

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

NATIONAL PARKS CONSERVATION  
ASSOCIATION  
1300 19th Street, NW, Suite 300  
Washington, DC 20036

and

COALITION OF NATIONAL PARK  
SERVICE RETIREES  
5625 North Wilmot Road  
Tucson, AZ 85750

Plaintiffs,

v.

DIRK KEMPTHORNE,  
in his official capacity as Secretary of the  
United States Department of the Interior,  
United States Department of the Interior  
1849 C Street, NW  
Washington, DC 20240

UNITED STATES DEPARTMENT OF  
THE INTERIOR  
1849 C Street, NW  
Washington, DC 20240

R. LYLE LAVERTY,  
in his official capacity as Assistant Secretary  
of the Interior for Fish, Wildlife and Parks,  
United States Department of the Interior  
1849 C Street, NW  
Washington, DC 20240

NATIONAL PARK SERVICE  
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

Case: 1:09-cv-00013  
Assigned To : Kollar-Kotelly, Colleen  
Assign. Date : 1/6/2009  
Description: Admn. Agency Review

UNITED STATES FISH AND WILDLIFE  
SERVICE  
1849 C Street, NW  
Washington, DC 20240

and

DALE HALL,  
In his official capacity as Director of the  
United States Fish and Wildlife Service,  
United States Fish and Wildlife Service  
1849 C Street, NW  
Washington, DC 20240

Defendants.

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND PETITION  
FOR REVIEW OF AGENCY ACTION**

1. In an abrupt reversal of rules dating back over a century and in a rush to take final action before the change in Administrations, Defendants have adopted new regulations which will permit visitors to carry loaded and concealed weapons in areas administered by Defendant National Park Service (“NPS”) and areas administered by Defendant United States Fish and Wildlife Service (“FWS”) (collectively, the “National Parks”), to the extent that visitors could do so lawfully under “non-conflicting state law” in the state in which the National Park is located. In a complete abdication of Defendants’ responsibilities to administer and serve as stewards and protectors of the National Parks, the new regulations also grant to the states the authority to enact laws or promulgate regulations specific to the carrying of loaded and concealed weapons in the National Parks. This, according to Defendants, appropriately defers “to the democratic judgments of State legislatures.”

2. In promulgating the new regulations, which will introduce untold numbers of loaded and concealed guns into the National Parks beginning on the effective date of January 9, 2009, Defendants have declared themselves excused from the requirements of the National Environmental Policy Act (“NEPA”) and have declared with certainty – albeit without any

analysis or data upon which to make such a conclusion – that the new regulations could not possibly have significant environmental impacts on the National Parks.

3. In promulgating the new regulations, Defendants have downplayed the overwhelming public opposition to their change in long-standing policy, including the opposition of seven former directors of NPS, and have given short shrift to the numerous, substantive concerns raised by those who commented on the regulations.

4. Defendants have promulgated last-minute regulations through a process that ignored multiple requirements under the Administrative Procedure Act (the “APA”), NEPA, the Organic Act creating NPS (the “Organic Act”), the National Wildlife Refuge System Administration Act (the “NWRSA”), and the National Historic Preservation Act (“NHPA”). The new regulation is an affront to the National Parks’ missions and purposes and a threat to the National Parks’ resources and values, which must be held unlawful and set aside.

5. Plaintiffs National Parks Conservation Association (“NPCA”) and Coalition of National Park Service Retirees (“CNPSR”) bring this action under the APA, 5 U.S.C. § 551, et seq., NEPA, 42 U.S.C. § 4321, et seq., the Organic Act, 16 U.S.C. § 1, et seq., the NWRSA, 16 U.S.C. § 668dd, et seq., the NHPA, 16 U.S.C. § 470, et seq., and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, to seek review of and to challenge (i) Defendants’ promulgation of final rules, published at 73 Fed. Reg. 74966-74972 (Dec. 10, 2008) (the “Final Rule”), amending 36 C.F.R. § 2.4 and 50 C.F.R. § 27.42, regulations pertaining to visitors’ ability to possess loaded and concealed weapons within the National Parks (the newly amended 36 C.F.R. § 2.4 and 50 C.F.R. § 27.42 are collectively referred to as the “Gun Rule” or the “Rule”); and (ii) Defendants’ failure to adhere to applicable statutes and regulations in promulgating the Rule.

### **JURISDICTION AND VENUE**

6. This action arises under the APA, 5 U.S.C. § 551, et seq., NEPA, 42 U.S.C. § 4321, et seq., the Organic Act, 16 U.S.C. § 1, et seq., NWRSA, 16 U.S.C. § 668dd, et

seq., the NHPA, 16 U.S.C. § 470, et seq., and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202. Accordingly, this Court has jurisdiction pursuant to 5 U.S.C. §§ 701-706 and 28 U.S.C. §§ 1331, 2201 and 2202.

7. Venue lies in this judicial district pursuant to 28 U.S.C. § 1391(e), as Defendants are agencies of the United States and officers of those agencies acting in their official capacity, as all Defendants are located within this judicial district and as a substantial part of the events or omissions giving rise to this action occurred in this judicial district.

### **PARTIES**

8. Plaintiff NPCA is a nonprofit membership organization headquartered in Washington, D.C. Founded in 1919, just three years after Defendant NPS was established, NPCA carries out its mission through programs, studies, and initiatives designed to identify and address threats facing parks and park resources; to protect and preserve the wildlife, flora, and scenery in the parks; to preserve park cultural and historic resources; to improve park management; and to enhance visitor experience and safety. NPCA focuses on preserving and protecting the National Park System. NPCA also runs a number of programs that impact wildlife protection and visitor enjoyment in the national wildlife refuges. NPCA has in excess of 320,000 members, many of whom have visited and will continue to visit the National Parks to enjoy and observe the wildlife, flora, scenery and historical and cultural assets of the National Parks and to enjoy the peace, solitude, quiet and serenity of the National Parks. The implementation of the Gun Rule will irreparably harm and adversely affect NPCA members' ability to enjoy and observe the wildlife, flora, scenery and historical and cultural assets of the National Parks and enjoy the peace, solitude, quiet and serenity of the National Parks. NPCA submitted comments to Defendants opposing the final adoption and implementation of the Gun Rule.

9. Plaintiff CNPSR is a nonprofit membership organization headquartered in Tucson, Arizona. CNPSR has approximately 683 members, all of whom are former salaried

employees of Defendant NPS. CNPSR is organized to advance the central mission of NPS, which is to conserve the scenery and the natural and historic objects and the wildlife in the national parks and to provide for the enjoyment of the parks in such manner and by such means as will leave them unimpaired for the enjoyment of future generations. CNPSR members have devoted their professional careers to, have lived and worked in the parks and have visited and will continue to visit the National Parks to enjoy and observe the wildlife, flora, scenery and historical and cultural assets of the National Parks and to enjoy the peace, solitude, quiet and serenity of the National Parks. Implementation of the Gun Rule will irreparably harm and adversely affect CNPSR members' ability to enjoy and observe the wildlife, flora, scenery and historical and cultural assets of the National Parks and enjoy the peace, solitude, quiet and serenity of the National Parks. CNPSR submitted comments to Defendants opposing the final adoption and implementation of the Gun Rule.

10. Defendant Dirk Kempthorne is sued in his official capacity as the Secretary of the United States Department of the Interior ("DOI").

