

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

**BRADY CAMPAIGN**  
**TO PREVENT GUN VIOLENCE,**  
1225 Eye Street NW, Suite 1100  
Washington, DC 20005,

Plaintiff,

v.

**DIRK KEMPTHORNE,**  
*In His Official Capacity as Secretary of*  
*the U.S. Department of the Interior,*  
U.S. Department of the Interior  
1849 C Street, NW  
Washington, DC 20240,

**U.S. DEPARTMENT OF THE INTERIOR,**  
1849 C Street, NW  
Washington, DC 20240,

**MARY A. BOMAR,**  
*In Her Official Capacity as Director of*  
*the National Park Service,*  
National Park Service  
1849 C Street, NW  
Washington, DC 20240,

and

**H. DALE HALL,**  
*In His Official Capacity as Director of*  
*the Fish and Wildlife Service,*  
U.S. Fish and Wildlife Service  
1849 C Street, NW  
Washington, DC 20240,

Defendants.

Case: 1:08-cv-02243  
Assigned To : Kollar-Kotelly, Colleen  
Assign. Date : 12/30/2008  
Description: Admn. Agency Review

Civ. Action No.

## **COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

### **NATURE OF THE CASE**

1. In this action, plaintiff Brady Campaign to Prevent Gun Violence (“Brady Campaign” or “Campaign”), on its own institutional behalf and on behalf of its members, challenges violations of fundamental provisions of the National Park Service Organic Act (“Organic Act”), 16 U.S.C. § 1 et seq., National Wildlife Refuge System Administration Act (“NWRSA”), 16 U.S.C. § 668dd et seq., National Environmental Policy Act (“NEPA”), 42 U.S.C. § 4321 et seq., and Administrative Procedure Act (“APA”), 5 U.S.C. §§ 701-706, by the Secretary of the Interior, Department of the Interior, Director of the National Park Service (“NPS”), and Director of the U.S. Fish and Wildlife Service (“FWS”) (hereafter, referred to collectively as “defendants”). As set forth herein, defendants violated these statutes when they reversed longstanding regulations so as to permit individuals to carry loaded and concealed firearms in national park areas and national wildlife refuges located in all but two states in the country.

2. Specifically, defendants’ new rule, which was promulgated on December 10, 2008, and will take effect on January 9, 2009, fundamentally alters earlier regulations governing the possession and transportation of firearms in national park areas and national wildlife refuges. In 1960, the Department of the Interior established regulations prohibiting persons from carrying loaded and concealed weapons in national wildlife refuges except under extremely limited circumstances. 50 C.F.R. § 27.42, 25 Fed. Reg. 8397, 8410 (Sept. 1, 1960). Subsequently, during the Reagan Administration in 1984, the Department of the Interior under then Secretary James Watt prohibited individuals from carrying loaded and concealed firearms in national park areas after finding that such a prohibition is necessary “to ensure public safety and

provide maximum protection of natural resources” in such areas. 36 C.F.R. Part 2, 49 Fed. Reg. 18441 (April 30, 1984). Although defendants had previously concluded that these restrictions are necessary to effectuate the purposes of the Organic Act and NWRSA, they lifted these restrictions in response to considerable political pressure and in the absence of any substantive findings whatsoever that these regulations are no longer necessary under the relevant statutes.

3. Defendants also acted hastily and in utter disregard of the procedural mandates of the APA and NEPA. Indeed, in their rush to judgment, defendants failed to adequately consider and address most of the approximately 125,000 comments that opposed this rule change, including the Brady Campaign’s comments, in violation of the APA. Moreover, defendants failed to comply with NEPA—the landmark environmental statute that requires all federal agencies to prepare an Environmental Impact Statement (“EIS”) evaluating any action that may significantly impact the quality of the human environment. Rather than preparing an EIS, or even an Environmental Assessment (“EA”) to determine whether an EIS is necessary, defendants did not undertake any environmental analysis at all. In fact, in their haste to finalize these regulations in the waning days of President George W. Bush’s administration, defendants even contravened a White House Memorandum, dated May 9, 2008, stating that “final regulations should be issued no later than November 1, 2008,” except in “extraordinary circumstances.” Defendants did not cite any such “extraordinary circumstances” in their last-minute rush to undo rules that have been in place for decades.

