

IN THE UNITED STATES DISTRICT COURT
FOR EASTERN DISTRICT OF LOUISIANA

**NATIONAL RIFLE ASSOCIATION OF
AMERICA, INC.**

**SECOND AMENDMENT FOUNDATION,
INC., et al.,**

Plaintiffs

v.

C. RAY NAGIN, Mayor of New Orleans, et al.,

Defendants

CIVIL ACTION NO. _____

**MEMORANDUM IN SUPPORT OF MOTION FOR TEMPORARY
RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

This is an action to vindicate the constitutional rights of the law-abiding citizens of Louisiana to keep and bear arms to protect themselves from criminal violence, and to enjoin confiscation of lawful firearms without due process, discriminatory policies based on wealth, and arbitrary searches and seizures. These acts were committed against victims of Hurricane Katrina.

Parties

Plaintiff National Rifle Association of America, Inc. (hereafter “NRA”) is a non-profit association incorporated under the laws of New York, with its principal place of business in Fairfax, Virginia. NRA has a membership of almost 4 million persons, of whom scores of thousands reside in Louisiana, many in New Orleans and in the other areas devastated by Hurricane Katrina. The purposes of NRA include protection of the right of citizens to have firearms for the lawful defense of their families, persons, and property, and to promote public safety and law and order. NRA brings this action on behalf of itself and its members. Plaintiff Buell Teel, a resident of Ponchatoula, Louisiana, is an NRA member.

Plaintiff Second Amendment Foundation, Inc. (hereafter “SAF”), is a non-profit membership organization incorporated under the laws of Washington with its principal place of business in Bellevue, Washington. SAF has over 600,000 members and supporters nationwide, including thousands in Louisiana. Over 200 SAF members and supporters have contact addresses which fall within one of the 63 zip codes covering the city of New Orleans. The purposes of SAF include education, research, publishing and legal action focusing on the Constitutional right privately to own and possess firearms and the consequences of gun control. SAF brings this action on behalf of itself and its members.

Defendants include New Orleans Mayor Ray Nagin, New Orleans Police Superintendent Edwin Compass, St. Tammany Parish Sheriff Jack Strain, and John Does I-VI, who are unidentified Sheriff’s Deputies from St. Tammany Parish. All are sued in their official capacities.

Jurisdiction

Jurisdiction is founded on 28 U.S.C. § 1331 in that this action arises under the Constitution and laws of the United States, and under 28 U.S.C. § 1343(3) in that this action seeks to redress the deprivation, under color of the laws, statutes, ordinances, regulations, customs and usages of Louisiana and political subdivisions thereof, of rights, privileges or immunities secured by the United States Constitution. Supplemental jurisdiction is founded upon the laws of the State of Louisiana. This action is brought under 42 U.S.C. § 1983.

Facts

On August 26, 2005, Louisiana Governor Kathleen Babineaux Blanco declared a state of emergency based on the imminent threat of Hurricane Katrina to the safety and security of the citizens of Louisiana. Such proclamation authorized chief law enforcement officers to

promulgate orders, to be effective for only five days, “Regulating and controlling the possession, storage, display, sale, transport and use of firearms” LSA-R.S. § 14:329.6.A(6). That statute did not authorize a prohibition on firearms possession,¹ and may not be interpreted to violate constitutional guarantees.²

In the devastation and breakdown of law and order that followed, law-abiding citizens were left on their own without police protection to protect their families, persons, and property from looters, rapists, and criminals of various types. Police officers who stayed on the job to do their duty were overwhelmed.

Defendants responded to this crisis in part by ordering that the law-abiding citizens be disarmed, leaving them at the mercy of roving gangs, home invaders, and other criminals. Defendants had no lawful authority to order the wholesale confiscation of firearms from citizens who lawfully possessed such firearms in their homes or who were lawfully carrying such firearms.

