

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 14-cv-2822-RPM

SANDY PHILLIPS, individually and as surviving parent
of Jessica Ghawi, decedent; LONNIE PHILLIPS,
individually and as surviving parent of Jessica Ghawi,
decedent,

Plaintiffs,

v.

LUCKYGUNNER, d/b/a/ BULKAMMO.COM,
THE SPORTSMAN'S GUIDE,
Brian Platt, d/b/a/ BTP ARMS,
Gold Strike E Commerce LLC d/b/a/
BULLETPROOFBODYARMORHQ.COM,
and JOHN DOES 1 through 10, unknown individuals,

Defendants.

**UNITED STATES OF AMERICA'S
ACKNOWLEDGEMENT OF CONSTITUTIONAL CHALLENGE**

On December 3, 2014, Plaintiffs Sandy Phillips and Lonnie Phillips (“Plaintiffs”) filed a Notice of Constitutional Challenge pursuant to Federal Rule of Civil Procedure 5.1. *See* ECF No. 28. In this Notice, Plaintiffs state that in their Opposition to Defendants’ Motion to Dismiss (ECF No. 27), they have drawn into question the constitutionality of the Protection of Lawful Commerce in Arms Act, 15 U.S.C. § 7901 *et seq.* (the “PLCAA”). On December 10, 2014, the Clerk of the Court certified, pursuant to 28 U.S.C. § 2403, that a Notification of a Claim of Unconstitutionality was filed in this action. *See* ECF No. 29.

The United States is authorized to intervene in any federal court action in which the constitutionality of an Act of Congress is drawn into question. 28 U.S.C. § 2403(a). Under

Federal Rule of Civil Procedure 5.1(c), “[u]nless the court sets a later time, the attorney general may intervene within 60 days after the notice is filed or the court certifies the challenge, whichever is earlier.” Fed. R. Civ. P. 5.1(c). “Before the time to intervene expires, the court may reject the constitutional challenge, but may not enter a final judgment holding the statute unconstitutional.” *Id.*

Counsel for the United States respectfully advises the Court that the United States is in the process of deciding whether to intervene in this action to defend the constitutionality of the PLCAA. The approval of the Solicitor General is required for the United States to intervene in an action to defend the constitutionality of a federal statute. *See* 28 C.F.R. § 0.21. Assuming approval is obtained, the United States anticipates being able to file a notice of intervention and a brief responding to the constitutional challenge by February 2, 2015, which is 60 days from the filing of the Rule 5.1 Notice.

Dated: December 12, 2014

Respectfully submitted,

JOYCE R. BRANDA
Acting Assistant Attorney General

DIANE KELLEHER
Assistant Branch Director

/s/ Lesley Farby
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Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on December 12, 2014, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will electronically send notice to the following:

<p>Thomas W. Stoeber, Jr. Paul W. Rodney Arnold & Porter, LLP 370 Seventeenth Street, Suite 4400 Denver, CO 80202 (303) 863-1000 Thomas.Stover@aporter.com Paul.Rodney@aporter.com</p> <p><i>Counsel for Plaintiffs</i></p>	<p>Phillip R. Zuber Sasscer Glagett & Bucher 5407 Water Street, Suite 101 Upper Marlboro, MD 20772 (301) 627-5500 pzuber@scblawyers.com</p> <p>Bruce A. Montoya Messner & Reeves LLP 1430 Wynkoop Street, Suite 300 Denver, Colorado 80202 303-623-1800 bmontoya@messner.com</p> <p><i>Counsel for Defendant Brian Platt, d/b/a BTP Arms</i></p>
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In addition, I served copies of same by deposit with the United States Postal Service on the following non-CM/ECF participants:

<p>John W. Suthers Attorney General Colorado Department of Law Ralph L. Carr Colorado Judicial Center 1300 Broadway, 10th Floor Denver, CO 80203</p>	<p>Jonathan E. Lowy Kelly Sampson Brady Center to Prevent Gun Violence 840 First Street, N.E., Suite 400 Washington, D.C. 20002</p> <p><i>Counsel for Plaintiffs</i></p>
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/s/ Lesley Farby
Lesley Farby