

Case No. 10-36094

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MONTANA SHOOTING SPORTS ASSOCIATION; SECOND AMENDMENT
FOUNDATION, INC.; and GARY MARBUT.

Plaintiffs-Appellants,

and

STEVE BULLOCK, the Attorney General of Montana,
Intervenor,

vs.

ERIC H. HOLDER, JR.,
Attorney General of the United States,
Defendant-Appellee.

**9th CIR. R. 27 MOTION UNDER F.R.A.P. 29 TO ALLOW AMICI CURIAE
THE GOLDWATER INSTITUTE AND CATO INSTITUTE, PERMISSION
TO PARTICIPATE IN ORAL ARGUMENT ALLOWING AMICI AN
ADDITIONAL TEN MINUTES OF ORAL ARGUMENT**

Appeal from the United States District Court for the District of Montana, Missoula
Division

Honorable Donald W. Molloy, Presiding District Judge

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INTRODUCTION

Pursuant to Rule 27 and Rule 29(g) of the Federal Rules of Appellate Procedure, *Amici Curiae* the Goldwater Institute for Public Policy and Cato Institute, hereby moves this Court to allow *Amici* to participate in oral arguments through attorney Nick Dranias, allowing *Amici* an additional ten minutes of oral argument.

INTEREST OF AMICI CURAIE

Undersigned *Amici* represent a distinct and valuable perspective on how the crucial constitutional issues raised in this case impact the Constitution's guarantee of individual liberty. While all parties have consented to allow *Amici* to participate in oral arguments; Defendant-Appellee does not consent to allowing *Amici* an additional ten minutes of oral argument, whereas Plaintiff- Appellant's consent is conditioned on *Amici* obtaining its own argument time.

The Scharf-Norton Center for Constitutional Litigation is a division of the Goldwater Institute, which is a tax exempt educational foundation under Section 501(c) (3) of the Internal Revenue Code. The Goldwater Institute advances public policies that further principles of limited government, economic freedom, and individual responsibility. The integrated mission of the Scharf-Norton Center for Constitutional Litigation is to preserve individual liberty by enforcing features of our state and federal constitutions that directly and structurally protect individual

rights, including the Bill of Rights, the doctrine of separation of powers and federalism. Most recently, the Goldwater Institute appeared before the United States Supreme Court in *McComish v. Bennett* (No. 10-239), and has filed amicus curiae briefings before the Court in *McDonald v. City of Chicago* (No. 08-1521) and *Northwest Austin Municipal Utility District Number One v. Holder* (No. 08-322-), available for review at <http://www.goldwaterinstitute.org/amicusbriefs>. Additionally, *Amici* participated in oral arguments in the current case at the district court level.

The Cato Institute was established in 1977 as a nonpartisan public policy research foundation dedicated to advancing principles of individual liberty, free markets, and limited government. Cato's Center for Constitutional Studies was established in 1989 to help restore the principles of limited constitutional government that are the foundation of liberty. Towards those ends, Cato Publishes books and studies, conducts conferences and forums, publishes the annual Cato Supreme Court Review, and files amicus briefs. The present case centrally concerns *Amici* because it represents an opportunity to clarify the limits that the Constitution places on federal power.

PARTICIPATION BY AMICI IN ORAL ARGUMENT WILL ASSIST IN POINTING THE COURT TO THE RIGHT ANSWERS.

Amici should be permitted to participate in oral arguments and an additional ten minutes of oral argument should be granted because of the valuable perspective

that can be offered as well as the compelling interest that Amici has in this case. *See Massachusetts Food Ass'n v. Massachusetts Alcoholic Beverages Control Com'n*, 197 F.3d 560, 567 (1st Cir. 1999) (“[A] court is usually delighted to hear additional arguments from able amici that will help the court toward right answers, and the amici can easily seek a larger allotment of pages or time to participate in oral argument”). Amici submitted their brief because of the important constitutional questions at play in the case. Specifically, Amici can offer an additional and important argument regarding the principles of state sovereignty limiting federal power, federal preemption of state law furthering principles of individual liberty, and federal preemption limiting the ability of the state to serve its appointed role as an effective check and balance on federal power. The argument presented by Amici offers considerable value to the Court in helping it towards the right answers, in that it focuses on the implicit overturning of *Garcia v. San Antonio Metropolitan Transit Authority*, 105 S. Ct. 1005 (1985), by all Supreme Court precedent since 1989.

Conclusion

For the reasons stated above, Amici respectfully asks the Court to grant the request to participate in oral argument and grant the request for an additional ten minutes of oral argument.

RESPECTFULLY SUBMITTED on this 11th day of January by:

s/Nicholas C. Dranias
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CERTIFICATE OF SERVICE

THE ATTACHED FILING HAS BEEN ELECTRONICALLY FILED BY ECF and COPIES have been served upon the persons identified in the following Service List via e-mail and U.S. Mail, sufficient postage prepaid, this 11th day of January, 2013.

s/Nicholas C. Dranias

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