IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BRADY CAMPAIGN TO PREVENT GUN VIOLENCE	)	
Plaintiff	)	
v.	)	No. 08-2243 (CKK)
DIRK KEMPTHORNE, *et al.*	)	
Defendant	)	

MOTION OF NATIONAL RIFLE ASSOCIATION TO INTERVENE

COME NOW the National Rifle Association of America (NRA), by counsel, and moves the court, pursuant to Fed.R.Civ.P. 24(a)(2), to intervene as a party defendant.

RULE 24

Fed.R.Civ.P. 24(a)(2) provides:

> Upon timely application anyone shall be permitted to intervene in an action: . . . (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

Fed.R.Civ.P. 24(c) provides in pertinent part:

> The motion must state the grounds for intervention and be accompanied by a pleading that sets out the claim or defense for which intervention is sought.

ARGUMENT

In *Fund for Animals, Inc.* v. *Norton*, 322 F.3d 728 (D.C. Cir. 2003), the court explained that:

> qualification for intervention as of right depends on the following four factors:

> (1) the timeliness of the motion; (2) whether the applicant "claims an interest relating to the property or transaction which is the subject of the action"; (3) whether "the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest"; and (4) whether "the applicant's interest is adequately represented by existing parties."

322 F.3d at 731.

Further, an application to intervene:

> should be viewed on the tendered pleadings--that is, whether those pleadings allege a legally sufficient claim or defense and not whether the applicant is likely to prevail on the merits.

Williams & Humbert Ltd. v. *W. & H. Trade Marks (Jersey) Ltd.*, 840 F.2d 72, 75 (D.C. Cir. 1988).

NRA satisfies all four factors and has accompanied this motion with a pleading that sets out a legally sufficient claim or defense for which intervention is sought.

1) Timeliness: The instant motion is timely as Defendants' answers are not due until early March, and their opposition to Plaintiff's motion for a preliminary injunction is not due until January 30, 2009.[1]

2) Interest: Plaintiff is seeking to have invalidated a regulation duly promulgated by Defendants which authorizes individuals who have voluntarily subjected themselves to, and been approved by, a state-administered permit process to carry concealed firearms in national parks and wildlife refuges. Thus, those individuals who have been issued permits have an interest in the disposition of the case. NRA is a New York not-for-profit membership corporation incorporated in 1871

[1] Plaintiff's reply to Defendants' opposition is not due until February 5, 2009 and Defendants' sur-reply is not due until February 13, 2009.

with approximately 4 million individual members nationwide. Among NRA's purposes, as set forth in its Bylaws, are:

> 1. To protect and defend the Constitution of the United States, especially with reference to the inalienable right of the individual American citizen guaranteed by such Constitution to acquire, possess, transport, carry, transfer ownership of, and enjoy the right to use arms, in order that the people may always be in a position to exercise their legitimate individual rights of self-preservation and defense of family, person, and property, as well as to serve effectively in the appropriate militia for the common defense of the Republic and the individual liberty of its citizens . . . .

NRA filed a comment in support of the proposed regulation. See Attachment A. Of the approximately 4 million permits extant in the United States, many are held by individual NRA members who already, and intend to continue to, lawfully carry firearms in national parks and wildlife refuges for personal protection and the protection of their families.

In *Military Toxics Project* v. *E.P.A.*, 146 F.3d 948 (D.C. Cir. 1998), the court held, based upon *Hunt* v. *Washington Apple Advertising Comm'n*, 432 U.S. 333 (1977)[2]:

> An association has standing to sue 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. . . . CMA has standing because some of its members produce military munitions and operate military firing ranges regulated under the Military

[2] "[A]n 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." 432 U.S. at 343.

> Munitions Rule. These companies are directly subject to the challenged Rule, and they benefit from the EPA's "intended use" interpretation (under which most military munitions at firing ranges are not solid waste), the conditional exemption from regulation of storage and transportation under Subtitle C, and other features of the Military Munitions Rule that the MTP is challenging in this appeal. These CMA members would suffer concrete injury if the court grants the relief the petitioners seek; they would therefore have standing to intervene in their own right, and we agree with the litigants that the CMA has standing to intervene on their behalf in support of the EPA.

146 F.3d at 953-54.

The millions of NRA's members who are permit holders would "have standing . . . in their own right" to intervene as they will "suffer concrete injury if the court grants the relief" Plaintiff seeks. Thus, NRA has "an interest relating to the property or transaction which is the subject of the action . . . ." Fed.R.Civ.P. 24(a)(2). See *Fund for Animals, Inc.* v. *Norton*, 322 F.3d at 735 ("Our conclusion that the NRD has constitutional standing is alone sufficient to establish that the NRD has 'an interest relating to the property or transaction which is the subject of the action,' Fed.R.Civ.P. 24(a)(2).."). Further, the interest NRA seeks to protect is very much "germane to" NRA's purpose. Finally, neither the claim asserted nor the relief requested requires the participation of individual NRA members in the lawsuit.

In *Independent Petrochemical* v. *Aetna Cas. & Sur. Co.*, 105 F.R.D. 106 (D.D.C. 1985), the court explained that, in determining whether a potential intervenor as of right satisfies the "interest" requirement under Rule 24(a)(2), the "approach taken by this jurisdiction":

> has been to look to the "practical consequences" of denying intervention, rather than to "revert to a narrow formulation that 'interest' means a 'specific legal or equitable interest

in the chose.'" (citation omitted).

105 F.R.D. at 109.

Further, the court observed that the D.C. Circuit declined to require "'a direct, substantial, legally protectable interest in the proceedings' as a prerequisite to intervention as of right." *Id.* Here, the "practical consequences" of denying intervention to NRA is that the court may not be fully advised of the relevant statutory and case law as Defendants have institutional interests which may well be at variance with the interests of NRA's members. Notably, the D.C. Circuit has recognized that governmental entities do not always have the same interests as private intervenors: "[W]e have often concluded that governmental entities do not adequately represent the interests of aspiring intervenors." *Fund for Animals, Inc.* v. *Norton*, 322 F.3d at 736. Moreover, if the regulation is invalidated, NRA's members will have no other means of protecting their ability to carry concealed firearms lawfully in national parks and wildlife refuges. This litigation is the only avenue through which NRA's members can protect their interests in the new regulation.

