



Legal Community Against Violence

expertise, information & advocacy to end gun violence

June 30, 2008

Honorable Dirk Kempthorne
Secretary of the Interior
U.S. Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

Dear Mr. Secretary:

Legal Community Against Violence (“LCAV”) is a national public interest law center devoted exclusively to providing legal assistance in support of gun violence prevention. LCAV works with legislators, government attorneys, agency officials and law enforcement across the country to adopt legislative and regulatory solutions to reduce gun violence.

LCAV firmly opposes the proposed relaxation of present firearm regulations in national parks and wildlife refuges. The current rules, established during the Reagan Administration, generally permit visitors of national parks and wildlife refuges to carry *unloaded* or *temporarily inoperable* firearms on or across these federally-protected lands.¹ Visitors may not, however, use or transport *loaded* firearms while within any national park or refuge.²

In December 2007, certain U.S. Senators (hereinafter “Senators”) proposed an unprecedented set of amendments to these rules that would allow visitors to carry concealed, loaded firearms into a national park or federal wildlife refuge.³ The changes would apply in federally protected lands located within a state that lawfully permits concealed, loaded firearms to be carried into its own state parks. In proposing the rule changes, the Senators assert that any regulation requiring park visitors to stow their weapons or transport them unloaded improperly infringes upon a visitor’s ability to possess firearms.

These Senators further argue that the current rules regarding concealed, loaded guns, which are unique to national parks and wildlife refuges, create confusion and inconsistency in the way public lands are managed. The Senators specifically note that many state parks and federally administered national forests are not subject to the same protective regulations. Believing that such distinctions bewilder and encumber visitors, the Senators present their proposal as a means of bringing uniformity to the management of public lands and deferring to state regulatory

¹ 36 C.F.R. § 2.4(a)(3): “Traps, nets and unloaded weapons may be possessed within a temporary lodging or mechanical mode of conveyance when such implements are rendered temporarily inoperable or are packed, cased or stored in a manner that will prevent their ready use; 50 C.F.R. § 27.42(b): “Only the following persons may possess, use, or transport firearms on national wildlife refuges in accordance with this section and applicable Federal and State law: (b) Persons carrying unloaded firearms, that are dismantled or cased, in vehicles and boats over routes of [specifically designated] travel....”

² 36 C.F.R. § 2.4(a)(1): “Except as otherwise provided ... the following are prohibited: (i) Possessing a weapon, trap, or net, (ii) Carrying a weapon, trap, or net, or (iii) Using a weapon, trap, or net.”; See also 50 C.F.R. § 27.42.

³ Letter from Sen. Mike Crapo and 46 other U.S. Senators to Dirk Kempthorne, Secretary of the Interior, U.S. Department of the Interior (Dec. 14, 2007) available at http://www.npca.org/keep_parks_safe/pdf/sen-crapo_itr_kempthorne_121407.pdf (last visited Jun. 10, 2008).

authority, while still preserving the ability of national park and wildlife refuge personnel to ensure the safety of visitors and park animals.

A broad coalition of knowledgeable citizens, public-interest groups and government employees, including active and retired Park Rangers and seven former National Park Service directors, disagree with the Senators' assessments. Their informed perspectives, developed through countless years of experience in park management and public safety, properly convey the unique challenge of stewarding these treasured examples of America's vast and trackless wilderness. LCAV joins this coalition, urging the U.S. Department of the Interior to reject the proposed rule changes. The current approach to firearm regulation in national parks and wildlife refuges improves, rather than hinders, the safety of park visitors and employees, and imposes little inconvenience upon law abiding gun owners. More importantly, there is no evidence that concealed, loaded firearms deter crime or are a good instrument for self-defense. The purported problems the Senators raise with respect to individual rights, public safety, and regulatory uniformity among public land management agencies simply do not exist. Although the proposed rule changes attempt to resolve these illusory conflicts, the changes actually would endanger national park visitors, federally-employed staff, and protected wildlife.

