

/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

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