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9 **MONTANA FOURTH JUDICIAL DISTRICT COURT**
MISSOULA COUNTY

10
11 CITY OF MISSOULA,

12 Plaintiff,

13 v.

14 TIMOTHY C. FOX, in his official
15 capacity as the Attorney General for the
State of Montana,

16 Defendant.

Cause No. DV-18-429

Dept. No. 2

Judge Robert L. Deschamps, III

**AMICUS CURIAE NATIONAL RIFLE
ASSOCIATION OF AMERICA, INC.'S
BRIEF IN OPPOSITION TO PLAINTIFF
CITY OF MISSOULA'S MOTION FOR
SUMMARY JUDGMENT AND IN SUPPORT
OF DEFENDANT TIMOTHY C. FOX'S
CROSS MOTION FOR SUMMARY
JUDGMENT**

17
18 Amicus Curiae National Rifle Association of America, Inc. respectfully submits this brief
19 in opposition to Plaintiff City of Missoula's Motion for Summary Judgment and in support of
20 Defendant Timothy C. Fox's Cross Motion for Summary Judgment in this action.

21 **IDENTITY AND INTEREST OF AMICUS CURIAE**

22 The National Rifle Association of America, Inc. (NRA) is the nation's oldest civil rights
23 organization and the foremost defender of the right to keep and bear arms. Founded in 1871, the
24 NRA has approximately five million members and is America's leading provider of firearms

1 marksmanship and safety training for civilians. The NRA has a strong interest in this case
2 because its members' right to purchase firearms are protected from regulation by the statutory
3 preemption provisions that the City of Missoula seeks to evade. The NRA is filing this brief
4 pursuant to the scheduling order entered by the Court on July 31, 2018.

5 INTRODUCTION

6 The Montana Legislature, in the exercise of the sovereign power vested in it by the
7 people of Montana, has reserved to itself the exclusive authority to regulate the purchase, sale,
8 and transfer of firearms. *See* Mont. Code Ann. §§ 7-1-111(9) (2017); 45-8-351(1) (2017).
9 Section 7-1-111(9) expressly denies to self-governing local government units, like the City of
10 Missoula, “any power that applies to or affects the right to keep or bear arms, except that a local
11 government has the power to regulate the carrying of concealed weapons.” Mont. Code Ann. § 7-
12 1-111(9). A restriction that regulates the ability of law-abiding, responsible citizens to acquire
13 firearms plainly “applies to or affects the right to keep or bear arms,” as that right would not
14 mean anything without the right to acquire firearms.

15 Despite this clear statutory prohibition, in 2016, the City of Missoula, a local government
16 unit with self-governing powers that is subject to Section 7-1-111(9), adopted an ordinance—
17 which we will call the “Firearm Transfer Ordinance”—that seeks to regulate “*every* firearm
18 transfer” that takes place in the City. Missoula, Mont., Code § 9.60.030(A) (emphasis added).
19 Subject to limited exceptions, the Firearm Transfer Ordinance mandates that “no person shall
20 transfer a firearm, and no person shall receive a firearm, without complying with this chapter,
21 including that the parties must comply with the process described in section 9.60.040.” *Id.*
22 Section 9.60.040, in turn, “requires that parties to a sale or transfer made by one who is not a
23 licensed firearms dealer must meet with a licensed dealer and successfully complete a
24

1 background check conducted through that dealer before the sale or transfer may be completed.”

2 See Plaintiff City of Missoula’s Brief in Support of Motion for Summary Judgment (“Missoula
3 Br.”) at 9; Missoula, Mont., Code, § 9.60.040.¹

4 There is debate over the policy ramifications of “universal background checks,” but
5 regardless of one’s views on that policy, requiring law-abiding, responsible citizens to engage in
6 background checks plainly *affects* their right to keep or bear arms. At a minimum, a background
7 check requirement creates “delay in purchase, sale, or other transfer” of a firearm, Mont. Code
8 Ann. § 45-8-351(1), and the Montana legislature has made clear that local governments have no
9 authority to cause such delay.