Allowing Concealed, Loaded Firearms in National Parks Will Undermine Public Safety

Long-standing restrictions upon carrying loaded guns in national parks and wildlife refuges have likely contributed to the extremely low crime rate in these areas.⁴ Ready access to loaded firearms increases the likelihood of harm to park visitors, rangers and other staff.⁵ Even as national parks represent some of America's safest destinations,⁶ some backers of this proposed rule change unfathomably argue that increasing the number of concealed, loaded firearms within park boundaries would not adversely affect the safety of visitors and staff.⁷ A policy permitting the concealed carrying of loaded firearms jeopardizes public safety. There is no credible evidence to suggest that the presence of persons carrying concealed, loaded firearms would reduce the already low rates violence and crime in national parks.

Considerable public health research on the use of firearms for self-defense has concluded that “[g]un use in self-defense is rare, and it appears that using a gun in self-defense is no more likely to reduce the chance of being injured during a crime than various other forms of protective action.”⁸ Furthermore, there is no evidence in existence demonstrating that gun use in self-defense reduces the risk of death.⁹ More ominously, where guns are

⁴ Letter from John T. Waterman, President, Ranger Lodge, Fraternal Order of Police, to Dirk Kempthorne, Secretary of the Interior, U.S. Dept. of the Interior (Jan. 27, 2008) *available at* http://www.npca.org/media_center/pdf/fop_to_kempthorne_guns_nat_parks.pdf (last visited June 27, 2008).

⁵ *Id.*

⁶ Letter from Karen Taylor-Goodrich, Associate Director, Visitor and Resource Protection, National Park Service, to Phillip Van Cleave, President, Virginia Citizens Defense League (Jan. 31, 2007) *available at* http://www.npca.org/keep_parks_safe/pdf/nps_denial_of_vcdl_prm.pdf (last visited June 27, 2008).

⁷ Letter from Sens. Russell Feingold, Arlen Specter, Christopher Bond, and Roger Wicker to Dirk Kempthorne, Secretary of the Interior, U.S. Dept. of the Interior (Feb. 11, 2008) *available at* http://www.npca.org/keep_parks_safe/pdf/feingold_specter_bond_wicker_021108.pdf (last visited June 27, 2008).

⁸ David Hemenway, *Private Guns, Public Health* 78 (2004).

⁹ *Id.*

prevalent, there are significantly more homicides, particularly gun homicides.¹⁰ Use of a gun in self-defense appears to be a rare occurrence. For instance, of the 30,694 Americans who died by gunfire in 2005, only 123 were killed by handguns in justifiable homicides by private citizens.¹¹

Carrying a concealed, loaded firearm for self-defense purposes in a national park or wildlife refuge probably will do more harm than good. There is no credible statistical evidence showing that laws allowing the carrying of concealed firearms reduce crime. In fact, the evidence suggests that permissive concealed carry laws generally will *increase* crime.¹² Recent research on permissive concealed carry laws in Florida and Texas – states that issue a large volume of concealed weapons permits – have shown that many criminals and individuals prone to criminal activity receive such permits.¹³ From 1996 to 2000, for example, permit holders in Texas were arrested for weapons-related crimes at a rate 81% higher than that of the state’s general population age 21 and older.¹⁴

In addition, recent research by the non-partisan National Research Council’s Committee on Law and Justice determined that studies indicating that more guns related to less crime, such as those conducted by researcher John Lott, were not reliable.¹⁵ The Committee found that no evidence exists to demonstrate a causal link between the passage of permissive carrying concealed weapons laws and crime rates.

Nearly all states that permit the carrying of concealed firearms restrict concealed carrying in sensitive locations – specified areas where sound public policy dictates that permit holders should not possess concealed, loaded firearms. States commonly proscribe carrying guns in places such as schools, prisons, places of worship, courthouses and other government buildings, hospitals, mental health facilities, and locations where liquor is served or sold.¹⁶ Leaving the national parks rule as it currently stands is a very reasonable policy measure consistent with current state concealed carry restrictions.

¹⁰ Hemenway, *supra* note 8, at 65. See also Lisa M. Hepburn & David Hemenway, *Firearm Availability and Homicide: A Review of the Literature*, 9 *Aggression & Violent Behavior* 417 (July 2004).