11. Defendant DOI is an agency of the United States charged by Congress with administering and conserving the public lands of the United States, including the National Parks. DOI, including its sub-agencies NPS and FWS, is the federal agency whose actions or inactions are challenged herein.

12. Defendant R. Lyle Lavery is sued in his official capacity as the Assistant Secretary of DOI for Fish, Wildlife and Parks. The Assistant Secretary of DOI for Fish, Wildlife and Parks has supervisory authority over Defendants NPS and FWS.

13. Defendant NPS is an agency within DOI charged with the administration and conservation of certain of the National Parks. NPS is one of the federal agencies whose actions or inactions are challenged herein.

14. Defendant Mary A. Bomar is sued in her official capacity as the Director of NPS.

15. Defendant FWS is an agency within DOI charged with the administration and conservation of certain of the National Parks. FWS is one of the federal agencies whose actions or inactions are challenged herein.

16. Defendant Dale Hall is sued in his official capacity as the Director of FWS.

### **FACTS**

#### **Over a Century of Reasonable Gun Restrictions**

17. The Organic Act states that it is the mission of the National Parks Service “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.” For over 100 years, the federal agencies overseeing the National Park System have carried out this mission with respect to the National Parks by restricting the carrying of loaded and concealed weapons within them. Defendant NPS has recognized in its Policies that “[t]he fundamental purpose of the national park system, established by the Organic Act, . . . begins with a mandate to conserve park resources and values.” Similarly, the NWRSA states that Defendant FWS’s lands are to be administered as “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.”

18. To this end, since the creation of the National Parks, and in recognition of their unique purposes, visitors to the National Parks have willingly adhered to restrictions on or regulations of numerous activities that may have been permissible on federal or state lands nearby or similar to the National Parks, including limitations on possessing or discharging firearms. As early as 1897, for example, visitors to Yellowstone National Park were required to surrender their firearms to law enforcement personnel for the duration of their visit to the Park. Similarly, regulations promulgated in 1948, 13 Fed. Reg. 8653 (Dec. 29, 1948), permitted law enforcement officials to carry concealed weapons in the National Parks, but recognized that

allowing guns more broadly would directly contradict the public safety and environmental concerns that were paramount to protecting the National Parks' purposes.

19. These reasonable restrictions on the carrying of loaded and concealed firearms in the lands administered by Defendant NPS took to heart Congress's mandate to Defendants, codified at 16 U.S.C. § 1a-1, that the authorization of recreational activities within the National Parks "shall be construed and the protection, management, and administration of [the National Parks] shall be conducted in light of the high public value and integrity of the [National Parks] and shall not be exercised in derogation of the values and purposes for which [the National Parks] have been established."

20. Similarly, Congress has stated unambiguously with respect to lands controlled by FWS that any secondary or recreational uses of those lands may be permitted only when consistent with the primary purpose of the lands: "conservation, management, and where appropriate, restoration of the fish, wildlife and plant resources and their habitats within the United States."

21. The Gun Rule reverses the century-plus of reasonable restrictions on the carrying of loaded and concealed weapons in the National Parks and supersedes rules last adopted during the Reagan Administration (the "Current Rules"). The Current Rules reasonably restricted National Park visitors' ability to possess an operable and loaded firearm unless the firearm was being used for lawful hunting activities, target practice in areas designated by special regulations, or other purposes related to the administration of federal lands in Alaska. Under the Current Rules, visitors to the National Parks could transport firearms through the National Parks subject to limitations that required the firearm to be unloaded and rendered inoperable or inaccessible.

22. Upon promulgating the Current Rules, Defendant DOI stated that the reasonable restrictions on carrying loaded and concealed weapons were integral to the protection of the National Parks and were a "basic mechanism used by [NPS] to protect the natural and

cultural resources of the parks and to protect visitors and property within the parks.” According to Defendants, the Current Rules recognized the need for limiting visitors’ ability to possess firearms in the National Parks and were “designed to ensure public safety and provide maximum protection of natural resources by limiting the opportunity for unauthorized use of weapons . . . while providing reasonable regulatory relief for persons living within, traveling through, or conducting activities on lands adjacent to park areas.” 47 Fed. Reg. 11,598, 11,602 (Mar. 17, 1982).

23. As recently as 2006, Defendant NPS’s Associate Director for Visitor and Resource Protection wrote to a Member of Congress stating that NPS “can’t stress enough the importance of [its] firearm regulation to ensure public safety and provide maximum protection of natural wildlife resources.”

24. Now, under the Gun Rule, Defendants will allow visitors to the National Parks to carry loaded and concealed weapons in the National Parks so long as there is a general ability to carry loaded and concealed weapons within the state in which the relevant portion of a National Park is located. The Rule would permit visitors to carry loaded and concealed weapons in National Parks within states that forbid the carrying of loaded and concealed weapons in their own state parks and would even permit the states to promulgate laws or regulations with respect to the carrying of loaded and concealed weapons in the National Parks within the state that applied on no other lands in the state.

25. Upon information and belief, Defendants have conducted no studies and have analyzed no data predicting how many loaded and concealed weapons might be introduced into the National Parks under the Gun Rule.

#### The Flawed Process by Which Defendants Promulgated the Gun Rule

26. Defendants adopted the Gun Rule with unwarranted haste, without following procedures required by law and without the consideration of its consequences that they are required to observe under law.

27. Only weeks after stating an intent to do so, Defendants, on April 30, 2008, published as proposed General Regulations for Areas Administered by the National Park Service and the Fish and Wildlife Service, 73 Fed. Reg. 23,388-23,390, their intent to reverse over a century of reasonable restrictions on the carrying of firearms in the National Parks including the Current Rules, which had been in place for a quarter of a century.

28. The Gun Rule will impact the 84.6 million acres of land under the management of Defendant NPS, including 58 National Parks, 120 National Historic Parks, 74 National Monuments, 54 Wilderness Areas, 28 National Memorials, 24 National Battlefields, 18 National Recreation Areas, 10 National Seashores, 4 National Lakeshores, 15 National Rivers and Wild and Scenic Riverways, 4 National Parkways and 3 National Scenic Trails spread across 49 states, the District of Columbia and U.S. territories and possessions. In the fiscal year 2007, there were over 272 million visits to just the lands under NPS management, with visitors from every state in the United States and many countries around the globe. The Rule will further impact the 96 million acres of public lands and waters under the management of Defendant FWS in its 548 refuges and 37 wetland management districts, which are spread across all fifty states and several U.S. territories and possessions and host approximately 40 million visitors annually.

29. Because the Gun Rule constitutes a change in existing regulations – in fact it is tantamount to a reversal of existing regulations – and because it impacts the entirety of the National Parks, it is a major federal action subject to the provisions of NEPA. Defendants' own regulation, 40 C.F.R. § 1508.18(b)(1), defines "major federal action" to include "new or revised agency rules, regulations, plans, policies or procedures."

30. NEPA requires agencies to conduct environmental analyses early in their decision-making process with respect to major federal actions to determine whether any significant environmental impacts would result from the proposed agency action. Among other factors, NEPA required Defendants to consider the degree to which the Gun Rule would impact

public health and safety, adversely affect endangered and threatened species or otherwise cause controversy.