4. As a result of defendants’ unlawful activities, the Brady Campaign and its members, along with many other Americans, will sustain imminent and irreparable harm. Defendants’ failure to comply with the Organic Act, NWRSA, NEPA, and the APA directly harms the Campaign and its members by increasing the risk of violent crime and gun violence in

national park areas and refuges that they visit and by increasing the risk that wildlife which they observe in such parks and refuges will be harmed as a result of increased poaching, thereby reducing visitors' enjoyment of these areas. In fact, as a direct result of defendants' unlawful rule change, members of the Brady Campaign will no longer visit national park areas and refuges out of fear for their personal safety from those who will now be permitted to carry loaded and concealed weapons in such areas. Moreover, those who do visit such areas will have their enjoyment of those areas profoundly diminished by the increased risk to safety created by this rule change. Accordingly, for the reasons set forth herein, the Brady Campaign asks this Court to preliminarily and permanently enjoin defendants' new rule, and set it 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, all in violation of the APA. 5 U.S.C. § 706(2)(A), (C), and (D).

### **JURISDICTION AND VENUE**

5. This Court has jurisdiction of this action under 28 U.S.C. § 1331 (Federal Question), 28 U.S.C. § 1361 (Mandamus), 5 U.S.C. § 551 et seq. (APA), and it may issue a declaratory judgment and provide for further relief pursuant to 28 U.S.C. §§ 2201 and 2202 (Declaratory Judgments). Defendants' adoption of the rule change constitutes "final agency action" under the APA.

6. Venue is proper in this Court under the general venue provisions of the United States Code, 28 U.S.C. § 1391(e), as well as under specific statutory provisions of the APA, 5 U.S.C. § 703.

7. An actual and justiciable controversy exists between plaintiff and defendants.

## PARTIES

8. Plaintiff Brady Campaign to Prevent Gun Violence is a non-profit organization existing under the laws of the District of Columbia and having its principal place of business at 1225 Eye Street NW, Suite 1100, Washington, DC 20005. The Brady Campaign is the nation's largest national, non-partisan, grassroots membership organization leading the fight to prevent gun violence. It is dedicated to creating an America free from gun violence, where all Americans are safe at home, at school, in their communities, and in all other areas, including national park areas and national wildlife refuges. The Brady Campaign has members in every state of the country that will face an increased risk for their personal safety and the safety of their families because of the rule change permitting the possession and transportation of concealed weapons in national park areas and national wildlife refuges.

9. Defendant Dirk Kempthorne is sued in his official capacity as Secretary of the Department of the Interior. In this capacity, he is responsible for ensuring that the Department and the agencies within the Department, including NPS and FWS, comply with all applicable laws and regulations, including the Organic Act, NWRSA, NEPA, and the APA.

10. Defendant United States Department of the Interior is the federal agency responsible for managing approximately 500 million acres of federal public lands for the protection of the natural and human environment. The Department of the Interior includes the NPS and FWS, and is authorized to promulgate rules and regulations pertaining to national park areas and national wildlife refuges. The Department of the Interior is an agency of the United States government subject to the APA, 5 U.S.C. § 701(b)(1).

11. Defendant Mary Bomar is sued in her official capacity as Director of the NPS. The NPS administers and manages national park areas. A national park area refers to "any

area of land and water now or hereafter administered by the Secretary of the Interior through the National Park Service for park, monument, historic, parkway, recreational, or other purposes.”

36 C.F.R. § 1.4. NPS is an agency of the United States government subject to the APA, 5 U.S.C. § 701(b)(1).

12. Defendant H. Dale Hall is sued in his official capacity as Director of FWS. FWS is responsible for administering and managing national wildlife refuge areas. FWS is an agency of the United States government subject to the APA, 5 U.S.C. § 701(b)(1).

### **STATUTORY AND REGULATORY BACKGROUND**

#### *The National Park Service Organic Act*

13. The National Park Service is charged with administering national park areas under the National Park Service Organic Act (“Organic Act”), 16 U.S.C. § 1. The Organic Act requires NPS to “promote and regulate 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 wildlife 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.

