to respondent, and that such retroactive application did not violate due process. The Sixth Circuit granted habeas relief on the ground that the Michigan Court of Appeals' ruling was objectively unreasonable. The U.S. Supreme Court unanimously reversed, explaining that it "has never found a due process violation in circumstances remotely resembling [this] case — *i.e.*, where a state supreme court, squarely addressing a particular issue for the first time, rejected a consistent line of lower court decisions based on the supreme court's reasonable interpretation of the language of a controlling statute." AEDPA therefore foreclosed habeas relief.
3. *Sebelius v. Cloer*, 12-236. The National Childhood Vaccine Injury Act of 1996 created a no-fault compensation program through which persons who incurred vaccine-related injuries may petition for compensation. The Act authorizes courts to award attorney's fees and costs not only for successful petitions, but also for unsuccessful petitions that were "brought in good faith" and with "a reasonable basis." The Court

unanimously held that an untimely petition can qualify for attorney's fees under this provision, so long as it was brought in good faith and there was a reasonable basis for the claim.

4. *PPL Corp. v. Comm'r of Internal Revenue*, 12-43. The Court unanimously held that an American company can obtain a tax credit for paying a one-time "windfall tax" that the United Kingdom imposed on 32 U.K. companies privatized between 1984 and 1996. The Court found that the windfall tax's predominant character is that of an excess profits tax, and that it therefore qualified for a credit under 26 U.S.C. §901(b)(1).

Cert Grants:

1. *Town of Greece, New York v. Galloway*, 12-696. The Town of Greece opens its monthly town board meetings with a prayer delivered by volunteer clergy. In practice, almost all of the prayers were delivered by Christian clergy, who often invoked explicitly Christian themes.

Under review is a Second Circuit decision holding that this practice violated the Establishment Clause because it constituted an endorsement of a particular religious viewpoint. The Town argues that that ruling conflicts with *Marsh v. Chambers*, 463 U.S. 783 (1983), which upheld the practice of starting legislative sessions with an invocation based on the practice's "unambiguous and unbroken history."

2. *Fernandez v. California*, 12-7822. In *Georgia v. Randolph*, 547 U.S. 103 (2006), the Court held that when one occupant of a premises consents to a warrantless search by police, "a physically present co-occupant's stated refusal to permit entry prevails, rendering the warrantless search unreasonable and invalid as to him." At issue is whether the same result obtains when an occupant objects to police entry into the premises, is later arrested and removed from the premises, and then a co-occupant consents to the police's entry. Distinguishing *Randolph*, the California Court of Appeal held that such a search does not violate the Fourth Amendment.

3. *Northwest, Inc. v. Ginsberg*, 12-462. The preemption provision of the Airline Deregulation Act of 1978 (ADA) provides that states "may not enact or enforce a law, regulation or other provision having the force and effect of law related to the price, route, or service of an air carrier." Under review is a Ninth Circuit decision holding that the ADA does not preempt a Northwest Airlines passenger's contract claim that the airline breached the implied covenant of good faith and fair dealing when it abruptly removed him from its frequent flyer program.

4. *Lawson v. FMR LLC*, 12-3. Section 806 of the Sarbanes-Oxley Act, 18 U.S.C. §1514A, forbids a publicly traded company or "any . . . contractor [or] subcontractor . . . of such company [to] . . . discriminate against an employee" based on the employee being a whistleblower. At issue is whether this whistleblower protection applies to employees of contractors and subcontractors or only to employees of publicly traded companies.

5. *Medtronic Inc. v. Boston Scientific Corp.*, 12-1128. In *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118 (2007), the Court held that a patent licensee that believes its products do not infringe the patent and therefore need not make royalty payments is "not required . . . to break or terminate its license agreement before seeking a declaratory judgment in federal court that the underlying patent is . . . not infringed." The question presented is "whether, in such a declaratory judgment action brought by a licensee under *MedImmune*, the licensee has the burden to prove that its products do not infringe the patent, or whether . . . the patentee must prove infringement."

Other Orders:

Mississippi State Conference of NAACP v. Bryant, 12-1019; *Standing Joint Legislative Committee on Reapportionment v. Mississippi State Conference of NAACP*, 12-1132. Through a one-line order, the Court affirmed the judgments. In the former case, the Court affirmed a district court ruling that allowed Mississippi's 2011 legislative elections to proceed under its then-present districting scheme, even though the 2010 Census showed the districts to be malapportioned. (In accordance with state law, the districts were be reapportioned in 2012.) In the latter case, the Court affirmed a district court ruling refusing to allow the state legislative reapportionment committee to intervene in the case.

Dan Schweitzer
Supreme Court Counsel
National Association of Attorneys General
2030 M Street, NW, 8th Floor
Washington, DC 20036
(202) 326-6010
(202) 785-0410 - fax
dschweitzer@naag.org

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Wednesday, February 12, 2014 12:23 PM
To: 'Melissa Sanz'
Cc: Hiram Sasser
Subject: RE: Tenth Mountain Division Veterans Memorial

Thank you Hiram and Melissa. This is very helpful. I've given a copy of the letter to General Fox and will let you know what he concludes.

Assuming we wanted to file a joint brief with one or more veterans groups, which group(s) do you think might join with us?

Thank you again,

Lawrence VanDyke
Solicitor General • Montana Department of Justice

215 N. Sanders • P.O. Box 201401
Helena, Montana 59620
T: (406) 444-3442 • F: (406) 444-3549
LVanDyke@mt.gov

From: Melissa Sanz [<mailto:msanz@libertyinstitute.org>]
Sent: Tuesday, February 11, 2014 6:30 PM
To: VanDyke, Lawrence
Cc: Hiram Sasser
Subject: Tenth Mountain Division Veterans Memorial

Good evening, Mr. VanDyke:

Mr. Sasser has asked me to send the attached letter. Thank you.

Sincerely,

Melissa Sanz
Legal Assistant



Restoring Religious Liberty in America

o: 972.941.4444
f: [972.941.4457](tel:972.941.4457)

msanz@libertyinstitute.org
www.LibertyInstitute.org

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From: VanDyke, Lawrence
Sent: Wednesday, May 07, 2014 10:00 AM
To: Fox, Tim; Mattioli, Mark; Barnes, John; Burton, Anastasia
Cc: James, Julie
Subject: FW: FFRF v. Weber Amicus Brief
Attachments: Docket Rpt - FFRF v. Weber Amicus Brief.pdf; 13-35770 Amicus Brief - FFRF v. Weber.pdf; Weber 9th Cir Amicus - Final.pdf

All – Attached is the Weber amicus brief that we filed this morning in the 9th Circuit. This is the brief we teamed up with the American Legion on, involving a challenge to a veterans memorial at Whitefish Mountain.

From: Michael Berry [<mailto:mberry@libertyinstitute.org>]
Sent: Wednesday, May 07, 2014 9:06 AM
To: VanDyke, Lawrence; Onderdonk, Philip B.
Subject: FFRF v. Weber Amicus Brief

Gentlemen,

Thanks for your hard work, cooperation, and patience with me. The Amicus Brief was filed this morning. Please see attached.

Michael Berry
Senior Counsel
Director of Military Affairs



Restoring Religious Liberty in America

o: 972.941.4444
direct: [972-941-4445](tel:972-941-4445)
f: 972.423.6162
mberry@libertyinstitute.org
www.LibertyInstitute.org

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From: VanDyke, Lawrence
Sent: Wednesday, April 30, 2014 9:45 AM
To: Fox, Tim; Mattioli, Mark; Barnes, John; Burton, Anastasia
Subject: FW: PDF version of Weber brief
Attachments: Weber-Amicus-DRAFT-FINAL-TO-PRINTER.pdf

Tim et al. – Attached is the final version of the 9th Circuit amicus brief we will be filing along with the American Legion next Wed., May 7. John is working on media coordination (the Legion's attorney's will be issuing their own press release) and will prepare a press release for Tim if he wants to issue one.

Let me know if you have any questions.

Thanks,

Lawrence

From: Michael Berry [<mailto:mberry@libertyinstitute.org>]
Sent: Wednesday, April 30, 2014 9:39 AM
To: VanDyke, Lawrence
Subject: PDF version of Weber brief

Lawrence,

Here you go.

Michael Berry
Senior Counsel
Director of Military Affairs



Restoring Religious Liberty in America

o: 972.941.4444
direct: [972-941-4445](tel:972-941-4445)
f: 972.423.6162
mberry@libertyinstitute.org
www.LibertyInstitute.org

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From: VanDyke, Lawrence
Sent: Friday, May 02, 2014 11:09 AM
To: Fox, Tim; Mattioli, Mark; Barnes, John; Burton, Anastasia
Cc: James, Julie
Subject: FW: Weber Amicus proof from printer
Attachments: FFRF v. Weber Amicus PROOF.pdf

Tim et al. – Attached is the final, formatted version of the brief in the Weber case (the Big Mountain Veterans Memorial case).

Thanks.

From: Michael Berry [<mailto:mberry@libertyinstitute.org>]
Sent: Thursday, May 01, 2014 2:33 PM
To: VanDyke, Lawrence
Subject: Weber Amicus proof from printer

Lawrence,

Here's the proof, for your review. Our printer made some formatting (nothing substantive) edits to comply with 9th Cir technical and ECF requirements. Please let me know once you approve. Thanks.

Michael Berry
Senior Counsel
Director of Military Affairs



Restoring Religious Liberty in America

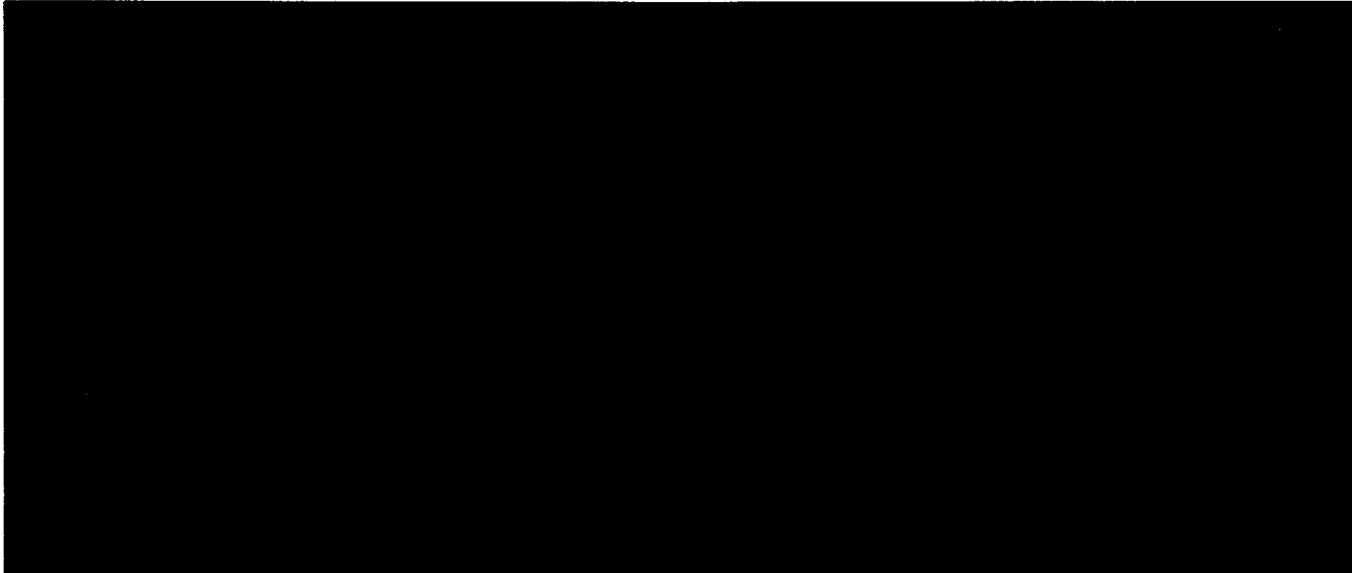
o: 972.941.4444
direct: [972-941-4445](tel:972-941-4445)
f: 972.423.6162
mberry@libertyinstitute.org
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From: VanDyke, Lawrence
Sent: Wednesday, April 09, 2014 10:24 AM
To: Fox, Tim; Mattioli, Mark
Subject: Weber-Amicus-DRAFT-FINAL-LJV Edits
Attachments: Weber-Amicus-DRAFT-FINAL-LJV Edits.docx



/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Thursday, February 13, 2014 1:07 PM
To: Fox, Tim
Subject: FW: Big Mountain Veterans Memorial issue

Tim – Looks like American Legion has already committed that they would join an amicus brief with us in the Big Mountain Jesus case. See below.

From: Hiram Sasser [<mailto:hsasser@libertyinstitute.org>]
Sent: Thursday, February 13, 2014 12:37 PM
To: VanDyke, Lawrence
Cc: Jeff Mateer
Subject: Big Mountain Veterans Memorial issue

Lawrence,

If the State of Montana wants to have Liberty Institute represent it in an amicus, The American Legion (2.5 million veterans), would like to join. I spoke to them today.

Hiram Sasser
Director of Litigation



Restoring Religious Liberty in America

o: 972.941.4444
direct: 972.941.4447
f: 972.423.6162
hsasser@libertyinstitute.org
www.LibertyInstitute.org

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/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Tuesday, October 29, 2013 12:03 PM
To: Fox, Tim; Mattioli, Mark
Cc: James, Julie; Barnes, John; Burton, Anastasia
Subject: RE: Isaacson brief as printed
Attachments: Isaacson Ohio et al amicus AS FILED 10 29 13.pdf

Sorry – going too fast. Attached is the cert-stage multi-state amicus brief that Montana co-authored with Ohio. 16 states total joined. Ohio is filing the brief today.

From: VanDyke, Lawrence
Sent: Tuesday, October 29, 2013 12:01 PM
To: Fox, Tim; Mattioli, Mark
Cc: James, Julie; Barnes, John; Burton, Anastasia
Subject: FW: Isaacson brief as printed

Tim et al. – Attached is the

From: Eric Murphy [<mailto:Eric.Murphy@ohioattorneygeneral.gov>]
Sent: Tuesday, October 29, 2013 11:53 AM
To: VanDyke, Lawrence
Cc: Stephen Carney; Megan M. Dillhoff
Subject: FW: Isaacson brief as printed

Lawrence:

We're sending this out for filing today. Good working with you, and we got a lot of States as well.

Eric

From: Kim Blankenship
Sent: Tuesday, October 29, 2013 12:27 PM
To: Eric Murphy
Subject: Isaacson brief as printed

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Wednesday, October 16, 2013 2:20 PM
To: 'Eric Murphy'
Cc: Frederick Nelson
Subject: RE: Isaacson Draft
Attachments: Isaacson amicus brief - lju edis.docx

Eric – This is a great draft, and I again really appreciate the tremendous work you all have done on this brief. Because it looks so good, and also because of deference given the leading role you all have taken, I have included just a few suggestions (in redline) in the attached document. Feel free to take or leave them as you see fit – none of them are necessary edits as far as I'm concerned.

The only thing of substance I've added is to the section where you all make the good point that this is about the states' interest in preventing pain, which is a separate interest than protecting life. It occurred to me that most (if not all) states *criminalize* the unwarranted infliction of pain on *animals*; so it stands to reason they should at least be able to do the same for unborn children capable of feeling pain. I looked up a few of the "animal cruelty" statutes that specifically mention "pain," and added a bit about that to the draft. Again, take it or leave it. (BTW – as best I could tell, neither Ohio's or Montana's animal cruelty statutes specifically use the word "pain," which is why I didn't include them as examples. Of course, if someone there knows different about Ohio's statute(s), then obviously it might be nice to use your own statute.)

Again, thank you very much for your hard work on this, and letting Montana ride shotgun. If you could forward me the next revised draft before it is circulated through NAAG, I would appreciate it. I plan to send that draft to General Fox.

Let me know if there is anything else I can do. Again – excellent draft.

Lawrence VanDyke
Solicitor General • Montana Department of Justice

215 N. Sanders • P.O. Box 201401
Helena, Montana 59620
T: (406) 444-3442 • F: (406) 444-3549
LVanDyke@mt.gov

From: Eric Murphy [<mailto:Eric.Murphy@ohioattorneygeneral.gov>]
Sent: Wednesday, October 16, 2013 9:35 AM
To: VanDyke, Lawrence
Cc: Frederick Nelson
Subject: Isaacson Draft

Lawrence:

Please find a proposed draft of the amicus brief. It is still being vetted here by folks and we don't have final authorization, but it is in relatively good shape.

Best,

Eric

From: VanDyke, Lawrence [<mailto:LVanDyke@mt.gov>]
Sent: Tuesday, October 15, 2013 2:18 PM
To: Eric Murphy
Cc: Frederick Nelson
Subject: RE: Isaacson letter notifying parties of amicus brief

Looks great – thanks again, Eric.

From: Eric Murphy [<mailto:Eric.Murphy@ohioattorneygeneral.gov>]
Sent: Tuesday, October 15, 2013 12:14 PM
To: VanDyke, Lawrence
Cc: Frederick Nelson
Subject: RE: Isaacson letter notifying parties of amicus brief

My bad, Lawrence. I'm still getting use to our document system. Here it is.

From: VanDyke, Lawrence [<mailto:LVanDyke@mt.gov>]
Sent: Tuesday, October 15, 2013 2:12 PM
To: Eric Murphy
Cc: Frederick Nelson
Subject: RE: Isaacson letter notifying parties of amicus brief

That sounds great, Eric. For some reason I can't open the attachment (it is a .nrl file, and apparently I don't have a program to open that type of file), but I'm sure the letter is fine. Send away – and thanks again for taking care of this.

From: Eric Murphy [<mailto:Eric.Murphy@ohioattorneygeneral.gov>]
Sent: Tuesday, October 15, 2013 12:01 PM
To: VanDyke, Lawrence
Cc: Frederick Nelson
Subject: Isaacson letter notifying parties of amicus brief

Lawrence:

Are you okay with me sending this letter today? We have to do it 10 days in advance. Please let me know when you have a second.

Thanks.

Eric

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Thursday, September 26, 2013 1:06 PM
To: 'Stephen Carney'
Cc: Megan M. Dillhoff; Frederick Nelson; Eric Murphy
Subject: RE: Isaacson - NAAG memo to States
Attachments: Isaacson Amicus Memo to States to Dan S - LJV suggestions.doc

Thank you, Stephen, for both the introduction and draft memo. I've made one small suggested change in the attached draft, for purposes of clarity. Feel free to incorporate it or not.

Your timing makes sense to me.

Also, can you forward me a copy of the petition when you get it? I'm not sure whether I will be sent a copy, and I'd like to review it too.

And thank you again to your entire team for all your work on this – great job!

Lawrence VanDyke
Solicitor General ♦ Montana Department of Justice

215 N. Sanders ♦ P.O. Box 201401
Helena, Montana 59620
T: (406) 444-3442 ♦ F: (406) 444-3549
LVanDyke@mt.gov

From: Stephen Carney [<mailto:stephen.carney@ohioattorneygeneral.gov>]
Sent: Thursday, September 26, 2013 9:11 AM
To: VanDyke, Lawrence
Cc: Megan M. Dillhoff; Frederick Nelson; Eric Murphy
Subject: Isaacson - NAAG memo to States

Lawrence –

First, meet Eric Murphy, our new Solicitor here in Ohio. And Eric, meet Lawrence.

Attached is our draft memo to send to the States re Isaacson. We welcome any edits, comments, etc.

We think we should send the day after the cert petition, so we can review the petition and see if it changes anything for our memo, and to know for sure whether we can say AZ is a petitioner along with Maricopa. The extension on the cert pet is listed as Sept. 28 – Saturday – so I don't know if they'll file tomorrow or Monday. I think they easily get Monday, but should've put the Monday date in the application for extension. Oh well.

We should talk soon about our brief, too, but want to nail down the memo first.

Thanks much, and call with any Qs.

Stephen

Stephen P. Carney
Deputy Solicitor, Appeals Section
Office of Ohio Attorney General Michael DeWine
30 E. Broad St., 17th Floor; Columbus, OH 43215
614-466-8980 stephen.carney@ohioattorneygeneral.gov

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Wednesday, October 23, 2013 10:37 AM
To: 'Stephen Carney'
Subject: RE: Amicus Brief in Horne v. Isaacson, No. 13-402

Stephen – could you send me a list of the signers we've gotten so far?

Thank you!

From: Stephen Carney [<mailto:stephen.carney@ohioattorneygeneral.gov>]
Sent: Tuesday, October 22, 2013 12:36 PM
To: Eastman, John; Eric Murphy
Cc: VanDyke, Lawrence; Frederick Nelson; Casey Mattox
Subject: RE: Amicus Brief in Horne v. Isaacson, No. 13-402

John et al. –

Attached is the amicus brief we're circulating to States. We've got a handful of signers already, and we asked them to sign on by Friday.

Stephen Carney

*Stephen P. Carney
Deputy Solicitor, Appeals Section
Office of Ohio Attorney General Michael DeWine
30 E. Broad St., 17th Floor; Columbus, OH 43215
614-466-8980 stephen.carney@ohioattorneygeneral.gov*

From: Eastman, John [<mailto:jeastman@chapman.edu>]
Sent: Monday, October 21, 2013 9:15 PM
To: Eric Murphy
Cc: VanDyke, Lawrence; Frederick Nelson; Stephen Carney; Casey Mattox
Subject: RE: Amicus Brief in Horne v. Isaacson, No. 13-402

Thank you. Please let us know if we might be of any assistance.

John Eastman

*Dr. John C. Eastman
Henry Salvatori Professor of Law & Community Service and former Dean
c/o Dale E. Fowler School of Law at Chapman University
One University Drive
Orange, CA 92866
(714) 628-2587
(877) 855-3330 x2
[SSRN Scholarship Page](#)*

From: Eric Murphy [<mailto:Eric.Murphy@ohioattorneygeneral.gov>]
Sent: Tuesday, October 15, 2013 11:35 AM

To: Eastman, John; tcamp@aclu.org; jcrepps@reprorights.org; Casey Mattox
Cc: VanDyke, Lawrence; Frederick Nelson; Stephen Carney
Subject: Amicus Brief in Horne v. Isaacson, No. 13-402

Dear Counsel:

Please see the attached letter notifying the parties of the amicus brief that the States of Ohio and Montana plan to file in support of the certiorari petition in Horne v. Isaacson, No. 13-402. Please let me know if you have any questions.

Thank you.

Eric

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Monday, January 13, 2014 8:23 AM
To: Fox, Tim; Mattioli, Mark; Bennion, Jon; Barnes, John
Subject: Isaacson

The Isaacson cert petition (involving Arizona's 20-week abortion ban), which we "co-authored" the states' amicus brief in, was also denied this morning.

Sent from my iPhone

> On Jan 13, 2014, at 8:17 AM, "VanDyke, Lawrence" <LVanDyke@mt.gov> wrote:
>
> Marbut's cert petition was denied this morning.
>
> Sent from my iPhone

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Thursday, October 17, 2013 9:29 AM
To: Fox, Tim; Mattioli, Mark
Subject: FW: Isaacson Draft
Attachments: Isaacson amicus brief.DOCX

Tim and Mark – Attached is the circulation draft of the SCOTUS amicus brief in the 20-week abortion case that we are “co-authoring.” Ohio sent me a draft earlier this week, and I provided some suggestions that they have incorporated. This is the draft they intend to circulate through NAAG, but before they do I wanted to give Tim a chance to review it since we are not just joining this brief, but are front-page “authors.” We need to get back to Ohio by early afternoon tomorrow at the latest.

Thanks,

Lawrence

From: Eric Murphy [<mailto:Eric.Murphy@ohioattorneygeneral.gov>]
Sent: Thursday, October 17, 2013 9:22 AM
To: VanDyke, Lawrence
Cc: Frederick Nelson
Subject: RE: Isaacson Draft

Lawrence:

Here’s an updated draft. I believe we accepted all your changes but maybe one or two stylistic ones. I hope to send it out to the states by the end of the day tomorrow, if I can get your approval to do so by then. Also, I am planning on sending to Texas ahead of time if okay by you, since Jonathan gave us that comment about the refusal to challenge their law and we mention Texas’s law quite a bit.

Thanks.

Eric

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Friday, May 24, 2013 12:47 PM
To: Fox, Tim; Mattioli, Mark
Subject: FW: cert amicus in Isaacson v. Horne case

It's official – Ohio and Montana will be co-authors on the Issacson v. Horne (20-week abortion case) SCOTUS amicus brief. Ohio will be taking the lead with the first draft.

From: Frederick Nelson [<mailto:Frederick.Nelson@ohioattorneygeneral.gov>]
Sent: Friday, May 24, 2013 12:42 PM
To: dschweitzer@naag.org
Cc: VanDyke, Lawrence
Subject: cert amicus in Isaacson v. Horne case

Just following up on my email of yesterday, I can report that Montana Solicitor Lawrence VanDyke and I have spoken further and confirmed that Ohio and Montana will work together to draft and circulate an amicus brief supporting Arizona in seeking cert from the Ninth Circuit decision regarding Arizona's HB 2036. In keeping with your counsel, we will hold off for a bit on circulating an amicus memo; we think it makes sense to wait until somewhat closer to the filing of the cert petition. Thanks again for your time on this matter.

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: Stephen Carney <stephen.carney@ohioattorneygeneral.gov>
Sent: Thursday, April 17, 2014 10:42 AM
To: VanDyke, Lawrence
Subject: NAAG Best Brief - sending Isaacson (FW: Horne v. Isaacson)
Attachments: Announcement.pdf

Lawrence –

Following up for Eric on this, as he's out in DC prepping to argue on Tues.

We ARE going to submit Isaacson, and I'm sending out our packet (due Tues) today, since I'm out tomorrow. Is that still OK, I presume? I think it's a longshot (as was the petition effort, so it's appropriate), but why not?

Hope all goes well with you.

Stephen

*Stephen P. Carney
Deputy Solicitor, Appeals Section
Office of Ohio Attorney General Michael DeWine
30 E. Broad St., 17th Floor; Columbus, OH 43215
614-466-8980 stephen.carney@ohioattorneygeneral.gov*

From: Kim Blankenship **On Behalf Of** Eric Murphy
Sent: Thursday, April 17, 2014 10:47 AM
To: Stephen Carney
Subject: FW: Horne v. Isaacson

From: VanDyke, Lawrence [<mailto:L.VanDyke@mt.gov>]
Sent: Monday, April 07, 2014 4:09 PM
To: Eric Murphy
Subject: RE: Horne v. Isaacson

Eric – I'm checking into this with General Fox. We were only planning to submit one brief (a BIO in a different case), so I would expect that we'll be happy to add this one as a joint submission. I'll let you know when I hear back, though. Would you guys want to submit it with your packet, and we'll just note the joint submission in ours? The guidelines sent out by NAAG (attached) require one of the joint states to actually submit the entry, but it counts as an entry for both states.

From: Eric Murphy [<mailto:Eric.Murphy@ohioattorneygeneral.gov>]
Sent: Sunday, April 06, 2014 6:34 PM
To: VanDyke, Lawrence
Subject: FW: Horne v. Isaacson

Lawrence:

I've been looking through what possible briefs we might submit and, while I'm not certain, this one might be in the running for us on submission for a best brief award. But since we co-authored them, we'd have to both submit it. Have you given any thought to what briefs you will be submitting? Thanks.

Eric

Eric E. Murphy
State Solicitor – Appeals Section
Office of Ohio Attorney General Mike DeWine
Office number: 614-995-2273
Eric.Murphy@OhioAttorneyGeneral.gov

From: Neiman, John [<mailto:JNeiman@ago.state.al.us>]
Sent: Monday, January 13, 2014 9:56 AM
To: Eric Murphy; 'LVanDyke@mt.gov'
Subject: Horne v. Isaacson

Guys – sorry to see the cert denial in this case. While I was thinking about it, I wanted to urge you to consider nominating your amicus in this case for NAAG best brief at the end of this term. It's been a while since I looked at it, but my memory is that it was the best states' amicus I've seen over the last three years.

John C. Neiman, Jr., Alabama Solicitor General
State of Alabama, Office of Attorney General Luther Strange
501 Washington Avenue
Montgomery, AL 36130
(334) 353-2187
cell: (334) 324-8746

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From: VanDyke, Lawrence
Sent: Monday, April 07, 2014 2:02 PM
To: Fox, Tim; Mattioli, Mark
Subject: FW: Horne v. Isaacson

Tim and Mark – See below. Ohio is thinking that they may want to submit the Issacson amicus brief (i.e., the 20-week abortion case) that we “co-authored” with Ohio for the NAAG best brief award. To do so, though, they need us to submit it too. We were planning to just submit the Hutterite brief, but we are allowed to make two submissions. Any objection to adding the Issacson brief to our submission to accommodate Ohio? If it won, we’d be one of the co-winners with Ohio.

From: Eric Murphy [<mailto:Eric.Murphy@ohioattorneygeneral.gov>]
Sent: Sunday, April 06, 2014 6:34 PM
To: VanDyke, Lawrence
Subject: FW: Horne v. Isaacson

Lawrence:

I’ve been looking through what possible briefs we might submit and, while I’m not certain, this one might be in the running for us on submission for a best brief award. But since we co-authored them, we’d have to both submit it. Have you given any thought to what briefs you will be submitting? Thanks.

Eric

Eric E. Murphy
State Solicitor – Appeals Section
Office of Ohio Attorney General Mike DeWine
Office number: 614-995-2273
Eric.Murphy@OhioAttorneyGeneral.gov

From: Neiman, John [<mailto:JNeiman@ago.state.al.us>]
Sent: Monday, January 13, 2014 9:56 AM
To: Eric Murphy; 'LVanDyke@mt.gov'
Subject: Horne v. Isaacson

Guys – sorry to see the cert denial in this case. While I was thinking about it, I wanted to urge you to consider nominating your amicus in this case for NAAG best brief at the end of this term. It’s been a while since I looked at it, but my memory is that it was the best states’ amicus I’ve seen over the last three years.

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From: Eric Murphy <Eric.Murphy@ohioattorneygeneral.gov>
Sent: Sunday, April 06, 2014 6:34 PM
To: VanDyke, Lawrence
Subject: FW: Horne v. Isaacson

Lawrence:

I've been looking through what possible briefs we might submit and, while I'm not certain, this one might be in the running for us on submission for a best brief award. But since we co-authored them, we'd have to both submit it. Have you given any thought to what briefs you will be submitting? Thanks.

Eric

Eric E. Murphy
State Solicitor - Appeals Section
Office of Ohio Attorney General Mike DeWine
Office number: 614-995-2273
Eric.Murphy@OhioAttorneyGeneral.gov

From: Neiman, John [<mailto:JNeiman@ago.state.al.us>]
Sent: Monday, January 13, 2014 9:56 AM
To: Eric Murphy; 'LVanDyke@mt.gov'
Subject: Horne v. Isaacson

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From: VanDyke, Lawrence
Sent: Wednesday, May 22, 2013 1:02 PM
To: Mattioli, Mark
Subject: FW: Amicus inquiry - Issacson v. Horne

FYI – can we discuss? Thanks.

From: Schweitzer, Dan [<mailto:DSCHWEITZER@NAAG.ORG>]
Sent: Wednesday, May 22, 2013 10:19 AM
To: VanDyke, Lawrence
Subject: RE: Amicus inquiry - Issacson v. Horne

I haven't heard from any state about the case yet. So that gives you "dibs" if you'd like it. Do you know for certain that Arizona will be seeking cert?

From: VanDyke, Lawrence [<mailto:LVanDyke@mt.gov>]
Sent: Wednesday, May 22, 2013 11:59 AM
To: Schweitzer, Dan
Subject: Amicus inquiry - Issacson v. Horne

Dan – I recall talking with you briefly about how the various states choose who will author the "states' amici brief" in a given SCOTUS case. As I vaguely recall, the process is governed less by hard-and-fast rules, and more by tradition, etc. I have a question about a specific case that we might be interested in authoring the amicus brief for (but I'm not sure at this point).

The case is the Issacson v. Horne case, which was just decided by the Ninth Circuit (No. 12-16670). It does not appear that there was a states' brief filed in the Court of Appeals. Do you know if some state has indicated yet that they plan to draft a cert-stage amicus brief in support of Arizona?

Thanks for your help.

Lawrence VanDyke
Solicitor General • Montana Department of Justice

215 N. Sanders • P.O. Box 201401
Helena, Montana 59620
T: (406) 444-3442 • F: (406) 444-3549
LVanDyke@mt.gov

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Wednesday, May 22, 2013 9:59 AM
To: Dan Schweitzer - NAAG (dschweitzer@naag.org)
Subject: Amicus inquiry - Issacson v. Horne

Dan – I recall talking with you briefly about how the various states choose who will author the “states’ amici brief” in a given SCOTUS case. As I vaguely recall, the process is governed less by hard-and-fast rules, and more by tradition, etc. I have a question about a specific case that we might be interested in authoring the amicus brief for (but I’m not sure at this point).

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Thanks for your help.

Lawrence VanDyke
Solicitor General • Montana Department of Justice

215 N. Sanders • P.O. Box 201401
Helena, Montana 59620
T: (406) 444-3442 • F: (406) 444-3549
LVanDyke@mt.gov

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Wednesday, May 22, 2013 10:24 AM
To: 'Schweitzer, Dan'
Subject: RE: Amicus inquiry - Issacson v. Horne

I don't know – I might call Arizona to find out. They may seek en banc review first (although it is hard to see how that would be ultimately fruitful on this issue in the Ninth, it might get them a nice dissenting opinion from O'Scannlain, etc.). I also need to see if there is any reason we might not be able to do this.

Thanks for the quick response – I'll get back to you after I do some due diligence.

From: Schweitzer, Dan [<mailto:DSCHWEITZER@NAAG.ORG>]
Sent: Wednesday, May 22, 2013 10:19 AM
To: VanDyke, Lawrence
Subject: RE: Amicus inquiry - Issacson v. Horne

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Sent: Wednesday, May 22, 2013 11:59 AM
To: Schweitzer, Dan
Subject: Amicus inquiry - Issacson v. Horne

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The case is the Issacson v. Horne case, which was just decided by the Ninth Circuit (No. 12-16670). It does not appear that there was a states' brief filed in the Court of Appeals. Do you know if some state has indicated yet that they plan to draft a cert-stage amicus brief in support of Arizona?

Thanks for your help.

Lawrence VanDyke
Solicitor General ♦ Montana Department of Justice

215 N. Sanders ♦ P.O. Box 201401
Helena, Montana 59620
T: (406) 444-3442 ♦ F: (406) 444-3549
LVanDyke@mt.gov

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: Eric Murphy <Eric.Murphy@ohioattorneygeneral.gov>
Sent: Monday, April 07, 2014 4:12 PM
To: VanDyke, Lawrence
Subject: RE: Horne v. Isaacson

Thanks Lawrence. Still not sure we will choose this one, but just wanted to see if it was even an option. We could send it along if so.

Hope all is well.

Eric E. Murphy
State Solicitor – Appeals Section
Office of Ohio Attorney General Mike DeWine
Office number: 614-995-2273
Eric.Murphy@OhioAttorneyGeneral.gov

From: VanDyke, Lawrence [<mailto:L.VanDyke@mt.gov>]
Sent: Monday, April 07, 2014 4:09 PM
To: Eric Murphy
Subject: RE: Horne v. Isaacson

Eric – I’m checking into this with General Fox. We were only planning to submit one brief (a BIO in a different case), so I would expect that we’ll be happy to add this one as a joint submission. I’ll let you know when I hear back, though. Would you guys want to submit it with your packet, and we’ll just note the joint submission in ours? The guidelines sent out by NAAG (attached) require one of the joint states to actually submit the entry, but it counts as an entry for both states.

From: Eric Murphy [<mailto:Eric.Murphy@ohioattorneygeneral.gov>]
Sent: Sunday, April 06, 2014 6:34 PM
To: VanDyke, Lawrence
Subject: FW: Horne v. Isaacson

Lawrence:

I’ve been looking through what possible briefs we might submit and, while I’m not certain, this one might be in the running for us on submission for a best brief award. But since we co-authored them, we’d have to both submit it. Have you given any thought to what briefs you will be submitting? Thanks.

Eric

Eric E. Murphy
State Solicitor – Appeals Section
Office of Ohio Attorney General Mike DeWine
Office number: 614-995-2273
Eric.Murphy@OhioAttorneyGeneral.gov

From: Neiman, John [<mailto:JNeiman@ago.state.al.us>]
Sent: Monday, January 13, 2014 9:56 AM
To: Eric Murphy; 'LVanDyke@mt.gov'
Subject: Horne v. Isaacson

Guys – sorry to see the cert denial in this case. While I was thinking about it, I wanted to urge you to consider nominating your amicus in this case for NAAG best brief at the end of this term. It's been a while since I looked at it, but my memory is that it was the best states' amicus I've seen over the last three years.

John C. Neiman, Jr., Alabama Solicitor General
State of Alabama, Office of Attorney General Luther Strange
501 Washington Avenue
Montgomery, AL 36130
(334) 353-2187
cell: (334) 324-8746

Confidentiality Notice: The information contained in this email and the documents attached hereto contain confidential information intended only for the use of the intended recipients. If the reader of the message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of the information contained herein is strictly prohibited. If you have received this communication in error, please immediately notify me by reply email.

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: Fox, Tim
Sent: Monday, April 07, 2014 2:53 PM
To: VanDyke, Lawrence
Cc: Mattioli, Mark
Subject: Re: Horne v. Isaacson

I'd say go ahead and submit it.

Sent from my iPhone

On Apr 7, 2014, at 4:01 PM, "VanDyke, Lawrence" <LVanDyke@mt.gov> wrote:

Tim and Mark – See below. Ohio is thinking that they may want to submit the Issacson amicus brief (i.e., the 20-week abortion case) that we “co-authored” with Ohio for the NAAG best brief award. To do so, though, they need us to submit it too. We were planning to just submit the Hutterite brief, but we are allowed to make two submissions. Any objection to adding the Issacson brief to our submission to accommodate Ohio? If it won, we’d be one of the co-winners with Ohio.

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Sent: Sunday, April 06, 2014 6:34 PM
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Subject: FW: Horne v. Isaacson

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From: VanDyke, Lawrence
Sent: Tuesday, September 10, 2013 3:50 PM
To: Fox, Tim; Mattioli, Mark; Bennion, Jon; Swanson, Cory; Barnes, John
Cc: Darkenwald, Scott
Subject: RE: Amici merits brief in McCullen v. Coakley (U.S.)
Attachments: State amici brief - McCullen v. Coakley 9.10.13.docx

Some more information about this: Montana is one of three states (together with Massachusetts and Colorado) that have "buffer zone" laws. See Mont. Code Ann. 45-8-110 (provided in its entirety below).

In some ways, Montana's law is stricter than Massachusetts': Massachusetts' has an 18 foot buffer zone around clinic entrances, and requires protestors to stay at least 6 feet from clinic workers and patients. Montana has a 36 foot buffer zone, and requires 8 feet of separation from anyone entering or leaving the facility.

But there are key differences between Montana's and Massachusetts' law, that go directly to the issue of content and viewpoint neutrality. Massachusetts' law applies to "reproductive health care facilities," whereas Montana's law applies more generally to "health care facilities." As Michigan's brief points out (see page 9), Massachusetts' limitation to abortion clinics alone raises content neutrality concerns right off the bat.

But the real content/viewpoint neutrality problem with Massachusetts' law is that it has a specific exceptions for "persons entering or leaving such facility" and "employees or agents of such facility acting within the scope of their employment." (See draft brief at page 10). Montana's law has neither of these exceptions. So for example, in Massachusetts an abortion clinic worker can "counsel" someone within the buffer zone (or a pro-choice person who the clinic allows to "enter" the clinic), but a pro-life protestor cannot. This raises serious viewpoint/content neutrality concerns. In Montana, nobody can "counsel" someone in the buffer zone, so our law is viewpoint/content neutral.

45-8-110. Obstructing health care facility access. (1) A person commits the offense of obstructing health care facility access if the person knowingly obstructs, hinders, or blocks another person's entry into or exit from a health care facility. Commission of the offense includes but is not limited to knowingly approaching within 8 feet of a person who is entering or leaving a health care facility to give the person written or oral information, to display a sign, or to protest, counsel, or educate about a health issue, when the person does not consent to that activity and is within 36 feet of an entrance to or exit from the health care facility.

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(3) For purposes of this section, "health care facility" means an office of a medical practitioner, as defined in 37-2-101, or any other facility or entity that is licensed, certified, or otherwise authorized by law to administer medical treatment in this state.

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Sent: Tuesday, September 10, 2013 2:41 PM
To: Fox, Tim; Mattioli, Mark; Bennion, Jon; Swanson, Cory; Barnes, John
Cc: Darkenwald, Scott
Subject: FW: Amici merits brief in McCullen v. Coakley (U.S.)

The US Supreme Court will hear a case this term considering whether a Massachusetts law creating a "buffer zone" around abortion clinics is constitutional. Michigan is asking us to join their merits-stage amicus brief arguing that Massachusetts' law is not constitutional. Michigan's brief acknowledges that all states have different speech "buffer zones" – for example, around polling places and for funerals – and argues that *those* buffer zones are constitutional, because they are viewpoint and content neutral. But the problem with Massachusetts' law, per Michigan, is that it is not content neutral – it allows employees and agents of abortion clinics to speak in the buffer zones, but no one else. This constitutes impermissible viewpoint discrimination.

Michigan's arguments sound right to me, and I am in favor of joining a SCOTUS amicus brief arguing that speech regulations (abortion-related or otherwise) must be viewpoint and content neutral. But I don't know what kind of "buffer zone" law(s) Montana has. If we have a law like Massachusetts, then I'm not sure it make sense for us to join Michigan's brief.

Does anyone know what kind of abortion clinic "buffer zone" laws Montana has, if any? If not, is there someone I could contact that would know?

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Also FYI – there will likely be an opposing multi-state amicus brief *supporting* Massachusetts.

Thanks,

Lawrence

-----Original Message-----

From: Schweitzer, Dan [mailto:DSCHWEITZER@NAAG.ORG]

Sent: Tuesday, September 10, 2013 8:27 AM

To:

Subject: Amici merits brief in McCullen v. Coakley (U.S.)

To: Civil Amicus Contacts

From: John Bursch, Michigan Solicitor General

Attached is an amici merits brief that Michigan has prepared in support of the petitioners in McCullen v. Coakley, No. 12-1168, a First Amendment case the Supreme Court will hear this term involving speech-free buffer zones around abortion clinics.

The petition presents two questions:

1. Whether the First Circuit erred in upholding Massachusetts' selective exclusion law under the First and Fourteenth Amendments, on its face and as applied to petitioners.
2. If *Hill v. Colorado*, 530 U.S. 703 (2000), permits enforcement of this law, whether *Hill* should be limited or overruled.

The amici brief addresses only the first question presented and answers that question "yes." The brief explains that while every state has buffer zone statutes protecting certain events (like polling places during elections and funerals), those statutes are permissible because they are viewpoint neutral. The Massachusetts statute, in contrast, discriminates based on who is speaking, so that employees and agents of abortion clinics can speak within the buffer zone, but no one else can.

The amici brief is due for filing next Monday, September 16, and Michigan can accept sign-ons until 9 a.m. EDT that same day. The contact person for Michigan is:

Aaron Lindstrom
Michigan Assistant Solicitor General
G. Mennen Williams Building, 7th Floor
525 West Ottawa Street
P.O. Box 30212
Lansing, MI 48909
Office: (517) 241-0367
Fax: (517) 373-3042
lindstroma@michigan.gov

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From: VanDyke, Lawrence
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To: Fox, Tim; Mattioli, Mark; Bennion, Jon; Swanson, Cory; Barnes, John
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Subject: FW: Amici merits brief in McCullen v. Coakley (U.S.)
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Michigan's arguments sound right to me, and I am in favor of joining a SCOTUS amicus brief arguing that speech regulations (abortion-related or otherwise) must be viewpoint and content neutral. But I don't know what kind of "buffer zone" law(s) Montana has. If we have a law like Massachusetts, then I'm not sure it make sense for us to join Michigan's brief.

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From: VanDyke, Lawrence
Sent: Wednesday, September 11, 2013 10:32 AM
To: Mattioli, Mark; Fox, Tim; Bennion, Jon; Swanson, Cory; Barnes, John
Cc: Darkenwald, Scott
Subject: RE: Amici merits brief in McCullen v. Coakley (U.S.)

I both agree and disagree with Mark. I think the "legal distinctions" I discuss below are the distinctions that legally matter in this case. Michigan's brief isn't saying that buffer zones per se are unconstitutional – to the contrary, they go out of their way to distinguish Colorado's. They are saying that Massachusetts' buffer zone is unconstitutional because it isn't viewpoint neutral, and the "legal distinctions" I point out below comprise all of the reasons they say it isn't viewpoint neutral. So as a legal matter, at least as relates to Michigan's points, there is a world of difference between Montana's law and Massachusetts'.

And I'm not particularly convinced by the argument that Montana's law isn't viewpoint neutral because abortion providers will be counseling clients on their own private property, not in the buffer zone. The abortion providers can do that because people are voluntarily entering their private property to be counseled. Pro-life folks could buy the building next door and invite folks to be voluntarily counseled on their private property. The question is who has a right to involuntarily counsel people in the buffer zone – and in Montana, nobody has that right. So the law is viewpoint neutral.

Moreover, as a practical matter no court is going to ultimately agree that Montana's law isn't viewpoint neutral because of Tim's argument because it would undercut the funeral buffer zone law. The same argument could be made there (the funeral speakers don't need to talk in the buffer zone because they were invited to the funeral).

So both as a practical matter, and even in principle, I think Montana's law is entirely legally distinguishable from Massachusetts'.

BUT, Mark is right that many folks, including probably our media, will miss the legal subtleties and simply note that Montana is one of the few other states that has a buffer zone law, so we must be attacking our own law by joining this brief. It could put Tim in the awkward position of defending Montana's buffer zone law to the media, which presumably is something Tim doesn't want to do.

I think that adding a paragraph to the brief distinguishing Montana's law would help a lot in that regard. I took the liberty of asking Michigan whether they would be open to that – they would. They would like our support for the reasons I laid out below – especially because having another buffer zone state join their brief would emphasize that this is not an attack on buffer zones per se, but only those that are viewpoint discriminatory.

Finally, I think we need to be careful not to overreact to those AGs who have refused to defend their marriage laws. The truth is that there are appropriate times to refuse to defend a statute because it violates the constitution (state or federal). Indeed, we are doing that right now. In the *Willems* case, Monforton has shown that the Redistricting Commission blatantly violated two different Montana statutes – which they did. But those two statutes are plainly unconstitutional, so not only are we not defending them, we are asking the Court to invalidate them. The question of when and how we decide not to defend a Montana statute because it is unconstitutional is complicated and challenging – but it is clear that there are legitimate times we may choose to uphold the Constitution (state or federal) instead of a statute.

Thankfully, though, that issue is not presented here.

From: Mattioli, Mark
Sent: Tuesday, September 10, 2013 5:41 PM
To: VanDyke, Lawrence; Fox, Tim; Bennion, Jon; Swanson, Cory; Barnes, John
Cc: Darkenwald, Scott
Subject: RE: Amici merits brief in McCullen v. Coakley (U.S.)

Although there are legal distinctions to make, as Lawrence points out, as a practical matter there's not a lot of difference between these laws because, as Tim points out, abortion providers aren't going to be counseling prospective clients in the buffer zone. Because the A.G. would be charged with defending Montana's statute if it were challenged, I recommend against joining this brief, which some will interpret as a willingness to forgo defending laws for moral or policy reasons.

If we decide to join, however, we should do so on the condition that the brief contrast the Massachusetts law with Montana's content-neutral law. The brief references the constitutionality of Colorado's law (page 9). The brief would be more effective if it contrasted the Massachusetts law with *both* the Colorado and Montana statutes. If Montana joined the brief, the reader may wonder why that argument is being advanced.

Mark

From: VanDyke, Lawrence
Sent: Tuesday, September 10, 2013 4:34 PM
To: Fox, Tim; Mattioli, Mark; Bennion, Jon; Swanson, Cory; Barnes, John
Cc: Darkenwald, Scott
Subject: RE: Amici merits brief in McCullen v. Coakley (U.S.)

You raise a good point, although I think a lot of courts wouldn't dig that deep in content/viewpoint neutrality analysis. I think Massachusetts' law is viewpoint/content discriminatory on its face, while Montana's is not – certainly not anywhere to the same degree. So I think there is a real distinction between our laws.

As to your second point – I think it depends on all the circumstances. In some cases, we may not want to join if we have our own "problematic" law because it may undercut the other states' efforts (the media may focus on our supposed hypocrisy, and attribute that to all the joining states). In other cases, being accused of undercutting Montana's own law(s) might become such a big distraction or time-waster that it simply isn't worth the effort. So I think there is some balancing involved.

Here, I do think that Montana's law differs meaningfully from Massachusetts', so we would not be directly attacking our own law (although we have to recognize that we may be accused by the media of doing so). And I think that our joining might be particularly helpful to the cause because unlike most states, we have our own "buffer zone" law, albeit one that is more neutral on its face. That shows this isn't just an attack on buffer zones, but a more principled attack on a particularly non-neutral one.

From: Fox, Tim
Sent: Tuesday, September 10, 2013 4:13 PM
To: VanDyke, Lawrence; Mattioli, Mark; Bennion, Jon; Swanson, Cory; Barnes, John
Cc: Darkenwald, Scott
Subject: RE: Amici merits brief in McCullen v. Coakley (U.S.)

Thank you Lawrence. One thought occurred to me concerning your last comment ("In Montana, nobody can "counsel" someone in the buffer zone, so our law is viewpoint/content neutral."). Of course, an abortion clinic counselor only need walk in the door of the clinic to counsel someone, and would never need to counsel anyone outside. So, is Montana's law really viewpoint/content neutral when the reality is that only the pro-life people would be prohibited from counseling within the buffer zone because the pro-abortion people have no need to counsel in the buffer zone? This may be a minor distinction, but I thought I'd bring it up anyway.

Regardless of the subtle question I raise above about Montana's law, the decision on whether to join this amicus ultimately focuses on whether the Massachusetts law in question is, in our opinion, unconstitutional. That holds true regardless of whether Montana has a similar law that passes constitutional muster. Would you agree?

From: VanDyke, Lawrence
Sent: Tuesday, September 10, 2013 3:50 PM
To: Fox, Tim; Mattioli, Mark; Bennion, Jon; Swanson, Cory; Barnes, John
Cc: Darkenwald, Scott
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Thanks,

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To: lindstroma@michigan.gov
Subject: FW: Amici merits brief in McCullen v. Coakley (U.S.)
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Aaron - here is my short analysis of Montana's law. I'm still working on seeing if we'll join; will let you know. Can you give me a call sometime to ask you about my SCOTUS procedural question?

Thanks!

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From: Schweitzer, Dan [mailto:DSCHWEITZER@NAAG.ORG]

Sent: Tuesday, September 10, 2013 8:27 AM

To: chris.coppin@cwagweb.org; paul.d.stern@maine.gov; dbahr@nd.gov; JMclIntosh@scag.gov; pam.murphy@doj.nh.gov; eric.tabor@iowa.gov; jknorr@attorneygeneral.gov; james.layton@ago.mo.gov; paula.bickett@azag.gov; charles.mcguigan@state.sd.us; RPartington@riag.ri.gov; crimago@saipan.com; barbara.underwood@ag.ny.gov; Hampton, Andrea; Schweitzer, Dan; sbluestone@nmag.gov; david.raupp@arkansasag.gov; gmorg@ago.state.ms.us; jlee@riag.ri.gov; attorney@samoatelco.com; stephan.finkel@lps.state.nj.us; Girard.D.Lau@hawaii.gov; stevemac@ku.edu; dennis.hansen@arkansasag.gov; basay@atg.state.vt.us; Mary.Williams@doj.state.or.us; gkelley@ncdoj.gov; alanc@atg.wa.gov; alama@nmag.gov; judy.zepun@state.ma.us; joanne.grace@alaska.gov; jnotz@atg.state.il.us; Gregory.Dauria@ct.gov; anne.edwards@doj.nh.gov; tom.fisher@atg.in.gov; jwhite@ncdoj.gov; whowle@ag.nv.gov; Frances.Grunder@doj.ca.gov; mlanf@ago.state.ms.us; ken.rosenstein@alaska.gov; allison.martin@ag.ky.gov; hpizz@ago.state.ms.us; wellsik@doj.state.wi.us; Lee.Davidson@ksag.org; edavis@doj.vi.gov; donna.murasky@dc.gov; ssullivan@oag.state.md.us; jmaddrey@ncdoj.gov; dspence@oag.state.md.us; vip@wvago.gov; debbie.mcveigh@wyo.gov; Steve.Creason@atg.in.gov; kguthrie@ago.state.al.us; andrea.silkowitz@dol.lps.state.nj.us; brian.kane@ag.idaho.gov; Richard.Dearing@ag.ny.gov; katie.spohn@nebraska.gov; rrussell@nmag.gov; mwood@ago.state.ms.us; restucciae@michigan.gov; wbrockman@oag.state.md.us; agesmith@scag.gov; susan.lee@doj.ca.gov; SG@atg.in.gov; todd.kim@dc.gov; delayne.deck@ag.idaho.gov; dan.domenico@state.co.us; mscodro@atg.state.il.us; heather.mcveigh@atg.in.gov; suzanne.gorman@doj.nh.gov; jbhoward@oag.state.md.us; potterkc@doj.state.wi.us; stjohnkm@doj.state.wi.us; ed.bedrosian@state.ma.us; john.garry@ag.state.mn.us; brooke.paup@texasattorneygeneral.gov; appeals@ohioattorneygeneral.gov; meanssp@doj.state.wi.us; Sherri.Wald@state.sd.us; adam.aston@texasattorneygeneral.gov; jhughes@atg.state.il.us; david.blake@state.co.us; Segrest, Stuart; susan.britton@ag.ky.gov; john.campbell@ksag.org; jung.kim@dol.lps.state.nj.us; dave.jones@alaska.gov; delberta.pfeifer@ksag.org; perry.zinn-rowthorn@ct.gov; jfishburn@ag.nv.gov; mwebb@ago.state.ms.us; barb.fehrman@ag.state.mn.us; vbeavers@ag.nv.gov; bromano@utah.gov; kris.ailsliager@ksag.org; bob.fagan@msdh.state.ms.us; Eileen.carey@state.ma.us; sean.riley@ag.ky.gov; ashley.harwel@atg.in.gov; dGetchell@oag.state.va.us; anna.joyce@doj.state.or.us; marlene.brown@dol.lps.state.nj.us; peter.michael@wyo.gov; diane.dewolf@myfloridalegal.com; jonathan.mitchell@oag.state.tx.us; mary.mertz@ohioattorneygeneral.gov; sforney@attorneygeneral.gov; npeterson@law.ga.gov; jneiman@ago.state.al.us; ariel.levinson-waldman@dc.gov; burschj@michigan.gov; Leesa.Thompson@oag.ok.gov; dowkerc@michigan.gov; frederick.nelson@ohioattorneygeneral.gov; patrick.wyrick@oag.ok.gov; bill.young@ag.tn.gov; Black, Michael; MBrady@oag.state.va.us; Sam Peterson; abrasher@ago.state.al.us; pamela.spang@state.ma.us; andy.oldham@texasattorneygeneral.gov; Jason.pleggenkuhle@ag.state.mn.us; michael.hendershot@ohioattorneygeneral.gov; robyn.bender@ag.ky.gov; laura-jane.weimer@state.co.us; james.adams@state.de.us; Aricka.seales@state.ma.us; wiltonp@ag.state.la.us; lindstroma@michigan.gov; VanDyke, Lawrence; allen.winsor@myfloridalegal.com; christopher.dodrill@wvago.gov; marmercado@justicia.pr.gov; elbert.lin@wvago.gov; Mary.McTaggart@state.de.us; Sarah.Greenwalt@oag.ok.gov; Michael.Franco@state.co.us

Subject: Amici merits brief in McCullen v. Coakley (U.S.)

To: Civil Amicus Contacts

From: John Bursch, Michigan Solicitor General

Attached is an amici merits brief that Michigan has prepared in support of the petitioners in McCullen v. Coakley, No. 12-1168, a First Amendment case the Supreme Court will hear this term involving speech-free buffer zones around abortion clinics.

The petition presents two questions:

1. Whether the First Circuit erred in upholding Massachusetts' selective exclusion law under the First and Fourteenth Amendments, on its face and as applied to petitioners.

2. If *Hill v. Colorado*, 530 U.S. 703 (2000), permits enforcement of this law, whether *Hill* should be limited or overruled.

The amici brief addresses only the first question presented and answers that question "yes." The brief explains that while every state has buffer zone statutes protecting certain events (like polling places during elections and funerals), those statutes are permissible because they are viewpoint neutral. The Massachusetts statute, in contrast, discriminates based on who is speaking, so that employees and agents of abortion clinics can speak within the buffer zone, but no one else can.

The amici brief is due for filing next Monday, September 16, and Michigan can accept sign-ons until 9 a.m. EDT that same day. The contact person for Michigan is:

Aaron Lindstrom
Michigan Assistant Solicitor General
G. Mennen Williams Building, 7th Floor
525 West Ottawa Street
P.O. Box 30212
Lansing, MI 48909
Office: (517) 241-0367
Fax: (517) 373-3042
lindstroma@michigan.gov

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Thursday, September 12, 2013 1:38 PM
To: 'Hirsch, Jason'
Cc: RIENZI@law.edu
Subject: RE: Reaching Out Per Aaron Lindstrom re Supreme Court Amicus Brief

Thank you, Jason. We actually told Michigan this morning that we will be joining their brief, so you had me at hello. ☺

We support your effort and think Michigan has put together a great brief. Like Colorado, Montana has its own "buffer zone" law, but unlike Massachusetts' law it is viewpoint neutral. Michigan has added some language to its brief noting that. Hopefully it is helpful to have one of the other few states with a "buffer zone" law joining your effort, since it emphasizes that this is not about buffer zones per se, but about viewpoint discrimination.

I did not realize Mark Rienzi was involved with the petition. Mark and I serve together on the Federalist Society's executive committee for the religious liberty practice group. And I believe we spoke at one point about an Austin ordinance directed at pregnancy centers, back when I was in private practice. Nice to have our paths cross again, Mark.

Thanks again, and glad to help the effort.

Sincerely,

Lawrence VanDyke
Solicitor General ♦ Montana Department of Justice

215 N. Sanders ♦ P.O. Box 201401
Helena, Montana 59620
T: (406) 444-3442 ♦ F: (406) 444-3549
LVanDyke@mt.gov

From: Hirsch, Jason [mailto:Jason.Hirsch@wilmerhale.com]
Sent: Thursday, September 12, 2013 1:20 PM
To: VanDyke, Lawrence
Cc: RIENZI@law.edu
Subject: Reaching Out Per Aaron Lindstrom re Supreme Court Amicus Brief

Lawrence,

Aaron Lindstrom in the Michigan Solicitor General's Office recommended that we reach out to you regarding a case before the Supreme Court this term, *McCullen v. Coakley*, in which we represent the petitioners. The case presents a First Amendment challenge to a Massachusetts buffer zone statute aimed at eliminating speech in the vicinity of abortion clinics. In concrete ways, the law is more restrictive of speech and more viewpoint-discriminatory than any previously upheld by the Court, including the Colorado law upheld in *Hill v. Colorado*. For example, the law only applies at abortion clinics, outlaws even peaceful, consensual conversations on public sidewalks, and has an exception that allows speech by clinic employees in what are now otherwise speech-free zones for all others. The petitioners are sidewalk counselors who simply wish to have conversations with (or pass information to) willing listeners at a normal

conversational distance, so that they may communicate their message of support without shouting, waving graphic signs, or undertaking other behavior that is often counterproductive.

Attorney General Schuette and Solicitor General Bursch have decided to file an amicus brief in support of our position. We understand that they have already circulated the brief to you and others earlier this week. We think that Michigan's brief is terrific and makes a critical contribution to the case. It is very important that the Court understand that if we win, States will still have ample regulatory tools available to address safety, access, and the protection of people in emotionally fragile state. Attorney General Schuette's Office strongly believes, as do we, that it is important to send a strong message to the Court that States have the ability to preserve significant interests in protecting the public - whether it be at health-care facilities, funerals, polling places, or otherwise - without trampling on free speech rights, and, more importantly, without giving one side of a contested issue a substantial advantage in an ongoing debate. To the end of sending a strong message, we are working with Michigan to build a broad coalition of support for the brief.

We hope that you will consider signing onto the brief; we would love to have Montana's support in this important case. If your office did not receive a copy of Michigan's brief, and would like me to send one on, let me know. In addition, I am attaching our merits brief, which we filed with the Court on Monday.

We would welcome the opportunity to discuss the case and Montana's possible support as an amicus with you or someone from your Office. Let us know if you would be willing to do that, and we would be happy to work around your schedule. Michigan's brief is due to the Court on September 16.

Thank you for your consideration.

Jason

Jason D. Hirsch | WilmerHale
7 World Trade Center
250 Greenwich Street
New York, NY 10007 USA
+1 212 937 7262 (t)
+1 212 230 8888 (f)
jason.hirsch@wilmerhale.com

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/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Monday, January 14, 2013 11:00 AM
To: Bennion, Jon
Subject: Canyon Ferry Bill

Jon – I looked a bit more at the Canyon Ferry bill – specifically why Governor Schweitzer vetoed it last session. As I mentioned on Friday, although the bill purports to be merely implementing the 9th Circuit decision, what it really does is implement Judge Noonan’s concurring opinion. The majority decision focused on the de minimis nature of the church’s expenditures. The concurrence focused on the fact that they were made by a religious organization. A bill implementing the majority decision would create a de minimis exceptions for all organizations, religious or not. But that is not what it does - the bill exempts expenditures made by religious organizations, whether de minimis or not. That distinction is important because the bill does not simply try to codify the Ninth Circuit’s ruling – only the majority ruling would be binding precedent. What the bill is trying to do is take the concurrence’s position (which is not binding law), and make that the law in Montana.

Schweitzer emphasized that distinction between the majority and concurrence, and said he would support a law that merely exempted de minimis expenditures for all organizations, but not one that exempts religious organizations all together. In other words, he supposedly agreed with the majority opinion, but not Noonan’s concurrence. I’m not sure whether the new Governor would take the same route or not, but if so, then he will presumably veto the bill for the same reason.

In answer to your last question on Friday – if pressed, I could offer arguments to a legislative committee in favor of the bill (i.e., protection of religious freedom), and simply ignore some of the concerns I raised to you (i.e., definitional and underinclusiveness problems with “bona fide church” and “made in the normal course of exercising its freedom of religious expression.”

Lawrence VanDyke
Solicitor General ♦ Montana Department of Justice

215 N. Sanders ♦ P.O. Box 201401
Helena, Montana 59620
T: (406) 444-3442 ♦ F: (406) 444-3549
LVanDyke@mt.gov

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Friday, February 15, 2013 10:38 AM
To: Darkenwald, Scott; James, Julie
Cc: Fox, Tim; Mattioli, Mark; Bennion, Jon; Barnes, John; Swanson, Cory
Subject: Suggested Topic for Senior Management Meeting - Election Law Cases

All – I propose that at one of our upcoming senior management meetings we discuss election law issues. As I understand it, we have inherited five election law cases from the prior administration. It would be nice to know what happened in those cases, where they now stand, and our plans going forward. Barnes also provided a press release from the Bullock administration stating it intends to pass more election regulations. In addition to the legal issues involved, these cases involve money concerns (e.g., we can expect that we will be paying significant fee awards to opposing counsel in at least some of these cases), political concerns, and resource concerns. I think it would be good to at least all get on the same page on these issues.

Thanks!

Lawrence VanDyke
Solicitor General ♦ Montana Department of Justice

215 N. Sanders ♦ P.O. Box 201401
Helena, Montana 59620
T: (406) 444-3442 ♦ F: (406) 444-3549
LVanDyke@mt.gov

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Friday, March 08, 2013 1:34 PM
To: Fox, Tim; Mattioli, Mark
Subject: Western Tradition Partnership Case - Attorney Fees

Tim and Mark – I need 15 minutes of your time (together and soon, preferably) to talk about what we want to do in the WTP case regarding fees. Our response to their fee petition (appx. \$141k total) is due next Friday. We need to decide how we want to pursue this, especially since there are likely more of these coming down the pike.

Lawrence VanDyke
Solicitor General ♦ Montana Department of Justice

215 N. Sanders ♦ P.O. Box 201401
Helena, Montana 59620
T: (406) 444-3442 ♦ F: (406) 444-3549
LVanDyke@mt.gov

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Thursday, September 12, 2013 11:34 AM
To: Fox, Tim; Mattioli, Mark
Cc: Bennion, Jon; Barnes, John; Swanson, Cory
Subject: FW: Amici Memo in Judd v. Libertarian Party of Va. (U.S.)
Attachments: AMICUS MEMO.docx

This is a short-fuse cert-stage amicus join request. Unless someone knows of a compelling Montana-specific reason we should join, I recommend that we do NOT join this one. Our decision is due this Monday, Sept. 16th, by 11 am.

Oklahoma is filing a brief in support of Virginia. Virginia, like 17 other states, has a law that petition circulators must be Virginia residents. (Any idea whether Montana is one of the 17 other states with a similar law?) The Fourth Circuit struck down the law as a violation of the First Amendment rights of the petition circulators. Oklahoma (and Virginia) is arguing that the residency requirement is narrowly tailored to address the problem of petition fraud.

I'm somewhat ambivalent as to whether Oklahoma is right. But more importantly, I'm not aware that this is a pressing issue in Montana; absent that, and given that this is cert-stage and out-of-circuit, I'm not sure it merits a join at this point even if they are right.

- Lawrence

From: Schweitzer, Dan [<mailto:DSCHWEITZER@NAAG.ORG>]
Sent: Thursday, September 12, 2013 11:10 AM
To:
Cc: Cara.Rodriguez@oag.ok.gov
Subject: Amici Memo in Judd v. Libertarian Party of Va. (U.S.)

To: Civil Amicus Contacts

Attached is an Amicus Memo describing the amicus brief Oklahoma is preparing in support of Virginia's cert petition in *Judd v. Libertarian Party of Virginia*, 13-321 (U.S.). The petition seeks review of a Fourth Circuit decision holding that Virginia's requirement that petition circulators be residents of the Commonwealth of Virginia is an unconstitutional infringement on the First Amendment rights of the petition circulators. The question presented is "[w]hether a state residency requirement is sufficiently narrowly tailored to the State's interests in protecting the integrity of the petition process and in policing the petition process against fraud that it survives scrutiny under the First and Fourteenth Amendments."

A draft of the brief will be circulated tomorrow; and the deadline for joining will be 12 noon CDT on September 16.

Dan Schweitzer
Supreme Court Counsel
National Association of Attorneys General
2030 M Street, NW, 8th Floor

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Thursday, June 27, 2013 9:05 AM
To: Fox, Tim; Darkenwald, Scott; Mattioli, Mark
Subject: FW: Sanders County Republicans case (partisan judicial endorsements)

Tim, Scott, and Mark –

The way the appeal decision was made in the Sanders County case has highlighted some questions I've had recently about my role in this office. I thought it would be best to air those questions to all three of you, because I don't want to "go behind anyone's back" or do anything that isn't hopefully constructive. But I do think it might be helpful, at least for me, to get more clarity as to my role and expectations here. I also want to be clear that I don't think these concerns require immediate attention – I think they are important, but not particularly urgent. So please don't let this distract any of you from more urgent matters.

Also, to be clear, please don't take this email as complaining about the actual substance of the decision that was made in the Sanders County case. Obviously, I strongly disagree with that decision, even after Tim briefly explained it to me. And I hope you all don't mind me telling you that you're wrong – I assume you don't want "yes men" working for you. While I disagree with the decision that was made, once it's made, I'm on board. Tim is the boss. My concern is the process of how the decision was made, and what that says about my role.

I am confused about that. I recognize that this is a smaller office, and so a certain amount of flexibility in what I do is expected and desirable. And, at least much of the time, I'm thankful for that. But it seems to me that one (arguably, "the") core responsibility of solicitors general throughout the nation is to manage appeals. And while Tim and I didn't spend a lot of time talking about what my duties would be as solicitor general before I was hired, I do specifically recall him saying I would "be in charge of" appeals, or something to that effect.

But I think how the Sanders County decision puts that into serious doubt – not because I didn't get to make the ultimate decision (that's obviously Tim's to make), but because I didn't even really get to participate in the decision-making process. All anyone had from me was the email below, and the only reason you had that was because I happen to have overheard that a ruling had issued in the Sanders County case. The email below plainly does not, and was not intended to, provide my reasons why we shouldn't appeal. The plain fact is that I wasn't really involved in the decision whether to appeal at all.

It would be helpful to me to get a better understanding of whether I have any specific core responsibilities as solicitor general, and what they are. For me, it is mostly a matter of expectations. Unmet expectations tend to lead to frustration, so it would help to ensure my expectations (and yours) are properly calibrated, or at least in sync.

I appreciate the opportunity to work with and for each of you. Thank you for your time, and I look forward to talking with you all about this.

Lawrence

From: VanDyke, Lawrence
Sent: Friday, June 21, 2013 1:27 PM
To: Fox, Tim; Darkenwald, Scott; Mattioli, Mark; Bennion, Jon; Swanson, Cory; Barnes, John
Subject: Sanders County Republicans case (partisan judicial endorsements)

I understand that the Ninth Circuit has issued an opinion in the Sanders County Republicans case, upholding Judge Lovell's ruling that Montana can't ban independent expenditures by political parties to support or oppose judicial candidates. I guess the next question is whether the state should seek en banc review or seek cert. I strongly think we should not. Enough is enough.

If there is some thought that we should continue, however, I think it would be worth having the entire team discuss this.

Thanks,

Lawrence VanDyke
Solicitor General ♦ Montana Department of Justice

215 N. Sanders ♦ P.O. Box 201401
Helena, Montana 59620
T: (406) 444-3442 ♦ F: (406) 444-3549
LVanDyke@mt.gov

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Wednesday, November 20, 2013 1:17 PM
To: Bennion, Jon
Subject: If you have 15 minutes today ...

... can you swing by to discuss the latest election law challenge we are defending?

Thanks,

Lawrence VanDyke
Solicitor General ♦ Montana Department of Justice

215 N. Sanders ♦ P.O. Box 201401
Helena, Montana 59620
T: (406) 444-3442 ♦ F: (406) 444-3549
LVanDyke@mt.gov

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Monday, January 13, 2014 11:16 AM
To: 'Muller, Derek T'
Subject: RE: Fox v. Sanders

I believe it is being filed today. I was busy working on my own cert petition, and chose not to be involved with the Sanders County one at all. It should be posted at Cockle's website after filing, but if you don't find it there by tomorrow morning, email me and I'll get an electronic copy for you.

Hope you are doing great.

From: Muller, Derek T [<mailto:Derek.Muller@pepperdine.edu>]
Sent: Monday, January 13, 2014 11:09 AM
To: VanDyke, Lawrence
Subject: Fox v. Sanders

Are you filing the petition today? Will it be posted somewhere?

Derek T. Muller
Associate Professor of Law
Pepperdine University School of Law
24255 Pacific Coast Hwy.
Malibu, CA 90263
+1 310-506-7058
SSRN Author Page: <http://ssrn.com/author=464341>

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Wednesday, October 09, 2013 11:40 AM
To: Mattioli, Mark; Bennion, Jon; Swanson, Cory
Cc: Fox, Tim; Darkenwald, Scott
Subject: RE: Sanders County -- Recommendation re Petition for Cert.

Tim forwarded this on Friday, so I think we may have all already had a chance to review it (at least I have).

From: Mattioli, Mark
Sent: Wednesday, October 09, 2013 11:36 AM
To: VanDyke, Lawrence; Bennion, Jon; Swanson, Cory
Cc: Fox, Tim; Darkenwald, Scott
Subject: FW: Sanders County -- Recommendation re Petition for Cert.

Here's Mike Black's recommendation in Sanders County. Tim has reviewed. I intended to forward this on Monday but got sidetracked with the new MIJA case.

Let me know when you've had a chance to review this and then I'll schedule a time to discuss at a meeting which would include Mike Black. Let's have an open, honest and professional discussion about the pros and cons of seeking cert in this case.

Mark

From: Black, Michael
Sent: Thursday, October 03, 2013 4:09 PM
To: Mattioli, Mark
Subject: Sanders County -- Recommendation re Petition for Cert.

Mark:

Please find attached my memo recommending that we proceed with petitioning for cert. in the Sanders County matter. Please let me know if you have any questions or concerns.

Michael G. Black
Bureau Chief
Civil Services Bureau
Montana Department of Justice
215 North Sanders
P.O. Box 201401
Helena, Montana 59620-1401
406-444-2026 telephone
406-444-3549 fax
mblack2@mt.gov

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Saturday, June 22, 2013 1:00 AM
To: Fox, Tim
Cc: Darkenwald, Scott; Mattioli, Mark; Bennion, Jon; Swanson, Cory; Barnes, John
Subject: Re: Sanders County Republicans case (partisan judicial endorsements)

I haven't seen it yet. Mike just told me about it this morning. He may be the only one with a copy right now.

Sent from my iPhone

On Jun 21, 2013, at 10:16 PM, "Fox, Tim" <TimFox@mt.gov> wrote:

Perhaps we should discuss first thing next week. I'd like to see the opinion. Anyone got a copy?

Sent from my iPhone

On Jun 21, 2013, at 1:26 PM, "VanDyke, Lawrence" <LVanDyke@mt.gov> wrote:

I understand that the Ninth Circuit has issued an opinion in the Sanders County Republicans case, upholding Judge Lovell's ruling that Montana can't ban independent expenditures by political parties to support or oppose judicial candidates. I guess the next question is whether the state should seek en banc review or seek cert. I strongly think we should not. Enough is enough.

If there is some thought that we should continue, however, I think it would be worth having the entire team discuss this.

Thanks,

Lawrence VanDyke
Solicitor General ♦ Montana Department of Justice

215 N. Sanders ♦ P.O. Box 201401
Helena, Montana 59620
T: (406) 444-3442 ♦ F: (406) 444-3549
LVanDyke@mt.gov

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Friday, August 16, 2013 2:45 PM
To: Barnes, John
Subject: RE: Sanders County

Thank you.

From: Barnes, John
Sent: Friday, August 16, 2013 2:16 PM
To: VanDyke, Lawrence
Subject: FW: Sanders County

From: Black, Michael
Sent: Friday, August 16, 2013 2:15 PM
To: Mattioli, Mark
Cc: Barnes, John; Cochenour, Matt
Subject: Sanders County

Mark:

Here is the actual order. Based upon our prior conversations, it is my understanding that the AG does not want to petition for cert. However, I would prefer not to make any public announcement so we can attempt to resolve the claim for attorney fees. Thanks.

Michael G. Black
Bureau Chief
Civil Services Bureau
Montana Department of Justice
215 North Sanders
P.O. Box 201401
Helena, Montana 59620-1401
406-444-2026 telephone
406-444-3549 fax
mblack2@mt.gov

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Friday, June 21, 2013 1:27 PM
To: Fox, Tim; Darkenwald, Scott; Mattioli, Mark; Bennion, Jon; Swanson, Cory; Barnes, John
Subject: Sanders County Republicans case (partisan judicial endorsements)

I understand that the Ninth Circuit has issued an opinion in the Sanders County Republicans case, upholding Judge Lovell's ruling that Montana can't ban independent expenditures by political parties to support or oppose judicial candidates. I guess the next question is whether the state should seek en banc review or seek cert. I strongly think we should not. Enough is enough.

If there is some thought that we should continue, however, I think it would be worth having the entire team discuss this.

Thanks,

Lawrence VanDyke
Solicitor General ♦ Montana Department of Justice

215 N. Sanders ♦ P.O. Box 201401
Helena, Montana 59620
T: (406) 444-3442 ♦ F: (406) 444-3549
LVanDyke@mt.gov

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Monday, February 24, 2014 8:07 AM
To: Fox, Tim; Mattioli, Mark; Darkenwald, Scott; Bennion, Jon; Swanson, Cory; Barnes, John; Burton, Anastasia
Subject: The Supreme Court denied cert in both of our cases
Attachments: 2014-02-24 SCOTUS Orders List.pdf

Montana v. Holder (the Montana Firearms Freedom Act case) and Sanders County Republicans (the political party endorsement of judicial candidates case).

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Wednesday, February 13, 2013 5:10 PM
To: Fox, Tim; Bennion, Jon; Swanson, Cory; Darkenwald, Scott; Barnes, John; Mattioli, Mark
Subject: RE: Parental notification for abortion: SupCo rule
Attachments: Parental Notice of Abortion Act Proposed Rule Comment.docx

Attached is a slightly revised draft.

-----Original Message-----

From: VanDyke, Lawrence
Sent: Wednesday, February 13, 2013 1:16 PM
To: Fox, Tim; Bennion, Jon; Swanson, Cory; Darkenwald, Scott; Barnes, John; Mattioli, Mark
Subject: RE: Parental notification for abortion: SupCo rule

All - Attached is a draft comment Tim could submit in response to the Supreme Court's proposed rule. Perhaps this is something we can discuss in our meeting this afternoon. If we want to submit a comment, I think it would be best to do so sooner rather than later.

- Lawrence

-----Original Message-----

From: Fox, Tim
Sent: Tuesday, February 12, 2013 4:30 PM
To: Bennion, Jon; Swanson, Cory; Darkenwald, Scott; VanDyke, Lawrence; Barnes, John; Mattioli, Mark
Subject: RE: Parental notification for abortion: SupCo rule

While I'm not sure that I agree with Rep. Smith that the Supreme Court's proposed rules make the Act "null & void," I do have a concern with the default decision of the Supreme Court that the lower court's decision is overturned and an abortion is allowed if no written decision is issued within the allotted time. Such a procedure would not only allow the Supreme Court to avoid simply review, but it would fail to make the Supreme Court accountable to the people of Montana who voted for this law. Furthermore, such a provision would be an affront to the intent and purpose of the law. In most cases, if an appeal court fails to issue an decision, or fails to accept cert, the decision of the lower court is constructively upheld. That is the typical way things are done in the American system of jurisprudence. Conversely, if an appeal court determines that it must reverse or modify the decision of a lower court, it does so usually with a written decision that not only informs the parties to the matter what and why the decision was made, but also provides written precedent so that law-abiding citizens and lower courts can understand what would be expected of them going forward. The Supreme Court's proposed Rule (7) turns the process on its head in this case, and will fail to allow the citizens and courts of Montana to know what conduct and procedures are expected of them. Moreover, it is difficult, if not impossible, to hold our Supreme Court justices accountable for their decisions by the voters if they do not give reasons for them. The "Constructive Order" provision in Rule 7 must state the opposite to comply with Parental Notification law's intent and purpose, to provide guidance to the public and to the courts in the future when applying this law, to adhere to our system of precedential jurisprudence, and to hold our elected Supreme Court justices accountable to the public for their decisions. For that reason, the Rule should state as follows:

(7) Constructive Order. If the supreme court fails to enter an order within 72 hours, including weekends and holidays, after the clerk of the supreme court receives the record on appeal, the clerk shall issue a certificate stating that (1) no order was entered within 72 hours, including weekends and holidays, after the appeal was docketed; and (2) the failure

to enter the order constitutes a constructive order of the court affirming the decision of the lower court and adopting the findings of fact and the conclusions of law of that lower court.

I also think that the Court should include a provision stating that any decision of the court shall be published with any information that might implicate privacy rights being redacted. The title of any such matter before the court should be similar to other matters involving minors - i.e., "In re (insert initials)." Finally, perhaps we should include a provision requiring notification of the appeal to the Attorney General's office, and giving the Attorney General the discretionary right of intervention to represent the interests of the State of Montana.

I believe that I need to have someone draft a strongly worded comment to the proposed rules for my signature to point out the failings of Rule 7 and another issues that we see with the other rules. Mark, please assign this to someone in your shop, preferably Cory, Lawrence, or Jon.

On a related note, when is the deadline for comment?

Thank you.

Tim

-----Original Message-----

From: Bennion, Jon

Sent: Tuesday, February 12, 2013 3:48 PM

To: Swanson, Cory; Fox, Tim; Darkenwald, Scott; VanDyke, Lawrence; Barnes, John; Mattioli, Mark

Subject: FW: Parental notification for abortion: SupCo rule

See attached

-----Original Message-----

From: cary smith [mailto:cary@bresnan.net]

Sent: Tuesday, February 12, 2013 11:46 AM

To: , Rep. Krayton Kerns; ART WITTICH ; Austin Knudsen; Bennion, Jon; Bowen Greenwood; David Howard; Essmann, Jeff; Gordy Vance; Jason S. Priest; Jason S. Priest; Jeff Laszloffy; Krayton Kerns; Kris Hansen; Mark W Blasdel; Peterson, Ken; Regier, Keith; Rep Knudsen; Tom McGillvray; Wagman, Pat; Walker, Edward

Subject: Parental notification for abortion: SupCo rule

All,

Please take a look at the Supreme Court Rule for Parental notification for an abortion for a minor. It really makes the Legislative Referendum null & void.

Any ideas?

Representative Cary Smith

House District 55

Montana State House of Representatives

Majority Whip

Cell # 406-698-9307

committed to....preserving our Freedom & Liberty

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Thursday, February 14, 2013 10:16 AM
To: Court, Clerk
Subject: PDF copy
Attachments: Comments on Proposed Rule-abortion_2-14-13.pdf

Here is the pdf copy of our comments.

Thanks!

Lawrence VanDyke
Solicitor General ♦ Montana Department of Justice

215 N. Sanders ♦ P.O. Box 201401
Helena, Montana 59620
T: (406) 444-3442 ♦ F: (406) 444-3549
LVanDyke@mt.gov

From: Holnbeck, Beverly
Sent: Thursday, February 14, 2013 9:39 AM
To: VanDyke, Lawrence
Subject:

Bev Holnbeck
Bev Holnbeck, Legal Assistant
Office of the Montana Attorney General
406-444-1952

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Monday, March 25, 2013 3:54 PM
To: Fox, Tim; Barnes, John
Cc: Darkenwald, Scott; Mattioli, Mark; Bennion, Jon; Swanson, Cory
Subject: FW: Contraception Mandate Sign-on Letter: Update and Draft Press Release
Attachments: Contraception Mandate Letter DRAFT Press Release.docx; AGComment on New Proposal Regarding Contraception Mandate - SIGNED circulation draft 3-25 (2).pdf

Tim and John – Attached is a near-final draft of the HHS mandate letter Tim is joining (along with 11 other AGs). It will be filed tomorrow.

Also attached is a draft press release. I don't know if we want to do press on this or not, but I thought I should pass this along just in case.

From: Brasher, Andrew [<mailto:ABrasher@ago.state.al.us>]
Sent: Monday, March 25, 2013 3:30 PM
To: Chanay, Jeff; Britt Grant; VanDyke, Lawrence; Frederick Nelson; Adam Piper; Tom.Bates@oag.ok.gov; Carlos Muniz; Fred.Yarger@state.co.us; Spohn, Katie; Elbert Lin; Kane, Brian
Cc: Beth Ryan
Subject: Contraception Mandate Sign-on Letter: Update and Draft Press Release

All,

I will file the contraception mandate comment letter **tomorrow morning, March 26, 2013**. I will then send an email to this list with the as-filed version letting you know that it has been filed and giving you the green light to do any press that you may want to do.

To that end, I have attached two things to this email: (1) I have attached the final draft of comment letter. There are been a few minor changes since the last draft. The two biggest are that I have removed a sentence from the last paragraph, and I have changed the term "contraception mandate" to "HHS mandate" to better correspond with the public relations strategy of the Beckett Fund and the Alliance Defending Freedom. If you have any concerns about this final draft, please let me know as soon as possible. (2) I have also attached a draft press release that your respective teams can modify/add to however you would like.

Thank you,

Andrew Brasher
Deputy Solicitor General
Office of Alabama Attorney General Luther Strange
Direct: 334-353-2609
Fax: 334-242-4891

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Monday, March 18, 2013 11:56 AM
To: Fox, Tim
Cc: Barnes, John
Subject: HHS Contraception Mandate Letter from Alabama

Tim – We discussed whether we should join Alabama’s letter to the HHS regarding problems with the HHS’s religion exception to its contraception mandate. My though is that the letter looks great, and the only reason we wouldn’t join is because Montana, as a result of a Montana Supreme Court ruling, has for some time now required that contraception coverage be included in all insurance coverage. So joining something like this could open us up to criticism for being inconsistent, pot calling the kettle black, etc.

You asked me to remind you about it this week. The letter will go out this Thursday, March 21, so our decision whether to join is probably due by Wednesday, March 20. I’m looping John Barnes in just in case he has any thoughts/concerns about adverse media if we join (or don’t).

As of this past Friday, Alabama, Florida, Georgia, South Carolina, Colorado, and Oklahoma had committed to joining the letter.

Lawrence VanDyke
Solicitor General ♦ Montana Department of Justice

215 N. Sanders ♦ P.O. Box 201401
Helena, Montana 59620
T: (406) 444-3442 ♦ F: (406) 444-3549
LVanDyke@mt.gov

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Friday, March 22, 2013 1:22 PM
To: 'Brasher, Andrew'
Subject: RE: Contraception Mandate Sign-on Letter

Andrew – This probably goes without saying, but could you send us a pdf copy of the final letter once it is filed?

Thank you, and have a great weekend.

From: Brasher, Andrew [<mailto:ABrasher@ago.state.al.us>]
Sent: Tuesday, March 19, 2013 1:25 PM
To: Chanay, Jeff; Britt Grant; VanDyke, Lawrence; Frederick Nelson; Adam Piper; Tom.Bates@oag.ok.gov; Carlos Muniz; Fred.Yarger@state.co.us; Spohn, Katie
Subject: Contraception Mandate Sign-on Letter

All,

Your Attorney General should have received the attached email from the Republican Attorney Generals' Association/State Government Leadership Foundation about the timing of our contraception mandate comment letter.

I just wanted to let you know that we have slightly modified the comment letter per some of your comments, are extending the deadline for other States to join, plan to circulate a draft press release to this group on Monday March 25, and plan to file the letter on Tuesday morning March 26.