10 On January 26, 2017, the Attorney General issued a legal opinion that declared the
11 Firearm Transfer Ordinance invalid. The Attorney General concluded that the Ordinance applied
12 to the right to keep or bear arms in violation of Section 7-1-111(9), reasoning that “one cannot
13 try to regulate the ability to acquire firearms (sale or transfer) without exercising power that
14 applies to or affects the right to keep or bear arms.” 57 Mont. Op. Atty. Gen. No. 1, ¶ 14, 2017
15 WL 392753, at *4 (Jan. 26, 2017). For this reason, the Attorney General concluded, the Firearm
16 Transfer Ordinance is *ultra vires*.

17 The Attorney General also addressed the City of Missoula’s contention that the Firearm
18 Transfer ordinance somehow is authorized by exceptions to the preemption regime. The
19 Attorney General rejected the City’s tortured interpretation of the statute, reasoning that “[t]he
20 narrow exceptions to this general rule . . . do not allow the regulation of purchases, sales or
21 transfers of firearms; rather, the exceptions clearly pertain only to specific situations involving
22 the use and possession of firearms.” *Id.*, ¶ 17, 2017 WL 392753, at *4-*5. While local

23
24 ¹ Federal law addresses when background checks are required in transactions that do involve a licensed firearm
dealer. See 18 U.S.C. § 922(t).

1 governments are authorized to regulate possession of firearms by certain classes of individuals
2 such as convicted felons and illegal aliens, only the State itself is authorized to “decide how
3 firearm purchases, sales and transfers should be regulated, if at all. In other words, the regulation
4 of the sale and transfer of firearms is an area affirmatively subjected to state control as defined
5 by Mont. Code Ann. § 7-1-113.” *Id.*, ¶ 23, 2017 WL 392753, at *6.

6 The Attorney General has correctly concluded that Missoula’s Firearm Transfer
7 Ordinance is preempted by state law, and this Court should ratify that conclusion.

8 ARGUMENT

9 This case concerns a local government’s effort to exercise power that the State legislature
10 has expressly denied to it. In its attempt to justify its unlawful Firearm Transfer Ordinance,
11 Missoula relies on two Montana statutes that, under basic principles of statutory construction,
12 establish conclusively that the Ordinance is *ultra vires*. First, Missoula argues that Section 7-1-
13 111(9) does not deny it the power to regulate the sale of firearms. Yet the words of the statute are
14 clear. Section 7-1-111(9) prohibits Missoula from exercising “any power that applies to or
15 affects the right to keep or bear arms, except that a local government has the power to regulate
16 the carrying of concealed weapons,” Mont. Code Ann. § 7-1-111(9), and regulating the transfer
17 of firearms affects the right to keep and bear them.

18 Second, Missoula argues that although the *restrictions* in Section 45-8-351 do not apply
19 to it, the *exceptions* to those restrictions somehow “expressly authorize” its regulation of
20 purchases, sales, and transfers of firearms. Missoula Br. at 14. But the text of Section 45-8-351
21 does not permit of piecemeal application: either both the prohibitions of Section 45-8-351(1) and
22 the exceptions of Section 45-8-351(2) apply to Missoula, or they both do not. Furthermore, even
23 if the statute were relevant, it would not authorize the Firearm Transfer Ordinance. Section 45-8-
24

1 351 expressly provides that local governments “*may not prohibit, register, tax, license, or*
2 *regulate the purchase, sale or other transfer (including delay in purchase, sale, or other*
3 *transfer), ownership, possession, transportation, use, or unconcealed carrying of any weapon,*
4 *including a rifle, shotgun, handgun, or concealed handgun.*” Mont. Code Ann. § 45-8-351(1)
5 (emphases added). The exception relied on by Missoula simply permits regulation of “the
6 *possession* of firearms by convicted felons, adjudicated mental incompetents, illegal aliens, and
7 minors.” Mont. Code Ann. § 45-8-351(2)(a) (emphasis added). Missoula’s interpretation, which
8 would allow it to regulate the *transfer* of firearms to law-abiding, responsible citizens under the
9 guise of regulating the *possession* of firearms by felons, mental incompetents, illegal aliens, and
10 minors, fails under basic principles of statutory construction.