3) Ability to protect interests: In *Fund for Animals, Inc.* v. *Norton*, the court read the "so situated that the disposition of the action may as a practical matter impair or impede [its] ability to protect [its] interest" language of Fed.R.Civ.P. 24(a)(2) "as looking to the `practical consequences' of denying intervention, even where the possibility of future challenge to the regulation remain[s] available." 322 F.3d at 735 (citation omitted). As noted, the practical

consequences of denying NRA's participation is that the court may not be fully apprized of applicable statutory and case law as Defendants may have institutional interests which diverge from the interests of NRA's members, and, if the regulation is invalidated, NRA's members will have no other means of protecting their ability to carry concealed firearms lawfully in national parks and wildlife refuges.

4) Representation by existing parties: In *Trbovich v. United Mine Workers*, 404 U.S. 528 (1972), the Court held that this "requirement of the Rule is satisfied if the applicant shows that representation of his interest `may be' inadequate; and the burden of making that showing should be treated as minimal." 404 U.S. at 538 n.10. Citing *Trbovich*, the D.C. Circuit has "described this requirement as 'not onerous.'" *Fund for Animals, Inc.* v. *Norton*, 322 F.3d at 735. As noted above, *Fund for Animals, Inc.* v. *Norton* also observed that it had "often concluded that governmental entities do not adequately represent the interests of aspiring intervenors." 322 F.3d at 736. This could certainly be the case here as President Obama has made clear his opposition to the carrying of firearms by law-abiding individuals with state-issued permits.

> On the issue of prohibiting citizens from carrying concealed weapons, Obama said he believes national legislation should be passed to "prevent other states' laws [allowing citizens to conceal their guns] from threatening the safety of Illinois residents."
>
> Still, Obama said concealed weapons should be allowed for retired police officers and some military personnel.

Keyes, Obama are far apart on guns; Views on assault weapons at odds, Chicago Tribune (Near West Final, 15 September 2004).

Similarly, the *Pittsburgh Tribune-Review* reported on Wednesday, April 2, 2008 that President Obama stated: "I am not in favor of concealed weapons. I think that creates a potential atmosphere where more innocent people could (get shot during) altercations."

In light of the administration's possible bias against the new regulation, its representation of NRA's members' interests may be inadequate. Thus, under *Trbovich,* NRA satisfies this factor.

CONCLUSION

The court should grant NRA's motion to intervene.

Respectfully submitted,

National Rifle Association
of America
By counsel

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing MOTION OF NATIONAL RIFLE ASSOCIATION TO INTERVENE was served, via the ECF system, on Bruce S. Mannheim and Barry A. Weiner this 27th day of January, 2009.

/S/Richard E. Gardiner
Richard E. Gardiner

ATTACHMENT A

National Rifle Association of America
Institute for Legislative Action
11250 Waples Mill Road
Fairfax, Virginia 22030

Office of the Executive Director
Chris W. Cox

June 30, 2008

Public Comments Processing
Attn: 1024-AD70
Division of Policy and Directives Management
U.S. Fish and Wildlife Service
4401 N. Fairfax Drive, Suite 222
Arlington, VA 22203

Dear Sir or Madam:

I am writing on behalf of the National Rifle Association, to offer our comments on the proposed changes to regulations on possession of firearms in national parks and wildlife refuges. We strongly support the proposed rule, but believe it could be improved further.

First, we believe this change in regulations is necessary. Some have suggested otherwise, arguing that individuals can already possess firearms in national parks and wildlife refuges. These critics gloss over the fact that under the current regulation, all guns must be unloaded and inaccessible for use.

The current storage requirement burdens those who possess guns for self-defense, and creates problems of its own. People with permits to carry concealed firearms, issued by states after background checks and proof of training, are authorized to carry those firearms most places in their states—and often in other states, under interstate reciprocity laws. They should not be forced to unload and case their guns merely to traverse a park or drive on a scenic parkway. (In fact, people stopping near park entrances to remove, unload, and lock up their guns are likely to draw unnecessary attention to themselves, creating awkward situations with members of the public who are unfamiliar with the law.)

Changes in State Law

Some critics argue that the rule change is unnecessary, given how long the current rules have been in effect. This argument ignores both the situation in the early 1980s,

when the National Park Service (NPS) enacted the current regulations, and the major changes that have occurred at the state level since then.

The commentary in the 1982 proposed rule noted that firearms were already prohibited in "natural and historical areas," but could be possessed in accordance with state law in "recreational areas."[1] The regulations were broadened to all park service lands, purportedly "to ensure public safety and provide maximum protection of natural resources."[2] There was no suggestion, however, that possession of firearms in recreational areas had posed a threat to public safety or to natural resources, and the 1982 Notice of Proposed Rulemaking offered no further discussion of how the regulation would "ensure public safety."

Since the current rule became final in 1983, the legal situation at the state level has changed dramatically. As of the end of 1982, only six states routinely allowed average citizens to carry handguns for self-defense.[3] Those states contained few major national parks.

Today, forty states have strong state laws respecting the right to carry firearms for self-protection, and eight others have more restrictive permit systems. Only Illinois and Wisconsin still forbid all concealed carry of handguns.[4]

These changes have had a disproportionate effect on states that contain major national park lands. Most of the western or southern states with the largest or most extensive national parks passed non-discretionary right-to-carry laws between 1983 and 1995. Just in 1994-95, states with major park lands that passed these laws included Arizona, North Carolina, Tennessee, Virginia and Wyoming.

Crime

The proposed rule is likely to help reduce violent crime. At the very least, it poses no added threat.

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[1] 47 FR 11598, 11602 (Mar. 17, 1982).

[2] *Id.*

[3] Alabama, Connecticut, Georgia, Indiana, and New Hampshire had permit systems that required issuance to qualified persons, or discretionary systems that were administered to generally issue permits to qualified persons. Vermont then, as now, required no permit to carry a handgun.

[4] Even so, recent Wisconsin court decisions have suggested that at least some individuals have the right to carry concealed handguns under the state constitution's guarantee of the right to keep and bear arms. See *State v. Hamdan*, 264 Wis. 2d 433 (2003); *State v. Vegas*, No. 07 CM 687 (Wis. Cir., Sept. 24, 2007).