¹¹ Federal Bureau of Investigation, U.S. Dept. of Justice, *Crime in the United States, 2006, Expanded Homicide Data Table 14*, available at http://www.fbi.gov/ucr/cius2006/offenses/expanded_information/data/shrtable_14.html (last visited June 29, 2008). (A “justifiable homicide” is defined by the FBI as the killing of a felon, during the commission of a felony, by a private citizen.); National Center for Injury Prevention and Control, U.S. Centers for Disease Control and Prevention, *Web-Based Injury Statistics Query and Reporting System (WISQARS) Injury Mortality Reports, 1999-2005*, at http://webappa.cdc.gov/sasweb/ncipc/mortrate10_sy.html.

¹² Ian Ayres & John J. Donohue III, *Shooting Down the “More Guns, Less Crime” Hypothesis*, 55 *Stan. L. Rev.* 1193, 1285, 1296 (Apr. 2003); and Ian Ayres & John J. Donohue III, *The Latest Misfires in Support of the “More Guns, Less Crime” Hypothesis*, 55 *Stan. L. Rev.* 1371, 1397 (Apr. 2003).

¹³ See Megan O’Matz, *In Florida, It’s Easy to Get a License to Carry a Gun*, *South Florida Sun-Sentinel*, Jan. 28, 2007, at 1A.; Violence Policy Center, *License to Kill IV: More Guns, More Crime* (June 2002), at <http://www.vpc.org/graphics/ltk4.pdf>.

¹⁴ *Id.* at 5.

¹⁵ Committee on Law and Justice, National Research Council, *Firearms and Violence: A Critical Review* 150 (2004); Hemenway, *supra* note 8, at 65.

¹⁶ See, e.g., Ark. Code Ann. §§ 5-73-119(b), 5-73-122, 5-73-306; Ga. Code Ann. §§ 16-11-127, 16-11-127.1; Kan. Stat. Ann. § 75-7c10; La. Rev. Stat. Ann. § 40:1379.3(N); Mich. Comp. Laws § 28.425o; Miss. Code Ann. § 45-9-101(13); Mo. Rev. Stat. § 571.107; Neb. Rev. Stat. Ann. § 69-2441; N.D. Cent. Code §§ 62.1-02-04, 62.1-02-05; S.C. Code Ann. § 23-31-215(M); Tex. Penal Code § 46.035; Utah Code Ann. § 53-5-710; Okla. Stat. tit. 21, § 1277.

Any protection a concealed, loaded firearm might offer to its owner is unnecessary in places where population density and crime rates are so low that no one could reasonably fear for their safety. National parks and wildlife refuges are such places.¹⁷ In Mount Rainier National Park, for example, rangers reported nine serious crimes affecting over a million visitors in 2007.¹⁸ The national park system as a whole echoes this assessment: in 2006 the National Park Service logged 11 murders and about 370 violent crimes affecting over 272 million visitors.¹⁹ This equates to 1.65 violent crimes per 100,000 national parks visitors.²⁰ Put into perspective, these data show that lightning poses a far greater danger to the average park visitor than any human predator.²¹ Even ardent gun rights advocates express grave concerns about armed but untrained hikers who too readily rely upon their sidearm to get them out of trouble.²²

Based on this evidence, one can hardly argue that carrying concealed, loaded firearms in national parks and wildlife refuges protects the safety of the possessor or his or her family, as well as the safety of other park visitors. Concealed, loaded firearms are not a good choice for self-defense, and will increase the danger of injury or death to persons in national parks and wildlife refuges.

Current Limitations on Concealed, Loaded Firearms in National Parks and Wildlife Refuges are Reasonably Calculated to Protect These Public Lands

Existing firearm regulations in national parks and wildlife refuges do not infringe on a visitor's ability to possess firearms. The current regulations – 36 C.F.R. § 2.4 and 50 C.F.R. § 27.42 – permit visitors to national parks and wildlife refuges to possess and transport firearms, provided all such weapons are “rendered temporarily inoperable or are packed, cased or stored in a manner that will prevent their ready use.”²³

The Senators' contention that existing regulations “prohibit individuals from possessing a firearm,” or otherwise prevent citizens from “transport[ing] and carry[ing] firearms across these [national parks and wildlife refuges]”²⁴

¹⁷ Letter from Karen Taylor-Goodrich, Associate Director, Visitor and Resource Protection, National Park Service, to Phillip Van Cleave, President, Virginia Citizens Defense League (Jan. 31, 2008) available at http://www.npca.org/keep_parks_safe/ (last visited Jun. 11, 2008).

