

ATTORNEY GENERAL

STATE OF MONTANA

Steve Bullock
Attorney General



Department of Justice
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Via Email (annie.bradley@usdoj.gov), Fax and US Postal Service

Honorable Eric H. Holder, Jr.
Attorney General
950 Pennsylvania Ave. NW
Washington, DC 20530-0001

Dear Attorney General Holder:

In less than a month, the rifle hunting season opens in Montana. Last year, there were approximately 200,000 hunters in Montana, and more than 580,000 hunting licenses were sold by our Department of Fish, Wildlife and Parks.

Like every fall, these Montanans are buying their ammunition, sighting their firearms, and preparing to enjoy an activity that is deeply rooted in our heritage and culture. Sporting goods stores throughout the state have been, and will be selling ammunition and guns to those who will be hunting in our great outdoors. Included among those buying ammunition and guns are Montana citizens who may also hold a registry card that allows them to use marijuana for medicinal purposes in accordance with Montana law.

Unfortunately, many hunters and licensees in Montana now must consider how their rights have been affected by the Bureau of Alcohol, Tobacco, and Firearm's September "Open Letter to All Federal Firearms Licensees." In essence, the letter warns licensees that they are not allowed under any circumstances to sell ammunition or firearms to persons who use marijuana, even if the person uses it in full compliance with state law that authorizes its use for medical purposes. The letter even takes it a step further by emphasizing that ATF is placing the responsibility on licensees to determine if there is *reasonable cause to believe* that the purchaser did not accurately fill out the ATF form.

The ATF letter implicates serious legal issues under the Second Amendment, and the equal protection and due process clauses of the Fifth Amendment. In addition, the letter raises serious policy and practical concerns.

The right to possess and use firearms is a constitutionally protected, individual right under the Second Amendment of the United States Constitution and the Montana Constitution.

Additionally, hunting is such an integral part of my state's culture and heritage that it is a constitutionally protected activity in Montana. See Mont. Const. art. IX, § 7 ("The opportunity to harvest wild fish and wild game animals is a heritage that shall forever be preserved to the individual citizens of the state. . . ."). The ATF letter construes the pertinent statutes and regulation in a way that automatically prohibits a person holding a registry card for marijuana from buying or possessing ammunition or guns, regardless of whether the person is actually a current user. The cards are valid for a year under Montana law. Presumably, not all card holders regularly use marijuana for the entire time the card is valid. Nevertheless, based on the ATF letter, they would not be allowed to purchase or even possess ammunition or firearms. Moreover, a registry card holder is allowed to use marijuana only based upon the express, written authorization of a licensed physician. The ATF letter does not take this into account, even though the controlling federal regulation recognizes that a person who uses a controlled substance in a manner prescribed by a physician is not disqualified from possessing or buying ammunition or guns. 27 C.F.R. § 478.11.

Currently, 16 states and the District of Columbia have enacted laws allowing the use of marijuana for medical purposes. More than 90 million people live in these jurisdictions, comprising 29.2% of the total population of the United States. In our federal system of dual sovereignty, I respectfully suggest that the federal government should act in a careful manner when its laws and policies involve conflicts with those of the states. I certainly recognize the Supremacy Clause and its importance in maintaining a Union. Its intent and purposes can be fully effectuated, however, through federal policies that accord proper respect and deference to states, and which allow the "laboratories of democracy" to test differing approaches to public policy.

There have been abuses of, and problems relating to, medical marijuana laws in the various states that have enacted them, including Montana. States, including Montana, have acted to address problems and explore workable solutions. In doing so, however, we also face issues that are, candidly, created or exacerbated by federal actions and policies that do not always reflect the kind of careful approach and appropriate accommodation that should be accorded the states.

I am willing and prepared to work constructively with your staff on exploring a reasonable solution to the problems created by the Bureau of Alcohol, Tobacco, Firearms and Explosives letter. By working creatively and cooperatively, I believe we can find an approach that works for the states that have authorized the use of marijuana for medical purposes. This would be much better than the type of unilateral proclamation represented by the ATF letter, which was issued without any advance notice or discussion with the elected officials who represent more than one-fourth of this nation's population, and one-third of its states.

In the meantime, I respectfully request that the Department of Justice not pursue any criminal prosecutions against law abiding citizens in Montana who exercise their constitutional rights to possess guns and enjoy hunting, or the licensees who are implicitly threatened by ATF's letter.

Sincerely,



STEVE BULLOCK
Attorney General

SB:sj

- c: Hon. Mike Cotter, US Attorney
- Hon. Max Baucus, Montana Senator
- Hon. Jon Tester, Montana Senator
- Hon. Dennis Rehberg, Montana Representative
- Gov. Brian Schweitzer, Montana
- Attorney General John J. Burns, Alaska
- Attorney General Tom Horne, Arizona
- Attorney General Kamala Harris, California
- Attorney General John W. Suthers, Colorado
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