During and after Hurricane Katrina, beginning in August 2005 and continuing through the present, Defendants Mayor C. Ray Nagin and P. Edwin Compass III, the Superintendent of Police, have pursued a policy of seizing lawfully-possessed firearms from law-abiding residents. Superintendent Compass announced, on or about September 8, 2005, that anyone with a weapon, even one legally registered, will have it confiscated, adding: “No one will be

¹While the above refers to “regulating and controlling” firearms, that section refers to “prohibiting” other items or conduct:

- (4) Prohibiting the sale and distribution of alcoholic beverages;
- (5) Prohibiting and controlling the presence of persons on public streets and places *Id.*

² “[W]here a statute is susceptible of two constructions, by one of which grave and doubtful constitutional questions arise and by the other of which such questions are avoided, our duty is to adopt the latter.” *United States ex rel. Attorney General v. Delaware & Hudson Co.*, 213 U.S. 366, 408 (1909).

able to be armed. Guns will be taken. Only law enforcement will be allowed to have guns.”³

During the same period, Mayor Nagin ordered the New Orleans Police and other law enforcement entities under his authority to evict persons from their homes and to confiscate their lawfully-possessed firearms. Police went from house to house and confiscated numerous firearms from citizens at gunpoint.⁴

Thousands of members of Plaintiff NRA members and hundreds of members of Plaintiff SAF reside in New Orleans. [NRA] Affidavit; Gottlieb Affidavit. The overwhelming majority of NRA and SAF members lawfully possess firearms. *Id.* NRA and SAF members from New Orleans thus have been and remain subject to having their firearms unlawfully confiscated from their homes and persons pursuant to the policies of Mayor Nagin and Superintendent Compass, subjecting said NRA and SAF members to irreparable harm.

While decreeing that ordinary citizens may not possess firearms, Defendants Nagin and Compass followed a policy of allowing certain businesses and wealthy persons to hire hundreds of armed security guards to protect their property.⁵

On or about September 9, 2005, Plaintiff Buell O. Teel was on a boat in Lake Pontchartrain in St. Tammany Parish working under contract to find an open path from the north shore of Lake Pontchartrain to the Industrial Canal in the city of New Orleans. He was stopped

³“Troops Escalate Urgency of Evacuation,” *Washington Post*, Sept. 9, 2005, A1, <http://www.washingtonpost.com/wp-dyn/content/article/2005/09/08/AR2005090802089.html>. These statements were widely published and televised.

⁴*E.g.*, “Corpses, Guns Found in New Orleans Homes,” <http://apnews.excite.com/article/20050909/D8CGQ5DO5.html>; “Some Katrina Victims Refuse Forced Evacuations,” http://abclocal.go.com/kabc/story?section=nation_world&id=3428024.

⁵*E.g.*, “New Orleans Gun Seizures Allegedly ‘Creating More Victims,’” Sept. 14, 2005, <http://www.cnsnews.com/ViewNation.asp?Page=%5CNation%5Carchive%5C200509%5CNAT20050914a.html>.

by officers in a St. Tammany Parish Sheriff's boat, including four uniformed officers with assault rifles (identified here as John Does I-IV), and was asked if he had any weapons. He answered that he had 2 hunting rifles in hard cases in the cabin of his boat. Teel brought the rifles with him for personal protection, fearing for his personal safety due to the numerous reports of shooting and looting in and around the New Orleans area. Two of the officers kept their guns pointed at him while two others seized his rifles on behalf of the St. Tammany Parish Sheriff. He was refused a receipt for his rifles. Teel Affidavit.

Proceeding on his way, Teel was again stopped, this time by three officers in a St. Tammany Parish Sheriff's boat who asked if they had any weapons. While one officer held a gun on Teel, the other two patted him down and searched his boat. Teel Affidavit. Said officers are identified here as John Does IV-VI.

Said Defendants John Does I-VI were acting officially under the authority of Defendant Jack Strain, Jr., Sheriff of St. Tammany Parish. Sheriff Strain either explicitly ordered said officers to confiscate firearms from citizens of St. Tammany Parish, or allowed said officers acting under his authority to do so and ratified their actions.

Teel has since attempted to obtain possession of his rifles but Sheriff Strain has refused to return his rifles to him. Teel Affidavit.