Empirical studies have demonstrated that possession of firearms by law-abiding adults deters crime and promotes public safety. Defensive gun use is very common, with as many as 2.5 million defensive gun uses per year.[5] Gun use is more effective than any other means for preventing the completion of robberies and assaults, and people who use guns in self-defense are significantly less likely to be injured during a robbery or assault than are victims who respond in any other way.[6]

Laws allowing people to carry firearms outside the home result in significant decreases in murder, rape and robbery in most states that adopt such laws.[7] In 2006, the most recent year for which complete data are available, states with right-to-carry laws had lower violent crime rates, on average, compared to the rest of the country (total violent crime by 26 percent; murder, 31 percent; robbery, 50 percent; and aggravated assault, 15 percent).[8]

Fears about the impact of these laws—such as those expressed by the radical anti-gun group, Violence Policy Center, in its comments—have proved baseless. The two states that VPC focuses on—Florida and Texas—actually best make the case for the effectiveness and success of Right-to-Carry laws now in effect in 40 states. Violent crime has decreased in both states since their adoption of Right-to-Carry laws, and the people who obtain permits are statistically more law-abiding than the rest of the public. For example, since 1987, Florida has issued 1,349,784 permits, and revoked only 165 for firearm-related crimes committed after licensure—a rate of 0.01 percent.[9] Texas publishes only general revocation data, and its revocation rate is similar to Florida's. Furthermore, most of the small number of permit-holder crimes that VPC identifies occurred in circumstances in which carry permit laws were irrelevant because a permit was not required to possess a firearm (for example, at home).

Opponents of the rule change also claim it is unnecessary because national parks are safe. While this is relatively true compared to urban areas, no rural area—not even a national park—is untouched by crime. NPS figures for 2006 include 11 murders, 35

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[5] *See, e.g.*, Gary Kleck & Marc Gertz, *Armed Resistance to Crime: The Prevalence and Nature of Self-Defense With a Gun,* 86 J. Crim. L. & Criminology 150, 164-65, 182-183 (1995); Gary Kleck, *The Frequency of Defensive Gun Use*, in Gary Kleck & Don B. Kates, *Armed: New Perspectives on Gun Control* 226-29 (2001).

[6] *See* Gary Kleck, *Targeting Guns* 170-74 (1997).

[7] *See* Florenz Plassmann & Nicholas Tideman, *Does the Right to Carry Concealed Handguns Deter Countable Crimes? Only A Count Analysis Can Say,* 44 J. L. & Econ. 771, 796-97 (2001); *see also* Carlisle E. Moody, *Testing for the Effects of Concealed Weapons Laws: Specification Errors and Robustness*, 44 J. L. & Econ. 799, 812 (2001).

[8] Calculated from statistics reported by the FBI Uniform Crime Reporting Program (http://www.fbi.gov/ucr/cius2006/offenses/violent_crime/index.html).

[9] *See* http://licgweb.doacs.state.fl.us/stats/cw_monthly.html (last visited June 18, 2008).

rapes, 61 robberies, and 261 aggravated assaults.[10] Due to the remoteness of their duties and unique hazards, "National Park Service officers are 12 times more likely to be killed or injured as a result of an assault than FBI agents," and attacks are reportedly increasing.[11] Danger factors include hidden methamphetamine labs and marijuana fields, and alien smuggling on the U.S.-Mexico border.[12] These not just faceless statistics, but real crimes, with real victims. And even if there were fewer crimes than this, citizens would still have the right to protect themselves even from rare dangers. People who drive on good roads still carry spare tires.

The idea that parks are so safe that citizens could not need to protect themselves is even belied by NPS literature. For example, NPS warns visitors that "Big Bend National Park shares the border with Mexico for 118 miles. This is a remote region. … *Visitors should be aware that drug smuggling routes pass through the park.*"[13] Visitors to Organ Pipe Cactus National Monument can read a similar warning, and are also warned that "cell phone service is usually out of range."[14] Until recently, the Organ Pipe website warned that law enforcement assistance may be inadequate:

> Organ Pipe Cactus National Monument is an attractive place, and not just for its scenery. Every thousands of people are attracted to this remote location for its apparent ease with which they can illegally enter the USA. Away from the development at Lukeville, the remoteness of our international boundary is impossible to completely stop cross-border traffic, though Border Patrol and Law Enforcement Rangers are continually patrolling the area.[15]

In fact, Organ Pipe visitors are warned to report suspicious behavior to the Kris Eggle Visitor Center, named after a Park Ranger killed in the line of duty by fleeing members of a Mexican "drug cartel hit squad."[16]

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[10] *Crime in National Parks*, The Washington Post, Feb. 28, 2008.

[11] Brad Knickerbocker, *Crime rates tick up across national parks*, Christian Science Monitor, Aug. 8, 2005.

[12] *Id.*; *see also* Zachary Coile, *National parks' pot farms blamed on cartels*, San Francisco Chronicle, Nov. 18, 2005.

[13] http://www.nps.gov/bibe/planyourvisit/border_travel.htm (emphasis in original) (last visited June 18, 2008).

[14] http://www.nps.gov/orpi/planyourvisit/boarder-concerns.htm (last visited June 18, 2008).

[15] Downloaded May 27, 2008.

[16] http://www.nps.gov/orpi/historyculture/kris.htm (last visited June 18, 2008).

Resource Protection

The proposed rule is also highly unlikely to cause any harm to the natural environment, park wildlife, or scenic resources. Nothing in the proposed rule—and no change sought by advocates of the rule—would repeal the NPS's existing ban on discharge of firearms outside of designated target shooting areas. Given that continued prohibition, law enforcement personnel would certainly have every incentive to investigate any reports of gunfire in parks.

Critics suggest that the rule change will lead to rampant poaching and uncontrolled target shooting. Experience on other types of federal and state land suggests otherwise. With the exception of a few isolated areas notable for their lack of a management presence, uncontrolled target shooting is not a major problem for other federal lands. Nor has it been a problem in the thirty states that currently allow possession of firearms in state parks. This should be no surprise, since the type of person who would shoot game out of season or in an unauthorized area is highly unlikely to obey the current NPS prohibition on possessing loaded firearms.