¹⁸ Jeffrey P. Mayor, *Debate on Carrying Guns Plays Out at Mount Rainier National Park*, The News Tribune, (Tacoma) (Mar. 27, 2008) at <http://www.thenewstribune.com/news/local/story/319182.html> (last visited Jun. 11, 2008).

¹⁹ *Only Rangers Need Loaded Guns in National Parks*, The Daily Sun (Arizona) (May 29, 2008) available at http://www.azdailysun.com/articles/2008/05/29/news/opinion/20080529_opinion_33.txt (last visited June 11, 2008).

²⁰ Jeffery P Mayor, *Argument for Concealed Weapons in Parks isn't Convincing*, The News Tribune (Tacoma) (June 26, 2008) at <http://www.thenewstribune.com/soundlife/story/398016.html> (last visited June 27, 2008).

²¹ *Id.*

²² Jeffrey P. Mayor, *Debate on Carrying Guns Plays Out at Mount Rainier National Park*, THE NEWS TRIBUNE (Tacoma) (Mar. 27, 2008) available at <http://www.thenewstribune.com/news/local/story/319182.html> (last visited Jun. 11, 2008) (Greg Shimek, a gun collector and gun rights advocate, believes that guns do not belong in national parks, since their users would rely upon them when trouble arises. He opines “conflict resolution through violence is not the answer”).

²³ 36 C.F.R. § 2.4(a)(3), 50 C.F.R. § 27.42(b).

²⁴ Letter from Sen. Mike Crapo and 46 other U.S. Senators to Dirk Kempthorne, Secretary of the Interior, U.S. Department of the Interior (Dec. 14, 2007) available at http://www.npca.org/keep_parks_safe/pdf/sen-crapo_ltr_kempthorne_121407.pdf (last visited Jun. 10, 2008).

is simply mistaken. Preventing the discharge or carriage of loaded firearms in national parks and wildlife refuges is a reasonable limitation not dissimilar from other state and federal limitations upon carrying loaded or concealed firearms which routinely survive legal challenge.²⁵ The U.S. Supreme Court's recent decision in *District of Columbia v. Heller* explicitly confirms governmental authority to prohibit firearms in "sensitive places" such as these.²⁶

The statutory purpose animating the creation and management of national parks and refuges is to preserve the land and wildlife for the enjoyment of present and future generations.²⁷ Hunting commonly is prohibited in these areas, so gun owners have little reason to carry loaded weapons in these places. The current regulations further this policy and protect public safety by forestalling sudden attempts to fire upon wildlife. While the vast majority of gun owners are law-abiding, rangers have noted that some people carrying loaded weapons on open federal land tend to "use those weapons to shoot at targets of opportunity as they drive."²⁸ The current regulations ensure that a loaded weapon is not readily available when wildlife appears, thus hindering this impulsive behavior, and protecting the safety of visitors as well as wildlife.

**National Parks, Many of Which Occupy Land in Multiple States,
Are Definitionally and Geographically Excluded From any
Single State's Firearms Laws**

States have no authority in national parks. The statutory framework governing the creation and management of national parks shows a clear legislative intent for uniformity in regulation across the national parks by referring to these federally administered public lands as "cumulative expressions of a single national heritage,"²⁹ which "are united through their inter-related purposes and resources into one national park system."³⁰ Harmony between state and national park regulation is unnecessary, and potentially antithetical to, the statutory obligations of the National Park System: to manage areas of "increased national dignity" and "superb environmental quality" for the ultimate "benefit and inspiration of all the people of the United States."³¹

²⁵ See e.g. *Robertson v. Baldwin*, 165 U.S. 275, 281-82 (1897) ("the right of the people to keep and bear arms...is not infringed by laws prohibiting the carrying of concealed weapons"); 18 U.S.C. §§ 930(a), 930(e) (prohibiting the presence of firearms in federal facilities generally, and specifying higher penalties for persons carrying firearms into federal courthouses). See also *Unity Church of St. Paul v. State*, 694 N.W.2d 585 (Minn. App. 2005) (church preserving its ability to ban firearms on its premises, even though the State of Minnesota had adopted a permissive gun law permitting carriage of loaded firearms anywhere in the State).