11 **I. The Firearms Transfer Ordinance is Preempted by Section 7-1-111(9)**

12 Like every self-governing local government unit in the State of Montana, the City of
13 Missoula is prohibited from exercising any power that applies to or affects the right to keep or
14 bear arms by Section 7-1-111(9). The right to acquire firearms, of course, is an integral
15 component of the right to keep or bear arms. By adopting the Firearm Transfer Ordinance, which
16 subjects those who seek to acquire firearms to background checks, Missoula has exercised a
17 power that applies to and affects the right to keep or bear arms, a power that Section 7-1-111(9)
18 expressly denies to it. The Firearm Transfer Ordinance is thus unlawful on its face.

19 **A. Section 7-1-111(9) Denies Self-Governing Municipalities of the Power to**
20 **Regulate the Transfer of Firearms.**

21 The Montana Constitution of 1972 authorizes the creation of local government units with
22 the power of self-government that are permitted to “exercise any power not prohibited by this
23 constitution, law, or charter.” Art. XI, § 6. The constitutional language makes clear that “[t]he
24 authority of a local government with self-government powers can be limited by express

1 prohibitory language.” *City of Missoula v. Armitage*, 2014 MT 274, ¶ 17, 376 Mont. 448, 452,
2 335 P.2d 736, 739.

3 In Section 7-1-111, the Montana legislature has “very clearly delineated” a number of
4 “powers that self-governing municipalities are ‘prohibited’ from exercising.” *American Cancer*
5 *Society v. State*, 2004 MT 376, ¶ 16, 325 Mont. 70, 76, 103 P.3d 1085, 1089 (2004). The
6 legislative “powers specifically denied to local governments are enumerated in section 7-1-
7 111.” *D & F Sanitation Service v. City of Billings*, 219 Mont. 437, 445, 713 P.2d 977, 982
8 (1986). Among these prohibitions is the authority to exercise “any power that applies to or
9 affects the right to keep or bear arms, except that a local government has the power to regulate
10 the carrying of concealed weapons.” Mont. Code Ann.. § 7-1-111(9). Because this prohibition is
11 found in Section 7-1-111, rather than in the adjacent Section 7-1-112, it is not subject to
12 legislative modification through specific delegations. *See American Cancer Society*, ¶¶ 15-16.

13 The “right to keep or bear arms” necessarily includes the right to acquire firearms. The
14 language of Section 7-1-111(9) is drawn from the Montana Constitution, which explicitly
15 recognizes an individual “right to keep or bear arms”: “The right of any person to keep or bear
16 arms in defense of his own home, person, and property, or in aid of the civil power when thereto
17 legally summoned, shall not be called in question, but nothing herein contained shall be held to
18 permit the carrying of concealed weapons.” Mont. Const., Art. II, § 12.

19 Given the expansive nature of this constitutional language, the Montana Supreme Court
20 has concluded that “Montanans enjoy a broader protection of the right to bear arms under Article
21 II, Section 12 than they do under the Second Amendment.” *Buhmann v. State*, 2008 MT 465, ¶
22 157, 348 Mont. 205, 262, 201 P.3d 70, 108. And even in delimiting the scope of the federal right,
23 the courts have concluded that, if the right to keep or bear arms “is to have any meaning,” *Radich*
24