Please give me a call with any questions.

Andrew Brasher
Deputy Solicitor General
Office of Alabama Attorney General Luther Strange
Direct: 334-353-2609
Fax: 334-242-4891

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Wednesday, February 13, 2013 1:16 PM
To: Fox, Tim; Bennion, Jon; Swanson, Cory; Darkenwald, Scott; Barnes, John; Mattioli, Mark
Subject: RE: Parental notification for abortion: SupCo rule
Attachments: Parental Notice of Abortion Act Proposed Rule Comment.docx; supreme court rule on judicial waiver.pdf

All - Attached is a draft comment Tim could submit in response to the Supreme Court's proposed rule. Perhaps this is something we can discuss in our meeting this afternoon. If we want to submit a comment, I think it would be best to do so sooner rather than later.

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Sent: Tuesday, February 12, 2013 4:30 PM
To: Bennion, Jon; Swanson, Cory; Darkenwald, Scott; VanDyke, Lawrence; Barnes, John; Mattioli, Mark
Subject: RE: Parental notification for abortion: SupCo rule

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From: Bennion, Jon

Sent: Tuesday, February 12, 2013 3:48 PM

To: Swanson, Cory; Fox, Tim; Darkenwald, Scott; VanDyke, Lawrence; Barnes, John; Mattioli, Mark

Subject: FW: Parental notification for abortion: SupCo rule

See attached

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Sent: Tuesday, February 12, 2013 11:46 AM

To: , Rep. Krayton Kerns; ART WITTICH ; Austin Knudsen; Bennion, Jon; Bowen Greenwood; David Howard; Essmann, Jeff; Gordy Vance; Jason S. Priest; Jason S. Priest; Jeff Laszloffy; Krayton Kerns; Kris Hansen; Mark W Blasdel; Peterson, Ken; Regier, Keith; Rep Knudsen; Tom Mcgillvray; Wagman, Pat; Walker, Edward

Subject: Parental notification for abortion: SupCo rule

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Please take a look at the Supreme Court Rule for Parental notification for an abortion for a minor. It really makes the Legislative Referendum null & void.

Any ideas?

Representative Cary Smith

House District 55

Montana State House of Representatives

Majority Whip

Cell # 406-698-9307

committed to....preserving our Freedom & Liberty

--- the forwarded message follows ---

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: Schweitzer, Dan <DSCHWEITZER@NAAG.ORG>
Sent: Thursday, February 06, 2014 4:51 PM
To: Schweitzer, Dan; chris.coppin@cwagweb.org; paul.d.stern@maine.gov; dbahr@nd.gov; peter.sacks@ago.state.ma.us; kmunro@ag.nv.gov; JMcIntosh@scag.gov; pam.murphy@doj.nh.gov; eric.tabor@iowa.gov; jk.norr@attorneygeneral.gov; margaret.chapple@ct.gov; james.layton@ago.mo.gov; paula.bickett@azag.gov; charles.mcguigan@state.sd.us; RPartington@riag.ri.gov; crimago@saipan.com; Edward.Dumont@doj.ca.gov; barbara.underwood@ag.ny.gov; Hampton, Andrea; sbluestone@nmag.gov; david.raupp@arkansasag.gov; gmorg@ago.state.ms.us; jlee@riag.ri.gov; attorney@samoatelco.com; stephan.finkel@lps.state.nj.us; Girard.D.Lau@hawaii.gov; stevemac@ku.edu; basay@atg.state.vt.us; fred.boss@doj.state.or.us; gkelley@ncdoj.gov; alanc@atg.wa.gov; Joe.Whalen@ag.tn.gov; alama@nmag.gov; judy.zepun@state.ma.us; robert.ellman@azag.gov; joanne.grace@alaska.gov; jnotz@atg.state.il.us; Gregory.Dauria@ct.gov; anne.edwards@doj.nh.gov; tom.fisher@atg.in.gov; jwhite@ncdoj.gov; whowle@ag.nv.gov; Frances.Grunder@doj.ca.gov; mlanf@ago.state.ms.us; ken.rosenstein@alaska.gov; allison.martin@ag.ky.gov; hpizz@ago.state.ms.us; wellsik@doj.state.wi.us; Lee.Davidson@ksag.org; edavis@doj.vi.gov; ssullivan@oag.state.md.us; jmaddrey@ncdoj.gov; dspence@oag.state.md.us; vicki.l.pendell@wvago.gov; sraphael@oag.state.va.us; judy.mitchell@wyo.gov; Steve.Creason@atg.in.gov; andrea.silkowitz@dol.lps.state.nj.us; brian.kane@ag.idaho.gov; Richard.Dearing@ag.ny.gov; katie.spohn@nebraska.gov; rrussell@nmag.gov; mwood@ago.state.ms.us; restucciae@michigan.gov; wbrockman@oag.state.md.us; agesmith@scag.gov; susan.lee@doj.ca.gov; todd.kim@dc.gov; delayne.deck@ag.idaho.gov; dan.domenico@state.co.us; heather.mcveigh@atg.in.gov; susanne.gorman@doj.nh.gov; jbhoward@oag.state.md.us; potterkc@doj.state.wi.us; stjohnkm@doj.state.wi.us; ed.bedrosian@state.ma.us; john.garry@ag.state.mn.us; brooke.paup@texasattorneygeneral.gov; appeals@ohioattorneygeneral.gov; Sherri.Wald@state.sd.us; adam.aston@texasattorneygeneral.gov; jhughes@atg.state.il.us; david.blake@state.co.us; Segrest, Stuart; susan.britton@ag.ky.gov; janell.hafner@alaska.gov; john.campbell@ksag.org; jung.kim@dol.lps.state.nj.us; delberta.pfeifer@ksag.org; perry.zinn-rowthorn@ct.gov; jfishburn@ag.nv.gov; mwebb@ago.state.ms.us; barb.fehrman@ag.state.mn.us; vbeavers@ag.nv.gov; bromano@utah.gov; kris.aillsliieger@ksag.org; david.curran@arkansasag.gov; bob.fagan@msdh.state.ms.us; sean.riley@ag.ky.gov; ashley.harwel@atg.in.gov; anna.joyce@doj.state.or.us; marlene.brown@dol.lps.state.nj.us; diane.dewolf@myfloridalegal.com; jonathan.mitchell@oag.state.tx.us; mary.mertz@ohioattorneygeneral.gov; sforney@attorneygeneral.gov; npeterson@law.ga.gov; ariel.levinson-waldman@dc.gov; Leesa.Thompson@oag.ok.gov; dowker@kentucky.gov; frederick.nelson@ohioattorneygeneral.gov; patrick.wyrick@oag.ok.gov; Black, Michael; MBrady@oag.state.va.us; steven.wu@ag.ny.gov; Sam Peterson; abrasher@ago.state.al.us; andy.oldham@texasattorneygeneral.gov; michael.hendershot@ohioattorneygeneral.gov; jeffrey.thompson@iowa.gov; robyn.bender@ag.ky.gov; laura-jane.weimer@state.co.us; james.adams@state.de.us; Aricka.seales@state.ma.us; wiltonp@ag.state.la.us; lindstroma@michigan.gov; VanDyke, Lawrence; allen.winsor@myfloridalegal.com; christopher.dodrill@wvago.gov; marmercado@justicia.pr.gov; elbert.lin@wvago.gov; Mary.McTaggart@state.de.us; Sarah.Greenwalt@oag.ok.gov; Michael.Francisco@state.co.us;

To: Eric.Murphy@ohioattorneygeneral.gov; john.knepper@wyo.gov;
mkirkpatrick@ago.state.al.us; craig.konnoth@doj.ca.gov; lkillough@ago.state.al.us;
Loren.AliKhan@dc.gov; lenningtondp@doj.state.wi.us; jacob.campion@ag.state.mn.us;
Schlichting, Melissa; Osvaldo.Vazquez@myfloridalegal.com;
Michael.Casper@doj.state.or.us; deidra.shannon@doj.ca.gov; tcox@oag.state.va.us;
cshapiro@atg.state.il.us
Cc: brittany.zielke@wyo.gov; Christyne.martens@wyo.gov; Caitlin.young@wyo.gov
Subject: Amicus Brief in Drake v. Jerejian (U.S.) - Second Amendment case
Attachments: Drake amicus brief.pdf

To: Civil Amicus Contacts

Attached is the amicus brief Wyoming has prepared in support of the cert petition filed in Drake v. Jerejian, 13-827 (U.S.). The petition seeks review of a Third Circuit decision that upheld against a Second Amendment challenge a New Jersey law that allows an individual to carry a handgun outside the home only if he shows a "justifiable need," which requires demonstration of urgent necessity evidenced by specific threats or previous attacks.

The deadline for joining the brief is 9 am MST, February 10, 2014. To join, you may contact:

Christyne Martens

Christyne.martens@wyo.gov<mailto:Christyne.martens@wyo.gov>

(307)-777-7977

or

Caitlin Young

Caitlin.young@wyo.gov<mailto:Caitlin.young@wyo.gov>

(307)-777-7977

From: Schweitzer, Dan
Sent: Wednesday, February 05, 2014 10:06 AM
Subject: Amicus Memo in Drake v. Jerejian (U.S.) - Second Amendment case

To: Civil Amicus Contacts

Attached is an Amicus Memo describing the amicus brief Wyoming is preparing in support of the cert petition filed in Drake v. Jerejian, 13-827 (U.S.). The petition seeks review of a Third Circuit decision that upheld against a Second

Amendment challenge a New Jersey law that allows an individual to carry a handgun outside the home only if he shows a "justifiable need," which requires demonstration of urgent necessity evidenced by specific threats or previous attacks.

Dan Schweitzer
Supreme Court Counsel
National Association of Attorneys General
2030 M Street, NW, 8th Floor
Washington, DC 20036
(202) 326-6010
(202) 785-0410 - fax
dschweitzer@naag.org<mailto:dschweitzer@naag.org>

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Monday, September 23, 2013 1:43 PM
To: Mattioli, Mark
Subject: FW: Donaldson, et al. v. State

Mark – Do you know where Mike Black is? The Goetz firm is waiting for a response from him about a scheduling conference in the Donaldson case (see below).

From: Karen Schultz [mailto:kschultz@Goetzlawfirm.com]
Sent: Monday, September 23, 2013 1:40 PM
To: VanDyke, Lawrence
Cc: Black, Michael
Subject: FW: Donaldson, et al. v. State

Mr. VanDyke:

I'm forwarding the message I emailed to Mike Black this morning, thinking you might be able to respond regarding this matter (see below).

Thank you,

Karen Schultz, Legal Assistant
Goetz, Baldwin & Geddes, P. C.
35 North Grand (zip code – 59715)
P. O. Box 6580
Bozeman, MT 59771-6580
Ph: (406) 587-0618
Fax: (406) 587-5144

From: Karen Schultz
Sent: Monday, September 23, 2013 9:39 AM
To: mblack2@mt.gov
Subject: Donaldson, et al. v. State

Dear Mr. Black:

Ben Alke is planning on participating in the scheduling conference on Monday, 9/30/13, at 10:30 a.m., by telephone. We are preparing a notice to the court today, and are wondering if you and/or Mr. VanDyke would like to participate by telephone.

Thank you,

Karen Schultz, Legal Assistant
Goetz, Baldwin & Geddes, P. C.
35 North Grand (zip code – 59715)
P. O. Box 6580
Bozeman, MT 59771-6580
Ph: (406) 587-0618
Fax: (406) 587-5144

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Wednesday, October 09, 2013 5:08 PM
To: Swanson, Cory; Mattioli, Mark; Bennion, Jon
Cc: Fox, Tim; Darkenwald, Scott
Subject: RE: Sanders County -- Recommendation re Petition for Cert.

Thank you, Mark. I generally agree with Cory. I think it would be helpful for us to think about the actual purpose of this meeting, and how that might affect who should attend.

1. The meeting could be to discuss whether the 9th Circuit was right or wrong. As best I can recall, though, everyone on this email except for Scott has told me that they agree that the 9th Circuit got the decision right, and that as a matter of first principles the law is unconstitutional. And their view on that seems pretty fixed. I'm not sure what Mike thinks – I suppose he may think the 9th Circuit was wrong. Assuming he does, I guess the purpose of the meeting might be for Mike to convince all of us that we are wrong? But I don't think Mike is going to change our minds—and more importantly, I don't expect that Mark or Tim thinks Mike is going to change our minds—so I have my doubts that the purpose of this meeting is really about the merits of the 9th Circuit decision, one way or the other. But if that is the reason for this meeting, it would be good to know that going in.
2. The meeting could be about the odds of cert being granted, etc. But I think that everyone (including Mike) agrees that the odds of cert being granted in this case are very low. So it doesn't make sense that we need to meet about something we all already have consensus on.
3. The meeting could be about how the Court will rule if cert is granted. But if there is basically no chance of a cert grant, who cares? And I'm pretty sure there is pretty much already something close to unanimity (including maybe even Mike) that in the unlikely chance that cert was granted, we would lose in the Supreme Court. So I'm not sure we need to meet to discuss that.
4. The meeting could be about whether political and practical realities dictate that we should file for cert notwithstanding that we agree with the loss, cert will likely not be granted, and even if it was we would just lose again. **Now this is something I could see would benefit from a meeting.** But if that is the primary purpose of the meeting, then I am wondering why this meeting would include people outside Tim's inner circle. That sounds like precisely the type of frank discussion Tim would want to have with just his political confidants. My thought is that having someone at this latter type of meeting who does not broadly share Tim's views would (a) dampen the discussion between those of us that do, and (b) risk leakage (this is not a slight on Mike – I would think this would be concern with most non-exempt staff).

Those are just my thoughts, and I certainly could be missing other reasons we should have a broader meeting. Thanks.

From: Swanson, Cory
Sent: Wednesday, October 09, 2013 1:54 PM
To: Mattioli, Mark; VanDyke, Lawrence; Bennion, Jon
Cc: Fox, Tim; Darkenwald, Scott
Subject: RE: Sanders County -- Recommendation re Petition for Cert.

I have reviewed it. But I am presently packing up to depart, so it is unlikely I will have a chance to participate in the deliberations. My recommendation is as follows:

- The determination that should decide this question is whether we (specifically Tim Fox) continue to believe this ruling is incorrect. If we believe it is incorrect and the law should be defended, then we should seek cert.
- However, my sense of everyone's opinion is that we actually believe the court got it right, and that the prohibition on endorsements is a violation of the First Amendment. If that is the case, then we should not seek cert. Our duty to uphold the First Amendment and the freedoms that it protects is much higher than our duty to defend an un-Constitutional law.
- The so-called expectation from the bench or other observers that we should continue to fight is a secondary criteria. If we feel we need to demonstrate our efforts to uphold an unbiased judiciary, then we have done so. We have done our duty to defend this law. We should be willing to make the right call and risk a little disapproval from folks who probably don't like us anyway. My own opinion is that if we truly want to seek an unbiased judiciary, there are many more substantive reforms that should be undertaken well beyond whether a political party can endorse a judge or candidate.
- We also need to balance the risk that if we seek cert., the other side could also seek cert. on the contributions issue. If one is granted, the other will be, and given the current view of the Court on these issues, it is possible the Supreme Court could strike down the contributions ban, as well.

I have had very little exposure to this case and the underlying issues. Therefore, my opinion should not be taken as anything more than a gut reaction after a quick review. I defer to the experts.

Cory J. Swanson
Deputy Attorney General
Montana Department of Justice
Ph: 406-444-5774

From: Mattioli, Mark
Sent: Wednesday, October 09, 2013 11:36 AM
To: VanDyke, Lawrence; Bennion, Jon; Swanson, Cory
Cc: Fox, Tim; Darkenwald, Scott
Subject: FW: Sanders County -- Recommendation re Petition for Cert.

Here's Mike Black's recommendation in Sanders County. Tim has reviewed. I intended to forward this on Monday but got sidetracked with the new MIJA case.

Let me know when you've had a chance to review this and then I'll schedule a time to discuss at a meeting which would include Mike Black. Let's have an open, honest and professional discussion about the pros and cons of seeking cert in this case.

Mark

From: Black, Michael
Sent: Thursday, October 03, 2013 4:09 PM
To: Mattioli, Mark
Subject: Sanders County -- Recommendation re Petition for Cert.

Mark:

Please find attached my memo recommending that we proceed with petitioning for cert. in the Sanders County matter. Please let me know if you have any questions or concerns.

Michael G. Black
Bureau Chief
Civil Services Bureau
Montana Department of Justice

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Wednesday, January 15, 2014 3:25 PM
To: Mattioli, Mark
Cc: Darkenwald, Scott; Fox, Tim
Subject: RE: Monforton

Mark – Just to follow up a bit more. I don't know very much about the Monforton case, but as I understand it Monforton is challenging a law that has already been struck down once, and was recently reenacted by the Montana Legislature without any changes. If that is right, or even close to right, then this is a slam-dunk loser case for the State. I don't know of any other state that thinks its Solicitor should be working on its slam-dunk loser cases. That just makes no sense to me – what a strange misallocation of resources.

From: VanDyke, Lawrence
Sent: Wednesday, January 15, 2014 2:44 PM
To: Mattioli, Mark
Cc: Darkenwald, Scott; Fox, Tim
Subject: RE: Monforton

Mark – This is like déjà vu. You said pretty much exactly the same thing when you “reassigned” Donaldson the first time, only to forcefully “reassign” it back to me after I had completed the work in the MIJA case that you had agreed was conflicting with Donaldson. And even though I wasn't happy about that I was willing to work on Donaldson, but I needed Mike's active help regarding plaintiffs' recent letter because I have no experience responding to such requests, which he was unwilling to give (see the attached email), except on his completely unhelpful terms. Any stranger reading Mike's email would conclude that I work for him.

Ultimately, this is a huge part of why I am resigning. One of the key aspects parts of any solicitor's job (federal or in the states) involves discretion. SGs generally have substantial discretion of what matters to work on, and even where to focus their limited resources on those matters. And usually that means SGs weigh in predominately on appeals. But you have a very different vision for me. I'm given very little discretion – either as to which cases I work on or what parts of those cases I work on. I am really not that different than any other assistant AG in the civil division, except that I am good enough that I don't need supervision. That is not what I was told this job would be like, and I had no reason to think it would be that way because that isn't how any other SG I know of is treated or used.

And just so you know, Tim and Scott – this is why I didn't jump at your recent “offer” where you kindly tried to address my concerns. I really appreciate that everyone went to the effort to make the offer – I really do. But as long as Mark, the guy who calls the day-to-day shots in my life, has such a different view of my job and role than that normally fulfilled by an SG, then nothing will really change. Ultimately I will be doing whatever Mark wants me to do, which is often dictated by what Mike has told Mark he can't (or won't) do.

From: Mattioli, Mark
Sent: Wednesday, January 15, 2014 2:13 PM
To: VanDyke, Lawrence
Cc: Darkenwald, Scott; Fox, Tim
Subject: Re: Monforton

You're the First Amendment expert and Solicitor. Are you saying you won't work on this in any capacity even if Donaldson were reassigned? If so, there's nothing for us to talk about.

Sent from my iPhone

On Jan 15, 2014, at 2:06 PM, "VanDyke, Lawrence" <LVanDyke@mt.gov> wrote:

No, I'm not. Feel free to give me a call if you would like to discuss.

Thanks,

Lawrence
X3442

From: Mattioli, Mark
Sent: Wednesday, January 15, 2014 2:05 PM
To: VanDyke, Lawrence
Subject: Fwd: Monforton

Lawrence, are you available to work on this?

Sent from my iPhone

Begin forwarded message:

From: "Black, Michael" <MBlack2@mt.gov>
Date: January 15, 2014, 1:45:19 PM MST
To: "Mattioli, Mark" <mmattioli@mt.gov>
Subject: RE: Monforton

Who do you want to work on it? I'll be back in the office tomorrow.

Sent from my Verizon Wireless 4G LTE smartphone

----- Original message -----

From: "Mattioli, Mark"
Date: 01/15/2014 1:29 PM (GMT-07:00)
To: "Segrest, Stuart"
Cc: "Black, Michael"
Subject: Re: Monforton

Maybe the hard copy should be routed to Stuart and in addition PDF's should be sent to me, Mike, Stuart, and Lawrence? Thoughts?

Sent from my iPhone

On Jan 15, 2014, at 12:47 PM, "Segrest, Stuart" <SSegrest@mt.gov> wrote:

We received a copy of the complaint and additional materials January 10 in the mail. It was placed on Mark's desk. When I sent out the email Mary retrieved it and brought it to me.

The package includes: (1) a "courtesy copy" of the Verified Complaint, with a note that a "formal copy with summons is forthcoming"; (2) a motion for PI and brief in support; (3) a motion to expedite; and (4) a pro hac vice motion for Bopp.

Let me know if you would like me to scan and email any of the materials today.

I will have Mary start a file and place the pleadings in your office.

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Friday, February 08, 2013 1:46 PM
To: Fox, Tim
Cc: Darkenwald, Scott; Mattioli, Mark
Subject: Mike Black

Tim – I just wanted to give a “shout out” of sorts on Mike Black’s behalf. He has been a tremendous help on the MJA case, including at yesterday’s hearing. Next time you see him, I think it might be good for you to tell him thank you on behalf of the office (I’ve already told him thanks multiple times). Not only has Mike been very helpful to me, but I know he has been helping others (e.g., Kelley Hubbard) with their cases too.

Thank you!

Lawrence VanDyke
Solicitor General ♦ Montana Department of Justice

215 N. Sanders ♦ P.O. Box 201401
Helena, Montana 59620
T: (406) 444-3442 ♦ F: (406) 444-3549
LVanDyke@mt.gov

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Thursday, January 30, 2014 11:47 AM
To: Mattioli, Mark
Subject: FW: Notice of Withdrawal

Mark – Any idea what this is about? Obviously, if it is really necessary for me to file a notice of withdrawal in Donaldson, then I'm happy to do it. But per the clerk's office, I'm not listed as a counsel of record on the case, and was told that filing this would like just "confuse things." Is there something more going on that I'm not aware of?

Thanks.

From: Black, Michael
Sent: Thursday, January 30, 2014 11:17 AM
To: VanDyke, Lawrence; Holnbeck, Beverly
Cc: Cochenour, Matt
Subject: RE: Notice of Withdrawal

It is necessary. If you decline to sign it, I'll sign it for you.

From: VanDyke, Lawrence
Sent: Thursday, January 30, 2014 11:17 AM
To: Black, Michael; Holnbeck, Beverly
Cc: Cochenour, Matt
Subject: RE: Notice of Withdrawal

I don't think this is necessary. I never entered an appearance in Donaldson. I attended the scheduling conference with Mike, and my name was signed to the discovery responses, but those were not filed with the Court. I called the clerk's office, and as best they could tell I am not listed on the docket as a counsel of record. She told me I didn't need to file a motion to withdraw, and that doing so would likely just confuse things.

Thank you, though. And let me know if you think differently.

From: Black, Michael
Sent: Thursday, January 30, 2014 10:35 AM
To: Holnbeck, Beverly
Cc: VanDyke, Lawrence; Cochenour, Matt
Subject: FW: Notice of Withdrawal

Bev:

Thank you. I modified the caption and signature block to remove counsel. Would you please print on bond and give to Mr. VanDyke or put in his box for his signature. I want to file this by the end of the week. Thank you.

Mike

From: Holnbeck, Beverly
Sent: Thursday, January 30, 2014 10:16 AM
To: Black, Michael
Subject: Notice of Withdrawal

In LIV directory: J:\LIV\Donaldson II 11-0027\Drafts\2014-01-30 Not of Withdrawal-Van Dyke.doc. Do you want me to move that folder back to you?

Beverly Holbeck

Beverly Holbeck, Legal Assistant
Office of the Montana Attorney General
406-444-1952

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Thursday, January 23, 2014 10:00 AM
To: Mattioli, Mark
Cc: Fox, Tim; Darkenwald, Scott
Subject: FW: Donaldson, et al. v. State

Mark – See Matt’s email below. Somebody needs to inform Matt and Mike that I am not working on the Donaldson case, and decide who is. This is part of the discussion I had with Tim when I gave notice. I haven’t told Mike or Matt that I’m leaving (since Tim asked that I not broadcast that). So I’m not sure how to tell them that I won’t be working on Donaldson. I think you need to inform them of that.

I will have plenty of work between now and when I leave without working on Donaldson. Right now I am busy working on the immigration case (coordinating depositions, responding to a motion to compel, and filing a motion for a protective order) as well as the Willems case (writing a response brief for the Montana Supreme Court). The immigration case will continue to be very busy with depositions, discovery briefing, and summary judgment briefing until the end of May, when there is a summary judgment hearing. Judge Sherlock will presumably rule in the Planned Parenthood case either this month or the first part of February, after which I will either be working on Montana Supreme Court briefing or our summary judgment briefing on the merits with Jon Bennion. I will also continue to help Jon with the briefing on the various referenda. And I will likely need to do some travel related to securing my next job at some point.

I have had basically no involvement on Donaldson so far, and it makes little sense for me to begin working on a case only to turn everything over to somebody else in a couple months – especially since the immediate tasks in that case are something I have little experience with or expertise in (discovery wrangling, experts, stipulations, and a meet and confer with opposing counsel). It also makes no sense for me to be the contact person for a meet and confer with Plaintiffs’ counsel where decisions will be made affecting the entire case, when I will be gone shortly thereafter. If I had some sort of expertise regarding these immediate tasks in Donaldson, I would of course want to help, especially given the subject matter of the case. But I don’t. And I have had no success getting Mike to provide any substantial help in situations like this where you have designated me the “lead counsel” and told me he will help me. So working on Donaldson would be an extremely time-consuming task for me right now, where I would likely mess things up anyway since I would be performing tasks I have no experience in and would receive little to no guidance from Mike. In short, it makes no sense for me to start working on Donaldson right now, especially given the immediate tasks in that case.

I would be happy to talk about this more with you if necessary. But Mike and Matt need some direction soon since plaintiffs’ counsel will be calling tomorrow.

Thanks,

Lawrence

From: Cochenour, Matt
Sent: Thursday, January 23, 2014 8:58 AM
To: VanDyke, Lawrence; Black, Michael
Subject: RE: Donaldson, et al. v. State

Hi Lawrence,

I had a phone message from Ben Alke regarding Donaldson. It wasn't a detailed message, but I assume he wants to discuss the meet/confer letter and amending complaint. He is in depositions today, but will call back tomorrow.

Thanks,
Matt

From: VanDyke, Lawrence
Sent: Friday, January 10, 2014 7:50 AM
To: Black, Michael
Cc: Cochenour, Matt
Subject: RE: Donaldson, et al. v. State

Thanks Mike. It would be very helpful for me to have yours and Matt's thoughts in developing a response. And I think it would be good for you to attend the meet and confer with me. Is there sometime next week that you and Matt can block out an hour or two to discuss the contents of the letter with me?

From: Black, Michael
Sent: Wednesday, January 08, 2014 10:10 AM
To: VanDyke, Lawrence
Cc: Cochenour, Matt
Subject: FW: Donaldson, et al. v. State

I will defer to you on this, as lead counsel on this case, regarding any response to Plaintiffs. I realize Mark and I assisted Matt with the discovery responses because you were out of the office, but I see no need to wade into this at this time. I believe Matt should be looking to you as well. Thanks.

From: Karen Schultz [<mailto:kschultz@Goetzlawfirm.com>]
Sent: Thursday, January 02, 2014 4:34 PM
To: Black, Michael; VanDyke, Lawrence; Cochenour, Matt
Cc: Ben Alke; JimT@aclumontana.org; Krystal Holden (krystelp@aclumontana.org); 'Borenstein, Ruth N.' (RBorenstein@mofocom); splunkett@mofocom; eregier@mofocom; aruiz@mofocom; Egill@aclunc.org
Subject: Donaldson, et al. v. State

Please see the attached letter of today from Ben Alke. The letter was also mailed to you today.

Karen Schultz, Legal Assistant
Goetz, Baldwin & Geddes, P. C.
35 North Grand (zip code - 59715)
P. O. Box 6580
Bozeman, MT 59771-6580
Ph: (406) 587-0618
Fax: (406) 587-5144

Black, Michael

From: Black, Michael
Sent: Sunday, January 12, 2014 6:17 PM
To: VanDyke, Lawrence
Subject: RE: Donaldson, et al. v. State

I understand you were sick, and I hope you are feeling better.

After you get your arms around this and come up with a proposed response, or at least a preferred option or two, I would be happy to look at it and give you my recommendation(s). It does not make sense to have too many cooks stirring the soup at this point, so I think you should take a first shot at it. I am not sure it makes sense for me to attend a discovery conference, as that might be overkill. But if my schedule allows it, I am not necessarily opposed to it. However, working it into my schedule is less important than getting it done.

Yesterday was my first full day off since Christmas, so I intend to take some time off over the next couple of weeks. Monday and Tuesday this week are pretty full, and I have some personal business to attend to in Missoula on Wednesday. So, if you can get me some ideas before Thursday, I should be able to look at it then. I expect to take the holiday off next week, and kids are out of school two more days next week, so it will be harder for me to get to it then.

Thanks.

From: VanDyke, Lawrence
Sent: Friday, January 10, 2014 7:50 AM
To: Black, Michael
Cc: Cochenour, Matt
Subject: RE: Donaldson, et al. v. State

Thanks Mike. It would be very helpful for me to have yours and Matt's thoughts in developing a response. And I think it would be good for you to attend the meet and confer with me. Is there sometime next week that you and Matt can block out an hour or two to discuss the contents of the letter with me?

From: Black, Michael
Sent: Wednesday, January 08, 2014 10:10 AM
To: VanDyke, Lawrence
Cc: Cochenour, Matt
Subject: FW: Donaldson, et al. v. State

I will defer to you on this, as lead counsel on this case, regarding any response to Plaintiffs. I realize Mark and I assisted Matt with the discovery responses because you were out of the office, but I see no need to wade into this at this time. I believe Matt should be looking to you as well. Thanks.

From: Karen Schultz [<mailto:kschultz@Goetzlawfirm.com>]
Sent: Thursday, January 02, 2014 4:34 PM
To: Black, Michael; VanDyke, Lawrence; Cochenour, Matt
Cc: Ben Alke; JimT@aclumontana.org; Krystel Holden (krystelp@aclumontana.org); 'Borenstein, Ruth N.' (RBorenstein@mofo.com); splunkett@mofo.com; eregier@mofo.com; aruiz@mofo.com; Egill@aclunc.org
Subject: Donaldson, et al. v. State

Please see the attached letter of today from Ben Alke. The letter was also mailed to you today.

Karen Schultz, Legal Assistant
Goetz, Baldwin & Geddes, P. C.
35 North Grand (zip code – 59715)
P. O. Box 6580
Bozeman, MT 59771-6580
Ph: (406) 587-0618
Fax: (406) 587-5144

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Monday, February 04, 2013 9:22 PM
To: Eastman, John
Subject: Re: Montana Shooting Sports Association - 9th Circuit Case

Thank you John for talking with me tonight.

Sent from my iPhone

On Feb 4, 2013, at 6:09 PM, "Eastman, John" <jeastman@chapman.edu> wrote:

Congrats on the new gig!

You can reach me at the 877 number below. Sitting down for dinner in a moment, but clear the rest of the evening, and tomorrow as well except between 10 and 1.

John

*Dr. John C. Eastman
Henry Salvatori Professor of Law & Community Service and former Dean
Chapman University School of Law
One University Drive
Orange, CA 92866
(714) 628-2587
(877) 855-3330 x2
[SSRN Scholarship Page](#)*

From: VanDyke, Lawrence [<mailto:LVanDyke@mt.gov>]
Sent: Monday, February 04, 2013 4:56 PM
To: Eastman, John
Subject: Montana Shooting Sports Association - 9th Circuit Case

Professor Eastman:

It has been too long since we last talked. I've recently moved to Montana from Texas and started as SG of my home state. I was wondering if I could call and talk with you briefly about the Montana Shooting Sports Association case, wherein you filed an amicus brief in the 9th Circuit.

If you could let me know when I could call you, and at what number, I would appreciate it.

Thank you!

Lawrence VanDyke
Solicitor General ♦ Montana Department of Justice

215 N. Sanders ♦ P.O. Box 201401
Helena, Montana 59620
T: (406) 444-3442 ♦ F: (406) 444-3549
LVanDyke@mt.gov

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Tuesday, February 05, 2013 8:11 AM
To: 'qmr@montanalawyer.com'
Subject: MSSA Case

Quentin – I left you a voice message. When you have a moment, I'd like to talk with you about the MSSA v. Holder case.

Thank you,

Lawrence VanDyke
Solicitor General ♦ Montana Department of Justice

215 N. Sanders ♦ P.O. Box 201401
Helena, Montana 59620
T: (406) 444-3442 ♦ F: (406) 444-3549
LVanDyke@mt.gov

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Tuesday, October 22, 2013 5:00 PM
To: 'Michael Greve'
Subject: RE: MSSA case
Attachments: MSSA 9th Cir Opinion.pdf

Here you go, Michael – thank you very much to taking a look!

From: Michael Greve [<mailto:mgreve@gmu.edu>]
Sent: Tuesday, October 22, 2013 3:45 PM
To: Dean Reuter; VanDyke, Lawrence; dreuter@fed-soc.org
Subject: RE: MSSA case

Hi again!

Pls send the 9th Cir opinion; I'll look at it & see what I can think of. Best!

From: Dean Reuter <dean.reuter@fed-soc.org>
Sent: Tuesday, October 22, 2013 4:19 PM
To: VanDyke, Lawrence; dreuter@fed-soc.org; Michael Greve
Subject: RE: MSSA case

Lawrence and Michael,

I am writing to re-introduce the two of you. You are both long-time Federalist Society sympathizers and there is a good reason for the two of you to be in touch. Michael, I think your expertise might be of some help to Lawrence in a case he is litigating, all explained below.

Please let me know if you need anything further from me.

Best,
Dean
202-822-8138

From: VanDyke, Lawrence [<mailto:LVanDyke@mt.gov>]
Sent: Tuesday, October 22, 2013 4:01 PM
To: dreuter@fed-soc.org
Subject: MSSA case

Dean – Thank you for offering to put me in touch with Michael Greve about the cert petition I am drafting in the Montana Shooting Sports Ass'n case. I enjoyed meeting Michael at the Park City summit, and really appreciated his comments.

Montana passed a statute called the Montana Freedom Firearm Act that says the manufacture and sale of purely “made in Montana” firearms are beyond the scope of Congress’s commerce power. Something like 6 more states have passed the same law since Montana. The Ninth Circuit recently struck down Montana’s law as preempted (opinion attached), and we will be filing a cert petition.

The statute was passed as an (arguably ill-advised) attempt to challenge the fed's overreaching commerce clause power (think Wickard meets guns). But I'm having trouble coming up with any plausible (much less good) arguments of how to get around *Raich*. I'd like to make some sort of cooperative federalism argument that when a state passes a law cordoning off certain intrastate activities, that triggers some sort of heightened scrutiny. But I don't know if that passes the straight-face test. And I would love to hear if Michael has any other ideas for good (or at least plausible) arguments I can make to get around *Raich*, *Wickard*, etc.

Thanks again,

Lawrence VanDyke

Solicitor General ♦ Montana Department of Justice

215 N. Sanders ♦ P.O. Box 201401

Helena, Montana 59620

T: (406) 444-3442 ♦ F: (406) 444-3549

LVanDyke@mt.gov

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Friday, September 13, 2013 12:50 PM
To: qmr@montanalawyer.com; John Sauer (jsauer@clarksauer.com)
Subject: MSSA v. Holder

Quentin and John – Allow me to introduce you to each other. I've talked with each of you about the other, so I don't think more needs to be said on that.

As I've discussed with both of you, I think it would be a great thing for the MSSA v. Holder case if it is possible for you to work together at the Supreme Court stage. Hopefully you can get together soon to explore whether that is possible.

Thanks,

Lawrence VanDyke
Solicitor General ♦ Montana Department of Justice

215 N. Sanders ♦ P.O. Box 201401
Helena, Montana 59620
T: (406) 444-3442 ♦ F: (406) 444-3549
LVanDyke@mt.gov

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Thursday, December 12, 2013 5:19 PM
To: Myers, Janet
Subject: FW: Mont. v. Holder 29048
Attachments: 29048 vandyke recap ap.pdf; MSSA 9th Cir Opinion.pdf; 108_J Molloy Order and Opinion.pdf; 103_Find & Recs_8-31-10.pdf

Janet – Here is the appendix proof and original docs we discussed for the MSSA cert petition. Could you check the proof against the original docs for accuracy? Thank you and let me know if you have any questions.

Lawrence

From: Cockle Legal Briefs [<mailto:contact@cocklelegalbriefs.com>]
Sent: Friday, December 06, 2013 3:46 PM
To: VanDyke, Lawrence
Subject: Mont. v. Holder 29048

Mr. Van Dyke:

Attached please find your proof of the recaptured appendix pages. Please call our corrections department with your edits or a final approval to print by December 30th at 10:00 a.m. Central Time. If you prefer, you may write the answers to our questions in the right hand margin – along with any additional edits you wish to make – and scan those back to us. Please **DO NOT** send us a revised file. We must make edits to the file we have already typeset and proofread, rather than starting over with a new document.

Please note that we must discuss the total number of copies that you will require us to print before we can begin printing.

Thank you!

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/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Thursday, September 12, 2013 9:45 AM
To: Mattioli, Mark
Subject: RE: MSSA v. Holder - cert petition

Yes, I think so.

From: Mattioli, Mark
Sent: Thursday, September 12, 2013 9:33 AM
To: VanDyke, Lawrence
Subject: FW: MSSA v. Holder - cert petition

Lawrence, are you the other attorney Quentin references, who asked whether MSSA would seek out experienced SCOTUS counsel? Just curious.

From: Tim Fox [<mailto:ofoxc@aol.com>]
Sent: Wednesday, September 11, 2013 7:04 PM
To: VanDyke, Lawrence; Mattioli, Mark
Subject: Fwd: MSSA v. Holder - cert petition

FYI

Sent from my iPad

Begin forwarded message:

From: Gary Marbut-MSSA <mssa@mtssa.org>
Date: September 11, 2013, 11:53:17 AM MDT
To: mssa@mtssa.org
Cc: "Quentin Rhoades" <qmr@montanalawyer.com>
Subject: MSSA v. Holder - cert petition

Dear *Amici* (double meaning intended),

We are now preparing our cert petition for the appeal of *MSSA v. Holder* to SCOTUS. We have 90 days to perfect and submit our cert petition - that is 90 days from the decision date by the Ninth Circuit, (08/23/13). That makes our cert petition due no later than 11/21/13, according to my calculation. We expect to make that deadline.

Amici briefs in support of our cert petition will be due 120 days after the Ninth's decision, or by 12/21/13.

We hope you are fully onboard and plan to support our cert petition with a brief. Plus, I am very eager to know if you can think of any other likely *amici* who you can contact or who I may contact to recruit. Please let me know about both.

[Ninth Circuit Decision](#)

In case you haven't read it, the Ninth handed us about as good a decision as they could, given prevailing precedent. They reversed the District Court on standing, giving me standing as the sole individual plaintiff in the lawsuit. They upheld the District Court on merit, saying that they must follow SCOTUS precedent, which is against our request that they affirm the validity of the Montana Firearms Freedom Act (MFFA). Basically, the Ninth gave us the green light to proceed to SCOTUS, which is where we've known we had to get all along to accomplish what we seek - to effectively challenge federal Interstate Commerce Clause power.

SCOTUS

We don't have our cert petition or brief prepared yet, but we are lining out what our approach will be. I wanted to take this opportunity to brief you on what our primary arguments will be.

First, we remind ourselves and *amici* that although we must address the substance of our arguments in our cert briefs, the purpose of the cert petition is to address the question, "Why should the Supreme Court accept this case?"

Reasons for Granting Cert

1. Because *MSSA v. Holder* raises core constitutional questions that only the Supreme Court may resolve.
2. Because a majority of states have enacted or introduced MFFA clones, indicating that the mood of the Nation is clear and that the Supreme Court must step to the plate and be a valid check on the executive and legislative branches.
3. Because in its line of Interstate Commerce Clause cases, from *Wickard* to present, the Supreme Court has lost credibility by abdicating its crucial role as a check on the executive and legislative branches. *MSSA v. Holder* will allow the Court to regain some of that lost credibility (as it may have begun in its recent *Bond v. US*).
4. Chief Justice Roberts addressed *stare decisis* in *Citizens United*, saying *stare decisis* must yield, "... when the precedent's underlying reasoning has become so discredited that the Court cannot keep the precedent alive without jury-rigging new and different justifications to shore up the original mistake." It is difficult to imagine precedent more jury-rigged than that surrounding the Interstate Commerce Clause.
5. Other compelling reasons *amici* may imagine or construct (we're open to discussion about this).

Our Primary Arguments

1. In 1942, the *Wickard* Court impermissibly, improperly, yet effectively amended the Constitution by assigning new definitions to three critical words, regulate, commerce, and among. The Constitution gives the Court no role in amending the Constitution, which power is reserved primarily to the states. Yet, by redefining "regulate" to mean "prohibit," by redefining "commerce" to mean "any economic activity, no matter how minor," and by redefining "among" to mean "within," the Court dramatically and improperly changed the meaning and effect of the Constitution.
2. It is an ancient principle of law that if a conflict exists between provisions within a co-equal

body of law, the most recently enacted must be given preference as the most recent expression of the enacting authority. The Second Amendment (to whatever extent it may apply), the Ninth Amendment and the Tenth Amendment were all enacted subsequent to the Supremacy Clause, the Necessary and Proper Clause, and the Interstate Commerce Clause. The Second, Ninth, and Tenth actually amended and affected the underlying Constitution. Given conflict between the Second/Ninth/Tenth and the Supremacy/N&P/Commerce, the Second/Ninth/Tenth must prevail as the most recent expression of the enacting authority. The Second, Ninth and Tenth must be afforded an equal seat at the constitutional dinner table with the First, Fourth, Fifth, and others. Or, as Scalia said in *Heller*, "... what is not debatable is that it is not the role of this Court to pronounce the Second Amendment extinct." Ditto the Ninth and Tenth - they must be afforded real validity.

3. #2 leads naturally to two other arguments:

a. Level of judicial review. Justice Scalia said in *Heller* that a rational basis will no longer suffice for intrusions into the Second Amendment sphere. Given the roles played by the Second, Ninth and Tenth in *MSSA v. Holder*, something more than rational basis must be required to justify any congressional regulatory authority in conflict with the MFFA and with the rights of Montana and its citizens reserved under the Ninth and Tenth Amendments.

b. Prior restraint. Prior restraint theory holds generally that a person may not be prevented by government from exercising a constitutionally reserved right simply because of the claim that persons exercising that right will abuse the exercise of the right if allowed to exercise it at all. Because of the effect of the Second, Ninth and Tenth Amendments, congressional prohibition of manufacture of state-retained firearms acts as a prior restraint upon Montana, MSSA, and me. Even if Congress were allowed that prior restraint, it could not be allowed until less restrictive means had first been employed and exhausted (such as sequestering a jury or moving a trial before muzzling the press to insure a fair trial).

This is only a general outline of the arguments we see as most valid. We are open to input about these. But, we want *amici* to know our general direction.

Some *amici* have championed specific arguments at the District and Ninth, at my request (e.g., the WCSM and the statehood contract argument). We ask that you continue with those themes at SCOTUS. Thanks!

Two other points to raise, please (thanks for your patience):

1. Very early in this process, friend and (then) ConLaw professor Rob Natelson urged me, "Don't forget about the Ninth Amendment." In recent strategy discussion with our lead counsel, Quentin Rhoades, he asked me to clarify the Ninth Amendment argument. I answered that the Tenth Amendment allows the State of Montana to enact and enforce the MFFA as an exclusive police power exercise, but that it is more specifically the Ninth Amendment that allows me, the lone individual plaintiff, to make firearms without federal permission. I know that the Ninth Amendment is not considered to be very sexy in legal circles, but I urge all of you to ponder its application in *MSSA v. Holder*. If the Ninth were considered the equal of the First Amendment, it would have profound application.

If you want a quick brush-up about the Ninth, I recommend Randy Barnett's writings, especially *Restoring the Lost Constitution*.

2. Quentin told me that another attorney had asked if MSSA would seek out counsel experienced with SCOTUS for the fight there. My response to Quentin was that I will continue to consider him as first chair in *MSSA v. Holder* until he advises me that another particular person involved would increase our chances of success, AND unless that other specific person were sufficiently enthused about this case to be willing to commit to *pro bono*. I believe Quentin and I are both open to ideas about additional SCOTUS-expert counsel if any *amici* have specific suggestions. We're not trolling, but we are receptive.

Thanks so very much for being with us in *MSSA v. Holder*. Let me know that you are still onboard, and let me know if you have any other ideas about new *amici* for our SCOTUS push.

Best wishes,

Gary Marbut, President
Montana Shooting Sports Association
<http://www.mtssa.org>
Author, *Gun Laws of Montana*
<http://www.MTPublish.com>

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Thursday, October 24, 2013 12:47 PM
To: 'Quentin Rhoades'
Cc: Rachel Rhoades
Subject: RE: MSSA v. Holder Extension

I was thinking I would circulate it to you tomorrow (hopefully) for your review and input. Once we get everything nailed down (hopefully Monday or Tuesday of next week), I'll email you an unsigned pdf next week, which you can print, sign and mail back to us. We'll sign it, and mail it off to the Court hopefully late next week. That means we'll file it about 3 weeks before the due date, which should be perfect.

Does that work?

From: Quentin Rhoades [<mailto:qmr@montanalawyer.com>]
Sent: Thursday, October 24, 2013 12:37 PM
To: VanDyke, Lawrence
Cc: Rachel Rhoades
Subject: MSSA v. Holder Extension

Lawrence,

What's your ETA on filing the request for enlargement. I think we need to be careful about timing. If we file it too early, it might be denied. Your thoughts?

Quentin

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Monday, January 13, 2014 9:17 AM
To: Fox, Tim
Cc: Mattioli, Mark; Bennion, Jon; Barnes, John
Subject: RE: MSSA v Holder

No - Ours will be dealt with as a separate petition. Ours is waiting for the US SG to either file a response or a waiver (he'll do the latter - probably this week), and then it will be circulated to the Court. The Court will either ask for a response or not, and will conference on the brief after it is circulated. Then it will decide whether to grant or deny our motion.

The fact that Marbut's petition was denied will presumably not help our already dim chances of getting a grant though.

-----Original Message-----

From: Fox, Tim
Sent: Monday, January 13, 2014 8:25 AM
To: VanDyke, Lawrence
Cc: Mattioli, Mark; Bennion, Jon; Barnes, John
Subject: Re: MSSA v Holder

Can I assume that means ours was denied as well?

Sent from my iPhone

> On Jan 13, 2014, at 8:17 AM, "VanDyke, Lawrence" <LVanDyke@mt.gov> wrote:
>
> Marbut's cert petition was denied this morning.
>
> Sent from my iPhone

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Wednesday, October 23, 2013 10:17 AM
To: 'Quentin Rhoades'
Subject: RE: MSSA v. Holder

Thanks Quentin for reaching out – I was actually planning to call you today for similar reasons. We are planning on getting an extension too, but maybe longer (because of the holidays). Can you give me a call to discuss at your convenience?

Thanks,

Lawrence VanDyke
Solicitor General ♦ Montana Department of Justice

215 N. Sanders ♦ P.O. Box 201401
Helena, Montana 59620
T: (406) 444-3442 ♦ F: (406) 444-3549
LVanDyke@mt.gov

From: Quentin Rhoades [<mailto:gmr@montanalawyer.com>]
Sent: Wednesday, October 23, 2013 5:19 AM
To: VanDyke, Lawrence
Subject: MSSA v. Holder

Lawrence,

I assume you are still planning on filing a petition for certiorari in this case, having heard nothing to the contrary. I wanted to let you know that I just yesterday had a trial set in U.S. Court for December 11, 2013, so I will be filing a motion for a 30 day enlargement of time to file our petition. FYI.

Have you done any further thinking on the approach you intend to take? I am going to argue, inter alia, that that since Morrison and Lopez cannot be reconciled with the ruling in Raich, which effectively overrules both, the Court needs to give us more guidance on the principals to be applied of Interstate Commerce Clause regulation. Something along these lines.

Your thoughts?

Quentin

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Friday, January 11, 2013 12:55 PM
To: 'Alan Joscelyn'
Cc: jan@gsjw.com
Subject: RE: Nick Dranias's contact information

I inadvertently left off Nick's email address. In case that is helpful: NDranias@goldwaterinstitute.org

Thank you again!

From: Alan Joscelyn [<mailto:alj@gsjw.com>]
Sent: Friday, January 11, 2013 12:52 PM
To: VanDyke, Lawrence
Cc: jan@gsjw.com
Subject: RE: Nick Dranias's contact information

Thanks, Lawrence this makes things easier. I'll contact Nick Dranias about the substitution (Julie N. will you prompt me on this next week?)

Alan--

From: VanDyke, Lawrence [<mailto:LVanDyke@mt.gov>]
Sent: Friday, January 11, 2013 12:43 PM
To: 'alj@gsjw.com'
Cc: Fox, Tim
Subject: Nick Dranias's contact information

Alan – It was a pleasure to meet you and your wife the other evening. I believe Tim has talked to you about substituting for him as local counsel for the Goldwater Institute in the Montana Shooting Sports Assn v. Holder district court case (No. 09-CV-00147-DWM-JCL). The proceedings in the district court are on hold, pending the outcome of the case in the Ninth Circuit, but just to be safe it makes sense for Tim to be out of the case as a private lawyer. I talked to the clerk's office and was advised that the easiest way to address this is to substitute local counsel, which apparently only requires a simple filing.

Nick Dranias is the Goldwater Institute's attorney. I talked to Nick this morning, and he is on board with substituting local counsel. His contact information is:

500 East Coronado Road
Phoenix, AZ 85004
Tel: 602-462-5000

I've gone ahead and attached the original Pro Hac Vice motion, Nick's application, and the Court's order granting the application, just in case they are helpful.

Thank you, and please let me know if I can provide anything else.

Lawrence VanDyke
Solicitor General • Montana Department of Justice

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Friday, April 18, 2014 5:56 PM
To: Quentin Rhoades
Subject: Re: USA Brass

Quentin - I took the entire day off today from work and was working on my campaign. So I wasn't able to get to this obviously. I will talk to Cory on Monday about this. I know we have a couple big meetings on other issues scheduled on Monday, but will try to get to this as soon as possible.

I am leaving the AG's office soon to focus on my campaign full-time, so have not been engaging on any new issues like this. I am just finishing up litigating a couple cases that I've been working on. But I will talk to Cory about this, and hopefully he or someone else will get back to you about it.

Thank you and have a good weekend

Sent from my iPhone

On Apr 18, 2014, at 12:32 PM, "Quentin Rhoades" <qmr@montanalawyer.com> wrote:

Dear Cory and Lawrence,

I talked to Gary Marbut yesterday about USA Brass and this issue of how the US Government used, fairly speaking, overwhelming armed force to execute an "audit" of the small Bozeman business's affairs. I understand that Gary has been pretty aggressive in insisting that General Fox "do something about it." I am writing to add a few of my own thoughts, for whatever they may be worth.

First let me say that Gary gets a bit exercised at times about what he sees as the principles of human freedom. Someone said such extremism is no vice. But he does sometimes let his passion overcome his tact. This can be off-putting indeed. Still, for all the great service he's given to Montana, fueled by his passion, in ensuring we have some of the best gun laws in the country, laws I know you support as much as I do, I'm willing to tolerate Gary's provocative remarks more than I might from someone with a less well-established commitment to the rule of law. I hope you can too.

Now to address the USA Brass issue. One of the fundamental tenants of justice, as you folks in law enforcement know, is proportionality. (E.g., <http://amor.cms.hu-berlin.de/~engleeri/theory/CONVERTdartmouth-proportionality.pdf>.) It's also been called "a principle of limited government." (Alice Ristroph, Proportionality As A Principle of Limited Government, 55 Duke L.J. 263, 266 (2005).) Exaggeration emphasizes the point: no death penalty for parking violations; no community service for serial killers.

Now, the best information we have is that the US Government's EPA conducted the USA Brass raid to execute what it has referred to as an "audit." I have read reports that the raiders used drawn weapons, SWAT tactics, and at least one armored vehicle. They also, it is said, confiscated personal cell phones, held employees under arrest and incommunicado for hours, and made-off with a trove of computers and business records. Now if there was probable cause to believe USA Brass was harboring a murderous criminal gang that was suspected of using violence against the public and law enforcement personnel in furtherance of its criminal

enterprises, the raiders' chosen tactics here could be easily justified – and staunchly defended by gun-rights advocates everywhere.

On the other hand, the need for an “audit” implies probable cause for no more than civil (not criminal) wrong-doing, in the nature of administrative and record keeping violations committed by law-abiding citizens who pose no danger of violence to either law enforcement or anyone else. If that is indeed what we are talking about here, then the raiders' tactics were adopted not for the safety of law enforcement and the public, but with the purpose to intimidate USA Brass – and anyone else who might be subject to EPA oversight. In other words, EPA is sending a message: “Citizens suspected of non-compliance, expect your Government to respond with heavily armed bullying tactics.”

Whatever else it may be, governance by naked intimidation is neither democracy nor the rule of law. That's why so many people are so lathered up about this raid. I hope you folks, whom I know love liberty, can see my point here. It's a very dangerous precedent.

This is where Tim Fox should step in. The Montana Attorney General has broad investigatory powers – regardless of the principals of federal supremacy. His office has the power to find out the facts, and, if warranted, expose them to the light of day. Is this a case where probable cause actually existed to believe the folks at USA Brass were capable of violence against regulatory agents, so that tactics similar to those used against known terrorists can be justified in the minds of reasonable people? Or is this yet another case of Government using its monopoly on force not “to serve and protect,” but to bully and intimidate non-violent, non-criminal citizens into “regulatory compliance.”

I wish we could still feel comfortable with the assurance “we're from the U.S. Government, we're here to help.” A U.S. Marshal's badge used to stand for civilization and the rule of law. But the U.S. Government has amassed power – of all kinds -- unprecedented in world history. Power corrupts. I am therefore suspicious of any assurances from such an all-powerful entity. I hope you are too. Please urge General Fox to use this incident as a teachable moment in the classroom of liberty.

Many thanks.

Quentin M. Rhoades | Attorney at Law
SULLIVAN, TABARACCI & RHOADES, P.C.
qmr@montanalawyer.com
www.montanalawyer.com
(406) 721-9700

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/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Tuesday, January 15, 2013 11:18 AM
To: Cochenour, Matt
Subject: RE: MSSA - Helena IR

Thank you Matt.

From: Cochenour, Matt
Sent: Tuesday, January 15, 2013 9:51 AM
To: Mattioli, Mark; VanDyke, Lawrence
Subject: MSSA - Helena IR

FYI –

Gary Marbut with Montana Shooting Sports authored an opinion piece in the IR:

http://helenair.com/news/opinion/montanan-s-won-t-follow-federal-gun-restrictions/article_708aca62-5f2b-11e2-a270-001a4bcf887a.html.

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Tuesday, October 22, 2013 3:02 PM
To: 'Dean Reuter'
Subject: RE: MSSA case

Thank you, Dean. I've actually talked with Randy already, and he offered some very helpful thoughts (and sources) that I already plan to incorporate in the brief. And I expect I'll talk with John Eastman today or tomorrow too, and I'm sure that will be very helpful. I figure it can't hurt to get advice/input from as many of our leading thinkers as possible; I want to make sure I'm making arguments that ultimately help, and don't hurt, the cause.

Thank you again for putting me in touch with Michael – I'm sure his input will be invaluable.

From: Dean Reuter [<mailto:dean.reuter@fed-soc.org>]
Sent: Tuesday, October 22, 2013 2:20 PM
To: VanDyke, Lawrence; dreuter@fed-soc.org
Subject: RE: MSSA case

Lawrence,

Randy Barnett, who argued Raich, might be of some help, too. Let me know if you want an intro to him.

Dean

From: VanDyke, Lawrence [<mailto:LVanDyke@mt.gov>]
Sent: Tuesday, October 22, 2013 4:01 PM
To: dreuter@fed-soc.org
Subject: MSSA case

Dean – Thank you for offering to put me in touch with Michael Greve about the cert petition I am drafting in the Montana Shooting Sports Ass'n case. I enjoyed meeting Michael at the Park City summit, and really appreciated his comments.

Montana passed a statute called the Montana Freedom Firearm Act that says the manufacture and sale of purely "made in Montana" firearms are beyond the scope of Congress's commerce power. Something like 6 more states have passed the same law since Montana. The Ninth Circuit recently struck down Montana's law as preempted (opinion attached), and we will be filing a cert petition.

The statute was passed as an (arguably ill-advised) attempt to challenge the fed's overreaching commerce clause power (think Wickard meets guns). But I'm having trouble coming up with any plausible (much less good) arguments of how to get around *Raich*. I'd like to make some sort of cooperative federalism argument that when a state passes a law cordoning off certain intrastate activities, that triggers some sort of heightened scrutiny. But I don't know if that passes the straight-face test. And I would love to hear if Michael has any other ideas for good (or at least plausible) arguments I can make to get around *Raich*, *Wickard*, etc.

Thanks again,

Lawrence VanDyke
Solicitor General • Montana Department of Justice

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Tuesday, October 22, 2013 2:05 PM
To: 'Eastman, John'
Subject: Montana Shooting Sports Ass'n Case

John – I'm writing a cert petition for the MSSA. Do you have time to briefly discuss the best arguments to make to get around Raich, etc.? If so, just let me know when I should call you.

Also, are you planning to file an amicus brief in support of cert?

Thanks,

Lawrence VanDyke
Solicitor General • Montana Department of Justice

215 N. Sanders • P.O. Box 201401
Helena, Montana 59620
T: (406) 444-3442 • F: (406) 444-3549
LVanDyke@mt.gov

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Friday, October 25, 2013 10:23 AM
To: qmr@montanalawyer.com
Subject: MSSA Extension of Time - Draft
Attachments: MSSA Extension of Time.doc

Quentin – Attached is a draft motion for extension of time for the MSSA case. Please review and let me know if you have any suggestions/comments/etc. I hope to send you a pdf of the final document on Monday or Tuesday, which you can then print and sign and send by mail back to me. I'll print it, scan it, mail-file it, and mail-serve it next Friday, November 1.

Thanks,

Lawrence VanDyke
Solicitor General • Montana Department of Justice

215 N. Sanders • P.O. Box 201401
Helena, Montana 59620
T: (406) 444-3442 • F: (406) 444-3549
LVanDyke@mt.gov

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Tuesday, October 22, 2013 2:01 PM
To: dreuter@fed-soc.org
Subject: MSSA case
Attachments: MSSA 9th Cir Opinion.pdf

Dean – Thank you for offering to put me in touch with Michael Greve about the cert petition I am drafting in the Montana Shooting Sports Ass’n case. I enjoyed meeting Michael at the Park City summit, and really appreciated his comments.

Montana passed a statute called the Montana Freedom Firearm Act that says the manufacture and sale of purely “made in Montana” firearms are beyond the scope of Congress’s commerce power. Something like 6 more states have passed the same law since Montana. The Ninth Circuit recently struck down Montana’s law as preempted (opinion attached), and we will be filing a cert petition.

The statute was passed as an (arguably ill-advised) attempt to challenge the fed’s overreaching commerce clause power (think Wickard meets guns). But I’m having trouble coming up with any plausible (much less good) arguments of how to get around *Raich*. I’d like to make some sort of cooperative federalism argument that when a state passes a law cordoning off certain intrastate activities, that triggers some sort of heightened scrutiny. But I don’t know if that passes the straight-face test. And I would love to hear if Michael has any other ideas for good (or at least plausible) arguments I can make to get around *Raich*, *Wickard*, etc.

Thanks again,

Lawrence VanDyke
Solicitor General • Montana Department of Justice

215 N. Sanders • P.O. Box 201401
Helena, Montana 59620
T: (406) 444-3442 • F: (406) 444-3549
LVanDyke@mt.gov

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Monday, September 09, 2013 3:27 PM
To: 'rb325@law.georgetown.edu'
Subject: MSSA v. Holder case

Randy – I'm not sure if we've ever met, but I've been involved with Fed-Soc since law school and have enjoyed many of your presentations, etc. I clerked for Judge Janice Rogers Brown after law school, worked for years in Gibson Dunn's appellate and constitutional issues group, served a short stint in the Texas SG's office, and am now Montana's SG. I also serve on the Fed-Soc's religious liberties and federalism & separation of powers executive committees.

I believe you are familiar with the Montana Shooting Sports Ass'n v. Holder case. The Ninth Circuit recently ruled that the Montana Freedom Firearms Act is preempted, and MSSA plans to seek cert. Montana will likely be filing an amicus brief, maybe a multi-state brief. If you have a few minutes, I was wondering if you have any thoughts on argument(s) you would want to see in such a brief.

I am available most of the time at my office number below. If it would work better for me to call you, let me know a time and number. Thanks in advance for your input.

Sincerely,

Lawrence VanDyke
Solicitor General ♦ Montana Department of Justice

215 N. Sanders ♦ P.O. Box 201401
Helena, Montana 59620
T: (406) 444-3442 ♦ F: (406) 444-3549
LVanDyke@mt.gov

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Friday, September 13, 2013 12:41 PM
To: 'John Sauer (jsauer@clarksauer.com)'
Subject: MSSA v. Holder
Attachments: 013_App Br_6-6-11.pdf; 49_Resp Brief_7-21-11.pdf; 57_Reply Br_8-4-11.pdf; 029_State of Montana - Amicus_6-13-11.pdf; 022_Am Brief_States_6-13-11.pdf; 103_Find & Recs_8-31-10.pdf; 108_J Molloy Order and Opinion.pdf

John –

FYI - some more docs from the MSSA case. These are the 9th Circuit merits briefs, Montana's amicus brief, another multistate amicus brief (led by Utah), and the district court's decisions (both the magistrate's proposed findings and recommendations, and the district judge's opinion adopting the magistrate's decision).

From: VanDyke, Lawrence
Sent: Friday, September 13, 2013 12:18 PM
To: John Sauer (jsauer@clarksauer.com)
Subject:

Lawrence VanDyke
Solicitor General ♦ Montana Department of Justice

215 N. Sanders ♦ P.O. Box 201401
Helena, Montana 59620
T: (406) 444-3442 ♦ F: (406) 444-3549
LVanDyke@mt.gov

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Monday, January 13, 2014 8:18 AM
To: Fox, Tim; Mattioli, Mark; Bennion, Jon; Barnes, John
Subject: MSSA v Holder

Marbut's cert petition was denied this morning.

Sent from my iPhone

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Friday, January 11, 2013 12:43 PM
To: 'alj@gsjw.com'
Cc: Fox, Tim
Subject: Nick Dranias's contact information
Attachments: 07_MO ADMIT_12-29-09pdf.pdf; 07-1_MOTION_12-29-09.pdf; 19_ORDER_2-12-10.pdf

Alan – It was a pleasure to meet you and your wife the other evening. I believe Tim has talked to you about substituting for him as local counsel for the Goldwater Institute in the Montana Shooting Sports Assn v. Holder district court case (No. 09-CV-00147-DWM-JCL). The proceedings in the district court are on hold, pending the outcome of the case in the Ninth Circuit, but just to be safe it makes sense for Tim to be out of the case as a private lawyer. I talked to the clerk's office and was advised that the easiest way to address this is to substitute local counsel, which apparently only requires a simple filing.

Nick Dranias is the Goldwater Institute's attorney. I talked to Nick this morning, and he is on board with substituting local counsel. His contact information is:

500 East Coronado Road
Phoenix, AZ 85004
Tel: 602-462-5000

I've gone ahead and attached the original Pro Hac Vice motion, Nick's application, and the Court's order granting the application, just in case they are helpful.

Thank you, and please let me know if I can provide anything else.

Lawrence VanDyke
Solicitor General ♦ Montana Department of Justice

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LVanDyke@mt.gov

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Friday, January 11, 2013 11:42 AM
To: Fox, Tim
Cc: Darkenwald, Scott; Mattioli, Mark
Subject: RE: A correction, MSSA v. Holder

That would work fine. It wouldn't require anything on Alan's part after that, since the case is inactive in district court right now. Only if it was remanded, became an active case, and the Goldwater Institute wanted to file another amicus brief, would Alan's "local counsel" status impose any obligations on him. That is highly unlikely.

The reason it is better to have Alan substitute in instead of Tim withdraw is (1) it avoids Tim needing to file anything himself, and (2) Tim withdrawing as local counsel could trigger the court to issue an order requiring the Institute to find different local counsel. So having someone substitute in is just simpler.

I still haven't heard from Nick. I'll put in another call to him.

From: Fox, Tim
Sent: Friday, January 11, 2013 11:35 AM
To: VanDyke, Lawrence
Cc: Darkenwald, Scott; Mattioli, Mark
Subject: RE: A correction, MSSA v. Holder

I can ask one of my former law partners, like Alan Joscelyn, if he would substitute at the district court level. What do you think?

From: VanDyke, Lawrence
Sent: Thursday, January 10, 2013 4:39 PM
To: Fox, Tim
Cc: Darkenwald, Scott; Mattioli, Mark
Subject: FW: A correction, MSSA v. Holder

Mark is correct. The clerk's office confirmed that, insofar as the Ninth Circuit is concerned, we are amicus, not interveners.

The clerk's office also confirmed that there is no hurry for us to notify the court whether we intend to request argument time as amicus (whether additional time, or sharing time with MSSA). I called Quentin Rhoades, attorney for MSSA, and told him Tim asked me to take a careful look at the case, including the arguments previously made by the state, and that we would get back to Quentin with our thoughts on whether it makes sense for us to participate in oral argument. I told him that we are very busy right now (which he understood), and so it could take some time for us to digest the issues and come to a conclusion, but that should not be a timing problem with the Ninth Circuit. Quentin agreed, and said he would let Gary know. I will look into the MSSA case and let you know my recommendation (after I turn to more urgent things, now that this is no longer urgent).

I also have a call into Nick Dranias of the Goldwater Institute. Per the District Court's clerk's office, Tim's status as "local counsel" for the Institute in the district court is not really an issue (at least right now), because the district court has lost jurisdiction over the case. (Tim is not local counsel for the Goldwater Institute in the Ninth Circuit.) But just to be safe, it would help if Nick could have some other friendly

Montana attorney (who is admitted in the Montana Fed. District Court) file a notice of substitution of local counsel. I'll see if Nick knows somebody who would do that. If so, that will ensure that Tim does not somehow become local counsel again if the case is remanded. If Nick can't do that, then Tim may have to move to withdraw (which is messier - both for Tim and the Institute).

----- Forwarded message -----

From: **Mattioli, Mark** <mmattioli@mt.gov>
Date: Thu, Jan 10, 2013 at 10:41 AM
Subject: RE: A correction, MSSA v. Holder
To: "Fox, Tim" <TimFox@mt.gov>
Cc: Darkenwald Scott <scott.darkenwald@gmail.com>, Lawrence VanDyke <lvandyke4@gmail.com>

My understanding is that we intervened in district, but did not appeal, and then filed an amicus brief because we did not appeal. The caption reflects our status in district court.

Mark

From: Tim Fox [<mailto:ofoxc@aol.com>]
Sent: Wednesday, January 09, 2013 10:45 PM
To: Mattioli, Mark
Cc: Darkenwald Scott; Lawrence VanDyke
Subject: Fwd: A correction, MSSA v. Holder

So are we an intervenor or not? (See below)

Sent from my iPad

Begin forwarded message:

From: Gary Marbut-MSSA <mssa@mtssa.org>
Date: January 9, 2013, 6:21:49 PM MST
To: ofoxc@aol.com
Subject: A correction, MSSA v. Holder

Tim,

My earlier email appears to have been incorrect in that the 9th seems to see Montana still as an intervenor. See the attached .pdf.

Gary

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Friday, January 11, 2013 12:01 PM
To: Fox, Tim
Cc: Darkenwald, Scott; Mattioli, Mark
Subject: RE: A correction, MSSA v. Holder

Just talked to Nick. He said he is fine with Alan substituting in as local counsel, assuming Alan agrees.

From: VanDyke, Lawrence
Sent: Friday, January 11, 2013 11:42 AM
To: Fox, Tim
Cc: Darkenwald, Scott; Mattioli, Mark
Subject: RE: A correction, MSSA v. Holder

That would work fine. It wouldn't require anything on Alan's part after that, since the case is inactive in district court right now. Only if it was remanded, became an active case, and the Goldwater Institute wanted to file another amicus brief, would Alan's "local counsel" status impose any obligations on him. That is highly unlikely.

The reason it is better to have Alan substitute in instead of Tim withdraw is (1) it avoids Tim needing to file anything himself, and (2) Tim withdrawing as local counsel could trigger the court to issue an order requiring the Institute to find different local counsel. So having someone substitute in is just simpler.

I still haven't heard from Nick. I'll put in another call to him.

From: Fox, Tim
Sent: Friday, January 11, 2013 11:35 AM
To: VanDyke, Lawrence
Cc: Darkenwald, Scott; Mattioli, Mark
Subject: RE: A correction, MSSA v. Holder

I can ask one of my former law partners, like Alan Joscelyn, if he would substitute at the district court level. What do you think?

From: VanDyke, Lawrence
Sent: Thursday, January 10, 2013 4:39 PM
To: Fox, Tim
Cc: Darkenwald, Scott; Mattioli, Mark
Subject: FW: A correction, MSSA v. Holder

Mark is correct. The clerk's office confirmed that, insofar as the Ninth Circuit is concerned, we are amicus, not interveners.

The clerk's office also confirmed that there is no hurry for us to notify the court whether we intend to request argument time as amicus (whether additional time, or sharing time with MSSA). I called Quentin Rhoades, attorney for MSSA, and told him Tim asked me to take a careful look at the case, including the arguments previously made by the state, and that we would get back to Quentin with our thoughts on whether it makes sense for us to participate in oral argument. I told him that we are very busy right now (which he understood), and so it could take some time for us to digest the issues and come to a

conclusion, but that should not be a timing problem with the Ninth Circuit. Quentin agreed, and said he would let Gary know. I will look into the MSSA case and let you know my recommendation (after I turn to more urgent things, now that this is no longer urgent).

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Subject: RE: A correction, MSSA v. Holder

To: "Fox, Tim" <TimFox@mt.gov>

Cc: Darkenwald Scott <scott.darkenwald@gmail.com>, Lawrence VanDyke <lvandyke4@gmail.com>

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Mark

From: Tim Fox [<mailto:ofoxc@aol.com>]

Sent: Wednesday, January 09, 2013 10:45 PM

To: Mattioli, Mark

Cc: Darkenwald Scott; Lawrence VanDyke

Subject: Fwd: A correction, MSSA v. Holder

So are we an intervenor or not? (See below)

Sent from my iPad

Begin forwarded message:

From: Gary Marbut-MSSA <mssa@mtssa.org>

Date: January 9, 2013, 6:21:49 PM MST

To: ofoxc@aol.com

Subject: A correction, MSSA v. Holder

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Tuesday, December 17, 2013 5:11 PM
To: Myers, Janet
Subject: FW: Montana v. Holder Proofs Attached (29048)
Attachments: 29048 VanDyke app.pdf

Janet – here are the new proofs. Everything up to page 88 should be the same as in the proofs I already gave you, except they've changed the numbering to add an "a" after each page number. Starting on page 88a, there are 6 pages of statutory text. Could you check to see that the statutory text and citations are accurate?

Thank you, Janet!

From: Cockle Legal Briefs [<mailto:contact@cocklelegalbriefs.com>]
Sent: Tuesday, December 17, 2013 4:08 PM
To: VanDyke, Lawrence
Subject: Montana v. Holder Proofs Attached (29048)

Attached please find the balance of your appendix proofs. Please call our office with corrections or a final approval to print as soon as possible or not later than 10:00 AM Central on December 30th. If you prefer, you may write the answers to our questions in the right hand margin – along with any additional edits you wish to make – and scan those back to us. Please **DO NOT** send us a revised file. We must make edits to the file we have already typeset and proofread, rather than starting over with a new document.

Please note that we must discuss the total number of copies that you will require us to print before we can begin printing. When calling our office with corrections/approval, please ask for our corrections department.

Thank you!

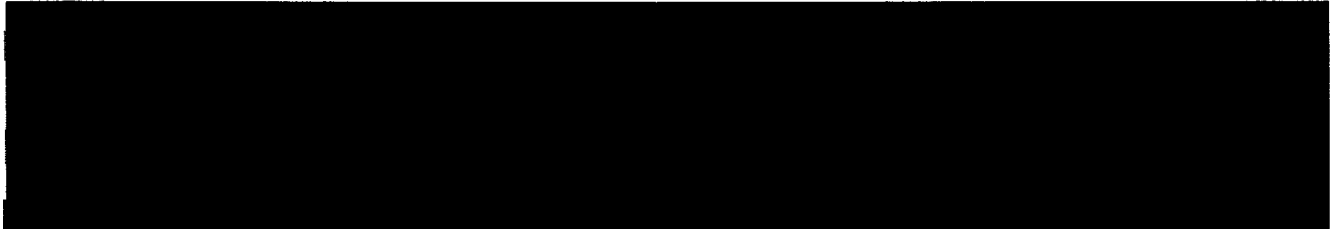
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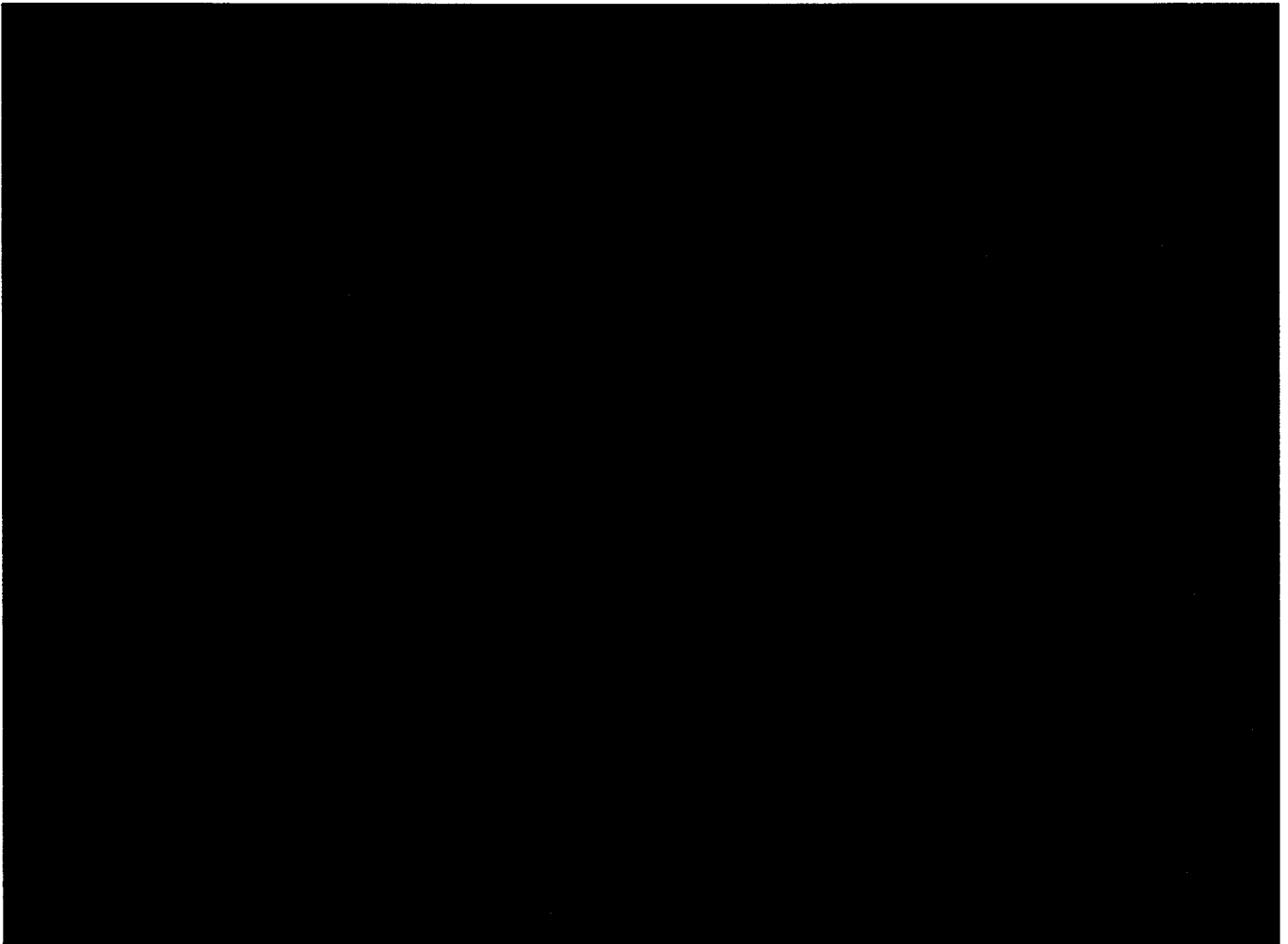
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/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Wednesday, April 02, 2014 11:46 AM
To: Fox, Tim
Subject: FW: Request for Amicus Support



From: Miko Tempski [<mailto:miko.tempski@saf.org>]
Sent: Wednesday, April 02, 2014 11:17 AM
To: VanDyke, Lawrence
Subject: Request for Amicus Support



Miko Tempski
General Counsel
Second Amendment Foundation

Phone: 425.454.7012 | Fax: 425.451.3959

James Madison Building
12500 NE Tenth Pl
Bellevue, WA 98005

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Friday, August 23, 2013 10:03 AM
To: Fox, Tim; Mattioli, Mark; Bennion, Jon; Swanson, Cory; Barnes, John
Cc: Darkenwald, Scott
Subject: FW: 10-36094 Montana Shooting Sports Associ, et al v. Eric Holder, Jr. "Opinion Filed"
Attachments: MSSA 9th Cir Opinion.pdf

Tim et al.

The Ninth Circuit handed down its decision in the MSSA case this morning (this is Gary Marbut's case brought under the Montana Firearms Freedom Act asking for a declaratory judgment that federal firearms laws don't apply to guns wholly "made-in-Montana").

As expected, Marbut lost. The Ninth Circuit did reverse Judge Molloy's decision that Marbut didn't have standing—it held that his economic injury suffices for standing. But it held that under *Gonzales v. Raich* (SCOTUS marijuana case) and *United States v. Stewart* (9th Circuit homemade machine gun case), the federal commerce clause clearly allows federal regulations to reach "made in Montana" guns, even if they never travel in interstate commerce. The Ninth Circuit panel also ruled that the MFFA is preempted and invalid. Judge Bea dissented from that part of the ruling, saying that once the court correctly ruled that the federal firearms laws reached Marbut's planned guns, it didn't need to go farther and find the MFFA preempted.

None of this is surprising – Marbut's Ninth Circuit briefing acknowledged (and the panel agreed) that panel's "hands were tied" by *Stewart*, which is binding on Ninth Circuit panels.

But here is the important thing: It is pretty clear that Marbut et al. think this is a terrific vehicle for challenging *Wickard*, *Raich*, etc. in the SCOTUS, and they have quite a bit of support both in the state and outside of the state. Something like 10 other states have passed a similar law – all of which are "clouded" by the Ninth Circuit's preemption decision. There is likely to be huge pressure to seek cert on this decision (and maybe seek en banc review in the Ninth Circuit). We need to talk about what, if any, role we'll want to take.

From: ca9_ecfnoticing@ca9.uscourts.gov [mailto:ca9_ecfnoticing@ca9.uscourts.gov]
Sent: Friday, August 23, 2013 9:21 AM
To: VanDyke, Lawrence
Subject: 10-36094 Montana Shooting Sports Associ, et al v. Eric Holder, Jr. "Opinion Filed"

*****NOTE TO PUBLIC ACCESS USERS***** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing.

United States Court of Appeals for the Ninth Circuit

Notice of Docket Activity

The following transaction was entered on 08/23/2013 at 8:20:31 AM PDT and filed on 08/23/2013

Case Name: Montana Shooting Sports Associ, et al v. Eric Holder, Jr.

Case Number: 10-36094

Document(s): Document(s)

Docket Text:

FILED OPINION (A. WALLACE TASHIMA, RICHARD R. CLIFTON and CARLOS T. BEA) AFFIRMED.
Judge: AWT , Judge: RRC Authoring, Judge: CTB Concurring & dissenting. FILED AND ENTERED
JUDGMENT. [8753712] (PH)

Notice will be electronically mailed to:

Mr. Timothy Neal Baldwin, Attorney
Mr. John E. Bloomquist, Attorney
Ms. Sharon Louise Browne
Steve Bullock, Attorney General
Anthony T. Caso, Attorney
Matthew T. Cochenour, Assistant Attorney General
Mr. Nicholas Constantine Dranias, Attorney
Mr. Mark R. Freeman, Attorney
Honorable Donald W. Molloy, District Judge
Adam Pomeroy
Lary Alan Rappaport
Mr. Quentin M. Rhoades, Attorney
Mr. Mark L. Shurtleff, Attorney General
Herbert W. Titus
USDC, Missoula
Lawrence VanDyke, Solicitor
Ms. Abby Christine Wright, Attorney
Mr. Zachary Zipfel, Assistant Attorney General

Case participants listed below will not receive this electronic notice:

Jessica B. Leinwand
DOJ - U.S. DEPARTMENT OF JUSTICE
Federal Programs Branch
P.O. Box 883, Ben Franklin Station
Washington, DC 20044

The following document(s) are associated with this transaction:

Document Description: Opinion

Original Filename: 10-36094 docket.pdf

Electronic Document Stamp:

[STAMP acecfStamp_ID=1106763461 [Date=08/23/2013] [FileNumber=8753712-0]

[8d7777c8d306836598ee5b247742b0844c6d5db135c07133cec53d1825c251eaedbbb293ca25ca6e7a52349d18c
958fd67d2ac62d573e9fdfe86df6d5abc9b3e]]

Document Description: Post Judgment Form

Original Filename: PostJudgmentandBillofCosts.pdf

Electronic Document Stamp:

[STAMP acecfStamp_ID=1106763461 [Date=08/23/2013] [FileNumber=8753712-1]
[964f8b82c57d52b28ef4064b97150a8227cae4a5c754aed35fe1cd622bdfc6e85543192ddc55ae1170a2e1368996f
407665aaacc122464e3afa3c5b12bad5291]]

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIEOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Monday, February 04, 2013 5:56 PM
To: 'jeastman@chapman.edu'
Subject: Montana Shooting Sports Association - 9th Circuit Case

Professor Eastman:

It has been too long since we last talked. I've recently moved to Montana from Texas and started as SG of my home state. I was wondering if I could call and talk with you briefly about the Montana Shooting Sports Association case, wherein you filed an amicus brief in the 9th Circuit.

If you could let me know when I could call you, and at what number, I would appreciate it.

Thank you!

Lawrence VanDyke
Solicitor General ♦ Montana Department of Justice

215 N. Sanders ♦ P.O. Box 201401
Helena, Montana 59620
T: (406) 444-3442 ♦ F: (406) 444-3549
LVanDyke@mt.gov

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Monday, February 04, 2013 6:37 PM
To: Eastman, John
Subject: Re: Montana Shooting Sports Association - 9th Circuit Case

Thank you John. I'm actually running late to pick up my daughter for a daddy daughter date, so I probably shouldn't call you now and delay that any further. I'll plan to call you tomorrow after 1 PM your time, if that still works for you. Look forward to talking to you!

Sent from my iPhone

On Feb 4, 2013, at 6:09 PM, "Eastman, John" <jeastman@chapman.edu> wrote:

Congrats on the new gig!

You can reach me at the 877 number below. Sitting down for dinner in a moment, but clear the rest of the evening, and tomorrow as well except between 10 and 1.

John

*Dr. John C. Eastman
Henry Salvatori Professor of Law & Community Service and former Dean
Chapman University School of Law
One University Drive
Orange, CA 92866
(714) 628-2587
(877) 855-3330 x2
[SSRN Scholarship Page](#)*

From: VanDyke, Lawrence [<mailto:LVanDyke@mt.gov>]
Sent: Monday, February 04, 2013 4:56 PM
To: Eastman, John
Subject: Montana Shooting Sports Association - 9th Circuit Case

Professor Eastman:

It has been too long since we last talked. I've recently moved to Montana from Texas and started as SG of my home state. I was wondering if I could call and talk with you briefly about the Montana Shooting Sports Association case, wherein you filed an amicus brief in the 9th Circuit.

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Thank you!

