

# Collateral Damage: The Gun Debate Moves into America's National Parks

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*National parks are the best idea we ever had. Absolutely American, absolutely democratic, they reflect us at our best rather than our worst.*

—Wallace Stegner<sup>1</sup>

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<sup>1</sup> *America's Best Idea Today*, NATIONAL PARK SERVICE, <http://www.nps.gov/america/sbestidea/> (last visited Jun. 15, 2017).

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## I. INTRODUCTION

In the mid-morning hours of Saturday, September 7, 2013, as the summer season was winding down at Yellowstone National Park, three-year-old Ella Marie Tucker found her father's gun and shot herself.<sup>2</sup> Park emergency personnel tried to resuscitate her, but Ella died, the victim of the first fatal shooting in Yellowstone in over three decades.<sup>3</sup> Ella's family was visiting from Pocatello, Idaho, and her father reportedly told bystanders that he had bought the pistol the previous week to protect his wife, toddler, and infant from bears.<sup>4</sup> Ella's story is an example of how America's gun debate has entered the National Park system, integrating concerns about wild animals, tourism, and public "ownership" of federal lands.

The use of guns in national parks has been a contested issue since firearm use was allowed, slipped in quietly as a rider on the Credit CARD Act of 2009. Supporters cite their Second Amendment rights, but critics express concerns about wildlife protection, visitor and employee safety, and disruption of preserved habitat. Recent evidence suggests that target shooting on federal lands is causing the destruction of the natural landscape, ancient artifacts, and occasionally, loss of life.<sup>5</sup> Opposition to guns in national parks is fueled by worries about safety and conservation in parks, but it is compounded by ideas of serenity traditionally associated with the American wilderness ethic.

National parks, as opposed to other federal public lands, are the focus of this article because they are arguably the most visible public lands in the United States.<sup>6</sup> The National Park Service, established in 1916 by President Woodrow Wilson, enjoys a reputation as one of the most popular federal agencies in the United States. Since its inception, the Park Service

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<sup>2</sup> Emily Yehle, *Guns in parks...It's complicated*, GREENWIRE (Nov. 14, 2013), <http://www.eenews.net/stories/1059990473>.

<sup>3</sup> *Id.*

<sup>4</sup> *Two Tents Down at Grant Campground, Yellowstone National Park*, EXOTIC HIKES BLOG (Sep. 20, 2013), <http://exotichikes.com/shooting-death-in-yellowstone-from-grant-campground/>.

<sup>5</sup> Jack Healy, *In Quiet Woods, a Clamorous Gun Debate*, N.Y. TIMES (Aug. 18, 2015), [http://www.nytimes.com/2015/08/19/us/a-culture-clash-over-guns-infiltrates-the-backcountry.html?\\_r=0](http://www.nytimes.com/2015/08/19/us/a-culture-clash-over-guns-infiltrates-the-backcountry.html?_r=0).

<sup>6</sup> "National Parks" in this note generally refers to national parks in the Lower 48 states. Guns were already allowed in many Alaska national parks and monuments as part of the 1980 Alaska National Interest Lands Conservation Act ("ANILCA"). Some parks in Alaska were affected by the passage of Section 512, such as Denali, Glacier Bay and Katmai National Parks, as well as Klondike Gold Rush and Sitka National Historic Parks, all or parts of which were established prior to ANILCA and were off limits to firearms. To minimize confusion, this note primarily considers national parks located outside of Alaska.

has been charged with conserving the parks, promoting their enjoyment, and preserving them “unimpaired for the enjoyment of future generations.”<sup>7</sup>

Historically, as this article will discuss, national parks were an unusual undertaking because during the United States’ first century, wilderness was to be conquered, not preserved. By the time Yellowstone National Park was founded as the world’s first national park in 1872, however, Thoreau had already proclaimed, “In wildness is the preservation of the world.”<sup>8</sup> John Muir had just spent his “First Summer in the Sierra,” George Perkins Marsh’s book *Man and Nature* was a coffee table staple, and a generation of outdoorsmen, headed by Teddy Roosevelt, was coming of age. By the early 20<sup>th</sup> century, wilderness preservation was no longer a conservationist’s pipe dream; Americans had adopted the mantra and were working to set aside ecologically valuable tracts of land for recreation and use by the public. The new American wilderness ethic was perhaps best represented in, first, the designation of national parks, and then in the formation of the National Park Service.