1 v. *Guerrero*, No. 1:14-cv-00020, 2016 WL 1212437, at *7 (D. N. Mar. I. Mar. 28, 2016), it
2 necessarily “must also include the right to *acquire* a firearm,” *Illinois Ass’n of Firearms*
3 *Retailers v. City of Chicago*, 961 F. Supp. 2d 928, 930 (N.D. Ill. 2014); *see also, e.g., United*
4 *States v. Marzzarella*, 614 F.3d 85, 92 n.8 (3d Cir. 2010) (“[P]rohibiting the commercial sale of
5 firearms . . . would be untenable under *Heller*.”). The Montana legislature has likewise
6 confirmed that “keeping or bearing arms” “includes, but is not limited to “producing,
7 manufacturing, storing, transporting, displaying, marketing, obtaining, selling, transferring,
8 carrying, and wearing arms.” 2017 S.J.R. 11 § (3)(a).

9 The limitation that Section 7-1-111(9) places on the municipal exercise of power over the
10 right to purchase a firearm is broad. The legislature could have chosen to prohibit the exercise of
11 power only when that power significantly infringes upon or violates the right to keep or bear
12 arms, but it instead elected to preempt the entire field. The legislature thus prohibited the
13 exercise of any power that merely “applies to or affects” the right to keep or bear arms. Giving
14 these terms their plain meaning, the statute prohibits any regulation that touches upon the right to
15 transfer a firearm, for “to apply” means “to be pertinent or relevant,”¹ while “to affect” means
16 “to have an influence on or effect a change in.”² The statute thus evinces a clear legislative intent
17 to deny self-governing local government units of the power to pass any ordinance that is
18 pertinent or relevant to the right to purchase a firearm, or that influences or effects a change in
19 that right.³

22 ¹ Q.v., American Heritage Dictionary, v. intr. 1. <https://ahdictionary.com/word/search.html?q=apply>

23 ² Q.v., American Heritage Dictionary, tr. v. 1. <https://ahdictionary.com/word/search.html?q=affect>

24 ³ Contrary to Missoula’s contention, the Montana Supreme Court did not reject a “broad interpretation” of “applies to or affects” in *Billings Firefighters Local 521 v. City of Billings*. Missoula Br. at 20. The Court instead held only that Section 7-1-111(2), which prohibits a municipality for exercising power that applies to or affects the provisions of Title 39, did not deny a municipality of power to adopt an ordinance superseding two code sections of Title 7.

1 In sum, Section 7-1-111(9) prohibits local government units with self-governing powers
2 from exercising any power that touches upon the purchase, sale, or transfer of firearms. “If the
3 intent of the Legislature can be determined from the plain meaning of the words used in the
4 statute, the plain meaning controls and the Court need go no further nor apply any other means of
5 interpretation.” *The Clark Fork Coalition v. Tubbs*, 2016 MT 229, ¶ 20, 384 Mont. 503, 511, 380
6 P.3d 771, 777 (citing *Phelps v. Hillhaven Corp.*, 231 Mont. 245, 251, 752 P.2d 737, 741
7 (1988)). The plain meaning of the words of Section 7-1-111(9) could not be clearer. The State
8 legislature has denied Montana municipalities of the power to adopt any ordinance that “applies
9 to or affects” the right to acquire a firearm. As we will now see, the City of Missoula has
10 arrogated that power to itself in violation of that clear statutory prohibition and in derogation of
11 the legislature’s clear purpose and intent. The task now falls to this Court, therefore, to give force
12 to the plain meaning of the words used in Section 7-1-111(9) and declare that ordinance
13 unlawful.

14 **B. Because the Firearm Transfer Ordinance “applies to and affects the right to**
15 **keep or bear arms,” Section 7-1-111(9) denies Missoula of the power to enact it.**

16 The Missoula Firearm Transfer Ordinance is unlawful because, by imposing a
17 requirement that individuals undergo a background check before they exercise their right to
18 purchase a firearm, Missoula has enacted a law that applies to and affects the right to purchase a
19 firearm. This is, quite simply, the end of the matter. The ordinance is, on its face, *ultra vires*
20 under Section 7-1-111(9).