31. Defendants, according to their own regulation, were required to commence the NEPA process “early enough so that it c[ould] serve practically as an important contribution to the decision making process and not be used to rationalize or justify decisions already made.” 40 C.F.R. § 1502.5. Defendants should have conducted at least an Environmental Assessment as required by NEPA before publishing the proposed Gun Rule and inviting public comment. An Environmental Assessment is to be used to determine whether impacts are significant, therefore requiring a more detailed Environmental Impact Statement. Instead of conducting an Environmental Assessment, when they proposed the Gun Rule, Defendants stated only that they “[were] currently working to determine the appropriate level of NEPA assessment and documentation that w[ould] be required for promulgation of this regulation.”

32. Only long after the time for public comment expired did Defendants publicly articulate their belief that the Gun Rule was categorically excluded from NEPA’s requirements because it “is in the nature of a legal change to existing rules that will not have any actual effects on the environment,” and because no “‘extraordinary circumstances’ exist which would prevent the proposed action from being classified as categorically excluded.”

33. The Gun Rule is not “legal” in nature, but rather reflects a politically-motivated decision by Defendants to subject the National Parks to a major change in use. The Gun Rule is a management action with a potential for significant environmental, public health and safety, and agency operational impacts that does not qualify for categorical exclusion from NEPA’s requirements. In fact, Defendants’ own regulation, 40 C.F.R. § 1508.4, provides that Defendants cannot rely on a categorical exclusion unless the action in question – here, the Gun Rule – was one that would “not . . . have a significant effect on the human environment.”

34. Even if the Gun Rule could fairly be characterized as “a legal change to existing regulations,” and thus within the scope of the claimed categorical exclusion, the Rule implicates multiple extraordinary circumstances as set forth in Defendant DOI’s regulations that required the preparation of at least an Environmental Assessment pursuant to NEPA.

35. Defendants’ internal communications prior to the initial proposal of the Gun Rule recognized that the Rule implicated extraordinary circumstances requiring the preparation of an Environmental Assessment.

36. Multiple extraordinary circumstances eliminate the ability of Defendants to rely upon a categorical exclusion and required the completion of an Environmental Assessment prior to promulgation of the Gun Rule.

#### Impacts on Public Safety

37. DOI has established as an extraordinary circumstance requiring the preparation of an Environmental Assessment major federal actions having significant impacts on public health or safety. The Gun Rule is likely to have a significant impact on public health and safety for multiple reasons.

38. Defendants recently stated on their website that restrictions on the possession of weapons within the National Parks are for the “protection of our resources, as well as providing visitors with a safe park experience.” Defendants further informed the public that “[t]he threat of [firearms] being turned against you or an accidental shooting [in the National Parks] may outweigh the benefit” of permitting the weapons.

39. In an attempt to justify the Gun Rule, in their Final Rule, Defendants stated: “[W]e also recognize that current statistics show an alarming increase in criminal activity on certain Federal lands managed by the Department of the Interior . . . especially in lands that are not readily accessible by law enforcement authorities.” Notwithstanding the complete lack of citation to evidence to support this statement, and Defendants’ own prior statements that National Parks are among the safest places to be in the United States, Defendants’ suggestion

that visitors may need to arm themselves to preserve their safety within the National Parks demonstrates that the Rule will impact public safety.

40. In fact, Defendants acknowledge in their Final Rule that they cannot begin to adequately patrol the National Parks, stating that “NPS and FWS together employ approximately 3,000 full and part-time law enforcement officers who are responsible for patrolling and securing millions of acres of land, a substantial portion of which is remote wilderness.” As a result, Defendants state: “NPS and FWS law enforcement officers are in no position to guarantee a specific level of public safety on their lands.” If NPS and FWS law enforcement officers were not in a position to guarantee public safety under the Current Rules, it is difficult to imagine how the introduction of an untold number of loaded and concealed weapons being carried by visitors into the National Parks under the Gun Rule would not impact public safety for the worse, because Defendants make clear that National Park law enforcement will not be able to assure that only law-abiding citizens carry guns pursuant to the Gun Rule. The Gun Rule gives those who would carry guns for illegal purposes in the National Parks the cover of legal carry by other visitors.

41. If the Gun Rule is allowed to take effect, the risk that visitors will overreact to a perceived threat from wildlife and fire a weapon – whether or not at an animal – increases immeasurably simply because visitors will have the ability to possess loaded and concealed weapons, which threatens visitors to the National Parks and the tranquility of the National Parks.

42. If the Gun Rule is allowed to take effect, the risk of visitors mistakenly shooting another person whom they mistake as an approaching animal or otherwise as a threat increases immeasurably simply because visitors will have the ability to possess loaded and concealed weapons.

43. If the Gun Rule is allowed to take effect, the risk of injuries to humans, including Plaintiffs’ member National Park visitors, and disruptions to the National Parks’

tranquility as a result of the accidental discharge of weapons increases immeasurably simply because visitors will have the ability to possess loaded and concealed weapons.

44. If the Gun Rule is allowed to take effect, armed visitors will hike, camp and otherwise travel without a secured storage system for their weapon, because secured storage is not required under the Rule, thus creating a substantial risk that weapons carried legally in the National Parks will fall into the hands of persons with improper motives and without permission to be armed, or who have no safety training in the handling of weapons (such as children). Upon information and belief, Defendants have made no provision whatsoever for visitors to secure their loaded and concealed weapons while sleeping, swimming, bathing, showering, visiting federal facilities or otherwise engaging in an activity where it is illegal or impractical to keep their weapon safely on their person.

45. If the Gun Rule is allowed to take effect, armed visitors to the National Parks who come to be under the influence of alcohol or drugs will have ready access to weapons that otherwise would not be at their disposal and the Rule will expose plaintiffs' member National Park visitors and NPS and FWS law enforcement personnel to an increased risk of armed confrontation.

46. If the Gun Rule is allowed to take effect, it will permit visitors, subject to the vagaries of state laws and regulations, to carry loaded and concealed weapons not only in sparsely populated rural National Parks, but also in urban parks, including outdoor venues such as the Wolf Trap National Park for the Performing Arts, which regularly host densely concentrated populations of visitors. Defendants' analysis of the public safety implications of the Rule ignores completely the unique concerns of these urban or other National Parks with high visitor population densities.

47. As part of their purported embrace of federalism as a basis for the Rule, Defendants have promulgated a regulatory regime that subjects visitors to potentially inconsistent rules with respect to the possession of loaded and concealed weapons whenever they

visit a National Park that spans multiple states. The Gun Rule makes no provisions for the handling of weapons when visitors within a National Park happen to cross state lines and does not provide any indication as to how visitors will know they have crossed state lines while in the National Park or how they will know if the permissibility of carrying concealed weapons changes from state to state. Defendants attempt to minimize this impact on public safety by stating in the Final Rule that “relatively few” National Parks span multiple states, but, in fact, upon information and belief, nearly 60 parks under the control of Defendant NPS alone, covering tens of thousands of acres, span multiple states.