As a proximate cause of the aforesaid acts of Defendants and their agents and employees, Plaintiffs have suffered and will continue to suffer irreparable harm in that they are subject to having their lawfully-possessed firearms confiscated from them, or have actually had their lawfully-possessed firearms confiscated from them, subjecting them to endangerment from criminal violence and violating their constitutional rights as set forth herein.

ARGUMENT

Standards for TRO/Preliminary Injunction

F.R.Civ.P. 65(b) provides:

A temporary restraining order may be granted without written or oral notice to the adverse party or that party's attorney only if (1) it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or that party's attorney can be heard in opposition, and (2) the applicant's attorney certifies to the court in writing the efforts, if any, which have been made to give the notice and the reasons supporting the claim that notice should not be required.

The criteria for a preliminary injunction is stated by *Sugar Busters, LLC. v. Brennan*, 177 F.3d 258, 265 (5th Cir.1999), as follows:

A preliminary injunction is an extraordinary equitable remedy that may be granted only if plaintiff establishes the following four elements: (1) a substantial likelihood of success on the merits, (2) a substantial threat that plaintiff will suffer irreparable injury if the injunction is denied, (3) that the threatened injury outweighs any damage that the injunction might cause defendants, and (4) that the injunction will not disserve the public interest.

“If a plaintiff makes a strong showing as to the other factors, ‘some likelihood’ of success may be all that is necessary to satisfy the first element required for issuance of a preliminary injunction.” *Torries v. Hebert*, 111 F. Supp.2d 806, 813 (W.D. La. 2000), citing *Productos Carnic, S.A. v. Cent. Am. Beef & Seafood Trading Co.*, 621 F.2d 683, 686 (5th Cir. 1980). “An irreparable injury is an injury which cannot be redressed by a legal or equitable remedy following trial.” *Torries*, 111 F. Supp.2d at 813. “In the balancing of the hardships inquiry, the court must identify the harm which a preliminary injunction might cause the

defendant and weigh it against the plaintiff's threatened injury.” *Id.* “Lastly, the moving party must show that issuance of the injunction will not disserve the public interest.” *Id.* (citation omitted.) All of the required factors are met here.

I. PLAINTIFFS ARE LIKELY TO PREVAIL ON THE MERITS

A. Violation of the Right to Keep and Bear Arms

The orders to confiscate firearms and the actual confiscation of firearms carried out by Defendants violated and continue to violate the right of Plaintiffs and countless other citizens to keep and bear arms. Article I, § 11, of the Louisiana Constitution provides: “The right of each citizen to keep and bear arms shall not be abridged, but this provision shall not prevent the passage of laws to prohibit the carrying of weapons concealed on the person.” This court has supplemental jurisdiction over the claim based on that provision. The Second Amendment to the United States Constitution similarly provides: “A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.”

Defendants had no authority to abridge the right of law-abiding citizens to keep and bear arms and to use them for lawful defense. “The Constitutions of the United States and Louisiana give us the right to keep and bear arms. It follows, logically, that to keep and bear arms gives us the right to use the arms for the intended purpose for which they were manufactured.” *McKellar v. Mason*, 159 So.2d 700, 702 (La. App. 7 Cir. 1964) (upholding right to defend home), *aff’d*, 245 La. 1075, 162 So.2d 571 (1964) (table).

La. Const., Art. I, § 11, was framed at the Constitutional Convention of 1973. Delegate John L. Avant, sponsor of the guarantee, noted its purpose to protect “the right to carry a firearm in your automobile, in your boat, or keep one in your place of

business.” VII Records of the Louisiana Constitutional Convention of 1973: Convention Transcripts, 45th day at 1211. He addressed the deterrent effect of the right on the criminal:

You know what’s going through his mind is the fact that that store owner, or that homeowner, or that citizen, is in all probability armed and prepared to defend himself. . . . [Y]ou take away from the citizen, the decent, average, law-abiding citizen of this state, the God-given right to defend himself, and then you talk about law and order. You see how much law and order you have. *Id.*⁶

Similarly, delegate Hayes noted the folly of “disarming everybody so the criminals could just have a heyday knowing that you have nothing to protect yourself with.” *Id.* at 1216. That is exactly what occurred in New Orleans as a result of the policies of Mayor Nagin and Police Superintendent Compass, who purported to suspend constitutional rights. But as Delegate Jenkins observed at the 1973 convention:

[O]ur people in this country have three freedoms: the jury box, the ballot box, and the cartridge box. If we ever give up any of those three, then freedom in this country won’t last very long. There is no more basic right than the right of self-defense or self-preservation. *Id.* at 1214.