Lawrence VanDyke
Solicitor General ♦ Montana Department of Justice

215 N. Sanders ♦ P.O. Box 201401
Helena, Montana 59620
T: (406) 444-3442 ♦ F: (406) 444-3549

Bennion, Jon

From: Cochenour, Matt
Sent: Friday, November 15, 2013 3:54 PM
To: VanDyke, Lawrence
Subject: Donaldson

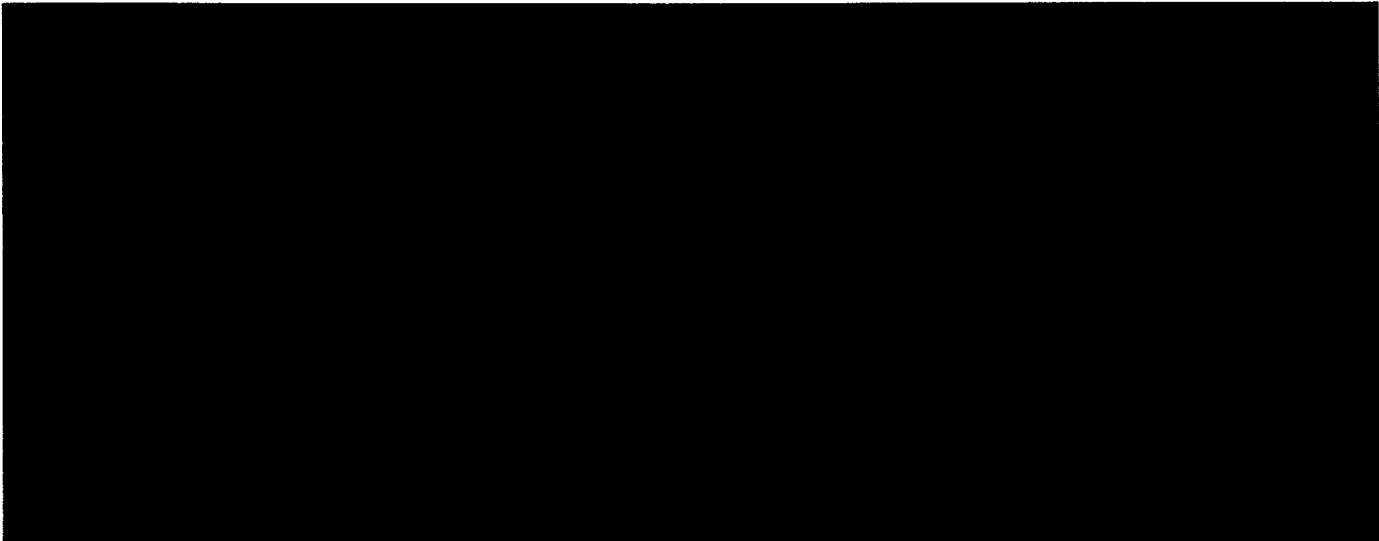


Matthew T. Cochenour
Assistant Attorney General
Montana Department of Justice
406-444-2026

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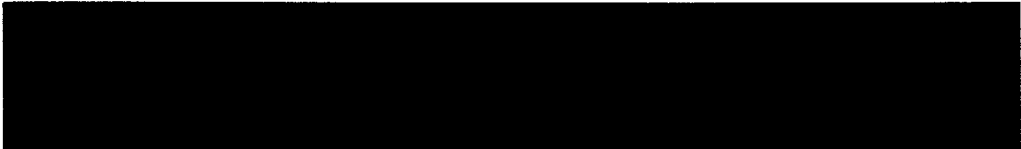
Bennion, Jon

From: Cochenour, Matt
Sent: Tuesday, October 22, 2013 2:24 PM
To: Black, Michael; VanDyke, Lawrence
Subject: Donaldson - discovery / requests for admissions
Attachments: matt's responses to req for admissions_DRAFT.rtf



Bennion, Jon

From: Cochenour, Matt
Sent: Friday, October 04, 2013 9:25 AM
To: VanDyke, Lawrence
Subject: Arguments we probably don't want to make . . .



Bennion, Jon

From: Karen Schultz <kschultz@Goetzlawfirm.com>
Sent: Thursday, January 02, 2014 4:34 PM
To: Black, Michael; VanDyke, Lawrence; Cochenour, Matt
Cc: Ben Alke; JimT@aclumontana.org; Krystal Holden (krystelp@aclumontana.org); 'Borenstein, Ruth N.' (RBorenstein@mofo.com); splunkett@mofo.com; eregier@mofo.com; aruiz@mofo.com; Egill@aclunc.org
Subject: Donaldson, et al. v. State
Attachments: Alke-Opposing Counsel 1 2 14.pdf

Please see the attached letter of today from Ben Alke. The letter was also mailed to you today.

Karen Schultz, Legal Assistant
Goetz, Baldwin & Geddes, P. C.
35 North Grand (zip code – 59715)
P. O. Box 6580
Bozeman, MT 59771-6580
Ph: (406) 587-0618
Fax: (406) 587-5144

Bennion, Jon

From: Cochenour, Matt
Sent: Tuesday, October 08, 2013 4:11 PM
To: VanDyke, Lawrence
Subject: donaldson



Bennion, Jon

From: Black, Michael
Sent: Monday, September 30, 2013 8:07 AM
To: Holnbeck, Beverly
Cc: VanDyke, Lawrence; Cochenour, Matt
Subject: Donaldson

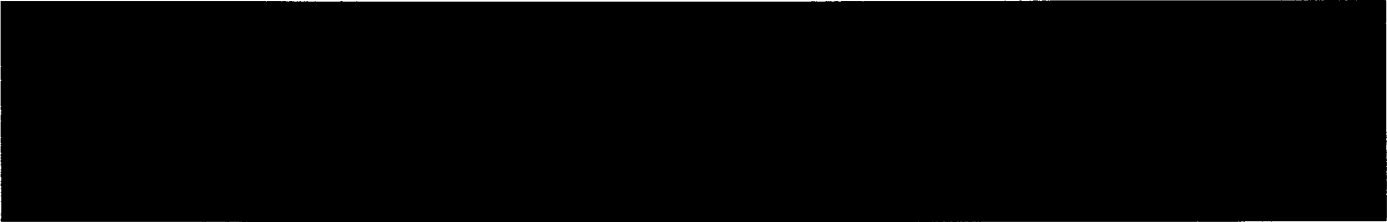
Bev:

If you have not already, would you please forward pdf copies of the new discovery requests to Lawrence and Matt in advance of the 10:30 scheduling conference? Thank you.

Mike

Bennion, Jon

From: Mattioli, Mark
Sent: Wednesday, November 27, 2013 1:45 AM
To: Cochenour, Matt
Cc: Black, Michael
Subject: Donaldson
Attachments: Donaldson (draft of First Discovery Responses).rtf



Bennion, Jon

From: Black, Michael
Sent: Monday, September 30, 2013 10:04 AM
To: VanDyke, Lawrence; Cochenour, Matt
Subject: Donaldson Discovery
Attachments: 002-D's Rspns to P's 1st Discovery.pdf

FYI

Bennion, Jon

From: Mattioli, Mark
Sent: Wednesday, January 09, 2013 5:59 PM
To: Cochenour, Matt
Cc: VanDyke, Lawrence; Tim Fox (hurdler.fox@gmail.com)
Subject: FW: 9th Cir oral argument in Mont. Shooting Sports

Matt,

Thank you for your email. This is very helpful.

I'm copying Tim, Lawrence, and Jon. I request that Lawrence take the lead on this. Lawrence, let's discuss after you've had a chance to read Matt's email and the amicus brief.

Mark

From: Cochenour, Matt
Sent: Wednesday, January 09, 2013 3:27 PM
To: Mattioli, Mark
Subject: 9th Cir oral argument in Mont. Shooting Sports

Hi Mark,

The 9th Circuit set oral argument in *Mont. Shooting Sports (MSSA) v. Holder* for March 4, 2013. The case involves the 2009 Montana Firearms Freedom Act (the Act), which sought to remove certain Montana-made firearms from federal regulation. The case began when MSSA and Gary Marbut sought a declaration that they could manufacture and sell firearms free from the federal firearms laws. We intervened and defended the Act after the U.S. Attorney's office challenged the Act's constitutionality. Judge Lynch dismissed for lack of subject matter jurisdiction based on the view that MSSA and Marbut had no standing, given the absence of any imminent prosecution. The court went further and ruled that the plaintiffs failed to state a claim upon which relief could be granted. In this part of the ruling, the court ruled that the National Firearms Act and Gun Control Act would were in conflict with (and trumped) the Act. Judge Molloy adopted Magistrate Judge Lynch's order in full.

MSSA and Marbut appealed to the 9th Circuit. We did not appeal, in part because there appear to be serious standing and ripeness problems. In our view, Judge Molloy was correct to dismiss on this ground. We did, however, file an amicus brief, arguing that Judge Molloy had issued too broad of a ruling and that the U.S. Constitution does not prevent the Montana Legislature from expressing its view on the interplay between the state and the federal government and between the 10th Amendment and the Commerce Clause. We also set forth our arguments distinguishing the Act from the primary Commerce Clause cases relied on by the courts.

As an amicus, we will not be participating in oral argument. This is probably a good thing because, if we argued, we would likely be put in a position of damaging MSSA's case. It seems clear that there has been no final agency action from ATF which could confer standing on MSSA, and whereas we were able to avoid that discussion in our briefs, we would likely have to concede the point at argument. The only real question is whether we want to send someone from DOJ to attend the argument. My sense is that we have made the appropriate arguments in our briefing and our absence would have no significance. But, I thought I'd check in

with you and get your thoughts. I need to file my acknowledgment of hearing soon, so please let me know if you have any guidance.

I'm attaching a copy of our amicus brief so you can see the arguments we made.

Thanks,
Matt

Bennion, Jon

From: Black, Michael
Sent: Wednesday, September 11, 2013 3:02 PM
To: Cochenour, Matt
Subject: FW: 13-35-237, MCA
Attachments: 130911 MGM to State.pdf

From: Matthew Monforton [<mailto:matthewmonforton@yahoo.com>]
Sent: Wednesday, September 11, 2013 2:37 PM
To: Black, Michael
Cc: VanDyke, Lawrence
Subject: 13-35-237, MCA

Mike:

Now that *Sanders County* is winding down, please find attached a preview of coming attractions.

Feel free to call.

Thanks

Matthew G. Monforton, Esq.
CA State Bar #175518, MT State Bar #5245
Monforton Law Offices, PLLC
32 Kelly Court
Bozeman, Montana 59718
Telephone: (406) 570-2949
Facsimile: (406) 551-6919

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Bennion, Jon

From: Cochenour, Matt
Sent: Wednesday, October 23, 2013 3:09 PM
To: Black, Michael; VanDyke, Lawrence
Subject: FW: Donaldson - additional time to respond to discovery

FYI

From: Ben Alke [<mailto:balke@goetzlawfirm.com>]
Sent: Wednesday, October 23, 2013 2:48 PM
To: Cochenour, Matt; Ben Alke
Subject: RE: Donaldson - additional time to respond to discovery

Plaintiffs agree. The State's responses to all requests in Plaintiffs' First Discovery Requests are not due until November 27, 2013.

Ben

From: Cochenour, Matt [<mailto:MCochenour2@mt.gov>]
Sent: Wednesday, October 23, 2013 2:40 PM
To: Ben Alke
Subject: Donaldson - additional time to respond to discovery

Hi Ben,

It was good talking with you. I just wanted to confirm that you agreed to give us an additional 30 days to respond to Plaintiffs' First Discovery Requests (requests for admissions, interrogatories, and requests for production). By my math, that means the State's discovery responses would be due on November 27, 2013. Please let me know if this is your understanding as well.

Thank you for your courtesy,
Matt

Matthew T. Cochenour
Assistant Attorney General
Montana Department of Justice
406-444-2026

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Bennion, Jon

From: Cochenour, Matt
Sent: Friday, December 06, 2013 4:06 PM
To: VanDyke, Lawrence
Subject: FW: Donaldson - additional time to respond to discovery
Attachments: 2013-12-06 Ds Verification.pdf

FYI

From: Cochenour, Matt
Sent: Friday, December 06, 2013 4:06 PM
To: 'Ben Alke'
Subject: RE: Donaldson - additional time to respond to discovery

Hi Ben,

I was reviewing the responses to Plaintiffs' First Discovery Requests and noticed the lack of verification page. I'm attaching a copy to this email, and copies were mailed to counsels of record today.

Stay warm and have a good weekend,
Matt

From: Ben Alke [<mailto:balke@goetzlawfirm.com>]
Sent: Wednesday, October 23, 2013 2:48 PM
To: Cochenour, Matt; Ben Alke
Subject: RE: Donaldson - additional time to respond to discovery

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To: Ben Alke
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Matt

Matthew T. Cochenour
Assistant Attorney General
Montana Department of Justice

406-444-2026

This email and any attachments may contain confidential and privileged information from the Montana Attorney General's Office. The information is intended solely for the individual or entity named above. If you are not the intended recipient, any use of this information is prohibited. If you have received this email in error, please immediately notify me by email and delete the information you received.

Bennion, Jon

From: Black, Michael
Sent: Tuesday, November 26, 2013 12:28 PM
To: Mattioli, Mark; Cochenour, Matt
Subject: RE: MDC v. COPP
Attachments: 08-13 Ex M.pdf; 08-14 Ex N.pdf; 08-15 Ex O.pdf

Here they are.

From: Mattioli, Mark
Sent: Tuesday, November 26, 2013 12:22 PM
To: Black, Michael; Cochenour, Matt
Subject: FW: MDC v. COPP

Mike or Matt, could one of you forward the exhibits showing how the COPP handled the requests for preapproval of the fliers?

Mark

From: Black, Michael
Sent: Tuesday, November 19, 2013 5:02 PM
To: VanDyke, Lawrence
Cc: Mattioli, Mark
Subject: MDC v. COPP

Lawrence:

Here are the Complaint and the Memorandum in support of the Motion for injunctive relief. Answer is due Tuesday, response brief is due Friday, and I understand you are working on getting discovery out in Donaldson by Wednesday. COPP thinks we should file a motion to dismiss by Tuesday.

Michael G. Black
Bureau Chief
Civil Services Bureau
Montana Department of Justice
215 North Sanders
P.O. Box 201401
Helena, Montana 59620-1401
406-444-2026 telephone
406-444-3549 fax
mblack2@mt.gov

Bennion, Jon

From: Cochenour, Matt
Sent: Friday, August 23, 2013 10:04 AM
To: Holnbeck, Beverly; Black, Michael; VanDyke, Lawrence
Subject: RE: Montana Shooting Sports

I think Lawrence took over this one

From: Holnbeck, Beverly
Sent: Friday, August 23, 2013 10:02 AM
To: Black, Michael; VanDyke, Lawrence; Cochenour, Matt
Subject: Montana Shooting Sports

I've lost track of who among you is lead counsel on this, but I think someone is supposed to fill out the post-judgment form???

Bev Holnbeck 

Beverly Holnbeck, Legal Assistant
Office of the Montana Attorney General
406-444-1952

Bennion, Jon

From: Black, Michael
Sent: Wednesday, November 20, 2013 4:06 PM
To: Cochenour, Matt
Subject: Fwd: MDC v. COPP

Sent from my Verizon Wireless 4G LTE smartphone

----- Original message -----

From: "VanDyke, Lawrence"
Date: 11/20/2013 3:06 PM (GMT-07:00)
To: "Black, Michael"
Cc: "Mattioli, Mark"
Subject: RE: MDC v. COPP

Thank you, Mike. As I mentioned during the meeting, I am gone all next week and don't have the time to work on this case. But I did read the complaint, and have some thoughts on how our office might proceed (or, more accurately, not proceed). Let me know if you would like to discuss.

Thanks again,

Lawrence

From: Black, Michael
Sent: Tuesday, November 19, 2013 5:02 PM
To: VanDyke, Lawrence
Cc: Mattioli, Mark
Subject: MDC v. COPP

Lawrence:

Here are the Complaint and the Memorandum in support of the Motion for injunctive relief. Answer is due Tuesday, response brief is due Friday, and I understand you are working on getting discovery out in Donaldson by Wednesday. COPP thinks we should file a motion to dismiss by Tuesday.

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Bennion, Jon

From: Cochenour, Matt
Sent: Thursday, January 10, 2013 9:31 AM
To: Mattioli, Mark
Subject: RE: A correction, MSSA v. Holder

I believe that's correct. In my experience, the captions don't change just because one party doesn't appeal. We're still an intervenor in the case, we just didn't appeal. I'm not sure what the significance is as far as our ability to argue without asking the court's permission. My guess is we don't have the right to argue because we didn't appeal, but instead filed an amicus brief.

I spoke with Lawrence about this issue this morning, and he was going to call the clerk of court to see what our options are regarding argument. Hopefully, we'll know more after he talks with the clerk's office.
Matt

From: Mattioli, Mark
Sent: Thursday, January 10, 2013 9:16 AM
To: Cochenour, Matt
Subject: FW: A correction, MSSA v. Holder

Matt, is the Ninth Circuit caption because of how the case was styled in district court?

Mark

From: Tim Fox [<mailto:ofoxc@aol.com>]
Sent: Wednesday, January 09, 2013 10:45 PM
To: Mattioli, Mark
Cc: Darkenwald Scott; Lawrence VanDyke
Subject: Fwd: A correction, MSSA v. Holder

So are we an intervenor or not? (See below)

Sent from my iPad

Begin forwarded message:

From: Gary Marbut-MSSA <mssa@mtssa.org>
Date: January 9, 2013, 6:21:49 PM MST
To: ofoxc@aol.com
Subject: A correction, MSSA v. Holder

Tim,

My earlier email appears to have been incorrect in that the 9th seems to see Montana still as an intervenor. See the attached .pdf.

Gary

Bennion, Jon

From: VanDyke, Lawrence
Sent: Friday, December 06, 2013 4:04 PM
To: Cochenour, Matt
Subject: RE: Donaldson - additional time to respond to discovery

Thank you Matt.

From: Cochenour, Matt
Sent: Friday, December 06, 2013 4:04 PM
To: VanDyke, Lawrence
Subject: FW: Donaldson - additional time to respond to discovery

FYI

From: Cochenour, Matt
Sent: Friday, December 06, 2013 4:06 PM
To: 'Ben Alke'
Subject: RE: Donaldson - additional time to respond to discovery

Hi Ben,

I was reviewing the responses to Plaintiffs' First Discovery Requests and noticed the lack of verification page. I'm attaching a copy to this email, and copies were mailed to counsels of record today.

Stay warm and have a good weekend,
Matt

From: Ben Alke [<mailto:balke@goetzlawfirm.com>]
Sent: Wednesday, October 23, 2013 2:48 PM
To: Cochenour, Matt; Ben Alke
Subject: RE: Donaldson - additional time to respond to discovery

Plaintiffs agree. The State's responses to all requests in Plaintiffs' First Discovery Requests are not due until November 27, 2013.

Ben

From: Cochenour, Matt [<mailto:MCochenour2@mt.gov>]
Sent: Wednesday, October 23, 2013 2:40 PM
To: Ben Alke
Subject: Donaldson - additional time to respond to discovery

Hi Ben,

It was good talking with you. I just wanted to confirm that you agreed to give us an additional 30 days to respond to Plaintiffs' First Discovery Requests (requests for admissions, interrogatories, and requests for production). By my math, that means the State's discovery responses would be due on November 27, 2013. Please let me know if this is your understanding as well.

Thank you for your courtesy,
Matt

Matthew T. Cochenour
Assistant Attorney General
Montana Department of Justice
406-444-2026

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Bennion, Jon

From: Black, Michael
Sent: Thursday, February 06, 2014 11:37 AM
To: Ben Alke
Cc: Cochenour, Matt
Subject: RE: Donaldson, et al. v. State

Ben:

How about Tuesday or Wednesday? My apologies for not getting back to you sooner. Also, I wanted to let you know that as a result of staffing issues in this office because of a recent resignation by an attorney who is not counsel of record in this case, I personally was not aware this office had been approached to sign on to the Ninth Circuit amicus brief filed in *Sevcik* until after it was filed, and I did not learn that this office had actually signed on until two days ago. Thanks.

Mike

From: Ben Alke [<mailto:BAIke@Goetzlawfirm.com>]
Sent: Tuesday, February 04, 2014 10:26 AM
To: Black, Michael
Cc: Cochenour, Matt
Subject: RE: Donaldson, et al. v. State

Thanks Mike. Have you and Matt had a chance to discuss days next week to discuss discovery issues?

Ben

From: Black, Michael [<mailto:MBlack2@mt.gov>]
Sent: Friday, January 31, 2014 4:14 PM
To: Ben Alke
Cc: Karen Schultz; Cochenour, Matt; Holnbeck, Beverly
Subject: RE: Donaldson, et al. v. State

Ben:

It is my understanding that you talked with Matt Cochenour about this matter earlier this week, and we appreciate your courtesies. I have attached a Notice of Substitution of this date. Please feel free to contact me (or Matt) if you have any questions or concerns. Thank you, and have a good weekend.

Michael G. Black
Bureau Chief
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P.O. Box 201401
Helena, Montana 59620-1401
406-444-2026 telephone
406-444-3549 fax

mblack2@mt.gov

From: VanDyke, Lawrence
Sent: Friday, January 10, 2014 7:45 AM
To: Ben Alke
Cc: JimT@aclumontana.org; Krystal Holden (krystelp@aclumontana.org); 'Borenstein, Ruth N.' (RBorenstein@mofo.com); splunkett@mofo.com; eregier@mofo.com; aruiz@mofo.com; Egill@aclunc.org; 'Karen Schultz'; Black, Michael; Cochenour, Matt
Subject: RE: Donaldson, et al. v. State

Ben – My apologies for the delay in responding to this letter. I have been very sick since Monday and today is my first day back in the office. We will review the letter and get back to you next week.

Thank you,

Lawrence VanDyke
Solicitor General ♦ Montana Department of Justice

215 N. Sanders ♦ P.O. Box 201401
Helena, Montana 59620
T: (406) 444-3442 ♦ F: (406) 444-3549
LVanDyke@mt.gov

From: Karen Schultz [<mailto:kschultz@Goetzlawfirm.com>]
Sent: Thursday, January 02, 2014 4:34 PM
To: Black, Michael; VanDyke, Lawrence; Cochenour, Matt
Cc: Ben Alke; JimT@aclumontana.org; Krystal Holden (krystelp@aclumontana.org); 'Borenstein, Ruth N.' (RBorenstein@mofo.com); splunkett@mofo.com; eregier@mofo.com; aruiz@mofo.com; Egill@aclunc.org
Subject: Donaldson, et al. v. State

Please see the attached letter of today from Ben Alke. The letter was also mailed to you today.

Karen Schultz, Legal Assistant
Goetz, Baldwin & Geddes, P. C.
35 North Grand (zip code – 59715)
P. O. Box 6580
Bozeman, MT 59771-6580
Ph: (406) 587-0618
Fax: (406) 587-5144

It is my understanding that you talked with Matt Cochenour about this matter earlier this week, and we appreciate your courtesies. I have attached a Notice of Substitution of this date. Please feel free to contact me (or Matt) if you have any questions or concerns. Thank you, and have a good weekend.

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Subject: RE: Donaldson, et al. v. State

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Thank you,

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LVanDyke@mt.gov

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Sent: Thursday, January 02, 2014 4:34 PM
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Cc: Ben Alke; JimT@aclumontana.org; Krystal Holden (krystelp@aclumontana.org); 'Borenstein, Ruth N.' (RBorenstein@mofo.com); splunkett@mofo.com; eregier@mofo.com; aruiz@mofo.com; Egill@aclunc.org
Subject: Donaldson, et al. v. State

Please see the attached letter of today from Ben Alke. The letter was also mailed to you today.

Karen Schultz, Legal Assistant
Goetz, Baldwin & Geddes, P. C.
35 North Grand (zip code – 59715)
P. O. Box 6580

Bennion, Jon

From: Ben Alke <BAIke@Goetzlawfirm.com>
Sent: Thursday, February 06, 2014 3:26 PM
To: Black, Michael
Cc: Cochenour, Matt
Subject: RE: Donaldson, et al. v. State

Wednesday would work. How about 2:00?

And thanks for the heads up.

Ben

From: Black, Michael [<mailto:MBlack2@mt.gov>]
Sent: Thursday, February 06, 2014 11:37 AM
To: Ben Alke
Cc: Cochenour, Matt
Subject: RE: Donaldson, et al. v. State

Ben:

How about Tuesday or Wednesday? My apologies for not getting back to you sooner. Also, I wanted to let you know that as a result of staffing issues in this office because of a recent resignation by an attorney who is not counsel of record in this case, I personally was not aware this office had been approached to sign on to the Ninth Circuit amicus brief filed in *Sevcik* until after it was filed, and I did not learn that this office had actually signed on until two days ago. Thanks.

Mike

From: Ben Alke [<mailto:BAIke@Goetzlawfirm.com>]
Sent: Tuesday, February 04, 2014 10:26 AM
To: Black, Michael
Cc: Cochenour, Matt
Subject: RE: Donaldson, et al. v. State

Thanks Mike. Have you and Matt had a chance to discuss days next week to discuss discovery issues?

Ben

From: Black, Michael [<mailto:MBlack2@mt.gov>]
Sent: Friday, January 31, 2014 4:14 PM
To: Ben Alke
Cc: Karen Schultz; Cochenour, Matt; Holnbeck, Beverly
Subject: RE: Donaldson, et al. v. State

Ben:

Bennion, Jon

From: Black, Michael
Sent: Friday, February 07, 2014 2:13 PM
To: Ben Alke
Cc: Cochenour, Matt
Subject: RE: Donaldson, et al. v. State

Consider it scheduled. Thanks.

From: Ben Alke [<mailto:BAIke@Goetzlawfirm.com>]
Sent: Thursday, February 06, 2014 3:26 PM
To: Black, Michael
Cc: Cochenour, Matt
Subject: RE: Donaldson, et al. v. State

Wednesday would work. How about 2:00?

And thanks for the heads up.

Ben

From: Black, Michael [<mailto:MBlack2@mt.gov>]
Sent: Thursday, February 06, 2014 11:37 AM
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Cc: Cochenour, Matt
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Ben:

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From: VanDyke, Lawrence
Sent: Friday, January 10, 2014 7:45 AM
To: Ben Alke
Cc: JimT@aclumontana.org; Krystel Holden (krystelp@aclumontana.org); 'Borenstein, Ruth N.' (RBorenstein@mofo.com); splunkett@mofo.com; eregier@mofo.com; aruiz@mofo.com; Egill@aclunc.org; 'Karen Schultz'; Black, Michael; Cochenour, Matt
Subject: RE: Donaldson, et al. v. State

Ben – My apologies for the delay in responding to this letter. I have been very sick since Monday and today is my first day back in the office. We will review the letter and get back to you next week.

Thank you,

Lawrence VanDyke
Solicitor General ♦ Montana Department of Justice

215 N. Sanders ♦ P.O. Box 201401
Helena, Montana 59620
T: (406) 444-3442 ♦ F: (406) 444-3549
LVanDyke@mt.gov

From: Karen Schultz [<mailto:kschultz@Goetzlawfirm.com>]
Sent: Thursday, January 02, 2014 4:34 PM
To: Black, Michael; VanDyke, Lawrence; Cochenour, Matt
Cc: Ben Alke; JimT@aclumontana.org; Krystel Holden (krystelp@aclumontana.org); 'Borenstein, Ruth N.'

(RBorenstein@mofo.com); spunkett@mofo.com; eregier@mofo.com; aruiz@mofo.com; Egill@aclunc.org
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Bennion, Jon

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To: Ben Alke
Cc: 'Karen Schultz'; Cochenour, Matt; Holnbeck, Beverly
Subject: RE: Donaldson, et al. v. State
Attachments: 2014-01-31_Notice of Substitution of Counsel.pdf

Ben:

It is my understanding that you talked with Matt Cochenour about this matter earlier this week, and we appreciate your courtesies. I have attached a Notice of Substitution of this date. Please feel free to contact me (or Matt) if you have any questions or concerns. Thank you, and have a good weekend.

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Thank you,

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Cc: Ben Alke; JimT@aclumontana.org; Krystal Holden (krystelp@aclumontana.org); 'Borenstein, Ruth N.' (RBorenstein@mofo.com); splunkett@mofo.com; eregier@mofo.com; aruiz@mofo.com; Egill@aclunc.org
Subject: Donaldson, et al. v. State

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P. O. Box 6580
Bozeman, MT 59771-6580
Ph: (406) 587-0618
Fax: (406) 587-5144

/O=MONTANA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENT

From: VanDyke, Lawrence
Sent: Monday, January 27, 2014 10:47 AM
To: Black, Michael; Cochenour, Matt
Cc: Mattioli, Mark
Subject: RE: Donaldson, et al. v. State
Attachments: RE: Donaldson, et al. v. State

No – The only communication I had with Ben was the attached email, which you were copied on. That is it. I have not reviewed or addressed their discovery letter, nor communicated further about the requested meet-and-confer about experts, stipulations, etc.

From: Black, Michael
Sent: Monday, January 27, 2014 10:43 AM
To: VanDyke, Lawrence; Cochenour, Matt
Cc: Mattioli, Mark
Subject: RE: Donaldson, et al. v. State

The question is: what have you done? Did you take care of this?

From: VanDyke, Lawrence
Sent: Monday, January 27, 2014 10:39 AM
To: Black, Michael; Cochenour, Matt
Subject: RE: Donaldson, et al. v. State

This is something you need to discuss with Mark. I am not going to be involved with Donaldson going forward.

From: Black, Michael
Sent: Monday, January 27, 2014 10:28 AM
To: Cochenour, Matt; VanDyke, Lawrence
Subject: RE: Donaldson, et al. v. State

Lawrence:

I have not heard back from you regarding discovery issues in this case, so there is nothing outstanding for me to address in this regard. I assume you have resolved any outstanding issues with Plaintiffs' counsel.

Mike

From: Cochenour, Matt
Sent: Thursday, January 23, 2014 8:58 AM
To: VanDyke, Lawrence; Black, Michael
Subject: RE: Donaldson, et al. v. State

Hi Lawrence,

I had a phone message from Ben Alke regarding Donaldson. It wasn't a detailed message, but I assume he wants to discuss the meet/confer letter and amending complaint. He is in depositions today, but will call back tomorrow.

Thanks,

Matt

From: VanDyke, Lawrence
Sent: Friday, January 10, 2014 7:50 AM
To: Black, Michael
Cc: Cochenour, Matt
Subject: RE: Donaldson, et al. v. State

Thanks Mike. It would be very helpful for me to have yours and Matt's thoughts in developing a response. And I think it would be good for you to attend the meet and confer with me. Is there sometime next week that you and Matt can block out an hour or two to discuss the contents of the letter with me?

From: Black, Michael
Sent: Wednesday, January 08, 2014 10:10 AM
To: VanDyke, Lawrence
Cc: Cochenour, Matt
Subject: FW: Donaldson, et al. v. State

I will defer to you on this, as lead counsel on this case, regarding any response to Plaintiffs. I realize Mark and I assisted Matt with the discovery responses because you were out of the office, but I see no need to wade into this at this time. I believe Matt should be looking to you as well. Thanks.

From: Karen Schultz [<mailto:kschultz@Goetzlawfirm.com>]
Sent: Thursday, January 02, 2014 4:34 PM
To: Black, Michael; VanDyke, Lawrence; Cochenour, Matt
Cc: Ben Alke; JimT@aclumontana.org; Krystal Holden (krystelp@aclumontana.org); 'Borenstein, Ruth N.' (RBorenstein@mofo.com); splunkett@mofo.com; eregier@mofo.com; aruiz@mofo.com; Egill@aclunc.org
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Bennion, Jon

From: Cochenour, Matt
Sent: Monday, October 14, 2013 9:10 PM
To: VanDyke, Lawrence
Subject: RE: donaldson

Hi Lawrence - I know we talked about meeting Tuesday, but Wednesday or Thursday would be better. Does one of those days work better for you?
Matt

From: VanDyke, Lawrence
Sent: Wednesday, October 09, 2013 9:26 AM
To: Cochenour, Matt
Subject: RE: donaldson

That sounds great – thank you, Matt.

From: Cochenour, Matt
Sent: Wednesday, October 09, 2013 9:24 AM
To: VanDyke, Lawrence
Subject: RE: donaldson

Next week should be fine. I'm not sure that an extension is necessary at this point – I'll take a stab at the responses and we can talk about them next week. Good luck on your briefs.

From: VanDyke, Lawrence
Sent: Wednesday, October 09, 2013 9:21 AM
To: Cochenour, Matt
Subject: RE: donaldson

Thank you, Matt. Will you be able to take the lead in drafting responses? And if so, do you think we'll need an extension (I believe they are due Oct. 28)?

Let me know if you would like to discuss them. I'm working on two briefs that are due Monday (Stu is drafting one of them, but I'll need to work on it Friday and/or Monday), so it might be easiest for me if we talked Tuesday of next week, but we can talk sooner if it would help.

From: Cochenour, Matt
Sent: Tuesday, October 08, 2013 4:09 PM
To: VanDyke, Lawrence
Subject: donaldson

Hey Lawrence -- Just an fyi that I'm starting to look through the discovery requests and get familiar with some of the statutes at issue.

Matt

Bennion, Jon

From: VanDyke, Lawrence
Sent: Friday, January 10, 2014 7:45 AM
To: Ben Alke
Cc: JimT@aclumontana.org; Krystal Holden (krystelp@aclumontana.org); 'Borenstein, Ruth N.' (RBorenstein@mofo.com); splunkett@mofo.com; eregier@mofo.com; aruiz@mofo.com; Egill@aclunc.org; 'Karen Schultz'; Black, Michael; Cochenour, Matt
Subject: RE: Donaldson, et al. v. State

Ben – My apologies for the delay in responding to this letter. I have been very sick since Monday and today is my first day back in the office. We will review the letter and get back to you next week.

Thank you,

Lawrence VanDyke
Solicitor General • Montana Department of Justice

215 N. Sanders • P.O. Box 201401
Helena, Montana 59620
T: (406) 444-3442 • F: (406) 444-3549
LVanDyke@mt.gov

From: Karen Schultz [<mailto:kschultz@Goetzlawfirm.com>]
Sent: Thursday, January 02, 2014 4:34 PM
To: Black, Michael; VanDyke, Lawrence; Cochenour, Matt
Cc: Ben Alke; JimT@aclumontana.org; Krystal Holden (krystelp@aclumontana.org); 'Borenstein, Ruth N.' (RBorenstein@mofo.com); splunkett@mofo.com; eregier@mofo.com; aruiz@mofo.com; Egill@aclunc.org
Subject: Donaldson, et al. v. State

Please see the attached letter of today from Ben Alke. The letter was also mailed to you today.

Karen Schultz, Legal Assistant
Goetz, Baldwin & Geddes, P. C.
35 North Grand (zip code – 59715)
P. O. Box 6580
Bozeman, MT 59771-6580
Ph: (406) 587-0618
Fax: (406) 587-5144

Bennion, Jon

From: Black, Michael
Sent: Tuesday, September 24, 2013 8:05 AM
To: VanDyke, Lawrence
Cc: Mattioli, Mark; Cochenour, Matt
Subject: RE: Donaldson, et al. v. State

[REDACTED]

From: VanDyke, Lawrence
Sent: Monday, September 23, 2013 1:50 PM
To: Black, Michael
Subject: FW: Donaldson, et al. v. State

[REDACTED]

From: Karen Schultz [<mailto:kschultz@Goetzlawfirm.com>]
Sent: Monday, September 23, 2013 1:40 PM
To: VanDyke, Lawrence
Cc: Black, Michael
Subject: FW: Donaldson, et al. v. State

Mr. VanDyke:

I'm forwarding the message I emailed to Mike Black this morning, thinking you might be able to respond regarding this matter (see below).

Thank you,

Karen Schultz, Legal Assistant
Goetz, Baldwin & Geddes, P. C.
35 North Grand (zip code - 59715)
P. O. Box 6580
Bozeman, MT 59771-6580
Ph: (406) 587-0618
Fax: (406) 587-5144

From: Karen Schultz
Sent: Monday, September 23, 2013 9:39 AM
To: mblack2@mt.gov
Subject: Donaldson, et al. v. State

Dear Mr. Black:

Ben Alke is planning on participating in the scheduling conference on Monday, 9/30/13, at 10:30 a.m., by telephone. We are preparing a notice to the court today, and are wondering if you and/or Mr. VanDyke would like to participate by telephone.

Thank you,

Karen Schultz, Legal Assistant
Goetz, Baldwin & Geddes, P. C.
35 North Grand (zip code – 59715)
P. O. Box 6580
Bozeman, MT 59771-6580
Ph: (406) 587-0618
Fax: (406) 587-5144

Bennion, Jon

From: Ben Alke <BAIke@Goetzlawfirm.com>
Sent: Wednesday, February 12, 2014 10:14 AM
To: Black, Michael
Cc: Cochenour, Matt
Subject: RE: Donaldson, et al. v. State

Mike and Matt,

We'll see you today at 2:00. It'll be me, Jim Taylor (MT ACLU), and Stuart Plunkett (from the San Francisco office of Morrison Foerster).

Ben

From: Black, Michael [mailto:MBlack2@mt.gov]
Sent: Friday, February 07, 2014 2:13 PM
To: Ben Alke
Cc: Cochenour, Matt
Subject: RE: Donaldson, et al. v. State

Consider it scheduled. Thanks.

From: Ben Alke [mailto:BAIke@Goetzlawfirm.com]
Sent: Thursday, February 06, 2014 3:26 PM
To: Black, Michael
Cc: Cochenour, Matt
Subject: RE: Donaldson, et al. v. State

Wednesday would work. How about 2:00?

And thanks for the heads up.

Ben

From: Black, Michael [mailto:MBlack2@mt.gov]
Sent: Thursday, February 06, 2014 11:37 AM
To: Ben Alke
Cc: Cochenour, Matt
Subject: RE: Donaldson, et al. v. State

Ben:

How about Tuesday or Wednesday? My apologies for not getting back to you sooner. Also, I wanted to let you know that as a result of staffing issues in this office because of a recent resignation by an attorney who is not counsel of record in this case, I personally was not aware this office had been approached to sign on to the Ninth Circuit amicus brief filed in *Sevcik* until after it was filed, and I did not learn that this office had actually signed on until two days ago. Thanks.

Mike

From: Ben Alke [<mailto:BAIke@Goetzlawfirm.com>]
Sent: Tuesday, February 04, 2014 10:26 AM
To: Black, Michael
Cc: Cochenour, Matt
Subject: RE: Donaldson, et al. v. State

Thanks Mike. Have you and Matt had a chance to discuss days next week to discuss discovery issues?

Ben

From: Black, Michael [<mailto:MBlack2@mt.gov>]
Sent: Friday, January 31, 2014 4:14 PM
To: Ben Alke
Cc: Karen Schultz; Cochenour, Matt; Holnbeck, Beverly
Subject: RE: Donaldson, et al. v. State

Ben:

It is my understanding that you talked with Matt Cochenour about this matter earlier this week, and we appreciate your courtesies. I have attached a Notice of Substitution of this date. Please feel free to contact me (or Matt) if you have any questions or concerns. Thank you, and have a good weekend.

Michael G. Black
Bureau Chief
Civil Services Bureau
Montana Department of Justice
215 North Sanders
P.O. Box 201401
Helena, Montana 59620-1401
406-444-2026 telephone
406-444-3549 fax
mblack2@mt.gov

From: VanDyke, Lawrence
Sent: Friday, January 10, 2014 7:45 AM
To: Ben Alke
Cc: JimT@aclumontana.org; Krystel Holden (krystelp@aclumontana.org); 'Borenstein, Ruth N.' (RBorenstein@mofo.com); splunkett@mofo.com; eregier@mofo.com; aruiz@mofo.com; Egill@aclunc.org; 'Karen Schultz'; Black, Michael; Cochenour, Matt
Subject: RE: Donaldson, et al. v. State

Ben – My apologies for the delay in responding to this letter. I have been very sick since Monday and today is my first day back in the office. We will review the letter and get back to you next week.

Thank you,

Lawrence VanDyke
Solicitor General • Montana Department of Justice

215 N. Sanders ♦ P.O. Box 201401
Helena, Montana 59620
T: (406) 444-3442 ♦ F: (406) 444-3549
LVanDyke@mt.gov

From: Karen Schultz [<mailto:kschultz@Goetzlawfirm.com>]
Sent: Thursday, January 02, 2014 4:34 PM
To: Black, Michael; VanDyke, Lawrence; Cochenour, Matt
Cc: Ben Alke; JimT@aclumontana.org; Krystal Holden (krystelp@aclumontana.org); 'Borenstein, Ruth N.' (RBorenstein@mofo.com); splunkett@mofo.com; eregier@mofo.com; aruiz@mofo.com; Egill@aclunc.org
Subject: Donaldson, et al. v. State

Please see the attached letter of today from Ben Alke. The letter was also mailed to you today.

Karen Schultz, Legal Assistant
Goetz, Baldwin & Geddes, P. C.
35 North Grand (zip code – 59715)
P. O. Box 6580
Bozeman, MT 59771-6580
Ph: (406) 587-0618
Fax: (406) 587-5144

Bennion, Jon

From: Cochenour, Matt
Sent: Tuesday, November 19, 2013 9:01 AM
To: VanDyke, Lawrence
Subject: RE: Donaldson

[REDACTED]

From: VanDyke, Lawrence
Sent: Monday, November 18, 2013 10:22 AM
To: Cochenour, Matt
Subject: RE: Donaldson

[REDACTED]

From: Cochenour, Matt
Sent: Monday, November 18, 2013 8:50 AM
To: VanDyke, Lawrence
Subject: RE: Donaldson

[REDACTED]

From: VanDyke, Lawrence
Sent: Saturday, November 16, 2013 9:09 AM
To: Cochenour, Matt
Subject: Re: Donaldson

[REDACTED]

Sent from my iPhone

On Nov 15, 2013, at 5:51 PM, "Cochenour, Matt" <MCochenour2@mt.gov> wrote:

[REDACTED]

Bennion, Jon

From: VanDyke, Lawrence
Sent: Wednesday, October 09, 2013 9:26 AM
To: Cochenour, Matt
Subject: RE: donaldson

[REDACTED]

From: Cochenour, Matt
Sent: Wednesday, October 09, 2013 9:24 AM
To: VanDyke, Lawrence
Subject: RE: donaldson

[REDACTED]

From: VanDyke, Lawrence
Sent: Wednesday, October 09, 2013 9:21 AM
To: Cochenour, Matt
Subject: RE: donaldson

[REDACTED]

From: Cochenour, Matt
Sent: Tuesday, October 08, 2013 4:09 PM
To: VanDyke, Lawrence
Subject: donaldson

Bennion, Jon

From: VanDyke, Lawrence
Sent: Monday, September 30, 2013 9:26 AM
To: Black, Michael
Cc: Cochenour, Matt
Subject: RE: Donaldson

[REDACTED]

From: Black, Michael
Sent: Monday, September 30, 2013 8:49 AM
To: VanDyke, Lawrence
Cc: Cochenour, Matt
Subject: RE: Donaldson

[REDACTED]

From: VanDyke, Lawrence
Sent: Monday, September 30, 2013 8:18 AM
To: Black, Michael
Cc: Cochenour, Matt
Subject: Re: Donaldson

[REDACTED]

Sent from my iPhone

On Sep 30, 2013, at 8:07 AM, "Black, Michael" <MBlack2@mt.gov> wrote:

[REDACTED]

Bennion, Jon

From: Cochenour, Matt
Sent: Tuesday, November 26, 2013 3:21 PM
To: Black, Michael
Subject: RE: Donaldson discovery requests

[REDACTED]

From: Black, Michael
Sent: Tuesday, November 26, 2013 3:09 PM
To: Cochenour, Matt
Cc: VanDyke, Lawrence; Mattioli, Mark; Holnbeck, Beverly
Subject: RE: Donaldson discovery requests

[REDACTED]

From: Cochenour, Matt
Sent: Tuesday, November 26, 2013 11:36 AM
To: Black, Michael
Cc: VanDyke, Lawrence; Mattioli, Mark; Holnbeck, Beverly
Subject: Donaldson discovery requests

[REDACTED]

Bennion, Jon

From: Cochenour, Matt
Sent: Monday, December 02, 2013 1:19 PM
To: Black, Michael
Subject: RE: Donaldson discovery

[REDACTED]

From: Black, Michael
Sent: Monday, December 02, 2013 10:02 AM
To: Cochenour, Matt
Subject: FW: Donaldson discovery

[REDACTED]

From: VanDyke, Lawrence
Sent: Monday, December 02, 2013 9:59 AM
To: Cochenour, Matt
Cc: Mattioli, Mark; Black, Michael
Subject: RE: Donaldson discovery

[REDACTED]

From: Cochenour, Matt
Sent: Wednesday, November 27, 2013 2:34 PM
To: VanDyke, Lawrence
Cc: Mattioli, Mark; Black, Michael
Subject: Donaldson discovery

[REDACTED]

Matthew T. Cochenour
Assistant Attorney General
Montana Department of Justice
406-444-2026

This email and any attachments may contain confidential and privileged information from the Montana Attorney General's Office. The information is intended solely for the individual or entity named above. If you are not the intended

Bennion, Jon

From: Wollitz, Kimberly
Sent: Monday, December 02, 2013 3:45 PM
To: Cochenour, Matt
Subject: RE: donaldson folders

Matt--I didn't get anything other than below.

-----Original Message-----

From: Cochenour, Matt
Sent: Monday, December 02, 2013 3:43 PM
To: VanDyke, Lawrence; Holnbeck, Beverly; Black, Michael
Cc: Wollitz, Kimberly
Subject: RE: donaldson folders

From: VanDyke, Lawrence
Sent: Monday, December 02, 2013 3:14 PM
To: Holnbeck, Beverly; Black, Michael
Cc: Cochenour, Matt; Wollitz, Kimberly
Subject: RE: donaldson folders

Thanks Bev – I see that only the files from Mike's drive were moved over, so I went ahead and moved over the files and folders from Matt's drive too so that they are all consolidated in one place.

Matt – Do we have a hard copy of the signed discovery responses? If so, I like to have Kim pdf it and put it in the directory so we have access to it if we need it.

From: Holnbeck, Beverly
Sent: Monday, December 02, 2013 2:56 PM
To: Black, Michael
Cc: VanDyke, Lawrence
Subject: RE: donaldson folders

The Donaldson folder has been moved to LJV.

Bennion, Jon

From: VanDyke, Lawrence
Sent: Monday, December 02, 2013 9:56 AM
To: Cochenour, Matt
Cc: Black, Michael
Subject: RE: donaldson folders

Thank you, Matt. I agree it makes sense to consolidate. I don't have a preference where they are consolidated – either your directory or mine is fine.

From: Cochenour, Matt
Sent: Friday, November 29, 2013 10:28 AM
To: VanDyke, Lawrence; Black, Michael
Subject: donaldson folders

Lawrence and Mike,

The discovery responses that went out Wednesday are saved as a Word doc in my Donaldson folder – discovery. The attachments that went out are in discovery → exhibits → Bates stamped. It would probably be good to consolidate the Donaldson directory folders (it looks like everyone has their own w/ various docs in them) so that it is less confusing going forward.

Matt

Barnes, John

From: VanDyke, Lawrence
Sent: Friday, December 06, 2013 3:20 PM
To: Fox, Tim; Darkenwald, Scott; Mattioli, Mark; Bennion, Jon; Swanson, Cory; Barnes, John; Burton, Anastasia
Subject: FW: Case: DV-25-2013-0000509-DK - Robert Willems, etal. vs. Linda McCulloch, etal. - File Attached
Attachments: DHARTMAN.pdf

Here is the Willems decision Judge Menahan just issued in the State's favor. Monforton will presumably file or an expedited appeal tomorrow.

-----Original Message-----

From: Segrest, Stuart
Sent: Friday, December 06, 2013 2:58 PM
To: Jim Regnier (jregnier@centurytel.net) (jregnier@centurytel.net); Lamson, Joe (DNRC); Quintana, Jorge; Weiss, Rachel
Cc: VanDyke, Lawrence
Subject: FW: Case: DV-25-2013-0000509-DK - Robert Willems, etal. vs. Linda McCulloch, etal. - File Attached

The Court granted the State's motion for summary judgment. See attached.

-----Original Message-----

From: Hartman, Denise
Sent: Friday, December 06, 2013 2:47 PM
To: matthewmonforton@yahoo.com; Segrest, Stuart; VanDyke, Lawrence
Subject: Case: DV-25-2013-0000509-DK - Robert Willems, etal. vs. Linda McCulloch, etal. - File Attached

Mr. Monforton, Segrest and VanDyke,
Please find the attached Decision and Order on Cross-Motions for Summary Judgment issued today by Judge Mike Menahan.
Please feel free to contact me if you need assistance.
Denise Hartman
Judicial Assistant
406-447-8209

Barnes, John

From: VanDyke, Lawrence
Sent: Monday, March 25, 2013 3:54 PM
To: Fox, Tim; Barnes, John
Cc: Darkenwald, Scott; Mattioli, Mark; Bennion, Jon; Swanson, Cory
Subject: FW: Contraception Mandate Sign-on Letter: Update and Draft Press Release
Attachments: Contraception Mandate Letter DRAFT Press Release.docx; AGComment on New Proposal Regarding Contraception Mandate - SIGNED circulation draft 3-25 (2).pdf

Tim and John – Attached is a near-final draft of the HHS mandate letter Tim is joining (along with 11 other AGs). It will be filed tomorrow.

Also attached is a draft press release. I don't know if we want to do press on this or not, but I thought I should pass this along just in case.

From: Brasher, Andrew [<mailto:ABrasher@ago.state.al.us>]
Sent: Monday, March 25, 2013 3:30 PM
To: Chanay, Jeff; Britt Grant; VanDyke, Lawrence; Frederick Nelson; Adam Piper; Tom.Bates@oag.ok.gov; Carlos Muniz; Fred.Yarger@state.co.us; Spohn, Katie; Elbert Lin; Kane, Brian
Cc: Beth Ryan
Subject: Contraception Mandate Sign-on Letter: Update and Draft Press Release

All,

I will file the contraception mandate comment letter **tomorrow morning, March 26, 2013**. I will then send an email to this list with the as-filed version letting you know that it has been filed and giving you the green light to do any press that you may want to do.

To that end, I have attached two things to this email: (1) I have attached the final draft of comment letter. There are been a few minor changes since the last draft. The two biggest are that I have removed a sentence from the last paragraph, and I have changed the term "contraception mandate" to "HHS mandate" to better correspond with the public relations strategy of the Beckett Fund and the Alliance Defending Freedom. If you have any concerns about this final draft, please let me know as soon as possible. (2) I have also attached a draft press release that your respective teams can modify/add to however you would like.

Thank you,

Andrew Brasher
Deputy Solicitor General
Office of Alabama Attorney General Luther Strange
Direct: 334-353-2609
Fax: 334-242-4891

Barnes, John

From: VanDyke, Lawrence
Sent: Monday, September 23, 2013 11:05 AM
To: Fox, Tim; Mattioli, Mark
Cc: Darkenwald, Scott; Bennion, Jon; Swanson, Cory; Barnes, John
Subject: Amicus Join Request - ACA conscience cases
Attachments: Amicus Memo -- Conestoga v. Sebelius (U.S.); Amicus Memo in Sebelius v. Hobby Lobby (U.S.)

We have received dueling cert-stage amicus join requests related to the ACA contraception mandate litigation. You may recall that Hobby Lobby has been involved in litigation against the feds saying that Obamacare's contraception mandate, as applied to them (a for-profit religious employer), violates their religious rights protected under the Religious Freedom Restoration Act (RFRA). Hobby Lobby won in the 10th Circuit, and the feds are seeking cert. Conestoga Wood Specialties, another for-profit company owned by Mennonites, filed a similar suit, and *lost* in the 3rd Circuit. They too are seeking cert.

California is filing a states' amicus brief in support of the feds in the Hobby Lobby case. Michigan and Ohio are filing a states' amicus brief in support of Conestoga. They obviously take opposing positions in a clear cert-split. **I recommend that we join the Michigan/Ohio brief.** Our decision is due Friday, Oct. 18.

We should all be familiar with the arguments, since we talked about trying to file a Hobby Lobby-type challenge months ago. If you need a refresher, read Conestoga memo in the attached email. The only concerns I had initially was whether the arguments being made in the Conestoga case could be taken as inconsistent with our position(s) in the Hutterite litigation – specifically, if they might be making some sort of broad *Hosanna-Tabor* type argument. I called my friends in Michigan and was assured they are not – they will be focusing on the RFRA standard, which is far afield from our Hutterite case.

The only other angle that we should be aware of is that in all these cases, the feds are basically arguing that corporations should not have religious liberty rights. This is obviously somewhat akin to many Montanan's beloved "corporations are not people" argument. But, practically speaking, neither Hobby Lobby (which is a quintessential "religious" company) nor Conestoga (which is a closely held woodworking company owned by Mennonites) are the type of huge, impersonal corporations that the "corporations-aren't-people" crowd likes to villainize.

We'll have some time to review the actual draft brief before it is filed, which I will do to make sure there isn't anything that directly undercuts us in the Hutterite case or it otherwise objectionable.

Thanks,

Lawrence VanDyke
Solicitor General ♦ Montana Department of Justice

215 N. Sanders ♦ P.O. Box 201401
Helena, Montana 59620
T: (406) 444-3442 ♦ F: (406) 444-3549
LVanDyke@mt.gov

Barnes, John

From: VanDyke, Lawrence
Sent: Friday, August 23, 2013 10:03 AM
To: Fox, Tim; Mattioli, Mark; Bennion, Jon; Swanson, Cory; Barnes, John
Cc: Darkenwald, Scott
Subject: FW: 10-36094 Montana Shooting Sports Associ, et al v. Eric Holder, Jr. "Opinion Filed"
Attachments: MSSA 9th Cir Opinion.pdf

Tim et al.

The Ninth Circuit handed down its decision in the MSSA case this morning (this is Gary Marbut's case brought under the Montana Firearms Freedom Act asking for a declaratory judgment that federal firearms laws don't apply to guns wholly "made-in-Montana").

As expected, Marbut lost. The Ninth Circuit did reverse Judge Molloy's decision that Marbut didn't have standing—it held that his economic injury suffices for standing. But it held that under *Gonzales v. Raich* (SCOTUS marijuana case) and *United States v. Stewart* (9th Circuit homemade machine gun case), the federal commerce clause clearly allows federal regulations to reach "made in Montana" guns, even if they never travel in interstate commerce. The Ninth Circuit panel also ruled that the MFFA is preempted and invalid. Judge Bea dissented from that part of the ruling, saying that once the court correctly ruled that the federal firearms laws reached Marbut's planned guns, it didn't need to go farther and find the MFFA preempted.

None of this is surprising – Marbut's Ninth Circuit briefing acknowledged (and the panel agreed) that panel's "hands were tied" by *Stewart*, which is binding on Ninth Circuit panels.

But here is the important thing: It is pretty clear that Marbut et al. think this is a terrific vehicle for challenging *Wickard*, *Raich*, etc. in the SCOTUS, and they have quite a bit of support both in the state and outside of the state. Something like 10 other states have passed a similar law – all of which are "clouded" by the Ninth Circuit's preemption decision. There is likely to be huge pressure to seek cert on this decision (and maybe seek en banc review in the Ninth Circuit). We need to talk about what, if any, role we'll want to take.

From: ca9_ecfnoticing@ca9.uscourts.gov [mailto:ca9_ecfnoticing@ca9.uscourts.gov]
Sent: Friday, August 23, 2013 9:21 AM
To: VanDyke, Lawrence
Subject: 10-36094 Montana Shooting Sports Associ, et al v. Eric Holder, Jr. "Opinion Filed"

*****NOTE TO PUBLIC ACCESS USERS***** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing.

United States Court of Appeals for the Ninth Circuit

Notice of Docket Activity

The following transaction was entered on 08/23/2013 at 8:20:31 AM PDT and filed on 08/23/2013

Case Name: Montana Shooting Sports Associ, et al v. Eric Holder, Jr.

Case Number: 10-36094

Document(s): Document(s)

Docket Text:

FILED OPINION (A. WALLACE TASHIMA, RICHARD R. CLIFTON and CARLOS T. BEA) AFFIRMED.
Judge: AWT , Judge: RRC Authoring, Judge: CTB Concurring & dissenting. FILED AND ENTERED
JUDGMENT. [8753712] (PH)

Notice will be electronically mailed to:

Mr. Timothy Neal Baldwin, Attorney
Mr. John E. Bloomquist, Attorney
Ms. Sharon Louise Browne
Steve Bullock, Attorney General
Anthony T. Caso, Attorney
Matthew T. Cochenour, Assistant Attorney General
Mr. Nicholas Constantine Dranias, Attorney
Mr. Mark R. Freeman, Attorney
Honorable Donald W. Molloy, District Judge
Adam Pomeroy
Lary Alan Rappaport
Mr. Quentin M. Rhoades, Attorney
Mr. Mark L. Shurtleff, Attorney General
Herbert W. Titus
USDC, Missoula
Lawrence VanDyke, Solicitor
Ms. Abby Christine Wright, Attorney
Mr. Zachary Zipfel, Assistant Attorney General

Case participants listed below will not receive this electronic notice:

Jessica B. Leinwand
DOJ - U.S. DEPARTMENT OF JUSTICE
Federal Programs Branch
P.O. Box 883, Ben Franklin Station
Washington, DC 20044

The following document(s) are associated with this transaction:

Document Description: Opinion

Original Filename: 10-36094 docket.pdf

Electronic Document Stamp:

[STAMP acecfStamp_ID=1106763461 [Date=08/23/2013] [FileNumber=8753712-0]

[8d7777c8d306836598ee5b247742b0844c6d5db135c07133cec53d1825c251eaedbbb293ca25ca6e7a52349d18c
958fd67d2ac62d573e9fdfe86df6d5abc9b3e]]

Document Description: Post Judgment Form

Original Filename: PostJudgmentandBillofCosts.pdf

Electronic Document Stamp:

[STAMP acecfStamp_ID=1106763461 [Date=08/23/2013] [FileNumber=8753712-1]
[964f8b82c57d52b28ef4064b97150a8227cae4a5c754aed35fe1cd622bdfc6e85543192ddc55ae1170a2e1368996f
407665aaacc122464e3afa3c5b12bad5291]]

Barnes, John

From: VanDyke, Lawrence
Sent: Wednesday, September 11, 2013 3:22 PM
To: Fox, Tim; Mattioli, Mark; Bennion, Jon; Swanson, Cory; Barnes, John
Subject: FW: 13-35-237, MCA
Attachments: 130911 MGM to State.pdf

Tim et al. – See the attached letter. Matthew Monforton has sent a letter on behalf of the Montana Family Foundation asking whether we (and the Commissioner of Political Practices) intend to enforce a new law requiring all organizations that engage in issue advocacy to include a disclaimer that it is “funded by anonymous sources” – listener beware. Monforton is claiming the requirement is “likely unconstitutional.” Presumably this letter is a precursor to a lawsuit.

From: Matthew Monforton [<mailto:matthewmonforton@yahoo.com>]
Sent: Wednesday, September 11, 2013 2:37 PM
To: Black, Michael
Cc: VanDyke, Lawrence
Subject: 13-35-237, MCA

Mike:

Now that *Sanders County* is winding down, please find attached a preview of coming attractions.

Feel free to call.

Thanks

Matthew G. Monforton, Esq.
CA State Bar #175518, MT State Bar #5245
Monforton Law Offices, PLLC
32 Kelly Court
Bozeman, Montana 59718
Telephone: (406) 570-2949
Facsimile: (406) 551-6919

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Barnes, John

From: VanDyke, Lawrence
Sent: Thursday, September 12, 2013 11:34 AM
To: Fox, Tim; Mattioli, Mark
Cc: Bennion, Jon; Barnes, John; Swanson, Cory
Subject: FW: Amici Memo in Judd v. Libertarian Party of Va. (U.S.)
Attachments: AMICUS MEMO.docx

This is a short-fuse cert-stage amicus join request. Unless someone knows of a compelling Montana-specific reason we should join, I **recommend that we do NOT join this one**. Our decision is due this Monday, Sept. 16th, by 11 am.

Oklahoma is filing a brief in support of Virginia. Virginia, like 17 other states, has a law that petition circulators must be Virginia residents. (Any idea whether Montana is one of the 17 other states with a similar law?) The Fourth Circuit struck down the law as a violation of the First Amendment rights of the petition circulators. Oklahoma (and Virginia) is arguing that the residency requirement is narrowly tailored to address the problem of petition fraud.

I'm somewhat ambivalent as to whether Oklahoma is right. But more importantly, I'm not aware that this is a pressing issue in Montana; absent that, and given that this is cert-stage and out-of-circuit, I'm not sure it merits a join at this point even if they are right.

- Lawrence

From: Schweitzer, Dan [<mailto:DSCHWEITZER@NAAG.ORG>]
Sent: Thursday, September 12, 2013 11:10 AM
To:
Cc: Cara.Rodriguez@oag.ok.gov
Subject: Amici Memo in Judd v. Libertarian Party of Va. (U.S.)

To: Civil Amicus Contacts

Attached is an Amicus Memo describing the amicus brief Oklahoma is preparing in support of Virginia's cert petition in *Judd v. Libertarian Party of Virginia*, 13-321 (U.S.). The petition seeks review of a Fourth Circuit decision holding that Virginia's requirement that petition circulators be residents of the Commonwealth of Virginia is an unconstitutional infringement on the First Amendment rights of the petition circulators. The question presented is "[w]hether a state residency requirement is sufficiently narrowly tailored to the State's interests in protecting the integrity of the petition process and in policing the petition process against fraud that it survives scrutiny under the First and Fourteenth Amendments."

A draft of the brief will be circulated tomorrow; and the deadline for joining will be 12 noon CDT on September 16.

Dan Schweitzer
Supreme Court Counsel
National Association of Attorneys General
2030 M Street, NW, 8th Floor

Barnes, John

From: VanDyke, Lawrence
Sent: Tuesday, September 10, 2013 2:41 PM
To: Fox, Tim; Mattioli, Mark; Bennion, Jon; Swanson, Cory; Barnes, John
Cc: Darkenwald, Scott
Subject: FW: Amici merits brief in McCullen v. Coakley (U.S.)
Attachments: State amici brief - McCullen v. Coakley 9.10.13.docx

The US Supreme Court will hear a case this term considering whether a Massachusetts law creating a "buffer zone" around abortion clinics is constitutional. Michigan is asking us to join their merits-stage amicus brief arguing that Massachusetts' law is not constitutional. Michigan's brief acknowledges that all states have different speech "buffer zones" – for example, around polling places and for funerals – and argues that *those* buffer zones are constitutional, because they are viewpoint and content neutral. But the problem with Massachusetts' law, per Michigan, is that it is not content neutral – it allows employees and agents of abortion clinics to speak in the buffer zones, but no one else. This constitutes impermissible viewpoint discrimination.

Michigan's arguments sound right to me, and I am in favor of joining a SCOTUS amicus brief arguing that speech regulations (abortion-related or otherwise) must be viewpoint and content neutral. But I don't know what kind of "buffer zone" law(s) Montana has. If we have a law like Massachusetts, then I'm not sure it make sense for us to join Michigan's brief.

Does anyone know what kind of abortion clinic "buffer zone" laws Montana has, if any? If not, is there someone I could contact that would know?

Assuming Montana does not have a buffer-zone law like Massachusetts', I would be in favor of joining Michigan's brief. The deadline for making our join decision is COB this Friday.

Also FYI – there will likely be an opposing multi-state amicus brief *supporting* Massachusetts.

Thanks,

Lawrence

-----Original Message-----

From: Schweitzer, Dan [<mailto:DSCHWEITZER@NAAG.ORG>]
Sent: Tuesday, September 10, 2013 8:27 AM
To:
Subject: Amici merits brief in McCullen v. Coakley (U.S.)

To: Civil Amicus Contacts
From: John Bursch, Michigan Solicitor General

Attached is an amici merits brief that Michigan has prepared in support of the petitioners in McCullen v. Coakley, No. 12-1168, a First Amendment case the Supreme Court will hear this term involving speech-free buffer zones around abortion clinics.

The petition presents two questions:

1. Whether the First Circuit erred in upholding Massachusetts' selective exclusion law under the First and Fourteenth Amendments, on its face and as applied to petitioners.
2. If *Hill v. Colorado*, 530 U.S. 703 (2000), permits enforcement of this law, whether *Hill* should be limited or overruled.

The amici brief addresses only the first question presented and answers that question "yes." The brief explains that while every state has buffer zone statutes protecting certain events (like polling places during elections and funerals), those statutes are permissible because they are viewpoint neutral. The Massachusetts statute, in contrast, discriminates based on who is speaking, so that employees and agents of abortion clinics can speak within the buffer zone, but no one else can.

The amici brief is due for filing next Monday, September 16, and Michigan can accept sign-ons until 9 a.m. EDT that same day. The contact person for Michigan is:

Aaron Lindstrom
Michigan Assistant Solicitor General
G. Mennen Williams Building, 7th Floor
525 West Ottawa Street
P.O. Box 30212
Lansing, MI 48909
Office: (517) 241-0367
Fax: (517) 373-3042
lindstroma@michigan.gov

Barnes, John

From: VanDyke, Lawrence
Sent: Wednesday, February 05, 2014 1:17 PM
To: Fox, Tim; Mattioli, Mark
Cc: Darkenwald, Scott; Bennion, Jon; Barnes, John; Swanson, Cory
Subject: FW: Amicus Memo in Drake v. Jerejian (U.S.) - Second Amendment case
Attachments: Amicus Memo - Cert Stage.pdf; News release: Second Amendment Rights / DRAFT; RE: Update on Amicus Brief in Kachalsky v. Cacace, No. 12-845; Re: Amicus Memo in Kachalsky v. Cacaces (U.S.) -- Second Amendment case

Wyoming is asking us to join their multistate cert-stage SCOTUS amicus brief asking the Court to grant and overturn a Third Circuit decision upholding against a 2nd Amendment challenge a New Jersey law that only allows carrying of a handgun outside the home upon a showing of "justifiable need"—i.e., a showing of urgent necessity supported by a history of specific threats or previous attacks. This case is very similar to one in which we joined the cert-stage amicus brief almost a year ago challenging a similar New York law (the Court denied cert in that case). I've attached the draft press release and another email regarding the New York case, which shows our reasons for joining that one.

For the same reasons we joined the amicus brief in a very similar case a year ago, I recommend that we DO join this brief. The join deadline is first thing this next Monday morning, February 10th – so effectively COB this Friday.

From: Schweitzer, Dan [<mailto:DSCHWEITZER@NAAG.ORG>]
Sent: Wednesday, February 05, 2014 8:07 AM
To:
Cc: brittany.zielke@wyo.gov
Subject: Amicus Memo in Drake v. Jerejian (U.S.) - Second Amendment case

To: Civil Amicus Contacts

Attached is an Amicus Memo describing the amicus brief Wyoming is preparing in support of the cert petition filed in *Drake v. Jerejian*, 13-827 (U.S.). The petition seeks review of a Third Circuit decision that upheld against a Second Amendment challenge a New Jersey law that allows an individual to carry a handgun outside the home only if he shows a "justifiable need," which requires demonstration of urgent necessity evidenced by specific threats or previous attacks.

Dan Schweitzer
Supreme Court Counsel
National Association of Attorneys General
2030 M Street, NW, 8th Floor
Washington, DC 20036
(202) 326-6010
(202) 785-0410 - fax
dschweitzer@naag.org

Barnes, John

From: VanDyke, Lawrence
Sent: Monday, March 24, 2014 9:45 AM
To: Fox, Tim; Mattioli, Mark
Cc: Bennion, Jon; Swanson, Cory; Barnes, John
Subject: FW: Amicus Memo in Mount Soledad Memorial Association v. Trunk (U.S.) - Cert stage
Attachments: 2014 NAAG memo.pdf

Tim - Texas is asking us to join their cert-stage amicus brief supporting the Mount Soledad Memorial Association in asking the Court to grant cert. **I recommend that we DO JOIN this cert petition.** The deadline for joining is effectively Friday, April 4th.

This case involves the Ninth Circuit ruling that a cross veterans memorial near San Diego violates the Establishment Clause. After the Ninth Circuit issued that ruling some time ago, the parties sought cert and Montana joined a multi-state cert-stage amicus brief urging the Court to grant cert. There were still some unresolved issues in the case, though. The Court denied cert but Justice Alito issued an opinion stating that this case presents important and timely questions, but that it would be better reviewed after it had a final judgment. The case went back down to the district court, which, consistent with the Ninth Circuit decision, issued final judgment against the cross. The parties are now asking the Court to grant cert directly from the district court decision, since the prior Ninth Circuit decision makes appeal to the Ninth Circuit fruitless.

This case presents the same type of establishment clause questions presented in Town of Greece, Elmbrook School District, the earlier iteration of this case, and other cert-stage amicus briefs we've joined. So I recommend we join this one too.

Thanks.

-----Original Message-----

From: Schweitzer, Dan [<mailto:DSCHWEITZER@NAAG.ORG>]
Sent: Friday, March 21, 2014 8:04 AM
To:
Subject: Amicus Memo in Mount Soledad Memorial Association v. Trunk (U.S.) - Cert stage

To: Civil Amicus Contacts
From: Adam Aston, Principal Deputy Solicitor General, Texas

The Mount Soledad Memorial Association has filed a petition for writ of certiorari before judgment to the Ninth Circuit in Mount Soledad Memorial Association v. Trunk, et al., No. 13-1061, a case involving an Establishment Clause challenge to the inclusion of a cross in a veterans memorial that has stood for decades near San Diego, California. The States' amicus brief supporting this cert petition will argue that this case presents an appropriate vehicle for the Supreme Court to provide much-needed clarity to the Court's Establishment Clause jurisprudence.

The need for clarity in that jurisprudence is an issue upon which a large group of States have found agreement. Twenty-Nine States have joined one or more recent amicus briefs urging the Supreme Court to take up that question (*City of San Diego, et al. v. Trunk*, No. 11-998; *Elmbrook School District v. Doe*, No. 12-755; and *Town of Greece v. Galloway*, No. 12-696): Alabama, Alaska, Arizona, Arkansas, Colorado, Florida, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Montana, Nebraska, New Hampshire, New Mexico, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, West Virginia, and Wisconsin.

Dan Schweitzer
Supreme Court Counsel
National Association of Attorneys General
2030 M Street, NW, 8th Floor
Washington, DC 20036
(202) 326-6010
(202) 785-0410 - fax
dschweitzer@naag.org<mailto:dschweitzer@naag.org>

Barnes, John

From: VanDyke, Lawrence
Sent: Wednesday, August 28, 2013 11:59 AM
To: Fox, Tim; Mattioli, Mark
Cc: Bennion, Jon; Swanson, Cory; Barnes, John
Subject: FW: Amicus Memo in NRA v. ATF (U.S.)
Attachments: Amicus Memo - NRA v Bureau of ATFE -- 8-27.pdf

Tim and Mark – This is a short-fuse cert-stage amicus join request from Alabama in a Second Amendment case coming out of the Fifth Circuit. The case challenges federal laws that categorically deny 18-21 year olds the ability to buy handguns or handgun ammunition. The Fifth Circuit panel rejected the challenge, holding that (1) the laws do not implicate the Second Amendment, and (2) even if they do, they don't violate it. The NRA is the Petitioner in this case.

I think we should join this brief. I'm not sure I agree with the strategy of bringing this case to the SCOTUS, but I think we want to be on the record as on the side of gun rights (and the NRA). I think that a blanket ban on handgun ownership for all 18-21 year olds probably does violate the original meaning of the second amendment – I would expect that 18 year olds were part of the "militia."

Our deadline is quick – we need to decide by this Friday.

Thanks,

Lawrence

From: Schweitzer, Dan [mailto:DSCHWEITZER@NAAG.ORG]
Sent: Tuesday, August 27, 2013 1:02 PM
To: chris.coppin@cwagweb.org; paul.d.stern@maine.gov; dbahr@nd.gov; JMcIntosh@scag.gov; pam.murphy@doj.nh.gov; eric.tabor@iowa.gov; jknorr@attorneygeneral.gov; james.layton@ago.mo.gov; paula.bickett@azag.gov; charles.mcguigan@state.sd.us; RPartington@riag.ri.gov; crimago@saipan.com; barbara.underwood@ag.ny.gov; Hampton, Andrea; Schweitzer, Dan; sbluestone@nmag.gov; david.raupp@arkansasag.gov; gmorg@ago.state.ms.us; jlee@riag.ri.gov; attorney@samoatelco.com; stephan.finkel@lps.state.nj.us; Girard.D.Lau@hawaii.gov; stevemac@ku.edu; dennis.hansen@arkansasag.gov; basay@atg.state.vt.us; Mary.Williams@doj.state.or.us; gkelley@ncdoj.gov; alanc@atg.wa.gov; alama@nmag.gov; judy.zeprun@state.ma.us; joanne.grace@alaska.gov; jnotz@atg.state.il.us; Gregory.Dauria@ct.gov; anne.edwards@doj.nh.gov; tom.fisher@atg.in.gov; jwhite@ncdoj.gov; whowle@ag.nv.gov; Frances.Grunder@doj.ca.gov; mlanf@ago.state.ms.us; ken.rosenstein@alaska.gov; allison.martin@ag.ky.gov; hpizz@ago.state.ms.us; wellslk@doj.state.wi.us; Lee.Davidson@ksag.org; edavis@doj.vi.gov; donna.murasky@dc.gov; ssullivan@oag.state.md.us; jmaddrey@ncdoj.gov; dspence@oag.state.md.us; vlp@wvago.gov; debbie.mcveigh@wyo.gov; Steve.Creason@atg.in.gov; kguthrie@ago.state.al.us; andrea.silkowitz@dol.lps.state.nj.us; brian.kane@ag.idaho.gov; Richard.Dearing@ag.ny.gov; katie.spohn@nebraska.gov; rrussell@nmag.gov; mwood@ago.state.ms.us; restucciae@michigan.gov; wbrockman@oag.state.md.us; agesmith@scag.gov; susan.lee@doj.ca.gov; SG@atg.in.gov; todd.kim@dc.gov; delayne.deck@ag.idaho.gov; dan.domenico@state.co.us; mscodro@atg.state.il.us; heather.mcveigh@atg.in.gov; suzanne.gorman@doj.nh.gov; jbhoward@oag.state.md.us; potterkc@doj.state.wi.us; stjohnkm@doj.state.wi.us; ed.bedrosian@state.ma.us; john.garry@ag.state.mn.us; brooke.paup@texasattorneygeneral.gov; appeals@ohioattorneygeneral.gov; meanssp@doj.state.wi.us; Sherri.Wald@state.sd.us; adam.aston@texasattorneygeneral.gov; jhughes@atg.state.il.us; david.blake@state.co.us; Segrest, Stuart; susan.britton@ag.ky.gov; john.campbell@ksag.org; jung.kim@dol.lps.state.nj.us; dave.jones@alaska.gov; delberta.pfeifer@ksag.org; perry.zinn-rowthorn@ct.gov; mwebb@ago.state.ms.us; barb.fehrman@ag.state.mn.us; vbeavers@ag.nv.gov; bromano@utah.gov; kris.aillslienger@ksag.org; bob.fagan@msdh.state.ms.us; Eileen.carey@state.ma.us; sean.riley@ag.ky.gov; ashley.harwel@atg.in.gov; dGetchell@oag.state.va.us; anna.joyce@doj.state.or.us; marlene.brown@dol.lps.state.nj.us; peter.michael@wyo.gov;

diane.dewolf@myfloridalegal.com; jonathan.mitchell@oag.state.tx.us; mary.mertz@ohioattorneygeneral.gov; sforney@attorneygeneral.gov; npeterson@law.ga.gov; jneiman@ago.state.al.us; ariel.levinson-waldman@dc.gov; burschj@michigan.gov; Leesa.Thompson@oag.ok.gov; dowker@michigan.gov; frederick.nelson@ohioattorneygeneral.gov; patrick.wyrick@oag.ok.gov; bill.young@ag.tn.gov; Black, Michael; MBrady@oag.state.va.us; Sam Peterson; abrasher@ago.state.al.us; pamela.spang@state.ma.us; andy.oldham@texasattorneygeneral.gov; Jason.pleggenkuhle@ag.state.mn.us; michael.hendershot@ohioattorneygeneral.gov; robyn.bender@ag.ky.gov; laura-jane.weimer@state.co.us; james.adams@state.de.us; Aricka.seales@state.ma.us; wiltonp@ag.state.la.us; lindstroma@michigan.gov; VanDyke, Lawrence; allen.winsor@myfloridalegal.com; christopher.dodrill@wvago.gov; marmercado@justicia.pr.gov; elbert.lin@wvago.gov; Mary.McTaggart@state.de.us; Sarah.Greenwalt@oag.ok.gov; Michael.Franco@state.co.us

Cc: KTurner@ago.state.al.us

Subject: Amicus Memo in NRA v. ATF (U.S.)

To: Civil Amicus Contacts

Attached is an Amicus Memo describing the amicus brief Alabama is preparing in support of the cert petition filed in *National Rifle Association v. U.S. Bureau of Alcohol, Tobacco, Firearms, and Explosives*, 13-137 (U.S.). The petition seeks review of a Fifth Circuit decision holding that the Second Amendment is not violated by federal laws prohibiting adults under the age of 21 from purchasing handguns and handgun ammunition. The question presented is “[w]hether a nationwide, class-based, categorical ban on meaningful access to the quintessential means to exercise the right to keep and bear arms for self-defense can be reconciled with the Second Amendment, the equal protection guarantee, and this Court’s precedents.”

The turn-around time is very short. Alabama will be circulating a draft brief tomorrow; and the deadline for joining is this Friday. To join, you may contact:

John Neiman
Solicitor General
Office of Alabama Attorney General Luther Strange
501 Washington Avenue
Montgomery, AL 36130
(334) 353-2187
JNeiman@ago.state.al.us

Dan Schweitzer
Supreme Court Counsel
National Association of Attorneys General
2030 M Street, NW, 8th Floor
Washington, DC 20036
(202) 326-6010
(202) 785-0410 - fax
dschweitzer@naag.org

Barnes, John

From: VanDyke, Lawrence
Sent: Wednesday, August 21, 2013 4:53 PM
To: Huff, Andy
Cc: Mattioli, Mark; Swanson, Cory
Subject: FW: West Virginia Reciprocity

Andy – Our office received a call from the West Virginia AG’s office, asking if we would be willing to enter into a “reciprocity” agreement with WVa agreeing that both states would mutually recognize the other’s concealed carry permit. I explained that Montana does not technically have CWP “reciprocity” with other states—we simply evaluate whether we should recognize their license under our statutory guidelines, and whether we recognize theirs doesn’t turn on whether they recognize ours. Thus, we never enter into “reciprocity agreements” with other states.

Montana already recognizes West Virginia’s license, because they meet the statutory requirements. But West Virginia can only recognize Montana’s under two circumstances: (1) W. Virginia enters into a “reciprocity agreement” with us, or (2) Montana’s Governor notifies West Virginia’s AG that Montana recognizes West Virginia’s CWP. Since we don’t do reciprocity agreements, if we want Montana permit holders to be recognized in West Virginia, only the latter option is available to us.

I asked whether, since the Montana AG is the official statutorily empowered to determine which licenses from other states we recognize, the Montana AG could provide the “notice.” The answer is no, because WVa’s law is clear that only a state’s Governor can provide the requisite notice (see below).

So – would Governor Bullock be interested in providing written notice to West Virginia that Montana recognizes their concealed carry permit?

Feel free to give me a call if you have any questions.

Thanks,

Lawrence VanDyke
Solicitor General ♦ Montana Department of Justice

215 N. Sanders ♦ P.O. Box 201401
Helena, Montana 59620
T: (406) 444-3442 ♦ F: (406) 444-3549
LVanDyke@mt.gov

From: Valentino, William R [<mailto:William.R.Valentino@wv.gov>]
Sent: Tuesday, August 13, 2013 2:08 PM
To: VanDyke, Lawrence
Cc: 'richard.heath@wvago.gov'
Subject: West Virginia Reciprocity

Lawrence, thanks so much for speaking with me today about the potential for mutual concealed handgun license recognition between Montana and West Virginia.

As I stated, our amended reciprocity statute (W.Va. Code 61-7-4) no longer requires a comparative issuance-standards analysis. Rather, only the following is required, with sub (a)(4) setting forth alternate options to achieve reciprocity:

(a) A valid out-of-state permit or license to possess or carry a handgun is valid in this state for the carrying of a concealed handgun, if the following conditions are met:

- (1) The permit or license holder is twenty-one years of age or older;
- (2) The permit or license is in his or her immediate possession;
- (3) The permit or license holder is not a resident of the State of West Virginia; and
- (4) The Attorney General has been notified by the Governor of the other state that the other state allows residents of West Virginia who are licensed in West Virginia to carry a concealed handgun to carry a concealed handgun in that state or the Attorney General has entered into a written reciprocity agreement with the appropriate official of the other state whereby the state agrees to honor West Virginia concealed handgun licenses in return for same treatment in this state.

As we discussed, please pass this along to the appropriate person to determine whether either of these options creates the possibility of mutual recognition of our permits.

Thanks again, I appreciate any help you can provide.

Will Valentino
Assistant Attorney General
West Virginia Office of the Attorney General
(304) 558-2754

Barnes, John

From: VanDyke, Lawrence
Sent: Tuesday, September 10, 2013 4:34 PM
To: Fox, Tim; Mattioli, Mark; Bennion, Jon; Swanson, Cory; Barnes, John
Cc: Darkenwald, Scott
Subject: RE: Amici merits brief in McCullen v. Coakley (U.S.)

You raise a good point, although I think a lot of courts wouldn't dig that deep in content/viewpoint neutrality analysis. I think Massachusetts' law is viewpoint/content discriminatory on its face, while Montana's is not – certainly not anywhere to the same degree. So I think there is a real distinction between our laws.

As to your second point – I think it depends on all the circumstances. In some cases, we may not want to join if we have our own "problematic" law because it may undercut the other states' efforts (the media may focus on our supposed hypocrisy, and attribute that to all the joining states). In other cases, being accused of undercutting Montana's own law(s) might become such a big distraction or time-waster that it simply isn't worth the effort. So I think there is some balancing involved.

Here, I do think that Montana's law differs meaningfully from Massachusetts', so we would not be directly attacking our own law (although we have to recognize that we may be accused by the media of doing so). And I think that our joining might be particularly helpful to the cause because unlike most states, we have our own "buffer zone" law, albeit one that is more neutral on its face. That shows this isn't just an attack on buffer zones, but a more principled attack on a particularly non-neutral one.

From: Fox, Tim
Sent: Tuesday, September 10, 2013 4:13 PM
To: VanDyke, Lawrence; Mattioli, Mark; Bennion, Jon; Swanson, Cory; Barnes, John
Cc: Darkenwald, Scott
Subject: RE: Amici merits brief in McCullen v. Coakley (U.S.)

Thank you Lawrence. One thought occurred to me concerning your last comment ("In Montana, nobody can "counsel" someone in the buffer zone, so our law is viewpoint/content neutral."). Of course, an abortion clinic counselor only need walk in the door of the clinic to counsel someone, and would never need to counsel anyone outside. So, is Montana's law really viewpoint/content neutral when the reality is that only the pro-life people would be prohibited from counseling within the buffer zone because the pro-abortion people have no need to counsel in the buffer zone? This may be a minor distinction, but I thought I'd bring it up anyway.

Regardless of the subtle question I raise above about Montana's law, the decision on whether to join this amicus ultimately focuses on whether the Massachusetts law in question is, in our opinion, unconstitutional. That holds true regardless of whether Montana has a similar law that passes constitutional muster. Would you agree?

From: VanDyke, Lawrence
Sent: Tuesday, September 10, 2013 3:50 PM
To: Fox, Tim; Mattioli, Mark; Bennion, Jon; Swanson, Cory; Barnes, John
Cc: Darkenwald, Scott
Subject: RE: Amici merits brief in McCullen v. Coakley (U.S.)

Some more information about this: Montana is one of three states (together with Massachusetts and Colorado) that have "buffer zone" laws. See Mont. Code Ann. 45-8-110 (provided in its entirety below).

In some ways, Montana's law is stricter than Massachusetts': Massachusetts' has an 18 foot buffer zone around clinic entrances, and requires protestors to stay at least 6 feet from clinic workers and patients. Montana has a 36 foot buffer zone, and requires 8 feet of separation from anyone entering or leaving the facility.

But there are key differences between Montana's and Massachusetts' law, that go directly to the issue of content and viewpoint neutrality. Massachusetts' law applies to "reproductive health care facilities," whereas Montana's law applies more generally to "health care facilities." As Michigan's brief points out (see page 9), Massachusetts' limitation to abortion clinics alone raises content neutrality concerns right off the bat.

But the real content/viewpoint neutrality problem with Massachusetts' law is that it has a specific exceptions for "persons entering or leaving such facility" and "employees or agents of such facility acting within the scope of their employment." (See draft brief at page 10). Montana's law has neither of these exceptions. So for example, in Massachusetts an abortion clinic worker can "counsel" someone within the buffer zone (or a pro-choice person who the clinic allows to "enter" the clinic), but a pro-life protestor cannot. This raises serious viewpoint/content neutrality concerns. In Montana, nobody can "counsel" someone in the buffer zone, so our law is viewpoint/content neutral.

45-8-110. Obstructing health care facility access. (1) A person commits the offense of obstructing health care facility access if the person knowingly obstructs, hinders, or blocks another person's entry into or exit from a health care facility. Commission of the offense includes but is not limited to knowingly approaching within 8 feet of a person who is entering or leaving a health care facility to give the person written or oral information, to display a sign, or to protest, counsel, or educate about a health issue, when the person does not consent to that activity and is within 36 feet of an entrance to or exit from the health care facility.

(2) A person convicted under this section shall be fined an amount not to exceed \$100.

(3) For purposes of this section, "health care facility" means an office of a medical practitioner, as defined in 37-2-101, or any other facility or entity that is licensed, certified, or otherwise authorized by law to administer medical treatment in this state.

From: VanDyke, Lawrence
Sent: Tuesday, September 10, 2013 2:41 PM
To: Fox, Tim; Mattioli, Mark; Bennion, Jon; Swanson, Cory; Barnes, John
Cc: Darkenwald, Scott
Subject: FW: Amici merits brief in McCullen v. Coakley (U.S.)

The US Supreme Court will hear a case this term considering whether a Massachusetts law creating a "buffer zone" around abortion clinics is constitutional. Michigan is asking us to join their merits-stage amicus brief arguing that Massachusetts' law is not constitutional. Michigan's brief acknowledges that all states have different speech "buffer zones" – for example, around polling places and for funerals – and argues that *those* buffer zones are constitutional, because they are viewpoint and content neutral. But the problem with Massachusetts' law, per Michigan, is that it is not content neutral – it allows employees and agents of abortion clinics to speak in the buffer zones, but no one else. This constitutes impermissible viewpoint discrimination.

Michigan's arguments sound right to me, and I am in favor of joining a SCOTUS amicus brief arguing that speech regulations (abortion-related or otherwise) must be viewpoint and content neutral. But I don't know what kind of "buffer zone" law(s) Montana has. If we have a law like Massachusetts, then I'm not sure it make sense for us to join Michigan's brief.

Does anyone know what kind of abortion clinic "buffer zone" laws Montana has, if any? If not, is there someone I could contact that would know?

Assuming Montana does not have a buffer-zone law like Massachusetts', I would be in favor of joining Michigan's brief. The deadline for making our join decision is COB this Friday.