21 The Colorado and Ohio cases that Missoula relies on to contest this conclusion are
22 inapposite because those cases addressed not whether state statutes imposing background check
23 requirements simply “affected” or “applied to” the right to keep and bear arms, but whether those
24 statutes violated or otherwise infringed upon the underlying constitutional right. See Br. at 22-23.

1 The court in *Rocky Mountain Gun Owners v. Hickenlooper*, for example, held only that a
2 Colorado law imposing mandatory background checks did “not infringe on individuals’ rights to
3 keep and bear arms for a lawful purpose.” 371 P.3d 768, 776-77 (Colo. App. 2016). Indeed, the
4 court’s reasoning makes clear that background checks affect the right to possess firearms, for the
5 court acknowledged that the requirement “creates an additional step” that must be taken to
6 consummate the sale of a firearm. *Id.* at 777. The court in *Colorado Outfitters Ass’n v.*
7 *Hickenlooper* similarly held only that a background check requirement “is constitutionally
8 permissible,” 24 F. Supp. 3d 1050, 1076 (D. Colo. 2014), and even that holding was later
9 vacated by the Tenth Circuit for lack of standing, *see* 823 F.3d 537, 549 (10th Cir. 2016).
10 Finally, the court in *Peoples Rights Organization v. Montgomery* held only that background
11 checks “did not, in themselves, impermissibly infringe upon buyers’ right to bear arms.” 756
12 N.E.2d 127, 173 (Ohio Ct. App. 2001). These decisions address only whether background checks
13 infringe upon or violate the right to keep and bear arms. To find that a law does not
14 impermissibly infringe upon a constitutional right is a very different thing than to find that a law
15 does not even affect or apply to that right. Furthermore, limiting preemption to laws that infringe
16 the right to keep and bear arms—as opposed to those that affect or apply to the right without
17 rising to the level of an infringement—would render the preemption provision superfluous,
18 because the Second Amendment to the United States Constitution already makes such laws
19 unconstitutional. Because the Firearm Transfer Ordinance affects the right to keep or bear arms,
20 it is preempted by state law.

21 **II. Section 45-8-351 does not authorize the Firearm Transfer Ordinance.**

22 Missoula argues that, although Section 45-8-351(1)’s prohibition of local regulation of
23 the “purchase, sale or transfer” of firearms does not apply to Missoula, an exception to that
24

1 prohibition nevertheless “expressly permits” Missoula to regulate every local transfer of
2 firearms. Missoula Br. at 14. Missoula’s argument fails for three independent reasons. First,
3 Missoula cannot claim to draw authority from an exception to a prohibition it claims does not
4 even apply to it. Second, Missoula’s piecemeal and selective application of Section 45-8-351
5 violates the canon of construction that a statute must be read as a whole. Third, Missoula’s
6 interpretation of Section 45-8-351(2) transforms a narrow exception to a broad prohibition into
7 an exception that swallows the rule entirely.

8 **A. Under the Premises of Missoula’s own Argument, Section 45-8-351(2) does not**
9 **apply to Missoula.**

10 Section 45-8-351(1) denies local governments the power to regulate firearms, providing
11 that “a county, city, town, consolidated local government, or other local government unit may
12 not prohibit, register, tax, license, or regulate the purchase, sale or other transfer (including delay
13 in purchase, sale, or other transfer), ownership, possession, transportation, use, or unconcealed
14 carrying of any weapon, including a rifle, shotgun, handgun, or concealed handgun.” Mont. Code
15 Ann. § 45-8-351(1). Relying upon the first judicial district’s decision in *City of Helena v. Yetter*,
16 1993 Mont. Dist. LEXIS 172 (1st. Dist. Oct. 5, 1993), Missoula argues that this statute does not
17 deny it the authority to regulate the “purchase, sale or transfer” of firearms, because Section 45-
18 8-351 does not expressly apply to local government units with self-government powers.
19 Missoula Br. at 24-27. But if Section 45-8-351(1)’s *prohibition* does not apply to Missoula, the
20 *exception* to that prohibition in Section 45-8-351(2)(a), which permits regulation of the
21 “possession” of firearms and by convicted felons, illegal aliens, incompetents, and minors, does
22 not apply to Missoula either.