Some have argued that the ability to prosecute people for possessing firearms is a suitable way to enforce laws against poaching in parks. We disagree. It is unjust to deprive honest citizens of the legal rights they enjoy on comparable types of state and federal land, simply because a tiny minority may be trying to take wildlife illegally and the government lacks any other evidence to support charges for a violation.

Finally, opponents claim that firearms are useless or even dangerous for self-protection against animal attack. Again, experience suggests otherwise. Though such attacks are rare, they can occur without provocation, and firearms can be an effective means of defense when other efforts fail. For example, last fall a bow hunter who accidentally wandered near a grizzly bear's den near Yellowstone was forced to defend himself with a handgun when bear spray failed to deter the animal.[17] At least a dozen grizzly attacks were reported between April and December of 2007.[18] Experienced hunters guides in Alaska's parks routinely carry firearms for protection against bear attack due to the possibility of such incidents. Although no form of self-defense is foolproof against animal attacks, any defense is better than no defense at all.

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[17] *Officials say fatal bear shooting was self defense*, Associated Press, Oct. 8, 2007.

[18] Matthew Brown, *Some Push for Hunts As Grizzlies Surge*, Associated Press, Dec. 4, 2007.

Firearms in Federal Facilities

Some opponents of the proposed rule have claimed that it conflicts with the existing federal law that prohibits possession of firearms in federal facilities, or that it would create unreasonable security burdens on facility managers by requiring extensive signage or use of magnetometers at all park buildings. Both claims are false.

Current federal law prohibits possession of "a firearm or other dangerous weapon in a Federal facility."[19] A "federal facility" is "a building or part thereof owned or leased by the Federal Government, where Federal employees are regularly present for the purpose of performing their official duties."[20]

The supposed burdens on facility managers are fictitious. The current law already requires that notice of the prohibition be "posted conspicuously at each public entrance to each Federal facility," and bars conviction if no such notice was posted (unless the accused had actual notice of the prohibition).[21] Therefore, the new rule would not create any need for new signs.

With regard to the claimed need for metal detectors, while detailed security standards for federal facilities are not available to the public, some guidelines have been published. According to those guidelines, devices such as magnetometers are only required in "Level IV" or higher facilities, defined as those with "[h]igh-volume public contact, *and* tenant agencies that may include high-risk law enforcement, courts, judicial offices, and highly sensitive government documents," and typically housing 450 or more employees.[22] Ordinary ranger stations, visitor centers, or restrooms would not qualify under this definition. And although a person with criminal intent could surely violate the current ban in such facilities, NPS has apparently never felt the threat level called for such extraordinary precautions.

Additional Proposed Changes

While the proposed rule is a great improvement over the existing rule, we believe it could be improved in two respects.

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[19] 18 U.S.C. § 930(a).

[20] 18 U.S.C. § 930(g)(1).

[21] 18 U.S.C. § 930(h).

[22] General Services Administration, "Security Standards for Leased Buildings," available at http://www.gsa.gov/Portal/gsa/ep/contentView.do?P=PQL&contentType=GSA_OVERVIEW&contentId=8320 (last visited June 18, 2008) (emphasis added).

First, a strict reading of the proposed rule would prohibit a person not only from carrying a firearm openly, but from carrying an unloaded or inoperable firearm. If a person chooses to carry an unloaded or (for whatever reason) inoperable firearm, it should not be a violation of law to do so. Even if the final rule retains the requirement that the firearm be concealed, the requirement that it be loaded and operable should be eliminated.

Second, the proposed rule authorizes carry in accordance with law governing state parks or state wildlife refuges or "any similar unit of state land." This term is vague and will lead to difficulty in applying the new rule. Possession of firearms in national parks could more simply be governed by state law governing state parks, and possession in wildlife refuges could more simply be governed by state law governing state wildlife management areas, state game lands, or other areas specifically dedicated to wildlife.

I hope these comments are helpful, and that the Department will quickly move to promulgate a final rule to protect honest citizens' right to possess firearms in national parks and wildlife refuges, consistent with state law. Of course, if we can be of any further assistance, please do not hesitate to contact me personally.

Sincerely,

Chris W. Cox
Executive Director, NRA-ILA

ATTACHMENT C

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BRADY CAMPAIGN TO PREVENT GUN VIOLENCE	)	
Plaintiff	)	
v.	)	No. 08-2243 (CKK)
DIRK KEMPTHORNE, *et al.*	)	
Defendant	)	

ANSWER OF INTERVENOR NATIONAL RIFLE ASSOCIATION

NATURE OF THE CASE

1) No response is required to the first sentence as it merely states the general nature of the case. The second sentence is denied as Defendants did not violate any of the enumerated statutes in promulgating the new regulation.

2) Admit all but the last sentence, which is denied.

3) Deny.

4) Deny, except that NRA is without information concerning whether Brady Campaign members will no longer visit national parks and wildlife refuges, or whether their enjoyment of those areas will be diminished.

JURISDICTION AND VENUE

5) Admit that the court has jurisdiction pursuant to 28 U.S.C. § 1331; deny that the court has jurisdiction pursuant to 28 U.S.C. § 1361 as the is no relief sought "in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff"; deny that the court has jurisdiction pursuant to 5 U.S.C. § 551 *et seq.* as no provision of

Subchapter II of Chapter 5 of Part I of Title 5 (Administrative Procedure, §§ 551-559) relates to jurisdiction of the district courts; admit that the court may issue declaratory judgments pursuant to 28 U.S.C. § 2201 and further relief pursuant to 28 U.S.C. § 2202.

6) Admit.

7) Deny.

PARTIES

8) Admit that the Brady Campaign is a non-profit organization and its address; deny that it is a grassroots membership organization or that it is involved in fighting to prevent gun violence; deny that it is dedicated to safety; deny that the members of the Brady Campaign, if any, will face an increased risk because of the new regulation.

9) Admit.

10) Admit.

11) Admit.

12) Admit.

STATUTORY AND REGULATORY BACKGROUND

The National Park Service Organic Act

13) Deny, as 16 U.S.C. § 1 is misquoted. The last sentence of 16 U.S.C. § 1 provides:

> The service thus established shall promote and regulate the use of the Federal areas known as national parks, monuments, and reservations . . . by such means and measures as conform to the fundamental purpose of the said parks, monuments, and reservations, which purpose is to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations. (Omitted text emphasized).