14. The Organic Act requires NPS to manage national park areas consistent with this mandate. In subsequent legislation, Congress declared that “the authorization of activities shall be construed and the protection, management, and administration of these areas shall be conducted in light of the high public value and integrity of the National Park System and shall not be exercised in derogation of the values and purposes for which these various areas have been established, except as may have been or shall be directly and specifically provided by Congress.” 16 U.S.C. § 1a-1.

*The National Wildlife Refuge System Administration Act*

15. The Fish and Wildlife Service is charged with administering the National Wildlife Refuge System. 16 U.S.C. § 668dd(a)(1). “The mission of the 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).

16. FWS regulations provide that “all national wildlife refuges are maintained for the primary purpose of developing a national program of wildlife and ecological conservation and rehabilitation. These refuges are established for the restoration, preservation, development and management of wildlife and wildlands habitat; for the protection and preservation of endangered or threatened species and their habitat; and for the management of wildlife and wildlands to obtain the maximum benefits from these resources.” 50 C.F.R. § 25.11(b).

*The National Environmental Policy Act*

17. In connection with its decisions under the Organic Act and NWRSA, defendants must comply with NEPA and its implementing regulations. 42 U.S.C. § 4321 et seq. The purposes of NEPA are “to encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; [and] to enrich the understanding of the ecological systems and natural resources important to the Nation . . . .” 42 U.S.C. § 4321.

18. To achieve these objectives, NEPA directs each federal agency to comply with certain “action-forcing” provisions before taking or approving actions. These provisions include the requirement that each agency prepare an Environmental Impact Statement (“EIS”) for any decision on any action that “may significantly affect the quality of human environment.”

42 U.S.C. § 4332(2)(C). To ensure compliance with these and other provisions, NEPA established the President's Council on Environmental Quality ("CEQ"). 42 U.S.C. §§ 4342 and 4344(3). The CEQ has issued implementing regulations for NEPA, which are binding on all federal agencies. 40 C.F.R. Part 1500.

19. Under the CEQ regulations, each federal agency must establish its own procedures for implementing NEPA. 40 C.F.R. § 1507.3(a). Those procedures must implement two discrete pathways, as prescribed by CEQ, for determining whether an EIS should be prepared for particular actions. Specifically, the first of these pathways requires a federal agency to prepare an Environmental Assessment ("EA"). An EA is a concise public document that provides sufficient evidence and analysis to determine whether an EIS is necessary. 40 C.F.R. § 1508.9. An EA must also discuss alternatives to the proposed action and their environmental impacts. If, on the basis of an EA, the agency decides not to prepare an EIS, it must issue a Finding of No Significant Impact ("FONSI") explaining why an EIS is not required.

20. The second pathway for an agency to decide that it need not prepare an EIS is through a determination that the proposed action qualifies for a "Categorical Exclusion" ("CX"). The agency need not issue an EIS or even 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. 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.

21. Such extraordinary circumstances include, but are not limited to, actions that "[h]ave significant impacts on public health or safety," "[h]ave significant impacts on such natural resources and unique geographic characteristics as historic or cultural resources; park



recreation or refuge lands; wilderness areas; wild or scenic rivers; national natural landmarks; sole or principal drinking water aquifers; prime farmlands; wetlands; floodplains; national monuments; migratory birds; and other ecologically significant or critical areas,” “[h]ave highly controversial environmental effects or involve unresolved conflicts concerning alternative uses of available resources,” “[h]ave highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks,” “establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects,” or “[h]ave a direct relationship to other actions with individually insignificant but cumulatively significant environmental effects.” 40 C.F.R. § 1508.27; and 43 C.F.R. § 46.215.

### **CHRONOLOGY OF DEFENDANTS' ACTIONS**

#### *1960 FWS Regulations and 1984 NPS Regulations*

22. On September 1, 1960, the Department of the Interior established regulations concerning, among other things, the use of firearms in national wildlife refuges administered by FWS. 25 Fed. Reg. 8410 (Sept. 1, 1960). Consistent with FWS’s mission of providing for wildlife and ecological rehabilitation and management of refuges for the benefit of present and future generations of Americans, the FWS regulations strictly limited the possession, transportation, and use of firearms in national wildlife refuges. FWS regulations only allowed firearms in the following circumstances: (a) where public hunting is allowed; (b) when firearms are unloaded and dismantled or cased in vehicles or boats in travel; (c) for persons authorized to use firearms to take specimens for scientific purposes; and (d) with a special permit. 50 C.F.R. § 27.42.