23 Missoula’s interpretation not only is wrong as a matter of logic but also would require the
24 Court to read the same words in the same statute to mean completely different things. That is not

1 how legislatures write statutes. “After all, it is a normal rule of statutory construction that
2 identical words used in different parts of the same act are intended to have the same meaning.”
3 *Pereira v. Sessions*, 138 S. Ct. 2105, 2115 (2018) (quotation marks omitted). If Missoula is not
4 “a county, city, town, consolidated local government, or other local government unit” for
5 purposes of Section 45-8-351(1), then it is not “a county, city, town, consolidated local
6 government, or other local government unit” for purposes of Section 45-8-351(2). Applying this
7 normal rule to Section 45-8-351, neither provision of the statute applies to Missoula under the
8 premises of Missoula’s own argument.

9 **B. Section 45-8-351 does not authorize local governments to regulate the purchase, sale
10 or transfer of firearms.**

11 The Firearm Transfer Ordinance would be preempted even if Section 45-8-351(2) were
12 construed to apply to Missoula, because that Section does not authorize local governments to
13 regulate the transfer of firearms.

14 Like all other statutes, Section 45-8-351 “must be read as a whole, and its terms should
15 not be isolated from the context in which they were used by the Legislature.” *Eldorado Coop
16 Canal Co. v Hoge*, 2016 MT 145, ¶ 18, 383 Mont. 523, 529, 373 P.3d 836, 840-41 (quotation
17 marks omitted). Furthermore, in reading the statute in the context of the statutory scheme as a
18 whole, the Court must “construe it so as to forward the purpose of that scheme.” *Id.* (quotation
19 marks omitted).

20 Applying these principles to Section 45-8-351, it is evident that while local governments
21 do have the power to regulate “*possession*” of firearms by “*by convicted felons, adjudicated
22 mental incompetents, illegal aliens, and minors,*” 45-8-351(2)(a), that power cannot be leveraged
23 into a much broader power to regulate the *purchase, sale, or other transfer* of firearms by
24 *anyone*, including law-abiding, responsible citizens. Section 45-8-351(1) broadly preempts the

1 authority of local governments to regulate firearms and specifically identifies several different
2 activities relating to firearms that generally are off limits: purchases, sales, or other transfers,
3 ownership, possession, transportation, use, or unconcealed carrying. Section 45-8-351(2) then
4 narrowly exempts one narrow activity from this broad prohibition: the *possession* of firearms by
5 convicted felons, adjudicated mental incompetents, illegal aliens, and minors. The legislature in
6 Section 45-8-351(1) thus differentiated between regulations of firearm transfers and the
7 possession of firearms, and then in Section 45-8-351(2) carved out an exception for certain
8 regulations of the possession—but not the transfer—of firearms. Reading the statute as a whole,
9 therefore, Section 45-8-351(2) cannot be read as authorizing the transfer of firearms, but only
10 their possession.

11 This interpretation of Section 45-8-351 dooms the Firearm Transfer Ordinance, as it
12 focuses entirely on the transfer of firearms:

13 [E]very firearm transfer between a transferor and a transferee, in whole or in part
14 in the City of Missoula, shall be subject to a background check. Except as
15 otherwise provided in this chapter, no person shall transfer a firearm, and no
16 person shall receive a firearm, without complying with this chapter, including that
17 the parties must comply with the process described in section 9.60.040.