48. If the Gun Rule is allowed to take effect, it will add additional administrative burdens to the admittedly under-staffed law enforcement personnel of Defendants NPS and FWS, which will necessarily draw resources away from other public safety issues. In order to determine whether a visitor is allowed to carry a loaded and concealed weapon under the Rule, NPS and FWS law enforcement personnel will be required to learn the concealed carry laws of the state (or states) in which their National Park sits, the reciprocity arrangements in place between that state (or states) and other states and territories as well as the concealed carry laws of every state with which their state maintains a reciprocity agreement. This task is not a simple one. Some states have no regulations with respect to possessing loaded and concealed weapons, some states allow the carrying of such weapons without a permit and still other states allow the carrying of such weapons only with a permit, the requirements for which vary dramatically by state. Moreover, reciprocity arrangements between the states are not truly reciprocal. For example, upon information and belief, a resident of New Jersey licensed to carry a loaded and concealed weapon could do so in Missouri, but a resident of Missouri could not do the same in New Jersey. Hence to effectively enforce the Gun Rule, law enforcement personnel in the National Parks will need to carry with them extensive lists of state regulations and reciprocity arrangements or otherwise develop a system for checking the legality of armed visitors who purport to be permitted to carry a loaded and concealed weapon. Because this

educational process and administrative nightmare will occupy scarce law enforcement resources that could be deployed elsewhere, the Gun Rule will significantly and adversely impact public safety within the National Parks.

49. If the Gun Rule is allowed to take effect, it will significantly and adversely impact public health and safety, including that of Plaintiffs' member National Park visitors. Defendants' explanation that the Gun Rule will have no such impact because the Rule does not permit the "use or discharge" of the loaded and concealed weapons visitors will be allowed to carry in the National Parks ignores the reality that the presence of loaded weapons legally in the National Parks creates a substantial risk, as Defendants have admitted in prior statements.

#### Impacts on Wildlife, Environmental, Historical and Cultural Resources

50. DOI has established as an extraordinary circumstance requiring the preparation of an Environmental Assessment major federal actions having significant impacts on such natural resources and unique geographic characteristics as: historical 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. The Gun Rule is likely to have a significant impact on these resources for multiple reasons.

51. Prior to promulgating the Gun Rule, Defendants stated on their website that, beyond threats to public health and safety, "an increased presence of firearms could also change the culture of [the National Parks]." For this reason alone, Defendants were obligated to perform an Environmental Assessment before promulgating the Rule.

52. If the Gun Rule is allowed to take effect, it will adversely impact the National Parks' wildlife resources, notwithstanding Defendants' unsupported assurances to the contrary. According to Defendants, the Gun Rule does not inhibit their ability to prevent poaching in the National Parks because they "continue[] to maintain existing prohibitions on poaching" and "expect visitors to obey those [restrictions]." This is contrary to Defendants'

admissions that their anti-poaching efforts, even under the Current Rules, are inadequate because Defendants lack the necessary resources to patrol the vast, sometimes remote areas constituting the National Parks. Indeed, Defendants stated in promulgating the Gun Rule that they have insufficient law enforcement personnel to police the National Parks adequately, thereby admitting that they lack the resources necessary to prevent poaching.

53. DOI has stated in a recent budget request that “the illegal removal of wildlife from the parks is suspected to be a factor in the decline of numerous species of wildlife and could cause the local extinction of many more from the parks.” In its 2005 budget request, NPS stated that the “illegal removal of wildlife from the parks is suspected to be a factor in the decline of at least twenty-nine species of wildlife, and could cause the extirpation of nineteen species from the parks.” In 2007, NPS reported 505 incidents of poaching in 153 of its National Parks and involving more than 100 species of wildlife.

54. Upon information and belief, actual incidence of poaching within the National Parks is significantly under-reported as a result of manpower and resource shortages. Defendants acknowledge in their Final Rule that they cannot begin to adequately patrol the vast and sometimes remote National Parks. If, as Defendants state, “NPS and FWS law enforcement officers [were] in no position to guarantee a specific level of public safety on their lands” under the Current Rules, it is difficult to fathom how, under the Gun Rule and its introduction of an untold number of loaded and concealed weapons into the National Parks, Defendants could maintain the status quo, which they acknowledge does not control poaching, much less eliminate poaching in the National Parks.

55. Under the Current Rules, with extremely limited exceptions, members of the public have no lawful purpose carrying an operable firearm in the National Parks. As a result, if law enforcement personnel find a visitor carrying a gun, they may assume that the visitor intends to poach or otherwise has suspicious intentions. If the Gun Rule is allowed to take effect, many more visitors to the National Parks may lawfully be armed, law enforcement personnel

will have no ability, short of witnessing an act of poaching or direct evidence that poaching has taken place, to discern poachers from other visitors and will actually lose ground in their fight to protect the wildlife within the National Parks.

56. On October 6, 2008, Plaintiff CNPSR submitted to Defendants a comprehensive report on the natural and cultural resource impacts of the proposed Gun Rule on NPS and FWS-administered lands (the “CNPSR Report”). Defendants referenced the CNPSR Report in their Decision Memorandum Regarding Environmental Review & Categorical Exclusion, made public together with the final Gun Rule. The CNPSR Report contained the results of a system-wide survey of current and retired NPS and FWS employees and documented the belief of the overwhelming majority of survey respondents, based upon their experiences, that the Gun Rule would have a significant negative impact on wildlife.

57. Beyond poaching, if the Gun Rule is allowed to take effect, the risk of armed visitors shooting wildlife in an overreaction to a perceived threat rises immeasurably simply because many more visitors will have ready access to weapons.

58. There are approximately 27,000 historic structures – including 5,771 Historic Buildings – and other cultural resources within the National Parks. Upon information and belief, Defendants did not consider the impact of the Gun Rule, including increased risks of vandalism, on the National Parks’ historical and cultural resources.

59. The CNPSR Report confirms that, in the experience of the substantial majority of survey respondents, the Gun Rule would have a significant negative impact on cultural and historical resources.

60. If the Gun Rule is allowed to take effect, it will significantly impact the natural resources and culture of the National Parks, recreational and refuge lands, wilderness areas, wild and scenic rivers, national natural landmarks, national monuments, and ecologically significant areas. Defendants’ explanation that the Gun Rule will have no such substantial impact because the Rule does not permit poaching or the “use or discharge” of the loaded and

concealed weapons visitors will be allowed to carry in the National Parks ignores reality and is belied by Defendants' prior statements, and Defendants have cited no evidence to support their change in position.

Impacts on Endangered and Threatened Species and Critical Habitat

61. DOI has established as an extraordinary circumstance requiring the preparation of environmental analyses under NEPA major federal actions having significant impact on species listed, or proposed to be listed, on the List of Endangered or Threatened Species, or having significant impacts on designated Critical Habitat for these species. The Gun Rule is likely to have a significant impact on endangered and threatened species and critical habitats.

62. Public information made available by Defendants establishes that more than 200 species of endangered, threatened, proposed and candidate species exist in the National Parks and implementation of the Gun Rule and the corresponding introduction of loaded and concealed weapons into the National Parks threatens to impact these species, as well as the critical habitats in which these species live, significantly and adversely.

63. The CNPSR Report confirms that, in the experience of the great majority of survey respondents, the Gun Rule would have a significant negative impact on endangered, threatened, proposed and candidate species.

64. Defendants' explanation that the Gun Rule will have no such significant impact because the Rule does not permit the "use or discharge" of the loaded and concealed weapons visitors will be allowed to carry in the National Parks ignores reality and common sense and is belied by Defendants' prior statements.