Because the National Park Service is directed to maintain parks primarily for the “benefit and enjoyment of the people,”<sup>9</sup> national parks occupy a unique space in the American consciousness, as well as in the legal considerations and regulatory framework of federal lands. Unlike other federal lands, national parks are not mined, drilled, extracted, or manipulated. National parks serve as a unifying, protected space. Due to the Park Service’s conservation mandate, as well as the special role of national parks as public lands, firearms are not appropriate in national parks, even if they may be suitable on most federal public lands. In this note, I address the historically contested purpose of U.S. national parks and the push and pull that occurs over “public ownership” of federal lands in the context of firearm use within national parks.

### A. *History of the CARD Act and Section 512*

Firearms were allowed in national parks for the first time with the passing of the CARD Act of 2009, which was a response to a nationwide economic meltdown. The Great Recession, sparked by the bursting of an 8 trillion dollar housing bubble in late 2007, led to cutbacks in consumer spending and business investment and, ultimately, massive job loss.<sup>10</sup> In

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<sup>7</sup> 16 U.S.C. § 1.

<sup>8</sup> HENRY DAVID THOREAU, *Walking 18* (1914).

<sup>9</sup> Roosevelt Arch, Gardiner, MT, entrance to Yellowstone National Park.

<sup>10</sup> *The Great Recession*, ECONOMIC POLICY INSTITUTE, <http://stateofworkingamerica.org/great-recession/> (last visited Feb. 28, 2016).

the two years following the housing bubble collapse, the U.S. labor market lost 8.4 million jobs.<sup>11</sup> Newsreels across the country played endless loops of foreclosure notices, unemployment headlines, and plummeting stock prices. The U.S. economy finally bottomed out in the beginning of 2009, just months after President Barack Obama took over the Oval Office and inherited an economy in financial crisis.<sup>12</sup>

A Democratic Congress, desperate to implement laws that would bring economic relief for American consumers, passed a slew of financial legislation in the first four months of the 111<sup>th</sup> Congressional term. One such piece of legislation was the Credit Card Accountability Responsibility and Disclosure Act of 2009, or the CARD Act, rushed through by Congress as a last-minute measure to salvage the U.S. economy.<sup>13</sup> The CARD Act is comprehensive credit card reform legislation that aims “. . .to establish fair and transparent practices relating to the extension of credit under an open end consumer credit plan, and for other purposes.”<sup>14</sup> The CARD Act, aimed at limiting how credit card companies can charge consumers, passed with bipartisan support in both the House and the Senate in late 2008. In May 2009, President Obama signed the CARD Act into law.

Slipped in just prior to the Congressional vote on the CARD Act was an unrelated rider, Section 512, “Protecting Americans from Violent Crime.”<sup>15</sup> Section 512(b) mandates that:

The Secretary of the Interior shall not promulgate or enforce any regulation that prohibits an individual from possessing a firearm including an assembled or functional firearm in any unit of the National Park System or the National Wildlife Refuge System if-- (1) the individual is not otherwise prohibited by law from possessing the firearm; and (2) the possession of the firearm is in compliance with the law of the State in which the unit of the National Park System or the National Wildlife Refuge System is located.<sup>16</sup>

Section 512, proposed by Republican Senator Tom Coburn of Oklahoma, angered many backers of the CARD Act. Despite widespread umbrage, Congressional leaders and administration officials decided not

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<sup>11</sup> *Id.*

<sup>12</sup> John Weinberg, *The Great Recession and Its Aftermath*, FEDERAL RESERVE HISTORY, <http://www.federalreservehistory.org/Period/Essay/15> (Dec. 3, 2013).

<sup>13</sup> Credit Card Accountability Responsibility and Disclosure Act of 2009, Pub. L. No. 111-24, 123 Stat. 1734 (2009).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* § 512.