23. On June 30, 1983, the Department of the Interior promulgated regulations

concerning, among other things, the use of firearms in national park areas administered by NPS. 48 Fed. Reg. 30251 (June 30, 1983). Consistent with NPS's mission of protecting wildlife and providing for parks users' enjoyment of scenery, natural and historic objects, and wildlife, the NPS regulations also strictly limited the possession, transportation, and use of firearms in national park areas. NPS regulations generally prohibited visitors from possessing an operable and loaded firearm, with three narrow exceptions: (a) lawful hunting activities, (b) target practice in specially designated areas, and (c) within a residential dwelling. *Id.* at 30255-56. These regulations prevented visitors from carrying concealed, operable, and loaded firearms in national park areas.

24. In connection with the adoption of these regulations, the Department of the Interior indicated that the regulations "will help the National Park Service provide improved visitor safety and resource protection," and were "the basic mechanism used by the National Park Service to protect the natural and cultural resources of the parks and to protect visitors and property within the parks." 48 Fed. Reg. 30251, 30252. Specifically, as to its restrictions on loaded and concealed firearms, the Department stated these restrictions were "designed to ensure public safety and provide maximum protection of natural resources by limiting the opportunity for unauthorized use of weapons." 48 Fed. Reg. 30251, 30265. In this context, Interior also stated that "the possession and carrying of weapons . . . presents law enforcement, administrative and public safety difficulties for the National Park Service." *Id.*

25. The NPS regulations were to become effective on October 3, 1983. The effective date of these regulations was later extended, and on April 30, 1984, the Department of the Interior promulgated final regulations concerning the use of firearms in areas administered by the NPS. 49 Fed. Reg. 18441 (Apr. 30, 1984), 36 C.F.R. § 2.4. In response to public concerns

raised regarding “public safety and resource protection,” these final regulations narrowed the circumstances in which firearms could be used on NPS lands in at least two respects: (i) further specifying the areas which qualified as “target ranges,” and (ii) specifying that a “residential dwelling” had to be “fixed” in location. 49 Fed. Reg. 18441, 18444-18445.

26. As to both the initial 1983 regulations and the final 1984 regulations, the Department of the Interior prepared an environmental assessment under NEPA on “those portions of this rulemaking which are other than correcting or clarifying in nature,” and it issued a Finding of No Significant Impact (“FONSI”). 48 Fed. Reg. 302751, 30274; 49 Fed. Reg. 18441, 18449.

#### *Defendants' 2008 Rule Change*

27. On April 30, 2008, defendants proposed new regulations allowing the carrying of concealed, loaded, and operable firearms in national park areas and national wildlife refuges. 73 Fed. Reg. 23388 (Apr. 30, 2008). Specifically, defendants proposed to reverse the long-standing prohibition against loaded and concealed firearms in such areas so as to “reflect current state laws authorizing the possession of concealed firearms.” *Id.* Thus, defendants declared that their “intent in undertaking this rulemaking process is to better respect the ability of states to determine who may lawfully possess a firearm within their borders while preserving the Federal government’s authority to manage its lands, buildings and facilities.” *Id.*

28. The comment period for the proposed regulations ended June 30, 2008. Following the Supreme Court decision in *District of Columbia v. Heller*, 554 U.S. \_\_\_, 128 S. Ct. 2783 (June 26, 2008), however, Interior provided for an additional, thirty-day period for parties to submit comments. 73 Fed. Reg. 39272 (July 9, 2008).