State v. Amos, 343 So.2d 166, 168 (La. 1977), noted that “it is reasonable for the legislature in the interest of public welfare and safety to *regulate the possession of firearms for a limited period of time by citizens who have committed certain specified*

⁶Delegate Tapper supported the guarantee to preclude restrictions on “the possession of firearms and weapons for the defense of the innocent people so that a man cannot have a weapon in his business place to protect himself, so that you cannot have a weapon in your home to protect yourself” *Id.* at 1213.

serious felonies.” (Emphasis added.) No such exception exists regarding law-abiding citizens. *See State v. Williams*, 735 So.2d 62, 70 (La. App. 5 Cir. 1999) (“We find no support for the defendant's proposition that one engaging in the proscribed criminal behavior, that is, illegal possession, sale, or distribution of controlled dangerous substances, has the equal right to possess or bear arms *as does the law-abiding citizen.*”) (emphasis added).⁷

Art. I, § 11, authorizes “the passage of laws to prohibit the carrying of weapons concealed on the person.” The courts have upheld legislation requiring the registration of certain narrowly-defined arms.⁸ However, a total ban on and confiscation of all firearms in all places, including the home, is plainly unconstitutional.⁹

Defendants also violated the federal Second Amendment. *United States v. Emerson*, 270 F.3d 203, 260 (5th Cir. 2001), *cert. denied*, 536 U.S. 907 (2002), states:

We hold . . . that it [the Second Amendment] protects the rights of individuals, including those not then actually a member of any militia or engaged in active military service or training, to privately possess and bear their own firearms, such as the pistol involved here, that are suitable as personal, individual weapons.

⁷See also *State v. Blanchard*, 776 So.2d 1165, 1173 (La. 2001) (“The requirement of a nexus between the firearm and the drug offense eliminates the risk that the statute will reach noncriminal or constitutionally protected activity without lessening the state's legitimate penal purpose.”);

⁸*State v. Hamlin*, 497 So.2d 1369, 1371 (La. 1986) (“it is reasonable for the legislature in the interest of public welfare and safety to require the registration of weapons [sawed-off shotguns] whose customary use in times of peace is in the perpetration of crime.”).

⁹“If the constitutional right to keep and bear arms for security is to mean anything, it must, as a general matter, permit a person to possess, carry, and sometimes conceal arms to maintain the security of his private residence” *State v. Hamdan*, 2003 Wis. 113, 665 N.W.2d 785, 808 (2003). “The right of defense of self, property and family is a fundamental part of our concept of ordered liberty. . . . For many, the mere possession of a firearm in the

Nineteenth century cases held that the First, Second, and Fourth Amendments do not apply *directly* to the States.¹⁰ However, the Supreme Court never considered whether these rights are incorporated against the State through the Fourteenth Amendment.¹¹ “[T]hese holdings all came well before the Supreme Court began the process of incorporating certain provisions of the first eight amendments into the Due Process Clause of the Fourteenth Amendment,” and “they ultimately rest on a rationale equally applicable to all those amendments” *Emerson*, 270 F.3d at 221 n.13.

Given the clear violation here of Article I, § 11, of the Louisiana Constitution, this court need not resolve whether the Fourteenth Amendment incorporates the Second Amendment. However, as discussed below, the Louisiana arms guarantee is a State-created liberty and property interest which is protected by the due process clause of the Fourteenth Amendment.

B. Deprivation of Liberty and Property Without Due Process

The Fourteenth Amendment to the United States Constitution provides that no State shall deprive any person of life, liberty, or property without due process of law. The firearms confiscated by Defendants constituted private property which was lawfully possessed by Plaintiffs pursuant to State and Federal law. Moreover, the manner in which Plaintiffs kept, bore, and possessed such property was a liberty interest recognized by State and Federal law.

home offers a source of security.” *Arnold v. Cleveland*, 616 N.E.2d 163, 169-70 (Ohio 1993).