18 MISSOULA, MONT., CODE § 9.60.030(A).

19 **C. Missoula May Not Regulate Firearm Transfers In Order To Regulate Possession.**

20 Missoula attempts to shoehorn the Firearm Transfer Ordinance into Section 45-8-351(2)
21 by arguing that its regulation of firearm transfers is aimed at the *purpose* of curtailing possession
22 of firearms by felons and other prohibited persons. But if a mere purpose of keeping firearms out
23 of the hands of felons can justify local gun control laws, the narrow exception in Section 45-8-
24 351(2) would effectively gut the broad preemption established by Section 45-8-351(1). Indeed, if
Missoula's argument were correct, it would be difficult to think of a firearm regulation that

1 Missoula could not enact. For example, even if a background check requirement made it more
2 difficult for felons to get firearms, it would not make it impossible for them to do so—they
3 could, for instance, employ a straw purchaser that could pass a background check to acquire a
4 firearm for them. How to address this problem? Well, one solution could be to ban the sale of
5 firearms *entirely*. But even that may not be a panacea, as felons could still *steal* firearms from
6 law-abiding citizens who acquired them before a sales ban—indeed, theft is one way in which
7 criminals obtain firearms.¹ To really keep guns out of the hands of felons, then, perhaps the
8 solution is to ban possession of firearms by *everyone*. Employing Missoula’s reasoning,
9 therefore, we quickly arrive at the startling proposition that a purportedly broad preemption
10 provision would not even block a wholesale ban on the possession of firearms. Were the court to
11 accept this argument, “[t]he exception would literally swallow the rule.” *Bradley v. North*
12 *Country Auto and Marine*, 2000 MT 81, ¶ 25, 299 Mont. 157, 163, 999 P.2d 308, 312.

13 The argument that Missoula must require background checks on all transfers to ensure
14 that firearms do not come into the possession of felons, incompetents, illegals, and minors is to
15 mistake the power that is conferred by a statute with the purpose for which that power may be
16 exercised. Section 45-8-351(2)(a) simply authorizes Missoula to prohibit the possession of
17 firearms by those not lawfully permitted to possess them.

18 Missoula also contends that it has “narrowly tailored,” Missoula Br. at 3, its ordinance to
19 target possession of firearms by felons, incompetents, illegals, and minors, but this contention is
20 belied by the fact that the Firearm Transfer Ordinance, on its face, does not prohibit the
21 possession of firearms *by anyone*. Indeed, a felon or illegal alien found to be in possession of a
22

23
24 ¹ See, e.g., GARY KLECK, TARGETING GUNS, FIREARMS AND THEIR CONTROL 91 (1997) (“Thefts are . . . probably the primary way that guns are transferred from the less criminal segments of the population to the more criminal segments.”).

1 firearm in Missoula would not have violated the ordinance. The one thing that Section 45-8-351
2 authorizes a municipality to do the Missoula ordinance does not even purport to do.

3 **CONCLUSION**

4 For the foregoing reasons, Plaintiff's motion for summary judgment should be DENIED
5 and Defendant's cross motion for summary judgment should be GRANTED.

6 DATED this 31st day of August, 2018.

8 REEP, BELL, LAIRD & JASPER, P.C.

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10 By: 

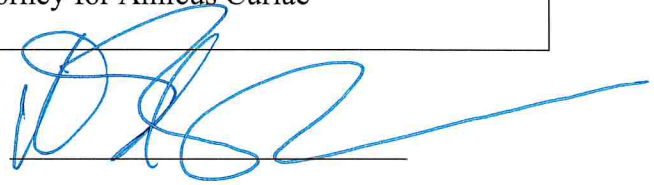
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CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that on the 31st day of August, 2018, a true and correct copy of the foregoing was served upon the following via US Mail:

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CERTIFICATE OF SERVICE

I, Robert T. Bell, hereby certify that I have served true and accurate copies of the foregoing Answer/Brief - Brief in Opposition to the following on 08-31-2018:

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