14) Admit.

The National Wildlife Refuge System Administration Act

15) Admit, except that relevant provisions of § 668dd are omitted. § 668dd(c) provides: "The regulations permitting hunting and fishing of resident fish and wildlife within the System shall be, to the extent practicable, consistent with State fish and wildlife laws and regulations." § 668dd(d)(1)(A) provides that the Secretary:

> is authorized, under such regulations as he may prescribe, to - (A) permit the use of any area within the System for any purpose, including but not limited to hunting, fishing, public recreation and accommodations, and access whenever he determines that such uses are compatible with the major purposes for which such areas were established . . . .

§ 668dd(m) provides:

> Nothing in this Act shall be construed as affecting the authority, jurisdiction, or responsibility of the several States to manage, control, or regulate fish and resident wildlife under State law or regulations in any area within the System. Regulations permitting hunting or fishing of fish and resident wildlife within the System shall be, to the extent practicable, consistent with State fish and wildlife laws, regulations, and management plans.

16) Admit.

The National Environmental Policy Act

17) Admit, except that "NEPA does not require the agency to assess *every* impact or effect of its proposed action, but only the impact or effect on the environment." *Metropolitan Edison v. People Against Nuclear Energy,* 460 U.S. 766, 772 (1983). Further, "NEPA was designed to promote human welfare by alerting governmental actors to the effect of their proposed actions on the physical environment." *Id.* What is involved in NEPA is:

> "a congressional declaration that we do not intend, as a government or as a people, to initiate actions which endanger the continued existence or the health of mankind: That *we will not intentionally initiate actions which do irreparable damage to the air, land and water* which support life on earth." 115 Cong. Rec. 40416 (1969) (remarks of Sen. Jackson) (emphasis supplied).
>
> "[W]e can now move forward *to preserve and enhance our air, aquatic, and terrestrial environments.* . . to carry out the policies and goals set forth in the bill to provide each citizen of this great country a healthful environment." *Id.*, at 40924 (remarks of Rep. Dingell) (emphasis supplied).

460 U.S. at 773.

18) Admit.

19) Admit.

20) Admit that the "Categorical Exclusion" under 40 C.F.R. § 1508.4 is an alternative procedure. Deny that an agency need not issue an EIS or an EA:

> if the criteria for a CX have been satisfied and the agency provides a reasoned explanation as to why there are no "extraordinary circumstances" that take the action out of the CX. (Emphasis added).

Concerning extraordinary circumstances, 40 C.F.R. § 1508.4 states only that "Any procedures under this section shall provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect." Deny that the "CEQ has specified certain 'extraordinary circumstances' that require preparation of an EIS or, at least an EA for actions that otherwise would ordinarily be subject to a CX. 40 C.F.R. § 1508.27." 40 C.F.R. § 1508.27 only defines the term "significantly" ("Significantly as used in NEPA requires considerations of both context and intensity").

21) Deny, as 40 C.F.R. § 1508.27 only defines the term

"significantly" and there is no 43 C.F.R. § 46.215. 40 C.F.R. § 1508.27 states:

> Significantly as used in NEPA requires considerations of both context and intensity:
>
> (a) Context. This means that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality. Significance varies with the setting of the proposed action. For instance, in the case of a site-specific action, significance would usually depend upon the effects in the locale rather than in the world as a whole. Both short- and long-term effects are relevant.
>
> (b) Intensity. This refers to the severity of impact. Responsible officials must bear in mind that more than one agency may make decisions about partial aspects of a major action. The following should be considered in evaluating intensity:
>
> (1) Impacts that may be both beneficial and adverse. A significant effect may exist even if the Federal agency believes that on balance the effect will be beneficial.
>
> (2) The degree to which the proposed action affects public health or safety.
>
> (3) Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.
>
> (4) The degree to which the effects on the quality of the human environment are likely to be highly controversial.
>
> (5) The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.
>
> (6) The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.
>
> (7) Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an

action temporary or by breaking it down into small component parts.

(8) The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources.

(9) The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.

(10) Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.

The DOI Departmental Manual, Part 516, Chapter 2 (Effective Date: 9/26/84) sets forth, in Appendix 2, "EXCEPTIONS TO CATEGORICAL EXCLUSIONS":

The following exceptions apply to individual actions within categorical exclusions (CX). Environmental documents must be prepared for actions which may:

2.1 Have significant adverse effects on public health or safety.

2.2 Have adverse effects on such unique geographic characteristics as historic or cultural resources, park, recreation or refuge lands, wilderness areas, wild or scenic rivers, sole or principal drinking water aquifers, prime farmlands, wetlands, floodplains or ecologically significant or critical areas, including those listed on the Department's National Register of Natural Landmarks.

2.3 Have highly controversial environmental effects.

2.4 Have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks.

2.5 Establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.

2.6 Be directly related to other actions with individually

insignificant but cumulatively significant environmental effects.

2.7 Have adverse effects on properties listed or eligible for listing on the National Register of Historic Places.

2.8 Have adverse effects on species listed or proposed to be listed on the List of Endangered or Threatened Species, or have adverse effects on designated Critical Habitat for these species.

2.9 Require compliance with Executive Order 11988 (Floodplain Management), Executive Order 11990 (Protection of Wetlands), or the Fish and Wildlife Coordination Act.

2.10 Threaten to violate a Federal, State, local or tribal law or requirement imposed for the protection of the environment.

CHRONOLOGY OF DEFENDANTS' ACTIONS

1960 FWS Regulations and 1984 NPS Regulations

22) Admit that DOI established the firearms regulations as described on September 1, 1960. Deny that the regulations were necessarily "[c]onsistent with" FWS's mission.

23) Admit that DOI established the firearms regulations as described on June 30, 1983. Deny that the regulations were necessarily "[c]onsistent with" NPS's mission.

24) Admit.

25) Admit.

26) Admit.

Defendants' 2008 Rule Change

27) Admit.

28) Admit.

29) Admit.

30) Admit.

31) Deny that Defendants "summarily dismissed various comments that were raised in opposition to the rule change." Admit the characterization of the comments, but deny that the comments are correct.

32) Admit.

33) Admit.

