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MONTANA FOURTH JUDICIAL DISTRICT COURT
MISSOULA COUNTY

CITY OF MISSOULA, Plaintiff, v. TIMOTHY C. FOX, in his official capacity as the Attorney General for the State of Montana, Defendant.	Cause No. DV-18-429 Dept. No. 2 Judge Robert L. Deschamps, III **BRIEF OF TOM PLATT, MARK GRIMES, HEIDI KENDALL, AND JOHN MOFFATT AS *AMICI CURIAE* IN SUPPORT OF PLAINTIFF CITY OF MISSOULA'S MOTION FOR SUMMARY JUDGMENT**

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Tom Platt, Mark Grimes, Heidi Kendall, and John Moffatt respectfully submit this brief as *amici curiae* in support of Plaintiff City of Missoula's motion for summary judgment.

INTERESTS OF *AMICI CURIAE*

Tom Platt, Mark Grimes, Heidi Kendall, and John Moffatt (collectively, "*Amici*") are residents of Missoula (the "City") who strongly support the validity of Missoula Ordinance 3581 (the "Ordinance") at issue in this case. *Amici* are not zealots who support banning guns entirely or taking away anyone's Second Amendment rights. Rather, they believe that the Ordinance is a reasonable, common-sense measure well within the City's lawful powers to ensure that firearms do not fall into the hands of people who by law are not entitled to possess them. *See* Missoula Municipal Code § 9.60.010 (explaining that the Ordinance was adopted "to prevent and suppress the possession of firearms by convicted felons, adjudicated mental incompetents, illegal aliens, and minors"). Indeed, *Amici* contend that the fundamental error committed by Attorney General Tim Fox in ruling the Ordinance invalid was to treat the Ordinance as effectively a ban on firearms sales, when in fact it is nothing of the sort.

Each of *Amici* offers his or her own unique perspective on the need for and validity of the Ordinance—a personal perspective that the City itself cannot present here. Together, they demonstrate the broad range of views of average Missoulians

who support the Ordinance and believe that a self-governing city like Missoula has the authority to take this reasonable step to protect its own residents.

Tom Platt is an avid hunter and gun owner, and has been his whole life. He owns about a dozen firearms, including hunting rifles, shotguns, an assault weapon, and several handguns. He is also a father who enjoys passing along his enthusiasm for hunting to his son, but understands the importance of teaching his son about gun safety and responsible gun ownership.

Mr. Platt is a strong supporter of the Ordinance because he believes that the background checks it requires for most gun sales within the city limits will help close a major loophole in existing federal law and prevent guns from falling into the hands of felons, minors, and others who are not legally entitled to possess them. Mr. Platt testified in support of the Ordinance while it was under consideration by the Missoula City Council. After its enactment, he obtained a Federal Firearms License to engage in firearms transactions in compliance with the Ordinance. Amidst talk that existing Federal Firearms Licensees ("FFLs") might refuse to participate in the background checks for private firearms sales required by the Ordinance, Mr. Platt wanted to ensure that at least one FFL in Missoula would be prepared to conduct background checks required by the Ordinance.

Mark Grimes is a distinguished professor of biology at the University of Montana. He also owns about a dozen firearms and has enjoyed hunting and

shooting for many years. In recent years, he has participated regularly in pistol shooting competitions and often serves as a range officer, to ensure that the competition is conducted safely. Dr. Grimes is a member of the U.S. Practical Shooting Association, the Big Sky Practical Shooting Club, and the Glock Sport Shooting Foundation. His interest in gun safety extends to his family; he has two daughters, and has been careful to teach them how to operate firearms safely.

Dr. Grimes has also had a personal experience that impressed upon him powerfully the importance of the background checks mandated by the Ordinance. More than a decade ago, Dr. Grimes wanted to sell a handgun that he no longer needed. He arranged to put it on sale through a gun shop and happened to be in the shop when a buyer expressed interest in the gun. When Dr. Grimes revealed that it was his gun that was for sale, the prospective buyer offered to buy it from him for cash, at a good price, but only if Dr. Grimes sold it to him in a direct private sale—not through the gun shop.

