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Pro Querente

MONTANA FOURTH JUDICIAL DISTRICT, MISSOULA COUNTY

<p>MONTANA SPORTS SHOOTING ASSOCIATION, INC., GARY S. MARBUT, ROBERT C. CLARK, CAROL LATTA,</p> <p style="text-align: right;">Plaintiffs,</p> <p>v.</p> <p>THE STATE OF MONTANA, MIKE MCGRATH, ATTORNEY GENERAL OF THE STATE OF MONTANA, THE MONTANA DEPARTMENT OF FISH, WILDLIFE, AND PARKS</p> <p style="text-align: right;">Defendants.</p>	<p>Cause No. <u>DV-06-94</u></p> <p>DEPT. NO. 1 ED McLEAN</p> <p style="text-align: center;">COMPLAINT FOR DECLARATORY JUDGMENT and PERMANENT INJUNCTION</p>
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COME NOW, Plaintiffs, Montana Shooting Sports Association, Inc. (MSSA), Gary S. Marbut, both as agent for MSSA and individually, Robert C. Clark, and Carol Latta

("Plaintiffs"), by and through their counsel, Sullivan, Tabaracci & Rhoades, P.C., and for their Complaint against Defendants, allege as follows:

PARTIES

1. Plaintiff Montana Shooting Sports Association ("MSSA") is a non-profit corporation organized under the laws of the State of Montana. The purpose of MSSA is to "support and promote firearm safety, the shooting sports, hunting, firearm collecting, and personal protection using firearms, to provide education to its members concerning shooting, firearms, safety, hunting and the right to keep and bear arms, to own and or manage one or more shooting facilities for the use of its members and or others, to conduct such other activities as serves the needs of its members." Members of MSSA have purchased Montana hunting licenses in the past and wish to do so in the future. Furthermore, MSSA has a genuine and viable interest in this litigation as its goals and its existence depends upon the protection of the rights and interests of its members.

2. Plaintiff Gary Marbut is the President of MSSA, a citizen of the United States, and a resident of Missoula, Montana. His address is P.O. Box 16106, Missoula, MT 59808. As an agent of MSSA, Gary Marbut is tasked with the responsibility to promote and protect the interests of MSSA and its members. Further, as an individual Gary Marbut is a lifetime sportsman and hunter.

3. Plaintiff Robert C. Clark was born in Montana, and is a resident of Ryegate in Golden Valley County. His address is P.O. Box 216, Ryegate, MT 59074. Mr. Clark is a lifetime sportsman and had purchased a Montana hunting license for 43 years, but has

discontinued purchasing such licenses when it became necessary to give his SSN to obtain a license.

4. Plaintiff Carol S. Latta is a resident of Whitehall, Montana, and a resident of Jefferson County. Ms. Latta is an outdoor enthusiast who had her identity stolen after purchasing a Montana fishing license at Canyon Ferry Reservoir located in Lewis and Clark county.

5. Defendant Mike McGrath, is the appointed, qualified, confirmed, and acting Attorney General and head of the Attorney General's Office for the State of Montana, and as such is the official charged with enforcing Mont. Code Ann. §§ 87-2-106 and 87-2-202. Defendant maintains his offices as Attorney General in the state capitol located in Helena, Montana.

6. Defendant, Department of Fish, Wildlife, and Parks, is an agency of the State of Montana, and maintains its headquarters in Helena, Montana.

JURISDICTION AND VENUE

7. This is an action for declaratory judgment pursuant to Title 27, Chapter Eight of the Montana Code Annotated for the purpose of determining a question of actual controversy between the parties as more fully appears in the complaint below. This is also an action for a permanent injunction pursuant to Title 27, Chapter Nineteen of the Montana Code Annotated to enjoin enforcement an unconstitutional state law as more fully appears in the complaint below.

8. Jurisdiction is therefore proper pursuant to Rule 57, Mont.R.Civ.P., and Mont. Code Ann. §§ 27-8-201 through 202 and § 27-19-101.

9. Venue for this action is proper pursuant to Mont. Code Ann. § 25-2-126 as one or more Plaintiffs, are residents of the State of Montana, with their residence located in Missoula, County.

ALLEGATIONS COMMON TO ALL COUNTS

10. Montana Code Ann. § 87-2-106 requires that all persons applying for a Montana residential wildlife conservation license must provide their social security numbers.

11. Montana Code Ann. § 87-2-201 provides in pertinent part, that it is unlawful for any person or persons to purchase any hunting, fishing, or trapping license without first having obtained a wildlife conservation license.

12. Montana Code Ann. § 87-2-202 mandates that all resident applicants for hunting, fishing, and trapping licenses must provide their social security numbers.

