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February 23, 2015

The Hon. Mark J. Langer, Clerk
United States Court of Appeals
for the District of Columbia Circuit
333 Constitution Avenue, N.W.
Washington, DC 20001-2866

Re: *Dearth v. Holder*, No. 12-5305
Re-argument set for March 5, 2015

Notice of Supplemental Authority, Fed. R. App. P. 28(j)

Dear Mr. Langer:

Two laws challenged here, 18 U.S.C. § 922(b)(3) and 27 C.F.R. § 478.99(a), have been struck down for violating the Second Amendment. See *Mance v. Holder*, No. 4:14-CV-0539-O, 2015 U.S. Dist. LEXIS 16679 (N.D. Tex. Feb. 11, 2015).

Mance reached the claims erroneously avoided in *Lane v. Holder*, 703 F.3d 668 (4th Cir. 2012), and held that the Government cannot forbid handgun transfers between residents of different states. *Mance* considered many of the arguments, and much the same evidence, as the Government presented here. It should be followed.

Mance upheld a Second Amendment rights organization's associational standing. *Mance*, at *11-*12; Pl. 2nd Supp. Br. 21-25. The primary injury, as here, was a residential restriction on purchase, *Mance*, at *9-*11, an injury unrelated to a consumer's access to *other* firearms, *id.* at *10, and thus not requiring individual participation.

Mr. Langer
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“To prevail on a facial challenge, Plaintiffs must show that *either* no set of circumstances exists under which the law would be valid *or that the statute lacks any plainly legitimate sweep.*” *Id.* at *15 (citations omitted) (emphasis added); Pl. 2nd Supp. Br. 12-17.

Reviewing essentially the same evidence presented here, *Mance* concluded that “interstate, geography-based, or residency-based firearm restrictions” are not “longstanding.” *Id.* at *18. *Mance* thus accepted that the challenged provisions implicated Second Amendment-secured conduct at step one. *Id.* at *19. It further found that the Amendment protects selling firearms. *Id.* at 25 n.8. Because these laws were not longstanding, “the de minimis standard [was] inapplicable.” *Id.* at *21 (footnote omitted).

Mance proceeded to apply strict scrutiny, as the interstate handgun transfer ban operated against all responsible, law-abiding individuals and heavily restricted the distribution of constitutionally-protected goods. *Id.* at *21-*23. The ban failed strict scrutiny as the Government lacked current evidence of narrow tailoring, and also failed as-applied to the plaintiffs. *Id.* at *28-*38. For similar reasons of poor fit, the ban failed intermediate scrutiny facially and as-applied. *Id.* at *38-*42. Finally, *Mance* struck down the interstate handgun transfer ban as an equal protection violation. *Id.* at *42-*44.

Sincerely,

/s/ Alan Gura

The body of this letter contains 349 words.

CERTIFICATE OF SERVICE

On this, the 23rd day of February, 2015, I served the foregoing by electronically filing it with the Court's CM/ECF system, which generated a Notice of Filing and effects service upon counsel for all parties in the case.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this the 23rd day of February, 2015.

/s/ Alan Gura
Alan Gura