Dr. Grimes did so and has regretted it ever since. A couple of years after the sale, Dr. Grimes was visited by a Missoula police officer trying to trace the origin of the gun. It turns out that the gun Dr. Grimes sold had been used in a homicide in Denver. With the benefit of 20/20 hindsight, Dr. Grimes now realizes that his buyer may have been so eager to buy the gun through a private sale precisely

because he could avoid a background check that way. And Dr. Grimes believes that the Ordinance will help prevent such unfortunate incidents in the future.

Heidi Kendall has lived most of her life in Missoula and is a respected and well-known member of the community. She has served on both the Missoula City Council and the Missoula County Public Schools Board of Trustees. Although no longer a member of the City Council at the time, Ms. Kendall was a strong supporter of the Ordinance and testified and presented in support of it. For the past several years, she has been the Suicide Prevention Coordinator for the Missoula City-County Health Department, although she just left that position last month. As Suicide Prevention Coordinator, she lectured on suicide prevention and firearm safety, and became well aware of the unfortunate fact that the great majority of suicides in Missoula and Montana involve the use of firearms.

Finally, **John Moffatt** had an experience that was once unique, and is now far too common: he was the victim of a school shooting. In 1986, he was the vice principal at Fergus High School in Lewistown, Montana, when a disturbed teenager went on a shooting spree. The 14-year-old shot and killed one of his teachers. He ran out of the classroom and found himself face-to-face with Mr. Moffatt, who was racing to the classroom to find out what had happened. The teenager shot Mr. Moffatt at point-blank range, and Mr. Moffatt likely would have died but for the fact that a parent who was visiting the school at the time happened

to be a former Army medic. In recent years, Mr. Moffatt has spoken before school audiences about gun safety. He grew up in Montana and respects cherished traditions including hunting and competitive shooting. But as he explains in his speaking engagements, there is also a need for common-sense gun regulations, including in particular the background checks required by the Ordinance.

INTRODUCTION AND SUMMARY OF ARGUMENT

Amici understand that firearms are an important part of Montana's rich culture. But this understanding is not incompatible with the need for background checks to ensure that firearms do not fall into the hands of felons, illegal immigrants, minors, or people with mental illnesses. The Ordinance was enacted specifically to further that goal in the interest of public safety, and is a lawful exercise of local government power expressly supported by the plain language of Section 45-8-351(2)(a) of the Montana Code. The Attorney General's Opinion to the contrary improperly treated background checks as if they were the same as a complete ban on firearms sales, but this was a serious error and wholly unsupported by the law. In fact, background checks are a narrow and carefully targeted measure to ensure that guns are not purchased by those who are not legally entitled to possess them, and they impose at most a trivial burden—a brief delay, often no more than 15 minutes, in *Amici*'s experience—on the ability of a law-abiding resident of Missoula to purchase a firearm. Experience demonstrates

that background checks, which have been required by federal law for the past 25 years, are an effective tool to reduce gun violence and save lives.

Moreover, contrary to the Attorney General's arguments, the Ordinance does not improperly "apply to or affect" the right to keep and bear arms within the meaning of Section 7-1-111(9) of the Montana Code. Section 7-1-111(9) must be read in harmony with Section 45-8-351(2)(a), and cannot properly be read to take away from self-governing cities the powers expressly granted to them under Section 45-8-351(2)(a). The background checks required by the Ordinance do not prevent any lawful purchase of firearms, and impose at most a trivial delay before a firearms transaction can be completed.

ARGUMENT

I. THE ORDINANCE IS A LAWFUL EXERCISE OF THE CITY'S POWER TO PREVENT AND SUPPRESS FIREARM POSSESSION BY PROHIBITED INDIVIDUALS.