65. On December 17, 2008, Plaintiffs provided notice to Defendants of their intent to sue under the Endangered Species Act, 16 U.S.C. § 1531, et seq., (the "ESA") to challenge the promulgation of the Gun Rule. If Defendants do not respond to Plaintiffs' notice of intent to sue by taking steps to withdraw the Gun Rule and assess its impact on endangered

and threatened species, Plaintiffs will, after the expiration of the 60-day notice period provided by the ESA, seek leave to amend this Complaint and Petition for Review to include a cause (or causes) of action arising under the ESA.

Controversial Environmental Effects and Unresolved Conflicts Regarding Alternatives

66. DOI has established as an extraordinary circumstance requiring the preparation of an Environmental Assessment major federal actions having highly controversial environmental effects or involving unresolved conflicts concerning alternative uses of available resources.

67. Defendants acknowledge receiving approximately 125,000 comments on the proposed Gun Rule, some of which were signed by or stated positions of multiple persons. The Final Rule does not provide a breakdown of the comments, but Plaintiffs' analysis of the comments shows that approximately 105,000 persons or entities opposed the Rule, while fewer than 36,000 supported it. Of those who made substantive comments – beyond simply opposing or supporting the Rule – over 64,000 opposed the Rule, while fewer than 30,000 supported it. Those opposing the Rule, including Plaintiffs, identified numerous controversial environmental effects of the Rule, including but not limited to the Rule's impact on the National Parks' wildlife resources, natural beauty, tranquility and public safety.

68. Defendants' responses to these public comments were superficial and often illogical statements that the Gun Rule would have no environmental impacts because any conduct that would lead to such an impact, for example discharging or brandishing a weapon or poaching, are illegal in their own right and therefore simply would not occur. Naivety with respect to environmental threats and denial with respect to environmental impacts cannot negate the existence of environmental controversy regarding the Rule. Defendants' explanation that the Gun Rule will have no highly controversial environmental effect because it will have no "extractive" impact on the environment is a dramatic over-simplification of the universe of

potential environmental impacts, such as those described in paragraphs 50-64 above. For all these reasons, environmental controversies exist with respect to the Gun Rule which Defendants have not addressed adequately or even acknowledged. Moreover, because Defendants have failed to assess the environmental impacts of the Gun Rule or even acknowledge that there would be any, they have not considered potential alternatives to the Rule that would minimize or eliminate the environmental impacts of the Rule.

69. The CNPSR Report confirms that, in the experience of the vast majority of the survey respondents, the Gun Rule would negatively affect the administration of the affected areas and result in complex and confusing administrative situations.

#### Other Procedural Deficiencies in the Promulgation of the Gun Rule

70. 16 U.S.C. § 1a-1, part of the Organic Act, mandates that all regulations concerning the National Parks consider and promote conservation of natural resources, including animals. Defendants appear to have given no consideration to the conservation of the National Parks' natural and cultural resources in promulgating the Gun Rule and, in fact, have even ignored the Rule's impact in exacerbating existing threats to those resources.

71. 16 U.S.C. § 1a-3 sets forth procedures by which the Secretary of the Interior may, by formal agreement, relinquish to a state part of the legislative jurisdiction of the United States over the National Park System, subject to notice to relevant Congressional Committees and a 60-day waiting period to enable Congressional action of disapproval.

72. The Gun Rule cedes to the states the ability to determine whether visitors to the National Parks may carry loaded and concealed weapons and, upon information and belief, Defendants did not consider the requirements of 16 U.S.C. § 1a-3 in promulgating the Gun Rule, let alone attempt to abide by them, and have not reserved for themselves final reviewing authority over the concealed carry regulations promulgated by the states.

73. As part of the appeal to federalism that they claim is the basis for the Gun Rule, Defendants state in the Final Rule that the Gun Rule "treats state law in a similar manner to

regulations adopted by the Bureau of Land Management (BLM) and the United States Forest Service (USFS), both of which allow visitors to carry weapons consistent with applicable Federal and state laws.” Unlike the National Parks, which exist “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,” BLM and USFS lands are by design multiple use lands which are to be managed with a focus on timber harvesting, livestock grazing, mineral leasing, and other commercial and non-commercial uses. Defendants simply ignore the vastly different purposes and use of the National Parks and BLM and USFS lands in justifying the Gun Rule.

74. Defendants, in proposing the Gun Rule, announced an intention “to amend existing regulations in order to allow individuals to carry concealed weapons in park units and refuges to the extent that they could lawfully do so on analogous state-administered lands.” 73 Fed. Reg. at 23388. According to Defendants, because the National Parks “are often located in close proximity to state parks or refuges, and visitors to these sites may frequently travel through a combination of federal and state lands during the course of a visit[,] . . . adopting the state standards for the possession of firearms on federal lands will promote uniformity of application [and] better visitor understanding of the requirements.” 73 Fed. Reg. at 23389. However, in response to public comments noting how ambiguous and confusing the term “similar state lands” was, Defendants jettisoned their original theory of federalism – that they ought to defer to state policies with respect to the possession of loaded and concealed weapons in parks and refuges – and adopted vastly more expansive regulations that permit visitors to carry such weapons in the National Parks as long as they are authorized to possess loaded and concealed weapons under the laws of the state in which the National Park sits, irrespective of whether the state has determined that the same conduct is not appropriate in its own park and refuge lands. Gone too with Defendants’ original notion of federalism is their belief that uniformity in the rules with respect to state and federal park and refuge lands was a laudable goal that would reduce confusion on the

part of visitors and National Park administrators. Upon information and belief, some states that allow their citizens to carry concealed weapons in fact prohibit such weapons in their state parks. Under the Gun Rule, visitors will be allowed to carry concealed weapons in National Parks in those states but would be prohibited from carrying concealed weapons in state parks in the same states. Defendants thus have undermined the state policies protecting visitors and wildlife in those state parks based on their overbroad concept of “federalism.” If implemented, the Final Rule would replace the uniformity of the Current Rules with a confusing tangle of state regulations and reciprocity agreements that are anything but uniform and that fail to defer to states’ efforts to protect their own parks and refuges from loaded and concealed guns.

75. The NHPA, 16 U.S.C. § 470h-2(a)(1), charges the heads of federal agencies with “responsibility for the preservation of historic properties which are owned or controlled by such agency.” 16 U.S.C. § 470h-2(a)(2) requires Defendants to ensure that the historic properties under their jurisdiction and control “are managed and maintained in a way that considers the preservation of their historic, archaeological, architectural, and cultural values.” Upon information and belief, Defendants did not consider the impact of the Gun Rule, including increased risks of vandalism, on the historical resources of the National Parks.

76. The NHPA, 16 U.S.C. § 470f, together with 36 C.F.R., Part 800, obligate the head of any Federal agency having direct or indirect jurisdiction over a proposed Federal or federally assisted undertaking to “afford the Advisory Council on Historic Preservation . . . a reasonable opportunity to comment with regard to such undertaking.” Upon information and belief, Defendants did not at any time during the promulgation of the Gun Rule consult with or otherwise afford the Advisory Council on Historic Preservation an opportunity to comment on the Rule.