Also FYI – there will likely be an opposing multi-state amicus brief *supporting* Massachusetts.

Thanks,

Lawrence

-----Original Message-----

From: Schweitzer, Dan [<mailto:DSCHWEITZER@NAAG.ORG>]

Sent: Tuesday, September 10, 2013 8:27 AM

To:

Subject: Amici merits brief in McCullen v. Coakley (U.S.)

To: Civil Amicus Contacts

From: John Bursch, Michigan Solicitor General

Attached is an amici merits brief that Michigan has prepared in support of the petitioners in McCullen v. Coakley, No. 12-1168, a First Amendment case the Supreme Court will hear this term involving speech-free buffer zones around abortion clinics.

The petition presents two questions:

1. Whether the First Circuit erred in upholding Massachusetts' selective exclusion law under the First and Fourteenth Amendments, on its face and as applied to petitioners.
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Office: (517) 241-0367
Fax: (517) 373-3042
lindstroma@michigan.gov

Barnes, John

From: VanDyke, Lawrence
Sent: Wednesday, September 11, 2013 10:32 AM
To: Mattioli, Mark; Fox, Tim; Bennion, Jon; Swanson, Cory; Barnes, John
Cc: Darkenwald, Scott
Subject: RE: Amici merits brief in McCullen v. Coakley (U.S.)

I both agree and disagree with Mark. I think the "legal distinctions" I discuss below are the distinctions that legally matter in this case. Michigan's brief isn't saying that buffer zones per se are unconstitutional – to the contrary, they go out of their way to distinguish Colorado's. They are saying that Massachusetts' buffer zone is unconstitutional because it isn't viewpoint neutral, and the "legal distinctions" I point out below comprise all of the reasons they say it isn't viewpoint neutral. So as a legal matter, at least as relates to Michigan's points, there is a world of difference between Montana's law and Massachusetts'.

And I'm not particularly convinced by the argument that Montana's law isn't viewpoint neutral because abortion providers will be counseling clients on their own private property, not in the buffer zone. The abortion providers can do that because people are voluntarily entering their private property to be counseled. Pro-life folks could buy the building next door and invite folks to be voluntarily counseled on their private property. The question is who has a right to involuntarily counsel people in the buffer zone – and in Montana, nobody has that right. So the law is viewpoint neutral.

Moreover, as a practical matter no court is going to ultimately agree that Montana's law isn't viewpoint neutral because of Tim's argument because it would undercut the funeral buffer zone law. The same argument could be made there (the funeral speakers don't need to talk in the buffer zone because they were invited to the funeral).

So both as a practical matter, and even in principle, I think Montana's law is entirely legally distinguishable from Massachusetts'.

BUT, Mark is right that many folks, including probably our media, will miss the legal subtleties and simply note that Montana is one of the few other states that has a buffer zone law, so we must be attacking our own law by joining this brief. It could put Tim in the awkward position of defending Montana's buffer zone law to the media, which presumably is something Tim doesn't want to do.

I think that adding a paragraph to the brief distinguishing Montana's law would help a lot in that regard. I took the liberty of asking Michigan whether they would be open to that – they would. They would like our support for the reasons I laid out below – especially because having another buffer zone state join their brief would emphasize that this is not an attack on buffer zones per se, but only those that are viewpoint discriminatory.

Finally, I think we need to be careful not to overreact to those AGs who have refused to defend their marriage laws. The truth is that there are appropriate times to refuse to defend a statute because it violates the constitution (state or federal). Indeed, we are doing that right now. In the *Willems* case, Monforton has shown that the Redistricting Commission blatantly violated two different Montana statutes – which they did. But those two statutes are plainly unconstitutional, so not only are we not defending them, we are asking the Court to invalidate them. The question of when and how we decide not to defend a Montana statute because it is unconstitutional is complicated and challenging – but it is clear that there are legitimate times we may choose to uphold the Constitution (state or federal) instead of a statute.

Thankfully, though, that issue is not presented here.

From: Mattioli, Mark
Sent: Tuesday, September 10, 2013 5:41 PM
To: VanDyke, Lawrence; Fox, Tim; Bennion, Jon; Swanson, Cory; Barnes, John
Cc: Darkenwald, Scott
Subject: RE: Amici merits brief in McCullen v. Coakley (U.S.)

Although there are legal distinctions to make, as Lawrence points out, as a practical matter there's not a lot of difference between these laws because, as Tim points out, abortion providers aren't going to be counseling prospective clients in the buffer zone. Because the A.G. would be charged with defending Montana's statute if it were challenged, I recommend against joining this brief, which some will interpret as a willingness to forgo defending laws for moral or policy reasons.

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Regardless of the subtle question I raise above about Montana's law, the decision on whether to join this amicus ultimately focuses on whether the Massachusetts law in question is, in our opinion, unconstitutional. That holds true regardless of whether Montana has a similar law that passes constitutional muster. Would you agree?

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In some ways, Montana's law is stricter than Massachusetts': Massachusetts' has an 18 foot buffer zone around clinic entrances, and requires protestors to stay at least 6 feet from clinic workers and patients. Montana has a 36 foot buffer zone, and requires 8 feet of separation from anyone entering or leaving the facility.

But there are key differences between Montana's and Massachusetts' law, that go directly to the issue of content and viewpoint neutrality. Massachusetts' law applies to "reproductive health care facilities," whereas Montana's law applies more generally to "health care facilities." As Michigan's brief points out (see page 9), Massachusetts' limitation to abortion clinics alone raises content neutrality concerns right off the bat.

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Michigan's arguments sound right to me, and I am in favor of joining a SCOTUS amicus brief arguing that speech regulations (abortion-related or otherwise) must be viewpoint and content neutral. But I don't know what kind of "buffer zone" law(s) Montana has. If we have a law like Massachusetts, then I'm not sure it make sense for us to join Michigan's brief.

Does anyone know what kind of abortion clinic "buffer zone" laws Montana has, if any? If not, is there someone I could contact that would know?

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Attachments: State amici brief - McCullen v. Coakley 9.10.13.docx

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But the real content/viewpoint neutrality problem with Massachusetts' law is that it has a specific exceptions for "persons entering or leaving such facility" and "employees or agents of such facility acting within the scope of their employment." (See draft brief at page 10). Montana's law has neither of these exceptions. So for example, in Massachusetts an abortion clinic worker can "counsel" someone within the buffer zone (or a pro-choice person who the clinic allows to "enter" the clinic), but a pro-life protestor cannot. This raises serious viewpoint/content neutrality concerns. In Montana, nobody can "counsel" someone in the buffer zone, so our law is viewpoint/content neutral.

45-8-110. Obstructing health care facility access. (1) A person commits the offense of obstructing health care facility access if the person knowingly obstructs, hinders, or blocks another person's entry into or exit from a health care facility. Commission of the offense includes but is not limited to knowingly approaching within 8 feet of a person who is entering or leaving a health care facility to give the person written or oral information, to display a sign, or to protest, counsel, or

educate about a health issue, when the person does not consent to that activity and is within 36 feet of an entrance to or exit from the health care facility.

(2) A person convicted under this section shall be fined an amount not to exceed \$100.

(3) For purposes of this section, "health care facility" means an office of a medical practitioner, as defined in 37-2-101, or any other facility or entity that is licensed, certified, or otherwise authorized by law to administer medical treatment in this state.

From: VanDyke, Lawrence
Sent: Tuesday, September 10, 2013 2:41 PM
To: Fox, Tim; Mattioli, Mark; Bennion, Jon; Swanson, Cory; Barnes, John
Cc: Darkenwald, Scott
Subject: FW: Amici merits brief in McCullen v. Coakley (U.S.)

The US Supreme Court will hear a case this term considering whether a Massachusetts law creating a "buffer zone" around abortion clinics is constitutional. Michigan is asking us to join their merits-stage amicus brief arguing that Massachusetts' law is not constitutional. Michigan's brief acknowledges that all states have different speech "buffer zones" – for example, around polling places and for funerals – and argues that *those* buffer zones are constitutional, because they are viewpoint and content neutral. But the problem with Massachusetts' law, per Michigan, is that it is not content neutral – it allows employees and agents of abortion clinics to speak in the buffer zones, but no one else. This constitutes impermissible viewpoint discrimination.

Michigan's arguments sound right to me, and I am in favor of joining a SCOTUS amicus brief arguing that speech regulations (abortion-related or otherwise) must be viewpoint and content neutral. But I don't know what kind of "buffer zone" law(s) Montana has. If we have a law like Massachusetts, then I'm not sure it make sense for us to join Michigan's brief.

Does anyone know what kind of abortion clinic "buffer zone" laws Montana has, if any? If not, is there someone I could contact that would know?

Assuming Montana does not have a buffer-zone law like Massachusetts', I would be in favor of joining Michigan's brief. The deadline for making our join decision is COB this Friday.

Also FYI – there will likely be an opposing multi-state amicus brief *supporting* Massachusetts.

Thanks,

Lawrence

-----Original Message-----

From: Schweitzer, Dan [<mailto:DSCHWEITZER@NAAG.ORG>]
Sent: Tuesday, September 10, 2013 8:27 AM
To:
Subject: Amici merits brief in McCullen v. Coakley (U.S.)

To: Civil Amicus Contacts
From: John Bursch, Michigan Solicitor General

Attached is an amici merits brief that Michigan has prepared in support of the petitioners in McCullen v. Coakley, No. 12-1168, a First Amendment case the Supreme Court will hear this term involving speech-free buffer zones around abortion clinics.

The petition presents two questions:

1. Whether the First Circuit erred in upholding Massachusetts' selective exclusion law under the First and Fourteenth Amendments, on its face and as applied to petitioners.
2. If *Hill v. Colorado*, 530 U.S. 703 (2000), permits enforcement of this law, whether *Hill* should be limited or overruled.

The amici brief addresses only the first question presented and answers that question "yes." The brief explains that while every state has buffer zone statutes protecting certain events (like polling places during elections and funerals), those statutes are permissible because they are viewpoint neutral. The Massachusetts statute, in contrast, discriminates based on who is speaking, so that employees and agents of abortion clinics can speak within the buffer zone, but no one else can.

The amici brief is due for filing next Monday, September 16, and Michigan can accept sign-ons until 9 a.m. EDT that same day. The contact person for Michigan is:

Aaron Lindstrom
Michigan Assistant Solicitor General
G. Mennen Williams Building, 7th Floor
525 West Ottawa Street
P.O. Box 30212
Lansing, MI 48909
Office: (517) 241-0367
Fax: (517) 373-3042
lindstroma@michigan.gov

Barnes, John

From: Fox, Tim
Sent: Wednesday, September 11, 2013 1:03 PM
To: VanDyke, Lawrence
Cc: Mattioli, Mark; Bennion, Jon; Swanson, Cory; Barnes, John; Darkenwald, Scott
Subject: Re: Amici merits brief in McCullen v. Coakley (U.S.)

With the caveat that the amicus brief be revised to include language favorably distinguishing Montana's law, I agree that WE DO JOIN this brief. Thank you Mark and Lawrence.

Sent from my iPhone

On Sep 11, 2013, at 10:32 AM, "VanDyke, Lawrence" <LVanDyke@mt.gov> wrote:

I both agree and disagree with Mark. I think the "legal distinctions" I discuss below are the distinctions that legally matter in this case. Michigan's brief isn't saying that buffer zones per se are unconstitutional – to the contrary, they go out of their way to distinguish Colorado's. They are saying that Massachusetts' buffer zone is unconstitutional because it isn't viewpoint neutral, and the "legal distinctions" I point out below comprise all of the reasons they say it isn't viewpoint neutral. So as a legal matter, at least as relates to Michigan's points, there is a world of difference between Montana's law and Massachusetts'.

And I'm not particularly convinced by the argument that Montana's law isn't viewpoint neutral because abortion providers will be counseling clients on their own private property, not in the buffer zone. The abortion providers can do that because people are voluntarily entering their private property to be counseled. Pro-life folks could buy the building next door and invite folks to be voluntarily counseled on their private property. The question is who has a right to involuntarily counsel people in the buffer zone – and in Montana, nobody has that right. So the law is viewpoint neutral.

Moreover, as a practical matter no court is going to ultimately agree that Montana's law isn't viewpoint neutral because of Tim's argument because it would undercut the funeral buffer zone law. The same argument could be made there (the funeral speakers don't need to talk in the buffer zone because they were invited to the funeral).

So both as a practical matter, and even in principle, I think Montana's law is entirely legally distinguishable from Massachusetts'.

BUT, Mark is right that many folks, including probably our media, will miss the legal subtleties and simply note that Montana is one of the few other states that has a buffer zone law, so we must be attacking our own law by joining this brief. It could put Tim in the awkward position of defending Montana's buffer zone law to the media, which presumably is something Tim doesn't want to do.

I think that adding a paragraph to the brief distinguishing Montana's law would help a lot in that regard. I took the liberty of asking Michigan whether they would be open to that – they would. They would like our support for the reasons I laid out below – especially because having another buffer zone state join their brief would emphasize that this is not an attack on buffer zones per se, but only those that are viewpoint discriminatory.

Finally, I think we need to be careful not to overreact to those AGs who have refused to defend their marriage laws. The truth is that there are appropriate times to refuse to defend a statute because it violates the constitution (state or federal). Indeed, we are doing that right now. In the *Willems* case, Monforton has shown that the Redistricting Commission blatantly violated two different Montana statutes – which they did. But those two statutes are plainly unconstitutional, so not only are we not defending them, we are asking the Court to invalidate them. The question of when and how we decide not to defend a Montana statute because it is unconstitutional is complicated and challenging – but it is clear that there are legitimate times we may choose to uphold the Constitution (state or federal) instead of a statute.

Thankfully, though, that issue is not presented here.

From: Mattioli, Mark
Sent: Tuesday, September 10, 2013 5:41 PM
To: VanDyke, Lawrence; Fox, Tim; Bennion, Jon; Swanson, Cory; Barnes, John
Cc: Darkenwald, Scott
Subject: RE: Amici merits brief in McCullen v. Coakley (U.S.)

Although there are legal distinctions to make, as Lawrence points out, as a practical matter there's not a lot of difference between these laws because, as Tim points out, abortion providers aren't going to be counseling prospective clients in the buffer zone. Because the A.G. would be charged with defending Montana's statute if it were challenged, I recommend against joining this brief, which some will interpret as a willingness to forgo defending laws for moral or policy reasons.

If we decide to join, however, we should do so on the condition that the brief contrast the Massachusetts law with Montana's content-neutral law. The brief references the constitutionality of Colorado's law (page 9). The brief would be more effective if it contrasted the Massachusetts law with *both* the Colorado and Montana statutes. If Montana joined the brief, the reader may wonder why that argument is being advanced.

Mark

From: VanDyke, Lawrence
Sent: Tuesday, September 10, 2013 4:34 PM
To: Fox, Tim; Mattioli, Mark; Bennion, Jon; Swanson, Cory; Barnes, John
Cc: Darkenwald, Scott
Subject: RE: Amici merits brief in McCullen v. Coakley (U.S.)

You raise a good point, although I think a lot of courts wouldn't dig that deep in content/viewpoint neutrality analysis. I think Massachusetts' law is viewpoint/content discriminatory on its face, while Montana's is not – certainly not anywhere to the same degree. So I think there is a real distinction between our laws.

As to your second point – I think it depends on all the circumstances. In some cases, we may not want to join if we have our own "problematic" law because it may undercut the other states' efforts (the media may focus on our supposed hypocrisy, and attribute that to all the joining states). In other cases, being accused of undercutting Montana's own law(s) might become such a big distraction or time-waster that it simply isn't worth the effort. So I think there is some balancing involved.

Here, I do think that Montana's law differs meaningfully from Massachusetts', so we would not be directly attacking our own law (although we have to recognize that we may be accused by the media of doing so). And I think that our joining might be particularly helpful to the cause because unlike most

states, we have our own "buffer zone" law, albeit one that is more neutral on its face. That shows this isn't just an attack on buffer zones, but a more principled attack on a particularly non-neutral one.

From: Fox, Tim
Sent: Tuesday, September 10, 2013 4:13 PM
To: VanDyke, Lawrence; Mattioli, Mark; Bennion, Jon; Swanson, Cory; Barnes, John
Cc: Darkenwald, Scott
Subject: RE: Amici merits brief in McCullen v. Coakley (U.S.)

Thank you Lawrence. One thought occurred to me concerning your last comment ("In Montana, nobody can "counsel" someone in the buffer zone, so our law is viewpoint/content neutral."). Of course, an abortion clinic counselor only need walk in the door of the clinic to counsel someone, and would never need to counsel anyone outside. So, is Montana's law really viewpoint/content neutral when the reality is that only the pro-life people would be prohibited from counseling within the buffer zone because the pro-abortion people have no need to counsel in the buffer zone? This may be a minor distinction, but I thought I'd bring it up anyway.

Regardless of the subtle question I raise above about Montana's law, the decision on whether to join this amicus ultimately focuses on whether the Massachusetts law in question is, in our opinion, unconstitutional. That holds true regardless of whether Montana has a similar law that passes constitutional muster. Would you agree?

From: VanDyke, Lawrence
Sent: Tuesday, September 10, 2013 3:50 PM
To: Fox, Tim; Mattioli, Mark; Bennion, Jon; Swanson, Cory; Barnes, John
Cc: Darkenwald, Scott
Subject: RE: Amici merits brief in McCullen v. Coakley (U.S.)

Some more information about this: Montana is one of three states (together with Massachusetts and Colorado) that have "buffer zone" laws. See Mont. Code Ann. 45-8-110 (provided in its entirety below).

In some ways, Montana's law is stricter than Massachusetts': Massachusetts' has an 18 foot buffer zone around clinic entrances, and requires protestors to stay at least 6 feet from clinic workers and patients. Montana has a 36 foot buffer zone, and requires 8 feet of separation from anyone entering or leaving the facility.

But there are key differences between Montana's and Massachusetts' law, that go directly to the issue of content and viewpoint neutrality. Massachusetts' law applies to "reproductive health care facilities," whereas Montana's law applies more generally to "health care facilities." As Michigan's brief points out (see page 9), Massachusetts' limitation to abortion clinics alone raises content neutrality concerns right off the bat.

But the real content/viewpoint neutrality problem with Massachusetts' law is that it has a specific exceptions for "persons entering or leaving such facility" and "employees or agents of such facility acting within the scope of their employment." (See draft brief at page 10). Montana's law has neither of these exceptions. So for example, in Massachusetts an abortion clinic worker can "counsel" someone within the buffer zone (or a pro-choice person who the clinic allows to "enter" the clinic), but a pro-life protestor cannot. This raises serious viewpoint/content neutrality concerns. In Montana, nobody can "counsel" someone in the buffer zone, so our law is viewpoint/content neutral.

45-8-110. Obstructing health care facility access. (1) A person commits the offense of obstructing health care facility access if the person knowingly obstructs, hinders, or blocks another person's entry into or exit from a health care facility. Commission of the offense includes but is not limited to knowingly approaching within 8 feet of a person who is entering or leaving a health care facility to give the person written or oral information, to display a sign, or to protest, counsel, or educate about a health issue, when the person does not consent to that activity and is within 36 feet of an entrance to or exit from the health care facility.

(2) A person convicted under this section shall be fined an amount not to exceed \$100.

(3) For purposes of this section, "health care facility" means an office of a medical practitioner, as defined in 37-2-101, or any other facility or entity that is licensed, certified, or otherwise authorized by law to administer medical treatment in this state.

From: VanDyke, Lawrence

Sent: Tuesday, September 10, 2013 2:41 PM

To: Fox, Tim; Mattioli, Mark; Bennion, Jon; Swanson, Cory; Barnes, John

Cc: Darkenwald, Scott

Subject: FW: Amici merits brief in McCullen v. Coakley (U.S.)

The US Supreme Court will hear a case this term considering whether a Massachusetts law creating a "buffer zone" around abortion clinics is constitutional. Michigan is asking us to join their merits-stage amicus brief arguing that Massachusetts' law is not constitutional. Michigan's brief acknowledges that all states have different speech "buffer zones" – for example, around polling places and for funerals – and argues that *those* buffer zones are constitutional, because they are viewpoint and content neutral. But the problem with Massachusetts' law, per Michigan, is that it is not content neutral – it allows employees and agents of abortion clinics to speak in the buffer zones, but no one else. This constitutes impermissible viewpoint discrimination.

Michigan's arguments sound right to me, and I am in favor of joining a SCOTUS amicus brief arguing that speech regulations (abortion-related or otherwise) must be viewpoint and content neutral. But I don't know what kind of "buffer zone" law(s) Montana has. If we have a law like Massachusetts, then I'm not sure it make sense for us to join Michigan's brief.

Does anyone know what kind of abortion clinic "buffer zone" laws Montana has, if any? If not, is there someone I could contact that would know?

Assuming Montana does not have a buffer-zone law like Massachusetts', I would be in favor of joining Michigan's brief. The deadline for making our join decision is COB this Friday.

Also FYI – there will likely be an opposing multi-state amicus brief *supporting* Massachusetts.

Thanks,

Lawrence

-----Original Message-----

From: Schweitzer, Dan [<mailto:DSCHWEITZER@NAAG.ORG>]

Sent: Tuesday, September 10, 2013 8:27 AM

To:

Subject: Amici merits brief in McCullen v. Coakley (U.S.)

To: Civil Amicus Contacts
From: John Bursch, Michigan Solicitor General

Attached is an amici merits brief that Michigan has prepared in support of the petitioners in *McCullen v. Coakley*, No. 12-1168, a First Amendment case the Supreme Court will hear this term involving speech-free buffer zones around abortion clinics.

The petition presents two questions:

1. Whether the First Circuit erred in upholding Massachusetts' selective exclusion law under the First and Fourteenth Amendments, on its face and as applied to petitioners.
2. If *Hill v. Colorado*, 530 U.S. 703 (2000), permits enforcement of this law, whether *Hill* should be limited or overruled.

The amici brief addresses only the first question presented and answers that question "yes." The brief explains that while every state has buffer zone statutes protecting certain events (like polling places during elections and funerals), those statutes are permissible because they are viewpoint neutral. The Massachusetts statute, in contrast, discriminates based on who is speaking, so that employees and agents of abortion clinics can speak within the buffer zone, but no one else can.

The amici brief is due for filing next Monday, September 16, and Michigan can accept sign-ons until 9 a.m. EDT that same day. The contact person for Michigan is:

Aaron Lindstrom
Michigan Assistant Solicitor General
G. Mennen Williams Building, 7th Floor
525 West Ottawa Street
P.O. Box 30212
Lansing, MI 48909
Office: (517) 241-0367
Fax: (517) 373-3042
lindstroma@michigan.gov

Barnes, John

From: VanDyke, Lawrence
Sent: Thursday, August 29, 2013 1:33 PM
To: Fox, Tim
Cc: Mattioli, Mark; Bennion, Jon; Swanson, Cory; Barnes, John; Darkenwald, Scott
Subject: RE: Amicus Memo in NRA v. ATF (U.S.)

Another FYI – a total of 11 states have now joined: Georgia, Idaho, North Dakota, South Carolina, Utah, Alabama, Florida, Louisiana, Nebraska, New Mexico, and South Dakota.

Just a reminder – the deadline for joining is 8:30 am our time tomorrow (Friday) morning. So, practically speaking, if we do want to join, we probably need to let Alabama know by the end of the day today.

Thanks.

From: Mattioli, Mark
Sent: Thursday, August 29, 2013 7:51 AM
To: VanDyke, Lawrence
Cc: Fox, Tim; Bennion, Jon; Swanson, Cory; Barnes, John; Darkenwald, Scott
Subject: Re: Amicus Memo in NRA v. ATF (U.S.)

I didn't expect their rationale to be good but never expected it to be that bad.

Sent from my iPhone

On Aug 28, 2013, at 5:27 PM, "VanDyke, Lawrence" <LVanDyke@mt.gov> wrote:

The Fifth Circuit held the conduct at issue didn't fall within the scope of the 2nd Amendment because any "longstanding, presumptively lawful regulatory measure ... would likely fall outside the ambit of the Second Amendment" entirely. And "[i]n the view of at least some members of the founding generation, disarming select groups for the sake of public safety was compatible with the right to arms specifically and with the idea of liberty generally" – namely, slaves.

So I guess the court's argument was that we should be able to disarm 18-20 year olds now because they disarmed slaves at the founding? Incredible. I wonder that they didn't see the irony in that argument.

From: Mattioli, Mark
Sent: Wednesday, August 28, 2013 5:13 PM
To: VanDyke, Lawrence; Fox, Tim
Cc: Bennion, Jon; Swanson, Cory; Barnes, John; Darkenwald, Scott
Subject: RE: Amicus Memo in NRA v. ATF (U.S.)

Although many have pointed to social science research suggesting that younger adults are more impulsive because the brain is not completely formed until about age 25, I agree with Lawrence's comments and concur that we should join.

Lawrence, what was the basis for the Fifth Circuit's determination that the Second Amendment was not implicated?

Mark

From: VanDyke, Lawrence
Sent: Wednesday, August 28, 2013 2:35 PM
To: Fox, Tim
Cc: Mattioli, Mark; Bennion, Jon; Swanson, Cory; Barnes, John; Darkenwald, Scott
Subject: RE: Amicus Memo in NRA v. ATF (U.S.)

I can answer some of these:

(1) What do Montana's laws say about 18-21 year olds and guns or ammunition?

- I don't believe Montana has any such laws. Montana law ban carrying of a weapon by a child under the age of 14, unless accompanied by an adult. MCA 45-8-344

(2) What are the policy implications of either supporting or not supporting this amicus brief in light of the high-profile and tragic shooting incidents across the country in recent years?

- I'm not sure there are any *direct* policy implications. Montana and federal laws would still ban carrying of guns in schools, and most 18-21 year olds are out of high school in any event. As far as indirect policy implications – as is the case with most gun issues, I'm sure it depends on your starting assumptions. Folks that think that gun control works will conclude that loosening control here will lead to more gun violence. Folks that think gun control typically only affects otherwise law-abiding citizens will think that allowing 18-21 year olds to lawfully own handguns will likely not increase crime and violence, in schools or otherwise.

(3) What considerations are there in light of our potential for partnering with Superintendent Juneau on the school safety and active shooter training initiatives?

- I don't know about this one, since I haven't been involved with this at all. Jon – do you know?

(4) What media attention, good or bad, has this case generated since it was filed?

- John is going to do some searching today or tomorrow morning to see what, if any, major press this has received. Thanks John!

(5) Is this a matter that we should consult, with the Governor's office on before making a decision?

(Note: I would think not, but would be interested in other's views).

- I don't think we need to. Does anyone else think it would be prudent nonetheless?

I've attached the draft brief – which I like. It does point out that Montana law allows 18-20 year-olds to own guns. See n.2. Here is a line from the first page (key soaring rhetoric music):

Adults who are 18, 19, and 20 honorably defend our country when it is at war.
These same Americans should be able to defend themselves and their families when they are at home.

I got chills. (Okay, not really, but I wanted to.)

From: Fox, Tim
Sent: Wednesday, August 28, 2013 12:17 PM
To: VanDyke, Lawrence
Cc: Mattioli, Mark; Bennion, Jon; Swanson, Cory; Barnes, John; Darkenwald, Scott
Subject: Re: Amicus Memo in NRA v. ATF (U.S.)

Before I make a decision, can one or more of you address the following questions:

- (1) What do Montana's laws say about 18-21 year olds and guns or ammunition?
 - (2) What are the policy implications of either supporting or not supporting this amicus brief in light of the high-profile and tragic shooting incidents across the country in recent years?
 - (3) What considerations are there in light of our potential for partnering with Superintendent Juneau on the school safety and active shooter training initiatives?
 - (4) What media attention, good or bad, has this case generated since it was filed?
 - (5) Is this a matter that we should consult, with the Governor's office on before making a decision?
- (Note: I would think not, but would be interested in other's views).

Thank you.

Tim

Sent from my iPad

On Aug 28, 2013, at 11:58 AM, "VanDyke, Lawrence" <LVanDyke@mt.gov> wrote:

Tim and Mark – This is a short-fuse cert-stage amicus join request from Alabama in a Second Amendment case coming out of the Fifth Circuit. The case challenges federal laws that categorically deny 18-21 year olds the ability to buy handguns or handgun ammunition. The Fifth Circuit panel rejected the challenge, holding that (1) the laws do not implicate the Second Amendment, and (2) even if they do, they don't violate it. The NRA is the Petitioner in this case.

I think we should join this brief. I'm not sure I agree with the strategy of bringing this case to the SCOTUS, but I think we want to be on the record as on the side of gun rights (and the NRA). I think that a blanket ban on handgun ownership for all 18-21 year olds probably does violate the original meaning of the second amendment – I would expect that 18 year olds were part of the "militia."

Our deadline is quick – we need to decide by this Friday.

Thanks,

Lawrence

From: Schweitzer, Dan [<mailto:DSCHWEITZER@NAAG.ORG>]
Sent: Tuesday, August 27, 2013 1:02 PM
To: chris.coppin@cwagweb.org; paul.d.stern@maine.gov; dbahr@nd.gov; JMCIntosh@scaq.gov; pam.murphy@doj.nh.gov; eric.tabor@iowa.gov; jknorr@attorneygeneral.gov; james.layton@ago.mo.gov; paula.bickett@azag.gov; charles.mcquigan@state.sd.us; RPartington@riag.ri.gov; crimago@saipan.com; barbara.underwood@ag.ny.gov; Hampton, Andrea; Schweitzer, Dan; sbluestone@nmag.gov; david.raupp@arkansasag.gov; gmorg@ago.state.ms.us; jlee@riag.ri.gov; attorney@samoatelco.com; stephan.finkel@lps.state.nj.us; Girard.D.Lau@hawaii.gov; stevemac@ku.edu; dennis.hansen@arkansasag.gov; basay@atg.state.vt.us; Mary.Williams@doj.state.or.us; gkelley@ncdoj.gov; alanc@atg.wa.gov; alama@nmag.gov; judy.zeprun@state.ma.us; joanne.grace@alaska.gov; jnotz@atg.state.il.us; Gregory.Dauria@ct.gov; anne.edwards@doj.nh.gov; tom.fisher@atg.in.gov; jwhite@ncdoj.gov;

whowle@ag.nv.gov; Frances.Grunder@doj.ca.gov; mlanf@ago.state.ms.us;
ken.rosenstein@alaska.gov; allison.martin@ag.ky.gov; hpizz@ago.state.ms.us;
wellsk@doj.state.wi.us; Lee.Davidson@ksag.org; edavis@doj.vi.gov;
donna.murasky@dc.gov; ssullivan@oag.state.md.us; jmaddrey@ncdoj.gov;
dspence@oag.state.md.us; vlp@wvago.gov; debbie.mcveigh@wyo.gov;
Steve.Creason@atq.in.gov; kguthrie@ago.state.al.us;
andrea.silkowitz@dol.lps.state.nj.us; brian.kane@ag.idaho.gov;
Richard.Dearing@ag.ny.gov; katie.spohn@nebraska.gov; russell@nmag.gov;
mwood@ago.state.ms.us; restucciae@michigan.gov; wbrockman@oag.state.md.us;
agesmith@scaq.gov; susan.lee@doj.ca.gov; SG@atq.in.gov; todd.kim@dc.gov;
delayne.deck@ag.idaho.gov; dan.domenico@state.co.us; mscodro@atq.state.il.us;
heather.mcveigh@atq.in.gov; suzanne.gorman@doj.nh.gov; jbhoward@oag.state.md.us;
potterkc@doj.state.wi.us; stjohnkm@doj.state.wi.us; ed.bedrosian@state.ma.us;
john.garry@ag.state.mn.us; brooke.paup@texasattorneygeneral.gov;
appeals@ohioattorneygeneral.gov; meanssp@doj.state.wi.us; Sherri.Wald@state.sd.us;
adam.aston@texasattorneygeneral.gov; jhughes@atq.state.il.us;
david.blake@state.co.us; Segrest, Stuart; susan.britton@ag.ky.gov;
john.campbell@ksag.org; jung.kim@dol.lps.state.nj.us; dave.jones@alaska.gov;
delberta.pfeifer@ksag.org; perry.zinn-rowthorn@ct.gov; mwebb@ago.state.ms.us;
barb.fehrman@ag.state.mn.us; vbeavers@ag.nv.gov; bromano@utah.gov;
kris.ailsleger@ksag.org; bob.fagan@msdh.state.ms.us; Eileen.carey@state.ma.us;
sean.riley@ag.ky.gov; ashley.harwel@atq.in.gov; dGetchell@oag.state.va.us;
anna.joyce@doj.state.or.us; marlene.brown@dol.lps.state.nj.us; peter.michael@wyo.gov;
diane.dewolf@myfloridalegal.com; jonathan.mitchell@oag.state.tx.us;
mary.mertz@ohioattorneygeneral.gov; sforney@attorneygeneral.gov;
npeterson@law.ga.gov; jneiman@ago.state.al.us; ariel.levinson-waldman@dc.gov;
burschj@michigan.gov; Leesa.Thompson@oag.ok.gov; dowkerc@michigan.gov;
frederick.nelson@ohioattorneygeneral.gov; patrick.wyrick@oag.ok.gov;
bill.young@ag.tn.gov; Black, Michael; MBrady@oag.state.va.us; Sam Peterson;
abrasher@ago.state.al.us; pamela.spang@state.ma.us;
andy.oldham@texasattorneygeneral.gov; Jason.pleggenkuhle@ag.state.mn.us;
michael.hendershot@ohioattorneygeneral.gov; robyn.bender@ag.ky.gov; laura-
jane.weimer@state.co.us; james.adams@state.de.us; Aricka.seales@state.ma.us;
wiltonp@ag.state.la.us; lindstroma@michigan.gov; VanDyke, Lawrence;
allen.winsor@myfloridalegal.com; christopher.dodrill@wvago.gov;
marmercado@justicia.pr.gov; elbert.lin@wvago.gov; Mary.McTaggart@state.de.us;
Sarah.Greenwalt@oag.ok.gov; Michael.Franco@state.co.us

Cc: KTurner@ago.state.al.us

Subject: Amicus Memo in NRA v. ATF (U.S.)

To: Civil Amicus Contacts

Attached is an Amicus Memo describing the amicus brief Alabama is preparing in support of the cert petition filed in *National Rifle Association v. U.S. Bureau of Alcohol, Tobacco, Firearms, and Explosives*, 13-137 (U.S.). The petition seeks review of a Fifth Circuit decision holding that the Second Amendment is not violated by federal laws prohibiting adults under the age of 21 from purchasing handguns and handgun ammunition. The question presented is "[w]hether a nationwide, class-based, categorical ban on meaningful access to the quintessential means to exercise the right to keep and bear arms for self-defense can be reconciled with the Second Amendment, the equal protection guarantee, and this Court's precedents."

The turn-around time is very short. Alabama will be circulating a draft brief tomorrow; and the deadline for joining is this Friday. To join, you may contact:

John Neiman
Solicitor General
Office of Alabama Attorney General Luther Strange
501 Washington Avenue
Montgomery, AL 36130
(334) 353-2187
JNeiman@ago.state.al.us

Dan Schweitzer
Supreme Court Counsel
National Association of Attorneys General
2030 M Street, NW, 8th Floor
Washington, DC 20036
(202) 326-6010
(202) 785-0410 - fax
dschweitzer@naag.org

<Amicus Memo - NRA v Bureau of ATFE -- 8-27.pdf>

Barnes, John

From: VanDyke, Lawrence
Sent: Thursday, August 29, 2013 9:16 AM
To: Mattioli, Mark
Cc: Fox, Tim; Bennion, Jon; Swanson, Cory; Barnes, John; Darkenwald, Scott
Subject: RE: Amicus Memo in NRA v. ATF (U.S.)

FYI - Alabama, Florida, Louisiana, Nebraska, New Mexico, and South Dakota have all joined the brief.

The deadline is tomorrow. Thanks.

From: Mattioli, Mark
Sent: Thursday, August 29, 2013 7:51 AM
To: VanDyke, Lawrence
Cc: Fox, Tim; Bennion, Jon; Swanson, Cory; Barnes, John; Darkenwald, Scott
Subject: Re: Amicus Memo in NRA v. ATF (U.S.)

I didn't expect their rationale to be good but never expected it to be that bad.

Sent from my iPhone

On Aug 28, 2013, at 5:27 PM, "VanDyke, Lawrence" <LVanDyke@mt.gov> wrote:

The Fifth Circuit held the conduct at issue didn't fall within the scope of the 2nd Amendment because any "longstanding, presumptively lawful regulatory measure ... would likely fall outside the ambit of the Second Amendment" entirely. And "[i]n the view of at least some members of the founding generation, disarming select groups for the sake of public safety was compatible with the right to arms specifically and with the idea of liberty generally" – namely, slaves.

So I guess the court's argument was that we should be able to disarm 18-20 year olds now because they disarmed slaves at the founding? Incredible. I wonder that they didn't see the irony in that argument.

From: Mattioli, Mark
Sent: Wednesday, August 28, 2013 5:13 PM
To: VanDyke, Lawrence; Fox, Tim
Cc: Bennion, Jon; Swanson, Cory; Barnes, John; Darkenwald, Scott
Subject: RE: Amicus Memo in NRA v. ATF (U.S.)

Although many have pointed to social science research suggesting that younger adults are more impulsive because the brain is not completely formed until about age 25, I agree with Lawrence's comments and concur that we should join.

Lawrence, what was the basis for the Fifth Circuit's determination that the Second Amendment was not implicated?

Mark

From: VanDyke, Lawrence
Sent: Wednesday, August 28, 2013 2:35 PM
To: Fox, Tim
Cc: Mattioli, Mark; Bennion, Jon; Swanson, Cory; Barnes, John; Darkenwald, Scott
Subject: RE: Amicus Memo in NRA v. ATF (U.S.)

I can answer some of these:

- (1) What do Montana's laws say about 18-21 year olds and guns or ammunition?
- I don't believe Montana has any such laws. Montana law ban carrying of a weapon by a child under the age of 14, unless accompanied by an adult. MCA 45-8-344
- (2) What are the policy implications of either supporting or not supporting this amicus brief in light of the high-profile and tragic shooting incidents across the country in recent years?
- I'm not sure there are any *direct* policy implications. Montana and federal laws would still ban carrying of guns in schools, and most 18-21 year olds are out of high school in any event. As far as indirect policy implications – as is the case with most gun issues, I'm sure it depends on your starting assumptions. Folks that think that gun control works will conclude that loosening control here will lead to more gun violence. Folks that think gun control typically only affects otherwise law-abiding citizens will think that allowing 18-21 year olds to lawfully own handguns will likely not increase crime and violence, in schools or otherwise.
- (3) What considerations are there in light of our potential for partnering with Superintendent Juneau on the school safety and active shooter training initiatives?
- I don't know about this one, since I haven't been involved with this at all. Jon – do you know?
- (4) What media attention, good or bad, has this case generated since it was filed?
- John is going to do some searching today or tomorrow morning to see what, if any, major press this has received. Thanks John!
- (5) Is this a matter that we should consult, with the Governor's office on before making a decision?
(Note: I would think not, but would be interested in other's views).
- I don't think we need to. Does anyone else think it would be prudent nonetheless?

I've attached the draft brief – which I like. It does point out that Montana law allows 18-20 year-olds to own guns. See n.2. Here is a line from the first page (key soaring rhetoric music):

Adults who are 18, 19, and 20 honorably defend our country when it is at war.
These same Americans should be able to defend themselves and their families when they are at home.

I got chills. (Okay, not really, but I wanted to.)

From: Fox, Tim
Sent: Wednesday, August 28, 2013 12:17 PM
To: VanDyke, Lawrence
Cc: Mattioli, Mark; Bennion, Jon; Swanson, Cory; Barnes, John; Darkenwald, Scott
Subject: Re: Amicus Memo in NRA v. ATF (U.S.)

Before I make a decision, can one or more of you address the following questions:

- (1) What do Montana's laws say about 18-21 year olds and guns or ammunition?

- (2) What are the policy implications of either supporting or not supporting this amicus brief in light of the high-profile and tragic shooting incidents across the country in recent years?
 - (3) What considerations are there in light of our potential for partnering with Superintendent Juneau on the school safety and active shooter training initiatives?
 - (4) What media attention, good or bad, has this case generated since it was filed?
 - (5) Is this a matter that we should consult, with the Governor's office on before making a decision?
- (Note: I would think not, but would be interested in other's views).

Thank you.

Tim

Sent from my iPad

On Aug 28, 2013, at 11:58 AM, "VanDyke, Lawrence" <LVanDyke@mt.gov> wrote:

Tim and Mark – This is a short-fuse cert-stage amicus join request from Alabama in a Second Amendment case coming out of the Fifth Circuit. The case challenges federal laws that categorically deny 18-21 year olds the ability to buy handguns or handgun ammunition. The Fifth Circuit panel rejected the challenge, holding that (1) the laws do not implicate the Second Amendment, and (2) even if they do, they don't violate it. The NRA is the Petitioner in this case.

I think we should join this brief. I'm not sure I agree with the strategy of bringing this case to the SCOTUS, but I think we want to be on the record as on the side of gun rights (and the NRA). I think that a blanket ban on handgun ownership for all 18-21 year olds probably does violate the original meaning of the second amendment – I would expect that 18 year olds were part of the "militia."

Our deadline is quick – we need to decide by this Friday.

Thanks,

Lawrence

From: Schweitzer, Dan [<mailto:DSCHWEITZER@NAAG.ORG>]

Sent: Tuesday, August 27, 2013 1:02 PM

To: chris.coppin@cwagweb.org; paul.d.stern@maine.gov; dbahr@nd.gov; JMcIntosh@scag.gov; pam.murphy@doj.nh.gov; eric.tabor@iowa.gov; jknorr@attorneygeneral.gov; james.layton@ago.mo.gov; paula.bickett@azag.gov; charles.mcquigan@state.sd.us; RPartington@riag.ri.gov; crimago@saipan.com; barbara.underwood@ag.ny.gov; Hampton, Andrea; Schweitzer, Dan; sbluestone@nmag.gov; david.raupp@arkansasag.gov; gmorg@ago.state.ms.us; jlee@riag.ri.gov; attorney@samoatelco.com; stephan.finkel@lps.state.nj.us; Girard.D.Lau@hawaii.gov; stevemac@ku.edu; dennis.hansen@arkansasag.gov; basay@atg.state.vt.us; Mary.Williams@doj.state.or.us; gkelley@ncdoj.gov; alanc@atg.wa.gov; alama@nmag.gov; judy.zeprun@state.ma.us; joanne.grace@alaska.gov; jnotz@atg.state.il.us; Gregory.Dauria@ct.gov; anne.edwards@doj.nh.gov; tom.fisher@atg.in.gov; jwhite@ncdoj.gov; howle@ag.nv.gov; Frances.Grunder@doj.ca.gov; mianf@ago.state.ms.us; ken.rosenstein@alaska.gov; allison.martin@ag.ky.gov; hpizz@ago.state.ms.us; wellsik@doj.state.wi.us; Lee.Davidson@ksag.org; edavis@doj.vi.gov; donna.murasky@dc.gov; ssullivan@oag.state.md.us; jmaddrey@ncdoj.gov;

dspence@oag.state.md.us; vlp@wvago.gov; debbie.mcveigh@wyo.gov;
Steve.Creason@atg.in.gov; kguthrie@ago.state.al.us;
andrea.silkowitz@dol.lps.state.nj.us; brian.kane@ag.idaho.gov;
Richard.Dearing@ag.ny.gov; katie.spohn@nebraska.gov; rusSELL@nmag.gov;
mwood@ago.state.ms.us; restucciae@michigan.gov; wbrockman@oag.state.md.us;
agesmith@scag.gov; susan.lee@doj.ca.gov; SG@atg.in.gov; todd.kim@dc.gov;
delayne.deck@ag.idaho.gov; dan.domenico@state.co.us; mscodro@atg.state.il.us;
heather.mcveigh@atg.in.gov; suzanne.gorman@doj.nh.gov; jbhoward@oag.state.md.us;
potterkc@doj.state.wi.us; stjohnkm@doj.state.wi.us; ed.bedrosian@state.ma.us;
john.garry@ag.state.mn.us; brooke.paup@texasattorneygeneral.gov;
appeals@ohioattorneygeneral.gov; meanssp@doj.state.wi.us; Sherri.Wald@state.sd.us;
adam.aston@texasattorneygeneral.gov; jhughes@atg.state.il.us;
david.blake@state.co.us; Segrest, Stuart; susan.britton@ag.ky.gov;
john.campbell@ksag.org; jung.kim@dol.lps.state.nj.us; dave.jones@alaska.gov;
delberta.pfeifer@ksag.org; perry.zinn-rowthorn@ct.gov; mwebb@ago.state.ms.us;
barb.fehrman@ag.state.mn.us; ybeavers@ag.nv.gov; bromano@utah.gov;
kris.aillsieger@ksag.org; bob.fagan@msdh.state.ms.us; Eileen.carey@state.ma.us;
sean.riley@ag.ky.gov; ashley.harwel@atg.in.gov; dGetchell@oag.state.va.us;
anna.joyce@doj.state.or.us; marlene.brown@dol.lps.state.nj.us; peter.michael@wyo.gov;
diane.dewolf@myfloridalegal.com; jonathan.mitchell@oag.state.tx.us;
mary.mertz@ohioattorneygeneral.gov; sforney@attorneygeneral.gov;
npeterson@law.ga.gov; jneiman@ago.state.al.us; ariel.levinson-waldman@dc.gov;
burschj@michigan.gov; Leesa.Thompson@oag.ok.gov; dowkerc@michigan.gov;
frederick.nelson@ohioattorneygeneral.gov; patrick.wyrick@oag.ok.gov;
bill.young@ag.tn.gov; Black, Michael; MBrady@oag.state.va.us; Sam Peterson;
abrasher@ago.state.al.us; pamela.spang@state.ma.us;
andy.oldham@texasattorneygeneral.gov; Jason.pleggenkuhle@ag.state.mn.us;
michael.hendershot@ohioattorneygeneral.gov; robyn.bender@ag.ky.gov; laura-jane.weimer@state.co.us; james.adams@state.de.us; Aricka.seales@state.ma.us;
wiltonp@ag.state.la.us; lindstroma@michigan.gov; VanDyke, Lawrence;
allen.winsor@myfloridalegal.com; christopher.dodrigill@wvago.gov;
marmercado@justicia.pr.gov; elbert.lin@wvago.gov; Mary.McTaggart@state.de.us;
Sarah.Greenwalt@oag.ok.gov; Michael.Franco@state.co.us
Cc: KTurner@ago.state.al.us
Subject: Amicus Memo in NRA v. ATF (U.S.)

To: Civil Amicus Contacts

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Supreme Court Counsel
National Association of Attorneys General
2030 M Street, NW, 8th Floor
Washington, DC 20036
(202) 326-6010
(202) 785-0410 - fax
dschweitzer@naag.org

<Amicus Memo - NRA v Bureau of ATFE -- 8-27.pdf>

Barnes, John

From: VanDyke, Lawrence
Sent: Thursday, February 14, 2013 9:44 AM
To: Bennion, Jon; Darkenwald, Scott
Cc: Fox, Tim; Swanson, Cory; Barnes, John; Mattioli, Mark; James, Julie
Subject: RE: Parental notification for abortion: SupCo rule
Attachments: Comments on Proposed Rule-abortion_2-14-13.pdf

Attached is the final comment letter, signed by Tim. I'll be filing it shortly, and will circulate hard copies.

Jon - how many do you need?

Thanks!

-----Original Message-----

From: Bennion, Jon
Sent: Wednesday, February 13, 2013 7:52 PM
To: Darkenwald, Scott; VanDyke, Lawrence
Cc: Fox, Tim; Swanson, Cory; Barnes, John; Mattioli, Mark; James, Julie
Subject: RE: Parental notification for abortion: SupCo rule

Just reading the revised version now, and I think it's great. I can start circulating copies when they are ready. Thanks,

Jon

From: Darkenwald, Scott
Sent: Wednesday, February 13, 2013 6:52 PM
To: VanDyke, Lawrence
Cc: Fox, Tim; Bennion, Jon; Swanson, Cory; Barnes, John; Mattioli, Mark; James, Julie
Subject: Re: Parental notification for abortion: SupCo rule

Please print.

Scott Darkenwald
Chief of Staff/ Deputy Director
Department of Justice
406-444-2026
sdarkenwald@mt.gov

On Feb 13, 2013, at 5:09 PM, "VanDyke, Lawrence" <LVanDyke@mt.gov> wrote:

> Attached is a slightly revised draft.

>

> -----Original Message-----

> **From:** VanDyke, Lawrence

> **Sent:** Wednesday, February 13, 2013 1:16 PM

> **To:** Fox, Tim; Bennion, Jon; Swanson, Cory; Darkenwald, Scott; Barnes,

> John; Mattioli, Mark

> Subject: RE: Parental notification for abortion: SupCo rule

>

> All - Attached is a draft comment Tim could submit in response to the Supreme Court's proposed rule. Perhaps this is something we can discuss in our meeting this afternoon. If we want to submit a comment, I think it would be best to do so sooner rather than later.

>

> - Lawrence

>

> -----Original Message-----

> From: Fox, Tim

> Sent: Tuesday, February 12, 2013 4:30 PM

> To: Bennion, Jon; Swanson, Cory; Darkenwald, Scott; VanDyke, Lawrence;

> Barnes, John; Mattioli, Mark

> Subject: RE: Parental notification for abortion: SupCo rule

>

> While I'm not sure that I agree with Rep. Smith that the Supreme Court's proposed rules make the Act "null & void," I do have a concern with the default decision of the Supreme Court that the lower court's decision is overturned and an abortion is allowed if no written decision is issued within the allotted time. Such a procedure would not only allow the Supreme Court to avoid simply review, but it would fail to make the Supreme Court accountable to the people of Montana who voted for this law. Furthermore, such a provision would be an affront to the intent and purpose of the law. In most cases, if an appeal court fails to issue an decision, or fails to accept cert, the decision of the lower court is constructively upheld. That is the typical way things are done in the American system of jurisprudence. Conversely, if an appeal court determines that it must reverse or modify the decision of a lower court, it does so usually with a written decision that not only informs the parties to the matter what and why the decision was made, but also provides written precedent so that law-abiding citizens and lower courts can understand what would be expected of them going forward. The Supreme Court's proposed Rule (7) turns the process on its head in this case, and will fail to allow the citizens and courts of Montana to know what conduct and procedures are expected of them. Moreover, it is difficult, if not impossible, to hold our Supreme Court justices accountable for their decisions by the voters if they do not give reasons for them. The "Constructive Order" provision in Rule 7 must state the opposite to comply with Parental Notification law's intent and purpose, to provide guidance to the public and to the courts in the future when applying this law, to adhere to our system of precedential jurisprudence, and to hold our elected Supreme Court justices accountable to the public for their decisions. For that reason, the Rule should state as follows:

>

> (7) Constructive Order. If the supreme court fails to enter an order within 72 hours, including weekends and holidays, after the clerk of the supreme court receives the record on appeal, the clerk shall issue a certificate stating that (1) no order was entered within 72 hours, including weekends and holidays, after the appeal was docketed; and (2) the failure to enter the order constitutes a constructive order of the court affirming the decision of the lower court and adopting the findings of fact and the conclusions of law of that lower court.

>

> I also think that the Court should include a provision stating that any decision of the court shall be published with any information that might implicate privacy rights being redacted. The title of any such matter before the court should be similar to other matters involving minors - i.e., "In re (insert initials)." Finally, perhaps we should include a provision requiring notification of the appeal to the Attorney General's office, and giving the Attorney General the discretionary right of intervention to represent the interests of the State of Montana.

>

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>

> On a related note, when is the deadline for comment?

>

> Thank you.

>

> Tim

>

> -----Original Message-----

> From: Bennion, Jon

> Sent: Tuesday, February 12, 2013 3:48 PM

> To: Swanson, Cory; Fox, Tim; Darkenwald, Scott; VanDyke, Lawrence;

> Barnes, John; Mattioli, Mark

> Subject: FW: Parental notification for abortion: SupCo rule

>

> See attached

>

> -----Original Message-----

> From: cary smith [mailto:cary@bresnan.net]

> Sent: Tuesday, February 12, 2013 11:46 AM

> To: , Rep. Krayton Kerns; ART WITTICH ; Austin Knudsen; Bennion, Jon;

> Bowen Greenwood; David Howard; Essmann, Jeff; Gordy Vance; Jason S.

> Priest; Jason S. Priest; Jeff Laszloffy; Krayton Kerns; Kris Hansen;

> Mark W Blasdel; Peterson, Ken; Regier, Keith; Rep Knudsen; Tom

> McGillvray; Wagman, Pat; Walker, Edward

> Subject: Parental notification for abortion: SupCo rule

>

> All,

>

> Please take a look at the Supreme Court Rule for Parental notification for an abortion for a minor. It really makes the Legislative Referendum null & void.

> Any ideas?

>

> Representative Cary Smith

> House District 55

> Montana State House of Representatives Majority Whip Cell #

> 406-698-9307

>

> *committed to....preserving our Freedom & Liberty*

>

>

>

>

> --- the forwarded message follows --- <Parental Notice of Abortion

> Act Proposed Rule Comment.docx>

Barnes, John

From: VanDyke, Lawrence
Sent: Wednesday, February 13, 2013 1:16 PM
To: Fox, Tim; Bennion, Jon; Swanson, Cory; Darkenwald, Scott; Barnes, John; Mattioli, Mark
Subject: RE: Parental notification for abortion: SupCo rule
Attachments: Parental Notice of Abortion Act Proposed Rule Comment.docx; supreme court rule on judicial waiver.pdf

All - Attached is a draft comment Tim could submit in response to the Supreme Court's proposed rule. Perhaps this is something we can discuss in our meeting this afternoon. If we want to submit a comment, I think it would be best to do so sooner rather than later.

- Lawrence

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Sent: Tuesday, February 12, 2013 4:30 PM
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Subject: RE: Parental notification for abortion: SupCo rule

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Tim

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Subject: Parental notification for abortion: SupCo rule

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Representative Cary Smith

House District 55

Montana State House of Representatives

Majority Whip

Cell # 406-698-9307

committed to....preserving our Freedom & Liberty

--- the forwarded message follows ---

Barnes, John

From: VanDyke, Lawrence
Sent: Wednesday, May 08, 2013 1:30 PM
To: Bennion, Jon; Darkenwald, Scott
Cc: Fox, Tim; Swanson, Cory; Barnes, John; Mattioli, Mark; James, Julie
Subject: RE: Parental notification for abortion: SupCo rule
Attachments: AF 07-0016 Comments-Request -- Order.pdf; Comments on Proposed Rule-abortion_2-14-13.pdf

All - The Montana Supreme Court today issued another order (attached) with proposed rules on the parental consent/notification law.

You will recall that we provided a comment (attached) on the "constructive order" part of the then-proposed rule that automatically reversed the youth court in the event the Supreme Court failed to act. Our comment was followed by other similar comments. The new proposed rules appear to have removed the "constructive order" provision.

- Lawrence

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From: VanDyke, Lawrence
Sent: Thursday, February 14, 2013 9:44 AM
To: Bennion, Jon; Darkenwald, Scott
Cc: Fox, Tim; Swanson, Cory; Barnes, John; Mattioli, Mark; James, Julie
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Scott Darkenwald
Chief of Staff/ Deputy Director
Department of Justice
406-444-2026
sdarkenwald@mt.gov

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> Sent: Tuesday, February 12, 2013 4:30 PM

> To: Bennion, Jon; Swanson, Cory; Darkenwald, Scott; VanDyke, Lawrence;

> Barnes, John; Mattioli, Mark

> Subject: RE: Parental notification for abortion: SupCo rule

>

> While I'm not sure that I agree with Rep. Smith that the Supreme Court's proposed rules make the Act "null & void," I do have a concern with the default decision of the Supreme Court that the lower court's decision is overturned and an abortion is allowed if no written decision is issued within the allotted time. Such a procedure would not only allow the Supreme Court to avoid simply review, but it would fail to make the Supreme Court accountable to the people of Montana who voted for this law. Furthermore, such a provision would be an affront to the intent and purpose of the law. In most cases, if an appeal court fails to issue an decision, or fails to accept cert, the decision of the lower court is constructively upheld. That is the typical way things are done in the American system of jurisprudence. Conversely, if an appeal court determines that it must reverse or modify the decision of a lower court, it does so usually with a written decision that not only informs the parties to the matter what and why the decision was made, but also provides written precedent so that law-abiding citizens and lower courts can understand what would be expected of them going forward. The Supreme Court's proposed Rule (7) turns the process on its head in this case, and will fail to allow the citizens and courts of Montana to know what conduct and procedures are expected of them. Moreover, it is difficult, if not impossible, to hold our Supreme Court justices accountable for their decisions by the voters if they do not give reasons for them. The "Constructive Order" provision in Rule 7 must state the opposite to comply with Parental Notification law's intent and purpose, to provide guidance to the public and to the courts in the future when applying this law, to adhere to our system of precedential jurisprudence, and to hold our elected Supreme Court justices accountable to the public for their decisions. For that reason, the Rule should state as follows:

>

> (7) Constructive Order. If the supreme court fails to enter an order within 72 hours, including weekends and holidays, after the clerk of the supreme court receives the record on appeal, the clerk shall issue a certificate stating that (1) no order was entered within 72 hours, including weekends and holidays, after the appeal was docketed; and (2) the failure to enter the order constitutes a constructive order of the court affirming the decision of the lower court and adopting the findings of fact and the conclusions of law of that lower court.

>

> I also think that the Court should include a provision stating that any decision of the court shall be published with any information that might implicate privacy rights being redacted. The title of any such matter before the court should be similar to other matters involving minors - i.e., "In re (insert initials)." Finally, perhaps we should include a provision requiring notification of the appeal to the Attorney General's office, and giving the Attorney General the discretionary right of intervention to represent the interests of the State of Montana.

>

> I believe that I need to have someone draft a strongly worded comment to the proposed rules for my signature to point out the failings of Rule 7 and another issues that we see with the other rules. Mark, please assign this to someone in your shop, preferably Cory, Lawrence, or Jon.

>

> On a related note, when is the deadline for comment?

>

> Thank you.

>

> Tim

>

> -----Original Message-----

> From: Bennion, Jon

> Sent: Tuesday, February 12, 2013 3:48 PM

> To: Swanson, Cory; Fox, Tim; Darkenwald, Scott; VanDyke, Lawrence;

> Barnes, John; Mattioli, Mark

> Subject: FW: Parental notification for abortion: SupCo rule

>

> See attached

>

> -----Original Message-----

> From: cary smith [mailto:cary@bresnan.net]

> Sent: Tuesday, February 12, 2013 11:46 AM

> To: , Rep. Krayton Kerns; ART WITTICH ; Austin Knudsen; Bennion, Jon;

> Bowen Greenwood; David Howard; Essmann, Jeff; Gordy Vance; Jason S.

> Priest; Jason S. Priest; Jeff Laszloffy; Krayton Kerns; Kris Hansen;

> Mark W Blasdel; Peterson, Ken; Regier, Keith; Rep Knudsen; Tom

> McGillvray; Wagman, Pat; Walker, Edward

> Subject: Parental notification for abortion: SupCo rule

>

> All,

>

> Please take a look at the Supreme Court Rule for Parental notification for an abortion for a minor. It really makes the Legislative Referendum null & void.

> Any ideas?

>

> Representative Cary Smith

> House District 55

> Montana State House of Representatives Majority Whip Cell #

> 406-698-9307

>

> *committed to....preserving our Freedom & Liberty*
>
>
>
>
> --- the forwarded message follows --- <Parental Notice of Abortion
> Act Proposed Rule Comment.docx>

Barnes, John

From: VanDyke, Lawrence
Sent: Wednesday, October 09, 2013 5:08 PM
To: Swanson, Cory; Mattioli, Mark; Bennion, Jon
Cc: Fox, Tim; Darkenwald, Scott
Subject: RE: Sanders County -- Recommendation re Petition for Cert.

Thank you, Mark. I generally agree with Cory. I think it would be helpful for us to think about the actual purpose of this meeting, and how that might affect who should attend.

1. The meeting could be to discuss whether the 9th Circuit was right or wrong. As best I can recall, though, everyone on this email except for Scott has told me that they agree that the 9th Circuit got the decision right, and that as a matter of first principles the law is unconstitutional. And their view on that seems pretty fixed. I'm not sure what Mike thinks – I suppose he may think the 9th Circuit was wrong. Assuming he does, I guess the purpose of the meeting might be for Mike to convince all of us that we are wrong? But I don't think Mike is going to change our minds—and more importantly, I don't expect that Mark or Tim thinks Mike is going to change our minds—so I have my doubts that the purpose of this meeting is really about the merits of the 9th Circuit decision, one way or the other. But if that is the reason for this meeting, it would be good to know that going in.
2. The meeting could be about the odds of cert being granted, etc. But I think that everyone (including Mike) agrees that the odds of cert being granted in this case are very low. So it doesn't make sense that we need to meet about something we all already have consensus on.
3. The meeting could be about how the Court will rule if cert is granted. But if there is basically no chance of a cert grant, who cares? And I'm pretty sure there is pretty much already something close to unanimity (including maybe even Mike) that in the unlikely chance that cert was granted, we would lose in the Supreme Court. So I'm not sure we need to meet to discuss that.
4. The meeting could be about whether political and practical realities dictate that we should file for cert notwithstanding that we agree with the loss, cert will likely not be granted, and even if it was we would just lose again. **Now this is something I could see would benefit from a meeting.** But if that is the primary purpose of the meeting, then I am wondering why this meeting would include people outside Tim's inner circle. That sounds like precisely the type of frank discussion Tim would want to have with just his political confidants. My thought is that having someone at this latter type of meeting who does not broadly share Tim's views would (a) dampen the discussion between those of us that do, and (b) risk leakage (this is not a slight on Mike – I would think this would be concern with most non-exempt staff).

Those are just my thoughts, and I certainly could be missing other reasons we should have a broader meeting. Thanks.

From: Swanson, Cory
Sent: Wednesday, October 09, 2013 1:54 PM
To: Mattioli, Mark; VanDyke, Lawrence; Bennion, Jon
Cc: Fox, Tim; Darkenwald, Scott
Subject: RE: Sanders County -- Recommendation re Petition for Cert.

I have reviewed it. But I am presently packing up to depart, so it is unlikely I will have a chance to participate in the deliberations. My recommendation is as follows:

- The determination that should decide this question is whether we (specifically Tim Fox) continue to believe this ruling is incorrect. If we believe it is incorrect and the law should be defended, then we should seek cert.
- However, my sense of everyone's opinion is that we actually believe the court got it right, and that the prohibition on endorsements is a violation of the First Amendment. If that is the case, then we should not seek cert. Our duty to uphold the First Amendment and the freedoms that it protects is much higher than our duty to defend an un-Constitutional law.
- The so-called expectation from the bench or other observers that we should continue to fight is a secondary criteria. If we feel we need to demonstrate our efforts to uphold an unbiased judiciary, then we have done so. We have done our duty to defend this law. We should be willing to make the right call and risk a little disapproval from folks who probably don't like us anyway. My own opinion is that if we truly want to seek an unbiased judiciary, there are many more substantive reforms that should be undertaken well beyond whether a political party can endorse a judge or candidate.
- We also need to balance the risk that if we seek cert., the other side could also seek cert. on the contributions issue. If one is granted, the other will be, and given the current view of the Court on these issues, it is possible the Supreme Court could strike down the contributions ban, as well.

I have had very little exposure to this case and the underlying issues. Therefore, my opinion should not be taken as anything more than a gut reaction after a quick review. I defer to the experts.

Cory J. Swanson
Deputy Attorney General
Montana Department of Justice
Ph: 406-444-5774

From: Mattioli, Mark
Sent: Wednesday, October 09, 2013 11:36 AM
To: VanDyke, Lawrence; Bennion, Jon; Swanson, Cory
Cc: Fox, Tim; Darkenwald, Scott
Subject: FW: Sanders County -- Recommendation re Petition for Cert.

Here's Mike Black's recommendation in Sanders County. Tim has reviewed. I intended to forward this on Monday but got sidetracked with the new MIJA case.

Let me know when you've had a chance to review this and then I'll schedule a time to discuss at a meeting which would include Mike Black. Let's have an open, honest and professional discussion about the pros and cons of seeking cert in this case.

Mark

From: Black, Michael
Sent: Thursday, October 03, 2013 4:09 PM
To: Mattioli, Mark
Subject: Sanders County -- Recommendation re Petition for Cert.

Mark:

Please find attached my memo recommending that we proceed with petitioning for cert. in the Sanders County matter. Please let me know if you have any questions or concerns.

Michael G. Black
Bureau Chief
Civil Services Bureau
Montana Department of Justice

Barnes, John

From: VanDyke, Lawrence
Sent: Wednesday, August 28, 2013 5:27 PM
To: Mattioli, Mark; Fox, Tim
Cc: Bennion, Jon; Swanson, Cory; Barnes, John; Darkenwald, Scott
Subject: RE: Amicus Memo in NRA v. ATF (U.S.)

The Fifth Circuit held the conduct at issue didn't fall within the scope of the 2nd Amendment because any "longstanding, presumptively lawful regulatory measure ... would likely fall outside the ambit of the Second Amendment" entirely. And "[i]n the view of at least some members of the founding generation, disarming select groups for the sake of public safety was compatible with the right to arms specifically and with the idea of liberty generally" – namely, slaves.

So I guess the court's argument was that we should be able to disarm 18-20 year olds now because they disarmed slaves at the founding? Incredible. I wonder that they didn't see the irony in that argument.

From: Mattioli, Mark
Sent: Wednesday, August 28, 2013 5:13 PM
To: VanDyke, Lawrence; Fox, Tim
Cc: Bennion, Jon; Swanson, Cory; Barnes, John; Darkenwald, Scott
Subject: RE: Amicus Memo in NRA v. ATF (U.S.)

Although many have pointed to social science research suggesting that younger adults are more impulsive because the brain is not completely formed until about age 25, I agree with Lawrence's comments and concur that we should join.

Lawrence, what was the basis for the Fifth Circuit's determination that the Second Amendment was not implicated?

Mark

From: VanDyke, Lawrence
Sent: Wednesday, August 28, 2013 2:35 PM
To: Fox, Tim
Cc: Mattioli, Mark; Bennion, Jon; Swanson, Cory; Barnes, John; Darkenwald, Scott
Subject: RE: Amicus Memo in NRA v. ATF (U.S.)

I can answer some of these:

(1) What do Montana's laws say about 18-21 year olds and guns or ammunition?

- I don't believe Montana has any such laws. Montana law ban carrying of a weapon by a child under the age of 14, unless accompanied by an adult. MCA 45-8-344

(2) What are the policy implications of either supporting or not supporting this amicus brief in light of the high-profile and tragic shooting incidents across the country in recent years?

- I'm not sure there are any *direct* policy implications. Montana and federal laws would still ban carrying of guns in schools, and most 18-21 year olds are out of high school in any event. As far as indirect policy implications – as is the case with most gun issues, I'm sure it depends on your starting assumptions. Folks that think that gun control works will

conclude that loosening control here will lead to more gun violence. Folks that think gun control typically only affects otherwise law-abiding citizens will think that allowing 18-21 year olds to lawfully own handguns will likely not increase crime and violence, in schools or otherwise.

(3) What considerations are there in light of our potential for partnering with Superintendent Juneau on the school safety and active shooter training initiatives?

- I don't know about this one, since I haven't been involved with this at all. Jon – do you know?

(4) What media attention, good or bad, has this case generated since it was filed?

- John is going to do some searching today or tomorrow morning to see what, if any, major press this has received. Thanks John!

(5) Is this a matter that we should consult, with the Governor's office on before making a decision? (Note: I would think not, but would be interested in other's views).

- I don't think we need to. Does anyone else think it would be prudent nonetheless?

I've attached the draft brief – which I like. It does point out that Montana law allows 18-20 year-olds to own guns. See n.2. Here is a line from the first page (key soaring rhetoric music):

Adults who are 18, 19, and 20 honorably defend our country when it is at war. These same Americans should be able to defend themselves and their families when they are at home.

I got chills. (Okay, not really, but I wanted to.)

From: Fox, Tim

Sent: Wednesday, August 28, 2013 12:17 PM

To: VanDyke, Lawrence

Cc: Mattioli, Mark; Bennion, Jon; Swanson, Cory; Barnes, John; Darkenwald, Scott

Subject: Re: Amicus Memo in NRA v. ATF (U.S.)

Before I make a decision, can one or more of you address the following questions:

(1) What do Montana's laws say about 18-21 year olds and guns or ammunition?

(2) What are the policy implications of either supporting or not supporting this amicus brief in light of the high-profile and tragic shooting incidents across the country in recent years?

(3) What considerations are there in light of our potential for partnering with Superintendent Juneau on the school safety and active shooter training initiatives?

(4) What media attention, good or bad, has this case generated since it was filed?

(5) Is this a matter that we should consult, with the Governor's office on before making a decision? (Note: I would think not, but would be interested in other's views).

Thank you.

Tim

Sent from my iPad

On Aug 28, 2013, at 11:58 AM, "VanDyke, Lawrence" <LVanDyke@mt.gov> wrote:

Tim and Mark – This is a short-fuse cert-stage amicus join request from Alabama in a Second Amendment case coming out of the Fifth Circuit. The case challenges federal laws that categorically deny 18-21 year olds the ability to buy handguns or handgun ammunition. The Fifth Circuit panel

rejected the challenge, holding that (1) the laws do not implicate the Second Amendment, and (2) even if they do, they don't violate it. The NRA is the Petitioner in this case.

I think we should join this brief. I'm not sure I agree with the strategy of bringing this case to the SCOTUS, but I think we want to be on the record as on the side of gun rights (and the NRA). I think that a blanket ban on handgun ownership for all 18-21 year olds probably does violate the original meaning of the second amendment – I would expect that 18 year olds were part of the "militia."

Our deadline is quick – we need to decide by this Friday.

Thanks,

Lawrence

From: Schweitzer, Dan [mailto:DSCHWEITZER@NAAG.ORG]

Sent: Tuesday, August 27, 2013 1:02 PM

To: chris.coppin@cwagweb.org; paul.d.stern@maine.gov; dbahr@nd.gov; JMcIntosh@scag.gov; pam.murphy@doj.nh.gov; eric.tabor@iowa.gov; jknorr@attorneygeneral.gov; james.layton@ago.mo.gov; paula.bickett@azag.gov; charles.mcquigan@state.sd.us; RPartington@riag.ri.gov; crimago@saipan.com; barbara.underwood@ag.ny.gov; Hampton, Andrea; Schweitzer, Dan; sbluestone@nmag.gov; david.raupp@arkansasag.gov; gmorg@ago.state.ms.us; jlee@riag.ri.gov; attorney@samoatelco.com; stephan.finkel@lps.state.nj.us; Girard.D.Lau@hawaii.gov; stevemac@ku.edu; dennis.hansen@arkansasag.gov; basay@atg.state.vt.us; Mary.Williams@doj.state.or.us; jkelly@ncdoj.gov; alanc@atg.wa.gov; alama@nmag.gov; judy.zeprun@state.ma.us; joanne.grace@alaska.gov; jnotz@atg.state.il.us; Gregory.Dauria@ct.gov; anne.edwards@doj.nh.gov; tom.fisher@atg.in.gov; jwhite@ncdoj.gov; whowle@ag.nv.gov; Frances.Grunder@doj.ca.gov; mlanf@ago.state.ms.us; ken.rosenstein@alaska.gov; allison.martin@ag.ky.gov; hpizz@ago.state.ms.us; wellsk@doj.state.wi.us; Lee.Davidson@ksag.org; edavis@doj.vi.gov; donna.murasky@dc.gov; ssullivan@oag.state.md.us; jmaddrey@ncdoj.gov; dspence@oag.state.md.us; vlp@wvago.gov; debbie.mcveigh@wyo.gov; Steve.Creason@atg.in.gov; kguthrie@ago.state.al.us; andrea.silkowitz@dol.lps.state.nj.us; brian.kane@ag.idaho.gov; Richard.Dearing@ag.ny.gov; katie.spohn@nebraska.gov; rrussell@nmag.gov; mwood@ago.state.ms.us; restucciae@michigan.gov; wbrockman@oag.state.md.us; agesmith@scag.gov; susan.lee@doj.ca.gov; SG@atg.in.gov; todd.kim@dc.gov; delayne.deck@ag.idaho.gov; dan.domenico@state.co.us; mscodro@atg.state.il.us; heather.mcveigh@atg.in.gov; suzanne.gorman@doj.nh.gov; jbhoward@oag.state.md.us; potterkc@doj.state.wi.us; stjohnkm@doj.state.wi.us; ed.bedrosian@state.ma.us; john.garry@ag.state.mn.us; brooke.paup@texasattorneygeneral.gov; appeals@ohioattorneygeneral.gov; meanssp@doj.state.wi.us; Sherri.Wald@state.sd.us; adam.aston@texasattorneygeneral.gov; jhughes@atg.state.il.us; david.blake@state.co.us; Segrest, Stuart; susan.britton@ag.ky.gov; john.campbell@ksag.org; jung.kim@dol.lps.state.nj.us; dave.jones@alaska.gov; delberta.pfeifer@ksag.org; perry.zinn-rowthorn@ct.gov; mwebb@ago.state.ms.us; barb.fehrman@ag.state.mn.us; vbeavers@ag.nv.gov; bromano@utah.gov; kris.aillsflieger@ksag.org; bob.fagan@msdh.state.ms.us; Eileen.carey@state.ma.us; sean.riley@ag.ky.gov; ashley.harwel@atg.in.gov; dGetchell@oag.state.va.us; anna.joyce@doj.state.or.us; marlene.brown@dol.lps.state.nj.us; peter.michael@wyo.gov; diane.dewolf@myfloridalegal.com; jonathan.mitchell@oag.state.tx.us; mary.mertz@ohioattorneygeneral.gov; sforney@attorneygeneral.gov; npeterson@law.ga.gov; jneiman@ago.state.al.us; ariel.levinson-waldman@dc.gov; burschj@michigan.gov; Leesa.Thompson@oag.ok.gov; dowkerc@michigan.gov; frederick.nelson@ohioattorneygeneral.gov; patrick.wyrick@oag.ok.gov; bill.young@ag.tn.gov; Black, Michael; MBrady@oag.state.va.us; Sam Peterson; abrasher@ago.state.al.us; pamela.spang@state.ma.us; andy.oldham@texasattorneygeneral.gov; Jason.pleggenkuhle@ag.state.mn.us; michael.hendershot@ohioattorneygeneral.gov; robyn.bender@ag.ky.gov; laura-jane.weimer@state.co.us; james.adams@state.de.us; Aricka.seales@state.ma.us; wiltonp@ag.state.la.us; lindstroma@michigan.gov; VanDyke, Lawrence; allen.winsor@myfloridalegal.com; christopher.dodrigill@wvago.gov; marmercado@justicia.pr.gov; elbert.lin@wvago.gov;

Mary.McTaggart@state.de.us; Sarah.Greenwalt@oag.ok.gov; Michael.Francisco@state.co.us

Cc: KTurner@ago.state.al.us

Subject: Amicus Memo in NRA v. ATF (U.S.)

To: Civil Amicus Contacts

Attached is an Amicus Memo describing the amicus brief Alabama is preparing in support of the cert petition filed in *National Rifle Association v. U.S. Bureau of Alcohol, Tobacco, Firearms, and Explosives*, 13-137 (U.S.). The petition seeks review of a Fifth Circuit decision holding that the Second Amendment is not violated by federal laws prohibiting adults under the age of 21 from purchasing handguns and handgun ammunition. The question presented is “[w]hether a nationwide, class-based, categorical ban on meaningful access to the quintessential means to exercise the right to keep and bear arms for self-defense can be reconciled with the Second Amendment, the equal protection guarantee, and this Court’s precedents.”

The turn-around time is very short. Alabama will be circulating a draft brief tomorrow; and the deadline for joining is this Friday. To join, you may contact:

John Neiman
Solicitor General
Office of Alabama Attorney General Luther Strange
501 Washington Avenue
Montgomery, AL 36130
(334) 353-2187
JNeiman@ago.state.al.us

Dan Schweitzer
Supreme Court Counsel
National Association of Attorneys General
2030 M Street, NW, 8th Floor
Washington, DC 20036
(202) 326-6010
(202) 785-0410 - fax
dschweitzer@naag.org

<Amicus Memo - NRA v Bureau of ATFE -- 8-27.pdf>

Barnes, John

From: VanDyke, Lawrence
Sent: Wednesday, August 28, 2013 5:20 PM
To: Fox, Tim
Cc: Mattioli, Mark; Bennion, Jon; Swanson, Cory; Barnes, John; Darkenwald, Scott
Subject: RE: Amicus Memo in NRA v. ATF (U.S.)
Attachments: NRA-petition-13-137.pdf

Some more information on this. Cooper and Kirk (a very well-respected DC appellate boutique – they represented the Petitioners in the Prop 8 litigation, for example) and Paul Clement are both on the petition (attached). So these are heavy hitters in the SCOTUS.

Also – I did not realize this before, but while federal laws ban *sales* of handguns to 18-20 year olds, they don't ban possession, or transfers (such as gifts from parents), or even purchases from non-businesses. So like many gun laws, it isn't even clear they are minimally rationale; it is tough to argue they would meet any kind of heightened scrutiny. Basically, the feds are telling 18-20 year-olds that they can only buy a gun if they do so in a way that avoids a background check.

From: VanDyke, Lawrence
Sent: Wednesday, August 28, 2013 2:35 PM
To: Fox, Tim
Cc: Mattioli, Mark; Bennion, Jon; Swanson, Cory; Barnes, John; Darkenwald, Scott
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- I don't think we need to. Does anyone else think it would be prudent nonetheless?

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Sent: Wednesday, August 28, 2013 12:17 PM

To: VanDyke, Lawrence

Cc: Mattioli, Mark; Bennion, Jon; Swanson, Cory; Barnes, John; Darkenwald, Scott

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Sent from my iPad

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Our deadline is quick – we need to decide by this Friday.

Thanks,

Lawrence

From: Schweitzer, Dan [mailto:DSCHWEITZER@NAAG.ORG]

Sent: Tuesday, August 27, 2013 1:02 PM

To: chris.coppin@cwagweb.org; paul.d.stern@maine.gov; dbahr@nd.gov; JMcIntosh@scaq.gov; pam.murphy@doj.nh.gov; eric.tabor@iowa.gov; jknorr@attorneygeneral.gov; james.layton@ago.mo.gov; paula.bickett@azag.gov; charles.mcquigan@state.sd.us; RPartington@riag.ri.gov; crimago@saipan.com; barbara.underwood@ag.ny.gov; Hampton, Andrea; Schweitzer, Dan; sbluestone@nmag.gov; david.raupp@arkansasag.gov; gmorg@ago.state.ms.us; jlee@riag.ri.gov; attorney@samoatelco.com; stephan.finkel@lps.state.nj.us; Girard.D.Lau@hawaii.gov; stevemac@ku.edu; dennis.hansen@arkansasag.gov; basay@atg.state.vt.us; Mary.Williams@doj.state.or.us; gkelley@ncdoj.gov; alanc@atg.wa.gov; alama@nmag.gov; judy.zeprun@state.ma.us; joanne.grace@alaska.gov; jnotz@atg.state.il.us; Gregory.Dauria@ct.gov; anne.edwards@doj.nh.gov; tom.fisher@atg.in.gov; jwhite@ncdoj.gov; whowle@ag.nv.gov; Frances.Grunder@doj.ca.gov; mianf@ago.state.ms.us; ken.rosenstein@alaska.gov; allison.martin@ag.ky.gov; hpizz@ago.state.ms.us; wellsik@doj.state.wi.us; Lee.Davidson@ksag.org; edavis@doj.vi.gov; donna.murasky@dc.gov; ssullivan@oag.state.md.us; jmaddrey@ncdoj.gov; dspence@oag.state.md.us; vlp@wvago.gov; debbie.mcveigh@wyo.gov; Steve.Creazon@atg.in.gov; kguthrie@ago.state.al.us; andrea.silkowitz@dol.lps.state.nj.us; brian.kane@ag.idaho.gov; Richard.Dearing@ag.ny.gov; katie.spohn@nebraska.gov; rrussell@nmag.gov; mwood@ago.state.ms.us; restucciae@michigan.gov; wbrockman@oag.state.md.us; agesmith@scaq.gov; susan.lee@doj.ca.gov; SG@atg.in.gov; todd.kim@dc.gov; delayne.deck@ag.idaho.gov; dan.domenico@state.co.us; mcsodro@atg.state.il.us; heather.mcveigh@atg.in.gov; suzanne.gorman@doj.nh.gov; jbhoward@oag.state.md.us; potterkc@doj.state.wi.us; stjohnkm@doj.state.wi.us; ed.bedrosian@state.ma.us; john.garry@ag.state.mn.us; brooke.paup@texasattorneygeneral.gov; appeals@ohioattorneygeneral.gov; meanssp@doj.state.wi.us; Sherry.Wald@state.sd.us; adam.aston@texasattorneygeneral.gov; jhughes@atg.state.il.us; david.blake@state.co.us; Segrest, Stuart; susan.britton@ag.ky.gov; john.campbell@ksag.org; jung.kim@dol.lps.state.nj.us; dave.jones@alaska.gov; delberta.pfeifer@ksag.org; perry.zinn-rowthorn@ct.gov; mwebb@ago.state.ms.us; barb.fehrman@ag.state.mn.us; vbeavers@ag.nv.gov; bromano@utah.gov; kris.aillslieger@ksag.org; bob.fagan@msdh.state.ms.us; Eileen.carey@state.ma.us; sean.riley@ag.ky.gov; ashley.harwel@atg.in.gov; dGetchell@oag.state.va.us; anna.joyce@doj.state.or.us; marlene.brown@dol.lps.state.nj.us; peter.michael@wyo.gov; diane.dewolf@myfloridalegal.com; jonathan.mitchell@oag.state.tx.us; mary.mertz@ohioattorneygeneral.gov; sforney@attorneygeneral.gov; npeterson@law.ga.gov; jneiman@ago.state.al.us; ariel.levinson-waldman@dc.gov; burschj@michigan.gov; Leesa.Thompson@oag.ok.gov; dowker@doj.michigan.gov; frederick.nelson@ohioattorneygeneral.gov; patrick.wyrick@oag.ok.gov; bill.young@ag.tn.gov; Black, Michael; MBrady@oag.state.va.us; Sam Peterson; abrasher@ago.state.al.us; pamela.spang@state.ma.us; andy.oldham@texasattorneygeneral.gov; Jason.pleggenkuhle@ag.state.mn.us; michael.hendershot@ohioattorneygeneral.gov; robyn.bender@ag.ky.gov; laura-jane.weimer@state.co.us; james.adams@state.de.us; Aricka.seales@state.ma.us; wiltonp@ag.state.la.us; lindstroma@michigan.gov; VanDyke, Lawrence; allen.winsor@myfloridalegal.com; christopher.dodrill@wvago.gov; marmercado@justicia.pr.gov; elbert.lin@wvago.gov; Mary.McTaggart@state.de.us; Sarah.Greenwalt@oag.ok.gov; Michael.Franisco@state.co.us

Cc: KTurner@ago.state.al.us

Subject: Amicus Memo in NRA v. ATF (U.S.)

To: Civil Amicus Contacts

Attached is an Amicus Memo describing the amicus brief Alabama is preparing in support of the cert petition filed in *National Rifle Association v. U.S. Bureau of Alcohol, Tobacco, Firearms, and Explosives*, 13-137 (U.S.). The petition seeks review of a Fifth Circuit decision holding that the Second Amendment is not violated by federal laws prohibiting adults under the age of 21 from purchasing handguns and handgun ammunition. The question presented is "[w]hether a nationwide, class-based, categorical ban on meaningful access to the quintessential means to

exercise the right to keep and bear arms for self-defense can be reconciled with the Second Amendment, the equal protection guarantee, and this Court's precedents."

The turn-around time is very short. Alabama will be circulating a draft brief tomorrow; and the deadline for joining is this Friday. To join, you may contact:

John Neiman
Solicitor General
Office of Alabama Attorney General Luther Strange
501 Washington Avenue
Montgomery, AL 36130
(334) 353-2187
JNeiman@ago.state.al.us

Dan Schweitzer
Supreme Court Counsel
National Association of Attorneys General
2030 M Street, NW, 8th Floor
Washington, DC 20036
(202) 326-6010
(202) 785-0410 - fax
dschweitzer@naag.org

<Amicus Memo - NRA v Bureau of ATFE -- 8-27.pdf>

Barnes, John

From: VanDyke, Lawrence
Sent: Wednesday, August 28, 2013 2:35 PM
To: Fox, Tim
Cc: Mattioli, Mark; Bennion, Jon; Swanson, Cory; Barnes, John; Darkenwald, Scott
Subject: RE: Amicus Memo in NRA v. ATF (U.S.)
Attachments: NRA v. BATFE -- draft brief -- 8-28 -- to States.pdf

I can answer some of these:

(1) What do Montana's laws say about 18-21 year olds and guns or ammunition?

- I don't believe Montana has any such laws. Montana law ban carrying of a weapon by a child under the age of 14, unless accompanied by an adult. MCA 45-8-344

(2) What are the policy implications of either supporting or not supporting this amicus brief in light of the high-profile and tragic shooting incidents across the country in recent years?

- I'm not sure there are any *direct* policy implications. Montana and federal laws would still ban carrying of guns in schools, and most 18-21 year olds are out of high school in any event. As far as indirect policy implications – as is the case with most gun issues, I'm sure it depends on your starting assumptions. Folks that think that gun control works will conclude that loosening control here will lead to more gun violence. Folks that think gun control typically only affects otherwise law-abiding citizens will think that allowing 18-21 year olds to lawfully own handguns will likely not increase crime and violence, in schools or otherwise.

(3) What considerations are there in light of our potential for partnering with Superintendent Juneau on the school safety and active shooter training initiatives?

- I don't know about this one, since I haven't been involved with this at all. Jon – do you know?