²⁶ *Dist. of Columbia v. Heller*, No. 07-290, 2008 U.S. LEXIS 5268, at *95 (U.S., June 26, 2008).

²⁷ 16 U.S.C. § 1 provides: "The [National Park Service] shall promote and regulate the use of the Federal areas known as national parks, monuments, and reservations ... by such means and measures as conform to the fundamental purpose of the said parks, monuments, and reservations, which purpose is to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations."

²⁸ Letter from John T. Waterman, President, Ranger Lodge, Fraternal Order of Police, to Dirk Kempthorne, Secretary of the Interior, U.S. Dept. of the Interior (Jan. 27, 2008) available at http://www.npca.org/media_center/pdf/fop_to_kempthorne_guns_nat_parks.pdf (last visited Jun. 10, 2008).

²⁹ 16 U.S.C. § 1a-1

³⁰ *Id.*

³¹ *Id.*

Moreover, Congress has expressly denied the states a voice in national park management:

[P]rotection, management, and administration of these areas ... 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.*³²

Congress clearly reserved for itself the power to manage national parks, and made no mention of states having any entitlement to do the same. Imposing a myriad of widely varying state firearm regulations into individual national parks would not only unsettle existing intra-system consistency, but would introduce a dissonant chorus of state firearm legislation that Congress never intended to accommodate. Indeed, since many national parks were established decades before the states containing them even existed, Congress had little reason to entertain any regulatory perspective but its own within national park boundaries.³³ Hence, the Senators' characterization of this rule change as a means of ensuring appropriate deference to state law is completely immaterial, since the legislative foundations of the National Park Service neither require nor envision such deference.

Finally, introducing state firearm regulations into an otherwise settled management structure is simply impractical and creates far more confusion than it resolves, because many national parks occupy land in several states. Under existing law, *all* visitors to *any* national park are notified upon entry to the park that firearms must be unloaded and inoperable for the duration of the visit. It is instantly comprehensible to the over 270 million people who visit the parks every year.

The proposed regulations, in contrast, would burden a national park visitor with the obligation to learn the state laws governing firearms in state parks; these laws are hardly uniform.³⁴ Compounding the problem are the actions of visitors to multi-state national parks like Death Valley or Yellowstone who would not only need to learn the firearm laws of several states, but also determine what sections of the park reside in which state. Because the proposed rule changes creates uncertainty where none currently exists, this misguided attempt to give states a voice in the regulation of firearms within national parks should be rejected.

National Parks and Wildlife Refuges Are Distinct from Other Public Lands, and Reasonably Subject to Unique Regulatory Approaches

National parks and wildlife refuges, managed by the National Park Service and U.S. Fish & Wildlife Service, respectively, are sensitive areas demanding special stewardship. The Bureau of Land Management and the U.S. Forest Service, other federal land management agencies, do not share the heavy regulatory burdens of the National

³² *Id.* (emphasis added).

³³ Montana entered the Union in November of 1889, and Idaho and Wyoming followed less than a year later, in July of 1890. Yellowstone National Park, which resides in all three of these states, was established under Federal Law in 1872, almost three decades earlier.

³⁴ Idaho, for example, does not permit the use or transport of loaded firearms in state Department of Parks and Recreation areas and facilities. Idaho Admin. Code r. 26.01.20.600. Montana forbids the discharge, though not transport, of firearms or archery weapons from "April 1 to the opening date of archery season each year." Mon. Admin. R. 12.8.202. In Wyoming, the regulations are even more complex; "unless otherwise posted, the use of firearms or other projectile devices are prohibited within 400 yards of any public use facility or activity area, including picnic areas, campgrounds, private cabin and concession areas, boat ramps, hard surfaced roads, designated trails, and parking lots." 090-010-001 Wyo. Code R. § 12(e). Under the new law, this diverse tapestry of firearms regulation would apply to particular sections of Yellowstone National Park, which is located in all three states. It is difficult to imagine how this system could be less confusing than the one it seeks to replace.