77. Defendant DOI’s internal policies and procedures manual mandates consultation with federally recognized Indian tribes “whenever plans or actions affect tribal trust resources, trust assets or tribal health and safety” and Executive Order 13175 required

Defendants to ensure meaningful and timely input by tribal officials with respect to the development of the Gun Rule. Defendants appear to have failed to undertake this consultation until a point when it cannot have a meaningful impact on the development of the Gun Rule. The Final Rule states only that Defendants “have invited federally recognized tribal governments to jointly evaluate and address the potential effects, if any of the [Rule].” Defendants should have engaged in and documented such consultation at a time prior to final adoption of the Rule so that any tribal input could have been considered.

78. On October 15, 2008, almost six months after proposing the Gun Rule, Defendant DOI changed the standards by which it determines the applicability of the categorical exclusion on which it relied to excuse Defendants from NEPA’s requirements. 73 Fed. Reg. 61,292. Prior to the October 2008 change, the categorical exclusion on which Defendants rely was available only for “[p]olicies, directives, and guidelines that are of an administrative, financial, legal, technical, or procedural nature and whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process, either collectively or case-by-case.” (Emphasis added.) Under the new regulatory scheme, the categorical exclusion is available for “[p]olicies, directives, and guidelines that: are of an administrative, financial, legal, technical or procedural nature; or whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process, either collectively or case-by-case.” 73 Fed. Reg. at 130 (emphasis added). While the Gun Rule cannot satisfy the first prong of the categorical exclusion irrespective of which version Defendants relied on, Defendants were required to apply the categorical exclusion in place at the time they published the proposed Gun Rule and invited public comment.

**FIRST CLAIM FOR RELIEF**

**(Agency Actions Without Observance of Procedure Required by Law)**

79. Plaintiffs reallege and incorporate by reference herein all of the foregoing allegations.

80. 5 U.S.C. § 706(2)(D) provides that a “reviewing court shall . . . hold unlawful and set aside agency action, findings, and conclusions found to be . . . without observance of procedure required by law.”

81. Defendants’ promulgation of the Gun Rule is a final agency action for purposes of review under the APA.

82. In promulgating the Gun Rule, Defendants have failed to observe procedures required by law in multiple respects.

83. In promulgating the Gun Rule, Defendants have failed to observe procedures required by law in their failure to consider the Organic Act’s “mandate to conserve park resources and values,” as set forth in 16 U.S.C. § 1.

84. In promulgating the Gun Rule, Defendants have failed to observe procedures required by law by administering the National Parks “in derogation of the values and purposes” for which Congress established the National Parks, as set forth in the Organic Act, 16 U.S.C. § 1a-1.

85. In promulgating the Gun Rule, a regulation ceding to the states the authority to create laws and regulations controlling the ability of visitors to the National Parks to carry loaded and concealed weapons, Defendants have failed to observe procedures required by law by neither considering nor complying with the requirements of 16 U.S.C. § 1a-3.

86. In promulgating the Gun Rule, Defendants have failed to observe procedures required by law in their failure to consider the NWRSA’s mandate that the wildlife refuges under the control of Defendant FWS be administered as “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.”

87. Because they failed to conduct at least an Environmental Assessment at any time concerning the Gun Rule – let alone before proposing it – Defendants have not determined whether the Gun Rule will have a significant environmental impact on the National Parks and, as a result, have failed to determine whether they were required to prepare an Environmental Impact Statement prior to the final adoption of the Rule.

88. By failing to conduct at least an Environmental Assessment or prepare an Environmental Impact Statement before promulgating the Gun Rule, Defendants deprived the public of the opportunity to comment in a meaningful way on the data, if any, on which Defendants relied in reversing over a century of regulations that restricted the carrying of loaded and concealed weapons in the National Parks and further deprived the public of any meaningful opportunity to assess and, if necessary, challenge Defendants’ interpretation of the data with respect to the environmental impacts of the Gun Rule.

89. The promulgation of the Gun Rule was not in accordance with procedures required by law because Defendants failed at any time prior to final adoption of the Gun Rule to state what categorical exclusion they claimed excused the preparation of an Environmental Assessment as required by NEPA and, therefore, deprived the public of any ability to comment on the claim of a categorical exclusion.

90. In any event, no categorical exclusion justifies Defendants failure to conduct, at a minimum, an Environmental Assessment with respect to the promulgation of the Gun Rule.

91. Defendants were obligated, at a minimum, to conduct an Environmental Assessment before promulgating the Gun Rule because the Rule has the potential to significantly impact public health and safety for multiple reasons set forth herein, including those in paragraphs 37-49 above.

92. Defendants were obligated, at a minimum, to conduct an Environmental Assessment before promulgating the Gun Rule because the Rule has the potential to significantly impact the National Parks' historical or cultural resources, park, recreation or refuge lands generally, wilderness areas, national natural landmarks, national monuments, migratory birds and ecologically significant or critical areas for multiple reasons set forth herein, including those in paragraphs 50-64 above.

93. Defendants were obligated, at a minimum, to conduct an Environmental Assessment before promulgating the Gun Rule because the Rule has the potential to significantly impact species listed, or proposed to be listed, on the List of Endangered or Threatened Species and designated Critical Habitat for these species for multiple reasons set forth herein, including those in paragraphs 61-64 above.

94. Defendants were obligated, at a minimum, to conduct an Environmental Assessment before promulgating the Gun Rule because the Rule poses unresolved, highly controversial environmental impacts on the National Parks and because Defendants have failed to identify, let alone analyze alternatives to the Rule for multiple reasons set forth herein, including those in paragraphs 50-69 above.

95. In promulgating the Gun Rule, Defendants have failed to observe procedure required by law in their failure to consider the impacts of the Rule on those historical and cultural resources within the National Parks subject to the protection of the NHPA.

96. In promulgating the Gun Rule, Defendants have failed to observe procedure required by law in their failure to consult with or otherwise afford the Advisory Council on Historic Preservation an opportunity to comment on the Rule at any time during its promulgation.

97. Defendants have further failed to observe procedure required by law in their failure to consult with federally recognized Indian tribes in a manner and at a time in which such consultation would be meaningful.

98. An actual and justiciable controversy exists between Plaintiffs and Defendants and the entry of a declaratory judgment is necessary and appropriate to resolve that controversy.

99. Because it was promulgated without observance of procedure required by law, the Gun Rule must be held unlawful and set aside.

**SECOND CLAIM FOR RELIEF**  
**(Agency Actions Which Are Arbitrary or Capricious)**

100. Plaintiffs reallege and incorporate by reference herein all of the foregoing allegations.

101. 5 U.S.C. § 706(2)(A) provides that a “reviewing court shall . . . hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary [or] capricious.”

102. Defendants’ promulgation of the Gun Rule is a final agency action for purposes of review under the APA.

103. For multiple reasons, the Gun Rule is, and the process by which it was promulgated was, arbitrary and capricious.

104. In justifying the Current Rules at the time of their promulgation, Defendant DOI stated that restrictions on firearms within the National Parks were essential to protecting the nature and culture of the National Parks and were “needed to provide for both public safety and resource protection.” The need for public safety and resource protection within the National Parks have not changed in the last quarter century. What has changed is Defendants’ apparent willingness to embrace notions of federalism to favor a generalized interest in gun possession within the National Parks over those “public safety and resource protection” needs that justified and continue to justify reasonable restrictions such as the Current Rules and the rules and regulations that preceded them. The promulgation of a rule that constitutes a stark reversal of a time-tested regulatory scheme without addressing adequately any of the enduring

policy concerns that necessitated and justified the prior regulatory scheme is arbitrary and capricious.