(4) What media attention, good or bad, has this case generated since it was filed?

- John is going to do some searching today or tomorrow morning to see what, if any, major press this has received. Thanks John!

(5) Is this a matter that we should consult, with the Governor's office on before making a decision? (Note: I would think not, but would be interested in other's views).

- I don't think we need to. Does anyone else think it would be prudent nonetheless?

I've attached the draft brief – which I like. It does point out that Montana law allows 18-20 year-olds to own guns. See n.2. Here is a line from the first page (key soaring rhetoric music):

Adults who are 18, 19, and 20 honorably defend our country when it is at war. These same Americans should be able to defend themselves and their families when they are at home.

I got chills. (Okay, not really, but I wanted to.)

From: Fox, Tim
Sent: Wednesday, August 28, 2013 12:17 PM
To: VanDyke, Lawrence
Cc: Mattioli, Mark; Bennion, Jon; Swanson, Cory; Barnes, John; Darkenwald, Scott
Subject: Re: Amicus Memo in NRA v. ATF (U.S.)

Before I make a decision, can one or more of you address the following questions:

- (1) What do Montana's laws say about 18-21 year olds and guns or ammunition?
- (2) What are the policy implications of either supporting or not supporting this amicus brief in light of the high-profile and tragic shooting incidents across the country in recent years?
- (3) What considerations are there in light of our potential for partnering with Superintendent Juneau on the school safety and active shooter training initiatives?
- (4) What media attention, good or bad, has this case generated since it was filed?
- (5) Is this a matter that we should consult, with the Governor's office on before making a decision? (Note: I would think not, but would be interested in other's views).

Thank you.

Tim

Sent from my iPad

On Aug 28, 2013, at 11:58 AM, "VanDyke, Lawrence" <LVanDyke@mt.gov> wrote:

Tim and Mark – This is a short-fuse cert-stage amicus join request from Alabama in a Second Amendment case coming out of the Fifth Circuit. The case challenges federal laws that categorically deny 18-21 year olds the ability to buy handguns or handgun ammunition. The Fifth Circuit panel rejected the challenge, holding that (1) the laws do not implicate the Second Amendment, and (2) even if they do, they don't violate it. The NRA is the Petitioner in this case.

I think we should join this brief. I'm not sure I agree with the strategy of bringing this case to the SCOTUS, but I think we want to be on the record as on the side of gun rights (and the NRA). I think that a blanket ban on handgun ownership for all 18-21 year olds probably does violate the original meaning of the second amendment – I would expect that 18 year olds were part of the "militia."

Our deadline is quick – we need to decide by this Friday.

Thanks,

Lawrence

From: Schweitzer, Dan [<mailto:DSCHWEITZER@NAAG.ORG>]

Sent: Tuesday, August 27, 2013 1:02 PM

To: chris.coppin@cwagweb.org; paul.d.stern@maine.gov; dbahr@nd.gov; JMcIntosh@scag.gov; pam.murphy@doj.nh.gov; eric.tabor@iowa.gov; jknorr@attorneygeneral.gov; james.layton@ago.mo.gov; paula.bickett@azag.gov; charles.mcquigan@state.sd.us; RPartington@riag.ri.gov; crimago@saipan.com; barbara.underwood@ag.ny.gov; Hampton, Andrea; Schweitzer, Dan; sbluestone@nmag.gov; david.raupp@arkansasag.gov; gmorg@ago.state.ms.us; jlee@riag.ri.gov; attorney@samoatelco.com; stephan.finkel@lps.state.nj.us; Girard.D.Lau@hawaii.gov; stevemac@ku.edu; dennis.hansen@arkansasag.gov; basay@atq.state.vt.us; Mary.Williams@doj.state.or.us; gkelley@ncdoj.gov; alanc@atq.wa.gov; alama@nmag.gov; judy.zeprun@state.ma.us; joanne.grace@alaska.gov; jnotz@atq.state.il.us; Gregory.Dauria@ct.gov; anne.edwards@doj.nh.gov; tom.fisher@atq.in.gov; jwhite@ncdoj.gov; whowle@ag.nv.gov; Frances.Grunder@doj.ca.gov; mianf@ago.state.ms.us; ken.rosenstein@alaska.gov; allison.martin@ag.ky.gov; hpizz@ago.state.ms.us; wellsik@doj.state.wi.us; Lee.Davidson@ksag.org; edavis@doj.vi.gov; donna.murasky@dc.gov; ssullivan@oag.state.md.us; jmaddrey@ncdoj.gov; dspence@oag.state.md.us; vlp@wvago.gov; debbie.mcveigh@wyo.gov; Steve.Creaseon@atq.in.gov; kquthrie@ago.state.al.us; andrea.silkowitz@dol.lps.state.nj.us; brian.kane@ag.idaho.gov; Richard.Dearing@ag.ny.gov

katie.spohn@nebraska.gov; russell@nmag.gov; mwood@ago.state.ms.us; restucciae@michigan.gov; wbrockman@oag.state.md.us; agesmith@sca.gov; susan.lee@doj.ca.gov; SG@atg.in.gov; todd.kim@dc.gov; delayne.deck@ag.idaho.gov; dan.domenico@state.co.us; mascodro@atg.state.il.us; heather.mcveigh@atg.in.gov; suzanne.gorman@doj.nh.gov; jbhoward@oag.state.md.us; potterkc@doj.state.wi.us; stjohnkm@doj.state.wi.us; ed.bedrosian@state.ma.us; john.garry@ag.state.mn.us; brooke.paup@texasattorneygeneral.gov; appeals@ohioattorneygeneral.gov; meanssp@doj.state.wi.us; Sherri.Wald@state.sd.us; adam.aston@texasattorneygeneral.gov; jhughes@atg.state.il.us; david.blake@state.co.us; Segrest, Stuart; susan.britton@ag.ky.gov; john.campbell@ksag.org; jung.kim@dol.lps.state.nj.us; dave.jones@alaska.gov; delberta.pfeifer@ksag.org; perry.zinn-rowthorn@ct.gov; mwebb@ago.state.ms.us; barb.fehrman@ag.state.mn.us; vbeavers@ag.nv.gov; bromano@utah.gov; kris.ailsieger@ksag.org; bob.fagan@msdh.state.ms.us; Eileen.carey@state.ma.us; sean.riley@ag.ky.gov; ashley.harwel@atg.in.gov; dGetchell@oag.state.va.us; anna.joyce@doj.state.or.us; marlene.brown@dol.lps.state.nj.us; peter.michael@wyo.gov; diane.dewolf@myfloridalegal.com; jonathan.mitchell@oag.state.tx.us; mary.mertz@ohioattorneygeneral.gov; sforney@attorneygeneral.gov; npeterson@law.ga.gov; jneiman@ago.state.al.us; ariel.levinson-waldman@dc.gov; burschj@michigan.gov; Leesa.Thompson@oag.ok.gov; dowker@michigan.gov; frederick.nelson@ohioattorneygeneral.gov; patrick.wyrick@oag.ok.gov; bill.young@ag.tn.gov; Black, Michael; MBrady@oag.state.va.us; Sam Peterson; abrasher@ago.state.al.us; pamela.spang@state.ma.us; andy.oldham@texasattorneygeneral.gov; Jason.pleggenkuhle@ag.state.mn.us; michael.hendershot@ohioattorneygeneral.gov; robyn.bender@ag.ky.gov; laura-jane.weimer@state.co.us; james.adams@state.de.us; Aricka.seales@state.ma.us; wiltonp@ag.state.la.us; lindstroma@michigan.gov; VanDyke, Lawrence; allen.winsor@myfloridalegal.com; christopher.dodrill@wvago.gov; marmercado@justicia.pr.gov; elbert.lin@wvago.gov; Mary.McTaggart@state.de.us; Sarah.Greenwalt@oag.ok.gov; Michael.Franisco@state.co.us

Cc: KTurner@ago.state.al.us

Subject: Amicus Memo in NRA v. ATF (U.S.)

To: Civil Amicus Contacts

Attached is an Amicus Memo describing the amicus brief Alabama is preparing in support of the cert petition filed in *National Rifle Association v. U.S. Bureau of Alcohol, Tobacco, Firearms, and Explosives*, 13-137 (U.S.). The petition seeks review of a Fifth Circuit decision holding that the Second Amendment is not violated by federal laws prohibiting adults under the age of 21 from purchasing handguns and handgun ammunition. The question presented is “[w]hether a nationwide, class-based, categorical ban on meaningful access to the quintessential means to exercise the right to keep and bear arms for self-defense can be reconciled with the Second Amendment, the equal protection guarantee, and this Court’s precedents.”

The turn-around time is very short. Alabama will be circulating a draft brief tomorrow; and the deadline for joining is this Friday. To join, you may contact:

John Neiman
Solicitor General
Office of Alabama Attorney General Luther Strange
501 Washington Avenue
Montgomery, AL 36130
(334) 353-2187
JNeiman@ago.state.al.us

Dan Schweitzer
Supreme Court Counsel
National Association of Attorneys General
2030 M Street, NW, 8th Floor
Washington, DC 20036
(202) 326-6010
(202) 785-0410 - fax
dschweitzer@naag.org

<Amicus Memo - NRA v Bureau of ATFE -- 8-27.pdf>

Barnes, John

From: VanDyke, Lawrence
Sent: Friday, December 06, 2013 4:04 PM
To: Mattioli, Mark; Fox, Tim; Darkenwald, Scott; Bennion, Jon; Swanson, Cory; Barnes, John; Burton, Anastasia
Subject: RE: Case: DV-25-2013-0000509-DK - Robert Willems, etal. vs. Linda McCulloch, etal. - File Attached

The problem is that if Plaintiffs don't get a decision before the deadline for filing to run for office (March? - Jon likely knows, but he and Cory aren't talking to me anymore ...), then it does them no good.

So I think they have a good basis for an expedited appeal. And Judge Regnier also seems to just assume it will expedited. I just hope our deadline for a Response isn't until late January.

-----Original Message-----

From: Mattioli, Mark
Sent: Friday, December 06, 2013 3:57 PM
To: VanDyke, Lawrence; Fox, Tim; Darkenwald, Scott; Bennion, Jon; Swanson, Cory; Barnes, John; Burton, Anastasia
Subject: RE: Case: DV-25-2013-0000509-DK - Robert Willems, etal. vs. Linda McCulloch, etal. - File Attached

Nice work. Although the case involves elections, after reading the opinion it doesn't appear to be writ worthy or a case requiring suspension of the rules to expedite an appeal.

-----Original Message-----

From: VanDyke, Lawrence
Sent: Friday, December 06, 2013 3:20 PM
To: Fox, Tim; Darkenwald, Scott; Mattioli, Mark; Bennion, Jon; Swanson, Cory; Barnes, John; Burton, Anastasia
Subject: FW: Case: DV-25-2013-0000509-DK - Robert Willems, etal. vs. Linda McCulloch, etal. - File Attached

Here is the Willems decision Judge Menahan just issued in the State's favor. Monforton will presumably file or an expedited appeal tomorrow.

-----Original Message-----

From: Segrest, Stuart
Sent: Friday, December 06, 2013 2:58 PM
To: Jim Regnier (jregnier@centurytel.net) (jregnier@centurytel.net); Lamson, Joe (DNRC); Quintana, Jorge; Weiss, Rachel
Cc: VanDyke, Lawrence
Subject: FW: Case: DV-25-2013-0000509-DK - Robert Willems, etal. vs. Linda McCulloch, etal. - File Attached

The Court granted the State's motion for summary judgment. See attached.

-----Original Message-----

From: Hartman, Denise
Sent: Friday, December 06, 2013 2:47 PM
To: matthewmonforton@yahoo.com; Segrest, Stuart; VanDyke, Lawrence
Subject: Case: DV-25-2013-0000509-DK - Robert Willems, etal. vs. Linda McCulloch, etal. - File Attached

Mr. Monforton, Segrest and VanDyke,

Please find the attached Decision and Order on Cross-Motions for Summary Judgment issued today by Judge Mike Menahan.

Please feel free to contact me if you need assistance.

Denise Hartman

Judicial Assistant

406-447-8209

Barnes, John

From: VanDyke, Lawrence
Sent: Thursday, March 28, 2013 5:26 PM
To: Swanson, Cory; Mattioli, Mark
Cc: Barnes, John; Fox, Tim; Bennion, Jon; Burton, Anastasia
Subject: RE: Concealed weapon permit database records request

I agree too.

From: Swanson, Cory
Sent: Thursday, March 28, 2013 5:26 PM
To: Mattioli, Mark
Cc: Barnes, John; Fox, Tim; Bennion, Jon; Burton, Anastasia; VanDyke, Lawrence
Subject: Re: Concealed weapon permit database records request

I agree with this analysis. The privacy prongs are whether a person has an expectation of privacy, but also whether society considers that expectation to be reasonable. This bill's passage and everything in the legislative record are ample evidence on both prongs.

I just can't believe they didn't give this law an immediate effective date.

Cory

Sent from my iPhone

On Mar 28, 2013, at 5:07 PM, "Mattioli, Mark" <mmattioli@mt.gov> wrote:

John, thanks. I'm copying Lawrence and Cory because we discussed this earlier.

Although the law is not immediately effective my initial reaction it's still relevant in assessing the reasonable expectations of privacy of MT permit holders. Because one of the purposes of holding a CWP is to conceal the fact that the permit holder is carrying, we can make a good legal argument that applicants reasonably expect their application information and permit status to remain confidential.

Mark

From: Barnes, John
Sent: Thursday, March 28, 2013 4:46 PM
To: Fox, Tim; Mattioli, Mark; Bennion, Jon
Cc: Burton, Anastasia
Subject: FW: Concealed weapon permit database records request

Below is a data request from Matt Gouras at the AP, which we received on 3/18. He called again today to inquire about its status. He is asking for specific information from the Concealed Weapons Permit database. We haven't given him anything.

Attached is a memo from 2000 that the DOJ has used in determining what could be released and what couldn't. I also attached a memo that Jennifer Anders had circulated during the previous administration, dictating what can be released.

Today Gov. Bullock signed a bill that makes all information in a CWP application confidential. That law goes into effect on October 1.

Given that previous AG's relied upon their own internal analysis to determine what parts of the CWP application are confidential and which are not, and given the law that will take effect later this year, I believe that we should refrain from disclosing any of that information. I told Matt we'd have an answer for him within the next week or two.

From: Gouras, Matt [<mailto:mgouras@ap.org>]
Sent: Monday, March 18, 2013 9:32 AM
To: Burton, Anastasia
Cc: Barnes, John
Subject: Concealed weapon permit database records request

John and Anastasia,

The Associated Press would like a digital copy of the concealed weapon permit holder database. My recollection is that this information is housed at DOJ. Let me know if I am wrong.

We'd like all public information included on each permit holder, including, but not limited to: last name, first name, middle, street address, city, employer, age or DOB, driver's license number, date of application.

A simple tab or comma delineated format should work. Let me know if your data gurus have a preference.

Also please let me know if I can modify this request a bit to make it easier or quicker for your agency to gather.

And if, for some reason, you anticipate significant cost meeting this request, please advise us in advance.

Thanks,

Matt Gouras
449-5542

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Barnes, John

From: VanDyke, Lawrence
Sent: Wednesday, August 21, 2013 5:11 PM
To: Huff, Andy
Cc: Mattioli, Mark; Swanson, Cory
Subject: RE: West Virginia Reciprocity

No hurry – thanks Andy.

From: Huff, Andy
Sent: Wednesday, August 21, 2013 5:08 PM
To: VanDyke, Lawrence
Cc: Mattioli, Mark; Swanson, Cory
Subject: RE: West Virginia Reciprocity

Lawrence,

I'll get back to you on this early next week. Technically, I'm on vacation this week although I'm checking my emails. If you need info sooner let me know.

Andy Huff
Chief Legal Counsel
Governor's Office
State Capitol
PO Box 200801
Helena, MT 59620-0801
Phone: (406) 444-3111 | Fax: (406) 444-5529
ahuff@mt.gov

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From: VanDyke, Lawrence
Sent: Wednesday, August 21, 2013 4:53 PM
To: Huff, Andy
Cc: Mattioli, Mark; Swanson, Cory
Subject: FW: West Virginia Reciprocity

Andy – Our office received a call from the West Virginia AG's office, asking if we would be willing to enter into a "reciprocity" agreement with WVa agreeing that both states would mutually recognize the other's concealed carry permit. I explained that Montana does not technically have CWP "reciprocity" with other states—we simply evaluate whether we should recognize their license under our statutory guidelines, and whether we recognize theirs doesn't turn on whether they recognize ours. Thus, we never enter into "reciprocity agreements" with other states.

Montana already recognizes West Virginia's license, because they meet the statutory requirements. But West Virginia can only recognize Montana's under two circumstances: (1) W. Virginia enters into a "reciprocity agreement" with us, or (2) Montana's Governor notifies West Virginia's AG that Montana recognizes West Virginia's CWP. Since we don't do reciprocity agreements, if we want Montana permit holders to be recognized in West Virginia, only the latter option is available to us.

I asked whether, since the Montana AG is the official statutorily empowered to determine which licenses from other states we recognize, the Montana AG could provide the "notice." The answer is no, because WVa's law is clear that only a state's Governor can provide the requisite notice (see below).

So – would Governor Bullock be interested in providing written notice to West Virginia that Montana recognizes their concealed carry permit?

Feel free to give me a call if you have any questions.

Thanks,

Lawrence VanDyke
Solicitor General • Montana Department of Justice

215 N. Sanders • P.O. Box 201401
Helena, Montana 59620
T: (406) 444-3442 • F: (406) 444-3549
LVanDyke@mt.gov

From: Valentino, William R [<mailto:William.R.Valentino@wv.gov>]
Sent: Tuesday, August 13, 2013 2:08 PM
To: VanDyke, Lawrence
Cc: 'richard.heath@wvago.gov'
Subject: West Virginia Reciprocity

Lawrence, thanks so much for speaking with me today about the potential for mutual concealed handgun license recognition between Montana and West Virginia.

As I stated, our amended reciprocity statute (W.Va. Code 61-7-4) no longer requires a comparative issuance-standards analysis. Rather, only the following is required, with sub (a)(4) setting forth alternate options to achieve reciprocity:

(a) A valid out-of-state permit or license to possess or carry a handgun is valid in this state for the carrying of a concealed handgun, if the following conditions are met:

- (1) The permit or license holder is twenty-one years of age or older;
- (2) The permit or license is in his or her immediate possession;
- (3) The permit or license holder is not a resident of the State of West Virginia; and
- (4) The Attorney General has been notified by the Governor of the other state that the other state allows residents of West Virginia who are licensed in West Virginia to carry a concealed handgun to carry a concealed handgun in that state or the Attorney General

has entered into a written reciprocity agreement with the appropriate official of the other state whereby the state agrees to honor West Virginia concealed handgun licenses in return for same treatment in this state.

As we discussed, please pass this along to the appropriate person to determine whether either of these options creates the possibility of mutual recognition of our permits.

Thanks again, I appreciate any help you can provide.

Will Valentino
Assistant Attorney General
West Virginia Office of the Attorney General
(304) 558-2754

Barnes, John

From: VanDyke, Lawrence
Sent: Friday, June 21, 2013 1:27 PM
To: Fox, Tim; Darkenwald, Scott; Mattioli, Mark; Bennion, Jon; Swanson, Cory; Barnes, John
Subject: Sanders County Republicans case (partisan judicial endorsements)

I understand that the Ninth Circuit has issued an opinion in the Sanders County Republicans case, upholding Judge Lovell's ruling that Montana can't ban independent expenditures by political parties to support or oppose judicial candidates. I guess the next question is whether the state should seek en banc review or seek cert. I strongly think we should not. Enough is enough.

If there is some thought that we should continue, however, I think it would be worth having the entire team discuss this.

Thanks,

Lawrence VanDyke
Solicitor General ♦ Montana Department of Justice

215 N. Sanders ♦ P.O. Box 201401
Helena, Montana 59620
T: (406) 444-3442 ♦ F: (406) 444-3549
LVanDyke@mt.gov

Barnes, John

From: VanDyke, Lawrence
Sent: Friday, February 15, 2013 10:38 AM
To: Darkenwald, Scott; James, Julie
Cc: Fox, Tim; Mattioli, Mark; Bennion, Jon; Barnes, John; Swanson, Cory
Subject: Suggested Topic for Senior Management Meeting - Election Law Cases

All – I propose that at one of our upcoming senior management meetings we discuss election law issues. As I understand it, we have inherited five election law cases from the prior administration. It would be nice to know what happened in those cases, where they now stand, and our plans going forward. Barnes also provided a press release from the Bullock administration stating it intends to pass more election regulations. In addition to the legal issues involved, these cases involve money concerns (e.g., we can expect that we will be paying significant fee awards to opposing counsel in at least some of these cases), political concerns, and resource concerns. I think it would be good to at least all get on the same page on these issues.

Thanks!

Lawrence VanDyke
Solicitor General ♦ Montana Department of Justice

215 N. Sanders ♦ P.O. Box 201401
Helena, Montana 59620
T: (406) 444-3442 ♦ F: (406) 444-3549
LVanDyke@mt.gov

Barnes, John

From: VanDyke, Lawrence
Sent: Wednesday, May 07, 2014 10:00 AM
To: Fox, Tim; Mattioli, Mark; Barnes, John; Burton, Anastasia
Cc: James, Julie
Subject: FW: FFRF v. Weber Amicus Brief
Attachments: Docket Rpt - FFRF v. Weber Amicus Brief.pdf; 13-35770 Amicus Brief - FFRF v. Weber.pdf; Weber 9th Cir Amicus - Final.pdf

All – Attached is the Weber amicus brief that we filed this morning in the 9th Circuit. This is the brief we teamed up with the American Legion on, involving a challenge to a veterans memorial at Whitefish Mountain.

From: Michael Berry [<mailto:mberry@libertyinstitute.org>]
Sent: Wednesday, May 07, 2014 9:06 AM
To: VanDyke, Lawrence; Onderdonk, Philip B.
Subject: FFRF v. Weber Amicus Brief

Gentlemen,

Thanks for your hard work, cooperation, and patience with me. The Amicus Brief was filed this morning. Please see attached.

Michael Berry
Senior Counsel
Director of Military Affairs



Restoring Religious Liberty in America

o: 972.941.4444
direct: 972-941-4445
f: 972.423.6162
mberry@libertyinstitute.org
www.LibertyInstitute.org

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Barnes, John

From: VanDyke, Lawrence
Sent: Friday, December 13, 2013 2:22 PM
To: James, Julie
Cc: Barnes, John; Burton, Anastasia
Subject: FW: Elane Photography v Willock
Attachments: Amicus Brief - Elane Photography v Willock.pdf

For the binder – thank you.

From: Killough, Lindsey [<mailto:lkillough@ago.state.al.us>]
Sent: Friday, December 13, 2013 2:16 PM
To: VanDyke, Lawrence; 'ESmith@scag.gov'; 'MBrady@oag.state.va.us'; 'RestucciaE@michigan.gov'; 'Paula.Bickett@azag.gov'; 'Delberta.Pfeifer@ksag.org'; 'patrickwyrick@gmail.com'
Cc: Brasher, Andrew
Subject: Elane Photography v Willock

Attached is the final Amicus Brief filed today with the Court.

Thanks,

Lindsey Killough, ACP
Paralegal - Office of the Solicitor General
Office of Attorney General Luther Strange
501 Washington Avenue
Montgomery, AL 36130-0152
lkillough@ago.state.al.us
(334) 353-1472



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Barnes, John

From: VanDyke, Lawrence
Sent: Tuesday, October 29, 2013 12:01 PM
To: Fox, Tim; Mattioli, Mark
Cc: James, Julie; Barnes, John; Burton, Anastasia
Subject: FW: Isaacson brief as printed
Attachments: Isaacson Ohio et al amicus AS FILED 10 29 13.PDF

Tim et al. – Attached is the

From: Eric Murphy [<mailto:Eric.Murphy@ohioattorneygeneral.gov>]
Sent: Tuesday, October 29, 2013 11:53 AM
To: VanDyke, Lawrence
Cc: Stephen Carney; Megan M. Dillhoff
Subject: FW: Isaacson brief as printed

Lawrence:

We're sending this out for filing today. Good working with you, and we got a lot of States as well.

Eric

From: Kim Blankenship
Sent: Tuesday, October 29, 2013 12:27 PM
To: Eric Murphy
Subject: Isaacson brief as printed

Barnes, John

From: VanDyke, Lawrence
Sent: Monday, February 10, 2014 2:03 PM
To: James, Julie
Cc: Barnes, John; Burton, Anastasia
Subject: FW: Kitchen v Herbert (13-4178) and Bishop v Smith (14-5003, 14-5006)
Attachments: Amicus brief of Indiana et al.pdf

For the binder – States' amicus brief we joined in the 10th Circuit supporting Oklahoma's and Utah's traditional marriage laws.

Thanks.

From: Stickle, Julie [<mailto:Julie.Stickle@atg.in.gov>]
Sent: Monday, February 10, 2014 2:00 PM
To: 'delayne.deck@ag.idaho.gov'; 'esmith@scag.gov'; 'katie.spohn@nebraska.gov'; 'dan.domenico@state.co.us'; patrick.wyrick@oag.ok.gov; VanDyke, Lawrence; 'abrasher@ago.state.al.us'; janell.hafner@alaska.gov; 'marlena.soto@azag.gov'
Cc: Fisher, Tom
Subject: Kitchen v Herbert (13-4178) and Bishop v Smith (14-5003, 14-5006)

Attached is a copy of the Amicus Brief as filed in the 10th Circuit today. Paper copies will be mailed to you as well.

Thank you for joining.

Julianne Stickle
Administrative Assistant to the Solicitor General
302 W. Washington Street
IGCS - Fifth Floor
Indianapolis, IN 46204
317-233-8292
317-232-7979 Fax
julie.stickle@atg.in.gov

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Barnes, John

From: VanDyke, Lawrence
Sent: Monday, February 11, 2013 4:31 PM
To: James, Julie
Cc: Mattioli, Mark; Barnes, John
Subject: FW: Kachalsky v. Cacace: Amicus Brief in Support of Petitioners
Attachments: Brief of the Commonwealth, et al., as Amici Curiae in Support of Petitioners.pdf

FYI – Copy of as-filed version of amicus brief attached.

From: Taylor, Kimberly E. [<mailto:KTaylor@oag.state.va.us>]
Sent: Monday, February 11, 2013 2:59 PM
To: (Dennis.Hansen@arkansasag.gov); Aston, Adam; Bickett, Paula; Bradford Phelps; Brasher, Andrew; Christopher Dodrill; Dave Jones (dave.jones@alaska.gov); David Raupp; Deck, Delayne; DeWolf, Diane; Emory Smith; Eric Restuccia; Erickson, Lynell; Jameson, William; John Neiman; Kane, Brian; Katie Spohn; King, Gary; Peterson, Nels; Pfeifer, Delberta; Romano, Bridget; Sherri Sundem Wald (Sherri.Wald@state.sd.us); Soto, Marlena; Turner, Kevin; VanDyke, Lawrence; Wyrick, Patrick
Cc: Brady, Michael H.
Subject: Kachalsky v. Cacace: Amicus Brief in Support of Petitioners

Please find attached an electronic copy of the court-filed amicus brief in support of the petitioner.

We believe a showing of 20 states will bring this matter to the Court's attention.

We appreciate each state's support and look forward to working with you in the future.

Best regards,

Michael H. Brady
Assistant Attorney General
Office of the Attorney General
900 East Main Street
Richmond, Virginia 23219
(804) 786-3518 – Telephone
(804) 371-0200 – Facsimile
mbrady@oag.state.va.us

Barnes, John

From: VanDyke, Lawrence
Sent: Friday, January 25, 2013 3:36 PM
To: Fox, Tim; Mattioli, Mark
Cc: Darkenwald, Scott; Bennion, Jon; Swanson, Cory; Barnes, John; James, Julie
Subject: FW: Amicus Brief in United States v. Windsor (U.S.) - DOMA case
Attachments: Windsor Amicus memo.pdf; Windsor Amicus brief.pdf

Recommendation: I recommend that we do join this merits stage amicus brief.

Decision Deadline: 3 pm on Monday, January 28

Analysis: This is an amicus brief asking the SCOTUS to uphold the federal Defense of Marriage Act against an equal protection challenge. The Second Circuit, applying heightened scrutiny, invalidated the Act on equal protection grounds. This is the case where a Bipartisan group of congressmen from the US House had to intervene because the Obama administration refused to defend the Act.

The brief argues that, consistent with precedent, only rational basis should be applied, and that multiple rational reasons exist to limit marriage to one man and one woman. The brief also argues that DOMA is important because it preserves each state's sovereign ability to define marriage for itself.

As of this point, 6 states have joined the brief—Alabama, Alaska, Georgia, South Carolina, Virginia, and Indiana (the authoring state). I would anticipate that additional states will join before Monday's deadline.

-----Original Message-----

From: Schweitzer, Dan [mailto:DSCHWEITZER@NAAG.ORG]
Sent: Wednesday, January 23, 2013 11:38 AM
To: chris.coppin@cwagweb.org; paul.d.stern@maine.gov; dbahr@nd.gov; agjwmcinto@scag.gov; pam.murphy@doj.nh.gov; eric.tabor@iowa.gov; jknorr@attorneygeneral.gov; james.layton@ago.mo.gov; paula.bickett@azag.gov; charles.mcguigan@state.sd.us; RPartington@riag.ri.gov; crimago@saipan.com; barbara.underwood@ag.ny.gov; Hampton, Andrea; Schweitzer, Dan; sbluestone@nmag.gov; david.raupp@arkansasag.gov; gmorg@ago.state.ms.us; jlee@riag.ri.gov; attorney@samoatelco.com; stephan.finkel@lps.state.nj.us; Girard.D.Lau@hawaii.gov; stevemac@ku.edu; dennis.hansen@arkansasag.gov; drobinson@law.ga.gov; hughesafran@hotmail.com; basay@atg.state.vt.us; Mary.Williams@doj.state.or.us; gkelley@ncdoj.gov; alanc@atg.wa.gov; alama@nmag.gov; judy.zeprun@state.ma.us; joanne.grace@alaska.gov; jnotz@atg.state.il.us; mcgimseyr@ag.state.la.us; Gregory.Dauria@ct.gov; anne.edwards@doj.nh.gov; tom.fisher@atg.in.gov; jwhite@ncdoj.gov; whowle@ag.nv.gov; Frances.Grunder@doj.ca.gov; mlanf@ago.state.ms.us; ken.rosenstein@alaska.gov; allison.martin@ag.ky.gov; hpizz@ago.state.ms.us; wellslk@doj.state.wi.us; Lee.Davidson@ksag.org; edavis@doj.vi.gov; donna.murasky@dc.gov; ssullivan@oag.state.md.us; jmaddrey@ncdoj.gov; dspence@oag.state.md.us; wjy@wvago.gov; debbie.jourgensen@wyo.gov; Steve.Creaseon@atg.in.gov; jafarshee@ago.state.al.us; andrea.silkowitz@dol.lps.state.nj.us; brian.kane@ag.idaho.gov; Richard.Dearing@ag.ny.gov; katie.spohn@nebraska.gov; rrussell@nmag.gov; mwood@ago.state.ms.us; hunterg@atg.wa.gov; restucciae@michigan.gov; wbrockman@oag.state.md.us; agesmith@scag.gov; susan.lee@doj.ca.gov; SG@atg.in.gov; todd.kim@dc.gov; delayne.deck@ag.idaho.gov; dan.domenico@state.co.us; mscodro@atg.state.il.us;

heather.mcveigh@atg.in.gov; suzanne.gorman@doj.nh.gov; jbhoward@oag.state.md.us; potterkc@doj.state.wi.us; stjohnkm@doj.state.wi.us; ed.bedrosian@state.ma.us; john.garry@ag.state.mn.us; Barbara.Durham@myfloridalegal.com; brooke.paup@texasattorneygeneral.gov; meanssp@doj.state.wi.us; Sherri.Wald@state.sd.us; adam.aston@texasattorneygeneral.gov; jhughes@atg.state.il.us; david.blake@state.co.us; Segrest, Stuart; susan.britton@ag.ky.gov; john.campbell@ksag.org; jung.kim@dol.lps.state.nj.us; dave.jones@alaska.gov; delberta.pfeifer@ksag.org; perry.zinn-rowthorn@ct.gov; mwebb@ago.state.ms.us; barb.fehrman@ag.state.mn.us; vbeavers@ag.nv.gov; bromano@utah.gov; timothy.osterhaus@myfloridalegal.com; kris.aillsliager@ksag.org; Alexandra.Schimmer@ohioattorneygeneral.gov; bob.fagan@msdh.state.ms.us; Eileen.carey@state.ma.us; sean.riley@ag.ky.gov; ashley.harwel@atg.in.gov; dGetchell@oag.state.va.us; anna.joyce@doj.state.or.us; marlene.brown@dol.lps.state.nj.us; peter.michael@wyo.gov; diane.dewolf@myfloridalegal.com; jonathan.mitchell@oag.state.tx.us; mary.mertz@ohioattorneygeneral.gov; sforney@attorneygeneral.gov; npeterson@law.ga.gov; jneiman@ago.state.al.us; ariel.levinson-waldman@dc.gov; burschj@michigan.gov; Dave.Cole@azag.gov; Leesa.Thompson@oag.ok.gov; dowkerc@michigan.gov; lkelly@attorneygeneral.gov; frederick.nelson@ohioattorneygeneral.gov; patrick.wyrick@oag.ok.gov; bill.young@ag.tn.gov; Black, Michael; MBrady@oag.state.va.us; Sam Peterson; abrasher@ago.state.al.us; pamela.spang@state.ma.us; luisroman@justice.com; kguthrie@ago.state.al.us; andy.oldham@texasattorneygeneral.gov; Jason.pleggenkuhle@ag.state.mn.us; Fred.Yarger@state.co.us; robyn.bender@ag.ky.gov; laura-jane.weimer@state.co.us; james.adams@state.de.us; Aricka.seales@state.ma.us; Wilton, Patricia; pamela.webster@state.de.us; VanDyke, Lawrence; christopher.dodrill@wvago.gov
Subject: Amicus Brief in United States v. Windsor (U.S.) - DOMA case

To: Civil Amicus Contacts

Attached is an amicus brief prepared by Indiana in support of defendant-intervenor Bipartisan Legal Advisory Group on the merits in United States v. Windsor, 12-144 (U.S.) (the Defense of Marriage Act case). The brief argues that Section 3 of DOMA -- which provides that for purposes of federal law, including the provision of federal benefits, "marriage" means only a legal union between a man and a woman -- is constitutional. (The Amicus Memo is also attached.)

[Please note that an amicus memo and brief will be circulated at a later date arguing that DOMA is unconstitutional.]

The deadline for joining the brief is January 28, 2013 at 5 pm EST. To join, you may contact:

Tom Fisher
Indiana Solicitor General
(317) 232-6255
Tom.Fisher@atg.in.gov<mailto:Tom.Fisher@atg.in.gov>

Barnes, John

From: VanDyke, Lawrence
Sent: Thursday, February 07, 2013 3:50 PM
To: Barnes, John
Subject: FW: Amicus Memo in Kachalsky v. Cacaces (U.S.) -- Second Amendment case
Attachments: Kachalsky Cert Petition (Filed).pdf; Kachalsky Op. (2d Cir.).pdf; Virginia Amicus Memo - Kachalsky - Cert Stage.doc

From: VanDyke, Lawrence
Sent: Thursday, January 17, 2013 11:02 AM
To: Fox, Tim
Cc: Mattioli, Mark; Barnes, John; James, Julie
Subject: Amicus Memo in Kachalsky v. Cacaces (U.S.) -- Second Amendment case

Recommendation: I recommend that we do join this amicus brief, even though it is only a cert-stage brief.

Decision Deadline: 3 pm on Friday, February 8

Analysis: This amicus brief (drafted by Virginia) supports petitioners in the next Second Amendment challenge being brought by the same folks that brought the successful challenges in *Heller* and *McDonald* (absolute ban on handguns). This is the next logical step – challenging New York’s law that, while it allows you to have a handgun in your home, does not allow you to get a permit to take it outside the home (absent a strong showing of unique and particularized need). This challenge will be especially timely, given the current push by some to impose more gun bans. The Second Circuit’s decision purported to apply heightened scrutiny to the ban, but arguably applied little more than rational basis review. The court also distinguished the right of self-defense in the home (established in *Heller* and *McDonald*) from the right of self-defense in public. The specific question addressed in this appeal is: “Does the Second Amendment secure a right to carry a handgun for self-defense outside the home?”

Virginia’s brief will provide an emphatic “yes” to that question, urging the Court to grant the petition and recognize the right of the citizens of the United States to lawfully protect themselves from unlawful violence outside the home. The brief will provide empirical evidence, taken from other states with more permissive laws than New York’s, showing that New York’s fears of increased violence from a more liberal regime of handgun carry are baseless.

From: Schweitzer, Dan [<mailto:DSCHWEITZER@NAAG.ORG>]
Sent: Wednesday, January 16, 2013 12:43 PM
To: chris.coppin@cwagweb.org; paul.d.stern@maine.gov; dbahr@nd.gov; agjwmcinto@scag.gov; pam.murphy@doj.nh.gov; eric.tabor@iowa.gov; jknorr@attorneygeneral.gov; james.layton@ago.mo.gov; paula.bickett@azag.gov; charles.mcquigan@state.sd.us; RPartington@riag.ri.gov; crimago@saipan.com; barbara.underwood@ag.ny.gov; Hampton, Andrea; Schweitzer, Dan; sbluestone@nmag.gov; david.raupp@arkansasag.gov; gmorg@ago.state.ms.us; jlee@riag.ri.gov; attorney@samoatelco.com; stephan.finkel@lps.state.nj.us; Girard.D.Lau@hawaii.gov; stevemac@ku.edu; dennis.hansen@arkansasag.gov; drobins@law.ga.gov; hughesafran@hotmail.com; basay@atg.state.vt.us; Mary.Williams@doj.state.or.us; gkelley@ncdoj.gov; alanc@atg.wa.gov; alama@nmag.gov; judy.zeprun@state.ma.us; joanne.grace@alaska.gov; jnotz@atg.state.il.us; mcgimseyr@ag.state.la.us; Gregory.Dauria@ct.gov; anne.edwards@doj.nh.gov; tom.fisher@atg.in.gov; jwhite@ncdoj.gov; whowle@ag.nv.gov; Frances.Grunder@doj.ca.gov; mianf@ago.state.ms.us; ken.rosenstein@alaska.gov; allison.martin@ag.ky.gov; hpizz@ago.state.ms.us; wellslk@doj.state.wi.us; Lee.Davidson@ksag.org; edavis@doj.vi.gov; donna.murasky@dc.gov; ssullivan@oag.state.md.us; jmaddrey@ncdoj.gov; dspence@oag.state.md.us; wjy@wvago.gov; debbie.jourgensen@wyo.gov; Steve.Creason@atg.in.gov; jafarshee@ago.state.al.us; andrea.silkowitz@dol.lps.state.nj.us; brian.kane@ag.idaho.gov; Richard.Dearing@ag.ny.gov;

katie.spohn@nebraska.gov; rrussell@nmag.gov; mwood@ago.state.ms.us; hunterg@atg.wa.gov;
restucciae@michigan.gov; wbrockman@oag.state.md.us; agesmith@scag.gov; susan.lee@doj.ca.gov; SG@atg.in.gov;
todd.kim@dc.gov; delayne.deck@ag.idaho.gov; dan.domenico@state.co.us; mcodro@atg.state.il.us;
heather.mcveigh@atg.in.gov; suzanne.gorman@doj.nh.gov; jbhoward@oag.state.md.us; potterkc@doj.state.wi.us;
stjohnkm@doj.state.wi.us; ed.bedrosian@state.ma.us; john.garry@ag.state.mn.us; Barbara.Durham@myfloridalegal.com;
brooke.paup@texasattorneygeneral.gov; meanssp@doj.state.wi.us; Sherri.Wald@state.sd.us;
adam.aston@texasattorneygeneral.gov; jhughes@atg.state.il.us; david.blake@state.co.us; Segrest, Stuart;
susan.britton@ag.ky.gov; john.campbell@ksag.org; jung.kim@dol.lps.state.nj.us; dave.jones@alaska.gov;
delberta.pfeifer@ksag.org; perry.zinn-rowthorn@ct.gov; mwebb@ago.state.ms.us; barb.fehrman@ag.state.mn.us;
vbeavers@ag.nv.gov; bromano@utah.gov; timothy.osterhaus@myfloridalegal.com; kris.aillslieger@ksag.org;
Alexandra.Schimmer@ohioattorneygeneral.gov; bob.fagan@msdh.state.ms.us; Eileen.carey@state.ma.us;
sean.riley@ag.ky.gov; ashley.harwel@atg.in.gov; dGetchell@oag.state.va.us; anna.joyce@doj.state.or.us;
marlene.brown@dol.lps.state.nj.us; peter.michael@wyo.gov; diane.dewolf@myfloridalegal.com;
jonathan.mitchell@oag.state.tx.us; mary.mertz@ohioattorneygeneral.gov; sforney@attorneygeneral.gov;
npeterson@law.ga.gov; jneiman@ago.state.al.us; ariel.levinson-waldman@dc.gov; burschj@michigan.gov;
Dave.Cole@azag.gov; Leesa.Thompson@oag.ok.gov; dowker@oag.ok.gov; dowker@michigan.gov; frederick.nelson@ohioattorneygeneral.gov;
patrick.wyrick@oag.ok.gov; bill.young@ag.tn.gov; Black, Michael; MBrady@oag.state.va.us; Sam Peterson;
abrasher@ago.state.al.us; pamela.spang@state.ma.us; luisroman@justice.com; kquthrie@ago.state.al.us;
andy.oldham@texasattorneygeneral.gov; Jason.pleggenkuhle@ag.state.mn.us; Fred.Yarger@state.co.us;
robyn.bender@ag.ky.gov; laura-jane.weimer@state.co.us; james.adams@state.de.us; Aricka.seales@state.ma.us; Wilton,
Patricia; pamela.webster@state.de.us; VanDyke, Lawrence

Subject: Amicus Memo in *Kachalsky v. Cacaces* (U.S.) -- Second Amendment case

To: Civil Amicus Contacts
From: Mike Brady, Virginia

The Commonwealth of Virginia is preparing an amicus brief to be filed in the Supreme Court of the United States in support of a petition for writ of certiorari from a decision of the United States Court of Appeals for the Second Circuit. The case is *Kachalsky v. Cacaces*, No. 12-845. A New York statute prohibits law-abiding citizens from carrying a handgun outside the home unless the citizen first demonstrates "proper cause" to carry a handgun. The Commonwealth will assert the State's interest in the Second Amendment being interpreted so as to meaningfully protect the citizen's right of lawful self-defense. The amicus brief will contend that this restriction of Second Amendment rights is neither narrowly tailored nor reasonably calculated to advance the State's interest in preventing criminal violence in view of the long experience of other States with more liberal handgun carry laws and the substantial body of evidence that has been collected on the relationship between such laws and the incidence of crime. An amicus memo providing further detail is attached.

A draft of the amicus brief will be circulated on Friday, February 1. As the amicus brief is due to be filed on Monday, February 11, the Commonwealth requests that States communicate their joinder by COB on Friday, February 8. To join or for more information, please contact the attorney listed below:

Mike Brady
Assistant Attorney General
Office of the Attorney General of Virginia
900 East Main Street
Richmond, Virginia 23219
Telephone: (804) 786-3518
Email: mbrady@oag.state.va.us

Dan Schweitzer
Supreme Court Counsel
National Association of Attorneys General
2030 M Street, NW, 8th Floor
Washington, DC 20036
(202) 326-6010
(202) 785-0410 - fax
dschweitzer@naag.org

Barnes, John

From: VanDyke, Lawrence
Sent: Wednesday, August 28, 2013 11:59 AM
To: Fox, Tim; Mattioli, Mark
Cc: Bennion, Jon; Swanson, Cory; Barnes, John
Subject: FW: Amicus Memo in NRA v. ATF (U.S.)
Attachments: Amicus Memo - NRA v Bureau of ATFE -- 8-27.pdf

Tim and Mark – This is a short-fuse cert-stage amicus join request from Alabama in a Second Amendment case coming out of the Fifth Circuit. The case challenges federal laws that categorically deny 18-21 year olds the ability to buy handguns or handgun ammunition. The Fifth Circuit panel rejected the challenge, holding that (1) the laws do not implicate the Second Amendment, and (2) even if they do, they don't violate it. The NRA is the Petitioner in this case.

I think we should join this brief. I'm not sure I agree with the strategy of bringing this case to the SCOTUS, but I think we want to be on the record as on the side of gun rights (and the NRA). I think that a blanket ban on handgun ownership for all 18-21 year olds probably does violate the original meaning of the second amendment – I would expect that 18 year olds were part of the "militia."

Our deadline is quick – we need to decide by this Friday.

Thanks,

Lawrence

From: Schweitzer, Dan [mailto:DSCHWEITZER@NAAG.ORG]
Sent: Tuesday, August 27, 2013 1:02 PM
To: chris.coppin@cwagweb.org; paul.d.stern@maine.gov; dbahr@nd.gov; JMcIntosh@scag.gov; pam.murphy@doj.nh.gov; eric.tabor@iowa.gov; jknorr@attorneygeneral.gov; james.layton@ago.mo.gov; paula.bickett@azag.gov; charles.mcguigan@state.sd.us; RPartington@riag.ri.gov; crimago@saipan.com; barbara.underwood@ag.ny.gov; Hampton, Andrea; Schweitzer, Dan; sbluestone@nmag.gov; david.raupp@arkansasag.gov; gmorg@ago.state.ms.us; jlee@riag.ri.gov; attorney@samoatelco.com; stephan.finkel@lps.state.nj.us; Girard.D.Lau@hawaii.gov; stevemac@ku.edu; dennis.hansen@arkansasag.gov; basay@atg.state.vt.us; Mary.Williams@doj.state.or.us; gkelley@ncdoj.gov; alanc@atg.wa.gov; alama@nmag.gov; judy.zepun@state.ma.us; joanne.grace@alaska.gov; jnotz@atg.state.il.us; Gregory.Dauria@ct.gov; anne.edwards@doj.nh.gov; tom.fisher@atg.in.gov; jwhite@ncdoj.gov; whowle@ag.nv.gov; Frances.Grunder@doj.ca.gov; mlanf@ago.state.ms.us; ken.rosenstein@alaska.gov; allison.martin@ag.ky.gov; hpizz@ago.state.ms.us; wellsik@doj.state.wi.us; Lee.Davidson@ksag.org; edavis@doj.vi.gov; donna.murasky@dc.gov; ssullivan@oag.state.md.us; jmaddrey@ncdoj.gov; dspence@oag.state.md.us; vlp@wvago.gov; debbie.mcveigh@wyo.gov; Steve.Creason@atg.in.gov; kguthrie@ago.state.al.us; andrea.silkowitz@dol.lps.state.nj.us; brian.kane@ag.idaho.gov; Richard.Dearing@ag.ny.gov; katie.spohn@nebraska.gov; rrussell@nmag.gov; mwood@ago.state.ms.us; restucciae@michigan.gov; wbrockman@oag.state.md.us; agesmith@scag.gov; susan.lee@doj.ca.gov; SG@atg.in.gov; todd.kim@dc.gov; delayne.deck@ag.idaho.gov; dan.domenico@state.co.us; mscodro@atg.state.il.us; heather.mcveigh@atg.in.gov; suzanne.gorman@doj.nh.gov; jbhoward@oag.state.md.us; potterkc@doj.state.wi.us; stjohnkm@doj.state.wi.us; ed.bedrosian@state.ma.us; john.garry@ag.state.mn.us; brooke.paup@texasattorneygeneral.gov; appeals@ohioattorneygeneral.gov; meanssp@doj.state.wi.us; Sherri.Wald@state.sd.us; adam.aston@texasattorneygeneral.gov; jhughes@atg.state.il.us; david.blake@state.co.us; Segrest, Stuart; susan.britton@ag.ky.gov; john.campbell@ksag.org; jung.kim@dol.lps.state.nj.us; dave.jones@alaska.gov; delberta.pfeifer@ksag.org; perry.zinn-rowthorn@ct.gov; mwebb@ago.state.ms.us; barb.fehrman@ag.state.mn.us; vbeavers@ag.nv.gov; bromano@utah.gov; kris.aillsieger@ksag.org; bob.fagan@msdh.state.ms.us; Eileen.carey@state.ma.us; sean.riley@ag.ky.gov; ashley.harwel@atg.in.gov; dGetchell@oag.state.va.us; anna.joyce@doj.state.or.us; marlene.brown@dol.lps.state.nj.us; peter.michael@wyo.gov;

diane.dewolf@myfloridalegal.com; jonathan.mitchell@oag.state.tx.us; mary.mertz@ohioattorneygeneral.gov; sforney@attorneygeneral.gov; npeterson@law.ga.gov; jneiman@ago.state.al.us; ariel.levinson-waldman@dc.gov; burschj@michigan.gov; Leesa.Thompson@oag.ok.gov; dowkerc@michigan.gov; frederick.nelson@ohioattorneygeneral.gov; patrick.wyrick@oag.ok.gov; bill.young@ag.tn.gov; Black, Michael; MBrady@oag.state.va.us; Sam Peterson; abrasher@ago.state.al.us; pamela.spang@state.ma.us; andy.oldham@texasattorneygeneral.gov; Jason.pleggenkuhle@ag.state.mn.us; michael.hendershot@ohioattorneygeneral.gov; robyn.bender@ag.ky.gov; laura-jane.weimer@state.co.us; james.adams@state.de.us; Aricka.seales@state.ma.us; wiltonp@ag.state.la.us; lindstroma@michigan.gov; VanDyke, Lawrence; allen.winsor@myfloridalegal.com; christopher.dodrill@wvago.gov; marmercado@justicia.pr.gov; elbert.lin@wvago.gov; Mary.McTaggart@state.de.us; Sarah.Greenwalt@oag.ok.gov; Michael.Franisco@state.co.us

Cc: KTurner@ago.state.al.us

Subject: Amicus Memo in NRA v. ATF (U.S.)

To: Civil Amicus Contacts

Attached is an Amicus Memo describing the amicus brief Alabama is preparing in support of the cert petition filed in *National Rifle Association v. U.S. Bureau of Alcohol, Tobacco, Firearms, and Explosives*, 13-137 (U.S.). The petition seeks review of a Fifth Circuit decision holding that the Second Amendment is not violated by federal laws prohibiting adults under the age of 21 from purchasing handguns and handgun ammunition. The question presented is “[w]hether a nationwide, class-based, categorical ban on meaningful access to the quintessential means to exercise the right to keep and bear arms for self-defense can be reconciled with the Second Amendment, the equal protection guarantee, and this Court’s precedents.”

The turn-around time is very short. Alabama will be circulating a draft brief tomorrow; and the deadline for joining is this Friday. To join, you may contact:

John Neiman
Solicitor General
Office of Alabama Attorney General Luther Strange
501 Washington Avenue
Montgomery, AL 36130
(334) 353-2187
JNeiman@ago.state.al.us

Dan Schweitzer
Supreme Court Counsel
National Association of Attorneys General
2030 M Street, NW, 8th Floor
Washington, DC 20036
(202) 326-6010
(202) 785-0410 - fax
dschweitzer@naag.org

Barnes, John

From: VanDyke, Lawrence
Sent: Thursday, March 21, 2013 8:56 AM
To: Fox, Tim; Mattioli, Mark; Swanson, Cory
Cc: Darkenwald, Scott; Bennion, Jon; Barnes, John
Subject: FW: brief
Attachments: Western MT Water Users Assn, LLC,, Docket No. 12-1060, Commission amicus.pdf

Attached is the draft of the Compact Commission's amicus brief that Chris Tweeten sent over this morning. I don't see anything here that is objectionable. It is pretty short, and mostly just makes clear to the Court that the Water Use Agreement under dispute is a key provision of the Water Compact, which is now pending before the legislature. No big news there. It also gives a brief background of why the Compact Commission exists, and why negotiated settlements are preferred over litigation. Again, that seems pretty incontrovertible.

The draft says very little about why Judge McNeil was wrong, and what it does say is very conclusory (see the excerpted paragraph below). Basically, the Commission is relying on the Appellants to make the real case why the Judge was wrong. So this brief doesn't really help me in trying to figure out who is right on the merits. Hopefully the Appellants' brief will.

Excerpt from draft as to why Judge McNeil erred:

Respectfully, the court below erred in entering the writ. No evidentiary hearing was ever held, and the only factual record before the court was the May draft of the WUA which, of course, had become a dead letter upon the release of the January draft that superseded it. The Court misread the May draft to require irrigators to convey privately held water rights to the CSKT, when the draft deals only with the delivery of water by the CSKT to the Project and by the Project to its members. The Court held that the FJBC could not legally hold a water right, a determination that was beyond its jurisdiction and within the exclusive purview of the Water Court. The Court should not let the Writ stand with these errors embedded in it and so much at stake.

From: Chris Tweeten [<mailto:c.tweeten@bresnan.net>]
Sent: Thursday, March 21, 2013 5:35 AM
To: VanDyke, Lawrence
Subject: brief

Hi Lawrence:

Attached is a copy of the amicus brief I intend to file today. As you can see it is quite short and intends to simply put the dispute over the water use agreement in context of the overall compact negotiation. If you have any comments about it please get them to me by mid-morning. I'll be in Helena to file the brief and plan to get it filed before noon.

Chris

Chris D. Tweeten
Attorney at Law
TweetenLaw, PLLC

Barnes, John

From: VanDyke, Lawrence
Sent: Monday, March 25, 2013 3:54 PM
To: Fox, Tim; Barnes, John
Cc: Darkenwald, Scott; Mattioli, Mark; Bennion, Jon; Swanson, Cory
Subject: FW: Contraception Mandate Sign-on Letter: Update and Draft Press Release
Attachments: Contraception Mandate Letter DRAFT Press Release.docx; AGComment on New Proposal Regarding Contraception Mandate - SIGNED circulation draft 3-25 (2).pdf

Tim and John – Attached is a near-final draft of the HHS mandate letter Tim is joining (along with 11 other AGs). It will be filed tomorrow.

Also attached is a draft press release. I don't know if we want to do press on this or not, but I thought I should pass this along just in case.

From: Brasher, Andrew [<mailto:ABrasher@ago.state.al.us>]
Sent: Monday, March 25, 2013 3:30 PM
To: Chanay, Jeff; Britt Grant; VanDyke, Lawrence; Frederick Nelson; Adam Piper; Tom.Bates@oag.ok.gov; Carlos Muniz; Fred.Yarger@state.co.us; Spohn, Katie; Elbert Lin; Kane, Brian
Cc: Beth Ryan
Subject: Contraception Mandate Sign-on Letter: Update and Draft Press Release

All,

I will file the contraception mandate comment letter **tomorrow morning, March 26, 2013**. I will then send an email to this list with the as-filed version letting you know that it has been filed and giving you the green light to do any press that you may want to do.

To that end, I have attached two things to this email: (1) I have attached the final draft of comment letter. There are been a few minor changes since the last draft. The two biggest are that I have removed a sentence from the last paragraph, and I have changed the term "contraception mandate" to "HHS mandate" to better correspond with the public relations strategy of the Beckett Fund and the Alliance Defending Freedom. If you have any concerns about this final draft, please let me know as soon as possible. (2) I have also attached a draft press release that your respective teams can modify/add to however you would like.

Thank you,

Andrew Brasher
Deputy Solicitor General
Office of Alabama Attorney General Luther Strange
Direct: 334-353-2609
Fax: 334-242-4891

Barnes, John

From: VanDyke, Lawrence
Sent: Thursday, December 05, 2013 10:55 AM
To: James, Julie
Cc: Barnes, John; Burton, Anastasia
Subject: FW: Cert Stage Amicus Brief in Elane Photography v. Willock (U.S.)
Attachments: Re: Cert Stage Amicus Brief in Elane Photography v. Willock (U.S.); FW: Cert Stage Amicus Brief in Elane Photography v. Willock (U.S.)

For the binder – yet another join.

John and Anastasia – this is the New Mexico case where a photographer was sanctioned because she refused to photograph a same-sex commitment ceremony. Filing date will be December 13. Not sure it makes sense to do any press on this, but wanted to give you a special head's up because since this brief relates to a socially hot issue, I suppose we could get press inquiries about our join. I would recommend reading the introduction in the draft brief. As far as we are concerned, this isn't about gay rights. The issue is whether core first amendment protections will continue to apply to set the background rules for fair public debate even when the issues are very socially divisive and hotly contested (regardless of what those issues are). Seems like the obvious answer is yes; indeed, that is precisely when first amendment protections are most needed. That is our messaging, if needed.

From: VanDyke, Lawrence
Sent: Thursday, December 05, 2013 10:47 AM
To: 'Brasher, Andrew'
Subject: RE: Cert Stage Amicus Brief in Elane Photography v. Willock (U.S.)

Andrew – Really great and important brief. I think the intro is powerful.

Montana would like to join.

Please list our Attorney General as "Timothy C. Fox".

General Fox's full address, should you need it, is:

Timothy C. Fox
Attorney General of Montana
P.O. Box 201401
Helena, MT 59620-1401
406-444-2026

Please confirm our join by return email, and if you could forward a copy of the final brief once filed, we would appreciate it.

Thank you,

Lawrence VanDyke
Solicitor General ♦ Montana Department of Justice

215 N. Sanders ♦ P.O. Box 201401
Helena, Montana 59620
T: (406) 444-3442 ♦ F: (406) 444-3549

LVanDyke@mt.gov

From: Brasher, Andrew [<mailto:ABrasher@ago.state.al.us>]

Sent: Thursday, December 05, 2013 9:43 AM

To: Schweitzer, Dan; chris.coppin@cwagweb.org; paul.d.stern@maine.gov; dbahr@nd.gov; peter.sacks@ago.state.ma.us; kmunro@ag.nv.gov; JMCIntosh@scaq.gov; pam.murphy@doj.nh.gov; eric.tabor@iowa.gov; jknorr@attorneygeneral.gov; margaret.chapple@ct.gov; james.layton@ago.mo.gov; paula.bickett@azag.gov; charles.mcguigan@state.sd.us; RPartington@riag.ri.gov; crimago@saipan.com; barbara.underwood@ag.ny.gov; Hampton, Andrea; sbluestone@nmag.gov; david.raupp@arkansasag.gov; gmorg@ago.state.ms.us; jlee@riag.ri.gov; attorney@samoatelco.com; stephan.finkel@lps.state.nj.us; Girard.D.Lau@hawaii.gov; stevemac@ku.edu; dennis.hansen@arkansasag.gov; basay@atg.state.vt.us; Mary.Williams@doj.state.or.us; gkelley@ncdoj.gov; alanc@atg.wa.gov; alama@nmag.gov; judy.zeprun@state.ma.us; joanne.grace@alaska.gov; jnotz@atg.state.il.us; Gregory.Dauria@ct.gov; anne.edwards@doj.nh.gov; tom.fisher@atg.in.gov; jwhite@ncdoj.gov; whowle@ag.nv.gov; Frances.Grunder@doj.ca.gov; mlanf@ago.state.ms.us; ken.rosenstein@alaska.gov; allison.martin@ag.ky.gov; hpizz@ago.state.ms.us; wellslk@doj.state.wi.us; Lee.Davidson@ksag.org; edavis@doj.vi.gov; ssullivan@oag.state.md.us; jmaddrey@ncdoj.gov; dspence@oag.state.md.us; vlp@wvago.gov; judy.mitchell@wyo.gov; Steve.Creason@atg.in.gov; Guthrie, Karen; andrea.silkowitz@dol.lps.state.nj.us; brian.kane@ag.idaho.gov; Richard.Dearing@ag.ny.gov; katie.spohn@nebraska.gov; rrussell@nmag.gov; Mary Jo Woods; restucciae@michigan.gov; wbrockman@oag.state.md.us; agesmith@scaq.gov; susan.lee@doj.ca.gov; SG@atg.in.gov; todd.kim@dc.gov; delayne.deck@ag.idaho.gov; dan.domenico@state.co.us; mscodro@atg.state.il.us; heather.mcveigh@atg.in.gov; suzanne.gorman@doj.nh.gov; jbhoward@oag.state.md.us; potterkc@doj.state.wi.us; stjohnkm@doj.state.wi.us; ed.bedrosian@state.ma.us; john.garry@ag.state.mn.us; brooke.paup@texasattorneygeneral.gov; appeals@ohioattorneygeneral.gov; Sherri.Wald@state.sd.us; adam.aston@texasattorneygeneral.gov; jhughes@atg.state.il.us; david.blake@state.co.us; Segrest, Stuart; susan.britton@ag.ky.gov; john.campbell@ksag.org; jung.kim@dol.lps.state.nj.us; dave.jones@alaska.gov; delberta.pfeifer@ksag.org; perry.zinn-rowthorn@ct.gov; jfishburn@ag.nv.gov; mwebb@ago.state.ms.us; barb.fehrman@ag.state.mn.us; vbeavers@ag.nv.gov; bromano@utah.gov; kris.aillslieger@ksag.org; bob.fagan@msdh.state.ms.us; Eileen.carey@state.ma.us; sean.riley@ag.ky.gov; ashley.harwel@atg.in.gov; dGetchell@oag.state.va.us; anna.joyce@doj.state.or.us; marlene.brown@dol.lps.state.nj.us; peter.michael@wyo.gov; diane.dewolf@myfloridalegal.com; jonathan.mitchell@oag.state.tx.us; mary.mertz@ohioattorneygeneral.gov; sforney@attorneygeneral.gov; npeterson@law.ga.gov; Neiman, John; ariel.levinson-waldman@dc.gov; burschj@michigan.gov; Leesa.Thompson@oag.ok.gov; dowker@michigan.gov; frederick.nelson@ohioattorneygeneral.gov; patrick.wyrick@oag.ok.gov; bill.young@ag.tn.gov; Black, Michael; MBrady@oag.state.va.us; steven.wu@ag.ny.gov; Sam Peterson; pamela.spang@state.ma.us; andy.oldham@texasattorneygeneral.gov; Jason.pleggenkuhle@ag.state.mn.us; michael.hendershot@ohioattorneygeneral.gov; robyn.bender@ag.ky.gov; laura-jane.weimer@state.co.us; james.adams@state.de.us; Aricka.seales@state.ma.us; wiltonp@ag.state.la.us; lindstroma@michigan.gov; VanDyke, Lawrence; allen.winsor@myfloridalegal.com; christopher.dodrill@wvago.gov; marmercado@justicia.pr.gov; elbert.lin@wvago.gov; Mary.McTaggart@state.de.us; Sarah.Greenwalt@oag.ok.gov; Michael.Francisco@state.co.us; Eric.Murphy@ohioattorneygeneral.gov; Killough, Lindsey; Loren.AliKhan@dc.gov

Subject: Cert Stage Amicus Brief in *Elane Photography v. Willock* (U.S.)

All,

Attached is an Amicus Brief that Alabama has prepared in support of the cert petition in *Elane Photography v. Willock*, 13-585 (U.S.). The cert petition and amicus memo are also attached. The petition seeks review of a decision by the New Mexico Supreme holding that a business offering wedding photography services violated the New Mexico Human Rights Act when it refused to photograph a commitment ceremony between two women. The question presented is "Whether applying a state public-accommodations statute to require a photographer to create expressive images and picture-books conveying messages that conflict with her religious beliefs violates the First Amendment's ban on compelled speech."

The deadline to join this brief is **December 13 at 9am Central Time**.

To join please contact:

Andrew Brasher
Deputy Solicitor General
Office of Alabama Attorney General Luther Strange
Direct: 334-353-2609
abrasher@ago.state.al.us

Andrew Brasher
Deputy Solicitor General
Office of Alabama Attorney General Luther Strange
Direct: 334-353-2609
Fax: 334-242-4891

From: Schweitzer, Dan [<mailto:DSCHWEITZER@NAAG.ORG>]

Sent: Thursday, November 14, 2013 10:39 AM

To: chris.coppin@cwagweb.org; paul.d.stern@maine.gov; dbahr@nd.gov; peter.sacks@ago.state.ma.us; kmunro@ag.nv.gov; JMcIntosh@scag.gov; pam.murphy@doj.nh.gov; eric.tabor@iowa.gov; iknorr@attorneygeneral.gov; margaret.chapple@ct.gov; james.layton@ago.mo.gov; paula.bickett@azag.gov; charles.mcguigan@state.sd.us; RPartington@riag.ri.gov; crimago@saipan.com; barbara.underwood@ag.ny.gov; Hampton, Andrea; Schweitzer, Dan; sbluestone@nmag.gov; david.raupp@arkansasag.gov; gmorg@ago.state.ms.us; jilee@riag.ri.gov; attorney@samoatelco.com; stephan.finkel@lps.state.nj.us; Girard.D.Lau@hawaii.gov; stevemac@ku.edu; dennis.hansen@arkansasag.gov; basay@atg.state.vt.us; Mary.Williams@doj.state.or.us; gkelley@ncdoj.gov; alanc@atg.wa.gov; alama@nmag.gov; judy.zeprun@state.ma.us; joanne.grace@alaska.gov; jnotz@atg.state.il.us; Gregory.Dauria@ct.gov; anne.edwards@doj.nh.gov; tom.fisher@atg.in.gov; jwhite@ncdoj.gov; whowle@ag.nv.gov; Frances.Grunder@doj.ca.gov; mlanf@ago.state.ms.us; ken.rosenstein@alaska.gov; allison.martin@ag.ky.gov; hpizz@ago.state.ms.us; wellsik@doj.state.wi.us; Lee.Davidson@ksag.org; edavis@doj.vi.gov; ssullivan@oag.state.md.us; jmaddrey@ncdoj.gov; dspence@oag.state.md.us; vlp@wvago.gov; judy.mitchell@wyo.gov; Steve.Creason@atg.in.gov; Guthrie, Karen; andrea.silkowitz@dol.lps.state.nj.us; brian.kane@ag.idaho.gov; Richard.Dearing@ag.ny.gov; katie.spohn@nebraska.gov; rrussell@nmag.gov; Mary Jo Woods; restucciae@michigan.gov; wbrockman@oag.state.md.us; agesmith@scag.gov; susan.lee@doj.ca.gov; SG@atg.in.gov; todd.kim@dc.gov; delayne.deck@ag.idaho.gov; dan.domenico@state.co.us; mscodro@atg.state.il.us; heather.mcveigh@atg.in.gov; suzanne.gorman@doj.nh.gov; jbhoward@oag.state.md.us; potterkc@doj.state.wi.us; stjohnkm@doj.state.wi.us; ed.bedrosian@state.ma.us; john.garry@ag.state.mn.us; brooke.paup@texasattorneygeneral.gov; appeals@ohioattorneygeneral.gov; Sherri.Wald@state.sd.us; adam.aston@texasattorneygeneral.gov; jhughes@atg.state.il.us; david.blake@state.co.us; ssegrest@mt.gov; susan.britton@ag.ky.gov; john.campbell@ksag.org; jung.kim@dol.lps.state.nj.us; dave.jones@alaska.gov; delberta.pfeifer@ksag.org; perry.zinn-rowthorn@ct.gov; jfishburn@ag.nv.gov; mwebb@ago.state.ms.us; barb.fehrman@ag.state.mn.us; vbeavers@ag.nv.gov; bromano@utah.gov; kris.aillsieger@ksag.org; bob.fagan@msdh.state.ms.us; Eileen.carey@state.ma.us; sean.riley@ag.ky.gov; ashley.harwel@atg.in.gov; dGetchell@oag.state.va.us; anna.joyce@doj.state.or.us; marlene.brown@dol.lps.state.nj.us; peter.michael@wyo.gov; diane.dewolf@myfloridalegal.com; jonathan.mitchell@oag.state.tx.us; mary.mertz@ohioattorneygeneral.gov; sforney@attorneygeneral.gov; npeterson@law.ga.gov; Neiman, John; ariel.levinson-waldman@dc.gov; burschj@michigan.gov; Leesa.Thompson@oag.ok.gov; dowkerc@michigan.gov; frederick.nelson@ohioattorneygeneral.gov; patrick.wyrick@oag.ok.gov; bill.young@ag.tn.gov; mblack2@mt.gov; MBrady@oag.state.va.us; steven.wu@ag.ny.gov; Sam Peterson; Brasher, Andrew; pamela.spang@state.ma.us; andy.oldham@texasattorneygeneral.gov; Jason.pieggenuhleh@ag.state.mn.us; michael.hendershot@ohioattorneygeneral.gov; robyn.bender@ag.ky.gov; laura-jane.weimer@state.co.us; james.adams@state.de.us; Aricka.seales@state.ma.us; wiltonp@ag.state.la.us; lindstroma@michigan.gov; LVanDyke@mt.gov; allen.winsor@myfloridalegal.com; christopher.dodrill@wvago.gov; marmercado@justicia.pr.gov; elbert.lin@wvago.gov; Mary.McTaggart@state.de.us; Sarah.Greenwalt@oag.ok.gov; Michael.Francisco@state.co.us; Eric.Murphy@ohioattorneygeneral.gov; Killough, Lindsey; Loren.AliKhan@dc.gov
Subject: Cert Stage Amicus Memo in Elane Photography v. Willock (U.S.)

To: Civil Amicus Contacts

Attached is an Amicus Memo describing the amicus brief Alabama is preparing in support of the cert petition in *Elane Photography v. Willock*, 13-585 (U.S.). The cert petition is also attached. The petition seeks review of a decision by the New Mexico Supreme holding that a business offering wedding photography services violated the New Mexico Human Rights Act when it refused to photograph a commitment ceremony between two women. The question presented is "Whether applying a state public-accommodations statute to require a photographer to create expressive images and picture-books conveying messages that conflict with her religious beliefs violates the First Amendment's ban on compelled speech."

Dan Schweitzer
Supreme Court Counsel
National Association of Attorneys General
2030 M Street, NW, 8th Floor
Washington, DC 20036
(202) 326-6010
(202) 785-0410 - fax
dschweitzer@naag.org

Barnes, John

From: Bennion, Jon
Sent: Tuesday, February 12, 2013 3:48 PM
To: Swanson, Cory; Fox, Tim; Darkenwald, Scott; VanDyke, Lawrence; Barnes, John; Mattioli, Mark
Subject: FW: Parental notification for abortion: SupCo rule
Attachments: SupCo rule

See attached

-----Original Message-----

From: cary smith [<mailto:cary@bresnan.net>]
Sent: Tuesday, February 12, 2013 11:46 AM
To: , Rep. Krayton Kerns; ART WITTICH ; Austin Knudsen; Bennion, Jon; Bowen Greenwood; David Howard; Essmann, Jeff; Gordy Vance; Jason S. Priest; Jason S. Priest; Jeff Laszloffy; Krayton Kerns; Kris Hansen; Mark W Blasdel; Peterson, Ken; Regier, Keith; Rep Knudsen; Tom McGillvray; Wagman, Pat; Walker, Edward
Subject: Parental notification for abortion: SupCo rule

All,

Please take a look at the Supreme Court Rule for Parental notification for an abortion for a minor. It really makes the Legislative Referendum null & void.
Any ideas?

Representative Cary Smith
House District 55
Montana State House of Representatives
Majority Whip
Cell # 406-698-9307

committed to....preserving our Freedom & Liberty

--- the forwarded message follows ---

Barnes, John

From: VanDyke, Lawrence
Sent: Tuesday, January 08, 2013 10:22 AM
To: Fox, Tim; Darkenwald, Scott; Mattioli, Mark; Barnes, John
Subject: FW: PDF of Amicus Brief in Town of Greece v. Galloway (U.S.)
Attachments: Galloway -- Amicus Brief of the States (FINAL).pdf

Attached is the Town of Greece SCOTUS amicus brief, joined by Montana, that was filed yesterday.

- Lawrence

From: McVeigh, Heather [<mailto:Heather.McVeigh@atg.in.gov>]
Sent: Tuesday, January 08, 2013 10:06 AM
To: jneiman@ago.state.al.us; 'Soto, Marlana'; 'Bradford Phelps'; dan.domenico@state.co.us; diane.dewolf@myfloridalegal.com; 'Deck, DeLayne'; 'Pfeifer, Delberta'; 'Restuccia, Eric (AG)'; 'MARY JO WOODS'; 'Lawrence VanDyke'; VanDyke, Lawrence; katie.spohn@nebraska.gov; rrussell@nmag.gov; Leesa.Thompson@oag.ok.gov; 'Emory Smith'; adam.aston@texasattorneygeneral.gov; bromano@utah.gov; MBrady@oag.state.va.us
Subject: PDF of Amicus Brief in Town of Greece v. Galloway (U.S.)

Good afternoon,

Attached please find a PDF of the final version of Indiana's amicus brief in *Town of Greece v. Galloway*, No. 12-696 (U.S.). Thank you again for your support.

Best,
Heather

Heather Hagan McVeigh
Deputy Solicitor General
Office of the Indiana Attorney General

Indiana Government Center South, 5th Floor
302 West Washington Street
Indianapolis, Indiana 46204
Heather.McVeigh@atg.in.gov
T: 317.234.4918 | F: 317.232.7979

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Barnes, John

From: VanDyke, Lawrence
Sent: Wednesday, April 30, 2014 9:45 AM
To: Fox, Tim; Mattioli, Mark; Barnes, John; Burton, Anastasia
Subject: FW: PDF version of Weber brief
Attachments: Weber-Amicus-DRAFT-FINAL-TO-PRINTER.pdf

Tim et al. – Attached is the final version of the 9th Circuit amicus brief we will be filing along with the American Legion next Wed., May 7. John is working on media coordination (the Legion's attorney's will be issuing their own press release) and will prepare a press release for Tim if he wants to issue one.

Let me know if you have any questions.

Thanks,

Lawrence

From: Michael Berry [<mailto:mberry@libertyinstitute.org>]
Sent: Wednesday, April 30, 2014 9:39 AM
To: VanDyke, Lawrence
Subject: PDF version of Weber brief

Lawrence,

Here you go.

Michael Berry
Senior Counsel
Director of Military Affairs



Restoring Religious Liberty in America

o: 972.941.4444
direct: 972-941-4445
f: 972.423.6162
mberry@libertyinstitute.org
www.LibertyInstitute.org

CONFIDENTIALITY NOTICE

This electronic mail message and any accompanying documents contain information belonging to the sender which is confidential and legally privileged. This information is intended only for the use of the individual or entity to whom it was sent as indicated above. If you are not the intended recipient, any disclosure, copying, distribution, or action taken in reliance on the contents of the information contained in this electronic mail message is strictly prohibited. If you have received this message in error, please delete it immediately, and call (972-941-4444) to advise me that you received it. Thank you. PRIVILEGED AND CONFIDENTIAL - ATTORNEY CLIENT COMMUNICATION/ATTORNEY WORK PRODUCT

Barnes, John

From: Barnes, John
Sent: Friday, August 16, 2013 2:16 PM
To: VanDyke, Lawrence
Subject: FW: Sanders County
Attachments: Sanders Co. Order (08-16-2013).pdf

From: Black, Michael
Sent: Friday, August 16, 2013 2:15 PM
To: Mattioli, Mark
Cc: Barnes, John; Cochenour, Matt
Subject: Sanders County

Mark:

Here is the actual order. Based upon our prior conversations, it is my understanding that the AG does not want to petition for cert. However, I would prefer not to make any public announcement so we can attempt to resolve the claim for attorney fees. Thanks.

Michael G. Black
Bureau Chief
Civil Services Bureau
Montana Department of Justice
215 North Sanders
P.O. Box 201401
Helena, Montana 59620-1401
406-444-2026 telephone
406-444-3549 fax
mblack2@mt.gov

Barnes, John

From: VanDyke, Lawrence
Sent: Thursday, February 07, 2013 3:00 PM
To: Fox, Tim; Mattioli, Mark
Cc: Barnes, John; James, Julie
Subject: FW: Update on Amicus Brief in Kachalsky v. Cacace, No. 12-845
Attachments: UPDATED DRAFT Amicus Brief of the Commonwealth of Virginia - Kachalsky v Cacace (2 7 2013).pdf

Attached is Virginia's updated draft cert-stage amicus brief in the New York 2nd Amendment case pending before the SCOTUS. Tim has already said he wants to join this one, consistent with Mark's and my recommendations. Deadline for joining is tomorrow. Arkansas, Florida, Kansas, South Carolina, and South Dakota have already joined, and I would assume many more will join before the deadline. Absent objection, I will let Virginia know tomorrow morning that we are joining.

From: Schweitzer, Dan [mailto:DSCHWEITZER@NAAG.ORG]

Sent: Thursday, February 07, 2013 12:21 PM

To: chris.coppin@cwagweb.org; paul.d.stern@maine.gov; dbahr@nd.gov; agjwmcinto@scag.gov; pam.murphy@doj.nh.gov; eric.tabor@iowa.gov; jknorr@attorneygeneral.gov; james.layton@ago.mo.gov; paula.bickett@azag.gov; charles.mcguigan@state.sd.us; RPartington@riag.ri.gov; crimago@saipan.com; barbara.underwood@ag.ny.gov; Hampton, Andrea; Schweitzer, Dan; sbluestone@nmag.gov; david.raupp@arkansasag.gov; gmorg@ago.state.ms.us; jlee@riag.ri.gov; attorney@samoatelco.com; stephan.finkel@lps.state.nj.us; Girard.D.Lau@hawaii.gov; stevemac@ku.edu; dennis.hansen@arkansasag.gov; darylrobinson@law.ga.gov; basay@atg.state.vt.us; Mary.Williams@doj.state.or.us; gkelley@ncdoj.gov; alanc@atg.wa.gov; alama@nmag.gov; judy.zeprun@state.ma.us; joanne.grace@alaska.gov; jnotz@atg.state.il.us; mcgimseyr@ag.state.la.us; Gregory.Dauria@ct.gov; anne.edwards@doj.nh.gov; tom.fisher@atg.in.gov; jwhite@ncdoj.gov; whowle@ag.nv.gov; Frances.Grunder@doj.ca.gov; mlanf@ago.state.ms.us; ken.rosenstein@alaska.gov; allison.martin@ag.ky.gov; hpizz@ago.state.ms.us; wellsik@doj.state.wi.us; Lee.Davidson@ksag.org; edavis@doj.vi.gov; donna.murasky@dc.gov; ssullivan@oag.state.md.us; jmaddrey@ncdoj.gov; dspence@oag.state.md.us; vlp@wvago.gov; debbie.jourgensen@wyo.gov; Steve.Creason@atg.in.gov; jafarshee@ago.state.al.us; andrea.silkowitz@dol.lps.state.nj.us; brian.kane@ag.idaho.gov; Richard.Dearing@ag.ny.gov; katie.spohn@nebraska.gov; russell@nmag.gov; mwood@ago.state.ms.us; restucciae@michigan.gov; wbrockman@oag.state.md.us; agesmith@scag.gov; susan.lee@doj.ca.gov; SG@atg.in.gov; todd.kim@dc.gov; delayne.deck@ag.idaho.gov; dan.domenico@state.co.us; mscodro@atg.state.il.us; heather.mcveigh@atg.in.gov; suzanne.gorman@doj.nh.gov; jbhoward@oag.state.md.us; potterkc@doj.state.wi.us; stjohnkm@doj.state.wi.us; ed.bedrosian@state.ma.us; john.garry@ag.state.mn.us; Barbara.Durham@myfloridalegal.com; brooke.paup@texasattorneygeneral.gov; meanssp@doj.state.wi.us; Sherri.Wald@state.sd.us; adam.aston@texasattorneygeneral.gov; jhughes@atg.state.il.us; david.blake@state.co.us; Segrest, Stuart; susan.britton@ag.ky.gov; john.campbell@ksag.org; jung.kim@dol.lps.state.nj.us; dave.jones@alaska.gov; delberta.pfeifer@ksag.org; perry.zinn-rowthorn@ct.gov; mwebb@ago.state.ms.us; barb.fehrman@ag.state.mn.us; vbeavers@ag.nv.gov; bromano@utah.gov; timothy.osterhaus@myfloridalegal.com; kris.ailsieger@ksag.org; Alexandra.Schimmer@ohioattorneygeneral.gov; bob.fagan@msdh.state.ms.us; Eileen.carey@state.ma.us; sean.riley@ag.ky.gov; ashley.harwel@atg.in.gov; dGetchell@oag.state.va.us; anna.joyce@doj.state.or.us; marlene.brown@dol.lps.state.nj.us; peter.michael@wyo.gov; diane.dewolf@myfloridalegal.com; jonathan.mitchell@oag.state.tx.us; mary.mertz@ohioattorneygeneral.gov; sforney@attorneygeneral.gov; npeterson@law.ga.gov; jneiman@ago.state.al.us; ariel.levinson-waldman@dc.gov; burschj@michigan.gov; Leesa.Thompson@oag.ok.gov; dowker@kentucky.gov; frederick.nelson@ohioattorneygeneral.gov; patrick.wyrick@oag.ok.gov; bill.young@ag.tn.gov; Black, Michael; MBrady@oag.state.va.us; Sam Peterson; abrasher@ago.state.al.us; pamela.spang@state.ma.us; kguthrie@ago.state.al.us; andy.oldham@texasattorneygeneral.gov; Jason.pleggenkuhle@ag.state.mn.us; Fred.Yarger@state.co.us; robyn.bender@ag.ky.gov; laura-jane.weimer@state.co.us; james.adams@state.de.us; Aricka.seales@state.ma.us; Wilton, Patricia; pamela.webster@state.de.us; VanDyke, Lawrence; allen.winsor@myfloridalegal.com;

christopher.dodrill@wvago.gov; mamercaado@justicia.gobierno.pr

Subject: Update on Amicus Brief in *Kachalsky v. Cacace*, No. 12-845

To: Civil Amicus Contacts

From: Mike Brady, Assistant Attorney General, Virginia

The Commonwealth of Virginia is preparing an amicus brief to be filed in the Supreme Court of the United States in support of the petition in *Kachalsky v. Cacace*, No. 12-845. The petition challenges a New York statute's criminal prohibition on law-abiding citizens carrying a handgun outside the home unless the citizen first demonstrates "proper cause" to carry, interpreted to mean that the applicant has been personally subject to threats. The Second Circuit upheld this restriction, 701 F.3d 81 (2d Cir. 2012), analogues to which are also being challenged in the Third, Fourth, and Ninth Circuits of the United States Courts of Appeals. The Commonwealth will assert the States' interest in the Second Amendment being interpreted so as to meaningfully protect the citizen's right of lawful self-defense. The amicus brief will contend that this restriction of Second Amendment rights is neither properly tailored nor reasonably calculated to advance the State's interest in preventing criminal violence or protecting public safety, in view of the long experience of other States with more liberal handgun carry laws and the substantial body of empirical evidence documenting the relationship between such laws and crime/public safety outcomes.

An updated draft amicus brief, now set in form and shortened slightly so as to comply with the Supreme Court's word limit, is attached. We are grateful for the support of Arkansas, Florida, Kansas, South Carolina, and South Dakota and look forward to receiving confirmation from others, as this petition affords the Court an excellent vehicle for giving effect to the right to bear arms.

Again, with the amicus brief due to be filed on Monday, February 11, the Commonwealth requests that States communicate their joinder by COB this Friday, February 8. To join or other inquiries, please contact the attorney listed below:

Mike Brady
Assistant Attorney General
Office of the Attorney General of Virginia
900 East Main Street
Richmond, Virginia 23219
Telephone: (804) 786-3518
Email: mbrady@oag.state.va.us

Barnes, John

From: VanDyke, Lawrence
Sent: Tuesday, August 13, 2013 2:34 PM
To: Mattioli, Mark; Swanson, Cory; Bennion, Jon; Barnes, John
Cc: Darkenwald, Scott
Subject: FW: West Virginia Reciprocity

Mark et al. – I took a “gun call” today from the W. Va. AG’s office. For them to recognize Montana’s CWP, they need either (1) a reciprocity agreement, or (2) written notice from Montana’s governor stating that our state recognizes W.Va. permit holders. I told him that we don’t do reciprocity agreements, and I told him that in Montana, the AG, not the governor, handles out-of-state CWP recognition. Unfortunately, their law requires notice from our governor – no one else suffices.

So here is the question: Montana already recognizes a W.Va. CWP. It is unfortunate that our permit holders aren’t recognized in W.Va., when it would presumably be pretty easy to make it happen (just a letter from Governor Bullock). Should we try to coordinate getting that letter from the governor’s office?

Thanks,

Lawrence

From: Valentino, William R [<mailto:William.R.Valentino@wv.gov>]
Sent: Tuesday, August 13, 2013 2:08 PM
To: VanDyke, Lawrence
Cc: 'richard.heath@wvago.gov'
Subject: West Virginia Reciprocity

Lawrence, thanks so much for speaking with me today about the potential for mutual concealed handgun license recognition between Montana and West Virginia.

As I stated, our amended reciprocity statute (W.Va. Code 61-7-4) no longer requires a comparative issuance-standards analysis. Rather, only the following is required, with sub (a)(4) setting forth alternate options to achieve reciprocity:

(a) A valid out-of-state permit or license to possess or carry a handgun is valid in this state for the carrying of a concealed handgun, if the following conditions are met:

(1) The permit or license holder is twenty-one years of age or older;

(2) The permit or license is in his or her immediate possession;

(3) The permit or license holder is not a resident of the State of West Virginia; and

(4) The Attorney General has been notified by the Governor of the other state that the other state allows residents of West Virginia who are licensed in West Virginia to carry a concealed handgun to carry a concealed handgun in that state or the Attorney General has entered into a written reciprocity agreement with the appropriate official of the other state whereby the state agrees to honor West Virginia concealed handgun licenses in return for same treatment in this state.

As we discussed, please pass this along to the appropriate person to determine whether either of these options creates the possibility of mutual recognition of our permits.

Thanks again, I appreciate any help you can provide.