¹⁰*United States v. Cruikshank*, 92 U.S. 542, 551-53 (1876); *Presser v. Illinois*, 116 U.S. 252, 265, 267 (1886); *Miller v. Texas*, 153 U.S. 535, 538 (1894).

¹¹*Miller v. Texas*, 153 U.S. at 538-39 (“And if the Fourteenth Amendment limited the power of the States as to such rights, as pertaining to citizens of the United States, we think it was fatal to this claim that it was not set up in the trial court”).

“State-created liberty and property interests, including the right to bear arms for defense and security, are protected by the Due Process Clause.” *Peoples Rights Organization v. City of Columbus*, 925 F. Supp. 1254, 1269 (S.D. Ohio 1996) , *aff’d in part & rev’d in part*, 152 F.3d 522 (6th Cir. 1998) (“*PRO*”). The *PRO* court cited the following for this proposition: *Mills v. Rogers*, 457 U.S. 291, 300 (1982);¹² *Olim v. Wakinekona*, 461 U.S. 238, 249 (1983);¹³ and *Hewitt v. Helms*, 459 U. S. 460, 466 (1983).¹⁴ The city “would have exceeded its authority . . . and would have violated [the constitutional guarantee] if it had banned all firearms.” *PRO*, 925 F. Supp. at 1269 (citation omitted). Exactly that occurred here.

Like liberty interests, property interests recognized by State law are also protected by the due process clause. *Paul v. Davis*, 424 U.S. 693, 710-11 (1976);¹⁵ *Board of Regents v. Roth*, 408 U.S. 564, 577 (1972).¹⁶ Applying these precedents to uphold an action under 42 U.S.C. §1983 for interference by local officials with State handgun permits, *Kellogg v. City of Gary*, 562 N.E.2d 685, 694 (Ind. 1990), held:

This right of Indiana citizens to bear arms for their own self-defense and for the defense of the state is an interest in both liberty and property which is protected by the Fourteenth Amendment to the Federal

12“Because state-created liberty interests are entitled to the protection of the federal Due Process Clause, . . . the full scope of a patient's due process rights may depend in part on the substantive liberty interests created by state as well as federal law.” *Id.*

13“A State creates a protected liberty interest by placing substantive limitations on official discretion.” *Id.*

14“Liberty interests protected by the Fourteenth Amendment may arise from two sources--the Due Process Clause itself and the laws of the States.” *Id.*

15“These [liberty and property] interests attain this constitutional status by virtue of the fact that they have been initially recognized and protected by state law” *Id.*

16“Property interests, of course, are not created by the Constitution. Rather, they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law” *Id.*

Constitution. . . . This interest is one of liberty to the extent that it enables law-abiding citizens to be free from the threat and danger of violent crime. There is also a property interest at stake, for example, in protecting one's valuables when transporting them. . . .¹⁷

“The right to defend oneself from a deadly attack is fundamental.” *United States v. Panter*, 688 F.2d 268, 271 (5th Cir. 1982). The very authorities who ordered the disarming of the citizens have no legal duty to protect them. *DeShaney v. Winnebago County Dep’t of Social Services*, 489 U.S. 189, 197 (1989) (“a State's failure to protect an individual against private violence simply does not constitute a violation of the Due Process Clause.”). “The Due Process Clause is intended to curb governmental abuse of power over the people it governs, not to require state officers to protect the people from each other.” *Saenz v. Heldenfels Brothers, Inc.*, 183 F.3d 389 (5th Cir. 1999).

Accordingly, by ordering the confiscation or actually confiscating the firearms belonging to Plaintiffs and countless other citizens, Defendants deprived them of liberty and property without due process of law.

C. Denial of Equal Protection of the Laws

The Fourteenth Amendment to the United States Constitution provides that no State shall deny to any person the equal protection of the laws. Defendants Nagin and Compass exempted the select wealthy from its confiscatory policies, denying Plaintiffs the equal protection of the laws.