105. Defendants acted arbitrarily and capriciously in promulgating the Gun Rule ostensibly for the purpose of enhancing visitor safety without beginning to explain credibly how the Rule could enhance rather than diminish visitor safety.

106. Defendants stated that the Current Rules “limit[ed] the opportunity for unauthorized use of weapons” within the National Parks, but in justifying the Gun Rule state that existing laws and regulations are sufficient to deter the unauthorized use of weapons in the National Parks. Defendants have failed to explain why reasonable restrictions on the possession of loaded and concealed weapons in the National Parks are no longer necessary to prevent their unauthorized use and thus have acted arbitrarily and capriciously in promulgating the Rule.

107. In response to concerns that the Gun Rule will pose threats to the National Parks’ wildlife resources, Defendants have indicated that existing “prohibitions on poaching” will remain in place. Defendants have also justified the Rule by citing purported increases in incidents of violent crimes in the National Parks and their inability to fully patrol the vast and remote lands under their control. If concerns of increased poaching under the Gun Rule are unjustified because poaching is illegal, Defendants cannot justify the Rule in other respects by citing the threat of violent crime within the National Parks. Violent crimes, like poaching, would be illegal under the Gun Rule just as they are under the Current Rules. Defendants’ views as to whether visitors to the National Parks should be presumed to be law-abiding vary by the outcomes they seek to accomplish, revealing that their analysis in promulgating the Gun Rule was result-driven and that that the Rule itself is arbitrary and capricious.

108. Defendants have acted arbitrarily and capriciously in promulgating the Gun Rule, which will provide for the introduction into the National Parks of untold numbers of loaded and concealed weapons, because their own statistics indicate that poaching of wildlife is a problem even under the Current Rules.

109. Defendants have acted arbitrarily and capriciously in promulgating the Gun Rule, which will provide for the introduction into the National Parks of untold numbers of loaded and concealed weapons, because their own statistics indicate that the National Parks, under the Current Rules, provide a safe environment for visitors.

110. Defendants have acted arbitrarily and capriciously in promulgating the Gun Rule because, as a result of their failure to comply with NEPA, they have neither identified nor considered alternatives to the Rule that might have addressed the concerns prompting the Rule without posing the significant risks of the Rule.

111. Defendants acted arbitrarily and capriciously in promulgating the Gun Rule for the purpose of respecting the legislative choices of the states in a manner similar to that in existing regulations of BLM and USFS, two agencies with starkly different missions and purposes than Defendants NPS and FWS.

112. Defendants have acted arbitrarily and capriciously in claiming a categorical exclusion to NEPA's Environmental Assessment requirements and by failing to acknowledge one or more of the extraordinary circumstances that obligated Defendants to conduct, at a minimum, an Environmental Assessment before promulgating the Gun Rule.

113. Defendants have acted arbitrarily and capriciously by disregarding the majority of the public comments they received, including the comments of seven former Directors of NPS, all of whom opposed the Gun Rule.

114. Moreover, Defendants acted arbitrarily and capriciously in providing simplistic, unsupported and unsupportable responses to the concerns raised in public comments opposing the Gun Rule that they chose to address and, in instances by mischaracterizing those concerns. For example:

- a. In response to concerns raised by commenters on the proposed Rule that visitors to the National Parks under the Gun Rule may have a false sense of security against potential attackers because of inadequate firearms training,

Defendants observed that “[m]any individuals authorized under State law to carry concealed firearms are in possession of permits, the acquisition of which is conditioned on some form of training in the use and storage of firearms.”

Defendants did not provide any projections of how many armed National Park visitors would have such training. Rather than reassuring the public, by acknowledging that many visitors will lack “some form of training in the use and storage of firearms,” Defendants implicitly recognize that the Rule poses a threat to public safety.

b. Defendants mischaracterize concerns for the protection of wildlife in the National Parks by suggesting there were concerns that “[v]isitors who carry a concealed firearm permitted under state law are likely to use their handguns to shoot or injure wildlife.” Defendants provide citations to studies purporting to demonstrate that most visitors to the National Parks would not intentionally “shoot or injure wildlife,” but in doing so they mischaracterized the concerns raised by the commenters. Upon information and belief, no commenters actually suggested that armed visitors to the National Parks, as a whole, are likely to shoot wildlife, but only that the Gun Rule makes it more likely that some armed visitors to the National Parks will use their weapons against wildlife. Defendants have made the effort to rebut arguments not made raised by commenters, but have dedicated no such effort to evaluating the realistic, potential impact on the National Parks’ wildlife resources of the presence of a larger (but not quantified) number of loaded weapons in the National Parks in the possession of visitors.

c. In response to comments noting that the carrying of loaded and concealed weapons in the National Parks is inconsistent with one of the missions of the National Parks, to be “havens of peace and safety,” Defendants state that the Gun Rule will not impact visitors’ ability to experience the National Parks as such

havens because “NPS and FWS law enforcement officers already carry firearms which are visible to the public.” Defendants fail to acknowledge that visitors carrying loaded and concealed weapons will impact other visitors’ senses of peace and safety in a qualitatively different way than does the presence of uniformed law enforcement personnel who carry firearms in the fulfillment of their duties.

d. In response to concerns about confusion, uncertainty and the administrative difficulties posed by National Parks whose boundaries span multiple states, each of which might maintain different regulations with respect to the possession of loaded and concealed weapons, Defendants reply that “individuals remain responsible for familiarizing themselves with and obeying all applicable laws.” Defendants provide no response stating how visitors are to know when they are crossing state lines, or how law enforcement personnel in such National Parks are to know and enforce the different state laws (including their reciprocity provisions).

115. The Gun Rule itself is arbitrary and capricious to the extent it would replace the Current Rules, a uniform system of regulating the possession of firearms within the National Parks, with each of the various standards of the states in which the National Parks are located for carrying loaded and concealed weapons, which vary from state to state, including in their reciprocity provisions, making enforcement of the Rule difficult and unlikely to be effective.

116. The Gun Rule itself is arbitrary and capricious to the extent it would permit the carrying of loaded and concealed weapons in National Parks within states that permit the carrying of loaded and concealed weapons as a general matter, but which states restrict such carrying in some or all of their state parks and refuges that are very similar in purpose and use to the National Parks and, in some instances, are contiguous to National Parks.

117. The Gun Rule itself is arbitrary and capricious to the extent it fails to address circumstances and concerns uniquely applicable to National Parks in urban settings or National Parks or areas of National Parks with high visitor population density.

118. The Gun Rule itself is arbitrary and capricious to the extent it fails to address the logistical difficulties posed by the security or storage of firearms when visitors to the National Parks are sleeping, swimming, bathing, showering, visiting federal facilities or otherwise engaging in an activity where it is illegal or impractical to keep their weapon safely on their person.

119. The Gun Rule itself is arbitrary and capricious as it would permit visitors to the National Parks to carry loaded and concealed weapons to the extent they can do so in the states in which the National Parks are located without providing any practical guidance as to how the Rule will be applied in any one of the many National Parks that spans multiple states.

120. Defendants have acted arbitrarily and capriciously in promulgating the Gun Rule by failing to consider the preservation of the historical, archaeological, architectural, and cultural values of those historical and cultural resources within the National Parks subject to the protection of the NHPA.