Park Service or the U.S. Fish & Wildlife Service. Given the divergent regulatory imperatives guiding particular land management agencies, insistence upon a uniform firearms policy for *all* of these agencies is unreasonable.

The Senators' regulatory proposal disregards the fact that the goals and priorities of the Bureau of Land Management and the Forest Service are fundamentally different from those of the national park and wildlife refuge systems. The statutory foundations for the National Park Service and U.S. Fish & Wildlife Service require careful stewardship of scenery and wildlife with an eye towards preserving the land's unique biological and geographical distinctiveness, especially ensuring that visitors may enjoy them for generations.³⁵ In contrast, the Bureau of Land Management and the U.S. Forest Service regulate land simply to ensure sustainable resource gathering, watershed control, or recreation.³⁶ These activities present different challenges.

The National Park Service and U.S. Fish & Wildlife Service actively work to prevent poaching and accidental death of animals from gun misuse through thousands of square miles of loosely patrolled wilderness. The existing regulations ease their burden and complement their efforts by reasonably restricting the ability to use of firearms within park lands.

Current limitations upon operable firearms allow rangers to better enforce poaching laws. When a ranger observes an individual unlawfully carrying a loaded gun within the park, the ranger has probable cause for investigating whether the visitor is illegally targeting wildlife.³⁷ A ranger may then conduct deeper inquiries and searches, looking for wildlife parts or potential targets nearby. These efforts benefit wildlife in addition to human life. Were the proposed rule change adopted, however, rangers would lose a crucial investigative tool.

Finally, the longstanding prohibition of loaded firearms in National Parks has a psychological impact upon visitors, implicitly informing them that national parks and wildlife refuges are special places designed for people to observe, rather than consume, the plants and animals within their borders. While this special purpose is exhaustively delineated by statute,³⁸ current firearm restrictions are one of many regulatory tools the National Park Service and Fish & Wildlife Service use to communicate the ecological fragility of the lands they manage and protect visitors therein.³⁹ The proposed relaxation of these restrictions would undermine the ability of management agencies to convey, through common-sense rules, the appropriate level of respect all visitors should confer upon these treasured natural spaces.

³⁵ 16 U.S.C. §§ 1, 668dd. The National Park Service is responsible for conserving the scenery, history, and wildlife within a national park, such that present *and* future generations may enjoy them undiminished. 16 U.S.C. § 1. Similarly, the U.S. Fish & Wildlife Service regulates human access to wildlife refuges, conserving the entire spectrum of plant and animal life within the refuge, thus ensuring that present visitors and their descendants might enjoy the land's biodiversity. 16 U.S.C. § 668dd(a); *Trustees for Alaska v. Watt*, 524 F. Supp 1303 (D. Alaska 1981).

³⁶ *Sierra Club v. Hardin*, 325 F. Supp. 99, 122-23 (D. Alaska 1971).

³⁷ *Id.*

³⁸ *See generally* 16 U.S.C. § 1a *et seq.*

³⁹ Letter from Ronald H. Walker and six former National Park Service Directors to Dirk Kempthorne, Secretary of the Interior, U.S. Dept. of the Interior (Apr. 3, 2008) *available at* http://www.npca.org/keep_parks_safe/pdf/nps_directors_letter_4_3_08.pdf (last visited Jun. 11, 2008).

**Conclusion: National Parks and Wildlife Refuges
Are Sanctuaries and Should Remain that Way**

National parks and wildlife refuges are a respite from the deafening rattle of gun related violence plaguing mainstream America. Visitors come to national parklands to immerse themselves in America's natural beauty, and existing firearms policies emphasize the importance of peaceful immersion and co-existence within the landscape. The backers of this rule change offer an overly complex alternative rule that endangers park staff, visitors, and indeed, the integrity of the parks themselves. LCAV urges the U.S. Department of the Interior to carefully examine the law establishing these sanctuaries, consider that concealed, loaded firearms present a danger to public and personal safety rather than a solution, take into account the experienced opinions of rangers and former park service managers, and reject the proposed relaxation of firearms regulations in national parks and wildlife refuges.

Respectfully submitted,

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