The Attorney General erred in determining that Section 45-8-351 of the Montana Code preempts the Ordinance. While Subsection (1) describes what local governments may not do with respect to the regulation of firearms, Subsection (2)(a) provides a number of exceptions when local legislation is expressly permitted. Among other things, the statute expressly declares that local governments have the "power to prevent and suppress . . . the possession of

firearms by convicted felons, adjudicated mental incompetents, illegal aliens, and minors." Mont. Code Ann. § 45-8-351(2)(a).

In his Opinion, the Attorney General arbitrarily characterizes these exceptions as "narrow," 57 Mont. Op. Att'y Gen. No. 1 ¶¶ 17, 19 (Jan. 26, 2017) (hereinafter, "AG Op."), but the Attorney General cites no support for this claim, and there is none. To the contrary, Montana law instructs that "[t]he powers and authority of a local government unit with self-government powers shall be liberally construed." Mont. Code Ann. § 7-1-106. And because Missoula is a self-governing locality, "[e]very reasonable doubt as to the existence of a local government power or authority shall be resolved *in favor of* the existence of that power or authority." *Id.* (emphasis added).

A. The Plain Language of Section 45-8-351 Supports the Validity of the Ordinance.

The Attorney General's failure to recognize the law's presumption in favor of the power of local governments like Missoula is a fundamental error. It led him to overlook the best evidence of the legislature's intent: the statute's plain text. The Attorney General concludes, without any statutory basis, that the statutory exceptions of Subsection (2)(a) "do not allow the regulation of purchases, sales or transfers of firearms; rather, the exceptions clearly pertain only to specific situations involving the use and possession of firearms." AG Op. ¶ 17. But this arbitrary assertion fails to take into account the City's express authority to take

action "to *prevent and suppress* . . . the possession of firearms by convicted felons" and others who are not entitled by the law to possess them. Mont. Code Ann. § 45-8-351(2)(a) (emphasis added).

The words "prevent" and "suppress" must be ascribed meaning. *See Taylor v. Matejovsky*, 261 Mont. 514, 520, 863 P.2d 1022, 1026 (1993) ("A statute must be construed in a way that gives effect to all of its provisions."). The legislature could not have supplied local governments with the power to prevent and suppress possession of firearms by restricted persons without permitting reasonable mechanisms by which to implement that power. The express purpose of the Ordinance is to prevent and suppress possession of firearms by the persons listed in Subsection (2)(a) of the state statute. *See* Missoula Municipal Code § 9.60.010. Background checks are directly related to that purpose; they are meant to determine who is a restricted person (such as a convicted felon) at the point of transfer and to stop that individual from gaining possession of a firearm—*i.e.*, to *prevent* possession before it happens. It is difficult to imagine any policy more narrowly tailored to the local power expressly permitted in Subsection 2(a) than background checks. To hold that background checks are not among the reasonable measures that local government may permissibly employ "to prevent and suppress" possession by restricted persons is to effectively write Subsection (2)(a) out of the Montana Code.

As the City's brief shows, background checks have proven effective in serving the purpose underlying the Ordinance: keeping guns out of the hands of restricted individuals. *See* City's Brief in Support of Summary Judgment (hereinafter, "City Br.") at 6. Since federal background checks have been required, they have prevented more than three million illegal firearm purchases nationwide, and since 1998 they have blocked more than 20,000 sales to convicted felons and other prohibited individuals in Montana alone. *Id.* But the fact that federal law does not extend background checks to private gun transactions has left a loophole that poses a significant threat to public safety. *See* City Br. at 6–7. Not surprisingly, studies show that criminals exploit this loophole in states that do not require background checks for private sales. *See* Daniel W. Webster & Garen J. Wintemute, *Effects of Policies Designed to Keep Firearms from High-Risk Individuals*, 36 Annual Review of Public Health 21, 34 (2015), available at https://www.annualreviews.org/doi/pdf/10.1146/annurev-publhealth-031914-122516 (concluding there is "[m]ounting evidence" that "laws intended to increase the accountability of firearm sellers to avoid risky transfers of firearms"—including laws adopting background checks—"are effective in curtailing the diversion of guns to criminals"). The Ordinance simply closes that loophole for gun sales within the City limits. *See* City Br. at 8–9.[1]