29. On December 5, 2008, defendants announced in a press release that they

had finalized the proposed rule change allowing the carrying of concealed, loaded, and operable firearms in national park areas and national wildlife refuges. On December 10, 2008, defendants issued a Final Rule eliminating the firearms limitations of 36 C.F.R. § 2.4 (applicable to national park areas) and 50 C.F.R. § 27.42 (applicable to national wildlife refuge areas). 73 Fed. Reg. 74966. The final agency action “amend[ed] the regulations to allow individuals to carry concealed, loaded, and operable firearms in Federal park units and refuges to the extent that they could lawfully do so under non-conflicting state law.” 73 Fed. Reg. 74967. As in its proposed rulemaking, defendants indicated that this rule change was meant to respect state prerogatives and authority and thereby give effect to the federalism concepts as called for in Executive Order 13132 of August 10, 1999.

30. In connection with the issuance of these final regulations, defendants indicated that they had received over 125,000 comments in response to their proposal, and that many of these comments expressed opposition to a change in the existing rules. 73 Fed. Reg. 74966, 74967. On the other hand, defendants indicated that they had received supporting comments from a number of U.S. Senators and other individuals who favored aligning federal policy with adjacent state law.

31. In support of their final rule, defendants summarily dismissed various comments that were raised in opposition to the rule change. Among other things, those comments stated that defendants should not rely on state law to manage firearms because Congress has given the federal government complete authority over federal lands. They also pointed out that there is no reason to allow visitors to carry a loaded and concealed firearm for personal safety since national park areas and national wildlife refuges are among the safest areas in the United States. These comments also emphasized that parks and refuges are designed to be

havens of peace and safety, and visitors who do not like guns will not be able to fully enjoy such areas if they know that another visitor in close proximity may be carrying a loaded and concealed firearm. Finally, these comments pointed out that the rule change will inhibit the ability of park and refuge managers to halt poaching of wildlife in such areas.

32. At the time that defendants proposed this new rule, they stated that they were “working to determine the appropriate level of NEPA assessment and documentation that will be required for promulgation of this regulation.” 73 Fed. Reg. 23388, 23390. It was only with issuance of the final rule, however, that defendants indicated, for the first time, that they would not prepare an EA or an EIS. This announcement appeared in a Decision Memorandum dated November 18, 2008, which was posted on the Department of the Interior’s website and referred to by defendants in their Notice regarding the final rules. 73 Fed. Reg. 74966, 74971.

33. Defendants’ stated reason for not preparing an EIS or even an EA was that the action is subject to a categorical exclusion under 43 C.F.R. § 46.210 since the final regulation purportedly constitutes a regulation that is of an administrative, financial, legal, technical, or procedural nature. At the same time, defendants concluded that none of the “extraordinary circumstances” that require preparation of an EA for actions that are typically subject to a categorical exclusion applied in the instant case. 73 Fed. Reg. 74970. Thus, defendants concluded that, among other things, the final rule would not have significant impacts on public health or safety nor would it have significant impacts on park and refuge lands. Moreover, defendants summarily dismissed the application of other “extraordinary circumstances,” including the potential for highly controversial environmental effects.

#### **THE BRADY CAMPAIGN’S COMMENTS**

34. In the final rule, defendants concluded that “[t]he 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. In so concluding, defendants summarily rejected without analysis and/or ignored credible statistics and comments submitted by the Brady Campaign by letters dated June 30, 2008 (during the initial comment period) and August 8, 2008 (during the supplementary comment period).

35. In its comments, 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, including the Campaign’s members who regularly visit and use these areas, and that the increased threat would violate defendants’ responsibility to safeguard lands for the enjoyment, education, and inspiration of this and future generations. Accordingly, the Campaign showed that the rule change allowing concealed, loaded and operable firearms in national park areas and national wildlife refuges is fundamentally incompatible with the unambiguous statutory command of the Organic Act and NWRSA. The Campaign also demonstrated that allowing concealed, loaded and operable firearms in national park areas and national wildlife refuges endangers natural scenery and wildlife.

36. The Brady Campaign further 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, and would threaten opportunities for parents and their children to safely engage in traditional outdoor activities in national wildlife refuges, in contravention of the National Wildlife Refuge System Administration Act, 16 U.S.C. § 668dd(a)(4)(k).