Will Valentino
Assistant Attorney General
West Virginia Office of the Attorney General
(304) 558-2754

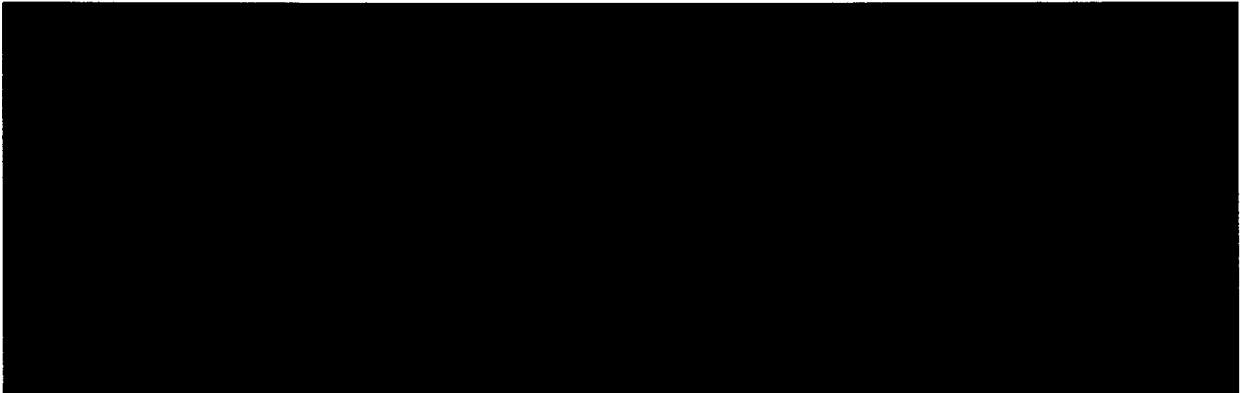
Barnes, John

From: Fox, Tim
Sent: Friday, June 14, 2013 4:48 PM
To: Barnes, John
Subject: Fwd: Planned Parenthood - Br in Support of Partial SJ Mot
Attachments: PP - Br in Support of Partial SJ Mot.doc; ATT00001.htm

Sent from my iPad

Begin forwarded message:

From: "VanDyke, Lawrence" <LVanDyke@mt.gov>
Date: June 14, 2013, 4:35:03 PM MDT
To: "Mattioli, Mark" <mmattioli@mt.gov>, "Bennion, Jon" <JonBennion@mt.gov>
Cc: "Fox, Tim" <TimFox@mt.gov>
Subject: Planned Parenthood - Br in Support of Partial SJ Mot



Barnes, John

From: VanDyke, Lawrence
Sent: Monday, June 17, 2013 10:13 AM
To: Barnes, John
Cc: Bennion, Jon
Subject: PP - Br in Support of Partial SJ Mot
Attachments: PP - Br in Support of Partial SJ Mot.doc



Barnes, John

From: VanDyke, Lawrence
Sent: Monday, January 06, 2014 10:59 AM
To: Fox, Tim; Mattioli, Mark; James, Julie
Cc: Barnes, John; Burton, Anastasia
Subject: FW: Montana v. Holder: Cert Petition Service Email
Attachments: Mont v Holder Cert Petition.pdf

Attached is an as-filed version of the cert petition we filed today in the Montana Firearms Freedom Act case.

John and Anastasia – I suppose we may get press inquiries about this sometime this week.

The federal government will almost certainly waive their response, so this petition will likely be circulated to the justices sometime this month. If one or more justices call for a response, the federal government will file one a month or two thereafter, and we will have an opportunity to file a reply with 10 or so days after that. The private plaintiffs (Gary Marbut, the Montana Shooting Sports Association, and the Second Amendment Foundation) filed their cert petition over a month ago, and it is due to be conferenced this Friday, January 10th. I would not be surprised to hear on this coming Monday that their cert petition has been denied. That obviously won't help the chances of ours being granted.

Thanks.

From: VanDyke, Lawrence
Sent: Monday, January 06, 2014 10:53 AM
To: 'supremectbriefs@USDOJ.gov'; qmr@montanalawyer.com
Subject: Montana v. Holder: Cert Petition Service Email

Counsel:

Please find attached an electronic copy of the petition for a writ of certiorari filed today in the above-referenced case. Hard copies will follow by mail.

Sincerely,

Lawrence VanDyke
Solicitor General ♦ Montana Department of Justice

215 N. Sanders ♦ P.O. Box 201401
Helena, Montana 59620
T: (406) 444-3442 ♦ F: (406) 444-3549
LVanDyke@mt.gov

Barnes, John

From: VanDyke, Lawrence
Sent: Friday, August 30, 2013 3:14 PM
To: James, Julie
Cc: Fox, Tim; Barnes, John; Burton, Anastasia
Subject: FW: NRA v ATF - Amicus Brief
Attachments: NRA -- FINAL -- 8-30-13.pdf; Amicus Memo - NRA v Bureau of ATFE -- 8-27.pdf

Julie – For the joinder binder. Thank you!

Tim – 22 states total ended up joining Alabama’s NRA v. ATF brief. Just FYI.

John and Anastasia – Just in case we get media inquiries, you have the brief and memo attached.

Thanks everyone!

From: Guthrie, Karen [<mailto:KarenGuthrie@ago.state.al.us>]
Sent: Friday, August 30, 2013 1:03 PM
To: 'stjohnkm@doj.state.wi.us'; 'Tom.Bates@oag.ok.gov'; 'Heather.McVeigh@atg.in.gov'; 'Marlena.Soto@azag.gov'; 'RestucciaE@michigan.gov'; 'ESmith@scag.gov'; 'Delberta.Pfeifer@ksag.org'; 'elbert.lin@wvago.gov'; 'dave.jones@alaska.gov'; VanDyke, Lawrence; 'jswallow@utah.gov'; 'dbahr@nd.gov'; 'delayne.deck@ag.idaho.gov'; 'npeterson@LAW.GA.GOV'; 'rrussell@nmag.gov'; 'Diane.DeWolf@myfloridalegal.com'; 'Katie.Spohn@nebraska.gov'; 'WiltonP@ag.state.la.us'; 'Lynell.Erickson@state.sd.us'; 'bradford.phelps@arkansasag.gov'; 'dan.domenico@state.co.us'
Cc: Neiman, John
Subject: NRA v ATF - Amicus Brief

Attached is a copy of the final brief. Thanks to all.

Karen Guthrie, ACP
Paralegal
Office of Attorney General Luther Strange
501 Washington Avenue
Montgomery, AL 36130-0152
kguthrie@ago.state.al.us
(334) 353-4708



Barnes, John

From: Fox, Tim
Sent: Monday, September 23, 2013 11:56 AM
To: VanDyke, Lawrence
Cc: Mattioli, Mark; Darkenwald, Scott; Bennion, Jon; Swanson, Cory; Barnes, John
Subject: Re: Amicus Join Request - ACA conscience cases

Thank you Lawrence. I agree that WE DO JOIN this brief. Tim

Sent from my iPad

On Sep 23, 2013, at 1:04 PM, "VanDyke, Lawrence" <LVanDyke@mt.gov> wrote:

We have received dueling cert-stage amicus join requests related to the ACA contraception mandate litigation. You may recall that Hobby Lobby has been involved in litigation against the feds saying that Obamacare's contraception mandate, as applied to them (a for-profit religious employer), violates their religious rights protected under the Religious Freedom Restoration Act (RFRA). Hobby Lobby won in the 10th Circuit, and the feds are seeking cert. Conestoga Wood Specialties, another for-profit company owned by Mennonites, filed a similar suit, and *lost* in the 3rd Circuit. They too are seeking cert.

California is filing a states' amicus brief in support of the feds in the Hobby Lobby case. Michigan and Ohio are filing a states' amicus brief in support of Conestoga. They obviously take opposing positions in a clear cert-split. **I recommend that we join the Michigan/Ohio brief.** Our decision is due Friday, Oct. 18.

We should all be familiar with the arguments, since we talked about trying to file a Hobby Lobby-type challenge months ago. If you need a refresher, read Conestoga memo in the attached email. The only concerns I had initially was whether the arguments being made in the Conestoga case could be taken as inconsistent with our position(s) in the Hutterite litigation – specifically, if they might be making some sort of broad *Hosanna-Tabor* type argument. I called my friends in Michigan and was assured they are not – they will be focusing on the RFRA standard, which is far afield from our Hutterite case.

The only other angle that we should be aware of is that in all these cases, the feds are basically arguing that corporations should not have religious liberty rights. This is obviously somewhat akin to many Montanan's beloved "corporations are not people" argument. But, practically speaking, neither Hobby Lobby (which is a quintessential "religious" company) nor Conestoga (which is a closely held woodworking company owned by Mennonites) are the type of huge, impersonal corporations that the "corporations-aren't-people" crowd likes to villainize.

We'll have some time to review the actual draft brief before it is filed, which I will do to make sure there isn't anything that directly undercuts us in the Hutterite case or it otherwise objectionable.

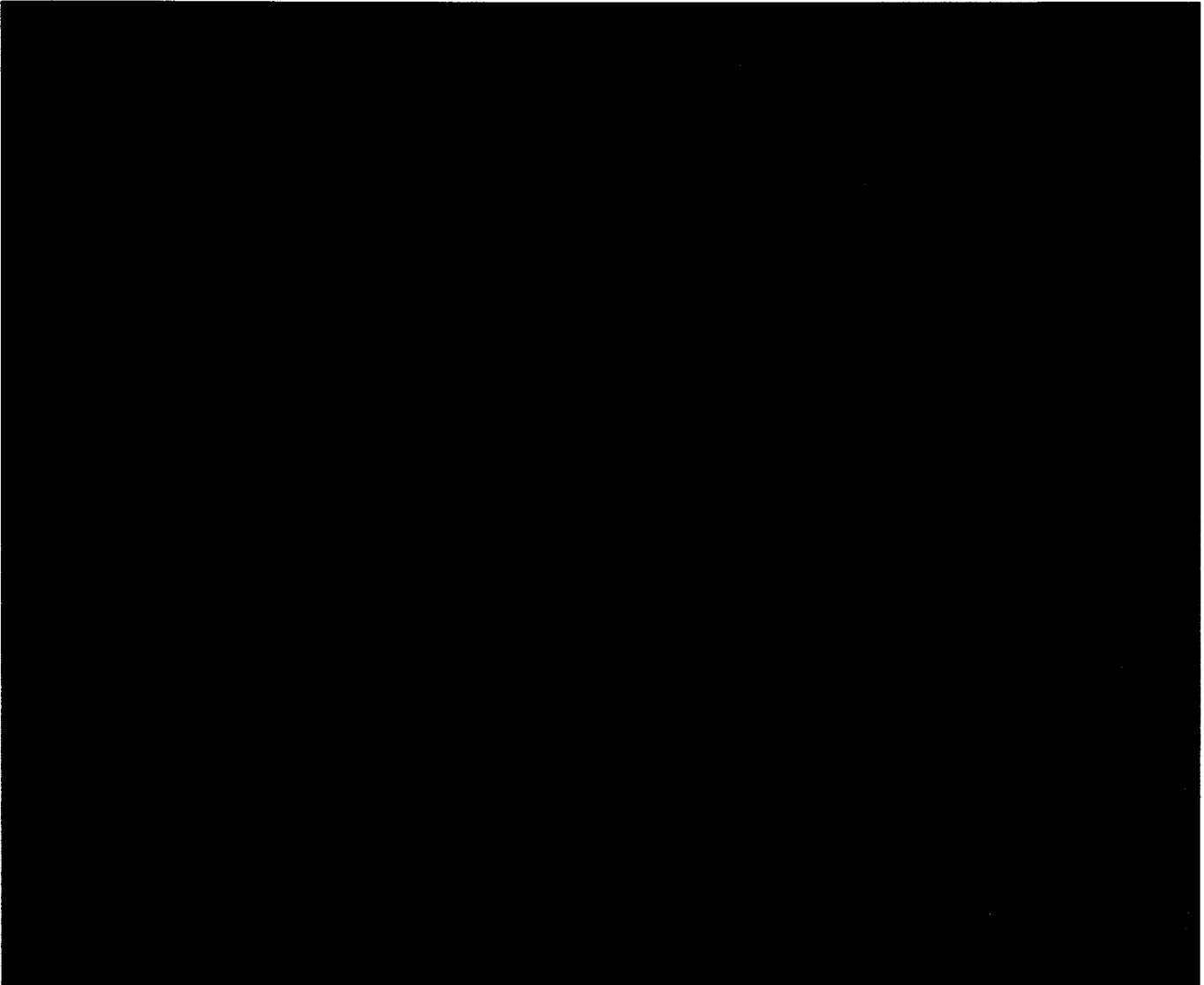
Thanks,

Lawrence VanDyke
Solicitor General ♦ Montana Department of Justice

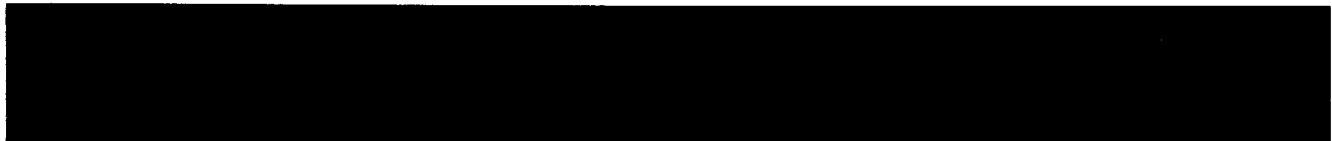
215 N. Sanders ♦ P.O. Box 201401
Helena, Montana 59620

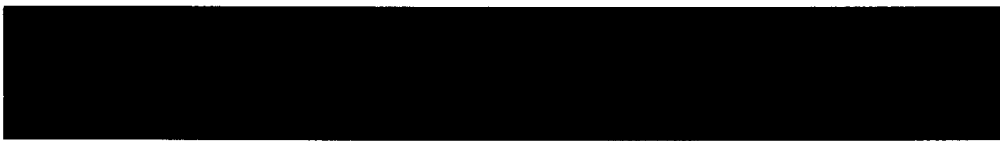
Barnes, John

From: VanDyke, Lawrence
Sent: Thursday, January 10, 2013 11:02 AM
To: Mattioli, Mark; Fox, Tim
Cc: Darkenwald, Scott; Bennion, Jon; Barnes, John; James, Julie
Subject: RE: Amicus Join Request - Hollingsworth v. Perry (U.S.) -- Prop 8 case

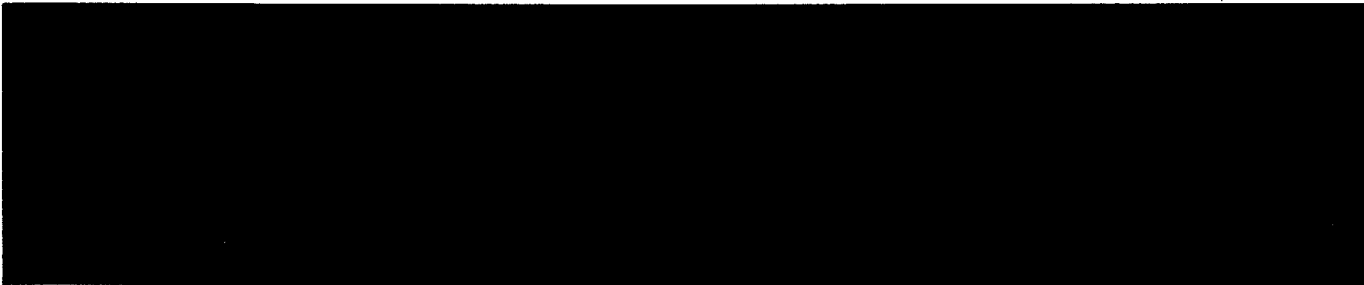


From: Mattioli, Mark
Sent: Thursday, January 10, 2013 9:53 AM
To: Fox, Tim; VanDyke, Lawrence
Cc: Darkenwald, Scott; Bennion, Jon; Barnes, John; James, Julie
Subject: RE: Amicus Join Request - Hollingsworth v. Perry (U.S.) -- Prop 8 case






From: Fox, Tim
Sent: Wednesday, January 09, 2013 3:37 PM
To: VanDyke, Lawrence
Cc: Darkenwald, Scott; Mattioli, Mark; Bennion, Jon; Barnes, John; James, Julie
Subject: RE: Amicus Join Request - Hollingsworth v. Perry (U.S.) -- Prop 8 case



From: VanDyke, Lawrence
Sent: Wednesday, January 09, 2013 3:09 PM
To: Fox, Tim
Cc: Darkenwald, Scott; Mattioli, Mark; Bennion, Jon; Barnes, John; James, Julie
Subject: Amicus Join Request - Hollingsworth v. Perry (U.S.) -- Prop 8 case



-----Original Message-----

From: Schweitzer, Dan [mailto:DSCHWEITZER@NAAG.ORG]
Sent: Thursday, December 20, 2012 2:38 PM
To: chris.coppin@cwagweb.org; paul.d.stern@maine.gov; dbahr@nd.gov; agjwmcinto@scag.gov; pam.murphy@doj.nh.gov; eric.tabor@iowa.gov; jknorr@attorneygeneral.gov; james.layton@ago.mo.gov; paula.bickett@azag.gov; charles.mcguigan@state.sd.us; RPartington@riag.ri.gov; manuel.medeiros@doj.ca.gov; crimago@saipan.com; barbara.underwood@ag.ny.gov; Hampton, Andrea; Schweitzer, Dan; sbluestone@nmag.gov; david.raupp@arkansasag.gov; gmorg@ago.state.ms.us; jlee@riag.ri.gov; attorney@samoatelco.com; stephan.finkel@lps.state.nj.us; Girard.D.Lau@hawaii.gov; stevemac@ku.edu; dennis.hansen@arkansasag.gov; drobenson@law.ga.gov; hughesafran@hotmail.com; james.smith@nebraska.gov; basay@atg.state.vt.us; Mary.Williams@doj.state.or.us; gkelley@ncdoj.gov;

alanc@atg.wa.gov; alama@nmag.gov; judy.zeprun@state.ma.us; joanne.grace@alaska.gov;
jnotz@atg.state.il.us; mcgimseyr@ag.state.la.us; Gregory.Dauria@ct.gov; anne.edwards@doj.nh.gov;
tom.fisher@atg.in.gov; jwhite@ncdoj.gov; whowle@ag.nv.gov; Frances.Grunder@doj.ca.gov;
mlanf@ago.state.ms.us; ken.rosenstein@alaska.gov; allison.martin@ag.ky.gov; hpizz@ago.state.ms.us;
wellslk@doj.state.wi.us; Lee.Davidson@ksag.org; edavis@doj.vi.gov; donna.murasky@dc.gov;
ssullivan@oag.state.md.us; jmaddrey@ncdoj.gov; dspence@oag.state.md.us; wjy@wvago.gov;
debbie.jourgensen@wyo.gov; Steve.Creason@atg.in.gov; jafarshee@ago.state.al.us;
andrea.silkowitz@dol.lps.state.nj.us; brian.kane@ag.idaho.gov; Richard.Dearing@ag.ny.gov;
katie.spohn@nebraska.gov; rrussell@nmag.gov; hunterg@atg.wa.gov; restucciae@michigan.gov;
wbrockman@oag.state.md.us; agesmith@scag.gov; lawrence.lewis@state.de.us; SG@atg.in.gov;
todd.kim@dc.gov; delayne.deck@ag.idaho.gov; dan.domenico@state.co.us; mscodro@atg.state.il.us;
heather.mcveigh@atg.in.gov; jbhoward@oag.state.md.us; potterkc@doj.state.wi.us; stjohnkm@doj.state.wi.us;
ed.bedrosian@state.ma.us; john.garry@ag.state.mn.us; Barbara.Durham@myfloridalegal.com;
brooke.paup@texasattorneygeneral.gov; meanssp@doj.state.wi.us; Sherri.Wald@state.sd.us;
adam.aston@texasattorneygeneral.gov; jhughes@atg.state.il.us; david.blake@state.co.us; Segrest, Stuart;
susan.britton@ag.ky.gov; john.campbell@ksag.org; ian.mcconnel@state.de.us; jung.kim@dol.lps.state.nj.us;
dave.jones@alaska.gov; delberta.pfeifer@ksag.org; perry.zinn-rowthorn@ct.gov; mwebb@ago.state.ms.us;
barb.fehrman@ag.state.mn.us; vbeavers@ag.nv.gov; bromano@utah.gov;
timothy.osterhaus@myfloridalegal.com; kris.aillslieger@ksag.org;
Alexandra.Schimmer@ohioattorneygeneral.gov; Katrina.barbour@state.de.us; bob.fagan@msdh.state.ms.us;
Eileen.carey@state.ma.us; sean.riley@ag.ky.gov; ashley.harwel@atg.in.gov; dGetchell@oag.state.va.us;
Ruckman, Stephen; anna.joyce@doj.state.or.us; marlene.brown@dol.lps.state.nj.us; peter.michael@wyo.gov;
bergethonr@ag.state.la.us; diane.dewolf@myfloridalegal.com; jonathan.mitchell@oag.state.tx.us;
mary.mertz@ohioattorneygeneral.gov; sforney@attorneygeneral.gov; npeterson@law.ga.gov;
jneiman@ago.state.al.us; ariel.levinson-waldman@dc.gov; burschj@michigan.gov; Dave.Cole@azag.gov;
Leesa.Thompson@oag.ok.gov; dowkerc@michigan.gov; lkelly@attorneygeneral.gov;
patrick.wyrick@oag.ok.gov; bill.young@ag.tn.gov; Black, Michael; MBrady@oag.state.va.us; Sam Peterson;
abrasher@ago.state.al.us; pamela.spang@state.ma.us; luisroman@justice.com; kguthrie@ago.state.al.us;
andy.oldham@texasattorneygeneral.gov; Jason.pleggenkuhle@ag.state.mn.us; Fred.Yarger@state.co.us;
robyn.bender@ag.ky.gov; laura-jane.weimer@state.co.us; james.adams@state.de.us;
Aricka.seales@state.ma.us

Subject: Amicus Memo in Hollingsworth v. Perry (U.S.) -- Prop 8 case

To: Civil Amicus Contacts

Attached is an Amicus Memo seeking support for an amicus brief being written by Indiana, Michigan and Virginia in support of the petitioners on the merits in Hollingsworth v. Perry, No. 12-144 (the Proposition 8 case). The brief is not yet ready, and is not due until January 29, but they want to circulate the memorandum now so that states have plenty of notice that it is coming.

[Please note that an amicus memo and brief will be circulated at a later date in support of respondents in this case.]

Barnes, John

From: VanDyke, Lawrence
Sent: Thursday, January 17, 2013 3:45 PM
To: Fox, Tim
Cc: Darkenwald, Scott; Mattioli, Mark; Bennion, Jon; Swanson, Cory; Barnes, John; James, Julie
Subject: RE: Amicus Memo (cert stage) in Elmbrook School District v. Doe (U.S.)

It turns out that Montana does use churches as polling places in various locations. I obtained a spreadsheet of all of our polling places from the Secretary of State's office (the spreadsheet was apparently available online until this morning, when it was taken down post-election to make room for other things, so it is a public document). I forwarded that spreadsheet to Texas so they can use Montana as an example in the brief.

From: Fox, Tim
Sent: Thursday, January 17, 2013 1:39 PM
To: VanDyke, Lawrence
Cc: Darkenwald, Scott; Mattioli, Mark; Bennion, Jon; Swanson, Cory; Barnes, John
Subject: Re: Amicus Memo (cert stage) in Elmbrook School District v. Doe (U.S.)

I agree that we DO join. Thank you. Tim

Sent from my iPhone

On Jan 17, 2013, at 11:41 AM, "VanDyke, Lawrence" <LVanDyke@mt.gov> wrote:

Recommendation: I recommend that we do join this amicus brief, even though it is only a cert-stage brief.

Decision Deadline: 9:30 am on Tuesday, January 22

Analysis: This amicus brief supports the Elmbrook School District's attempt to have the Court review a decision of the en banc Seventh Circuit. That court held the school could not hold its graduation ceremony in a church building, because of the "sheer religiosity of the space," notwithstanding that the decision was made for secular reasons (air-conditioning, adequate seating, and sufficient parking), and that the graduation ceremony had no religious content. This is a very troubling decision that literally excludes a church from the "public square," simply because it is a church. This another example of interpreting the First Amendment to require discrimination *against* religion – a hold-over from the Warren court that, thankfully, a majority of the Court has moved away from in recent years (emphasizing neutrality).

Special Request: Texas (the drafters of the brief) have asked other joining states to provide examples of any recent government use of churches in their states (e.g., polling places in the 2012 election, aid stations, etc.). Anyone have ideas of how I could get examples for Montana?

From: Schweitzer, Dan [<mailto:DSCHWEITZER@NAAG.ORG>]
Sent: Wednesday, January 16, 2013 12:46 PM
To: chris.coppin@cwagweb.org; paul.d.stern@maine.gov; dbahr@nd.gov; agjwmcinto@scag.gov; pam.murphy@doj.nh.gov; eric.tabor@iowa.gov; jknorr@attorneygeneral.gov; james.layton@ago.mo.gov; paula.bickett@azag.gov; charles.mcquigan@state.sd.us; RPartington@riag.ri.gov; crimago@saipan.com; barbara.underwood@ag.ny.gov; Hampton, Andrea; Schweitzer, Dan; sbluestone@nmag.gov;

david.raupp@arkansasag.gov; gmorg@ago.state.ms.us; jlee@riag.ri.gov; attorney@samoatelco.com;
stephan.finkel@lps.state.nj.us; Girard.D.Lau@hawaii.gov; stevemac@ku.edu;
dennis.hansen@arkansasag.gov; drobinson@law.ga.gov; hughesafran@hotmail.com;
basay@atg.state.vt.us; Mary.Williams@doj.state.or.us; gkelley@ncdoj.gov; alanc@atg.wa.gov;
alama@nmag.gov; judy.zeprun@state.ma.us; joanne.grace@alaska.gov; jnotz@atg.state.il.us;
mcgimseyr@ag.state.la.us; Gregory.Dauria@ct.gov; anne.edwards@doj.nh.gov; tom.fisher@atg.in.gov;
jwhite@ncdoj.gov; whowle@ag.nv.gov; Frances.Grunder@doj.ca.gov; mlanf@ago.state.ms.us;
ken.rosenstein@alaska.gov; allison.martin@ag.ky.gov; hpizz@ago.state.ms.us; wellsik@doj.state.wi.us;
Lee.Davidson@ksag.org; edavis@doj.vi.gov; donna.murasky@dc.gov; ssullivan@oag.state.md.us;
jmaddrey@ncdoj.gov; dspence@oag.state.md.us; wjy@wvago.gov; debbie.jourgensen@wyo.gov;
Steve.Creaseon@atg.in.gov; jafarshee@ago.state.al.us; andrea.silkowitz@dol.lps.state.nj.us;
brian.kane@ag.idaho.gov; Richard.Dearing@ag.ny.gov; katie.spohn@nebraska.gov; rrussell@nmag.gov;
mwood@ago.state.ms.us; hunterg@atg.wa.gov; restucciae@michigan.gov;
wbrockman@oag.state.md.us; agesmith@scag.gov; susan.lee@doj.ca.gov; SG@atg.in.gov;
todd.kim@dc.gov; delayne.deck@ag.idaho.gov; dan.domenico@state.co.us; mscodro@atg.state.il.us;
heather.mcveigh@atg.in.gov; suzanne.gorman@doj.nh.gov; jbhoward@oag.state.md.us;
potterkc@doj.state.wi.us; stjohnkm@doj.state.wi.us; ed.bedrosian@state.ma.us;
john.garry@ag.state.mn.us; Barbara.Durham@myfloridalegal.com;
brooke.paup@texasattorneygeneral.gov; meanssp@doj.state.wi.us; Sherri.Wald@state.sd.us;
adam.aston@texasattorneygeneral.gov; jhughes@atg.state.il.us; david.blake@state.co.us; Segrest,
Stuart; susan.britton@ag.ky.gov; john.campbell@ksag.org; jung.kim@dol.lps.state.nj.us;
dave.jones@alaska.gov; delberta.pfeifer@ksag.org; perry.zinn-rowthorn@ct.gov;
mwebb@ago.state.ms.us; barb.fehrman@ag.state.mn.us; vbeavers@ag.nv.gov; bromano@utah.gov;
timothy.osterhaus@myfloridalegal.com; kris.aillslieger@ksag.org;
Alexandra.Schimmer@ohioattorneygeneral.gov; bob.fagan@msdh.state.ms.us;
Eileen.carey@state.ma.us; sean.riley@ag.ky.gov; ashley.harwel@atg.in.gov; dGetchell@oag.state.va.us;
anna.joyce@doj.state.or.us; marlene.brown@dol.lps.state.nj.us; peter.michael@wyo.gov;
diane.dewolf@myfloridalegal.com; jonathan.mitchell@oag.state.tx.us;
mary.mertz@ohioattorneygeneral.gov; sforney@attorneygeneral.gov; npeterson@law.ga.gov;
jneiman@ago.state.al.us; ariel.levinson-waldman@dc.gov; burschj@michigan.gov; Dave.Cole@azag.gov;
Leesa.Thompson@oag.ok.gov; dowkerc@michigan.gov; frederick.nelson@ohioattorneygeneral.gov;
patrick.wyrick@oag.ok.gov; bill.young@ag.tn.gov; Black, Michael; MBrady@oag.state.va.us; Sam
Peterson; abrasher@ago.state.al.us; pamela.spang@state.ma.us; luisroman@justice.com;
kguthrie@ago.state.al.us; andy.oldham@texasattorneygeneral.gov; Jason.pleggenkuhle@ag.state.mn.us;
Fred.Yarger@state.co.us; robyn.bender@ag.ky.gov; laura-jane.weimer@state.co.us;
james.adams@state.de.us; Aricka.seales@state.ma.us; Wilton, Patricia; pamela.webster@state.de.us;
VanDyke, Lawrence

Cc: adam.aston@texasattorneygeneral.gov

Subject: Amicus Memo (cert stage) in *Elmbrook School District v. Doe* (U.S.)

To: Civil Amicus Contacts

From: Adam W. Aston, Principal Deputy Solicitor General of Texas

The attached Amicus Memo describes an amicus brief Texas is preparing in support of the cert petition filed in *Elmbrook School District v. Doe*, 12-755 (U.S.). Elmbrook School District is seeking certiorari review from an en banc Seventh Circuit decision holding that the district's rental of a church for high school graduations violated the Establishment Clause, even though it was undisputed that the decision was made for non-religious reasons and the graduation ceremonies had no religious content. According to the Seventh Circuit, the "sheer religiosity of the space" was dispositive both as to the endorsement and coercion of religion.

The States' brief is due on January 22, and we can accept sign-ons until 10:30 a.m. that day. Additionally, we would like joining States to provide any available information regarding recent government uses of church space (ex. polling locations during the 2012 general elections, as aid stations during recent hurricanes and other emergencies, etc.).

Adam W. Aston
Principal Deputy Solicitor General
Office of the Attorney General of Texas
P.O. Box 12548 (MC 059)
Austin, TX 78711-2548
[Tel.] (512) 936-0596
[Fax] (512) 474-2697
Adam.Aston@oag.state.tx.us

Dan Schweitzer
Supreme Court Counsel
National Association of Attorneys General
2030 M Street, NW, 8th Floor
Washington, DC 20036
(202) 326-6010
(202) 785-0410 - fax
dschweitzer@naag.org

<Elmbrook NAAG memo.docx>

Barnes, John

From: VanDyke, Lawrence
Sent: Thursday, August 29, 2013 1:33 PM
To: Fox, Tim
Cc: Mattioli, Mark; Bennion, Jon; Swanson, Cory; Barnes, John; Darkenwald, Scott
Subject: RE: Amicus Memo in NRA v. ATF (U.S.)

Another FYI – a total of 11 states have now joined: Georgia, Idaho, North Dakota, South Carolina, Utah, Alabama, Florida, Louisiana, Nebraska, New Mexico, and South Dakota.

Just a reminder – the deadline for joining is 8:30 am our time tomorrow (Friday) morning. So, practically speaking, if we do want to join, we probably need to let Alabama know by the end of the day today.

Thanks.

From: Mattioli, Mark
Sent: Thursday, August 29, 2013 7:51 AM
To: VanDyke, Lawrence
Cc: Fox, Tim; Bennion, Jon; Swanson, Cory; Barnes, John; Darkenwald, Scott
Subject: Re: Amicus Memo in NRA v. ATF (U.S.)

I didn't expect their rationale to be good but never expected it to be that bad.

Sent from my iPhone

On Aug 28, 2013, at 5:27 PM, "VanDyke, Lawrence" <LVanDyke@mt.gov> wrote:

The Fifth Circuit held the conduct at issue didn't fall within the scope of the 2nd Amendment because any "longstanding, presumptively lawful regulatory measure ... would likely fall outside the ambit of the Second Amendment" entirely. And "[i]n the view of at least some members of the founding generation, disarming select groups for the sake of public safety was compatible with the right to arms specifically and with the idea of liberty generally" – namely, slaves.

So I guess the court's argument was that we should be able to disarm 18-20 year olds now because they disarmed slaves at the founding? Incredible. I wonder that they didn't see the irony in that argument.

From: Mattioli, Mark
Sent: Wednesday, August 28, 2013 5:13 PM
To: VanDyke, Lawrence; Fox, Tim
Cc: Bennion, Jon; Swanson, Cory; Barnes, John; Darkenwald, Scott
Subject: RE: Amicus Memo in NRA v. ATF (U.S.)

Although many have pointed to social science research suggesting that younger adults are more impulsive because the brain is not completely formed until about age 25, I agree with Lawrence's comments and concur that we should join.

Lawrence, what was the basis for the Fifth Circuit's determination that the Second Amendment was not implicated?

Mark

From: VanDyke, Lawrence
Sent: Wednesday, August 28, 2013 2:35 PM
To: Fox, Tim
Cc: Mattioli, Mark; Bennion, Jon; Swanson, Cory; Barnes, John; Darkenwald, Scott
Subject: RE: Amicus Memo in NRA v. ATF (U.S.)

I can answer some of these:

- (1) What do Montana's laws say about 18-21 year olds and guns or ammunition?
- I don't believe Montana has any such laws. Montana law ban carrying of a weapon by a child under the age of 14, unless accompanied by an adult. MCA 45-8-344
- (2) What are the policy implications of either supporting or not supporting this amicus brief in light of the high-profile and tragic shooting incidents across the country in recent years?
- I'm not sure there are any *direct* policy implications. Montana and federal laws would still ban carrying of guns in schools, and most 18-21 year olds are out of high school in any event. As far as indirect policy implications – as is the case with most gun issues, I'm sure it depends on your starting assumptions. Folks that think that gun control works will conclude that loosening control here will lead to more gun violence. Folks that think gun control typically only affects otherwise law-abiding citizens will think that allowing 18-21 year olds to lawfully own handguns will likely not increase crime and violence, in schools or otherwise.
- (3) What considerations are there in light of our potential for partnering with Superintendent Juneau on the school safety and active shooter training initiatives?
- I don't know about this one, since I haven't been involved with this at all. Jon – do you know?
- (4) What media attention, good or bad, has this case generated since it was filed?
- John is going to do some searching today or tomorrow morning to see what, if any, major press this has received. Thanks John!
- (5) Is this a matter that we should consult, with the Governor's office on before making a decision?
(Note: I would think not, but would be interested in other's views).
- I don't think we need to. Does anyone else think it would be prudent nonetheless?

I've attached the draft brief – which I like. It does point out that Montana law allows 18-20 year-olds to own guns. See n.2. Here is a line from the first page (key soaring rhetoric music):

Adults who are 18, 19, and 20 honorably defend our country when it is at war. These same Americans should be able to defend themselves and their families when they are at home.

I got chills. (Okay, not really, but I wanted to.)

From: Fox, Tim
Sent: Wednesday, August 28, 2013 12:17 PM
To: VanDyke, Lawrence
Cc: Mattioli, Mark; Bennion, Jon; Swanson, Cory; Barnes, John; Darkenwald, Scott
Subject: Re: Amicus Memo in NRA v. ATF (U.S.)

Before I make a decision, can one or more of you address the following questions:

- (1) What do Montana's laws say about 18-21 year olds and guns or ammunition?
 - (2) What are the policy implications of either supporting or not supporting this amicus brief in light of the high-profile and tragic shooting incidents across the country in recent years?
 - (3) What considerations are there in light of our potential for partnering with Superintendent Juneau on the school safety and active shooter training initiatives?
 - (4) What media attention, good or bad, has this case generated since it was filed?
 - (5) Is this a matter that we should consult, with the Governor's office on before making a decision?
- (Note: I would think not, but would be interested in other's views).

Thank you.

Tim

Sent from my iPad

On Aug 28, 2013, at 11:58 AM, "VanDyke, Lawrence" <LVanDyke@mt.gov> wrote:

Tim and Mark – This is a short-fuse cert-stage amicus join request from Alabama in a Second Amendment case coming out of the Fifth Circuit. The case challenges federal laws that categorically deny 18-21 year olds the ability to buy handguns or handgun ammunition. The Fifth Circuit panel rejected the challenge, holding that (1) the laws do not implicate the Second Amendment, and (2) even if they do, they don't violate it. The NRA is the Petitioner in this case.

I think we should join this brief. I'm not sure I agree with the strategy of bringing this case to the SCOTUS, but I think we want to be on the record as on the side of gun rights (and the NRA). I think that a blanket ban on handgun ownership for all 18-21 year olds probably does violate the original meaning of the second amendment – I would expect that 18 year olds were part of the "militia."

Our deadline is quick – we need to decide by this Friday.

Thanks,

Lawrence

From: Schweitzer, Dan [<mailto:DSCHWEITZER@NAAG.ORG>]

Sent: Tuesday, August 27, 2013 1:02 PM

To: chris.coppin@cwagweb.org; paul.d.stern@maine.gov; dbahr@nd.gov; JMcIntosh@scag.gov; pam.murphy@doj.nh.gov; eric.tabor@iowa.gov; jknorr@attorneygeneral.gov; james.layton@ago.mo.gov; paula.bickett@azag.gov; charles.mcquigan@state.sd.us; RPartington@riag.ri.gov; crimago@saipan.com; barbara.underwood@ag.ny.gov; Hampton, Andrea; Schweitzer, Dan; sbluestone@nmag.gov; david.raupp@arkansasag.gov; gmorg@ago.state.ms.us; jlee@riag.ri.gov; attorney@samoatelco.com; stephan.finkel@lps.state.nj.us; Girard.D.Lau@hawaii.gov; stevemac@ku.edu; dennis.hansen@arkansasag.gov; basay@atg.state.vt.us; Mary.Williams@doj.state.or.us; gkelley@ncdoj.gov; alanc@atg.wa.gov; alama@nmag.gov; judy.zeprun@state.ma.us; joanne.grace@alaska.gov; jnotz@atg.state.il.us; Gregory.Dauria@ct.gov; anne.edwards@doj.nh.gov; tom.fisher@atg.in.gov; jwhite@ncdoj.gov;

whowle@ag.nv.gov; Frances.Grunder@doj.ca.gov; mlanf@ago.state.ms.us;
ken.rosenstein@alaska.gov; allison.martin@ag.ky.gov; hpizz@ago.state.ms.us;
wellsik@doj.state.wi.us; Lee.Davidson@ksag.org; edavis@doj.vi.gov;
donna.murasky@dc.gov; ssullivan@oag.state.md.us; jmaddrey@ncdoj.gov;
dspence@oag.state.md.us; vlp@wvago.gov; debbie.mcveigh@wyo.gov;
Steve.Creason@atg.in.gov; kguthrie@ago.state.al.us;
andrea.silkowitz@dol.lps.state.nj.us; brian.kane@ag.idaho.gov;
Richard.Dearing@ag.ny.gov; katie.spohn@nebraska.gov; rrussell@nmag.gov;
mwood@ago.state.ms.us; restucciae@michigan.gov; wbrockman@oag.state.md.us;
agesmith@scag.gov; susan.lee@doj.ca.gov; SG@atg.in.gov; todd.kim@dc.gov;
delayne.deck@ag.idaho.gov; dan.domenico@state.co.us; mscodro@atg.state.il.us;
heather.mcveigh@atg.in.gov; suzanne.gorman@doj.nh.gov; jbhoward@oag.state.md.us;
potterkc@doj.state.wi.us; stjohnkm@doj.state.wi.us; ed.bedrosian@state.ma.us;
john.garry@ag.state.mn.us; brooke.paup@texasattorneygeneral.gov;
appeals@ohioattorneygeneral.gov; meanssp@doj.state.wi.us; Sherri.Wald@state.sd.us;
adam.aston@texasattorneygeneral.gov; jhughes@atg.state.il.us;
david.blake@state.co.us; Segrest, Stuart; susan.britton@ag.ky.gov;
john.campbell@ksag.org; jung.kim@dol.lps.state.nj.us; dave.jones@alaska.gov;
delberta.pfeifer@ksag.org; perry.zinn-rowthorn@ct.gov; mwebb@ago.state.ms.us;
barb.fehrman@ag.state.mn.us; vbeavers@ag.nv.gov; bromano@utah.gov;
kris.aillslieger@ksag.org; bob.fagan@msdh.state.ms.us; Eileen.carey@state.ma.us;
sean.riley@ag.ky.gov; ashley.harwel@atg.in.gov; dGetchell@oag.state.va.us;
anna.joyce@doj.state.or.us; marlene.brown@dol.lps.state.nj.us; peter.michael@wyo.gov;
diane.dewolf@myfloridalegal.com; jonathan.mitchell@oag.state.tx.us;
mary.mertz@ohioattorneygeneral.gov; sforney@attorneygeneral.gov;
npeterson@law.ga.gov; jneiman@ago.state.al.us; ariel.levinson-waldman@dc.gov;
burschj@michigan.gov; Leesa.Thompson@oag.ok.gov; dowkerc@michigan.gov;
frederick.nelson@ohioattorneygeneral.gov; patrick.wyrick@oag.ok.gov;
bill.young@ag.tn.gov; Black, Michael; MBrady@oag.state.va.us; Sam Peterson;
abrasher@ago.state.al.us; pamela.spang@state.ma.us;
andy.oldham@texasattorneygeneral.gov; Jason.pleggenkuhle@ag.state.mn.us;
michael.hendershot@ohioattorneygeneral.gov; robyn.bender@ag.ky.gov; laura-jane.weimer@state.co.us; james.adams@state.de.us; Aricka.seales@state.ma.us;
wiltonp@ag.state.la.us; lindstroma@michigan.gov; VanDyke, Lawrence;
allen.winsor@myfloridalegal.com; christopher.dodrill@wvago.gov;
marmercado@justicia.pr.gov; elbert.lin@wvago.gov; Mary.McTaggart@state.de.us;
Sarah.Greenwalt@oag.ok.gov; Michael.Franisco@state.co.us

Cc: KTurner@ago.state.al.us

Subject: Amicus Memo in NRA v. ATF (U.S.)

To: Civil Amicus Contacts

Attached is an Amicus Memo describing the amicus brief Alabama is preparing in support of the cert petition filed in *National Rifle Association v. U.S. Bureau of Alcohol, Tobacco, Firearms, and Explosives*, 13-137 (U.S.). The petition seeks review of a Fifth Circuit decision holding that the Second Amendment is not violated by federal laws prohibiting adults under the age of 21 from purchasing handguns and handgun ammunition. The question presented is “[w]hether a nationwide, class-based, categorical ban on meaningful access to the quintessential means to exercise the right to keep and bear arms for self-defense can be reconciled with the Second Amendment, the equal protection guarantee, and this Court’s precedents.”

The turn-around time is very short. Alabama will be circulating a draft brief tomorrow; and the deadline for joining is this Friday. To join, you may contact:

John Neiman
Solicitor General
Office of Alabama Attorney General Luther Strange
501 Washington Avenue
Montgomery, AL 36130
(334) 353-2187
JNeiman@ago.state.al.us

Dan Schweitzer
Supreme Court Counsel
National Association of Attorneys General
2030 M Street, NW, 8th Floor
Washington, DC 20036
(202) 326-6010
(202) 785-0410 - fax
dschweitzer@naag.org

<Amicus Memo - NRA v Bureau of ATFE -- 8-27.pdf>

Barnes, John

From: VanDyke, Lawrence
Sent: Wednesday, August 28, 2013 5:27 PM
To: Mattioli, Mark; Fox, Tim
Cc: Bennion, Jon; Swanson, Cory; Barnes, John; Darkenwald, Scott
Subject: RE: Amicus Memo in NRA v. ATF (U.S.)

The Fifth Circuit held the conduct at issue didn't fall within the scope of the 2nd Amendment because any "longstanding, presumptively lawful regulatory measure ... would likely fall outside the ambit of the Second Amendment" entirely. And "[i]n the view of at least some members of the founding generation, disarming select groups for the sake of public safety was compatible with the right to arms specifically and with the idea of liberty generally" – namely, slaves.

So I guess the court's argument was that we should be able to disarm 18-20 year olds now because they disarmed slaves at the founding? Incredible. I wonder that they didn't see the irony in that argument.

From: Mattioli, Mark
Sent: Wednesday, August 28, 2013 5:13 PM
To: VanDyke, Lawrence; Fox, Tim
Cc: Bennion, Jon; Swanson, Cory; Barnes, John; Darkenwald, Scott
Subject: RE: Amicus Memo in NRA v. ATF (U.S.)

Although many have pointed to social science research suggesting that younger adults are more impulsive because the brain is not completely formed until about age 25, I agree with Lawrence's comments and concur that we should join.

Lawrence, what was the basis for the Fifth Circuit's determination that the Second Amendment was not implicated?

Mark

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Subject: RE: Amicus Memo in NRA v. ATF (U.S.)

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(1) What do Montana's laws say about 18-21 year olds and guns or ammunition?

- I don't believe Montana has any such laws. Montana law ban carrying of a weapon by a child under the age of 14, unless accompanied by an adult. MCA 45-8-344

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Adults who are 18, 19, and 20 honorably defend our country when it is at war. These same Americans should be able to defend themselves and their families when they are at home.

I got chills. (Okay, not really, but I wanted to.)

From: Fox, Tim

Sent: Wednesday, August 28, 2013 12:17 PM

To: VanDyke, Lawrence

Cc: Mattioli, Mark; Bennion, Jon; Swanson, Cory; Barnes, John; Darkenwald, Scott

Subject: Re: Amicus Memo in NRA v. ATF (U.S.)

Before I make a decision, can one or more of you address the following questions:

(1) What do Montana's laws say about 18-21 year olds and guns or ammunition?

(2) What are the policy implications of either supporting or not supporting this amicus brief in light of the high-profile and tragic shooting incidents across the country in recent years?

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(5) Is this a matter that we should consult, with the Governor's office on before making a decision? (Note: I would think not, but would be interested in other's views).

Thank you.

Tim

Sent from my iPad

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rejected the challenge, holding that (1) the laws do not implicate the Second Amendment, and (2) even if they do, they don't violate it. The NRA is the Petitioner in this case.

I think we should join this brief. I'm not sure I agree with the strategy of bringing this case to the SCOTUS, but I think we want to be on the record as on the side of gun rights (and the NRA). I think that a blanket ban on handgun ownership for all 18-21 year olds probably does violate the original meaning of the second amendment – I would expect that 18 year olds were part of the "militia."

Our deadline is quick – we need to decide by this Friday.

Thanks,

Lawrence

From: Schweitzer, Dan [mailto:DSCHWEITZER@NAAG.ORG]

Sent: Tuesday, August 27, 2013 1:02 PM

To: chris.coppin@cwagweb.org; paul.d.stern@maine.gov; dbahr@nd.gov; JMcIntosh@scag.gov; pam.murphy@doj.nh.gov; eric.tabor@iowa.gov; jknorr@attorneygeneral.gov; james.layton@ago.mo.gov; paula.bickett@azag.gov; charles.mcquigan@state.sd.us; RPartington@riag.ri.gov; crimago@saipan.com; barbara.underwood@ag.ny.gov; Hampton, Andrea; Schweitzer, Dan; sbluestone@nmag.gov; david.raupp@arkansasag.gov; gmorg@ago.state.ms.us; jlee@riag.ri.gov; attorney@samoatelco.com; stephan.finkel@lps.state.nj.us; Girard.D.Lau@hawaii.gov; stevemac@ku.edu; dennis.hansen@arkansasag.gov; basay@atg.state.vt.us; Mary.Williams@doj.state.or.us; gkelley@ncdoj.gov; alanc@atg.wa.gov; alama@nmag.gov; judy.zeprun@state.ma.us; joanne.grace@alaska.gov; jnotz@atg.state.il.us; Gregory.Dauria@ct.gov; anne.edwards@doj.nh.gov; tom.fisher@atg.in.gov; jwhite@ncdoj.gov; whowle@ag.nv.gov; Frances.Grunder@doj.ca.gov; mianf@ago.state.ms.us; ken.rosenstein@alaska.gov; allison.martin@ag.ky.gov; hpizz@ago.state.ms.us; wellslk@doj.state.wi.us; Lee.Davidson@ksag.org; edavis@doj.vi.gov; donna.murasky@dc.gov; ssullivan@oag.state.md.us; jmaddrey@ncdoj.gov; dspence@oag.state.md.us; vlp@wvago.gov; debbie.mcveigh@wyo.gov; Steve.Creason@atg.in.gov; kguthrie@ago.state.al.us; andrea.silkowitz@dol.lps.state.nj.us; brian.kane@ag.idaho.gov; Richard.Dearing@ag.ny.gov; katie.spohn@nebraska.gov; rrussell@nmag.gov; mwood@ago.state.ms.us; restucciae@michigan.gov; wbrockman@oag.state.md.us; agesmith@scag.gov; susan.lee@doj.ca.gov; SG@atg.in.gov; todd.kim@dc.gov; delayne.deck@ag.idaho.gov; dan.domenico@state.co.us; mscodro@atg.state.il.us; heather.mcveigh@atg.in.gov; suzanne.gorman@doj.nh.gov; jbhoward@oag.state.md.us; potterkc@doj.state.wi.us; stjohnkm@doj.state.wi.us; ed.bedrosian@state.ma.us; john.garry@ag.state.mn.us; brooke.paup@texasattorneygeneral.gov; appeals@ohioattorneygeneral.gov; meanssp@doj.state.wi.us; Sherri.Wald@state.sd.us; adam.aston@texasattorneygeneral.gov; jhughes@atg.state.il.us; david.blake@state.co.us; Segrest, Stuart; susan.britton@ag.ky.gov; john.campbell@ksag.org; jung.kim@dol.lps.state.nj.us; dave.jones@alaska.gov; delberta.pfeifer@ksag.org; perry.zinn-rowthorn@ct.gov; mwebb@ago.state.ms.us; barb.fehrman@ag.state.mn.us; vbeavers@ag.nv.gov; bromano@utah.gov; kris.aillslieger@ksag.org; bob.fagan@msdh.state.ms.us; Eileen.carey@state.ma.us; sean.riley@ag.ky.gov; ashley.harwel@atg.in.gov; dGetchell@oag.state.va.us; anna.joyce@doj.state.or.us; marlene.brown@dol.lps.state.nj.us; peter.michael@wyo.gov; diane.dewolf@myfloridalegal.com; jonathan.mitchell@oag.state.tx.us; mary.mertz@ohioattorneygeneral.gov; sforney@attorneygeneral.gov; npeterson@law.ga.gov; jneiman@ago.state.al.us; ariel.levinson-waldman@dc.gov; burschj@michigan.gov; Leesa.Thompson@oag.ok.gov; dowkerc@michigan.gov; frederick.nelson@ohioattorneygeneral.gov; patrick.wyrick@oag.ok.gov; bill.young@ag.tn.gov; Black, Michael; MBrady@oag.state.va.us; Sam Peterson; abrasher@ago.state.al.us; pamela.spang@state.ma.us; andy.oldham@texasattorneygeneral.gov; Jason.pleggenkuhle@ag.state.mn.us; michael.hendershot@ohioattorneygeneral.gov; robbyn.bender@ag.ky.gov; laura-jane.weimer@state.co.us; james.adams@state.de.us; Aricka.seales@state.ma.us; wiltonp@ag.state.la.us; lindstroma@michigan.gov; VanDyke, Lawrence; allen.winsor@myfloridalegal.com; christopher.dodrill@wvago.gov; marmercado@justicia.pr.gov; elbert.lin@wvago.gov;

Mary.McTaggart@state.de.us; Sarah.Greenwalt@oag.ok.gov; Michael.Francisco@state.co.us

Cc: KTurner@ago.state.al.us

Subject: Amicus Memo in NRA v. ATF (U.S.)

To: Civil Amicus Contacts

Attached is an Amicus Memo describing the amicus brief Alabama is preparing in support of the cert petition filed in *National Rifle Association v. U.S. Bureau of Alcohol, Tobacco, Firearms, and Explosives*, 13-137 (U.S.). The petition seeks review of a Fifth Circuit decision holding that the Second Amendment is not violated by federal laws prohibiting adults under the age of 21 from purchasing handguns and handgun ammunition. The question presented is “[w]hether a nationwide, class-based, categorical ban on meaningful access to the quintessential means to exercise the right to keep and bear arms for self-defense can be reconciled with the Second Amendment, the equal protection guarantee, and this Court’s precedents.”

The turn-around time is very short. Alabama will be circulating a draft brief tomorrow; and the deadline for joining is this Friday. To join, you may contact:

John Neiman
Solicitor General
Office of Alabama Attorney General Luther Strange
501 Washington Avenue
Montgomery, AL 36130
(334) 353-2187
JNeiman@ago.state.al.us

Dan Schweitzer
Supreme Court Counsel
National Association of Attorneys General
2030 M Street, NW, 8th Floor
Washington, DC 20036
(202) 326-6010
(202) 785-0410 - fax
dschweitzer@naag.org

<Amicus Memo - NRA v Bureau of ATFE -- 8-27.pdf>

Barnes, John

From: VanDyke, Lawrence
Sent: Wednesday, August 28, 2013 2:35 PM
To: Fox, Tim
Cc: Mattioli, Mark; Bennion, Jon; Swanson, Cory; Barnes, John; Darkenwald, Scott
Subject: RE: Amicus Memo in NRA v. ATF (U.S.)
Attachments: NRA v. BATFE -- draft brief -- 8-28 -- to States.pdf

I can answer some of these:

(1) What do Montana's laws say about 18-21 year olds and guns or ammunition?

- I don't believe Montana has any such laws. Montana law ban carrying of a weapon by a child under the age of 14, unless accompanied by an adult. MCA 45-8-344

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I've attached the draft brief -- which I like. It does point out that Montana law allows 18-20 year-olds to own guns. See n.2. Here is a line from the first page (key soaring rhetoric music):

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I think we should join this brief. I'm not sure I agree with the strategy of bringing this case to the SCOTUS, but I think we want to be on the record as on the side of gun rights (and the NRA). I think that a blanket ban on handgun ownership for all 18-21 year olds probably does violate the original meaning of the second amendment – I would expect that 18 year olds were part of the "militia."

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wbrockman@oag.state.md.us; agesmith@scag.gov; susan.lee@doj.ca.gov; SG@atg.in.gov;
todd.kim@dc.gov; delayne.deck@ag.idaho.gov; dan.domenico@state.co.us; mscodro@atg.state.il.us;
heather.mcveigh@atg.in.gov; suzanne.gorman@doj.nh.gov; jbhoward@oag.state.md.us;
potterkc@doj.state.wi.us; stjohnkm@doj.state.wi.us; ed.bedrosian@state.ma.us;
john.garry@ag.state.mn.us; brooke.paup@texasattorneygeneral.gov; appeals@ohioattorneygeneral.gov;
meanssp@doj.state.wi.us; Sherri.Wald@state.sd.us; adam.aston@texasattorneygeneral.gov;
jhughes@atg.state.il.us; david.blake@state.co.us; Segrest, Stuart; susan.britton@ag.ky.gov;
john.campbell@ksag.org; jung.kim@dol.lps.state.nj.us; dave.jones@alaska.gov;
delberta.pfeifer@ksag.org; perry.zinn-rowthorn@ct.gov; mwebb@ago.state.ms.us;
barb.fehrman@ag.state.mn.us; vbeavers@ag.nv.gov; bromano@utah.gov; kris.ailslieger@ksag.org;
bob.fagan@msdh.state.ms.us; Eileen.carey@state.ma.us; sean.riley@ag.ky.gov;
ashley.harwel@atg.in.gov; dGetchell@oag.state.va.us; anna.joyce@doj.state.or.us;
marlene.brown@dol.lps.state.nj.us; peter.michael@wyo.gov; diane.dewolf@myfloridalegal.com;
jonathan.mitchell@oag.state.tx.us; mary.mertz@ohioattorneygeneral.gov; sforney@attorneygeneral.gov;
npeterson@law.ga.gov; jneiman@ago.state.al.us; ariel.levinson-waldman@dc.gov;
burschi@michigan.gov; Leesa.Thompson@oag.ok.gov; dowkerc@michigan.gov;
frederick.nelson@ohioattorneygeneral.gov; patrick.wyrick@oag.ok.gov; bill.young@ag.tn.gov; Black,
Michael; MBrady@oag.state.va.us; Sam Peterson; abrasher@ago.state.al.us; pamela.spang@state.ma.us;
andy.oldham@texasattorneygeneral.gov; Jason.pleggenkuhle@ag.state.mn.us;
michael.hendershot@ohioattorneygeneral.gov; robyn.bender@ag.ky.gov; laura-jane.weimer@state.co.us;
james.adams@state.de.us; Aricka.seales@state.ma.us; wiltonp@ag.state.la.us;
lindstroma@michigan.gov; VanDyke, Lawrence; allen.winsor@myfloridalegal.com;
christopher.dodrill@wvago.gov; marmercado@justicia.pr.gov; elbert.lin@wvago.gov;
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Subject: Amicus Memo in NRA v. ATF (U.S.)

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Dan Schweitzer
Supreme Court Counsel
National Association of Attorneys General
2030 M Street, NW, 8th Floor
Washington, DC 20036
(202) 326-6010
(202) 785-0410 - fax
dschweitzer@naag.org

<Amicus Memo - NRA v Bureau of ATFE -- 8-27.pdf>

Barnes, John

From: VanDyke, Lawrence
Sent: Friday, December 06, 2013 4:04 PM
To: Mattioli, Mark; Fox, Tim; Darkenwald, Scott; Bennion, Jon; Swanson, Cory; Barnes, John; Burton, Anastasia
Subject: RE: Case: DV-25-2013-0000509-DK - Robert Willems, etal. vs. Linda McCulloch, etal. - File Attached

The problem is that if Plaintiffs don't get a decision before the deadline for filing to run for office (March? - Jon likely knows, but he and Cory aren't talking to me anymore ...), then it does them no good.

So I think they have a good basis for an expedited appeal. And Judge Regnier also seems to just assume it will expedited. I just hope our deadline for a Response isn't until late January.

-----Original Message-----

From: Mattioli, Mark
Sent: Friday, December 06, 2013 3:57 PM
To: VanDyke, Lawrence; Fox, Tim; Darkenwald, Scott; Bennion, Jon; Swanson, Cory; Barnes, John; Burton, Anastasia
Subject: RE: Case: DV-25-2013-0000509-DK - Robert Willems, etal. vs. Linda McCulloch, etal. - File Attached

Nice work. Although the case involves elections, after reading the opinion it doesn't appear to be writ worthy or a case requiring suspension of the rules to expedite an appeal.

-----Original Message-----

From: VanDyke, Lawrence
Sent: Friday, December 06, 2013 3:20 PM
To: Fox, Tim; Darkenwald, Scott; Mattioli, Mark; Bennion, Jon; Swanson, Cory; Barnes, John; Burton, Anastasia
Subject: FW: Case: DV-25-2013-0000509-DK - Robert Willems, etal. vs. Linda McCulloch, etal. - File Attached

Here is the Willems decision Judge Menahan just issued in the State's favor. Monforton will presumably file an expedited appeal tomorrow.

-----Original Message-----

From: Segrest, Stuart
Sent: Friday, December 06, 2013 2:58 PM
To: Jim Regnier (jregnier@centurytel.net) (jregnier@centurytel.net); Lamson, Joe (DNRC); Quintana, Jorge; Weiss, Rachel
Cc: VanDyke, Lawrence
Subject: FW: Case: DV-25-2013-0000509-DK - Robert Willems, etal. vs. Linda McCulloch, etal. - File Attached

The Court granted the State's motion for summary judgment. See attached.

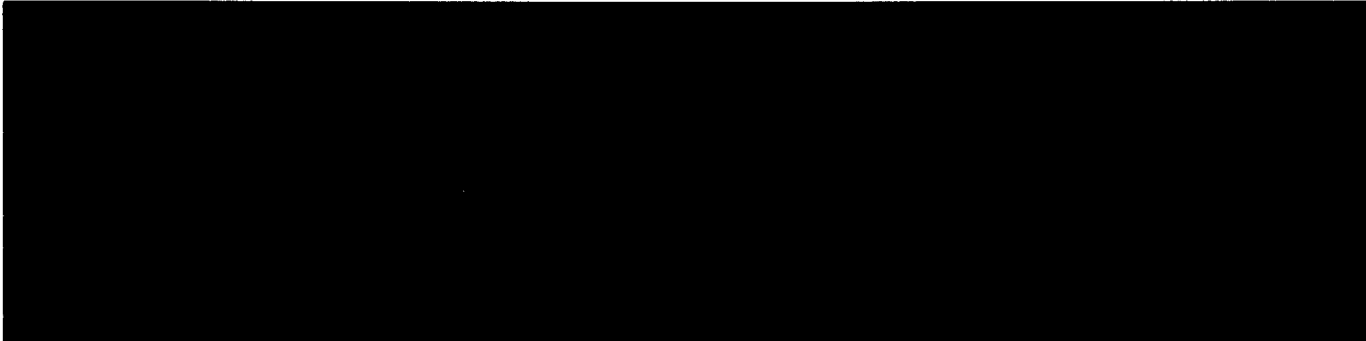
-----Original Message-----

From: Hartman, Denise
Sent: Friday, December 06, 2013 2:47 PM
To: matthewmonforton@yahoo.com; Segrest, Stuart; VanDyke, Lawrence
Subject: Case: DV-25-2013-0000509-DK - Robert Willems, etal. vs. Linda McCulloch, etal. - File Attached

Mr. Monforton, Segrest and VanDyke,

Barnes, John

From: VanDyke, Lawrence
Sent: Wednesday, June 12, 2013 10:03 AM
To: Bennion, Jon; Barnes, John
Cc: Mattioli, Mark
Subject: PP - Response to PI Motion
Attachments: PP - Response to PI Motion.doc



Barnes, John

From: VanDyke, Lawrence
Sent: Wednesday, September 11, 2013 10:32 AM
To: Mattioli, Mark; Fox, Tim; Bennion, Jon; Swanson, Cory; Barnes, John
Cc: Darkenwald, Scott
Subject: RE: Amici merits brief in McCullen v. Coakley (U.S.)

I both agree and disagree with Mark. I think the "legal distinctions" I discuss below are the distinctions that legally matter in this case. Michigan's brief isn't saying that buffer zones per se are unconstitutional – to the contrary, they go out of their way to distinguish Colorado's. They are saying that Massachusetts' buffer zone is unconstitutional because it isn't viewpoint neutral, and the "legal distinctions" I point out below comprise all of the reasons they say it isn't viewpoint neutral. So as a legal matter, at least as relates to Michigan's points, there is a world of difference between Montana's law and Massachusetts'.

And I'm not particularly convinced by the argument that Montana's law isn't viewpoint neutral because abortion providers will be counseling clients on their own private property, not in the buffer zone. The abortion providers can do that because people are voluntarily entering their private property to be counseled. Pro-life folks could buy the building next door and invite folks to be voluntarily counseled on their private property. The question is who has a right to involuntarily counsel people in the buffer zone – and in Montana, nobody has that right. So the law is viewpoint neutral.

Moreover, as a practical matter no court is going to ultimately agree that Montana's law isn't viewpoint neutral because of Tim's argument because it would undercut the funeral buffer zone law. The same argument could be made there (the funeral speakers don't need to talk in the buffer zone because they were invited to the funeral).

So both as a practical matter, and even in principle, I think Montana's law is entirely legally distinguishable from Massachusetts'.

BUT, Mark is right that many folks, including probably our media, will miss the legal subtleties and simply note that Montana is one of the few other states that has a buffer zone law, so we must be attacking our own law by joining this brief. It could put Tim in the awkward position of defending Montana's buffer zone law to the media, which presumably is something Tim doesn't want to do.

I think that adding a paragraph to the brief distinguishing Montana's law would help a lot in that regard. I took the liberty of asking Michigan whether they would be open to that – they would. They would like our support for the reasons I laid out below – especially because having another buffer zone state join their brief would emphasize that this is not an attack on buffer zones per se, but only those that are viewpoint discriminatory.

Finally, I think we need to be careful not to overreact to those AGs who have refused to defend their marriage laws. The truth is that there are appropriate times to refuse to defend a statute because it violates the constitution (state or federal). Indeed, we are doing that right now. In the *Willems* case, Monforton has shown that the Redistricting Commission blatantly violated two different Montana statutes – which they did. But those two statutes are plainly unconstitutional, so not only are we not defending them, we are asking the Court to invalidate them. The question of when and how we decide not to defend a Montana statute because it is unconstitutional is complicated and challenging – but it is clear that there are legitimate times we may choose to uphold the Constitution (state or federal) instead of a statute.

Thankfully, though, that issue is not presented here.

From: Mattioli, Mark
Sent: Tuesday, September 10, 2013 5:41 PM
To: VanDyke, Lawrence; Fox, Tim; Bennion, Jon; Swanson, Cory; Barnes, John
Cc: Darkenwald, Scott
Subject: RE: Amici merits brief in McCullen v. Coakley (U.S.)

Although there are legal distinctions to make, as Lawrence points out, as a practical matter there's not a lot of difference between these laws because, as Tim points out, abortion providers aren't going to be counseling prospective clients in the buffer zone. Because the A.G. would be charged with defending Montana's statute if it were challenged, I recommend against joining this brief, which some will interpret as a willingness to forgo defending laws for moral or policy reasons.

If we decide to join, however, we should do so on the condition that the brief contrast the Massachusetts law with Montana's content-neutral law. The brief references the constitutionality of Colorado's law (page 9). The brief would be more effective if it contrasted the Massachusetts law with *both* the Colorado and Montana statutes. If Montana joined the brief, the reader may wonder why that argument is being advanced.

Mark

From: VanDyke, Lawrence
Sent: Tuesday, September 10, 2013 4:34 PM
To: Fox, Tim; Mattioli, Mark; Bennion, Jon; Swanson, Cory; Barnes, John
Cc: Darkenwald, Scott
Subject: RE: Amici merits brief in McCullen v. Coakley (U.S.)

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(2) A person convicted under this section shall be fined an amount not to exceed \$100.

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Thanks,

Lawrence

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From: Schweitzer, Dan [mailto:DSCHWEITZER@NAAG.ORG]

Sent: Tuesday, September 10, 2013 8:27 AM

To:

Subject: Amici merits brief in McCullen v. Coakley (U.S.)

To: Civil Amicus Contacts

From: John Bursch, Michigan Solicitor General

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Michigan Assistant Solicitor General
G. Mennen Williams Building, 7th Floor
525 West Ottawa Street
P.O. Box 30212
Lansing, MI 48909
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Fax: (517) 373-3042
lindstroma@michigan.gov

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Attachments: State amici brief - McCullen v. Coakley 9.10.13.docx

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Barnes, John

From: VanDyke, Lawrence
Sent: Wednesday, August 28, 2013 5:27 PM
To: Mattioli, Mark; Fox, Tim
Cc: Bennion, Jon; Swanson, Cory; Barnes, John; Darkenwald, Scott
Subject: RE: Amicus Memo in NRA v. ATF (U.S.)

The Fifth Circuit held the conduct at issue didn't fall within the scope of the 2nd Amendment because any "longstanding, presumptively lawful regulatory measure ... would likely fall outside the ambit of the Second Amendment" entirely. And "[i]n the view of at least some members of the founding generation, disarming select groups for the sake of public safety was compatible with the right to arms specifically and with the idea of liberty generally" – namely, slaves.

So I guess the court's argument was that we should be able to disarm 18-20 year olds now because they disarmed slaves at the founding? Incredible. I wonder that they didn't see the irony in that argument.

From: Mattioli, Mark
Sent: Wednesday, August 28, 2013 5:13 PM
To: VanDyke, Lawrence; Fox, Tim
Cc: Bennion, Jon; Swanson, Cory; Barnes, John; Darkenwald, Scott
Subject: RE: Amicus Memo in NRA v. ATF (U.S.)

Although many have pointed to social science research suggesting that younger adults are more impulsive because the brain is not completely formed until about age 25, I agree with Lawrence's comments and concur that we should join.

Lawrence, what was the basis for the Fifth Circuit's determination that the Second Amendment was not implicated?

Mark

From: VanDyke, Lawrence
Sent: Wednesday, August 28, 2013 2:35 PM
To: Fox, Tim
Cc: Mattioli, Mark; Bennion, Jon; Swanson, Cory; Barnes, John; Darkenwald, Scott
Subject: RE: Amicus Memo in NRA v. ATF (U.S.)

I can answer some of these:

(1) What do Montana's laws say about 18-21 year olds and guns or ammunition?

- I don't believe Montana has any such laws. Montana law ban carrying of a weapon by a child under the age of 14, unless accompanied by an adult. MCA 45-8-344

(2) What are the policy implications of either supporting or not supporting this amicus brief in light of the high-profile and tragic shooting incidents across the country in recent years?

- I'm not sure there are any *direct* policy implications. Montana and federal laws would still ban carrying of guns in schools, and most 18-21 year olds are out of high school in any event. As far as indirect policy implications – as is the case with most gun issues, I'm sure it depends on your starting assumptions. Folks that think that gun control works will

conclude that loosening control here will lead to more gun violence. Folks that think gun control typically only affects otherwise law-abiding citizens will think that allowing 18-21 year olds to lawfully own handguns will likely not increase crime and violence, in schools or otherwise.

(3) What considerations are there in light of our potential for partnering with Superintendent Juneau on the school safety and active shooter training initiatives?

- I don't know about this one, since I haven't been involved with this at all. Jon – do you know?

(4) What media attention, good or bad, has this case generated since it was filed?

- John is going to do some searching today or tomorrow morning to see what, if any, major press this has received. Thanks John!

(5) Is this a matter that we should consult, with the Governor's office on before making a decision? (Note: I would think not, but would be interested in other's views).

- I don't think we need to. Does anyone else think it would be prudent nonetheless?

I've attached the draft brief – which I like. It does point out that Montana law allows 18-20 year-olds to own guns. See n.2. Here is a line from the first page (key soaring rhetoric music):

Adults who are 18, 19, and 20 honorably defend our country when it is at war. These same Americans should be able to defend themselves and their families when they are at home.

I got chills. (Okay, not really, but I wanted to.)

From: Fox, Tim

Sent: Wednesday, August 28, 2013 12:17 PM

To: VanDyke, Lawrence

Cc: Mattioli, Mark; Bennion, Jon; Swanson, Cory; Barnes, John; Darkenwald, Scott

Subject: Re: Amicus Memo in NRA v. ATF (U.S.)

Before I make a decision, can one or more of you address the following questions:

(1) What do Montana's laws say about 18-21 year olds and guns or ammunition?

(2) What are the policy implications of either supporting or not supporting this amicus brief in light of the high-profile and tragic shooting incidents across the country in recent years?

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Thank you.

Tim

Sent from my iPad

On Aug 28, 2013, at 11:58 AM, "VanDyke, Lawrence" <LVanDyke@mt.gov> wrote:

Tim and Mark – This is a short-fuse cert-stage amicus join request from Alabama in a Second Amendment case coming out of the Fifth Circuit. The case challenges federal laws that categorically deny 18-21 year olds the ability to buy handguns or handgun ammunition. The Fifth Circuit panel

rejected the challenge, holding that (1) the laws do not implicate the Second Amendment, and (2) even if they do, they don't violate it. The NRA is the Petitioner in this case.

I think we should join this brief. I'm not sure I agree with the strategy of bringing this case to the SCOTUS, but I think we want to be on the record as on the side of gun rights (and the NRA). I think that a blanket ban on handgun ownership for all 18-21 year olds probably does violate the original meaning of the second amendment – I would expect that 18 year olds were part of the "militia."

Our deadline is quick – we need to decide by this Friday.

Thanks,

Lawrence

From: Schweitzer, Dan [<mailto:DSCHWEITZER@NAAG.ORG>]

Sent: Tuesday, August 27, 2013 1:02 PM

To: chris.coppin@cwagweb.org; paul.d.stern@maine.gov; dbahr@nd.gov; JMcIntosh@scag.gov; pam.murphy@doj.nh.gov; eric.tabor@iowa.gov; jknorr@attorneygeneral.gov; james.layton@ago.mo.gov; paula.bickett@azag.gov; charles.mcguigan@state.sd.us; RPartington@riag.ri.gov; crimago@saipan.com; barbara.underwood@ag.ny.gov; Hampton, Andrea; Schweitzer, Dan; sbluestone@nmag.gov; david.raupp@arkansasag.gov; gmorg@ago.state.ms.us; jlee@riag.ri.gov; attorney@samoatelco.com; stephan.finkel@lps.state.nj.us; Girard.D.Lau@hawaii.gov; stevemac@ku.edu; dennis.hansen@arkansasag.gov; basay@atg.state.vt.us; Mary.Williams@doj.state.or.us; gkelley@ncdoj.gov; alanc@atg.wa.gov; alama@nmag.gov; judy.zeprun@state.ma.us; joanne.grace@alaska.gov; jnotz@atg.state.il.us; Gregory.Dauria@ct.gov; anne.edwards@doj.nh.gov; tom.fisher@atg.in.gov; jwhite@ncdoj.gov; whowle@ag.nv.gov; Frances.Grunder@doj.ca.gov; mlanf@ago.state.ms.us; ken.rosenstein@alaska.gov; allison.martin@ag.ky.gov; hpizz@ago.state.ms.us; wellslk@doj.state.wi.us; Lee.Davidson@ksag.org; edavis@doj.vi.gov; donna.murasky@dc.gov; ssullivan@oag.state.md.us; jmaddrey@ncdoj.gov; dspence@oag.state.md.us; vlp@wvago.gov; debbie.mcveigh@wyo.gov; Steve.Creazon@atg.in.gov; kguthrie@ago.state.al.us; andrea.silkowitz@dol.lps.state.nj.us; brian.kane@ag.idaho.gov; Richard.Dearing@ag.ny.gov; katie.spohn@nebraska.gov; rrussell@nmag.gov; mwood@ago.state.ms.us; restucciae@michigan.gov; wbrockman@oag.state.md.us; agesmith@scag.gov; susan.lee@doj.ca.gov; SG@atg.in.gov; todd.kim@dc.gov; delayne.deck@ag.idaho.gov; dan.domenico@state.co.us; mscodro@atg.state.il.us; heather.mcveigh@atg.in.gov; suzanne.gorman@doj.nh.gov; jbhoward@oag.state.md.us; potterkc@doj.state.wi.us; stjohnkm@doj.state.wi.us; ed.bedrosian@state.ma.us; john.garry@ag.state.mn.us; brooke.paup@texasattorneygeneral.gov; appeals@ohioattorneygeneral.gov; meanssp@doj.state.wi.us; Sherri.Wald@state.sd.us; adam.aston@texasattorneygeneral.gov; jhughes@atg.state.il.us; david.blake@state.co.us; Segrest, Stuart; susan.britton@ag.ky.gov; john.campbell@ksag.org; jung.kim@dol.lps.state.nj.us; dave.jones@alaska.gov; delberta.pfeifer@ksag.org; perry.zinn-rowthorn@ct.gov; mwebb@ago.state.ms.us; barb.fehrman@ag.state.mn.us; vbeavers@ag.nv.gov; bromano@utah.gov; kris.ailslieger@ksag.org; bob.fagan@msdh.state.ms.us; Eileen.carey@state.ma.us; sean.riley@ag.ky.gov; ashley.harwel@atg.in.gov; dGetchell@oag.state.va.us; anna.joyce@doj.state.or.us; marlene.brown@dol.lps.state.nj.us; peter.michael@wyo.gov; diane.dewolf@myfloridalegal.com; jonathan.mitchell@oag.state.tx.us; mary.mertz@ohioattorneygeneral.gov; sfomey@attorneygeneral.gov; npeterson@law.ga.gov; jnelman@ago.state.al.us; ariel.levinson-waldman@dc.gov; burschj@michigan.gov; Leesa.Thompson@oag.ok.gov; dowker@michigan.gov; frederick.nelson@ohioattorneygeneral.gov; patrick.wyrick@oag.ok.gov; bill.young@ag.tn.gov; Black, Michael; MBrady@oag.state.va.us; Sam Peterson; abrasher@ago.state.al.us; pamela.spang@state.ma.us; andy.oldham@texasattorneygeneral.gov; Jason.pleggenkuhle@ag.state.mn.us; michael.hendershot@ohioattorneygeneral.gov; robyn.bender@ag.ky.gov; laura-jane.weimer@state.co.us; james.adams@state.de.us; Aricka.seales@state.ma.us; wiltonp@ag.state.la.us; lindstroma@michigan.gov; VanDyke, Lawrence; allen.winsor@myfloridalegal.com; christopher.dodrill@wvago.gov; marmercado@justicia.pr.gov; elbert.lin@wvago.gov;

Mary.McTaggart@state.de.us; Sarah.Greenwalt@oag.ok.gov; Michael.Francisco@state.co.us
Cc: KTurner@ago.state.al.us
Subject: Amicus Memo in NRA v. ATF (U.S.)

To: Civil Amicus Contacts

Attached is an Amicus Memo describing the amicus brief Alabama is preparing in support of the cert petition filed in *National Rifle Association v. U.S. Bureau of Alcohol, Tobacco, Firearms, and Explosives*, 13-137 (U.S.). The petition seeks review of a Fifth Circuit decision holding that the Second Amendment is not violated by federal laws prohibiting adults under the age of 21 from purchasing handguns and handgun ammunition. The question presented is “[w]hether a nationwide, class-based, categorical ban on meaningful access to the quintessential means to exercise the right to keep and bear arms for self-defense can be reconciled with the Second Amendment, the equal protection guarantee, and this Court’s precedents.”

The turn-around time is very short. Alabama will be circulating a draft brief tomorrow; and the deadline for joining is this Friday. To join, you may contact:

John Neiman
Solicitor General
Office of Alabama Attorney General Luther Strange
501 Washington Avenue
Montgomery, AL 36130
(334) 353-2187
JNeiman@ago.state.al.us

Dan Schweitzer
Supreme Court Counsel
National Association of Attorneys General
2030 M Street, NW, 8th Floor
Washington, DC 20036
(202) 326-6010
(202) 785-0410 - fax
dschweitzer@naag.org

<Amicus Memo - NRA v Bureau of ATFE -- 8-27.pdf>

Barnes, John

From: VanDyke, Lawrence
Sent: Wednesday, August 28, 2013 2:35 PM
To: Fox, Tim
Cc: Mattioli, Mark; Bennion, Jon; Swanson, Cory; Barnes, John; Darkenwald, Scott
Subject: RE: Amicus Memo in NRA v. ATF (U.S.)
Attachments: NRA v. BATFE -- draft brief -- 8-28 -- to States.pdf

I can answer some of these:

(1) What do Montana's laws say about 18-21 year olds and guns or ammunition?

- I don't believe Montana has any such laws. Montana law ban carrying of a weapon by a child under the age of 14, unless accompanied by an adult. MCA 45-8-344

(2) What are the policy implications of either supporting or not supporting this amicus brief in light of the high-profile and tragic shooting incidents across the country in recent years?

- I'm not sure there are any *direct* policy implications. Montana and federal laws would still ban carrying of guns in schools, and most 18-21 year olds are out of high school in any event. As far as indirect policy implications – as is the case with most gun issues, I'm sure it depends on your starting assumptions. Folks that think that gun control works will conclude that loosening control here will lead to more gun violence. Folks that think gun control typically only affects otherwise law-abiding citizens will think that allowing 18-21 year olds to lawfully own handguns will likely not increase crime and violence, in schools or otherwise.

(3) What considerations are there in light of our potential for partnering with Superintendent Juneau on the school safety and active shooter training initiatives?

- I don't know about this one, since I haven't been involved with this at all. Jon – do you know?

(4) What media attention, good or bad, has this case generated since it was filed?

- John is going to do some searching today or tomorrow morning to see what, if any, major press this has received. Thanks John!

(5) Is this a matter that we should consult, with the Governor's office on before making a decision? (Note: I would think not, but would be interested in other's views).

- I don't think we need to. Does anyone else think it would be prudent nonetheless?

I've attached the draft brief – which I like. It does point out that Montana law allows 18-20 year-olds to own guns. See n.2. Here is a line from the first page (key soaring rhetoric music):

Adults who are 18, 19, and 20 honorably defend our country when it is at war. These same Americans should be able to defend themselves and their families when they are at home.

I got chills. (Okay, not really, but I wanted to.)

From: Fox, Tim
Sent: Wednesday, August 28, 2013 12:17 PM
To: VanDyke, Lawrence
Cc: Mattioli, Mark; Bennion, Jon; Swanson, Cory; Barnes, John; Darkenwald, Scott
Subject: Re: Amicus Memo in NRA v. ATF (U.S.)

Before I make a decision, can one or more of you address the following questions:

- (1) What do Montana's laws say about 18-21 year olds and guns or ammunition?
- (2) What are the policy implications of either supporting or not supporting this amicus brief in light of the high-profile and tragic shooting incidents across the country in recent years?
- (3) What considerations are there in light of our potential for partnering with Superintendent Juneau on the school safety and active shooter training initiatives?
- (4) What media attention, good or bad, has this case generated since it was filed?
- (5) Is this a matter that we should consult, with the Governor's office on before making a decision? (Note: I would think not, but would be interested in other's views).

Thank you.

Tim

Sent from my iPad

On Aug 28, 2013, at 11:58 AM, "VanDyke, Lawrence" <LVanDyke@mt.gov> wrote:

Tim and Mark – This is a short-fuse cert-stage amicus join request from Alabama in a Second Amendment case coming out of the Fifth Circuit. The case challenges federal laws that categorically deny 18-21 year olds the ability to buy handguns or handgun ammunition. The Fifth Circuit panel rejected the challenge, holding that (1) the laws do not implicate the Second Amendment, and (2) even if they do, they don't violate it. The NRA is the Petitioner in this case.

I think we should join this brief. I'm not sure I agree with the strategy of bringing this case to the SCOTUS, but I think we want to be on the record as on the side of gun rights (and the NRA). I think that a blanket ban on handgun ownership for all 18-21 year olds probably does violate the original meaning of the second amendment – I would expect that 18 year olds were part of the "militia."

Our deadline is quick – we need to decide by this Friday.

Thanks,

Lawrence

From: Schweitzer, Dan [<mailto:DSCHWEITZER@NAAG.ORG>]

Sent: Tuesday, August 27, 2013 1:02 PM

To: chris.coppin@cwagweb.org; paul.d.stern@maine.gov; dbahr@nd.gov; JMcIntosh@scag.gov; pam.murphy@doj.nh.gov; eric.tabor@iowa.gov; jknorr@attorneygeneral.gov; james.layton@ago.mo.gov; paula.bickett@azag.gov; charles.mcquigan@state.sd.us; RPartington@riag.ri.gov; crimago@saipan.com; barbara.underwood@ag.ny.gov; Hampton, Andrea; Schweitzer, Dan; sbluestone@nmag.gov; david.raupp@arkansasag.gov; gmorg@ago.state.ms.us; jlee@riag.ri.gov; attorney@samoatelco.com; stephan.finkel@lps.state.nj.us; Girard.D.Lau@hawaii.gov; stevemac@ku.edu; dennis.hansen@arkansasag.gov; basay@atg.state.vt.us; Mary.Williams@doj.state.or.us; gkelley@ncdoj.gov; alanc@atg.wa.gov; alama@nmag.gov; judy.zeprun@state.ma.us; joanne.grace@alaska.gov; jnotz@atg.state.il.us; Gregory.Dauria@ct.gov; anne.edwards@doj.nh.gov; tom.fisher@atg.in.gov; jwhite@ncdoj.gov; whowle@ag.nv.gov; Frances.Grunder@doj.ca.gov; mianf@ago.state.ms.us; ken.rosenstein@alaska.gov; allison.martin@ag.ky.gov; hpizz@ago.state.ms.us; wellsk@doj.state.wi.us; Lee.Davidson@ksag.org; edavis@doj.vi.gov; donna.murasky@dc.gov; ssullivan@oag.state.md.us; jmaddrey@ncdoj.gov; dspence@oag.state.md.us; vlp@wvago.gov; debbie.mcveigh@wyo.gov; Steve.Creaseon@atg.in.gov; kquthrie@ago.state.al.us; andrea.silkowitz@dol.lps.state.nj.us; brian.kane@ag.idaho.gov; Richard.Dearing@ag.ny.gov;

katie.spohn@nebraska.gov; rrussell@nmag.gov; mwood@ago.state.ms.us; restucciae@michigan.gov;
wbrockman@oag.state.md.us; agesmith@scag.gov; susan.lee@doj.ca.gov; SG@atg.in.gov;
todd.kim@dc.gov; delayne.deck@ag.idaho.gov; dan.domenico@state.co.us; mscodro@atg.state.il.us;
heather.mcveigh@atg.in.gov; suzanne.gorman@doj.nh.gov; jbhoward@oag.state.md.us;
potterkc@doj.state.wi.us; stjohnkm@doj.state.wi.us; ed.bedrosian@state.ma.us;
john.garry@ag.state.mn.us; brooke.paup@texasattorneygeneral.gov; appeals@ohioattorneygeneral.gov;
meanssp@doj.state.wi.us; Sherri.Wald@state.sd.us; adam.aston@texasattorneygeneral.gov;
jhughes@atg.state.il.us; david.blake@state.co.us; Segrest, Stuart; susan.britton@ag.ky.gov;
john.campbell@ksag.org; jung.kim@dol.lps.state.nj.us; dave.jones@alaska.gov;
delberta.pfeifer@ksag.org; perry.zinn-rowthorn@ct.gov; mwebb@ago.state.ms.us;
barb.fehrman@ag.state.mn.us; vbeavers@ag.nv.gov; bromano@utah.gov; kris.ailsieger@ksag.org;
bob.fagan@msdh.state.ms.us; Eileen.carey@state.ma.us; sean.riley@ag.ky.gov;
ashley.harwel@atg.in.gov; dGetchell@oag.state.va.us; anna.joyce@doj.state.or.us;
marlene.brown@dol.lps.state.nj.us; peter.michael@wyo.gov; diane.dewolf@myfloridalegal.com;
jonathan.mitchell@oag.state.tx.us; mary.mertz@ohioattorneygeneral.gov; sforney@attorneygeneral.gov;
npeterson@law.ga.gov; jneiman@ago.state.al.us; ariel.levinson-waldman@dc.gov;
burschj@michigan.gov; Leesa.Thompson@oag.ok.gov; dowkerc@michigan.gov;
frederick.nelson@ohioattorneygeneral.gov; patrick.wyrick@oag.ok.gov; bill.young@ag.tn.gov; Black,
Michael; MBrady@oag.state.va.us; Sam Peterson; abrasher@ago.state.al.us; pamela.spanq@state.ma.us;
andy.oldham@texasattorneygeneral.gov; Jason.pleggenkuhle@ag.state.mn.us;
michael.hendershot@ohioattorneygeneral.gov; robyn.bender@ag.ky.gov; laura-jane.weimer@state.co.us;
james.adams@state.de.us; Aricka.seales@state.ma.us; wiltonp@ag.state.la.us;
lindstroma@michigan.gov; VanDyke, Lawrence; allen.winsor@myfloridalegal.com;
christopher.dodrigill@wvago.gov; marmercado@justicia.pr.gov; eibert.lin@wvago.gov;
Mary.McTaggart@state.de.us; Sarah.Greenwalt@oag.ok.gov; Michael.Francisco@state.co.us
Cc: KTurner@ago.state.al.us
Subject: Amicus Memo in NRA v. ATF (U.S.)