THE BRADY CAMPAIGN'S COMMENTS

34) Admit Defendants' conclusion. Deny that Defendants "summarily rejected without analysis and/or ignored credible statistics and comments submitted by the Brady Campaign" as Defendants' conclusion that the "available data does not suggest that visitors to these lands misuse their legally permitted firearms for poaching or illegal shooting, or that there is additional danger posed to the public from lawfully carried concealed firearms" (73 Fed. Reg. 74970) was supported by scholarly publications:

> See, e.g., National Research Council, Committee on Law and Justice, *Firearms and Violence: A Critical Review* (Washington, D.C.: The National Academies Press, 2004), p.6; Dodenhoff, David, *Concealed Carry Legislation: An Examination of the Facts*, Wisconsin Public Policy Research Institute (2006), p.5; *see also*, Jeffrey Snyder, *Fighting Back: Crime, Self-Defense; and the Right to Carry a Handgun* (October 1997); Kopel, David, et al., *Policy Review* No. 78 (July & August 1996).

73 Fed. Reg. 74970.

35) Deny that the Brady Campaign "demonstrated that allowing the possession and transportation of concealed firearms on federal lands will unnecessarily endanger visitors to national park areas and national wildlife refuges" and deny that the Brady Campaign

"demonstrated that . . . the increased threat would violate defendants' responsibility to safeguard lands for the enjoyment, education, and inspiration of this and future generations" as the Brady Campaign's comments presented no evidence concerning the effects of the "possession and transportation of concealed firearms on federal lands" and thus nothing concerning a violation of Defendants' responsibility. Rather, the Brady Campaign's comments presented studies of questionable merit which Defendants were required to consider, but the determination of how much weight is to be given to these studies is properly left to the informed discretion of the DOI.

Deny that the Brady Campaign "showed that the rule change" is "fundamentally incompatible with the unambiguous statutory command of the Organic Act and NWRSA" as the Organic Act provides very generally that the NPS "shall promote and regulate the use of the Federal areas known as national parks, monuments, and reservations":

> by such means and measures as conform to the fundamental purpose of the said parks, monuments, and reservations, which purpose is to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.

16 U.S.C. § 1.

Further, the NWRSA provides very generally that the "mission of the [National Wildlife Refuge] System is to administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and

future generations of Americans." 16 U.S.C. § 668dd(a)(2). In administering the System, 16 U.S.C. § 668dd(a)(4)(A)-(N) imposes various duties upon the Secretary. Moreover, § 668dd(c) expressly provides that the "regulations permitting hunting and fishing of resident fish and wildlife within the System shall be, to the extent practicable, consistent with State fish and wildlife laws and regulations" and § 668dd(d)(1)(A) provides that the Secretary is "authorized, under such regulations as he may prescribe, to":

> permit the use of any area within the System for any purpose, including but not limited to hunting, fishing, public recreation and accommodations, and access whenever he determines that such uses are compatible with the major purposes for which such areas were established . . . .

In addition, § 668dd(m) provides:

> Nothing in this Act shall be construed as affecting the authority, jurisdiction, or responsibility of the several States to manage, control, or regulate fish and resident wildlife under State law or regulations in any area within the System. Regulations permitting hunting or fishing of fish and resident wildlife within the System shall be, to the extent practicable, consistent with State fish and wildlife laws, regulations, and management plans.

Accordingly, Congress has delegated to the Secretary broad general authority to determine what activities are appropriate in national parks and wildlife refuges, but has also emphasized, as to wildlife refuges, that there should be consistency with state law.

Deny that the Brady Campaign also "demonstrated" that allowing concealed, loaded and operable firearms to be carried in national parks and wildlife refuges in compliance with state law "endangers natural scenery and wildlife."

36) Deny that the Brady Campaign "demonstrated that the rule would

harm the enjoyment of the national park areas and impair their use for future generations, in contravention of the National Park Service Organic Act, 16 U.S.C. § 1," as that provision merely states very generally that the NPS "shall promote and regulate the use of the Federal areas known as national parks, monuments, and reservations":

> by such means and measures as conform to the fundamental purpose of the said parks, monuments, and reservations, which purpose is to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.

16 U.S.C. § 1.

Deny that the Brady Campaign "demonstrated that the rule would . . . threaten opportunities for parents and their children to safely engage in traditional outdoor activities in national wildlife refuges in contravention of . . . 16 U.S.C. § 668dd(a)(4)(k)" as § 668dd(a)(4)(k) requires the Secretary to "provide increased opportunities for families to experience compatible wildlife-dependent recreation, particularly opportunities for parents and their children to safely engage in traditional outdoor activities, such as fishing and hunting . . . ." (Emphasis added). Thus, § 668dd(a)(4)(k) not only does not bar firearms in national wildlife refuges, it requires the Secretary to provide increased opportunities for the use of firearms in national wildlife refuges in referring to hunting as a traditional outdoor activity.

37) Deny that there is an "inconsistency stemming from the presence of concealed firearms on federal lands designated for the use

and enjoyment of the public" and deny that there is an "accompanying threat to public health and safety . . . ." Admit that the Brady Campaign urged Defendants to prepare an EIS, or conduct an EA.

38) Deny that the Brady Campaign "fully documented the dangers associated with concealed firearms" or that the Brady Campaign "refuted studies and publications cited by defendants" or that the Brady Campaign "explained that the methodology and conclusions of these widely repudiated studies . . . were flawed" or that "concealed carry laws have increased violent crime."

39) Deny that the Brady Campaign "showed that the prohibition on concealed carrying of firearms in national park areas has made these areas some of the safest places to visit in the country." Deny that "the risk of harm posed by concealed weapons is too great to allow loaded and concealed carrying in national parks and refuges."

40) Deny that the Brady Campaign "highlighted weaknesses in state processes for granting concealed carry permits . . . ." Deny that the examples provided by the Brady Campaign are factually accurate or demonstrate weaknesses in state processes for granting concealed carry permits.