37. Because of the inconsistency stemming from the presence of concealed firearms on federal lands designated for the use and enjoyment of the public, and because of the accompanying threat to public health and safety, the Brady Campaign urged defendants to prepare an EIS and to consider alternatives before finalizing the proposed action. Alternatively, the Campaign urged defendants to conduct an EA at the very least, and to provide an opportunity for public comment following the EA.

38. In support of these comments, the Brady Campaign fully documented the dangers associated with concealed firearms. In so doing, the Brady Campaign refuted studies and publications cited by defendants that concluded that laws allowing the carrying of concealed firearms have reduced crime and, ostensibly, increased public safety. Quite to the contrary, the Campaign explained that the methodology and conclusions of these widely repudiated studies relied upon by defendants were flawed according to a consensus of leading criminologists, economists and other researchers, and that, if anything, concealed carry laws have increased violent crime.

39. The Brady Campaign also 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. There were only 61 robberies out of 272 million park visits in 2006. Likewise, there were 261 aggravated assaults in the parks that year, less than one per million visitors. The Campaign stressed that given the low rate of violent crime in the parks and the serious threat posed by armed visitors as confirmed by numerous studies, the risk of harm posed by concealed weapons is too great to allow loaded and concealed carrying in national parks and refuges.

40. The Brady Campaign also highlighted weaknesses in state processes for granting concealed carry permits, including the issuance of concealed carry permits to persons

with criminal histories or mental health problems. The Campaign also provided numerous examples of violent crimes committed across the country by persons to whom a concealed carry permit had been issued (or re-issued following a suspension), including numerous instances of assault, kidnapping, rape, and homicide.

41. Simply put, the Brady Campaign 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. Nonetheless, Interior summarily ignored and failed to address the studies and statistics that the Brady Campaign submitted. Instead, it simply 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.

42. In sum, 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. Defendants also ignored and dismissed the substantial body of evidence that the Brady Campaign submitted regarding the dangers of loaded and concealed weapons, even those lawfully issued and possessed or transported by law-abiding citizens.

#### **HARM TO THE BRADY CAMPAIGN AND ITS MEMBERS**

43. Plaintiff Brady Campaign to Prevent Gun Violence is the nation's largest national, non-partisan, grassroots membership organization leading the fight to prevent gun violence. It is dedicated to creating an America free from gun violence, where all Americans are safe at home, at school, in their communities, and in all other areas, including national park areas and national wildlife refuges. The Brady Campaign has members in every state of the country



that are harmed by defendants' final rule. Such members face an increased risk for their personal safety and the safety of their families because of the rule change permitting the possession and transportation of concealed weapons in national park areas and national wildlife refuges. These members include, but are not limited to, those described below.

44. Suzanne Verge, a member of the Brady Campaign living in Santa Monica, California, regularly uses, visits, and enjoys national park areas, including Yosemite National Park, Zion National Park, Bryce Canyon National Park, and Grand Canyon National Park. Defendants' failure to comply with the Organic Act, NEPA, and the APA directly harms Ms. Verge by reducing the safety and enjoyment of national park areas that she visits and by increasing the risk of wildlife poaching. As a direct result of defendants' unlawful rule change, Ms. Verge will no longer visit some national park areas that will allow the carrying of concealed weapons because of fear for her personal safety from those who will now be permitted to carry loaded and concealed weapons in such areas, and she has cancelled plans to visit such areas due to this rule change, unless and until Interior rescinds this rule change. Consequently, defendants' unlawful actions have harmed Ms. Verge by eliminating the opportunity for her to pursue recreational, aesthetic and leisure activities in national park areas, including Yosemite National Park. Moreover, even if Ms. Verge were to visit such areas, defendants' unlawful rule change will lead to increased poaching of wildlife or increased risk of such poaching, which will diminish the quality of her experience in such areas. In addition, by violating various procedural requirements, defendants deprived Ms. Verge of crucial information and the opportunity for public comment to which she is entitled, including information concerning the impacts of defendants' rule change and alternatives.