At the same time that Defendants Nagin and Compass instituted and executed their policy of confiscating firearms from Plaintiffs and countless other law-abiding citizens and thereby prevented them from protecting their more-modest homes from

¹⁷See also *Rabbitt v. Leonard*, 36 Conn. Supp. 108, 413 A.2d 489, 491 (1979) (“a Connecticut citizen, under the language of the Connecticut constitution, has a fundamental right to bear arms in self-defense, a liberty interest which must be protected by procedural due process”).

looters and other intruders, Defendants allowed selected wealthy persons to keep their firearms and/or to retain armed private security personnel to protect their expensive homes and properties.

Discrimination based on wealth as to who may possess firearms violates equal protection. *Hetherton v. Sears, Roebuck & Co.*, 652 F.2d 1152, 1157-58 (3rd Cir. 1981), invalidated a requirement that two freeholders identify a firearm purchaser, because a state cannot “arbitrarily establish categories of persons who can or cannot buy the weapons.” *Id.* at 1157-58. *Hetherton* remarks:

To limit the options of prospective purchasers for guns to a requirement that only people who own real estate can identify the purchasers is not more constitutionally permissible than a requirement that only Catholics or Blacks or Indians can identify purchasers of handguns.

Id. at 1160.

A less wealthy person who cannot afford a private security service is not more likely to misuse a firearm than is a more wealthy person or a private security guard such person may retain. *See Peoples Rights Organization, Inc. v. City of Columbus*, 152 F.3d 522, 531-32 (6th Cir. 1998) (invalidating law which allowed some to register and possess “assault weapons” and prohibited similarly-situated persons from doing so), quoting *Nordlinger v. Hahn*, 505 U.S. 1, 10 (1992) (equal protection clause “keeps governmental decision makers from treating differently persons who are in all relevant respects alike”) and *Romer v. Evans*, 517 U.S. 620, 632 (1996) (“even in the ordinary equal protection case calling for the most deferential of standards, we insist on knowing the relation between the classification adopted and the object to be attained”).

Defendants Nagin and Compass discriminated in favor of the selected few, and against Plaintiffs and the great majority of citizens, solely on the basis of wealth and influence. Defendants thereby denied Plaintiffs and countless other citizens the equal protection of the law.

D. The Right to Be Secure from Unreasonable Searches and Seizures

The Fourth Amendment to the United States Constitution, which applies to the States through the Fourteenth Amendment, provides in part that “the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated” The Defendants violated the right of Plaintiffs and countless other citizens to be secure in their persons, houses, and effects against unreasonable searches and seizures.

The mere presence of a firearm does not justify a search of or seizure from its apparent lawful possessor. “[O]wning a gun is usually licit and blameless conduct. Roughly 50 percent of American homes contain at least one firearm of some sort” *Staples v. United States*, 511 U.S. 600, 613-14 (1994). “Common sense tells us that millions of Americans possess these items [revolvers, semi-automatic pistols, hunting rifles, or shotguns] with perfect innocence.” *United States v. Anderson*, 885 F.2d 1248, 1254 (5th Cir. 1989) (*en banc*).

“An officer seizes a person when he, ‘by means of physical force *or* show of authority, has in some way restrained the liberty of a citizen.’” *Flores v. City of Palacios*, 381 F.3d 391, 396 (5th Cir. 2004), quoting *Terry v. Ohio*, 392 U.S. 1, 19 n. 16 (1968) (emphasis added). Defendants, by their orders or their actions, have violated the security of the persons of Plaintiffs by restraining their liberty and seizing their firearms.

“[P]olice officers may stop and briefly detain an individual for investigative purposes if they have reasonable suspicion that criminal activity is afoot.” *Goodson v. City of Corpus Christi*, 202 F.3d 730, 736 (5th Cir. 2000), citing *Terry*, 392 U.S. at 30. Apparent lawful possession of a firearm gives rise to no such reasonable suspicion. “The Fourth Amendment requires some minimal level of objective justification for making the stop.” *Id.* at 736 (citation and quotation marks omitted).