[1] Studies also show that background checks reduce firearm suicides. As a RAND

The Attorney General argues that if Subsection (2)(a) is interpreted to permit background checks, then the exceptions to Section 45-8-351(1) will "completely swallow" the rule and "render[ ] . . . meaningless" the general preemption provision in Subsection (1). AG Op. ¶ 19. But this concern is grossly exaggerated and contrary to the plain language of the statute. Subsection (2)(a) simply means what it says: Among other things, local governments have the power to take steps to prevent and suppress possession of firearms by restricted persons. Even read in light of the exceptions in Subsection (2)(a), Subsection (1) still prohibits local governments from enacting a wide range of firearms-related laws, including, for example, a general ban on the sale or transfer of weapons.

B. The Legislative History of Section 45-8-351 Supports the Validity of the Ordinance.

The Attorney General also errs in relying on the legislative history of Section 45-8-351. The Attorney General argues that the legislature clearly intended to preempt local governments from "passing regulations or ordinances

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Corporation survey recently concluded, "the available studies provide moderate evidence that background checks reduce firearm suicides," including "a statistically significant decrease in firearm suicides associated with background checks for those aged 55 or older." Rajeev Ramchand, *Effects of Background Checks on Suicide*, RAND Corporation, https://www.rand.org/research/gun-policy/analysis/background-checks/suicide.html. As *amicus* Heidi Kendall knows all too well from her service as the Suicide Prevention Coordinator, this is a major concern for the people of Missoula. To date, there have been 16 suicides so far this year in Missoula County, and 14 of those suicides (88%) were carried out by use of a firearm.

addressing the sale or transfer of firearms." AG Op. ¶ 20; *see also id.* ¶ 23 ("The purpose of HB 643 was clear—only the state should decide how firearm purchases, sales and transfers should be regulated, if at all."). But that sweeping conclusion is completely unwarranted. It not only ignores the express exceptions included in the statute, but also finds no support in its legislative history.

Representative Bob Thoft of Stevensville sponsored HB 643, the bill that became Section 45-8-351. As reported in the official summary of the House Judiciary Committee hearing on the bill, Representative Thoft explained that the bill was "an act to provide when a local government *may and may not* . . . regualte [sic] the purchase, sale or other transfer . . . of firearms." House Judiciary Committee Minutes, at 7 (Feb. 14, 1985), available at http://courts.mt.gov/portals/189/leg/1985/house/02-14am8-hjud.pdf (emphasis added). Representative Thoft's acknowledgement that the bill was intended in part to explain "when a local government *may* . . . regu[late] the . . . purchase, sale or other transfer . . . of firearms," *id.* (emphasis added), completely undermines the Attorney General's contention that the bill was intended to prevent local governments from regulating firearm purchases, sales, and transfers at all.

Similarly, the proponents of HB 643 did not argue that it was intended to preclude all local regulation of firearm purchases. For example, Senator James Shaw argued that the bill was necessary to defend against a perceived movement to

"disarm our country." Senate Judiciary Committee Minutes, at 5–6, 24 (Mar. 28, 1985), available at http://courts.mt.gov/portals/189/leg/1985/senate/03-28-sjud.pdf. He asserted that the bill addressed local efforts to *ban* firearms, *id.* at 5, not local regulation to prevent purchases of firearms by those not legally entitled to have them.