To: Civil Amicus Contacts

Attached is an Amicus Memo describing the amicus brief Alabama is preparing in support of the cert petition filed in *National Rifle Association v. U.S. Bureau of Alcohol, Tobacco, Firearms, and Explosives*, 13-137 (U.S.). The petition seeks review of a Fifth Circuit decision holding that the Second Amendment is not violated by federal laws prohibiting adults under the age of 21 from purchasing handguns and handgun ammunition. The question presented is “[w]hether a nationwide, class-based, categorical ban on meaningful access to the quintessential means to exercise the right to keep and bear arms for self-defense can be reconciled with the Second Amendment, the equal protection guarantee, and this Court’s precedents.”

The turn-around time is very short. Alabama will be circulating a draft brief tomorrow; and the deadline for joining is this Friday. To join, you may contact:

John Neiman
Solicitor General
Office of Alabama Attorney General Luther Strange
501 Washington Avenue
Montgomery, AL 36130
(334) 353-2187
JNeiman@ago.state.al.us

Dan Schweitzer
Supreme Court Counsel
National Association of Attorneys General
2030 M Street, NW, 8th Floor
Washington, DC 20036
(202) 326-6010
(202) 785-0410 - fax
dschweitzer@naag.org

<Amicus Memo - NRA v Bureau of ATFE -- 8-27.pdf>

Barnes, John

From: VanDyke, Lawrence
Sent: Friday, December 06, 2013 4:04 PM
To: Mattioli, Mark; Fox, Tim; Darkenwald, Scott; Bennion, Jon; Swanson, Cory; Barnes, John; Burton, Anastasia
Subject: RE: Case: DV-25-2013-0000509-DK - Robert Willems, etal. vs. Linda McCulloch, etal. - File Attached

The problem is that if Plaintiffs don't get a decision before the deadline for filing to run for office (March? - Jon likely knows, but he and Cory aren't talking to me anymore ...), then it does them no good.

So I think they have a good basis for an expedited appeal. And Judge Regnier also seems to just assume it will expedited. I just hope our deadline for a Response isn't until late January.

-----Original Message-----

From: Mattioli, Mark
Sent: Friday, December 06, 2013 3:57 PM
To: VanDyke, Lawrence; Fox, Tim; Darkenwald, Scott; Bennion, Jon; Swanson, Cory; Barnes, John; Burton, Anastasia
Subject: RE: Case: DV-25-2013-0000509-DK - Robert Willems, etal. vs. Linda McCulloch, etal. - File Attached

Nice work. Although the case involves elections, after reading the opinion it doesn't appear to be writ worthy or a case requiring suspension of the rules to expedite an appeal.

-----Original Message-----

From: VanDyke, Lawrence
Sent: Friday, December 06, 2013 3:20 PM
To: Fox, Tim; Darkenwald, Scott; Mattioli, Mark; Bennion, Jon; Swanson, Cory; Barnes, John; Burton, Anastasia
Subject: FW: Case: DV-25-2013-0000509-DK - Robert Willems, etal. vs. Linda McCulloch, etal. - File Attached

Here is the Willems decision Judge Menahan just issued in the State's favor. Monforton will presumably file or an expedited appeal tomorrow.

-----Original Message-----

From: Segrest, Stuart
Sent: Friday, December 06, 2013 2:58 PM
To: Jim Regnier (jregnier@centurytel.net) (jregnier@centurytel.net); Lamson, Joe (DNRC); Quintana, Jorge; Weiss, Rachel
Cc: VanDyke, Lawrence
Subject: FW: Case: DV-25-2013-0000509-DK - Robert Willems, etal. vs. Linda McCulloch, etal. - File Attached

The Court granted the State's motion for summary judgment. See attached.

-----Original Message-----

From: Hartman, Denise
Sent: Friday, December 06, 2013 2:47 PM
To: matthewmonforton@yahoo.com; Segrest, Stuart; VanDyke, Lawrence
Subject: Case: DV-25-2013-0000509-DK - Robert Willems, etal. vs. Linda McCulloch, etal. - File Attached

Mr. Monforton, Segrest and VanDyke,

Barnes, John

From: VanDyke, Lawrence
Sent: Tuesday, October 29, 2013 12:03 PM
To: Fox, Tim; Mattioli, Mark
Cc: James, Julie; Barnes, John; Burton, Anastasia
Subject: RE: Isaacson brief as printed
Attachments: Isaacson Ohio et al amicus AS FILED 10 29 13.pdf

Sorry – going too fast. Attached is the cert-stage multi-state amicus brief that Montana co-authored with Ohio. 16 states total joined. Ohio is filing the brief today.

From: VanDyke, Lawrence
Sent: Tuesday, October 29, 2013 12:01 PM
To: Fox, Tim; Mattioli, Mark
Cc: James, Julie; Barnes, John; Burton, Anastasia
Subject: FW: Isaacson brief as printed

Tim et al. – Attached is the

From: Eric Murphy [<mailto:Eric.Murphy@ohioattorneygeneral.gov>]
Sent: Tuesday, October 29, 2013 11:53 AM
To: VanDyke, Lawrence
Cc: Stephen Carney; Megan M. Dillhoff
Subject: FW: Isaacson brief as printed

Lawrence:

We're sending this out for filing today. Good working with you, and we got a lot of States as well.

Eric

From: Kim Blankenship
Sent: Tuesday, October 29, 2013 12:27 PM
To: Eric Murphy
Subject: Isaacson brief as printed

Barnes, John

From: VanDyke, Lawrence
Sent: Thursday, January 10, 2013 11:02 AM
To: Mattioli, Mark; Fox, Tim
Cc: Darkenwald, Scott; Bennion, Jon; Barnes, John; James, Julie
Subject: RE: Amicus Join Request - Hollingsworth v. Perry (U.S.) -- Prop 8 case

I talked with the assistant SG of Michigan, who is a friend, and he confirmed this morning that the draft is all but done at this point – there really isn't much we could offer as an additional author.

But more broadly on this: there is a well-established set of procedures and traditions that basically govern these state amicus briefs, especially in major SCOTUS cases, and it is mostly coordinated through the NAAG. The higher profile a case is, the earlier that states (usually those with significant SG offices or departments, like Texas, Indiana, and Alabama) tend to "claim" authorship for the upcoming states' amicus brief. Once a state is the first to claim an amicus in a case (or at least one making certain arguments – sometimes different states will be on different sides of the issue), traditionally they have the privilege of writing it and other states that generally agree with the position will simply join it. Of course, those joining states are welcome to make small suggestions or object to part of the draft (much like justices joining an opinion). But the whole system is set up to encourage states with generally the same position to all join one, well-written brief, instead of submitting multiple briefs on the same or similar issues. I've had multiple SCOTUS clerks tell me that the justices do not read most amicus briefs, so arguably the number of states on the cover is often more important than the contents of the brief.

The reason the *Perry* case has three authoring states isn't because three were needed to share the workload; it is because this is a very high profile case and either it wasn't clear which state had "first dibs" on the traditional-marriage-side amicus, or this was politically important enough that a few additional states were able, early on, to convince the first-mover state (probably Indiana) to let them share authorship credit. Mark is right that roughly 30 states have marriage amendments, and even more have marriage-protection statutes, so most states were pretty similarly situated on this issue.

In short – states need to claim "authorship" for SCOTUS amicus briefs through NAAG pretty early on, and the more high profile a case is, the earlier it is taken. As you can imagine, states with substantial SG staffs tend to "claim" and author most of the amicus briefs, both because they have the staff to do it, and just as important, because they have the resources to identify early on key cases that are trickling up through the system.

Hopefully this is helpful in understanding the process. I'd be happy to swing by to discuss if anyone wants to know more.

- Lawrence

From: Mattioli, Mark
Sent: Thursday, January 10, 2013 9:53 AM
To: Fox, Tim; VanDyke, Lawrence
Cc: Darkenwald, Scott; Bennion, Jon; Barnes, John; James, Julie
Subject: RE: Amicus Join Request - Hollingsworth v. Perry (U.S.) -- Prop 8 case

There are already three states working on the brief. In my experience it's very difficult to coordinate the work of three attorneys, let alone four. I think Indiana, Virginia, and Michigan will adequately represent the interests of states like Montana. Aren't there about 30 states with marriage amendments like Montana's?

I recommend that we join. I recommend against our being a fourth author of the brief.

Mark

From: Fox, Tim
Sent: Wednesday, January 09, 2013 3:37 PM
To: VanDyke, Lawrence
Cc: Darkenwald, Scott; Mattioli, Mark; Bennion, Jon; Barnes, John; James, Julie
Subject: RE: Amicus Join Request - Hollingsworth v. Perry (U.S.) -- Prop 8 case

Thanks Lawrence,

Is there any chance that we can get in on, if not the ground floor, at least the next level in the genesis of this amicus brief? By that I mean "do we have to wait to see the draft brief, or can I contact the principle author/lead state(s) and get more involved now?" I'm fine with waiting to see what the amicus brief says, but I'd rather have a hand in drafting it. This is particularly important because of our Montana Constitution's provision on marriage. What are your thoughts?

Tim

From: VanDyke, Lawrence
Sent: Wednesday, January 09, 2013 3:09 PM
To: Fox, Tim
Cc: Darkenwald, Scott; Mattioli, Mark; Bennion, Jon; Barnes, John; James, Julie
Subject: Amicus Join Request - Hollingsworth v. Perry (U.S.) -- Prop 8 case

Tim:

Sometime around Tuesday, January 22, the states of Indiana, Michigan, and Virginia will be circulating a draft SCOTUS amicus brief in support of the petitioners in the *Hollingsworth v. Perry* (California Prop. 8) case. This is the case appealing the Ninth Circuit's decision that California's constitutional amendment defining marriage as between a man and a woman is unconstitutional. The three authoring states are soliciting other states to join their brief. **The deadline for joining will be 5 pm ET, Monday, January 28th.**

The attached memo circulated through the NAAG briefly describes the arguments the states plan to make, and the states' interests asserted. I will circulate the draft brief once I get it, but I'm giving you an earlier heads-up in case you wish to discuss it sooner.

Lawrence

-----Original Message-----

From: Schweitzer, Dan [mailto:DSCHWEITZER@NAAG.ORG]
Sent: Thursday, December 20, 2012 2:38 PM
To: chris.coppin@cwagweb.org; paul.d.stern@maine.gov; dbahr@nd.gov; agjwmcinto@scag.gov; pam.murphy@doj.nh.gov; eric.tabor@iowa.gov; jknorr@attorneygeneral.gov; james.layton@ago.mo.gov; paula.bickett@azag.gov; charles.mcguigan@state.sd.us; RPartington@riag.ri.gov; manuel.medeiros@doj.ca.gov; crimago@saipan.com; barbara.underwood@ag.ny.gov; Hampton, Andrea; Schweitzer, Dan; sbluestone@nmag.gov; david.raupp@arkansasag.gov; gmorg@ago.state.ms.us; jlee@riag.ri.gov; attorney@samoatelco.com; stephan.finkel@lps.state.nj.us; Girard.D.Lau@hawaii.gov; stevemac@ku.edu; dennis.hansen@arkansasag.gov; drobenson@law.ga.gov; hughesafran@hotmail.com; james.smith@nebraska.gov; basay@atg.state.vt.us; Mary.Williams@doj.state.or.us; gkelley@ncdoj.gov;

alanc@atg.wa.gov; alama@nmag.gov; judy.zeprun@state.ma.us; joanne.grace@alaska.gov;
jnotz@atg.state.il.us; mcgimseyr@ag.state.la.us; Gregory.Dauria@ct.gov; anne.edwards@doj.nh.gov;
tom.fisher@atg.in.gov; jwhite@ncdoj.gov; whowle@ag.nv.gov; Frances.Grunder@doj.ca.gov;
mlanf@ago.state.ms.us; ken.rosenstein@alaska.gov; allison.martin@ag.ky.gov; hpizz@ago.state.ms.us;
wellslk@doj.state.wi.us; Lee.Davidson@ksag.org; edavis@doj.vi.gov; donna.murasky@dc.gov;
ssullivan@oag.state.md.us; jmaddrey@ncdoj.gov; dspence@oag.state.md.us; wjy@wvago.gov;
debbie.jourgensen@wyo.gov; Steve.Creason@atg.in.gov; jafarshee@ago.state.al.us;
andrea.silkowitz@dol.lps.state.nj.us; brian.kane@ag.idaho.gov; Richard.Dearing@ag.ny.gov;
katie.spohn@nebraska.gov; rrussell@nmag.gov; hunterg@atg.wa.gov; restucciae@michigan.gov;
wbrockman@oag.state.md.us; agesmith@scag.gov; lawrence.lewis@state.de.us; SG@atg.in.gov;
todd.kim@dc.gov; delayne.deck@ag.idaho.gov; dan.domenico@state.co.us; mscodro@atg.state.il.us;
heather.mcveigh@atg.in.gov; jbhoward@oag.state.md.us; potterkc@doj.state.wi.us; stjohnkm@doj.state.wi.us;
ed.bedrosian@state.ma.us; john.garry@ag.state.mn.us; Barbara.Durham@myfloridalegal.com;
brooke.paup@texasattorneygeneral.gov; meanssp@doj.state.wi.us; Sherri.Wald@state.sd.us;
adam.aston@texasattorneygeneral.gov; jhughes@atg.state.il.us; david.blake@state.co.us; Segrest, Stuart;
susan.britton@ag.ky.gov; john.campbell@ksag.org; ian.mcconnel@state.de.us; jung.kim@dol.lps.state.nj.us;
dave.jones@alaska.gov; delberta.pfeifer@ksag.org; perry.zinn-rowthorn@ct.gov; mwebb@ago.state.ms.us;
barb.fehrman@ag.state.mn.us; vbeavers@ag.nv.gov; bromano@utah.gov;
timothy.osterhaus@myfloridalegal.com; kris.ailsieger@ksag.org;
Alexandra.Schimmer@ohioattorneygeneral.gov; Katrina.barbour@state.de.us; bob.fagan@msdh.state.ms.us;
Eileen.carey@state.ma.us; sean.riley@ag.ky.gov; ashley.harwel@atg.in.gov; dGetchell@oag.state.va.us;
Ruckman, Stephen; anna.joyce@doj.state.or.us; marlene.brown@dol.lps.state.nj.us; peter.michael@wyo.gov;
bergethonr@ag.state.la.us; diane.dewolf@myfloridalegal.com; jonathan.mitchell@oag.state.tx.us;
mary.mertz@ohioattorneygeneral.gov; sforney@attorneygeneral.gov; npeterson@law.ga.gov;
jneiman@ago.state.al.us; ariel.levinson-waldman@dc.gov; burschj@michigan.gov; Dave.Cole@azag.gov;
Leesa.Thompson@oag.ok.gov; dowkerc@michigan.gov; lkelly@attorneygeneral.gov;
patrick.wyrick@oag.ok.gov; bill.young@ag.tn.gov; Black, Michael; MBrady@oag.state.va.us; Sam Peterson;
abrasher@ago.state.al.us; pamela.spang@state.ma.us; luisroman@justice.com; kguthrie@ago.state.al.us;
andy.oldham@texasattorneygeneral.gov; Jason.pleggenkuhle@ag.state.mn.us; Fred.Yarger@state.co.us;
robyn.bender@ag.ky.gov; laura-jane.weimer@state.co.us; james.adams@state.de.us;
Aricka.seales@state.ma.us

Subject: Amicus Memo in Hollingsworth v. Perry (U.S.) -- Prop 8 case

To: Civil Amicus Contacts

Attached is an Amicus Memo seeking support for an amicus brief being written by Indiana, Michigan and Virginia in support of the petitioners on the merits in Hollingsworth v. Perry, No. 12-144 (the Proposition 8 case). The brief is not yet ready, and is not due until January 29, but they want to circulate the memorandum now so that states have plenty of notice that it is coming.

[Please note that an amicus memo and brief will be circulated at a later date in support of respondents in this case.]

Barnes, John

From: Fox, Tim
Sent: Monday, September 23, 2013 11:56 AM
To: VanDyke, Lawrence
Cc: Mattioli, Mark; Darkenwald, Scott; Bennion, Jon; Swanson, Cory; Barnes, John
Subject: Re: Amicus Join Request - ACA conscience cases

Thank you Lawrence. I agree that WE DO JOIN this brief. Tim

Sent from my iPad

On Sep 23, 2013, at 1:04 PM, "VanDyke, Lawrence" <LVanDyke@mt.gov> wrote:

We have received dueling cert-stage amicus join requests related to the ACA contraception mandate litigation. You may recall that Hobby Lobby has been involved in litigation against the feds saying that Obamacare's contraception mandate, as applied to them (a for-profit religious employer), violates their religious rights protected under the Religious Freedom Restoration Act (RFRA). Hobby Lobby won in the 10th Circuit, and the feds are seeking cert. Conestoga Wood Specialties, another for-profit company owned by Mennonites, filed a similar suit, and *lost* in the 3rd Circuit. They too are seeking cert.

California is filing a states' amicus brief in support of the feds in the Hobby Lobby case. Michigan and Ohio are filing a states' amicus brief in support of Conestoga. They obviously take opposing positions in a clear cert-split. **I recommend that we join the Michigan/Ohio brief.** Our decision is due Friday, Oct. 18.

We should all be familiar with the arguments, since we talked about trying to file a Hobby Lobby-type challenge months ago. If you need a refresher, read Conestoga memo in the attached email. The only concerns I had initially was whether the arguments being made in the Conestoga case could be taken as inconsistent with our position(s) in the Hutterite litigation – specifically, if they might be making some sort of broad *Hosanna-Tabor* type argument. I called my friends in Michigan and was assured they are not – they will be focusing on the RFRA standard, which is far afield from our Hutterite case.

The only other angle that we should be aware of is that in all these cases, the feds are basically arguing that corporations should not have religious liberty rights. This is obviously somewhat akin to many Montanan's beloved "corporations are not people" argument. But, practically speaking, neither Hobby Lobby (which is a quintessential "religious" company) nor Conestoga (which is a closely held woodworking company owned by Mennonites) are the type of huge, impersonal corporations that the "corporations-aren't-people" crowd likes to villainize.

We'll have some time to review the actual draft brief before it is filed, which I will do to make sure there isn't anything that directly undercuts us in the Hutterite case or it otherwise objectionable.

Thanks,

Lawrence VanDyke
Solicitor General ♦ Montana Department of Justice

215 N. Sanders ♦ P.O. Box 201401
Helena, Montana 59620

Barnes, John

From: VanDyke, Lawrence
Sent: Thursday, January 17, 2013 3:45 PM
To: Fox, Tim
Cc: Darkenwald, Scott; Mattioli, Mark; Bennion, Jon; Swanson, Cory; Barnes, John; James, Julie
Subject: RE: Amicus Memo (cert stage) in Elmbrook School District v. Doe (U.S.)

It turns out that Montana does use churches as polling places in various locations. I obtained a spreadsheet of all of our polling places from the Secretary of State's office (the spreadsheet was apparently available online until this morning, when it was taken down post-election to make room for other things, so it is a public document). I forwarded that spreadsheet to Texas so they can use Montana as an example in the brief.

From: Fox, Tim
Sent: Thursday, January 17, 2013 1:39 PM
To: VanDyke, Lawrence
Cc: Darkenwald, Scott; Mattioli, Mark; Bennion, Jon; Swanson, Cory; Barnes, John
Subject: Re: Amicus Memo (cert stage) in Elmbrook School District v. Doe (U.S.)

I agree that we DO join. Thank you. Tim

Sent from my iPhone

On Jan 17, 2013, at 11:41 AM, "VanDyke, Lawrence" <LVanDyke@mt.gov> wrote:

Recommendation: I recommend that we do join this amicus brief, even though it is only a cert-stage brief.

Decision Deadline: 9:30 am on Tuesday, January 22

Analysis: This amicus brief supports the Elmbrook School District's attempt to have the Court review a decision of the en banc Seventh Circuit. That court held the school could not hold its graduation ceremony in a church building, because of the "sheer religiosity of the space," notwithstanding that the decision was made for secular reasons (air-conditioning, adequate seating, and sufficient parking), and that the graduation ceremony had no religious content. This is a very troubling decision that literally excludes a church from the "public square," simply because it is a church. This another example of interpreting the First Amendment to require discrimination *against* religion – a hold-over from the Warren court that, thankfully, a majority of the Court has moved away from in recent years (emphasizing neutrality).

Special Request: Texas (the drafters of the brief) have asked other joining states to provide examples of any recent government use of churches in their states (e.g., polling places in the 2012 election, aid stations, etc.). Anyone have ideas of how I could get examples for Montana?

From: Schweitzer, Dan [<mailto:DSCHWEITZER@NAAG.ORG>]
Sent: Wednesday, January 16, 2013 12:46 PM
To: chris.coppin@cwagweb.org; paul.d.stern@maine.gov; dbahr@nd.gov; agjwmcinto@scag.gov; pam.murphy@doj.nh.gov; eric.tabor@iowa.gov; jknorr@attorneygeneral.gov; james.layton@ago.mo.gov; paula.bickett@azag.gov; charles.mcquigan@state.sd.us; RPartington@riag.ri.gov; crimago@saipan.com; barbara.underwood@ag.ny.gov; Hampton, Andrea; Schweitzer, Dan; sbluestone@nmag.gov;

david.raupp@arkansasag.gov; gmorg@ago.state.ms.us; jlee@riag.ri.gov; attorney@samoatelco.com;
stephan.finkel@lps.state.nj.us; Girard.D.Lau@hawaii.gov; stevemac@ku.edu;
dennis.hansen@arkansasag.gov; drobinson@law.ga.gov; hughesafran@hotmail.com;
basay@atg.state.vt.us; Mary.Williams@doj.state.or.us; gkelley@ncdoj.gov; alanc@atg.wa.gov;
alama@nmaq.gov; judy.zeprun@state.ma.us; joanne.grace@alaska.gov; jnotz@atg.state.il.us;
mcgimseyr@ag.state.la.us; Gregory.Dauria@ct.gov; anne.edwards@doj.nh.gov; tom.fisher@atg.in.gov;
jwhite@ncdoj.gov; whowie@ag.nv.gov; Frances.Grunder@doj.ca.gov; mianf@ago.state.ms.us;
ken.rosenstein@alaska.gov; allison.martin@ag.ky.gov; hpizz@ago.state.ms.us; wellsk@doj.state.wi.us;
Lee.Davidson@ksag.org; edavis@doj.vi.gov; donna.murasky@dc.gov; ssullivan@oag.state.md.us;
jmadrey@ncdoj.gov; dspence@oag.state.md.us; wjy@wvago.gov; debbie.jourgensen@wyo.gov;
Steve.Creason@atg.in.gov; jafarshee@ago.state.al.us; andrea.silkowitz@dol.lps.state.nj.us;
brian.kane@ag.idaho.gov; Richard.Dearing@ag.ny.gov; katie.spohn@nebraska.gov; rrussell@nmag.gov;
mwood@ago.state.ms.us; hunterg@atg.wa.gov; restucciae@michigan.gov;
[wbrockman@oag.state.md.us](mailto>wbrockman@oag.state.md.us); agesmith@scaq.gov; susan.lee@doj.ca.gov; SG@atg.in.gov;
todd.kim@dc.gov; delayne.deck@ag.idaho.gov; dan.domenico@state.co.us; mscodro@atg.state.il.us;
heather.mcveigh@atg.in.gov; suzanne.gorman@doj.nh.gov; jbhoward@oag.state.md.us;
potterkc@doj.state.wi.us; stjohnkm@doj.state.wi.us; ed.bedrosian@state.ma.us;
john.garry@ag.state.mn.us; Barbara.Durham@myfloridalegal.com;
brooke.paup@texasattorneygeneral.gov; meanssp@doj.state.wi.us; Sherri.Wald@state.sd.us;
adam.aston@texasattorneygeneral.gov; jhughes@atg.state.il.us; david.blake@state.co.us; Segrest,
Stuart; susan.britton@ag.ky.gov; john.campbell@ksag.org; jung.kim@dol.lps.state.nj.us;
dave.jones@alaska.gov; delberta.pfeifer@ksag.org; perry.zinn-rowthorn@ct.gov;
mwebb@ago.state.ms.us; barb.fehrman@ag.state.mn.us; vbeavers@ag.nv.gov; bromano@utah.gov;
timothy.osterhaus@myfloridalegal.com; kris.aillsieger@ksag.org;
Alexandra.Schimmer@ohioattorneygeneral.gov; bob.fagan@msdh.state.ms.us;
Eileen.carey@state.ma.us; sean.riley@ag.ky.gov; ashley.harwel@atg.in.gov; dGetchell@oag.state.va.us;
anna.joyce@doj.state.or.us; marlene.brown@dol.lps.state.nj.us; peter.michael@wyo.gov;
diane.dewolf@myfloridalegal.com; jonathan.mitchell@oag.state.tx.us;
mary.mertz@ohioattorneygeneral.gov; sforney@attorneygeneral.gov; npeterson@law.ga.gov;
jneiman@ago.state.al.us; ariel.levinson-waldman@dc.gov; burschi@michigan.gov; Dave.Cole@azag.gov;
Leesa.Thompson@oag.ok.gov; dowkerc@michigan.gov; frederick.nelson@ohioattorneygeneral.gov;
patrick.wyrick@oag.ok.gov; bill.young@ag.tn.gov; Black, Michael; MBrady@ag.state.va.us; Sam
Peterson; abrasher@ago.state.al.us; pamela.spang@state.ma.us; luisroman@justice.com;
kuthrie@ago.state.al.us; andy.oldham@texasattorneygeneral.gov; Jason.pleggenkuhle@ag.state.mn.us;
Fred.Yarger@state.co.us; robyn.bender@ag.ky.gov; laura-jane.weimer@state.co.us;
james.adams@state.de.us; Aricka.seales@state.ma.us; Wilton, Patricia; pamela.webster@state.de.us;
VanDyke, Lawrence

Cc: adam.aston@texasattorneygeneral.gov

Subject: Amicus Memo (cert stage) in *Elmbrook School District v. Doe* (U.S.)

To: Civil Amicus Contacts

From: Adam W. Aston, Principal Deputy Solicitor General of Texas

The attached Amicus Memo describes an amicus brief Texas is preparing in support of the cert petition filed in *Elmbrook School District v. Doe*, 12-755 (U.S.). Elmbrook School District is seeking certiorari review from an en banc Seventh Circuit decision holding that the district's rental of a church for high school graduations violated the Establishment Clause, even though it was undisputed that the decision was made for non-religious reasons and the graduation ceremonies had no religious content. According to the Seventh Circuit, the "sheer religiosity of the space" was dispositive both as to the endorsement and coercion of religion.

The States' brief is due on January 22, and we can accept sign-ons until 10:30 a.m. that day. Additionally, we would like joining States to provide any available information regarding recent government uses of church space (ex. polling locations during the 2012 general elections, as aid stations during recent hurricanes and other emergencies, etc.).

Adam W. Aston
Principal Deputy Solicitor General
Office of the Attorney General of Texas
P.O. Box 12548 (MC 059)
Austin, TX 78711-2548
[Tel.] (512) 936-0596
[Fax] (512) 474-2697
Adam.Aston@oag.state.tx.us

Dan Schweitzer
Supreme Court Counsel
National Association of Attorneys General
2030 M Street, NW, 8th Floor
Washington, DC 20036
(202) 326-6010
(202) 785-0410 - fax
dschweitzer@naag.org

<Elmbrook NAAG memo.docx>

Barnes, John

From: VanDyke, Lawrence
Sent: Thursday, August 29, 2013 1:33 PM
To: Fox, Tim
Cc: Mattioli, Mark; Bennion, Jon; Swanson, Cory; Barnes, John; Darkenwald, Scott
Subject: RE: Amicus Memo in NRA v. ATF (U.S.)

Another FYI – a total of 11 states have now joined: Georgia, Idaho, North Dakota, South Carolina, Utah, Alabama, Florida, Louisiana, Nebraska, New Mexico, and South Dakota.

Just a reminder – the deadline for joining is 8:30 am our time tomorrow (Friday) morning. So, practically speaking, if we do want to join, we probably need to let Alabama know by the end of the day today.

Thanks.

From: Mattioli, Mark
Sent: Thursday, August 29, 2013 7:51 AM
To: VanDyke, Lawrence
Cc: Fox, Tim; Bennion, Jon; Swanson, Cory; Barnes, John; Darkenwald, Scott
Subject: Re: Amicus Memo in NRA v. ATF (U.S.)

I didn't expect their rationale to be good but never expected it to be that bad.

Sent from my iPhone

On Aug 28, 2013, at 5:27 PM, "VanDyke, Lawrence" <LVanDyke@mt.gov> wrote:

The Fifth Circuit held the conduct at issue didn't fall within the scope of the 2nd Amendment because any "longstanding, presumptively lawful regulatory measure ... would likely fall outside the ambit of the Second Amendment" entirely. And "[i]n the view of at least some members of the founding generation, disarming select groups for the sake of public safety was compatible with the right to arms specifically and with the idea of liberty generally" – namely, slaves.

So I guess the court's argument was that we should be able to disarm 18-20 year olds now because they disarmed slaves at the founding? Incredible. I wonder that they didn't see the irony in that argument.

From: Mattioli, Mark
Sent: Wednesday, August 28, 2013 5:13 PM
To: VanDyke, Lawrence; Fox, Tim
Cc: Bennion, Jon; Swanson, Cory; Barnes, John; Darkenwald, Scott
Subject: RE: Amicus Memo in NRA v. ATF (U.S.)

Although many have pointed to social science research suggesting that younger adults are more impulsive because the brain is not completely formed until about age 25, I agree with Lawrence's comments and concur that we should join.

Lawrence, what was the basis for the Fifth Circuit's determination that the Second Amendment was not implicated?

Mark

From: VanDyke, Lawrence
Sent: Wednesday, August 28, 2013 2:35 PM
To: Fox, Tim
Cc: Mattioli, Mark; Bennion, Jon; Swanson, Cory; Barnes, John; Darkenwald, Scott
Subject: RE: Amicus Memo in NRA v. ATF (U.S.)

I can answer some of these:

(1) What do Montana's laws say about 18-21 year olds and guns or ammunition?
- I don't believe Montana has any such laws. Montana law ban carrying of a weapon by a child under the age of 14, unless accompanied by an adult. MCA 45-8-344

(2) What are the policy implications of either supporting or not supporting this amicus brief in light of the high-profile and tragic shooting incidents across the country in recent years?
- I'm not sure there are any *direct* policy implications. Montana and federal laws would still ban carrying of guns in schools, and most 18-21 year olds are out of high school in any event. As far as indirect policy implications – as is the case with most gun issues, I'm sure it depends on your starting assumptions. Folks that think that gun control works will conclude that loosening control here will lead to more gun violence. Folks that think gun control typically only affects otherwise law-abiding citizens will think that allowing 18-21 year olds to lawfully own handguns will likely not increase crime and violence, in schools or otherwise.

(3) What considerations are there in light of our potential for partnering with Superintendent Juneau on the school safety and active shooter training initiatives?
- I don't know about this one, since I haven't been involved with this at all. Jon – do you know?

(4) What media attention, good or bad, has this case generated since it was filed?
- John is going to do some searching today or tomorrow morning to see what, if any, major press this has received. Thanks John!

(5) Is this a matter that we should consult, with the Governor's office on before making a decision?
(Note: I would think not, but would be interested in other's views).
- I don't think we need to. Does anyone else think it would be prudent nonetheless?

I've attached the draft brief – which I like. It does point out that Montana law allows 18-20 year-olds to own guns. See n.2. Here is a line from the first page (key soaring rhetoric music):

Adults who are 18, 19, and 20 honorably defend our country when it is at war. These same Americans should be able to defend themselves and their families when they are at home.

I got chills. (Okay, not really, but I wanted to.)

From: Fox, Tim
Sent: Wednesday, August 28, 2013 12:17 PM
To: VanDyke, Lawrence
Cc: Mattioli, Mark; Bennion, Jon; Swanson, Cory; Barnes, John; Darkenwald, Scott
Subject: Re: Amicus Memo in NRA v. ATF (U.S.)

Before I make a decision, can one or more of you address the following questions:

- (1) What do Montana's laws say about 18-21 year olds and guns or ammunition?
 - (2) What are the policy implications of either supporting or not supporting this amicus brief in light of the high-profile and tragic shooting incidents across the country in recent years?
 - (3) What considerations are there in light of our potential for partnering with Superintendent Juneau on the school safety and active shooter training initiatives?
 - (4) What media attention, good or bad, has this case generated since it was filed?
 - (5) Is this a matter that we should consult, with the Governor's office on before making a decision?
- (Note: I would think not, but would be interested in other's views).

Thank you.

Tim

Sent from my iPad

On Aug 28, 2013, at 11:58 AM, "VanDyke, Lawrence" <LVanDyke@mt.gov> wrote:

Tim and Mark – This is a short-fuse cert-stage amicus join request from Alabama in a Second Amendment case coming out of the Fifth Circuit. The case challenges federal laws that categorically deny 18-21 year olds the ability to buy handguns or handgun ammunition. The Fifth Circuit panel rejected the challenge, holding that (1) the laws do not implicate the Second Amendment, and (2) even if they do, they don't violate it. The NRA is the Petitioner in this case.

I think we should join this brief. I'm not sure I agree with the strategy of bringing this case to the SCOTUS, but I think we want to be on the record as on the side of gun rights (and the NRA). I think that a blanket ban on handgun ownership for all 18-21 year olds probably does violate the original meaning of the second amendment – I would expect that 18 year olds were part of the "militia."

Our deadline is quick – we need to decide by this Friday.

Thanks,

Lawrence

From: Schweitzer, Dan [<mailto:DSCHWEITZER@NAAG.ORG>]
Sent: Tuesday, August 27, 2013 1:02 PM
To: chris.coppin@cwagweb.org; paul.d.stern@maine.gov; dbahr@nd.gov; JMcIntosh@scag.gov; pam.murphy@doj.nh.gov; eric.tabor@iowa.gov; jknorr@attorneygeneral.gov; james.layton@ago.mo.gov; paula.bickett@azag.gov; charles.mcquigan@state.sd.us; RPartington@riag.ri.gov; crimago@saipan.com; barbara.underwood@ag.ny.gov; Hampton, Andrea; Schweitzer, Dan; sbluestone@nmag.gov; david.raupp@arkansasag.gov; gmorg@ago.state.ms.us; jlee@riag.ri.gov; attorney@samoatelco.com; stephan.finkel@lps.state.nj.us; Girard.D.Lau@hawaii.gov; stevemac@ku.edu; dennis.hansen@arkansasag.gov; basay@atg.state.vt.us; Mary.Williams@doj.state.or.us; gkelley@ncdoj.gov; alanc@atg.wa.gov; alama@nmag.gov; judy.zerun@state.ma.us; joanne.grace@alaska.gov; jnotz@atg.state.il.us; Gregory.Dauria@ct.gov; anne.edwards@doj.nh.gov; tom.fisher@atg.in.gov; jwhite@ncdoj.gov;

whowle@ag.nv.gov; Frances.Grunder@doj.ca.gov; mlanf@ago.state.ms.us;
ken.rosenstein@alaska.gov; allison.martin@ag.ky.gov; hpizz@ago.state.ms.us;
wellslk@doj.state.wi.us; Lee.Davidson@ksag.org; edavis@doj.vi.gov;
donna.murasky@dc.gov; ssullivan@oag.state.md.us; jmaddrey@ncdoj.gov;
dspence@oag.state.md.us; vlp@wvago.gov; debbie.mcveigh@wyo.gov;
Steve.Creaseon@atg.in.gov; kguthrie@ago.state.al.us;
andrea.silkowitz@dol.lps.state.nj.us; brian.kane@ag.idaho.gov;
Richard.Dearing@ag.ny.gov; katie.spohn@nebraska.gov; rrussell@nmaq.gov;
mwood@ago.state.ms.us; restucciae@michigan.gov; wbrockman@oag.state.md.us;
agesmith@scag.gov; susan.lee@doj.ca.gov; SG@atg.in.gov; todd.kim@dc.gov;
delayne.deck@ag.idaho.gov; dan.domenico@state.co.us; mscodro@atg.state.il.us;
heather.mcveigh@atg.in.gov; suzanne.gorman@doj.nh.gov; jbhoward@oag.state.md.us;
potterkc@doj.state.wi.us; stjohnkm@doj.state.wi.us; ed.bedrosian@state.ma.us;
john.garry@ag.state.mn.us; brooke.paup@texasattorneygeneral.gov;
appeals@ohioattorneygeneral.gov; meanssp@doj.state.wi.us; Sherri.Wald@state.sd.us;
adam.aston@texasattorneygeneral.gov; jhughes@atg.state.il.us;
david.blake@state.co.us; Segrest, Stuart; susan.britton@ag.ky.gov;
john.campbell@ksag.org; jung.kim@dol.lps.state.nj.us; dave.jones@alaska.gov;
delberta.pfeifer@ksag.org; perry.zinn-rowthorn@ct.gov; mwebb@ago.state.ms.us;
barb.fehrman@ag.state.mn.us; vbeavers@ag.nv.gov; bromano@utah.gov;
kris.ailsieger@ksag.org; bob.fagan@mstdh.state.ms.us; Eileen.carey@state.ma.us;
sean.riley@ag.ky.gov; ashley.harwel@atg.in.gov; dGetchell@oag.state.va.us;
anna.joyce@doj.state.or.us; marlene.brown@dol.lps.state.nj.us; peter.michael@wyo.gov;
diane.dewolf@myfloridalegal.com; jonathan.mitchell@oag.state.tx.us;
mary.mertz@ohioattorneygeneral.gov; sforney@attorneygeneral.gov;
npeterson@law.ga.gov; jneiman@ago.state.al.us; ariel.levinson-waldman@dc.gov;
burschj@michigan.gov; Leesa.Thompson@oag.ok.gov; dowkerc@michigan.gov;
frederick.nelson@ohioattorneygeneral.gov; patrick.wyrick@oag.ok.gov;
bill.young@ag.tn.gov; Black, Michael; MBrady@oag.state.va.us; Sam Peterson;
abrasher@ago.state.al.us; pamela.spanq@state.ma.us;
andy.oldham@texasattorneygeneral.gov; Jason.piegggenkuhle@ag.state.mn.us;
michael.hendershot@ohioattorneygeneral.gov; robyn.bender@ag.ky.gov; laura-jane.weimer@state.co.us; james.adams@state.de.us; Aricka.seales@state.ma.us;
wiltonp@ag.state.la.us; lindstroma@michigan.gov; VanDyke, Lawrence;
allen.winsor@myfloridalegal.com; christopher.dodrill@wvago.gov;
marmacado@justicia.pr.gov; elbert.lin@wvago.gov; Mary.McTaggart@state.de.us;
Sarah.Greenwalt@oag.ok.gov; Michael.Franco@state.co.us

Cc: KTurner@ago.state.al.us

Subject: Amicus Memo in NRA v. ATF (U.S.)

To: Civil Amicus Contacts

Attached is an Amicus Memo describing the amicus brief Alabama is preparing in support of the cert petition filed in *National Rifle Association v. U.S. Bureau of Alcohol, Tobacco, Firearms, and Explosives*, 13-137 (U.S.). The petition seeks review of a Fifth Circuit decision holding that the Second Amendment is not violated by federal laws prohibiting adults under the age of 21 from purchasing handguns and handgun ammunition. The question presented is “[w]hether a nationwide, class-based, categorical ban on meaningful access to the quintessential means to exercise the right to keep and bear arms for self-defense can be reconciled with the Second Amendment, the equal protection guarantee, and this Court’s precedents.”

The turn-around time is very short. Alabama will be circulating a draft brief tomorrow; and the deadline for joining is this Friday. To join, you may contact:

John Neiman
Solicitor General
Office of Alabama Attorney General Luther Strange
501 Washington Avenue
Montgomery, AL 36130
(334) 353-2187
JNeiman@ago.state.al.us

Dan Schweitzer
Supreme Court Counsel
National Association of Attorneys General
2030 M Street, NW, 8th Floor
Washington, DC 20036
(202) 326-6010
(202) 785-0410 - fax
dschweitzer@naag.org

<Amicus Memo - NRA v Bureau of ATFE -- 8-27.pdf>

Barnes, John

From: VanDyke, Lawrence
Sent: Wednesday, February 13, 2013 5:10 PM
To: Fox, Tim; Bennion, Jon; Swanson, Cory; Darkenwald, Scott; Barnes, John; Mattioli, Mark
Subject: RE: Parental notification for abortion: SupCo rule
Attachments: Parental Notice of Abortion Act Proposed Rule Comment.docx

Attached is a slightly revised draft.

-----Original Message-----

From: VanDyke, Lawrence
Sent: Wednesday, February 13, 2013 1:16 PM
To: Fox, Tim; Bennion, Jon; Swanson, Cory; Darkenwald, Scott; Barnes, John; Mattioli, Mark
Subject: RE: Parental notification for abortion: SupCo rule

All - Attached is a draft comment Tim could submit in response to the Supreme Court's proposed rule. Perhaps this is something we can discuss in our meeting this afternoon. If we want to submit a comment, I think it would be best to do so sooner rather than later.

- Lawrence

-----Original Message-----

From: Fox, Tim
Sent: Tuesday, February 12, 2013 4:30 PM
To: Bennion, Jon; Swanson, Cory; Darkenwald, Scott; VanDyke, Lawrence; Barnes, John; Mattioli, Mark
Subject: RE: Parental notification for abortion: SupCo rule

While I'm not sure that I agree with Rep. Smith that the Supreme Court's proposed rules make the Act "null & void," I do have a concern with the default decision of the Supreme Court that the lower court's decision is overturned and an abortion is allowed if no written decision is issued within the allotted time. Such a procedure would not only allow the Supreme Court to avoid simply review, but it would fail to make the Supreme Court accountable to the people of Montana who voted for this law. Furthermore, such a provision would be an affront to the intent and purpose of the law. In most cases, if an appeal court fails to issue an decision, or fails to accept cert, the decision of the lower court is constructively upheld. That is the typical way things are done in the American system of jurisprudence. Conversely, if an appeal court determines that it must reverse or modify the decision of a lower court, it does so usually with a written decision that not only informs the parties to the matter what and why the decision was made, but also provides written precedent so that law-abiding citizens and lower courts can understand what would be expected of them going forward. The Supreme Court's proposed Rule (7) turns the process on its head in this case, and will fail to allow the citizens and courts of Montana to know what conduct and procedures are expected of them. Moreover, it is difficult, if not impossible, to hold our Supreme Court justices accountable for their decisions by the voters if they do not give reasons for them. The "Constructive Order" provision in Rule 7 must state the opposite to comply with Parental Notification law's intent and purpose, to provide guidance to the public and to the courts in the future when applying this law, to adhere to our system of precedential jurisprudence, and to hold our elected Supreme Court justices accountable to the public for their decisions. For that reason, the Rule should state as follows:

(7) Constructive Order. If the supreme court fails to enter an order within 72 hours, including weekends and holidays, after the clerk of the supreme court receives the record on appeal, the clerk shall issue a certificate stating that (1) no order was entered within 72 hours, including weekends and holidays, after the appeal was docketed; and (2) the failure

to enter the order constitutes a constructive order of the court affirming the decision of the lower court and adopting the findings of fact and the conclusions of law of that lower court.

I also think that the Court should include a provision stating that any decision of the court shall be published with any information that might implicate privacy rights being redacted. The title of any such matter before the court should be similar to other matters involving minors - i.e., "In re (insert initials)." Finally, perhaps we should include a provision requiring notification of the appeal to the Attorney General's office, and giving the Attorney General the discretionary right of intervention to represent the interests of the State of Montana.

I believe that I need to have someone draft a strongly worded comment to the proposed rules for my signature to point out the failings of Rule 7 and another issues that we see with the other rules. Mark, please assign this to someone in your shop, preferably Cory, Lawrence, or Jon.

On a related note, when is the deadline for comment?

Thank you.

Tim

-----Original Message-----

From: Bennion, Jon

Sent: Tuesday, February 12, 2013 3:48 PM

To: Swanson, Cory; Fox, Tim; Darkenwald, Scott; VanDyke, Lawrence; Barnes, John; Mattioli, Mark

Subject: FW: Parental notification for abortion: SupCo rule

See attached

-----Original Message-----

From: cary smith [mailto:cary@bresnan.net]

Sent: Tuesday, February 12, 2013 11:46 AM

To: , Rep. Krayton Kerns; ART WITTICH ; Austin Knudsen; Bennion, Jon; Bowen Greenwood; David Howard; Essmann, Jeff; Gordy Vance; Jason S. Priest; Jason S. Priest; Jeff Laszloffy; Krayton Kerns; Kris Hansen; Mark W Blasdel; Peterson, Ken; Regier, Keith; Rep Knudsen; Tom McGillvray; Wagman, Pat; Walker, Edward

Subject: Parental notification for abortion: SupCo rule

All,

Please take a look at the Supreme Court Rule for Parental notification for an abortion for a minor. It really makes the Legislative Referendum null & void.

Any ideas?

Representative Cary Smith

House District 55

Montana State House of Representatives

Majority Whip

Cell # 406-698-9307

committed to....preserving our Freedom & Liberty

Barnes, John

From: VanDyke, Lawrence
Sent: Wednesday, February 13, 2013 1:16 PM
To: Fox, Tim; Bennion, Jon; Swanson, Cory; Darkenwald, Scott; Barnes, John; Mattioli, Mark
Subject: RE: Parental notification for abortion: SupCo rule
Attachments: Parental Notice of Abortion Act Proposed Rule Comment.docx; supreme court rule on judicial waiver.pdf

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- Lawrence

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Bennion, Jon

From: Mattioli, Mark
Sent: Wednesday, April 02, 2014 9:26 AM
To: Fox, Tim
Cc: Darkenwald, Scott
Subject: Re: Timothy Bostic, et al. v. George E. Schaefer, III, et al., No. 14-1167

Lawrence forwarded the email before I could talk to Mike. I talked to Mike for over an hour about this email, Lawrence, and professionalism.

Mike and Matt Cochenour are handling Donaldson.

Sent from my iPhone

On Apr 1, 2014, at 9:40 PM, "Fox, Tim" <TimFox@mt.gov> wrote:

> Mark,
>
> The message below from Mike Black is strange and upsetting to say the least. There's no legal reasoning in Mike's recommendation, and what he recommends (staying out of amicus briefs on marriage cases) is actually contrary to Montana's interests on this issue as those interests rest on Montana's Constitution.
>
> What's more, the tone of Mike's message in addressing Lawrence as "Mr. VanDyke" and unnecessarily mentioning Lawrence's role in the Donaldson case is unprofessional and obviously meant to be offensive to Lawrence. Why else would Mike copy Lawrence with such a petty and terse message?
>
> And, I can't begin to understand why Mike thought he needed to copy Matt Cochenour with this e-mail message. I intend to speak with Mike when I return because obviously he's putting his personal grudges against Lawrence above his responsibilities to the office and his position as Bureau Chief. I'll take Scott with me.
>
> Tim
>
> cc: Scott
>
> Sent from my iPhone
>
> Begin forwarded message:
>
> From: "VanDyke, Lawrence" <LVanDyke@mt.gov<<mailto:LVanDyke@mt.gov>>>
> Date: April 1, 2014 at 11:38:43 AM MDT
> To: "Fox, Tim" <TimFox@mt.gov<<mailto:TimFox@mt.gov>>>
> Cc: "Mattioli, Mark" <mmattioli@mt.gov<<mailto:mmattioli@mt.gov>>>, "Bennion, Jon" <JonBennion@mt.gov<<mailto:JonBennion@mt.gov>>>, "Swanson, Cory" <CoSwanson@mt.gov<<mailto:CoSwanson@mt.gov>>>, "Barnes, John" <JohnBarnes@mt.gov<<mailto:JohnBarnes@mt.gov>>>
> Subject: FW: Timothy Bostic, et al. v. George E. Schaefer, III, et al., No. 14-1167
>
> Just so you have it, here is Mike Black's recommendation on Indiana's Fourth Circuit amicus join request. Mine is unchanged.

>
> Thanks.
>
> From: Black, Michael
> Sent: Tuesday, April 01, 2014 11:30 AM
> To: Mattioli, Mark
> Cc: VanDyke, Lawrence; Cochenour, Matt
> Subject: FW: Timothy Bostic, et al. v. George E. Schaefer, III, et al., No. 14-1167
>
> Mark:
>
> My recommendation would be that this office not sign on to any more amicus briefs similar to Sevcik, especially cases outside of the Ninth Circuit or in the Supreme Court on the merits. I understand that Mr. VanDyke may again recommend signing on, but he has refused to work on the Donaldson case since January 27 (at the latest), and I would prefer staying out of the fray while Donaldson is pending because I do not see any upside.
>
> Just my two cents worth.
>
> Mike
>
> From: Stickle, Julie [<mailto:Julie.Stickle@atg.in.gov>]
> Sent: Tuesday, April 01, 2014 10:46 AM
> To: Stickle, Julie
> Cc: Fisher, Tom
> Subject: Timothy Bostic, et al. v. George E. Schaefer, III, et al., No. 14-1167
>
> To Amicus Contacts in Selected States:
>
> Attached is an amicus curiae brief to be filed in the Fourth Circuit in Timothy Bostic, et al. v. George E. Schaefer, III, et al., No. 14-1167.
>
> The brief supports Defendants/Appellants as they seek reversal of a district court ruling invalidating Virginia's traditional definition of marriage under the Fourteenth Amendment. It is very similar to the ones Indiana (joined by many of your states) recently filed in the Ninth Circuit in Beverly Sevcik et al. v. Brian Sandoval, et al., No. 12-17668 and in the Tenth Circuit in Derek Kitchen, et al. v. Gary Herbert, et al., No. 13-4178 and Mary Bishop, et al. v. Sally Howe Smith, et al., Nos. 14-5003, & 14-5006.
>
> The Bostic brief is due on Friday, April 4, and we can take joiners until noon that day.
>
> If you have questions or wish to join, please contact Tom Fisher at tom.fisher@atg.in.gov<<mailto:tom.fisher@atg.in.gov>>.
>
> Thanks very much for your consideration.
>
>
> Julianne Stickle
> Administrative Assistant to the Solicitor General
> 302 W. Washington Street
> IGCS - Fifth Floor
> Indianapolis, IN 46204
> 317-233-8292
> 317-232-7979 Fax

> julie.stickle@atg.in.gov<mailto:julie.stickle@atg.in.gov>

>

> NOTICE: This communication may contain privileged or other confidential information. If you have received it in error, please advise the sender by reply email and immediately delete the message and any attachments without copying or disclosing the contents. Thank you.

> <Amicus Memo.doc>

> <Bostic -Amicus brief of Indiana et al - distribution draft.pdf>

>
> Thanks.
>
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> Sent: Tuesday, April 01, 2014 11:30 AM
> To: Mattioli, Mark
> Cc: VanDyke, Lawrence; Cochenour, Matt
> Subject: FW: Timothy Bostic, et al. v. George E. Schaefer, III, et al., No. 14-1167
>



>
> From: Stickle, Julie [<mailto:Julie.Stickle@atg.in.gov>]
> Sent: Tuesday, April 01, 2014 10:46 AM
> To: Stickle, Julie
> Cc: Fisher, Tom
> Subject: Timothy Bostic, et al. v. George E. Schaefer, III, et al., No. 14-1167
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> julie.stickle@atg.in.gov<mailto:julie.stickle@atg.in.gov>

>

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> <Amicus Memo.doc>

> <Bostic -Amicus brief of Indiana et al - distribution draft.pdf>

Bennion, Jon

From: Fox, Tim
Sent: Monday, November 04, 2013 11:48 AM
To: VanDyke, Lawrence
Cc: Darkenwald, Scott; Mattioli, Mark
Subject: RE: Calif. To Flex Policy Muscle With New Solicitor General

Interesting article. DuMont looks to be a heavy hitter – 27 years of law practice, 18 SCOTUS arguments, Assistant USDOJ Solicitor General, etc. Eight attorneys in California's new SG office doesn't seem like enough given the fact that they have ten statewide AG offices, over a thousand attorneys (http://en.wikipedia.org/wiki/California_Attorney_General) and another 3,700 non-attorney staff. I'd covet their resources, except I'd rather live in Montana than California any day!

Tim Fox
Attorney General
State of Montana
215 N. Sanders Street
Helena, MT 59601
Tel.: 406-444-2026
Fax: 406-444-3549
E-Mail: timfox@mt.gov
Website: www.doj.mt.gov



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From: VanDyke, Lawrence
Sent: Monday, November 4, 2013 10:25 AM
To: Fox, Tim
Cc: Darkenwald, Scott; Mattioli, Mark
Subject: Calif. To Flex Policy Muscle With New Solicitor General

Tim – Given our recent conversations, I thought I should forward this article from Law360. It is an interesting read. The SG position in California, in contrast to the federal SG's office and states like Texas, New York, Michigan, Alabama, Ohio, etc., has historically been fairly weak. General Harris has decided to follow the majority trend and "beef up" the office, by expanding it and giving it more of a central role. The pros and cons of the change are discussed in the article.

Thanks.

http://www.law360.com/texas/articles/484859?nl_pk=20cacf7a-1c2d-4ccb-89e8-5ea02440f986&utm_source=newsletter&utm_medium=email&utm_campaign=texas

Calif. To Flex Policy Muscle With New Solicitor General
By Erin Coe

Law360, San Diego (October 31, 2013, 9:42 PM ET) -- The WilmerHale partner set to become California's solicitor general told Law360 on Wednesday that he aims to grow the government office and build relationships with the U.S. Supreme Court and top courts in the state — plans experts say signal California is mobilizing to play a more active, aggressive role in high-profile appellate cases that affect public policy.

Two days earlier, California Attorney General Kamala Harris tapped Edward DuMont, vice chair of WilmerHale's appellate and Supreme Court litigation practice in Washington, D.C., to serve as the state's solicitor general to oversee civil and criminal appeals and litigate complex appellate cases in state and federal courts. DuMont will assume the post on Jan. 6.

DuMont said the solicitor general's office will be expanded to include a core group made up of the solicitor general, a deputy and six attorneys who will focus on appellate litigation in the most significant cases, such as those that involve legal issues that will affect many cases and those that will affect the government in an important, structural way.

"The idea is to build a core group of great appellate lawyers who also become very familiar with the courts we deal with most often, and then leverage that expertise to help lawyers throughout the department provide great representation in all appeals," he said.

DuMont said that during the seven years he had spent working as an assistant to the solicitor general at the U.S. Department of Justice and as an associate deputy attorney general, the U.S. Supreme Court would routinely invite the solicitor general's office to express its views on a case, and the office would share whether it thought the matter was timely, important enough and sufficiently representative of other cases to grapple with the underlying legal issue.

"One would hope that the same kind of relationship could be built up with the U.S. Supreme Court, the Ninth Circuit and the California Supreme Court — those courts with which the state of California has an ongoing relationship as an important repeat litigant," DuMont said. "We would hope to look to and learn from the federal model and other states. But California is unique, and we will need to make sure that what is done is ideally suited to the conditions in California."

At a time when the governor and the majority of both branches of the state Legislature belong to the Democratic Party, California may take advantage of an expanded role for the solicitor general to push policy goals with a liberal bent, according to Horvitz & Levy LLP partner Jeremy Rosen, who pointed to Texas' use of former state Solicitor General Ted Cruz to advance a conservative policy agenda through litigation.

"I suspect California Attorney General Harris wants to leave a real mark on litigation success, but to do that ... she needs a sophisticated appellate lawyer at her side," he said. "I would be on the lookout for targeted and aggressive use of litigation through the appellate courts to drive policy."

By enlarging the solicitor general position, the attorney general is likely planning to be more assertive in asking top appeals courts to take cases that could affect the state's public policy and in filing amicus briefs on the merits, according to Roderick Walston, of counsel at Best Best & Krieger LLP who previously held several roles in the California Attorney General's Office, including chief assistant attorney general.

"I would assume that Attorney General Harris' creation of the expanded position is intended to give the attorney general higher and more constant visibility before the U.S. Supreme Court and the California Supreme Court," he said.

The position DuMont is set to fill is a major change from the state's traditional solicitor general role. Former Solicitor General Manuel Medeiros, who retired last December, supervised big appellate cases, but instead of arguing cases, he acted more as a behind-the-scenes coordinator between the state attorney general's office and the attorney assigned to the case, according to Walston. DuMont, on the other hand, is gearing up to be a familiar face in the courtroom, handling significant cases before the state's top appeals courts and the U.S. Supreme Court.

"The solicitor general's responsibilities in the past have been more diffuse and diverse," said Barger & Wolen LLP partner Royal Oakes. "The new solicitor general position is more powerful and pretty much all-encompassing in terms of the most important cases the state is involved in."

Rosen said the new solicitor general role was long overdue and will likely create a number of benefits. With one person overseeing the state's caseload, the move would improve quality and consistency in appellate work.

"In general, the quality of appellate work for California is very hit or miss," he said. "There are many appellate briefs from the state that are just not well done and don't show the sophistication of an appellate expert. Some look like recycled trial briefs. It will be very beneficial for a true superstar appellate lawyer to increase uniformity of quality from top to bottom in cases."

However, some had outstanding concerns about the expanded position.

Appellate cases traditionally handled by deputies could now be steered toward specialists, a change that might not be welcomed by some in the attorney general's office, according to a source. One of the perks of serving as a deputy is gaining critical experience by taking on major cases on behalf of the state through the appellate process, but the deputy role may be marginalized if more cases are handed off to specialists, the source said.

Rosen says he'll be watching closely to see how businesses may be affected by any litigation the state takes up in an effort to make a statement.

"I have some concern that some aggressive use of the new solicitor general might be in ways hostile to business but that further the political goals of the attorney general," he said. "We're going to have to wait and see."

An earlier pick for the Federal Circuit, DuMont would have been the first openly gay U.S. appellate judge if confirmed, but he asked President Barack Obama to withdraw his nomination in 2011, after 18 months had passed without the Senate scheduling a hearing on his nomination.

Oakes wondered whether the experience of having his nomination to the Federal Circuit held up for a lengthy period of time would have any effect on DuMont's legal work.

"It's hard to believe someone would go through an experience like that and come out completely unscathed," he said. "Ideally, the rough-and-tumble world of politics and the serious business of representing the state of California in high-profile litigation should be separate and distinct."

Oakes said it remained to be seen whether the revised solicitor general position would have a beneficial or negative impact on the state.

"If people look back on this move and conclude it marked an unfortunate politicization of the litigation process, that would be a bad thing," he said. "On the other hand, if it turns out simply to be a more efficient way for the attorney general and governor to protect the state's interests in court, that will be seen as a good thing."

Bennion, Jon

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Cc: Darkenwald, Scott; Mattioli, Mark
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At a time when the governor and the majority of both branches of the state Legislature belong to the Democratic Party, California may take advantage of an expanded role for the solicitor general to push policy goals with a liberal bent, according to Horvitz & Levy LLP partner Jeremy Rosen, who pointed to Texas' use of former state Solicitor General Ted Cruz to advance a conservative policy agenda through litigation.

"I suspect California Attorney General Harris wants to leave a real mark on litigation success, but to do that ... she needs a sophisticated appellate lawyer at her side," he said. "I would be on the lookout for targeted and aggressive use of litigation through the appellate courts to drive policy."

By enlarging the solicitor general position, the attorney general is likely planning to be more assertive in asking top appeals courts to take cases that could affect the state's public policy and in filing amicus briefs on the merits, according to Roderick Walston, of counsel at Best Best & Krieger LLP who previously held several roles in the California Attorney General's Office, including chief assistant attorney general.

"I would assume that Attorney General Harris' creation of the expanded position is intended to give the attorney general higher and more constant visibility before the U.S. Supreme Court and the California Supreme Court," he said.

The position DuMont is set to fill is a major change from the state's traditional solicitor general role. Former Solicitor General Manuel Medeiros, who retired last December, supervised big appellate cases, but instead of arguing cases, he acted more as a behind-the-scenes coordinator between the state attorney general's office and the attorney assigned to the case, according to Walston. DuMont, on the other hand, is gearing up to be a familiar face in the courtroom, handling significant cases before the state's top appeals courts and the U.S. Supreme Court.

"The solicitor general's responsibilities in the past have been more diffuse and diverse," said Barger & Wolen LLP partner Royal Oakes. "The new solicitor general position is more powerful and pretty much all-encompassing in terms of the most important cases the state is involved in."

Rosen said the new solicitor general role was long overdue and will likely create a number of benefits. With one person overseeing the state's caseload, the move would improve quality and consistency in appellate work.

"In general, the quality of appellate work for California is very hit or miss," he said. "There are many appellate briefs from the state that are just not well done and don't show the sophistication of an appellate expert. Some look like recycled trial briefs. It will be very beneficial for a true superstar appellate lawyer to increase uniformity of quality from top to bottom in cases."

However, some had outstanding concerns about the expanded position.

Appellate cases traditionally handled by deputies could now be steered toward specialists, a change that might not be welcomed by some in the attorney general's office, according to a source. One of the perks of serving as a deputy is gaining critical experience by taking on major cases on behalf of the state through the appellate process, but the deputy role may be marginalized if more cases are handed off to specialists, the source said.

Rosen says he'll be watching closely to see how businesses may be affected by any litigation the state takes up in an effort to make a statement.

"I have some concern that some aggressive use of the new solicitor general might be in ways hostile to business but that further the political goals of the attorney general," he said. "We're going to have to wait and see."

An earlier pick for the Federal Circuit, DuMont would have been the first openly gay U.S. appellate judge if confirmed, but he asked President Barack Obama to withdraw his nomination in 2011, after 18 months had passed without the Senate scheduling a hearing on his nomination.

Oakes wondered whether the experience of having his nomination to the Federal Circuit held up for a lengthy period of time would have any effect on DuMont's legal work.

"It's hard to believe someone would go through an experience like that and come out completely unscathed," he said. "Ideally, the rough-and-tumble world of politics and the serious business of representing the state of California in high-profile litigation should be separate and distinct."

Oakes said it remained to be seen whether the revised solicitor general position would have a beneficial or negative impact on the state.

"If people look back on this move and conclude it marked an unfortunate politicization of the litigation process, that would be a bad thing," he said. "On the other hand, if it turns out simply to be a more efficient way for the attorney general and governor to protect the state's interests in court, that will be seen as a good thing."

--Editing by Kat Laskowski and Edrienne Su.

Bennion, Jon

From: Mattioli, Mark
Sent: Thursday, January 23, 2014 11:19 AM
To: Fox, Tim; Darkenwald, Scott
Subject: FW: Donaldson, et al. v. State

Tim and Scott, I had to tell Mike in confidence that Lawrence is leaving. Can I share this information with the entire Civil Bureau? Logistically I don't see how we can keep a lid on this. We need to explain to others in the Civil Bureau why we're having to reassign responsibilities in cases and we have to begin transitioning workload while we search for a new solicitor and/or deputy solicitor. Lawrence's leaving will also affect scheduling with opposing counsel and judges, so I think we need to let people know.

Mark

From: VanDyke, Lawrence
Sent: Thursday, January 23, 2014 10:00 AM
To: Mattioli, Mark
Cc: Fox, Tim; Darkenwald, Scott
Subject: FW: Donaldson, et al. v. State

Mark – See Matt's email below. Somebody needs to inform Matt and Mike that I am not working on the Donaldson case, and decide who is. This is part of the discussion I had with Tim when I gave notice. I haven't told Mike or Matt that I'm leaving (since Tim asked that I not broadcast that). So I'm not sure how to tell them that I won't be working on Donaldson. I think you need to inform them of that.

I will have plenty of work between now and when I leave without working on Donaldson. Right now I am busy working on the immigration case (coordinating depositions, responding to a motion to compel, and filing a motion for a protective order) as well as the Willems case (writing a response brief for the Montana Supreme Court). The immigration case will continue to be very busy with depositions, discovery briefing, and summary judgment briefing until the end of May, when there is a summary judgment hearing. Judge Sherlock will presumably rule in the Planned Parenthood case either this month or the first part of February, after which I will either be working on Montana Supreme Court briefing or our summary judgment briefing on the merits with Jon Bennion. I will also continue to help Jon with the briefing on the various referenda. And I will likely need to do some travel related to securing my next job at some point.

I have had basically no involvement on Donaldson so far, and it makes little sense for me to begin working on a case only to turn everything over to somebody else in a couple months – especially since the immediate tasks in that case are something I have little experience with or expertise in (discovery wrangling, experts, stipulations, and a meet and confer with opposing counsel). It also makes no sense for me to be the contact person for a meet and confer with Plaintiffs' counsel where decisions will be made affecting the entire case, when I will be gone shortly thereafter. If I had some sort of expertise regarding these immediate tasks in Donaldson, I would of course want to help, especially given the subject matter of the case. But I don't. And I have had no success getting Mike to provide any substantial help in situations like this where you have designated me the "lead counsel" and told me he will help me. So working on Donaldson would be an extremely time-consuming task for me right now, where I would likely mess things up anyway since I would be performing tasks I have no experience in and would receive little to no guidance from Mike. In short, it makes no sense for me to start working on Donaldson right now, especially given the immediate tasks in that case.

I would be happy to talk about this more with you if necessary. But Mike and Matt need some direction soon since plaintiffs' counsel will be calling tomorrow.

Thanks,

Lawrence

From: Cochenour, Matt
Sent: Thursday, January 23, 2014 8:58 AM
To: VanDyke, Lawrence; Black, Michael
Subject: RE: Donaldson, et al. v. State

Hi Lawrence,

I had a phone message from Ben Alke regarding Donaldson. It wasn't a detailed message, but I assume he wants to discuss the meet/confer letter and amending complaint. He is in depositions today, but will call back tomorrow.

Thanks,
Matt

From: VanDyke, Lawrence
Sent: Friday, January 10, 2014 7:50 AM
To: Black, Michael
Cc: Cochenour, Matt
Subject: RE: Donaldson, et al. v. State

Thanks Mike. It would be very helpful for me to have yours and Matt's thoughts in developing a response. And I think it would be good for you to attend the meet and confer with me. Is there sometime next week that you and Matt can block out an hour or two to discuss the contents of the letter with me?

From: Black, Michael
Sent: Wednesday, January 08, 2014 10:10 AM
To: VanDyke, Lawrence
Cc: Cochenour, Matt
Subject: FW: Donaldson, et al. v. State

I will defer to you on this, as lead counsel on this case, regarding any response to Plaintiffs. I realize Mark and I assisted Matt with the discovery responses because you were out of the office, but I see no need to wade into this at this time. I believe Matt should be looking to you as well. Thanks.

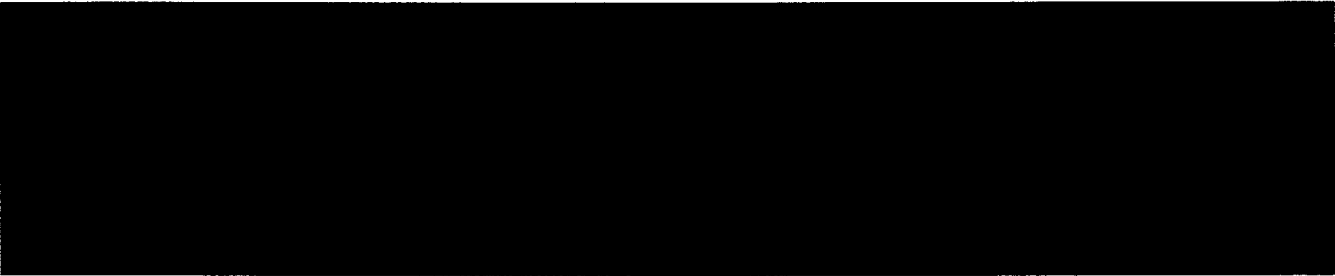
From: Karen Schultz [<mailto:kschultz@Goetzlawfirm.com>]
Sent: Thursday, January 02, 2014 4:34 PM
To: Black, Michael; VanDyke, Lawrence; Cochenour, Matt
Cc: Ben Alke; JimT@aclumontana.org; Krystel Holden (krystelp@aclumontana.org); 'Borenstein, Ruth N.' (RBorenstein@mofo.com); splunkett@mofo.com; eregier@mofo.com; aruiz@mofo.com; Egill@aclunc.org
Subject: Donaldson, et al. v. State

Please see the attached letter of today from Ben Alke. The letter was also mailed to you today.

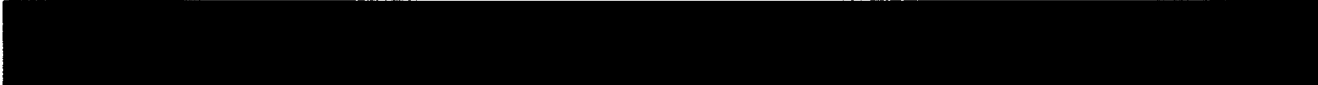
Karen Schultz, Legal Assistant
Goetz, Baldwin & Geddes, P. C.
35 North Grand (zip code – 59715)
P. O. Box 6580
Bozeman, MT 59771-6580

Barnes, John

From: Kristin Hansen <kristinhansen@kristinhansen.com>
Sent: Friday, May 23, 2014 1:57 PM
To: VanDyke, Lawrence
Cc: Mailee Smith; Steven H. Aden; Catherine Glenn Foster; Bennion, Jon
Subject: Re: Planned Parenthood Draft

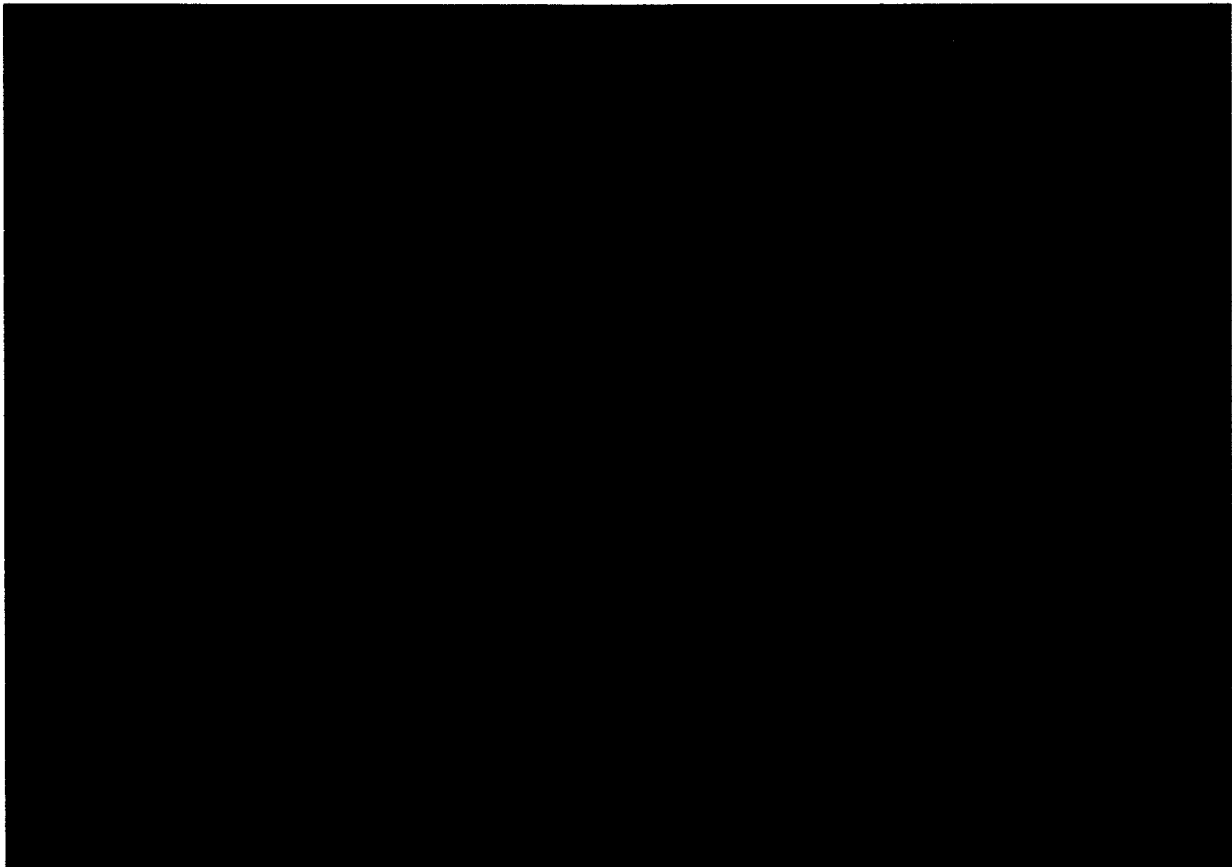


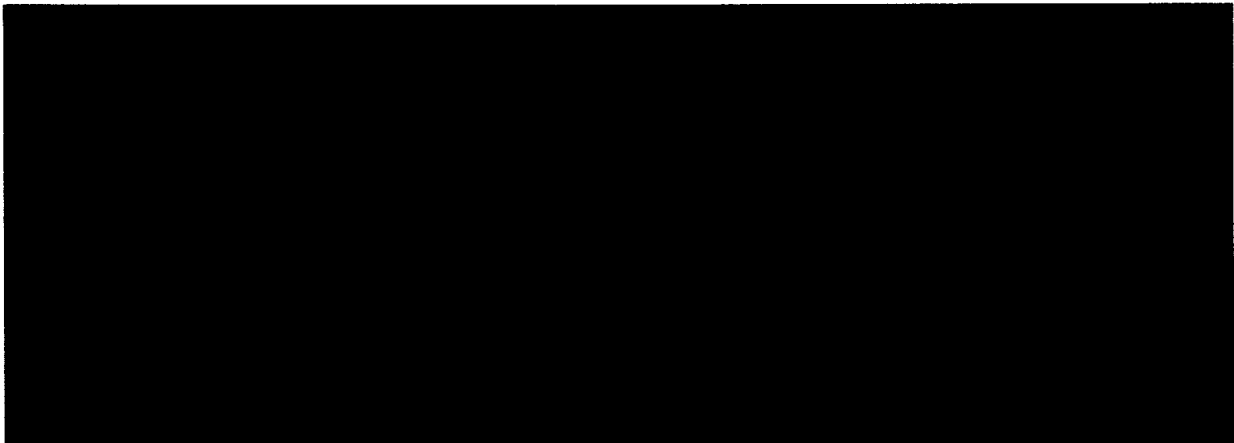
On May 23, 2014, at 1:43 PM, VanDyke, Lawrence <LVanDyke@mt.gov> wrote:



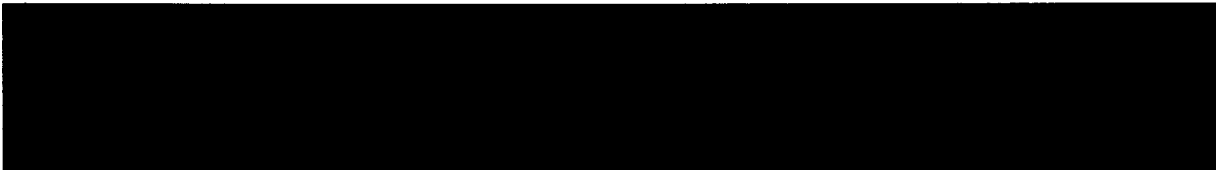
sent from my iPhone

On May 23, 2014, at 1:17 PM, "Mailee Smith" <mailee.smith@aui.org> wrote:





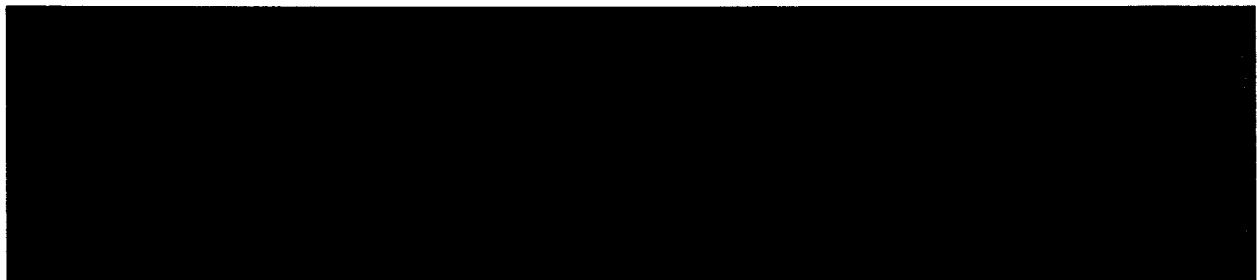
From: Steven H. Aden [<mailto:saden@alliancedefendingfreedom.org>]
Sent: Friday, May 23, 2014 2:00 PM
To: VanDyke, Lawrence; Kristin Hansen (kristinhansen@kristinhansen.com)
(kristinhansen@kristinhansen.com); Mailee Smith; Catherine Glenn Foster
Cc: Bennion, Jon
Subject: RE: Planned Parenthood Draft



<image001.png>

Steven H. Aden
Senior Counsel, Vice President, Center for Life
202-393-8690 (Office)
703-638-9731 (Mobile)
202-347-3622 (Fax)
saden@alliancedefendingfreedom.org
www.alliancedefendingfreedom.org

From: VanDyke, Lawrence [<mailto:LVanDyke@mt.gov>]
Sent: Wednesday, May 21, 2014 12:09 PM
To: Kristin Hansen (kristinhansen@kristinhansen.com) (kristinhansen@kristinhansen.com); Mailee Smith
(mailee.smith@aul.org); Steven H. Aden; Catherine Glenn Foster
Cc: Bennion, Jon
Subject: Planned Parenthood Draft



Lawrence VanDyke
Solicitor General ♦ Montana Department of Justice

215 N. Sanders ♦ P.O. Box 201401
Helena, Montana 59620
T: (406) 444-3442 ♦ F: (406) 444-3549
LVanDyke@mt.gov

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<image001.png>

Barnes, John

From: VanDyke, Lawrence
Sent: Thursday, May 29, 2014 12:06 PM
To: Bennion, Jon
Subject: RE: Planned Parenthood Brief

-----Original Message-----

From: Bennion, Jon
Sent: Thursday, May 29, 2014 11:38 AM
To: VanDyke, Lawrence
Subject: RE: Planned Parenthood Brief

Jon Bennion
Deputy Attorney General
State of Montana
office: (406) 444-5880
jonbennion@mt.gov

From: VanDyke, Lawrence
Sent: Thursday, May 29, 2014 8:39 AM
To: Bennion, Jon
Subject: Re: Planned Parenthood Brief

Sent from my iPhone

On May 29, 2014, at 8:21 AM, "Bennion, Jon" <JonBennion@mt.gov<<mailto:JonBennion@mt.gov>>> wrote:

From: Bennion, Jon
Sent: Wednesday, May 28, 2014 10:57 AM
To: Myers, Janet
Subject: Planned Parenthood Brief

Jon Bennion
Deputy Attorney General
Montana Department of Justice
Ph: 406-444-5880

<image001.png>

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<Planned Parenthood Opening Br - MT S Ct FINAL DRAFT.doc>

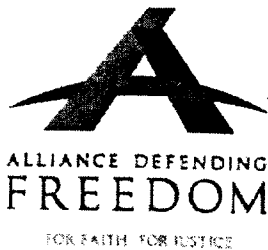
Barnes, John

From: VanDyke, Lawrence
Sent: Thursday, May 01, 2014 10:10 AM
To: 'Steven H. Aden'
Cc: Bennion, Jon; Catherine Glenn Foster
Subject: RE: MT Parental Notice Case
Attachments: 2013-01-31 Ord on Motions for Sum J.PDF

[REDACTED]

From: Steven H. Aden [<mailto:saden@alliancedefendingfreedom.org>]
Sent: Wednesday, April 30, 2014 12:18 PM
To: VanDyke, Lawrence
Cc: Bennion, Jon; Catherine Glenn Foster
Subject: MT Parental Notice Case

[REDACTED]



Steven H. Aden
Senior Counsel, Vice President, Center for Life
202-393-8690 (Office)
703-638-9731 (Mobile)
202-347-3622 (Fax)
saden@alliancedefendingfreedom.org
www.alliancedefendingfreedom.org

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Barnes, John

From: VanDyke, Lawrence
Sent: Wednesday, April 16, 2014 4:14 PM
To: 'Holzer, Meg'
Cc: Bennion, Jon; tholm@crislaw.com
Subject: RE: MT Appeal
Attachments: 2014-04-16 Mot for Ext of Time.pdf

Meg – The attached motion for an extension of time was filed today, per our discussion below. Hard copies will follow by mail.

Thank you,

Lawrence

From: Holzer, Meg [<mailto:meg.holzer@ppfa.org>]
Sent: Thursday, April 10, 2014 9:37 AM
To: VanDyke, Lawrence
Cc: Bennion, Jon; tholm@crislaw.com
Subject: Re: MT Appeal

That definitely works for us. Thanks for reaching out to the clerk's office about this.

On Thu, Apr 10, 2014 at 11:18 AM, VanDyke, Lawrence <LVanDyke@mt.gov> wrote:

Thank you, Meg. I talked to the clerk's office about this – this is what they told me. If the State files an unopposed motion for up to 30 days, we are granted it by rule (it is just granted by the clerk's office; the Justices don't even review it). Same would be true for your response. The clerk's office told me that they can accommodate a joint schedule like you are proposing below, but they prefer to just have the party whose brief is due file an unopposed motion, which will just push back our due date.

Also, May 15 as our due date would be particularly bad for me, because I have another substantial brief due right around that time.

So here is what I would propose: How about the State just files an unopposed brief asking for a 30 day extension to our due date, which would push our due date back to Friday, May 30th. Your brief would then be due Monday, June 30. If you want up to a 30 day extension for your brief, we will not oppose, and it will be granted by rule. We will leave it up to you, obviously, whether you want more than 30 days for your response. And you don't have to decide that now – you can decide that anytime before your brief is due.

Let me know if that works. Assuming it does, we'll file an unopposed motion for a 30 day extension of our due date.

Thanks,

Lawrence VanDyke

Solicitor General ♦ Montana Department of Justice

215 N. Sanders ♦ P.O. Box 201401

Helena, Montana 59620

T: (406) 444-3442 ♦ F: (406) 444-3549

LVanDyke@mt.gov

From: Holzer, Meg [<mailto:meg.holzer@ppfa.org>]
Sent: Thursday, April 10, 2014 7:44 AM
To: VanDyke, Lawrence; Bennion, Jon
Cc: tholm@crislaw.com
Subject: MT Appeal

Lawrence and Jon,

Based on the current Supreme Court schedule, we've calculated our response to your appellate brief to be due May 29. In a case of unfortunate timing, I've learned that I will be going to trial in Wisconsin on May 27. Would you object to our seeking additional time from the Supreme Court to respond? My current thought is to push the entire schedule back four weeks by splitting the difference: your appellate brief would be due May 15 and our response due June 30.

Please let me know if this timing works for you, or if you have other thoughts on scheduling. I'm unavailable from 10-12 ET, but otherwise available to discuss.

Regards,

Meg

--

Meg Holzer

Staff Attorney

Public Policy Litigation & Law

Planned Parenthood Federation of America

212.261.4772

--

Meg Holzer

Staff Attorney

Public Policy Litigation & Law

Planned Parenthood Federation of America

212.261.4772

Barnes, John

From: Holzer, Meg <meg.holzer@ppfa.org>
Sent: Thursday, April 10, 2014 9:37 AM
To: VanDyke, Lawrence
Cc: Bennion, Jon; tholm@crislaw.com
Subject: Re: MT Appeal

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Lawrence VanDyke

Solicitor General • Montana Department of Justice

215 N. Sanders ♦ P.O. Box 201401

Helena, Montana 59620

T: (406) 444-3442 ♦ F: (406) 444-3549

LVanDyke@mt.gov

From: Holzer, Meg [<mailto:meg.holzer@ppfa.org>]
Sent: Thursday, April 10, 2014 7:44 AM
To: VanDyke, Lawrence; Bennion, Jon
Cc: tholm@crislaw.com
Subject: MT Appeal

Lawrence and Jon,

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Please let me know if this timing works for you, or if you have other thoughts on scheduling. I'm unavailable from 10-12 ET, but otherwise available to discuss.