Defendants violated the Fourth Amendment by searching the persons, homes, boats, and automobiles of Plaintiffs and seizing their firearms. See *Simmons v. City of Paris, Texas*, 378 F.3d 476, 480 (5th Cir. 2004) (upholding § 1983 claim where “the plaintiffs' home was searched and their persons seized”); *Estep v. Dallas County*, 310 F.3d 353, 358 (5th Cir. 2002) (to search a vehicle for a weapon, the facts must “reasonably warrant the officer in believing that the suspect is dangerous and the suspect may gain immediate control of the weapon.”).

Defendants’ seizures of persons in order to seize their firearms violate the Fourth Amendment and should be enjoined.

II. PLAINTIFFS WILL SUFFER IRREPARABLE INJURY IF THE INJUNCTION IS DENIED

Defendants have suspended the constitutional rights of Plaintiffs for an indeterminate period of time, and that constitutes irreparable injury. See *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (“The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.”). The injury is particularly irreparable here, as Defendants have deprived or threatened to deprive Plaintiffs of their means of defense, subjecting them to criminal violence without any means of resistance.

Plaintiffs NRA and SAF may represent their members for purposes of standing and

showing of irreparable harm. *Familias Unidas v. Briscoe*, 619 F.2d 391, 398 n.7 (5th Cir. 1980), explains:

The Supreme Court has long recognized that a voluntary association has standing to bring suit on behalf of its members when:

(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.

Id., quoting *Hunt v. Washington State Apple Advertising Comm'n*, 432 U.S. 333, 343 (1977).

NRA has a long record of representing the interests of its members in civil litigation, and its standing to do so is well recognized.¹⁸ An association may challenge a firearm ban on behalf of its members. *Peoples Rights Organization, supra*, 152 F.3d at 526-27. An association may have standing even though “it is not possible to state with certainty which of the members in the plaintiffs’ associations will be harmed.” *American Maritime Ass’n v. Blumenthal*, 458 F. Supp. 849, 855 (D. D.C. 1977), *aff’d* 590 F.2d 1156 (D.C. Cir. 1979), *cert. denied*, 441 U.S. 943.¹⁹

III. THE THREATENED INJURY OUTWEIGHS ANY DAMAGE THAT THE INJUNCTION MIGHT CAUSE DEFENDANTS

¹⁸E.g., *NRA v. Potter*, 628 F. Supp. 903, 907-08 (D. D.C. 1986) (hunters); *NRA v. City of South Miami*, 812 So. 2d 504 (Fla. 3rd DCA 2002) (gun owners); *NRA v. Reno*, 216 F.3d 122 (D.C. Cir. 2000) (firearm purchasers).

¹⁹See *American Federation of Government Employees v. OPM*, 618 F. Supp. 1254, 1259 (D. D.C. 1985) (“plaintiffs [unions] need not be able to identify particular employees who will be harmed, nor to prophesy the exact nature and extent of the damage to be inflicted, to maintain such actions”), *aff’d* 782 F.2d 278 (D.C. Cir. 1986).

The injury to Plaintiffs is the violation of their constitutional rights and their access to the means to protect themselves from criminal violence. An injunction would not damage Defendants in any respect. Law-abiding citizens who possess firearms can only help law enforcement, not hinder them, and contribute to law and order.

IV. THE INJUNCTION WILL NOT DISSERVE THE PUBLIC INTEREST

“[T]he public interest would be served by granting preliminary injunctive relief. It is beyond cavil that it is in the public interest to uphold a constitutionally protected right.” *Morscott, Inc. v. City of Cleveland*, 781 F. Supp. 500, 506 (N.D. Ohio 1990). The public interest is further served by allowing law-abiding persons to protect their families and their persons from criminal violence. By unlawfully confiscating firearms, Defendants violated and continue to violate fundamental constitutional rights and to endanger citizens.

CONCLUSION

This court should issue a temporary restraining order and a preliminary injunction compelling Defendants to return all unlawfully seized firearms to Plaintiffs (including the members of the association Plaintiffs) and to their other lawful owners, and ordering Defendants not to make any further unlawful seizures of firearms.

Respectfully Submitted,

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