In his Opinion, the Attorney General relied on statements by various advocates supporting the bill at the House and Senate Judiciary Committee hearings. *See* AG Op. ¶ 22. Even setting aside the impropriety of relying on statements by advocates rather than the intent of legislators, these advocates, too, were expressing concerns about local *bans or prohibitions* on otherwise lawful gun possession and transportation, which are not at issue here. *See, e.g.,* House Minutes at 7 (statement that the bill would prevent local law removing firearms from the general public); *id.* at 149–51 (discussing the Morton Grove, Illinois handgun ban and similar bans in other cities); *id.* at 157 (discussing concerns about prohibitions in other states on gun ownership and possession); Senate Judiciary Committee Minutes, at 6 (Mar. 26, 1985), available at http://courts.mt.gov/portals/189/leg/1985/senate/03-26-sjud.pdf (discussing concern about citizens unknowingly entering a local area where it would be unlawful to transport weapons); *id.* at 37 (expressing concern about local laws that would make it difficult for pistol shooting competitors to travel legally to

competition sites). There is nothing in the available legislative history that expresses any concern about background checks. The Attorney General's reliance on the legislative history was thus fundamentally mistaken; he improperly treated the Ordinance as if it were a ban on firearms, when it is plainly nothing of the sort.

Moreover, the Attorney General erred in relying on the positions urged by outside advocates, including the northwestern region state liaison for the National Rifle Association ("NRA"), Louis J. Brune, III. *See* AG Op. ¶ 22. The positions of outside advocates have little value in interpreting the statute. It is the text of the statute and the intent of the *legislature* that matters. *See* Mont. Code Ann. § 1-2-102 ("In the construction of a statute, the intention of the legislature is to be pursued if possible.").

This is especially true here because the legislative history reflects that, in other respects, the legislature *rejected* the arguments advanced by the NRA state liaison. The Attorney General relies in part on Mr. Brune's critique of a local ordinance contemplated in 1984 that would have prohibited carrying firearms into publicly owned buildings. AG Op. ¶ 23; *see* Senate Minutes at 31–32 (Mar. 26, 1985); House Minutes at 150–51. But to the extent the legislature considered that critique, the legislature dismissed it. A Senate amendment adopted in the final legislation specifically *permits* local governments to "prevent and suppress the carrying of concealed or unconcealed weapons to a . . . *publicly owned*

building . . . ." Mont. Code Ann. § 45-8-351(2)(a) (emphasis added); *see* Senate Minutes at 5–6 (Mar. 28, 1985).

Thus, the Attorney General points to nothing in the legislative history evidencing concerns about background checks or other local measures preventing the possession of firearms by restricted persons at the point of sale. Indeed, the Attorney General failed to recognize that even the NRA state liaison acknowledged that Section 45-8-351 would in no way weaken local ordinances regulating the possession of firearms by convicted felons, adjudicated mental incompetents, illegal aliens, and minors. *See* House Minutes at 151.

II. THE ORDINANCE DOES NOT IMPROPERLY APPLY TO OR AFFECT THE RIGHT TO KEEP OR BEAR ARMS.

The Attorney General also erred in concluding that Section 7-1-111(9) of the Montana Code precluded the City from adopting the Ordinance. Section 7-1-111(9) provides:

> A local government unit with self-government powers is prohibited from exercising . . . any power that applies to or affects the right to keep or bear arms, except that a local government has the power to regulate the carrying of concealed weapons.

Mont. Code Ann. § 7-1-111(9). But contrary to the Attorney General's view, the Ordinance's background check requirement does not "apply to or affect the right to keep or bear arms" within the meaning of Section 7-1-111(9).

In his Opinion, the Attorney General claims that "[Section] 7-1-111(9) clearly places a broad limitation on the power of self-governing cities to enact any ordinance *that regulates the sale and transfer of firearms*." AG Op. ¶ 14 (emphasis added). But that is simply not what the statute says; rather, it prohibits the exercise of any power that "applies to or affects the *right* to keep or bear arms." Mont. Code Ann. § 7-1-111(9) (emphasis added). The statute does not preclude any ordinance that has anything to do with firearms, and the right to keep or bear arms is not affected by a simple background check requirement.