41) Deny that the Brady Campaign has "demonstrated that defendants' reliance on certain studies was misguided, and resulted in an erroneous conclusion about the potential risks of concealed weapons in national park areas and national wildlife refuges." Deny that DOI "summarily ignored and failed to address the studies and statistics that the Brady Campaign submitted" and instead, "stated without

justification that there was no evidence regarding an 'additional danger posed to the public from lawfully carried concealed firearms.' 73 Fed. Reg. 74970." (Emphasis added). In fact, the DOI stated:

> The available data does not suggest that visitors to these lands misuse their legally permitted firearms for poaching or illegal shooting, or that there is additional danger posed to the public from lawfully carried concealed firearms. See e.g., National Research Council, Committee on Law and Justice, *Firearms and Violence: A Critical Review* (Washington, D.C.: The National Academies Press, 2004), p.6; Dodenhoff, David, *Concealed Carry Legislation: An Examination of the Facts*, Wisconsin Public Policy Research Institute (2006), p.5; *see also*, Jeffrey Snyder, *Fighting Back: Crime, Self-Defense; and the Right to Carry a Handgun* (October 1997); Kopel, David, et al., *Policy Review* No. 78 (July & August 1996).

73 Fed. Reg. 74970 (Emphasis added).

Accordingly, the DOI has met its burden because an agency must only "examine the relevant data and articulate a satisfactory explanation for its action" (*Motor Vehicles Mfrs. Assn. v. State Farm Mut.*, 463 U.S. 29, 43 (1983)) as resolution of the issue of the potential risks of concealed weapons in national park areas and national wildlife refuges "is properly left to the informed discretion of the responsible federal agencies." *Kleppe v. Sierra Club,* 427 U.S. 390, 412 (1976).

42) Deny that Defendants "ignored and failed to consider the Brady Campaign's comments concerning defendants' obligations to safeguard lands for the enjoyment, education, and inspiration of this and future generations, and for parents and their children to safely engage in traditional outdoor activities" as Defendants properly exercised their statutorily delegated duties. Deny that Defendants "ignored and

dismissed the substantial body of evidence that the Brady Campaign submitted" as the "evidence" submitted by the Brady Campaign is of questionable merit and Defendants "examine[d] the relevant data and articulate[d] a satisfactory explanation for [their] action . . . ." *Motor Vehicles Mfrs. Assn., supra,* 463 U.S. at 43.

HARM TO THE BRADY CAMPAIGN AND ITS MEMBERS

43) Admit that the Brady Campaign is a national non-profit organization; deny that it is a grassroots membership organization or that it is involved in fighting to prevent gun violence; deny that it is dedicated to safety; deny that the members of the Brady Campaign, if any, are harmed by the new regulation or that they face an increased risk for their personal safety and the safety of their families because of the new regulation.

44) NRA is without information to admit or deny information concerning Suzanne Verge and her future plans. Deny that Defendants have failed to comply with the Organic Act, the NEPA, and the APA, or that the new regulation will reduce the safety of national parks or increase the risk of poaching. Deny that, if Ms. Verge will no longer visit national parks, she has suffered a cognizable injury-in-fact as any invasion by the new regulation of her legally protected interest is conjectural or hypothetical, and there is no causal connection between the purported injury-in-fact and the conduct complained of as the purported injury-in-fact is not fairly traceable to the challenged action of Defendants, but is the result of the independent action of third parties not before the court, *i.e.*, persons who may carry

concealed, loaded, operable firearms in a national park or wildlife refuge.

45) NRA is without information to admit or deny information concerning Rachel Freedland and her future plans. Deny that Defendants have failed to comply with the Organic Act, the NEPA, and the APA, or that the new regulation will reduce the safety of national parks or increase the risk of gun violence and gun crime. Deny that, if Ms. Freedland will no longer visit national parks, she has suffered a cognizable injury-in-fact as any invasion by the new regulation of her legally protected interest is conjectural or hypothetical, and there is no causal connection between the purported injury-in-fact and the conduct complained of as the purported injury-in-fact is not fairly traceable to the challenged action of Defendants, but is the result of the independent action of third parties not before the court, *i.e.*, persons who may carry concealed, loaded, operable firearms in a national park or wildlife refuge.

46) NRA is without information to admit or deny information concerning Loraine Price and her future plans. Deny that Defendants have failed to comply with the Organic Act, the NEPA, and the APA, or that the new regulation will reduce the safety of national parks or increase the risk of poaching or of harm. Deny that, if Ms. Price will no longer visit national parks, she has suffered a cognizable injury-in-fact as any invasion by the new regulation of her legally protected interest is conjectural or hypothetical, and there is no causal connection between the purported injury-in-fact and the conduct

complained of as the purported injury-in-fact is not fairly traceable to the challenged action of Defendants, but is the result of the independent action of third parties not before the court, *i.e.*, persons who may carry concealed, loaded, operable firearms in a national park or wildlife refuge.

47) NRA is without information to admit or deny information concerning Dana Quist and her future plans. Deny that Defendants have failed to comply with the Organic Act, the NEPA, and the APA, or that the new regulation will reduce the safety of national parks or increase the risk of poaching. Deny that, if Ms. Quist will no longer visit national parks, she has suffered a cognizable injury-in-fact as any invasion by the new regulation of her legally protected interest is conjectural or hypothetical, and there is no causal connection between the purported injury-in-fact and the conduct complained of as the purported injury-in-fact is not fairly traceable to the challenged action of Defendants, but is the result of the independent action of third parties not before the court, *i.e.*, persons who may carry concealed, loaded, operable firearms in a national park or wildlife refuge.

48) NRA is without information to admit or deny information concerning Derrick Posey and his future plans. Deny that Defendants have failed to comply with the Organic Act, the NEPA, and the APA, or that the new regulation will reduce the safety of national parks. Deny that, if Mr. Posy will no longer visit national parks, he has suffered a cognizable injury-in-fact as any invasion by the new regulation of

his legally protected interest is conjectural or hypothetical, and there is no causal connection between the purported injury-in-fact and the conduct complained of as the purported injury-in-fact is not fairly traceable to the challenged action of Defendants, but is the result of the independent action of third parties not before the court, *i.e.*, persons who may carry concealed, loaded, operable firearms in a national park or wildlife refuge.