121. Defendants have acted arbitrarily and capriciously in promulgating the Gun Rule by failing to consult with or otherwise afford the Advisory Council on Historic Preservation an opportunity to comment on the Rule.

122. An actual and justiciable controversy exists between Plaintiffs and Defendants and the entry of a declaratory judgment is necessary and appropriate to resolve that controversy.

123. Because the Gun Rule and the process by which it was promulgated represent arbitrary and capricious exercises of Defendants' rulemaking authority, the Rule must be held unlawful and set aside.

### **THIRD CLAIM FOR RELIEF**

#### **(Agency Actions Not in Accordance with Law)**

124. Plaintiffs reallege and incorporate by reference herein all of the foregoing allegations.

125. 5 U.S.C. § 706(2)(A) provides that a “reviewing court shall . . . hold unlawful and set aside agency action, findings, and conclusions found to be . . . not in accordance with law.”

126. Defendants’ promulgation of the Gun Rule is a final agency action for purposes of review under the APA.

127. The Gun Rule is not in accordance with law because in promulgating it, Defendants have failed to observe the Organic Act’s “mandate to conserve park resources and values” and to administer the National Parks in accordance with the priorities stated in the Organic Act.

128. The Gun Rule is not in accordance with law because in promulgating it, Defendants have exercised their authority to administer the National Parks “in derogation of the values and purposes” for which Congress established the National Parks, as set forth in the Organic Act, 16 U.S.C. § 1a-1.

129. The Gun Rule is not in accordance with law because in promulgating it, Defendants have failed to observe the NWRSA’s mandate that lands under the control of Defendant FWS be administered as “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.”

130. The Gun Rule is not in accordance with law because it abdicates to the states Defendants’ statutory responsibility to manage and administer the National Parks, including granting to the states the authority to create laws with respect to the carrying of loaded

and concealed weapons applicable to the National Parks (and it permits state promulgation of laws applicable only to the National Parks) within their borders.

131. The Gun Rule is not in accordance with law because in promulgating it, Defendants have failed to consider the impacts of the Rule on those historical and cultural resources within the National Parks subject to the protection of the NHPA or otherwise comply with the requirements of the NHPA.

132. The Gun Rule is not in accordance with law because in promulgating it, Defendants failed to consult with or otherwise afford the Advisory Council on Historic Preservation an opportunity to comment on the Rule.

133. An actual and justiciable controversy exists between Plaintiffs and Defendants and the entry of a declaratory judgment is necessary and appropriate to resolve that controversy.

134. Because the Gun Rule, including the process by which Defendants' promulgated it, is not in accordance with law, it must be held unlawful and set aside.

**FOURTH CLAIM FOR RELIEF**  
**(Violation of NEPA)**

135. Plaintiffs reallege and incorporate by reference herein all of the foregoing allegations.

136. For all the reasons set forth herein, the Gun Rule is in contravention of NEPA. The Rule was not categorically excluded from NEPA's requirements, one or more extraordinary circumstances applied to negate any arguably applicable categorical exclusion, and Defendants, at a minimum, were required to conduct an Environmental Assessment prior to publishing the proposed Rule.

137. An actual and justiciable controversy exists between Plaintiffs and Defendants and the entry of a declaratory judgment is necessary and appropriate to resolve that controversy.

138. Because the Gun Rule, including the process by which Defendants' promulgated it, is in contravention of NEPA, it must be held unlawful and set aside.

**FIFTH CLAIM FOR RELIEF**  
**(Violation of the Organic Act)**

139. Plaintiffs reallege and incorporate by reference herein all of the foregoing allegations.

140. For all the reasons stated herein, the Defendants have failed to observe the Organic Act's "mandate to conserve park resources and values" and to administer the National Parks in accordance with the priorities stated in the Organic Act.

141. For all the reasons stated herein, Defendants have contravened the Organic Act, 16 U.S.C. § 1a-1, by administering the National Parks "in derogation of the values and purposes" for which Congress established the National Parks.

142. The Gun Rule is further in contravention of the Organic Act as a result of Defendants' failure to consider or comply with the requirements of 16 U.S.C. § 1a-3 in promulgating the Gun Rule, a regulation ceding to the states the authority to create laws and regulations controlling the ability of visitors to the National Parks to carry loaded and concealed weapons.

143. An actual and justiciable controversy exists between Plaintiffs and Defendants and the entry of a declaratory judgment is necessary and appropriate to resolve that controversy.

144. Because the Gun Rule, including the process by which Defendants' promulgated it, is in contravention of the Organic Act, it must be held unlawful and set aside.

**SIXTH CLAIM FOR RELIEF**  
**(Violation of the NWRSA)**

145. Plaintiffs reallege and incorporate by reference herein all of the foregoing allegations.

146. The Gun Rule is in contravention of the NWRSA as a result of Defendants' failure, in promulgating the Rule, to comply with the NWRSA's mandate that lands under the control of Defendant FWS be administered as "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."

147. An actual and justiciable controversy exists between Plaintiffs and Defendants and the entry of a declaratory judgment is necessary and appropriate to resolve that controversy.

148. Because the Gun Rule, including the process by which Defendants' promulgated it, is in contravention of the NWRSA, it must be held unlawful and set aside.

**SEVENTH CLAIM FOR RELIEF**  
**(Violation of the NHPA)**

149. Plaintiffs reallege and incorporate by reference herein all of the foregoing allegations.

150. The Gun Rule is in contravention of the NHPA as a result of Defendants' failure, in promulgating the Rule, to consider the impacts of the Rule on those historical and cultural resources within the National Parks subject to the protection of the NHPA or otherwise comply with the requirements of the NHPA.

151. The Gun Rule is further in contravention of the NHPA as a result of Defendants failure, in promulgating the Rule, to consult with or otherwise afford the Advisory Council on Historic Preservation an opportunity to comment on the Rule.

152. An actual and justiciable controversy exists between Plaintiffs and Defendants and the entry of a declaratory judgment is necessary and appropriate to resolve that controversy.

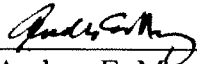
153. Because the Gun Rule, including the process by which Defendants' promulgated it, is in contravention of the NHPA, it must be held unlawful and set aside.

**REQUEST FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request that this Court:

- (1) Preliminarily and permanently enjoin implementation of the Gun Rule;
- (2) Declare the Gun Rule unlawful and set it aside, pursuant to 5 U.S.C. § 706(2)(D), as having been promulgated without observance of procedure required by law;
- (3) Declare the Gun Rule unlawful and set it aside, pursuant to 5 U.S.C. § 706(2)(A), as arbitrary and capricious;
- (4) Declare the Gun Rule unlawful and set it aside, pursuant to 5 U.S.C. § 706(2)(A), as not in accordance with law;
- (5) Declare the Gun Rule to be in contravention of NEPA, 42 U.S.C. § 4321, et seq.;
- (6) Declare the Gun Rule to be in contravention of the Organic Act, 16 U.S.C. § 1, et seq.;
- (7) Declare the Gun Rule to be in contravention of the NWRSA, 16 U.S.C. § 668dd, et seq.;
- (8) Declare the Gun Rule to be in contravention of the NHPA, 16 U.S.C. § 470, et seq.; and
- (9) Grant Plaintiffs their attorneys' fees and costs and such other and further relief as the Court may deem proper.

Dated: January 6, 2009

  
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