Regards,

Meg

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Meg Holzer

Staff Attorney

Public Policy Litigation & Law

Planned Parenthood Federation of America

212.261.4772

--

Meg Holzer

Staff Attorney

Public Policy Litigation & Law

Planned Parenthood Federation of America

212.261.4772

Barnes, John

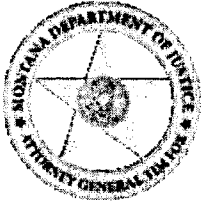
From: VanDyke, Lawrence
Sent: Wednesday, April 09, 2014 4:40 PM
To: Bennion, Jon
Subject: RE: Briefing Schedule in Planned Parenthood

[REDACTED]

From: Bennion, Jon
Sent: Wednesday, April 09, 2014 4:28 PM
To: VanDyke, Lawrence
Subject: Briefing Schedule in Planned Parenthood

[REDACTED]

Jon Bennion
Deputy Attorney General
Montana Department of Justice
Ph: 406-444-5880



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Barnes, John

From: VanDyke, Lawrence
Sent: Tuesday, May 27, 2014 11:10 AM
To: Bennion, Jon
Subject: PP Opening Brief - Near final draft
Attachments: Planned Parenthood Opening Br - MT S Ct.doc



Lawrence VanDyke
Solicitor General ♦ Montana Department of Justice

215 N. Sanders ♦ P.O. Box 201401
Helena, Montana 59620
T: (406) 444-3442 ♦ F: (406) 444-3549
LVanDyke@mt.gov

Barnes, John

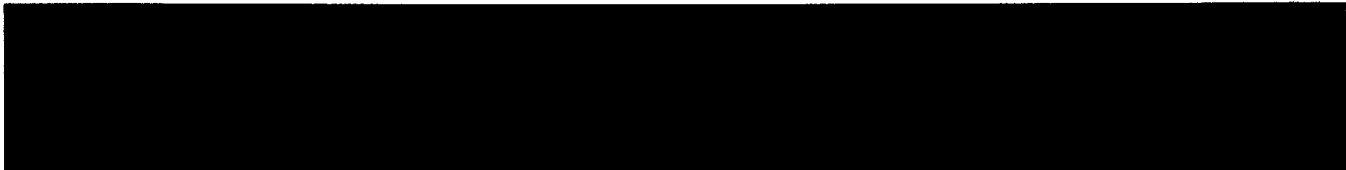
From: VanDyke, Lawrence
Sent: Friday, May 23, 2014 10:00 AM
To: Mattioli, Mark
Cc: Bennion, Jon
Subject: Planned Parenthood MSC Appeal - Draft Opening Brief
Attachments: Planned Parenthood Opening Br - MT S Ct.doc

Lawrence VanDyke
Solicitor General • Montana Department of Justice

215 N. Sanders • P.O. Box 201401
Helena, Montana 59620
T: (406) 444-3442 • F: (406) 444-3549
LVanDyke@mt.gov

Barnes, John

From: VanDyke, Lawrence
Sent: Wednesday, May 21, 2014 10:03 AM
To: Bennion, Jon
Subject: Planned Parenthood Draft
Attachments: Planned Parenthood Opening Br - MT S Ct.doc

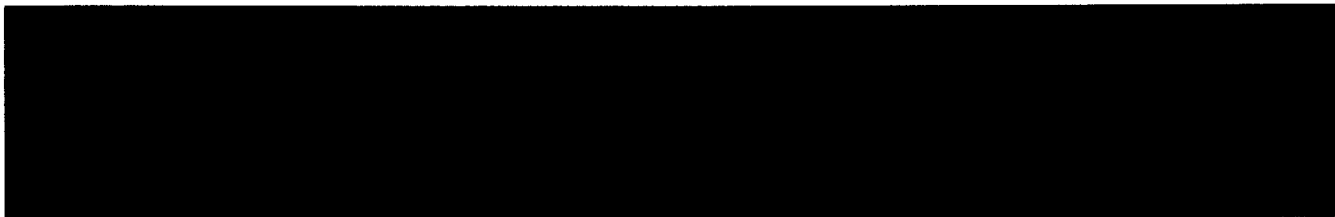


Lawrence VanDyke
Solicitor General • Montana Department of Justice

215 N. Sanders • P.O. Box 201401
Helena, Montana 59620
T: (406) 444-3442 • F: (406) 444-3549
LVanDyke@mt.gov

Barnes, John

From: Bennion, Jon
Sent: Friday, May 23, 2014 8:14 AM
To: VanDyke, Lawrence
Subject: Edits
Attachments: Planned Parenthood Opening Br - MT S Ct (JB Edits).doc



Jon Bennion
Deputy Attorney General
Montana Department of Justice
Ph: 406-444-5880



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Barnes, John

From: VanDyke, Lawrence
Sent: Thursday, May 29, 2014 7:07 AM
To: Bennion, Jon
Subject: Did Mark ever get you comments on the PP brief?

Sent from my iPhone

Barnes, John

From: Lawrence VanDyke <lvandyke4@gmail.com>
Sent: Monday, June 23, 2014 2:12 PM
To: Bennion, Jon
Subject: Fwd: Sevcik v. Sandoval/Latta v. Otter
Attachments: Amicus Brief of Indiana et al.pdf; ATT00001.htm; Clerk letter sending amicus.doc; ATT00002.htm

FYI

Begin forwarded message:

From: "Fisher, Tom" <Tom.Fisher@atg.in.gov>
Date: June 23, 2014 at 2:06:17 PM MDT
To: "ABrasher@ago.state.al.us" <ABrasher@ago.state.al.us>, "dave.jones@alaska.gov" <dave.jones@alaska.gov>, "Paula.Bickett@azag.gov" <Paula.Bickett@azag.gov>, "Dan.Domenico@state.co.us" <Dan.Domenico@state.co.us>, "LVanDyke@mt.gov" <LVanDyke@mt.gov>, "Katie.Spohn@nebraska.gov" <Katie.Spohn@nebraska.gov>, "Sarah.Greenwalt@oag.ok.gov" <Sarah.Greenwalt@oag.ok.gov>, "ESmith@scag.gov" <ESmith@scag.gov>, "bromano@utah.gov" <bromano@utah.gov>
Cc: "brian.kane@ag.idaho.gov" <brian.kane@ag.idaho.gov>
Subject: Sevcik v. Sandoval/Latta v. Otter

Dear Colleagues—

As you may recall, each of your states was kind enough to join our Ninth Circuit amicus brief in support of Nevada's traditional marriage definition last January in *Sevcik v. Sandoval*, No. 12-17668. That brief is attached.

Now, a challenge to Idaho's traditional marriage definition also is pending before the Ninth Circuit, and the Court has issued an order permitting *Sevcik* amici to designate their briefs to be treated as filed in that case, *Latta v. Otter*, No. 14-35421. Accordingly, I have drafted the attached letter to submit to the Ninth Circuit cross-designating our *Sevcik* brief for consideration in *Latta* on behalf of all joining states except Idaho.

As soon as possible, please confirm that your state wishes to join this cross designation. This letter is due this Thursday, June 26, though I hope to have it on file before then if possible.

Thanks very much.

TMF

Thomas M. Fisher
Solicitor General
Office of the Attorney General
State of Indiana

Indiana Government Center South, Fifth Floor
302 West Washington Street
Indianapolis, Indiana 46204
tom.fisher@atg.in.gov
T: 317.232.6255 | F: 317.232.7979

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Barnes, John

From: Lawrence VanDyke <lvandyke4@gmail.com>
Sent: Monday, June 23, 2014 2:12 PM
To: Bennion, Jon
Subject: Fwd: Sevcik v. Sandoval/Latta v. Otter
Attachments: Amicus Brief of Indiana et al.pdf; ATT00001.htm; Clerk letter sending amicus.doc; ATT00002.htm

FYI

Begin forwarded message:

From: "Fisher, Tom" <Tom.Fisher@atg.in.gov>
Date: June 23, 2014 at 2:06:17 PM MDT
To: "ABrasher@ago.state.al.us" <ABrasher@ago.state.al.us>, "dave.iones@alaska.gov" <dave.iones@alaska.gov>, "Paula.Bickett@azag.gov" <Paula.Bickett@azag.gov>, "Dan.Domenico@state.co.us" <Dan.Domenico@state.co.us>, "LVanDyke@mt.gov" <LVanDyke@mt.gov>, "Katie.Spohn@nebraska.gov" <Katie.Spohn@nebraska.gov>, "Sarah.Greenwalt@oag.ok.gov" <Sarah.Greenwalt@oag.ok.gov>, "ESmith@scag.gov" <ESmith@scag.gov>, "bromano@utah.gov" <bromano@utah.gov>
Cc: "brian.kane@ag.idaho.gov" <brian.kane@ag.idaho.gov>
Subject: Sevcik v. Sandoval/Latta v. Otter

Dear Colleagues—

As you may recall, each of your states was kind enough to join our Ninth Circuit amicus brief in support of Nevada's traditional marriage definition last January in *Sevcik v. Sandoval*, No. 12-17668. That brief is attached.

Now, a challenge to Idaho's traditional marriage definition also is pending before the Ninth Circuit, and the Court has issued an order permitting *Sevcik* amici to designate their briefs to be treated as filed in that case, *Latta v. Otter*, No. 14-35421. Accordingly, I have drafted the attached letter to submit to the Ninth Circuit cross-designating our *Sevcik* brief for consideration in *Latta* on behalf of all joining states except Idaho.

As soon as possible, please confirm that your state wishes to join this cross designation. This letter is due this Thursday, June 26, though I hope to have it on file before then if possible.

Thanks very much.

TMF

Thomas M. Fisher
Solicitor General
Office of the Attorney General
State of Indiana

Indiana Government Center South, Fifth Floor
302 West Washington Street
Indianapolis, Indiana 46204
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Barnes, John

From: Mattioli, Mark
Sent: Thursday, January 23, 2014 11:19 AM
To: Fox, Tim; Darkenwald, Scott
Subject: FW: Donaldson, et al. v. State

Tim and Scott, I had to tell Mike in confidence that Lawrence is leaving. Can I share this information with the entire Civil Bureau? Logistically I don't see how we can keep a lid on this. We need to explain to others in the Civil Bureau why we're having to reassign responsibilities in cases and we have to begin transitioning workload while we search for a new solicitor and/or deputy solicitor. Lawrence's leaving will also affect scheduling with opposing counsel and judges, so I think we need to let people know.

Mark

From: VanDyke, Lawrence
Sent: Thursday, January 23, 2014 10:00 AM
To: Mattioli, Mark
Cc: Fox, Tim; Darkenwald, Scott
Subject: FW: Donaldson, et al. v. State

Mark – See Matt's email below. Somebody needs to inform Matt and Mike that I am not working on the Donaldson case, and decide who is. This is part of the discussion I had with Tim when I gave notice. I haven't told Mike or Matt that I'm leaving (since Tim asked that I not broadcast that). So I'm not sure how to tell them that I won't be working on Donaldson. I think you need to inform them of that.

I will have plenty of work between now and when I leave without working on Donaldson. Right now I am busy working on the immigration case (coordinating depositions, responding to a motion to compel, and filing a motion for a protective order) as well as the Willems case (writing a response brief for the Montana Supreme Court). The immigration case will continue to be very busy with depositions, discovery briefing, and summary judgment briefing until the end of May, when there is a summary judgment hearing. Judge Sherlock will presumably rule in the Planned Parenthood case either this month or the first part of February, after which I will either be working on Montana Supreme Court briefing or our summary judgment briefing on the merits with Jon Bennion. I will also continue to help Jon with the briefing on the various referenda. And I will likely need to do some travel related to securing my next job at some point.

I have had basically no involvement on Donaldson so far, and it makes little sense for me to begin working on a case only to turn everything over to somebody else in a couple months – especially since the immediate tasks in that case are something I have little experience with or expertise in (discovery wrangling, experts, stipulations, and a meet and confer with opposing counsel). It also makes no sense for me to be the contact person for a meet and confer with Plaintiffs' counsel where decisions will be made affecting the entire case, when I will be gone shortly thereafter. If I had some sort of expertise regarding these immediate tasks in Donaldson, I would of course want to help, especially given the subject matter of the case. But I don't. And I have had no success getting Mike to provide any substantial help in situations like this where you have designated me the "lead counsel" and told me he will help me. So working on Donaldson would be an extremely time-consuming task for me right now, where I would likely mess things up anyway since I would be performing tasks I have no experience in and would receive little to no guidance from Mike. In short, it makes no sense for me to start working on Donaldson right now, especially given the immediate tasks in that case.

I would be happy to talk about this more with you if necessary. But Mike and Matt need some direction soon since plaintiffs' counsel will be calling tomorrow.

Thanks,

Lawrence

From: Cochenour, Matt
Sent: Thursday, January 23, 2014 8:58 AM
To: VanDyke, Lawrence; Black, Michael
Subject: RE: Donaldson, et al. v. State

Hi Lawrence,

I had a phone message from Ben Alke regarding Donaldson. It wasn't a detailed message, but I assume he wants to discuss the meet/confer letter and amending complaint. He is in depositions today, but will call back tomorrow.

Thanks,
Matt

From: VanDyke, Lawrence
Sent: Friday, January 10, 2014 7:50 AM
To: Black, Michael
Cc: Cochenour, Matt
Subject: RE: Donaldson, et al. v. State

Thanks Mike. It would be very helpful for me to have yours and Matt's thoughts in developing a response. And I think it would be good for you to attend the meet and confer with me. Is there sometime next week that you and Matt can block out an hour or two to discuss the contents of the letter with me?

From: Black, Michael
Sent: Wednesday, January 08, 2014 10:10 AM
To: VanDyke, Lawrence
Cc: Cochenour, Matt
Subject: FW: Donaldson, et al. v. State

I will defer to you on this, as lead counsel on this case, regarding any response to Plaintiffs. I realize Mark and I assisted Matt with the discovery responses because you were out of the office, but I see no need to wade into this at this time. I believe Matt should be looking to you as well. Thanks.

From: Karen Schultz [<mailto:kschultz@Goetzlawfirm.com>]
Sent: Thursday, January 02, 2014 4:34 PM
To: Black, Michael; VanDyke, Lawrence; Cochenour, Matt
Cc: Ben Alke; JimT@aclumontana.org; Krystel Holden (krystelp@aclumontana.org); 'Borenstein, Ruth N.' (RBorenstein@mofo.com); splunkett@mofo.com; eregier@mofo.com; aruiz@mofo.com; Egill@aclunc.org
Subject: Donaldson, et al. v. State

Please see the attached letter of today from Ben Alke. The letter was also mailed to you today.

Karen Schultz, Legal Assistant
Goetz, Baldwin & Geddes, P. C.
35 North Grand (zip code – 59715)
P. O. Box 6580
Bozeman, MT 59771-6580

Barnes, John

From: Black, Michael
Sent: Thursday, January 23, 2014 9:47 AM
To: Mattioli, Mark
Cc: Darkenwald, Scott
Subject: FW: Donaldson, et al. v. State

Mark:

I talked with Scott about this briefly. This is about a meet and confer request letter from the Goetz firm about discovery. I had responded to the January 10 email from Lawrence (I did not copy Matt) by essentially telling him I would be happy to look at the discovery and offer my thoughts, but that I expected Lawrence to get his arms around it and come up with some proposed alternatives. I have not heard back from him and it sounds like he has not contacted the Goetz firm.

I'll jump back in, if necessary, but I prefer to have the ability to say why, so I would appreciate learning when the resignation can be revealed.

Mike

From: Cochenour, Matt
Sent: Thursday, January 23, 2014 8:58 AM
To: VanDyke, Lawrence; Black, Michael
Subject: RE: Donaldson, et al. v. State

Hi Lawrence,

I had a phone message from Ben Alke regarding Donaldson. It wasn't a detailed message, but I assume he wants to discuss the meet/confer letter and amending complaint. He is in depositions today, but will call back tomorrow.

Thanks,
Matt

From: VanDyke, Lawrence
Sent: Friday, January 10, 2014 7:50 AM
To: Black, Michael
Cc: Cochenour, Matt
Subject: RE: Donaldson, et al. v. State

Thanks Mike. It would be very helpful for me to have yours and Matt's thoughts in developing a response. And I think it would be good for you to attend the meet and confer with me. Is there sometime next week that you and Matt can block out an hour or two to discuss the contents of the letter with me?

From: Black, Michael
Sent: Wednesday, January 08, 2014 10:10 AM
To: VanDyke, Lawrence
Cc: Cochenour, Matt
Subject: FW: Donaldson, et al. v. State

I will defer to you on this, as lead counsel on this case, regarding any response to Plaintiffs. I realize Mark and I assisted Matt with the discovery responses because you were out of the office, but I see no need to wade into this at this time. I believe Matt should be looking to you as well. Thanks.

From: Karen Schultz [<mailto:kschultz@Goetzlawfirm.com>]

Sent: Thursday, January 02, 2014 4:34 PM

To: Black, Michael; VanDyke, Lawrence; Cochenour, Matt

Cc: Ben Alke; JimT@aclumontana.org; Krystal Holden (krystelp@aclumontana.org); 'Borenstein, Ruth N.' (RBorenstein@mofo.com); splunkett@mofo.com; eregier@mofo.com; aruiz@mofo.com; Egill@aclunc.org

Subject: Donaldson, et al. v. State

Please see the attached letter of today from Ben Alke. The letter was also mailed to you today.

Karen Schultz, Legal Assistant
Goetz, Baldwin & Geddes, P. C.
35 North Grand (zip code – 59715)
P. O. Box 6580
Bozeman, MT 59771-6580
Ph: (406) 587-0618
Fax: (406) 587-5144

Barnes, John

From: VanDyke, Lawrence
Sent: Wednesday, April 30, 2014 9:56 AM
To: Bennion, Jon
Cc: Mattioli, Mark
Subject: FW: Rambold

[REDACTED]

From: Light, Brant
Sent: Wednesday, April 30, 2014 9:46 AM
To: DOJ AG Attorneys
Subject: Rambold

Great job by Tammy in the Rambold case (teacher given 30 days by Judge Baugh after rape of 14 yr old student).
The court vacated and remanded for sentencing before a new judge.

The Court discussed Judge Baugh's statements:

"The idea that C.M. could have 'control' of the situation is directly at odds with the law, which holds that a youth is incapable of consent and, therefore, lacks any control over the situation whatsoever. The statement also disregards the serious power disparity that exists between an adult teacher and his minor pupil. In addition, there is no basis in the law for the court's distinction between the victim's 'chronological age' and the court's perception of her maturity."

Well said - wish I could read that to our jury on similar cases. As a prosecutor I'm very grateful for the hard work that Tammy did on this case and making it right!

Brant

Barnes, John

From: Fox, Tim
Sent: Tuesday, April 01, 2014 9:41 PM
To: Mattioli, Mark
Cc: Darkenwald, Scott
Subject: Fwd: Timothy Bostic, et al. v. George E. Schaefer, III, et al., No. 14-1167
Attachments: Amicus Memo.doc; ATT00001.htm; Bostic -Amicus brief of Indiana et al - distribution draft.pdf; ATT00002.htm

Mark,

The message below from Mike Black is strange and upsetting to say the least. There's no legal reasoning in Mike's recommendation, and what he recommends (staying out of amicus briefs on marriage cases) is actually contrary to Montana's interests on this issue as those interests rest on Montana's Constitution.

What's more, the tone of Mike's message in addressing Lawrence as "Mr. VanDyke" and unnecessarily mentioning Lawrence's role in the Donaldson case is unprofessional and obviously meant to be offensive to Lawrence. Why else would Mike copy Lawrence with such a petty and terse message?

And, I can't begin to understand why Mike thought he needed to copy Matt Cochenour with this e-mail message. I intend to speak with Mike when I return because obviously he's putting his personal grudges against Lawrence above his responsibilities to the office and his position as Bureau Chief. I'll take Scott with me.

Tim

cc: Scott

Sent from my iPhone


Begin forwarded message:

From: "VanDyke, Lawrence" <LVanDyke@mt.gov>
Date: April 1, 2014 at 11:38:43 AM MDT
To: "Fox, Tim" <TimFox@mt.gov>
Cc: "Mattioli, Mark" <mmattioli@mt.gov>, "Bennion, Jon" <JonBennion@mt.gov>, "Swanson, Cory" <CoSwanson@mt.gov>, "Barnes, John" <JohnBarnes@mt.gov>
Subject: FW: Timothy Bostic, et al. v. George E. Schaefer, III, et al., No. 14-1167



From: Black, Michael
Sent: Tuesday, April 01, 2014 11:30 AM
To: Mattioli, Mark
Cc: VanDyke, Lawrence; Cochenour, Matt
Subject: FW: Timothy Bostic, et al. v. George E. Schaefer, III, et al., No. 14-1167





From: Stickle, Julie [<mailto:Julie.Stickle@atg.in.gov>]
Sent: Tuesday, April 01, 2014 10:46 AM
To: Stickle, Julie
Cc: Fisher, Tom
Subject: Timothy Bostic, et al. v. George E. Schaefer, III, et al., No. 14-1167

To Amicus Contacts in Selected States:

Attached is an *amicus curiae* brief to be filed in the Fourth Circuit in *Timothy Bostic, et al. v. George E. Schaefer, III, et al.*, No. 14-1167.

The brief supports Defendants/Appellants as they seek reversal of a district court ruling invalidating Virginia's traditional definition of marriage under the Fourteenth Amendment. It is very similar to the ones Indiana (joined by many of your states) recently filed in the Ninth Circuit in *Beverly Sevcik et al. v. Brian Sandoval, et al.*, No. 12-17668 and in the Tenth Circuit in *Derek Kitchen, et al. v. Gary Herbert, et al.*, No. 13-4178 and *Mary Bishop, et al. v. Sally Howe Smith, et al.*, Nos. 14-5003, & 14-5006.

The *Bostic* brief is due on Friday, April 4, and we can take joiners until noon that day.

If you have questions or wish to join, please contact Tom Fisher at tom.fisher@atg.in.gov.

Thanks very much for your consideration.

Julianne Stickle
Administrative Assistant to the Solicitor General
302 W. Washington Street
IGCS - Fifth Floor
Indianapolis, IN 46204
317-233-8292
317-232-7979 Fax
julie.stickle@atg.in.gov

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Barnes, John

From: Black, Michael
Sent: Thursday, January 30, 2014 3:38 PM
To: Mattioli, Mark
Cc: VanDyke, Lawrence; Darkenwald, Scott
Subject: FW: Notice of Withdrawal
Attachments: 2013-09-30 Scheduling Order.pdf

Mark:

I am happy to discuss this further with you, but any disagreement over this is just plain silly.

Mr. VanDyke and the attorneys who continue to represent the State have a professional and statutory obligation to file a notice of withdrawal for Mr. VanDyke. It has been a common practice for attorneys from this office to withdraw from cases when their involvement has ceased, and we have made big deal about other attorneys failing to comply with statutory rules on withdrawal in cases before Judge Sherlock.

Mr. VanDyke has been lead counsel on this case for the last year, and the Plaintiffs were informed he was lead counsel a year ago. He has been in charge of this case for a year.

Mr. VanDyke has appeared as attorney for the State as reflected in the attached order, and his appearance is probably reflected in other court filings. Withdrawal is required pursuant to MCA §§ 37-61-403 and 37-61-404, found at <http://leg.mt.gov/bills/mca/37/61/37-61-403.htm> and <http://leg.mt.gov/bills/mca/37/61/37-61-404.htm>

Calling the clerk of court is not a substitute for complying with the statute.

Mike

From: Black, Michael
Sent: Thursday, January 30, 2014 11:20 AM
To: VanDyke, Lawrence; Holnbeck, Beverly
Cc: Cochenour, Matt
Subject: RE: Notice of Withdrawal

It is necessary. If you decline to sign it, I'll sign it for you.

From: VanDyke, Lawrence
Sent: Thursday, January 30, 2014 11:17 AM
To: Black, Michael; Holnbeck, Beverly
Cc: Cochenour, Matt
Subject: RE: Notice of Withdrawal

I don't think this is necessary. I never entered an appearance in Donaldson. I attended the scheduling conference with Mike, and my name was signed to the discovery responses, but those were not filed with the Court. I called the clerk's office, and as best they could tell I am not listed on the docket as a counsel of record. She told me I didn't need to file a motion to withdraw, and that doing so would likely just confuse things.

Thank you, though. And let me know if you think differently.

From: Black, Michael
Sent: Thursday, January 30, 2014 10:35 AM
To: Holnbeck, Beverly
Cc: VanDyke, Lawrence; Cochenour, Matt
Subject: FW: Notice of Withdrawal

Bev:

Thank you. I modified the caption and signature block to remove counsel. Would you please print on bond and give to Mr. VanDyke or put in his box for his signature. I want to file this by the end of the week. Thank you.

Mike

From: Holnbeck, Beverly
Sent: Thursday, January 30, 2014 10:16 AM
To: Black, Michael
Subject: Notice of Withdrawal

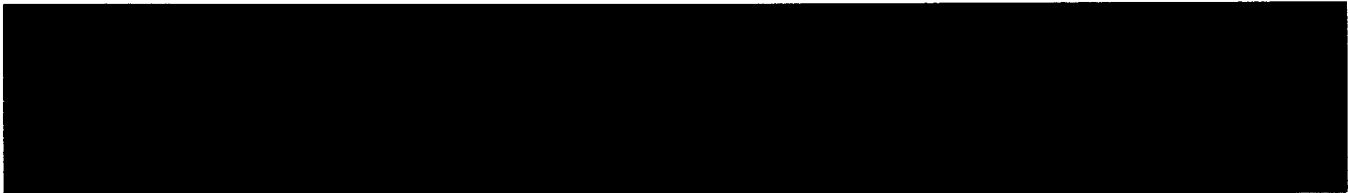
In LJV directory: J:\LJV\Donaldson II 11-0027\Drafts\2014-01-30 Not of Withdrawal-Van Dyke.doc. Do you want me to move that folder back to you?

Bev Holnbeck

Beverly Holnbeck, Legal Assistant
Office of the Montana Attorney General
406-444-1952

Barnes, John

From: VanDyke, Lawrence
Sent: Thursday, February 06, 2014 11:29 AM
To: Mattioli, Mark; Bennion, Jon
Subject: PP - Rule 56b and stay motion
Attachments: PP - Rule 56b and stay motion.doc



Barnes, John

From: Matthew Monforton <matthewmonforton@yahoo.com>
Sent: Wednesday, September 11, 2013 6:12 PM
To: Black, Michael
Cc: VanDyke, Lawrence; Mattioli, Mark; Motl, Jonathan; Cochenour, Matt
Subject: Re: 13-35-237, MCA

Mike:

Thanks for getting back to me re 13-35-237.

Regarding SCRCC, I had assumed (prematurely) that the AG had decided not to file a cert petn. Obviously, a discussion re fees can wait until after your office makes a decision on that.

Matthew G. Monforton, Esq.
CA State Bar #175518, MT State Bar #5245
Monforton Law Offices, PLLC
32 Kelly Court
Bozeman, Montana 59718
Telephone: (406) 570-2949
Facsimile: (406) 551-6919

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From: "Black, Michael" <MBlack2@mt.gov>
To: Matthew Monforton <matthewmonforton@yahoo.com>
Cc: "VanDyke, Lawrence" <LVanDyke@mt.gov>; "Mattioli, Mark" <mmattioli@mt.gov>; "Motl, Jonathan" <JMotl@mt.gov>; "Cochenour, Matt" <MCochenour2@mt.gov>
Sent: Wednesday, September 11, 2013 5:59 PM
Subject: RE: 13-35-237, MCA

Matthew:

I forwarded your email to the Chief Deputy but, as you know, the COPP is responsible for investigating all of the alleged violations of the election laws contained in MCA Title 13, Chapter 35, and in conjunction with the county attorneys is responsible for enforcing these election laws.

As far as Sanders County is concerned, the Attorney General has not yet made a determination regarding whether this office will petition for a writ of certiorari. Please let me know if you have any questions or concerns.

Michael G. Black
Bureau Chief
Civil Services Bureau
Montana Department of Justice
215 North Sanders
P.O. Box 201401

Helena, Montana 59620-1401
406-444-2026 telephone
406-444-3549 fax
mblack2@mt.gov

From: Matthew Monforton [<mailto:matthewmonforton@yahoo.com>]
Sent: Wednesday, September 11, 2013 2:37 PM
To: Black, Michael
Cc: VanDyke, Lawrence
Subject: 13-35-237, MCA

Mike:

Now that *Sanders County* is winding down, please find attached a preview of coming attractions.

Feel free to call.

Thanks

Matthew G. Monforton, Esq.
CA State Bar #175518, MT State Bar #5245
Monforton Law Offices, PLLC
32 Kelly Court
Bozeman, Montana 59718
Telephone: (406) 570-2949
Facsimile: (406) 551-6919

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Barnes, John

From: VanDyke, Lawrence
Sent: Wednesday, February 19, 2014 10:27 AM
To: Bennion, Jon; Mattioli, Mark
Subject: PP - Notice of Objection re entry of final judgment
Attachments: PP - Notice of Objection re entry of final judgment.doc



Barnes, John

From: Mattioli, Mark
Sent: Wednesday, February 05, 2014 1:20 PM
To: VanDyke, Lawrence; Fox, Tim
Cc: Darkenwald, Scott; Bennion, Jon; Barnes, John; Swanson, Cory
Subject: RE: Amicus Memo in Drake v. Jerejian (U.S.) - Second Amendment case

I agree with Lawrence that we should join this cert-stage brief.

From: VanDyke, Lawrence
Sent: Wednesday, February 05, 2014 1:17 PM
To: Fox, Tim; Mattioli, Mark
Cc: Darkenwald, Scott; Bennion, Jon; Barnes, John; Swanson, Cory
Subject: FW: Amicus Memo in Drake v. Jerejian (U.S.) - Second Amendment case

Wyoming is asking us to join their multistate cert-stage SCOTUS amicus brief asking the Court to grant and overturn a Third Circuit decision upholding against a 2nd Amendment challenge a New Jersey law that only allows carrying of a handgun outside the home upon a showing of "justifiable need"—i.e., a showing of urgent necessity supported by a history of specific threats or previous attacks. This case is very similar to one in which we joined the cert-stage amicus brief almost a year ago challenging a similar New York law (the Court denied cert in that case). I've attached the draft press release and another email regarding the New York case, which shows our reasons for joining that one.

For the same reasons we joined the amicus brief in a very similar case a year ago, I recommend that we DO join this brief. The join deadline is first thing this next Monday morning, February 10th – so effectively COB this Friday.

From: Schweitzer, Dan [<mailto:DSCHWEITZER@NAAG.ORG>]
Sent: Wednesday, February 05, 2014 8:07 AM
To:
Cc: brittany.zielke@wyo.gov
Subject: Amicus Memo in Drake v. Jerejian (U.S.) - Second Amendment case

To: Civil Amicus Contacts

Attached is an Amicus Memo describing the amicus brief Wyoming is preparing in support of the cert petition filed in *Drake v. Jerejian*, 13-827 (U.S.). The petition seeks review of a Third Circuit decision that upheld against a Second Amendment challenge a New Jersey law that allows an individual to carry a handgun outside the home only if he shows a "justifiable need," which requires demonstration of urgent necessity evidenced by specific threats or previous attacks.

Dan Schweitzer
Supreme Court Counsel
National Association of Attorneys General
2030 M Street, NW, 8th Floor
Washington, DC 20036
(202) 326-6010

Barnes, John

From: VanDyke, Lawrence
Sent: Wednesday, August 28, 2013 5:27 PM
To: Mattioli, Mark; Fox, Tim
Cc: Bennion, Jon; Swanson, Cory; Barnes, John; Darkenwald, Scott
Subject: RE: Amicus Memo in NRA v. ATF (U.S.)

The Fifth Circuit held the conduct at issue didn't fall within the scope of the 2nd Amendment because any "longstanding, presumptively lawful regulatory measure ... would likely fall outside the ambit of the Second Amendment" entirely. And "[i]n the view of at least some members of the founding generation, disarming select groups for the sake of public safety was compatible with the right to arms specifically and with the idea of liberty generally" – namely, slaves.

So I guess the court's argument was that we should be able to disarm 18-20 year olds now because they disarmed slaves at the founding? Incredible. I wonder that they didn't see the irony in that argument.

From: Mattioli, Mark
Sent: Wednesday, August 28, 2013 5:13 PM
To: VanDyke, Lawrence; Fox, Tim
Cc: Bennion, Jon; Swanson, Cory; Barnes, John; Darkenwald, Scott
Subject: RE: Amicus Memo in NRA v. ATF (U.S.)

Although many have pointed to social science research suggesting that younger adults are more impulsive because the brain is not completely formed until about age 25, I agree with Lawrence's comments and concur that we should join.

Lawrence, what was the basis for the Fifth Circuit's determination that the Second Amendment was not implicated?

Mark

From: VanDyke, Lawrence
Sent: Wednesday, August 28, 2013 2:35 PM
To: Fox, Tim
Cc: Mattioli, Mark; Bennion, Jon; Swanson, Cory; Barnes, John; Darkenwald, Scott
Subject: RE: Amicus Memo in NRA v. ATF (U.S.)

I can answer some of these:

(1) What do Montana's laws say about 18-21 year olds and guns or ammunition?

- I don't believe Montana has any such laws. Montana law ban carrying of a weapon by a child under the age of 14, unless accompanied by an adult. MCA 45-8-344

(2) What are the policy implications of either supporting or not supporting this amicus brief in light of the high-profile and tragic shooting incidents across the country in recent years?

- I'm not sure there are any *direct* policy implications. Montana and federal laws would still ban carrying of guns in schools, and most 18-21 year olds are out of high school in any event. As far as indirect policy implications – as is the case with most gun issues, I'm sure it depends on your starting assumptions. Folks that think that gun control works will

conclude that loosening control here will lead to more gun violence. Folks that think gun control typically only affects otherwise law-abiding citizens will think that allowing 18-21 year olds to lawfully own handguns will likely not increase crime and violence, in schools or otherwise.

(3) What considerations are there in light of our potential for partnering with Superintendent Juneau on the school safety and active shooter training initiatives?

- I don't know about this one, since I haven't been involved with this at all. Jon – do you know?

(4) What media attention, good or bad, has this case generated since it was filed?

- John is going to do some searching today or tomorrow morning to see what, if any, major press this has received. Thanks John!

(5) Is this a matter that we should consult, with the Governor's office on before making a decision? (Note: I would think not, but would be interested in other's views).

- I don't think we need to. Does anyone else think it would be prudent nonetheless?

I've attached the draft brief – which I like. It does point out that Montana law allows 18-20 year-olds to own guns. See n.2. Here is a line from the first page (key soaring rhetoric music):

Adults who are 18, 19, and 20 honorably defend our country when it is at war. These same Americans should be able to defend themselves and their families when they are at home.

I got chills. (Okay, not really, but I wanted to.)

From: Fox, Tim

Sent: Wednesday, August 28, 2013 12:17 PM

To: VanDyke, Lawrence

Cc: Mattioli, Mark; Bennion, Jon; Swanson, Cory; Barnes, John; Darkenwald, Scott

Subject: Re: Amicus Memo in NRA v. ATF (U.S.)

Before I make a decision, can one or more of you address the following questions:

(1) What do Montana's laws say about 18-21 year olds and guns or ammunition?

(2) What are the policy implications of either supporting or not supporting this amicus brief in light of the high-profile and tragic shooting incidents across the country in recent years?

(3) What considerations are there in light of our potential for partnering with Superintendent Juneau on the school safety and active shooter training initiatives?

(4) What media attention, good or bad, has this case generated since it was filed?

(5) Is this a matter that we should consult, with the Governor's office on before making a decision? (Note: I would think not, but would be interested in other's views).

Thank you.

Tim

Sent from my iPad

On Aug 28, 2013, at 11:58 AM, "VanDyke, Lawrence" <LVanDyke@mt.gov> wrote:

Tim and Mark – This is a short-fuse cert-stage amicus join request from Alabama in a Second Amendment case coming out of the Fifth Circuit. The case challenges federal laws that categorically deny 18-21 year olds the ability to buy handguns or handgun ammunition. The Fifth Circuit panel

rejected the challenge, holding that (1) the laws do not implicate the Second Amendment, and (2) even if they do, they don't violate it. The NRA is the Petitioner in this case.

I think we should join this brief. I'm not sure I agree with the strategy of bringing this case to the SCOTUS, but I think we want to be on the record as on the side of gun rights (and the NRA). I think that a blanket ban on handgun ownership for all 18-21 year olds probably does violate the original meaning of the second amendment – I would expect that 18 year olds were part of the "militia."

Our deadline is quick – we need to decide by this Friday.

Thanks,

Lawrence

From: Schweitzer, Dan [mailto:DSCHWETZ@NAAG.ORG]

Sent: Tuesday, August 27, 2013 1:02 PM

To: chris.coppin@cwagweb.org; paul.d.stern@maine.gov; dbahr@nd.gov; JMcIntosh@scag.gov; pam.murphy@doj.nh.gov; eric.tabor@iowa.gov; jknorr@attorneygeneral.gov; james.layton@ago.mo.gov; paula.bickett@azag.gov; charles.mcquigan@state.sd.us; RPartington@riag.ri.gov; crimago@saipan.com; barbara.underwood@ag.ny.gov; Hampton, Andrea; Schweitzer, Dan; sbluestone@nmag.gov; david.raupp@arkansasag.gov; gmorg@ago.state.ms.us; jlee@riag.ri.gov; attorney@samoatelco.com; stephan.finkel@lps.state.nj.us; Girard.D.Lau@hawaii.gov; stevemac@ku.edu; dennis.hansen@arkansasag.gov; basay@atg.state.vt.us; Mary.Williams@doj.state.or.us; gkelley@ncdoj.gov; alanc@atg.wa.gov; alama@nmag.gov; judy.zeprun@state.ma.us; joanne.grace@alaska.gov; jnotz@atg.state.il.us; Gregory.Dauria@ct.gov; anne.edwards@doj.nh.gov; tom.fisher@atg.in.gov; jwhite@ncdoj.gov; whowle@ag.nv.gov; Frances.Grunder@doj.ca.gov; mlanf@ago.state.ms.us; ken.rosenstein@alaska.gov; allison.martin@ag.ky.gov; hpizz@ago.state.ms.us; wellslk@doj.state.wi.us; Lee.Davidson@ksag.org; edavis@doj.vi.gov; donna.murasky@dc.gov; ssullivan@oag.state.md.us; jmaddrey@ncdoj.gov; dspence@oag.state.md.us; vlp@wvago.gov; debbie.mcveigh@wyo.gov; Steve.Creason@atg.in.gov; kguthrie@ago.state.al.us; andrea.silkowitz@dol.lps.state.nj.us; brian.kane@ag.idaho.gov; Richard.Dearing@ag.ny.gov; katie.spohn@nebraska.gov; rrussell@nmag.gov; mwood@ago.state.ms.us; restucciae@michigan.gov; wbrockman@oag.state.md.us; agesmith@scag.gov; susan.lee@doj.ca.gov; SG@atg.in.gov; todd.kim@dc.gov; delayne.deck@ag.idaho.gov; dan.domenico@state.co.us; mscodro@atg.state.il.us; heather.mcveigh@atg.in.gov; suzanne.gorman@doj.nh.gov; jbhoward@oag.state.md.us; potterkc@doj.state.wi.us; stjohnkm@doj.state.wi.us; ed.bedrosian@state.ma.us; john.garry@ag.state.mn.us; brooke.paup@texasattorneygeneral.gov; appeals@ohioattorneygeneral.gov; meanssp@doj.state.wi.us; Sherri.Wald@state.sd.us; adam.aston@texasattorneygeneral.gov; jhughes@atg.state.il.us; david.blake@state.co.us; Segrest, Stuart; susan.britton@ag.ky.gov; john.campbell@ksag.org; jung.kim@dol.lps.state.nj.us; dave.jones@alaska.gov; delberta.pfeifer@ksag.org; perry.zinn-rowthorn@ct.gov; mwebb@ago.state.ms.us; barb.fehrman@ag.state.mn.us; vbeavers@ag.nv.gov; bromano@utah.gov; kris.aillslieger@ksag.org; bob.fagan@msdh.state.ms.us; Eileen.carey@state.ma.us; sean.riley@ag.ky.gov; ashley.harwel@atg.in.gov; dGetchell@oag.state.va.us; anna.joyce@doj.state.or.us; marlene.brown@dol.lps.state.nj.us; peter.michael@wyo.gov; diane.dewolf@myfloridalegal.com; jonathan.mitchell@oag.state.tx.us; mary.mertz@ohioattorneygeneral.gov; sforney@attorneygeneral.gov; npeterson@law.ga.gov; jneiman@ago.state.al.us; ariel.levinson-waldman@dc.gov; burschj@michigan.gov; Leesa.Thompson@oag.ok.gov; dowker@michigan.gov; frederick.nelson@ohioattorneygeneral.gov; patrick.wyrick@oag.ok.gov; bill.young@ag.tn.gov; Black, Michael; MBrady@oag.state.va.us; Sam Peterson; abrasher@ago.state.al.us; pamela.spang@state.ma.us; andy.oldham@texasattorneygeneral.gov; Jason.pleggenkuhle@ag.state.mn.us; michael.hendershot@ohioattorneygeneral.gov; robyn.bender@ag.ky.gov; laura-jane.weimer@state.co.us; james.adams@state.de.us; Aricka.seales@state.ma.us; wiltonp@ag.state.la.us; lindstroma@michigan.gov; VanDyke, Lawrence; allen.winsor@myfloridalegal.com; christopher.dodril@wvago.gov; marmercado@justicia.pr.gov; elbert.lin@wvago.gov;

Mary.McTaggart@state.de.us; Sarah.Greenwalt@oag.ok.gov; Michael.Francisco@state.co.us
Cc: KTurner@ago.state.al.us
Subject: Amicus Memo in NRA v. ATF (U.S.)

To: Civil Amicus Contacts

Attached is an Amicus Memo describing the amicus brief Alabama is preparing in support of the cert petition filed in *National Rifle Association v. U.S. Bureau of Alcohol, Tobacco, Firearms, and Explosives*, 13-137 (U.S.). The petition seeks review of a Fifth Circuit decision holding that the Second Amendment is not violated by federal laws prohibiting adults under the age of 21 from purchasing handguns and handgun ammunition. The question presented is “[w]hether a nationwide, class-based, categorical ban on meaningful access to the quintessential means to exercise the right to keep and bear arms for self-defense can be reconciled with the Second Amendment, the equal protection guarantee, and this Court’s precedents.”

The turn-around time is very short. Alabama will be circulating a draft brief tomorrow; and the deadline for joining is this Friday. To join, you may contact:

John Neiman
Solicitor General
Office of Alabama Attorney General Luther Strange
501 Washington Avenue
Montgomery, AL 36130
(334) 353-2187
JNeiman@ago.state.al.us

Dan Schweitzer
Supreme Court Counsel
National Association of Attorneys General
2030 M Street, NW, 8th Floor
Washington, DC 20036
(202) 326-6010
(202) 785-0410 - fax
dschweitzer@naag.org

<Amicus Memo - NRA v Bureau of ATFE -- 8-27.pdf>

Barnes, John

From: Mattioli, Mark
Sent: Wednesday, February 05, 2014 6:14 PM
To: VanDyke, Lawrence; Fox, Tim
Cc: Bennion, Jon; Barnes, John
Subject: RE: Litigation: Planned Parenthood of Montana/Henke v. State of Montana/Fox, MT 1st Judicial District, Lewis & Clark County, Cause #BDV-2013-407

[REDACTED]

From: VanDyke, Lawrence
Sent: Wednesday, February 05, 2014 3:35 PM
To: Fox, Tim; Mattioli, Mark
Cc: Bennion, Jon; Barnes, John
Subject: FW: Litigation: Planned Parenthood of Montana/Henke v. State of Montana/Fox, MT 1st Judicial District, Lewis & Clark County, Cause #BDV-2013-407

[REDACTED]

From: Crystal Reichenbach [<mailto:CREichenbach@crislaw.com>]
Sent: Wednesday, February 05, 2014 3:11 PM
To: VanDyke, Lawrence; Bennion, Jon
Cc: Tanis Holm; Lisa Sundeen
Subject: Litigation: Planned Parenthood of Montana/Henke v. State of Montana/Fox, MT 1st Judicial District, Lewis & Clark County, Cause #BDV-2013-407

Please find attached *Plaintiffs' Motion for Entry of Judgment and Stay of Filing of Bill of Costs* which has been filed with the Clerk in the above-captioned court on this same day by facsimile.

Thank you.

Crystal K. Reichenbach, Office Manager/Legal Secretary

Crist, Krogh, Butler & Nord, LLC

Attorneys at Law

The Securities Building

2708 1st Avenue North, Suite 300

Billings, MT 59101

Telephone: (406) 255-0400

Facsimile: (406) 255-0697

creichenbach@crislaw.com

Barnes, John

From: VanDyke, Lawrence
Sent: Thursday, January 30, 2014 12:03 PM
To: Mattioli, Mark
Cc: Darkenwald, Scott
Subject: RE: Notice of Withdrawal

Thanks – I'll be happy to sign it if it's necessary or helpful. Just let me know.

From: Mattioli, Mark
Sent: Thursday, January 30, 2014 12:00 PM
To: VanDyke, Lawrence
Cc: Darkenwald, Scott
Subject: RE: Notice of Withdrawal

This is the first I've heard of it. I'll talk to Mike.

From: VanDyke, Lawrence
Sent: Thursday, January 30, 2014 11:47 AM
To: Mattioli, Mark
Subject: FW: Notice of Withdrawal

Mark – Any idea what this is about? Obviously, if it is really necessary for me to file a notice of withdrawal in Donaldson, then I'm happy to do it. But per the clerk's office, I'm not listed as a counsel of record on the case, and was told that filing this would like just "confuse things." Is there something more going on that I'm not aware of?

Thanks.

From: Black, Michael
Sent: Thursday, January 30, 2014 11:17 AM
To: VanDyke, Lawrence; Holnbeck, Beverly
Cc: Cochenour, Matt
Subject: RE: Notice of Withdrawal

It is necessary. If you decline to sign it, I'll sign it for you.

From: VanDyke, Lawrence
Sent: Thursday, January 30, 2014 11:17 AM
To: Black, Michael; Holnbeck, Beverly
Cc: Cochenour, Matt
Subject: RE: Notice of Withdrawal

I don't think this is necessary. I never entered an appearance in Donaldson. I attended the scheduling conference with Mike, and my name was signed to the discovery responses, but those were not filed with the Court. I called the clerk's office, and as best they could tell I am not listed on the docket as a counsel of record. She told me I didn't need to file a motion to withdraw, and that doing so would likely just confuse things.

Thank you, though. And let me know if you think differently.

From: Black, Michael
Sent: Thursday, January 30, 2014 10:35 AM
To: Holnbeck, Beverly
Cc: VanDyke, Lawrence; Cochenour, Matt
Subject: FW: Notice of Withdrawal

Bev:

Thank you. I modified the caption and signature block to remove counsel. Would you please print on bond and give to Mr. VanDyke or put in his box for his signature. I want to file this by the end of the week. Thank you.

Mike

From: Holnbeck, Beverly
Sent: Thursday, January 30, 2014 10:16 AM
To: Black, Michael
Subject: Notice of Withdrawal

In LJV directory: J:\LJV\Donaldson II 11-0027\Drafts\2014-01-30 Not of Withdrawal-Van Dyke.doc. Do you want me to move that folder back to you?

Bev Holnbeck

Beverly Holnbeck, Legal Assistant
Office of the Montana Attorney General
406-444-1952

Barnes, John

From: Black, Michael
Sent: Friday, January 31, 2014 9:28 AM
To: Mattioli, Mark
Cc: Darkenwald, Scott
Subject: RE: Notice of Withdrawal

This is fine. I apologize for the emails. I have several emails to apologize for this week. I should not go off about lack of professionalism, then not practice what I preach. Thank you.

From: Mattioli, Mark
Sent: Thursday, January 30, 2014 4:46 PM
To: Black, Michael
Subject: RE: Notice of Withdrawal

Mike, your lead counsel now, but can't the obligations of the statute be satisfied by filing a Notice of Substitution of Counsel? Such a notice, which myself and others have filed in other cases, satisfies the consent of the client and attorney under 37-61-403(1) as well notice to opposing parties as required by 37-61-404.

From: Black, Michael
Sent: Thursday, January 30, 2014 3:38 PM
To: Mattioli, Mark
Cc: VanDyke, Lawrence; Darkenwald, Scott
Subject: FW: Notice of Withdrawal

Mark:

I am happy to discuss this further with you, but any disagreement over this is just plain silly.

Mr. VanDyke and the attorneys who continue to represent the State have a professional and statutory obligation to file a notice of withdrawal for Mr. VanDyke. It has been a common practice for attorneys from this office to withdraw from cases when their involvement has ceased, and we have made big deal about other attorneys failing to comply with statutory rules on withdrawal in cases before Judge Sherlock.

Mr. VanDyke has been lead counsel on this case for the last year, and the Plaintiffs were informed he was lead counsel a year ago. He has been in charge of this case for a year.

Mr. VanDyke has appeared as attorney for the State as reflected in the attached order, and his appearance is probably reflected in other court filings. Withdrawal is required pursuant to MCA §§ 37-61-403 and 37-61-404, found at <http://leg.mt.gov/bills/mca/37/61/37-61-403.htm> and <http://leg.mt.gov/bills/mca/37/61/37-61-404.htm>

Calling the clerk of court is not a substitute for complying with the statute.

Mike

From: Black, Michael
Sent: Thursday, January 30, 2014 11:20 AM
To: VanDyke, Lawrence; Holnbeck, Beverly
Cc: Cochenour, Matt
Subject: RE: Notice of Withdrawal

It is necessary. If you decline to sign it, I'll sign it for you.

From: VanDyke, Lawrence
Sent: Thursday, January 30, 2014 11:17 AM
To: Black, Michael; Holnbeck, Beverly
Cc: Cochenour, Matt
Subject: RE: Notice of Withdrawal

I don't think this is necessary. I never entered an appearance in Donaldson. I attended the scheduling conference with Mike, and my name was signed to the discovery responses, but those were not filed with the Court. I called the clerk's office, and as best they could tell I am not listed on the docket as a counsel of record. She told me I didn't need to file a motion to withdraw, and that doing so would likely just confuse things.

Thank you, though. And let me know if you think differently.

From: Black, Michael
Sent: Thursday, January 30, 2014 10:35 AM
To: Holnbeck, Beverly
Cc: VanDyke, Lawrence; Cochenour, Matt
Subject: FW: Notice of Withdrawal

Bev:

Thank you. I modified the caption and signature block to remove counsel. Would you please print on bond and give to Mr. VanDyke or put in his box for his signature. I want to file this by the end of the week. Thank you.

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From: Holnbeck, Beverly
Sent: Thursday, January 30, 2014 10:16 AM
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Subject: Notice of Withdrawal

In LJV directory: J:\LJV\Donaldson II 11-0027\Drafts\2014-01-30 Not of Withdrawal-Van Dyke.doc. Do you want me to move that folder back to you?

Bev Holnbeck

Beverly Holnbeck, Legal Assistant
Office of the Montana Attorney General
406-444-1952

Barnes, John

From: VanDyke, Lawrence
Sent: Friday, January 31, 2014 9:24 AM
To: Mattioli, Mark
Cc: Darkenwald, Scott
Subject: RE: Notice of Withdrawal

Sounds good – thanks.

From: Mattioli, Mark
Sent: Friday, January 31, 2014 9:23 AM
To: VanDyke, Lawrence
Cc: Darkenwald, Scott
Subject: RE: Notice of Withdrawal

I talked to him. My understanding is that he will file a notice of substitution of counsel, so your signature won't be required.

From: VanDyke, Lawrence
Sent: Friday, January 31, 2014 9:21 AM
To: Mattioli, Mark
Cc: Darkenwald, Scott
Subject: FW: Notice of Withdrawal

Mark – I'm fine with signing this if you think that's best under the circumstances. I'm not sold on Mike's rationale below (which was the first time I'd heard it), and even if a notice of withdrawal were required, I think it might make the most sense to file one along with the notices I'll file in my other cases when I leave to avoid premature questions and confusion. But if filing this now helps avoid problems with Mike, and you think it's the best thing to do, I'm happy to do so. Just let me know. Thanks.

From: Black, Michael
Sent: Thursday, January 30, 2014 3:38 PM
To: Mattioli, Mark
Cc: VanDyke, Lawrence; Darkenwald, Scott
Subject: FW: Notice of Withdrawal

Mark:

I am happy to discuss this further with you, but any disagreement over this is just plain silly.

Mr. VanDyke and the attorneys who continue to represent the State have a professional and statutory obligation to file a notice of withdrawal for Mr. VanDyke. It has been a common practice for attorneys from this office to withdraw from cases when their involvement has ceased, and we have made big deal about other attorneys failing to comply with statutory rules on withdrawal in cases before Judge Sherlock.

Mr. VanDyke has been lead counsel on this case for the last year, and the Plaintiffs were informed he was lead counsel a year ago. He has been in charge of this case for a year.

Mr. VanDyke has appeared as attorney for the State as reflected in the attached order, and his appearance is probably reflected in other court filings. Withdrawal is required pursuant to MCA §§ 37-61-403 and 37-61-404, found at <http://leg.mt.gov/bills/mca/37/61/37-61-403.htm> and <http://leg.mt.gov/bills/mca/37/61/37-61-404.htm>

Calling the clerk of court is not a substitute for complying with the statute.

Mike

From: Black, Michael
Sent: Thursday, January 30, 2014 11:20 AM
To: VanDyke, Lawrence; Holnbeck, Beverly
Cc: Cochenour, Matt
Subject: RE: Notice of Withdrawal

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Cc: Cochenour, Matt
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Thank you, though. And let me know if you think differently.

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To: Holnbeck, Beverly
Cc: VanDyke, Lawrence; Cochenour, Matt
Subject: FW: Notice of Withdrawal

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Subject: Notice of Withdrawal

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Bev Holnbeck

Beverly Holnbeck, Legal Assistant
Office of the Montana Attorney General
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Bev Holnbeck

Beverly Holnbeck, Legal Assistant
Office of the Montana Attorney General
406-444-1952

Barnes, John

From: Black, Michael
Sent: Wednesday, February 05, 2014 12:59 PM
To: Mattioli, Mark
Subject: RE: Notice of Withdrawal

Mr. VanDyke should have sought input from both Matt and me, and his failure to do so is unfortunate.

From: Mattioli, Mark
Sent: Tuesday, February 04, 2014 12:47 PM
To: Black, Michael
Subject: RE: Notice of Withdrawal

Mike, as I have been busy juggling several things, I didn't give this joinder request any attention. Lawrence remains responsible for fielding amicus joinder requests. I didn't notice that you weren't looped in. I did not intend to exclude your input.

From: Black, Michael
Sent: Tuesday, February 04, 2014 11:28 AM
To: Mattioli, Mark
Subject: FW: Notice of Withdrawal

Mark:

The attached amicus brief was filed in the Ninth Circuit a week ago.

You informed me on January 20 that Mr. VanDyke had resigned from his position but would be around for a few more months. By that time, Mr. VanDyke had already punted on *Donaldson* but I was not aware that he had blown off the Goetz firm. I still receive emails about amicus requests but pay little attention to them, so I went back and found the *Sevcik* request. On January 22, a draft amicus brief in the *Sevcik* case was circulated and by January 27 this office had decided to sign on. I just learned the attached brief was filed on January 28.

Since *Donaldson* had clearly been dumped by Mr. VanDyke the time the amicus request was received, and there was an expectation that I would be required to step back in, is there a reason why I was not included in the discussion of whether we should sign on to the *Sevcik* amicus brief when the issues are clearly related to what the strategy may be in *Donaldson*?

Mike

From: Mattioli, Mark
Sent: Thursday, January 30, 2014 4:46 PM
To: Black, Michael
Subject: RE: Notice of Withdrawal

Mike, your lead counsel now, but can't the obligations of the statute be satisfied by filing a Notice of Substitution of Counsel? Such a notice, which myself and others have filed in other cases, satisfies the consent of the client and attorney under 37-61-403(1) as well notice to opposing parties as required by 37-61-404.

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Cc: VanDyke, Lawrence; Darkenwald, Scott
Subject: FW: Notice of Withdrawal

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Sent: Thursday, January 30, 2014 11:20 AM
To: VanDyke, Lawrence; Holnbeck, Beverly
Cc: Cochenour, Matt
Subject: RE: Notice of Withdrawal

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Thank you. I modified the caption and signature block to remove counsel. Would you please print on bond and give to Mr. VanDyke or put in his box for his signature. I want to file this by the end of the week. Thank you.

Mike

From: Holnbeck, Beverly
Sent: Thursday, January 30, 2014 10:16 AM
To: Black, Michael
Subject: Notice of Withdrawal

In LJV directory: J:\LJV\Donaldson II 11-0027\Drafts\2014-01-30 Not of Withdrawal-Van Dyke.doc. Do you want me to move that folder back to you?

Bev Holnbeck

Beverly Holnbeck, Legal Assistant
Office of the Montana Attorney General
406-444-1952

Barnes, John

From: Black, Michael
Sent: Saturday, March 22, 2014 8:16 AM
To: Mattioli, Mark; Darkenwald, Scott
Subject: RE: question re USSC appeal

I realize Mark is out of the office next week, but I assume both of you are aware of this morning's Tribune:

<http://www.greatfallstribune.com/article/20140321/NEWS01/303210035/VanDyke-s-status-questioned>

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Actually attached this time.

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Best,

Courtney

Courtney Jenkins
Senior Tax Counsel
Special Assistant Attorney General
P.O. Box 7701
125 N. Roberts
Helena, MT 59601
406.444.5849

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Barnes, John

From: Black, Michael
Sent: Sunday, March 30, 2014 5:31 PM
To: Darkenwald, Scott
Cc: Mattioli, Mark
Subject: RE: question re USSC appeal

Scott:

I hope you are feeling better, and I did not get a chance to talk with you after you returned to work. Did you have the opportunity to talk with Tim about public disclosure of Mr. Vandyke's termination?

Because the landscape has changed significantly over the past few weeks, I think it is important for DOJ to be open and transparent about this. I am getting Mark back in the loop because he will be back in the office tomorrow. I hope the termination can finally be publicly disclosed.

Please let me know. Thanks.

Mike

From: Darkenwald, Scott
Sent: Monday, March 24, 2014 12:12 PM
To: Black, Michael
Subject: Re: question re USSC appeal

Mike. It was always my understanding Lawrence would be leaving in May. That is Tim's call and I will talk to him about it when I am back in. Nothing has changed there that I know about.

I was suggesting you show more self control when it comes to Lawrence. It seems so out of character for you to not be the consummate seasoned professional. You, the lawyer, are critical to DOJ. And we need your dispassionate legal mind and invaluable experience not being clouded.

Scott

Scott Darkenwald
Chief of Staff/ Deputy Director
Department of Justice
406-444-2026
sdarkenwald@mt.gov

On Mar 24, 2014, at 11:12 AM, "Black, Michael" <MBlack2@mt.gov> wrote:

I agree that Mr. VanDyke should exhibit some judicial temperament, but I have no control over that. The issue is whether it can be made public that Mr. VanDyke's employment is terminating permanently in the near term.

From: Darkenwald, Scott
Sent: Sunday, March 23, 2014 1:11 PM
To: Black, Michael
Subject: Re: question re USSC appeal

Mike. I am home with "walking pneumonia " Mark is in Oregon. Don't think I will be in tomorrow. I suggest a little judicial temperament. We will talk about this hopefully Tuesday. I have been out since Wednesday. This email and my suggestion is only sent to you. Scott

Scott Darkenwald
Chief of Staff/ Deputy Director
Department of Justice
406-444-2026
sdarkenwald@mt.gov

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Best,
Courtney

Courtney Jenkins
Senior Tax Counsel
Special Assistant Attorney General
P.O. Box 7701
125 N. Roberts
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Barnes, John

From: VanDyke, Lawrence
Sent: Friday, April 04, 2014 1:11 PM
To: Fox, Tim
Cc: Mattioli, Mark
Subject: RE: Request for Amicus Support

I just don't. I'm working furiously on summary judgment briefing in the immigration case into next week. Then I need to immediately turn to Montana Supreme Court briefing in the Planned Parenthood case. And I need to review and revise (if necessary) the 9th Circuit Big Mountain Jesus brief we're teaming up with Liberty Institute to file. And then I need to turn back to the reply briefing in the immigration case. Plus the other day to day stuff I do like evaluating amicus joins, helping Jon with the Referendum/Initiative lawsuits, etc. And I would like to start taking a day or a half a day off here and there (using vacation) to campaign, but even that looks difficult right now.

So while I would like to take something like this one, it just isn't possible. This would require a significant time commitment on my part – as you both know I write good briefs, but I don't necessarily write fast, especially when the issues are complicated constitutional issues.

Should I ask them if they know of someone who could ghost-write a first draft for us?

From: Fox, Tim
Sent: Friday, April 04, 2014 1:05 PM
To: VanDyke, Lawrence
Cc: Mattioli, Mark
Subject: RE: Request for Amicus Support

Thanks Lawrence. Unless you have time to do this, I don't know how we'd get it done. Everyone else is busy. I hate to tell them "no" because I think it's something we should be doing, especially in light of the fact that we missed joining a recent 2nd Amendment amicus brief. What are the chances that you'd have time for this?

Tim Fox
Attorney General
State of Montana
215 N. Sanders Street
Helena, MT 59601
Tel.: 406-444-2026
Fax: 406-444-3549
E-Mail: timfox@mt.gov
Website: www.doj.mt.gov



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From: VanDyke, Lawrence
Sent: Friday, April 4, 2014 12:28 PM
To: Fox, Tim
Subject: FW: Request for Amicus Support

From: Miko Tempski [<mailto:miko.tempski@saf.org>]
Sent: Wednesday, April 02, 2014 11:17 AM
To: VanDyke, Lawrence
Subject: Request for Amicus Support



Phone: 425.454.7012 | Fax: 425.451.3959

James Madison Building
12500 NE Tenth Pl
Bellevue, WA 98005

Bennion, Jon

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Bennion, Jon

From: Black, Michael
Sent: Wednesday, March 19, 2014 3:11 PM
To: Mattioli, Mark
Subject: RE: question re USSC appeal

Good to hear. I will not be silent about why I believe he should not be elected. Thanks for the clarification.

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Subject: RE: question re USSC appeal

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Bennion, Jon

From: Black, Michael
Sent: Wednesday, February 05, 2014 3:46 PM
To: Mattioli, Mark
Cc: Cochenour, Matt
Subject: Donaldson Case

[REDACTED]

From: Mattioli, Mark
Sent: Tuesday, February 04, 2014 3:46 PM
To: Black, Michael
Subject: FW: Consolidated State Amicus brief in two CA10 marriage cases: Derek Kitchen, et al. v. Gary Herbert, et al., No. 13-4178 and Mary Bishop, et al. v. Sally Howe Smith, et al., Nos. 14-5003, & 14-5006.

[REDACTED]

From: Mattioli, Mark
Sent: Tuesday, February 04, 2014 12:46 PM
To: Black, Michael
Subject: RE: Consolidated State Amicus brief in two CA10 marriage cases: Derek Kitchen, et al. v. Gary Herbert, et al., No. 13-4178 and Mary Bishop, et al. v. Sally Howe Smith, et al., Nos. 14-5003, & 14-5006.

[REDACTED]

From: Black, Michael
Sent: Tuesday, February 04, 2014 11:26 AM
To: Mattioli, Mark
Subject: FW: Consolidated State Amicus brief in two CA10 marriage cases: Derek Kitchen, et al. v. Gary Herbert, et al., No. 13-4178 and Mary Bishop, et al. v. Sally Howe Smith, et al., Nos. 14-5003, & 14-5006.

[REDACTED]

From: Fisher, Tom [<mailto:Tom.Fisher@atg.in.gov>]
Sent: Tuesday, February 04, 2014 9:26 AM

To: Fisher, Tom

Cc: Stickle, Julie

Subject: Consolidated State Amicus brief in two CA10 marriage cases: Derek Kitchen, et al. v. Gary Herbert, et al., No. 13-4178 and Mary Bishop, et al. v. Sally Howe Smith, et al., Nos. 14-5003, & 14-5006.

To Amicus Contacts in Selected States:

Attached is an *amicus curiae* brief to be filed in the Tenth Circuit in two cases, *Derek Kitchen, et al. v. Gary Herbert, et al.*, No. 13-4178 and *Mary Bishop, et al. v. Sally Howe Smith, et al.*, Nos. 14-5003, & 14-5006. (The Tenth Circuit has entered an order allowing each amicus to file a single consolidated brief for both cases.)

The brief supports Utah and Oklahoma as they seek reversal of separate district court rulings invalidating their traditional definitions of marriage under the Fourteenth Amendment. It is very similar to the one Indiana (joined by many of your states) recently filed in the Ninth Circuit in *Beverly Sevcik et al. v. Brian Sandoval, et al.*, No. 12-17668.

The *Kitchen/Bishop* brief is due on Monday, February 10, and we can take joiners until noon that day.

If you have questions or wish to join, please contact me or my assistant, Julie Stickle, who is copied on this message.

Thanks very much for your consideration.

Thomas M. Fisher
Solicitor General
Office of the Attorney General
State of Indiana

Indiana Government Center South, Fifth Floor
302 West Washington Street
Indianapolis, Indiana 46204
tom.fisher@atg.in.gov
T: 317.232.6255 | F: 317.232.7979

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Bennion, Jon

From: Black, Michael
Sent: Wednesday, September 11, 2013 6:02 PM
To: Huff, Andy
Subject: FW: 13-35-237, MCA

FYI

From: Black, Michael
Sent: Wednesday, September 11, 2013 6:01 PM
To: 'Matthew Monforton'
Cc: VanDyke, Lawrence; Mattioli, Mark; Motl, Jonathan; Cochenour, Matt
Subject: RE: 13-35-237, MCA

Matthew:

I forwarded your email to the Chief Deputy but, as you know, the COPP is responsible for investigating all of the alleged violations of the election laws contained in MCA Title 13, Chapter 35, and in conjunction with the county attorneys is responsible for enforcing these election laws.

As far as Sanders County is concerned, the Attorney General has not yet made a determination regarding whether this office will petition for a writ of certiorari. Please let me know if you have any questions or concerns.

Michael G. Black
Bureau Chief
Civil Services Bureau
Montana Department of Justice
215 North Sanders
P.O. Box 201401
Helena, Montana 59620-1401
406-444-2026 telephone
406-444-3549 fax
mblack2@mt.gov

From: Matthew Monforton [<mailto:matthewmonforton@yahoo.com>]
Sent: Wednesday, September 11, 2013 2:37 PM
To: Black, Michael
Cc: VanDyke, Lawrence
Subject: 13-35-237, MCA

Mike:

Now that *Sanders County* is winding down, please find attached a preview of coming attractions.

Feel free to call.

Thanks

Matthew G. Monforton, Esq.
CA State Bar #175518, MT State Bar #5245
Monforton Law Offices, PLLC
32 Kelly Court
Bozeman, Montana 59718
Telephone: (406) 570-2949
Facsimile: (406) 551-6919

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Bennion, Jon

From: Black, Michael
Sent: Monday, January 27, 2014 10:49 AM
To: Mattioli, Mark
Subject: FW: Donaldson, et al. v. State

I realize that you expect to keep Mr. VanDyke's resignation nonpublic "for as long as possible" but, if I need to call Ben Alke regarding Donaldson discovery, I expect to tell him why I am stepping in.

From: Black, Michael
Sent: Monday, January 27, 2014 10:31 AM
To: Cochenour, Matt; VanDyke, Lawrence
Subject: RE: Donaldson, et al. v. State

Lawrence:

I have not heard back from you regarding discovery issues in this case, so there is nothing outstanding for me to address in this regard. I assume you have resolved any outstanding issues with Plaintiffs' counsel.

Mike

From: Cochenour, Matt
Sent: Thursday, January 23, 2014 8:58 AM
To: VanDyke, Lawrence; Black, Michael
Subject: RE: Donaldson, et al. v. State

Hi Lawrence,

I had a phone message from Ben Alke regarding Donaldson. It wasn't a detailed message, but I assume he wants to discuss the meet/confer letter and amending complaint. He is in depositions today, but will call back tomorrow.

Thanks,
Matt

From: VanDyke, Lawrence
Sent: Friday, January 10, 2014 7:50 AM
To: Black, Michael
Cc: Cochenour, Matt
Subject: RE: Donaldson, et al. v. State

Thanks Mike. It would be very helpful for me to have yours and Matt's thoughts in developing a response. And I think it would be good for you to attend the meet and confer with me. Is there sometime next week that you and Matt can block out an hour or two to discuss the contents of the letter with me?

From: Black, Michael
Sent: Wednesday, January 08, 2014 10:10 AM
To: VanDyke, Lawrence
Cc: Cochenour, Matt
Subject: FW: Donaldson, et al. v. State

I will defer to you on this, as lead counsel on this case, regarding any response to Plaintiffs. I realize Mark and I assisted Matt with the discovery responses because you were out of the office, but I see no need to wade into this at this time. I believe Matt should be looking to you as well. Thanks.

From: Karen Schultz [<mailto:kschultz@Goetzlawfirm.com>]

Sent: Thursday, January 02, 2014 4:34 PM

To: Black, Michael; VanDyke, Lawrence; Cochenour, Matt

Cc: Ben Alke; JimT@aclumontana.org; Krystal Holden (krystelp@aclumontana.org); 'Borenstein, Ruth N.' (RBorenstein@mofo.com); splunkett@mofo.com; eregier@mofo.com; aruiz@mofo.com; Eqill@aclunc.org

Subject: Donaldson, et al. v. State

Please see the attached letter of today from Ben Alke. The letter was also mailed to you today.

Karen Schultz, Legal Assistant

Goetz, Baldwin & Geddes, P. C.

35 North Grand (zip code - 59715)

P. O. Box 6580

Bozeman, MT 59771-6580

Ph: (406) 587-0618

Fax: (406) 587-5144

Bennion, Jon

From: Mattioli, Mark
Sent: Thursday, October 17, 2013 4:18 PM
To: Black, Michael
Subject: FW: Sanders County -- Recommendation re Petition for Cert.

Follow Up Flag: Follow up
Flag Status: Completed

Mike, sorry for my not timely getting this to you. My Outlook froze this morning and I just closed it out to work on the OCP Chief job description.

Please provide me with the cert deadline so I can calendar it and let's get you admitted ASAP. As I recall, the application is available on the SCOTUS website. I will need to review the cert petition before it's filed and would like Lawrence to do so as well. Thanks.

Mark

From: Fox, Tim
Sent: Thursday, October 17, 2013 11:05 AM
To: Mattioli, Mark
Cc: Darkenwald, Scott; VanDyke, Lawrence; Bennion, Jon; Swanson, Cory
Subject: RE: Sanders County -- Recommendation re Petition for Cert.

Mark,

My decision on the Sanders County case is that we seek cert. Please inform Mike Black and let's get the application for cert filed. Thank you. Tim

cc: Scott, Lawrence, Cory, Jon

From: Mattioli, Mark
Sent: Wednesday, October 9, 2013 11:36 AM
To: VanDyke, Lawrence; Bennion, Jon; Swanson, Cory
Cc: Fox, Tim; Darkenwald, Scott
Subject: FW: Sanders County -- Recommendation re Petition for Cert.

Here's Mike Black's recommendation in Sanders County. Tim has reviewed. I intended to forward this on Monday but got sidetracked with the new MIJA case.

Let me know when you've had a chance to review this and then I'll schedule a time to discuss at a meeting which would include Mike Black. Let's have an open, honest and professional discussion about the pros and cons of seeking cert in this case.

Mark

From: Black, Michael
Sent: Thursday, October 03, 2013 4:09 PM
To: Mattioli, Mark
Subject: Sanders County -- Recommendation re Petition for Cert.

Mark:

Please find attached my memo recommending that we proceed with petitioning for cert. in the Sanders County matter. Please let me know if you have any questions or concerns.

Michael G. Black
Bureau Chief
Civil Services Bureau
Montana Department of Justice
215 North Sanders
P.O. Box 201401
Helena, Montana 59620-1401
406-444-2026 telephone
406-444-3549 fax
mblack2@mt.gov

Bennion, Jon

From: Cochenour, Matt
Sent: Wednesday, January 29, 2014 1:21 PM
To: Black, Michael
Subject: RE: Beverly Sevcik et al. v. Brian Sandoval, et al., No. 12-17668

It seems related

From: Black, Michael
Sent: Wednesday, January 29, 2014 1:16 PM
To: Cochenour, Matt
Subject: FW: Beverly Sevcik et al. v. Brian Sandoval, et al., No. 12-17668

Mr. VanDyke apparently has time to work on this, though no time to tell us about it or work on *Donaldson*.

From: Fisher, Tom [[mailto:Tom.Fisher\[at\]atg.in.gov](mailto:Tom.Fisher[at]atg.in.gov)]
Sent: Monday, January 27, 2014 12:23 PM
To: Fisher, Tom
Cc: Stickle, Julie
Subject: RE: Beverly Sevcik et al. v. Brian Sandoval, et al., No. 12-17668

With apologies for the interruption, I want to update everyone concerning Indiana's amicus brief (joined so far by Alabama, Alaska, Montana, Nebraska, Oklahoma and Utah) in the Sevcik case.

Based on constructive comments from this group, our own internal discussions, and the need to cut words, we have made several substantive revisions to the brief. I do not think any of these revisions will be controversial, but to aid your consideration of the brief I attach both a clean copy of the most recent draft and a version that compares it to the one circulated last week.

The brief is due tomorrow, and we are happy to welcome joiners until the moment we file. If you could let me know by 12:00 noon EST tomorrow, that would be great.

Thanks much, and please contact me if you have any questions or comments.

TMF

Thomas M. Fisher
Solicitor General
Office of the Attorney General
State of Indiana

Indiana Government Center South, Fifth Floor
302 West Washington Street
Indianapolis, Indiana 46204
[tom.fisher\[at\]atg.in.gov](mailto:tom.fisher[at]atg.in.gov)
T: 317.232.6255 | F: 317.232.7979

From: Stickle, Julie

Sent: Wednesday, January 22, 2014 6:04 PM

To: jneiman@ago.state.al.us; joanne.grace@alaska.gov; Dave.jones@alaska.gov; paula.bickett@azag.gov; daniel.domenico@state.co.us; Osvaldo.Vazquez@myfloridalegal.com; allen.winsor@myfloridalegal.com; npeterson@law.ga.gov; brian.kane@ag.idaho.gov; delayne.deck@ag.idaho.gov; Kris.Ailsieger@ksag.org; wiltonp@ag.state.la.us; restucciae@michigan.gov; LVanDyke@mt.gov; mblack2@mt.gov; katie.spohn@nebraska.gov; appeals@ohioattorneygeneral.gov; mary.mertz@ohioattorneygeneral.gov; frederick.nelson@ohioattorneygeneral.gov; Eric.Murphy@ohioattorneygeneral.gov; patrick.wyrick@oag.ok.gov; Leesa.thompson@oag.ok.gov; jknorr@attorneygeneral.gov; JMcIntosh@scag.gov; Sherri.Wald@state.sd.us; jonathan.mitchell@oag.state.tx.us; bromano@utah.gov; vlp@wvago.gov; christopher.dodrill@wvago.gov; elbert.lin@wvago.gov; wellsik@doj.state.wi.us; potterkc@doj.state.wi.us; stjohnkm@doj.state.wi.us; lenningtondp@doj.state.wi.us; peter.michael@wyo.gov

Cc: Fisher, Tom

Subject: Beverly Sevcik et al. v. Brian Sandoval, et al., No. 12-17668

To Amicus Contacts in Selected States:

Attached for your consideration are a formal amicus memo and an *amicus curiae* brief to be filed in the Ninth Circuit in support of Nevada Governor Brian Sandoval in *Beverly Sevcik et al. v. Brian Sandoval, et al.*, No. 12-17668. The district court, per Judge Robert C. Jones, upheld Nevada's traditional definition of marriage against a Fourteenth Amendment challenge. 911 F. Supp. 2d 996 (D. Nev. 2013).

This *amicus* brief supports and defends Nevada's traditional definition of marriage and is similar in many respects to multi-state amicus briefs Indiana, Virginia, and Michigan have co-authored in the past in other marriage cases, such as *Hollingsworth v. Perry*.

The brief is due on Tuesday, January 28, but to ensure plenty of time for final formatting we would like to get sign-ons by close of business Monday, January 27.

If you have questions or wish to join, please contact me or my assistant, Julie Stickle.

Thanks very much for your consideration.

Thomas M. Fisher
Solicitor General
Office of the Attorney General
State of Indiana

Indiana Government Center South, Fifth Floor
302 West Washington Street
Indianapolis, Indiana 46204
tom.fisher@atg.in.gov
T: 317.232.6255 | F: 317.232.7979

Julianne Stickle
Administrative Assistant to the Solicitor General
302 W. Washington Street
IGCS - Fifth Floor
Indianapolis, IN 46204

317-233-8292
317-232-7979 Fax
julie.stickle@atg.in.gov

NOTICE: This communication may contain privileged or other confidential information. If you have received it in error, please advise the sender by reply email and immediately delete the message and any attachments without copying or disclosing the contents. Thank you.

Bennion, Jon

From: Black, Michael
Sent: Tuesday, September 10, 2013 11:50 AM
To: Mattioli, Mark
Subject: RE: Bureau Chief Meeting

Mark:

Sorry I missed your phone calls. I told my son this morning that, if he stayed home sick, I would need to leave him alone for few hours because I needed to attend the meeting this afternoon. After I got the email canceling the meeting, I told him I would not have to go and I could stay home with him, so it would probably be better for us to meet Wednesday or Thursday.

As far as Sanders County goes, based upon our conversation in late June, I was operating on the assumption that no petition for cert. would be filed and Lawrence had sent an email opposing the office from even seeking rehearing en banc (Lawrence did not copy me on his email). So, the issue of compromising the attorneys fees claim is premised upon us not petitioning for cert., and if a petition may be filed then the strategy should be readdressed.

Let me know when you want to meet. The time between 3:00 and 4:00 is not optimal, otherwise I expect to be free both days. Thanks.

Mike

From: James, Julie on behalf of Mattioli, Mark
Sent: Tuesday, September 10, 2013 9:25 AM
To: DOJ AG Conf; Black, Michael; Fowler, C Mark; Light, Brant; Scheier, James; Fox, Tim; Darkenwald, Scott; VanDyke, Lawrence
Subject: Bureau Chief Meeting
When: Occurs on Tuesday every other week from 2:00 PM to 3:00 PM effective 9/24/2013.
Where: DOJ Conf Room

This is the regularly scheduled meeting of all Bureau Chiefs that will occur every other Tuesday at 2:00. Most will be held in the DOJ conference room unless otherwise notified.

Bennion, Jon

From: Holnbeck, Beverly
Sent: Thursday, April 24, 2014 2:07 PM
To: Black, Michael
Subject: RE: Donaldson

Have four binders on my desk from Mr. VanDyke.

From: Black, Michael
Sent: Thursday, April 24, 2014 12:30 PM
To: Holnbeck, Beverly
Cc: Cochenour, Matt
Subject: Donaldson

Bev:

I am looking for the old hardcopy files in Donaldson. Anthony Johnstone had organized them, including some notebooks. Mr. VanDyke abdicated his role as lead counsel in this case over three months ago and then I was requested to quit speaking with him after the confrontation about staff treatment in early February. I assume Mr. VanDyke may still have the files. Could you please track down the files for me? Matt and I need them.

Thanks.

Michael G. Black
Bureau Chief
Civil Services Bureau
Montana Department of Justice
215 North Sanders
P.O. Box 201401
Helena, Montana 59620-1401
406-444-2026 telephone
406-444-3549 fax
mblack2@mt.gov

Bennion, Jon

From: Darkenwald, Scott
Sent: Tuesday, January 28, 2014 12:18 PM
To: Black, Michael
Cc: Mattioli, Mark
Subject: Re: Donaldson, et al. v. State

I appreciate that completely. We will talk about this afternoon.

Scott Darkenwald
Chief of Staff/ Deputy Director
Department of Justice
406-444-2026
sdarkenwald@mt.gov

On Jan 28, 2014, at 12:04 PM, "Black, Michael" <MBlack2@mt.gov> wrote:

I am in a different situation here. I will not allow my professional reputation to be sullied by the brattish behavior of Mr. VanDyke. I have worked too hard to develop positive relationships with judges and other lawyers, based in large part upon appropriate candor, which I will not sacrifice.

From: Darkenwald, Scott
Sent: Tuesday, January 28, 2014 9:34 AM
To: Black, Michael; Mattioli, Mark
Subject: RE: Donaldson, et al. v. State

Mike ... your frustration does not exceed ours ... you and Mark and I will have this conversation in private between the 3 of us after the Bureau chief meeting ... Scott

Scott Darkenwald
Chief of Staff
Department of Justice
406-444-2026
<https://doj.mt.gov>

<image001.png>

CONFIDENTIALITY NOTICE: This email contains information from the Montana Attorney General's Office which is confidential and/or privileged. If you are not the intended recipient, please do not disclose, copy, distribute or use the contents of this information. Please notify me by return email and delete the information you received in error immediately. Thank you.

From: Black, Michael
Sent: Tuesday, January 28, 2014 9:08 AM
To: Mattioli, Mark
Cc: Darkenwald, Scott
Subject: RE: Donaldson, et al. v. State

Mark:

For the past year, I have been told the AG wants to run this office like a law firm. But running a law firm means insisting on accountability, rewarding proficiency, and demanding professionalism. Ever since he has arrived, Mr. VanDyke has been arrogant and disrespectful to others, both in and outside of this office. He avoids work. He does not have the skills to perform, nor desire to learn how to perform, the work of a lawyer. Now that he has resigned and refuses to work on cases assigned to him, while remaining on the payroll for the next several months, I am not allowed to disclose he is leaving even when it would be prudent in order to obtain extension of deadlines because we are short-handed. This is not how to run this office like a law firm.

I am working from home this morning because my son is sick, but I expect to make it to the meeting this afternoon. I also expect to call the Goetz firm after the meeting and let them know why Mr. VanDyke blew them off and will no longer be working on the Donaldson case. I see no reason to place undue burden on the lawyers in this office who have acted responsibly and done their work in order to help Mr. VanDyke coast out the door.

Mike

From: Mattioli, Mark
Sent: Monday, January 27, 2014 12:19 PM
To: Black, Michael
Subject: RE: Donaldson, et al. v. State

At this point I think you should schedule a meeting with Tim and Scott and I to discuss.

From: Black, Michael
Sent: Monday, January 27, 2014 12:13 PM
To: Mattioli, Mark
Subject: FW: Donaldson, et al. v. State

So Lawrence told them 2 ½ weeks ago that he would address the discovery issues and respond within a week, then failed to do so and never bothered to tell anyone else about his decision not to do anything about it. I can either tell the Goetz firm why we need an extension to deal with it or I can tell Judge Sherlock in response to the motion to compel. I do not believe it is possible to avoid disclosure.

From: VanDyke, Lawrence
Sent: Monday, January 27, 2014 10:47 AM
To: Black, Michael; Cochenour, Matt
Cc: Mattioli, Mark
Subject: RE: Donaldson, et al. v. State

No – The only communication I had with Ben was the attached email, which you were copied on. That is it. I have not reviewed or addressed their discovery letter, nor communicated further about the requested meet-and-confer about experts, stipulations, etc.

From: Black, Michael
Sent: Monday, January 27, 2014 10:43 AM
To: VanDyke, Lawrence; Cochenour, Matt
Cc: Mattioli, Mark
Subject: RE: Donaldson, et al. v. State

The question is: what have you done? Did you take care of this?

From: VanDyke, Lawrence
Sent: Monday, January 27, 2014 10:39 AM
To: Black, Michael; Cochenour, Matt
Subject: RE: Donaldson, et al. v. State

This is something you need to discuss with Mark. I am not going to be involved with Donaldson going forward.

From: Black, Michael
Sent: Monday, January 27, 2014 10:28 AM
To: Cochenour, Matt; VanDyke, Lawrence
Subject: RE: Donaldson, et al. v. State

Lawrence:

I have not heard back from you regarding discovery issues in this case, so there is nothing outstanding for me to address in this regard. I assume you have resolved any outstanding issues with Plaintiffs' counsel.

Mike

From: Cochenour, Matt
Sent: Thursday, January 23, 2014 8:58 AM
To: VanDyke, Lawrence; Black, Michael
Subject: RE: Donaldson, et al. v. State

Hi Lawrence,

I had a phone message from Ben Alke regarding Donaldson. It wasn't a detailed message, but I assume he wants to discuss the meet/confer letter and amending complaint. He is in depositions today, but will call back tomorrow.

Thanks,
Matt

From: VanDyke, Lawrence
Sent: Friday, January 10, 2014 7:50 AM
To: Black, Michael
Cc: Cochenour, Matt
Subject: RE: Donaldson, et al. v. State

Thanks Mike. It would be very helpful for me to have yours and Matt's thoughts in developing a response. And I think it would be good for you to attend the meet and confer with me. Is there sometime next week that you and Matt can block out an hour or two to discuss the contents of the letter with me?

From: Black, Michael
Sent: Wednesday, January 08, 2014 10:10 AM
To: VanDyke, Lawrence
Cc: Cochenour, Matt
Subject: FW: Donaldson, et al. v. State

I will defer to you on this, as lead counsel on this case, regarding any response to Plaintiffs. I realize Mark and I assisted Matt with the discovery responses because you were out of the office, but I see no need to wade into this at this time. I believe Matt should be looking to you as well. Thanks.

From: Karen Schultz [<mailto:kschultz@Goetzlawfirm.com>]
Sent: Thursday, January 02, 2014 4:34 PM
To: Black, Michael; VanDyke, Lawrence; Cochenour, Matt
Cc: Ben Alke; JimT@aclumontana.org; Krystal Holden (krystelp@aclumontana.org); 'Borenstein, Ruth N.' (RBorenstein@mofo.com); splunkett@mofo.com; eregier@mofo.com; aruiz@mofo.com; Egill@aclunc.org
Subject: Donaldson, et al. v. State

Please see the attached letter of today from Ben Alke. The letter was also mailed to you today.

Karen Schultz, Legal Assistant
Goetz, Baldwin & Geddes, P. C.
35 North Grand (zip code – 59715)
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Ph: (406) 587-0618
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