As an initial matter, Section 7-1-111(9) must be read in harmony with Section 45-8-351(2)(a), which expressly gives local governments the power to take steps to prevent and suppress the possession of firearms by felons and others. *See, e.g., Hawley v. Bd. of Oil & Gas Conservation*, 2000 MT 2, ¶ 12, 297 Mont. 467, 993 P.2d 677 ("Interpretations that give effect to the legislation are always preferred over interpretations that treat the statute as void or as mere surplusage."). The Montana legislature's express recognition of the power of local governments to regulate firearms under Section 45-8-351(2)(a) confirms that Section 7-1-111(9) does not have the broad prohibitory effect that the Attorney General assumes. For both statutes to be given effect, the "power to prevent and suppress . . . the possession of firearms" by restricted persons expressly granted by Section 45-8-351(2)(a) cannot be prohibited under Section 7-1-111(9) as a "power

that applies to or affects the right to keep or bear arms." The power extended to local governments in Section 45-8-351(2)(a) to adopt background checks to prevent felons, illegal aliens and others from unlawfully obtaining firearms does not apply to or affect the *right* to keep or bear arms under Section 7-1-111(9) because it does not preclude conduct or activity within the scope of that right.[2]

To determine whether a local government action applies to or affects the right to keep or bear arms within the meaning of Section 7-1-111(9), it is first necessary to understand the scope of that right. And critically, under both the Montana and U.S. Constitutions, that right has significant boundaries that are important here. In particular, felons and others who will be prevented from purchasing a gun by virtue of background checks have no right to keep or bear arms. *See State v. Fadness*, 2012 MT 12, ¶ 31, 363 Mont. 322, 268 P.3d 17 ("It goes without saying that an incarcerated individual does not have the right to keep or bear arms while incarcerated, and nothing in the plain language of Article II, Section 12 guarantees such a right. It is also axiomatic that the right of a felon to keep or bear arms may be regulated in the interest of public safety, and again

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[2] *Amici* agree with the City that Section 45-8-351 is not applicable to localities with self-government powers. *See* City Br. at 24–27. However, Subsection 2(a) of Section 45-8-351 is nevertheless an essential tool for interpreting the scope of Section 7-1-111(9), because it is inconceivable that the legislature intended localities with self-governing powers to have *less* power under Section 7-1-111(9) than is permitted to general power local governments under Section 45-8-351(2)(a). *See* Mont. Code Ann. § 7-1-101 ("[Self-government] powers include but are not limited to the powers granted to general power governments.").

nothing in the plain language of Article II, Section 12 states otherwise." (footnote omitted)); *see also District of Columbia v. Heller*, 554 U.S. 570, 626–27 (2008) ("[N]othing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill . . . .").

The legal authorities cited by the Attorney General have nothing to do with background checks, and do not support his contention that requiring background checks for firearm sales applies to or affects the right to keep and bear arms within the meaning of Section 7-1-111(9). *See* AG Op. ¶ 13. The cases quoted in the Attorney General's Opinion merely explain that the right to keep and bear arms generally includes, for example, the right to purchase arms and closely-related acts necessary to exercise the right, such as obtaining bullets. But those cases do not address the limitations on the right applicable to particular categories of people, like felons, who do not have any legal right to keep or bear arms. Moreover, even the authorities cited by the Attorney General acknowledge that the right to keep and bear arms is not absolute, and that reasonable regulations are consistent with the right. *See, e.g.*, *Andrews v. State*, 50 Tenn. 165, 181 (1871) ("But the power is given to regulate, with a view to prevent crime.").

There is no support for the Attorney General's position that background checks apply to or affect the right to keep or bear arms. Since the U.S. Supreme Court's decision in *Heller*, federal appellate courts have largely adopted a two-step

approach to determine whether the right to keep and bear arms is violated. In the first step, the courts evaluate whether the right is even implicated—in other words, "whether the challenged law imposes a burden on conduct falling within the scope of the [right]." *Peterson v. Martinez*, 707 F.3d 1197, 1208 (10th Cir. 2013) (citation omitted); *see United States v. Chovan*, 735 F.3d 1127, 1136 (9th Cir. 2013) (adopting this approach). If the right to keep and bear arms is not implicated, then the court's analysis ends there.