45. Rachel Freedland, a member of the Brady Campaign living in New York,

New York, regularly uses, visits, and enjoys national park areas, including Ellis Island National Monument, the Statue of Liberty National Monument, and General Grant National Memorial. Defendants' failure to comply with the Organic Act, NEPA, and the APA directly harms Ms. Freedland by reducing the safety of national park areas that she visits. As a direct result of defendants' unlawful rule change, Ms. Freedland will no longer visit some national park areas because of fear for her personal safety from those who will now be permitted to carry loaded and concealed weapons in such areas, and she has no plans to visit such areas unless and until Interior rescinds this rule change. Moreover, even if Ms. Freedland were to visit such areas, defendants' unlawful rule change will lead to an increased risk of gun violence and gun crime, which will threaten her safety and diminish the quality of her experience in such areas. Consequently, defendants' unlawful actions have harmed Ms. Freedland by eliminating the opportunity for her to pursue recreational, aesthetic and leisure activities in national park areas. In addition, by violating various procedural requirements, defendants deprived Ms. Freedland of crucial information and the opportunity for public comment to which she is entitled, including information concerning the impacts of defendants' rule change and alternatives.

46. Lorraine Price, a member of the Brady Campaign living in Williamsburg, Virginia, regularly uses, visits, and enjoys national park areas, including Yellowstone National Park. Defendants' failure to comply with the Organic Act, NEPA, and the APA directly harms Ms. Price by reducing the safety of national park areas that she visits and by increasing the risk of wildlife poaching. As a direct result of defendants' unlawful rule change, Ms. Price will face an increased risk of harm in national park areas, including Yellowstone National Park, and reduced enjoyment of these areas because of fear for her personal safety from those who will now be permitted to carry loaded and concealed weapons in such areas. Consequently,

defendants' unlawful actions have harmed Ms. Price by eliminating the opportunity for her to safely pursue recreational, aesthetic and leisure activities in national park areas, including Yellowstone National Park. In addition, by violating various procedural requirements, defendants deprived Ms. Price of crucial information and the opportunity for public comment to which she is entitled, including information concerning the impacts of defendants' rule change and alternatives.

47. Dana Quist, a member of the Brady Campaign living in Ft. Lauderdale, Florida, regularly uses, visits, and enjoys national park areas, including Everglades National Park. Defendants' failure to comply with the Organic Act, NEPA, and the APA directly harms Ms. Quist by reducing the safety of national park areas that she visits and by increasing the risk of wildlife poaching. As a direct result of defendants' unlawful rule change, Ms. Quist will fear for her personal safety from those who will now be permitted to carry loaded and concealed weapons in such areas. Consequently, defendants' unlawful actions have harmed Ms. Quist by eliminating the opportunity for her to safely pursue recreational, aesthetic and leisure activities in national park areas, including Everglades National Park. Moreover, even if Ms. Quist were to visit such areas, defendants' unlawful rule change will or could lead to increased poaching of wildlife, which will diminish the quality of her experience in such areas. In addition, by violating various procedural requirements, defendants deprived Ms. Quist of crucial information and the opportunity for public comment to which she is entitled, including information concerning the impacts of defendants' rule change and alternatives.

48. Derrick Posey, a member of the Brady Campaign living in Silver Spring, Maryland, regularly uses, visits, and enjoys national park areas, including the National Mall. Defendants' failure to comply with the Organic Act, NEPA, and the APA directly harms

Mr. Posey by reducing the safety of national park areas that he visits. As a direct result of defendants' unlawful rule change, Mr. Posey will fear for his personal safety from those who will now be permitted to carry loaded and concealed weapons in such areas. Consequently, defendants' unlawful actions have harmed Mr. Posey by eliminating the opportunity for him to safely pursue recreational, aesthetic and leisure activities in national park areas, including the National Mall. In addition, by violating various procedural requirements, defendants deprived Mr. Posey of crucial information and the opportunity for public comment to which he is entitled, including information concerning the impacts of defendants' rule change and alternatives.

49. Philip Goldsmith, a member of the Brady Campaign living in Wynnewood, Pennsylvania, regularly uses, visits, and enjoys national park areas, including Independence National Historical Park. Defendants' failure to comply with the Organic Act, NEPA, and the APA directly harms Mr. Goldsmith by reducing the safety of national park areas that he visits. As a direct result of defendants' unlawful rule change, Mr. Goldsmith will fear for his personal safety from those who will now be permitted to carry loaded and concealed weapons in such areas. Consequently, defendants' unlawful actions have harmed Mr. Goldsmith by eliminating the opportunity for him to pursue recreational, aesthetic and leisure activities in national park areas, including Independence National Historical Park. In addition, by violating various procedural requirements, defendants deprived Mr. Goldsmith of crucial information and the opportunity for public comment to which he is entitled, including information concerning the impacts of defendants' rule change and alternatives.