13. The Montana Department of Fish, Wildlife, and Parks (DFWP) is responsible for administering and enforcing regulations pertaining to hunting, fishing, and trapping licenses.

14. Montanans have a reasonable expectation of privacy in their Social Security Numbers.

15. In 1997, Plaintiff Carol Latta had her identity stolen after her social security number was stolen while purchasing a Montana resident fishing license; and as direct result fraudulent charges in excess of \$100,000 were made in her name.

16. Defendant DFWP has perennially interfered Plaintiff Robert C. Clark's Constitutionally protected right of privacy in his Social Security Number ("SSN") because he refuses to provide his SSN when purchasing a Montana resident hunting license - a free exercise of his fundamental right of privacy protected by the Montana Constitution. Mr. Clark wishes to exercise his Constitutionally protected rights to hunt and fish in Montana, but he is unwilling to surrender his Constitutional privacy rights in order to do so.

17. Similarly, in May of 2002, Plaintiff Gary S. Marbut was denied entry into the Fish, Wildlife, and Parks' special permit drawing process for exercising his Constitutional right of privacy by refusing to provide his SSN on permit application forms.

18. As a result of Defendants' actions, Plaintiff MSSA is adversely affected as many of its members are continually deprived of their Constitutional rights of privacy for refusing to provide their SSNs when applying for required licenses under Mont. Code Ann. §§ 87-2-106, *et. seq.*, and many of its members are deprived of their Constitutional rights of privacy when they are coerced into providing their SSNs in order to obtain licenses to hunt or fish.

19. Defendants have failed to provide the adequate and necessary safeguards needed for the preservation of Plaintiffs' Constitutional rights of privacy.

20. Defendants have failed to obtain exemptions from federal funding requirements to allow anglers and hunters to receive licenses without forfeiting their Constitutional rights of privacy.

21. As a result of Defendants' actions, there is a real and actual controversy regarding whether Mont. Code Ann. §§ 87-2-106, 202 are in conflict with Plaintiffs' fundamental rights of privacy under Article II, Section 10 of the Montana Constitution, and their rights to harvest wild fish and game under Article IX, Section 7 of the Montana Constitution.

22. Defendants lack the requisite compelling interest required for such Constitutional abridgment or alternatively have failed to choose the least restrictive means to effectuate such an interest.

23. Plaintiffs have suffered and will continue to suffer actual injury as their fundamental Constitutional rights continue to be abrogated.

24. The injuries suffered by Plaintiffs are capable of repetition, and are likely to evade review.

25. The public policy of state law that is to be vindicated by the causes of action alleged herein is of vital societal importance.

26. Private enforcement is the sole means to the public policy at issue by this litigation, and results in excessive and extreme burden upon Plaintiffs.

27. A great many people stand to benefit from this litigation, including the citizens of Missoula County, and of the State of Montana.

28. In order to commence and to prosecute this action, Plaintiffs have been required to employ attorneys and have employed undersigned counsel, licensed to practice

law in the State of Montana, for such purpose and as such Plaintiffs have obligated themselves to pay reasonable attorney's fees for services in prosecuting this action.

REQUESTS FOR RELIEF
COUNT I
(DECLARATORY JUDGMENT)

29. Plaintiffs have a genuine interest in the outcome of this case and accordingly request a declaratory judgment pursuant to Rule 57, Mont.R.Civ.P., and Mont. Code Ann. §§ 27-8-201, 202, for the purpose of determining and adjudicating questions of actual controversy between the parties as set forth above, that:

(A) The requirements mandating an applicant for a Montana conservation, hunting, fishing, or trapping license to provide a SSN are unConstituional and therefore void; and

(B) Any prior or future use, storage, or retention of applicants SSNs by the DFWP is unConstituional and therefore void.

COUNT II
(INJUNCTIVE RELIEF)

30. Plaintiffs further request that the Court grant injunctive relief pursuant to Mont. Code Ann. § 27-19-102:

(A) Permanently enjoining DFWP from withholding a conservation, hunting, fishing, or trapping license from an applicant who does not provide their SSN during the pendency of this action; and

(B) Permanently enjoining DFWP from requesting, demanding, or collecting SSNs on applications for licenses and permits the Department grants.

COUNT III
(ATTORNEY FEES - MONTANA PRIVATE ATTORNEY GENERAL)

31. Plaintiffs further request that they receive their costs, and an award of reasonable attorney's fees, expert witness fees and costs of court pursuant to Mont. Code Ann. § 27-8-311;

32. Plaintiffs further request such other and further relief as may be just and proper under the circumstances.

DATED this 30th day of January, 2006.

Respectfully submitted,

SULLIVAN, TABARACCI & RHOADES, P.C.

By: _____



Quentin M. Rhoades
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