49) NRA is without information to admit or deny information concerning Philip Goldsmith and his future plans. Deny that Defendants have failed to comply with the Organic Act, the NEPA, and the APA, or that the new regulation will reduce the safety of national parks. Deny that, if Mr. Goldsmith will no longer visit national parks, he has suffered a cognizable injury-in-fact as any invasion by the new regulation of his legally protected interest is conjectural or hypothetical, and there is no causal connection between the purported injury-in-fact and the conduct complained of as the purported injury-in-fact is not fairly traceable to the challenged action of Defendants, but is the result of the independent action of third parties not before the court, *i.e.*, persons who may carry concealed, loaded, operable firearms in a national park or wildlife refuge.

COUNT I - VIOLATION OF THE ORGANIC ACT

50) NRA incorporates by its answers to the allegations in paragraphs 1-49.

51) Admit that the language of the Organic Act (16 U.S.C. § 1) is correctly stated. Deny that Defendants "erroneously concluded that

permitting the possession and transportation of concealed firearms in national park areas is consistent with and permissible under this statutory mandate" as the Organic Act grants the DOI the authority to manage the Nation's parks and to "judge how much protection of park lands is wise and how that level of conservation is to be attained." *Clark v. Community for Creative Non-Violence,* 468 U.S. 288, 299 (1984). Deny that Defendants' rule change is reviewable under 5 U.S.C. § 701(a)(2) as 16 U.S.C. § 1 is drawn in such broad terms that there is no law to apply. Deny, if Defendants' rule change is reviewable, that it is "arbitrary, capricious, an abuse of discretion, not in accordance with law, in excess of statutory authority, and without observance of procedure required by law" in violation of 5 U.S.C. § 706(2)(A), (C), and (D).

COUNT II - VIOLATION OF THE NWRSA

52) NRA incorporates by its answers to the allegations in paragraphs 1-49.

53) Admit that the language of 16 U.S.C. § 668dd(a)(2) is correctly stated. Deny that Defendants "erroneously concluded in their final rule that permitting the possession and transportation of concealed firearms on national wildlife refuges is consistent with and permissible under this statutory mandate." § 668dd(c) provides: "The regulations permitting hunting and fishing of resident fish and wildlife within the System shall be, to the extent practicable, consistent with State fish and wildlife laws and regulations." § 668dd(d)(1)(A) provides that the Secretary:

> is authorized, under such regulations as he may prescribe, to - (A) permit the use of any area within the System for any purpose, including but not limited to hunting, fishing, public recreation and accommodations, and access whenever he determines that such uses are compatible with the major purposes for which such areas were established . . . .
>
> § 668dd(m) provides:
>
> Nothing in this Act shall be construed as affecting the authority, jurisdiction, or responsibility of the several States to manage, control, or regulate fish and resident wildlife under State law or regulations in any area within the System. Regulations permitting hunting or fishing of fish and resident wildlife within the System shall be, to the extent practicable, consistent with State fish and wildlife laws, regulations, and management plans.

Further, § 668dd grants the DOI the authority to manage the Nation's wildlife refuges and to "judge how much protection of [wildlife refuges] is wise and how that level of conservation is to be attained." *Clark v. Community for Creative Non-Violence,* 468 U.S. 288, 299 (1984). Deny that Defendants' rule change is reviewable under 5 U.S.C. § 701(a)(2) as 16 U.S.C. § § 668dd is drawn in such broad terms that there is no law to apply. Deny, if Defendants' rule change is reviewable, that it is "arbitrary, capricious, an abuse of discretion, not in accordance with law, in excess of statutory authority, and without observance of procedure required by law" in violation of 5 U.S.C. § 706(2)(A), (C), and (D).

COUNT III - VIOLATION OF NEPA

54) NRA incorporates by its answers to the allegations in paragraphs 1-49.

55) Admit that "NEPA and CEQ's implementing regulations require defendants to prepare an EIS for any 'major Federal action

significantly affecting the quality of the human environment.' 42 U.S.C. § 4332(2)(C)." Deny that Defendants "failed to comply with NEPA and the CEQ regulations" by not preparing an EIS, or an EA, as "NEPA does not require the agency to assess *every* impact or effect of its proposed action, but only the impact or effect on the environment." *Metropolitan Edison v. People Against Nuclear Energy, supra*, 460 U.S. at 772. Further, "NEPA was designed to promote human welfare by alerting governmental actors to the effect of their proposed actions on the physical environment." *Id.* What is involved in NEPA is:

> "a congressional declaration that we do not intend, as a government or as a people, to initiate actions which endanger the continued existence or the health of mankind: That *we will not intentionally initiate actions which do irreparable damage to the air, land and water* which support life on earth." 115 Cong. Rec. 40416 (1969) (remarks of Sen. Jackson) (emphasis supplied).
>
> "[W]e can now move forward *to preserve and enhance our air, aquatic, and terrestrial environments.* . . to carry out the policies and goals set forth in the bill to provide each citizen of this great country a healthful environment." *Id.*, at 40924 (remarks of Rep. Dingell) (emphasis supplied).

460 U.S. at 773.

Deny that Defendants' purported "failure to comply with NEPA and the CEQ regulations" requires that such action "must be set aside as arbitrary, capricious, an abuse of discretion, not in accordance with law, in excess of statutory authority, and without observance of procedure required by law" in violation of 5 U.S.C. § 706(2)(A), (C), and (D).

COUNT IV - VIOLATION OF APA

56) NRA incorporates by its answers to the allegations in

paragraphs 1-49.

57) Admit that an agency rule "would be arbitrary and capricious if the agency relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Motor Vehicles Mfrs. Assn. v. State Farm Mut.*, 463 U.S. 29, 43 (1983). Deny that Defendants "relied on factors which Congress has not intended it to consider"; deny that Defendants "entirely failed to consider an important aspect of the problem"; deny that Defendants "offered an explanation for its decision that runs counter to the evidence before the agency"; and deny that Defendants' new rule "is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." Deny that Defendants' actions "must be set aside as arbitrary, capricious, an abuse of discretion, not in accordance with law, in excess of statutory authority, and without observance of procedure required by law" in violation of 5 U.S.C. § 706(2)(A), (C), and (D).

PRAYER FOR RELIEF

WHEREFORE, NRA respectfully requests the court to dismiss this action with prejudice.

Respectfully submitted,
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing ANSWER OF INTERVENOR NATIONAL RIFLE ASSOCIATION was sent, via Federal Express, this 27th day of January, 2009 to:

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