#### **COUNT I – VIOLATION OF THE ORGANIC ACT**

50. The Brady Campaign realleges and incorporates herein by reference all allegations contained in paragraphs 1 through 49 of the Complaint.

51. The Secretary of the Interior, Department of the Interior and Director of NPS are required under the Organic Act “to promote and regulate the use of the . . . national parks, monuments and reservations . . . by such means and measures as conform to the fundamental purpose of said parks, monuments, and reservations, which purpose is to conserve the scenery and the natural and historic objects and the wildlife 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. 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. Defendants’ rule change is final agency action that 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, all in violation of the APA. 5 U.S.C. § 706(2)(A), (C), and (D).

## **COUNT II – VIOLATION OF THE NWRSA**

52. The Brady Campaign realleges and incorporates herein by reference all allegations contained in paragraphs 1 through 49 of the Complaint.

53. The Secretary of the Interior, Department of the Interior and Director of FWS are required under the NWRSA “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). 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. Defendants’ rule change is final agency action that 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, all in violation of the APA. 5 U.S.C. § 706(2)(A), (C), and (D).

### **COUNT III – VIOLATION OF NEPA**

54. The Brady Campaign realleges and incorporates herein by reference all allegations contained in paragraphs 1 through 49 of the Complaint.

55. 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). Defendants failed to comply with NEPA and the CEQ regulations by refusing to prepare an EIS, or even an EA, in connection with their decision to allow loaded, concealed firearms on national park areas and national wildlife refuges areas. Defendants' final rule allowing for the possession and transportation of concealed and loaded firearms in national park areas and national wildlife refuges constitutes final agency action. Defendants' failure to comply with NEPA and the CEQ regulations in connection with such final agency 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, all in violation of the APA. 5 U.S.C. § 706(2)(A), (C), and (D).

### **COUNT IV – VIOLATION OF APA**

56. The Brady Campaign realleges and incorporates herein by reference all allegations contained in paragraphs 1 through 49 of the Complaint.

57. Under the APA, administrative actions must be vacated where 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. Defendants violated these fundamental requirements of the APA in connection with their decision to adopt a final rule allowing for the possession and transportation of concealed and loaded firearms in national park areas and national wildlife refuges. Accordingly, 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, all in violation of the APA. 5 U.S.C. § 706(2)(A), (C), and (D).

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in its favor and that the Court:

A) Declare that defendants violated the National Park Service Organic Act by authorizing the possession and transportation of loaded and concealed firearms in national park areas;

B) Declare that defendants violated the National Wildlife Refuge System Administration Act by authorizing the possession and transportation of loaded and concealed firearms in national wildlife refuges;

C) Declare that defendants violated NEPA when it approved its final rule permitting the possession and transportation of loaded and concealed firearms in national park areas and national wildlife refuges;

D) Declare that defendants violated the APA when it approved its final rule permitting the possession and transportation of loaded and concealed firearms in national park areas and national wildlife refuges;

E) Temporarily, preliminarily, and permanently enjoin defendants from implementing the rule permitting the possession and transportation of loaded and concealed

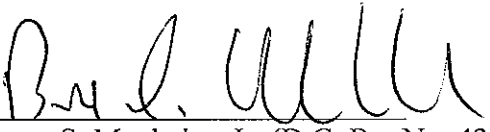
firearms in national park areas and national wildlife refuges;

F) Set aside and vacate defendants' rule permitting the possession and transportation of loaded and concealed firearms in national park areas and national wildlife refuges;

G) Award plaintiff the costs incurred in pursuing this action, including attorneys' fee and reasonable expenses, as authorized by the Equal Access to Justice Act, 28 U.S.C. § 2412(d), and other applicable provisions; and

H) Grant such other and further relief as the Court deems proper.

Dated: Dec. 30, 2008

  
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