Although the phrase "applies to or affects the right" in Section 7-1-111(9) is not defined in the statute, the analysis used by the federal courts under the Second Amendment offers a useful analytical framework. That is, if the Ordinance does not impose a burden on conduct falling within the scope of the right to keep or bear arms, then it does not "appl[y] to or affect[ ] the right," and does not run afoul of Section 7-1-111(9).

The cases on point demonstrate that, contrary to the Attorney General's view, background check requirements do not implicate the right to keep or bear arms. In *Rocky Mountain Gun Owners v. Hickenlooper*, 371 P.3d 768 (Colo. Ct. App. 2016), the Colorado court considered whether state legislation imposing mandatory background checks for transfers of firearms between private parties was permissible in light of Colorado's constitutional right to keep and bear arms, which is nearly identical to Montana's constitutional provision. The Colorado court held

that the background check legislation did "not implicate" the "fundamental right" to keep or bear arms because background checks provide a reasonable mechanism for denying firearms to certain categories of persons, like felons, who are unprotected by that right. *Id.* at 776; *see also Peoples Rights Org., Inc. v. Montgomery*, 756 N.E.2d 127, 173 (Ohio Ct. App. 2001) ("The Brady checks did not, in themselves, impermissibly infringe upon buyers' right to bear arms.").

Further, any impact that background checks may have on the lawful sale and transfer of firearms is *de minimis*. *See, e.g., Heller v. District of Columbia*, 670 F.3d 1244, 1253 (D.C. Cir. 2011) (explaining that regulations with *de minimis* effects do not burden conduct within the scope of the Second Amendment). Like the legislation at issue in *Hickenlooper*, the Ordinance "imposes the same background check requirements on private firearm sales that are already required for sales . . . by firearm dealers. Accordingly, [the Ordinance] does not prevent the private sale of firearms; [it] merely creates an additional step for those sales not taking place through a licensed gun dealer." 371 P.3d at 776–77. Background checks do not preclude any lawful sale of firearms; they merely impose a slight delay before the sale transaction can be completed. As the City's brief demonstrates, the vast majority of background checks under the National Instant Criminal Background Check System ("NICS") are completed instantaneously or within a matter of minutes. *See* City Br. at 6. *Amici* Tom Platt and Mark Grimes

have been through literally dozens of background checks in purchasing firearms over the years, and have found that that the process is fully computerized, is not onerous, and often takes no more than fifteen minutes. Any *de minimis* effect the Ordinance may have on transfers of firearms does not apply to or affect their right to keep or bear arms within the meaning of Section 7-1-111(9).

CONCLUSION

For the foregoing reasons, *Amici* urge the Court to uphold the validity of Missoula Ordinance 3581.

Respectfully submitted this 19th day of July, 2018.

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MONTANA FOURTH JUDICIAL DISTRICT COURT
MISSOULA COUNTY

CITY OF MISSOULA, Plaintiff, v. TIMOTHY C. FOX, in his official capacity as the Attorney General for the State of Montana, Defendant.	Cause No. DV-18-429 Dept. No. 2 Judge Robert L. Deschamps, III **[PROPOSED] ORDER GRANTING UNOPPOSED MOTION FOR LEAVE FOR TOM PLATT, MARK GRIMES, HEIDI KENDALL, AND JOHN MOFFATT TO PARTICIPATE AS *AMICI CURIAE* AND FILE A BRIEF IN SUPPORT OF PLAINTIFF CITY OF MISSOULA'S MOTION FOR SUMMARY JUDGMENT**

[PROPOSED] ORDER

Tom Platt, Mark Grimes, Heidi Kendall, and John Moffatt (collectively, "*Amici*") have filed a motion for leave to participate in this action and file a brief as *amici curiae*. Plaintiff City of Missoula and Defendant Attorney General Timothy Fox have consented to *Amici*'s motion and the requested relief.

Accordingly, IT IS HEREBY ORDERED that *Amici*'s motion for leave to participate in this action and to file a brief as *amici curiae* is GRANTED.

Dated: _____, 2018 By: _____

JUDGE ROBERT L. DESCHAMPS, III
Montana Fourth Judicial District Court