<sup>16</sup> *Id.* § 512(b).

to contest the gun measure, so as to avoid delaying important financial legislation.<sup>17</sup>

The gun amendment, Section 512, was approved, but Democrats expressed outrage at how the measure was enacted. The last-minute addition of the gun provision caused the House to split its vote to allow Democrats who backed the credit card elements to oppose the elimination of a ban on loaded weapons in national parks and preserves. Representative Carolyn McCarthy, a Democrat from New York, voiced, “I am incredibly disappointed that this well-meaning bill has been hijacked and used as a political tool ramming a provision down the throats of Americans.”<sup>18</sup> Supporters of the legislation said it was needed to end confusion about where gun owners could carry their weapons, and they noted that guns were already allowed on public lands overseen by the Forest Service and Bureau of Land Management. Representative Rob Bishop, a Republican from Utah, said, “The real winners in this amendment are law-abiding Americans who will not be treated as criminals even though they are good people.”<sup>19</sup> Many people assumed that Senator Coburn’s addition of the Section 512 ‘gotcha’ amendment was a poison pill, designed to kill the larger CARD Act. Others suggested it was a standard rider, taking advantage of the time crunch and the CARD Act’s widespread support to gain passage when it likely would have failed on its own.

National park employees, National Rifle Association (“NRA”) members, and outdoor recreationists all weighed in on the passage of Section 512, both before and after it was signed into law. The NRA was a major supporter of the bill, and maintained “the fundamental right to keep and bear arms shouldn’t be taken away if you step into a federal park. Second Amendment rights do not end where a park begins. It’s an individual and fundamental constitutional right.”<sup>20</sup> Chris W. Cox, the NRA’s chief lobbyist, publicly stated that, “We are pleased that the Interior Department recognizes the right of law-abiding citizens to protect

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<sup>17</sup> Carl Hulse, *Bill Changing Credit Card Rules is Sent to Obama with Gun Measure Included*, N.Y. TIMES (May 20, 2009), <http://www.nytimes.com/2009/05/21/us/politics/21cards.html>.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> Vince Devlin, *Spokesman Says Glacier Gun Incidents an Anomaly in National Parks*, HELENA INDEPENDENT RECORD (Oct. 19, 2014), [http://helenair.com/lifestyles/outdoors/spokesman-says-glacier-gun-incidents-an-anomaly-in-national-parks/article\\_5ab9e308-2dfc-5762-b42d-58e2c5077752.html](http://helenair.com/lifestyles/outdoors/spokesman-says-glacier-gun-incidents-an-anomaly-in-national-parks/article_5ab9e308-2dfc-5762-b42d-58e2c5077752.html).

themselves and their families while enjoying America's national parks and wildlife refuges."<sup>21</sup>

Meanwhile, several groups representing park employees declared their displeasure with Section 512. John Waterman, the president of the U.S. Park Rangers Lodge, called it an "ill-considered law," and anticipated the moment when "an inexperienced visitor, who has not seen a bear or buffalo wandering through a campground, gets frightened and takes out the now-readily-available firearm and shoots blindly at an animal or a person."<sup>22</sup> Scot McElveen, who headed the Association of National Park Rangers, said law enforcement now would be hard-pressed when investigating poaching cases, adding, "We think it naïve to believe that purposeful poachers will not take every advantage of this change in the law."<sup>23</sup>

The CARD Act, including Section 512, was enacted on February 22, 2010.<sup>24</sup> Beginning that day, firearms were allowed in national parks under the same rules as the state in which the park is located, although they were still prohibited at any buildings where park employees regularly work.<sup>25</sup> That includes office buildings, maintenance sheds, and visitor centers. Additionally, guns are prohibited at locations like the National Mall and the caves at Carlsbad Caverns, because park employees regularly work there by giving tours and interpretive talks.<sup>26</sup> Gun owners may be able to bring their firearm into a non-park owned lodge or concession stand, however, if the lodge and state law allow it. The responsibility to know whether a lodge is concession-run or managed by the park falls on the gun owner. Gun owners may also carry firearms in the campground area, but they may have to store their firearm before entering a park amphitheatre to hear a nightly ranger talk.<sup>27</sup>

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<sup>21</sup> Ted Alvarez, *Guns Allowed in National Parks*, BACKPACKER (Dec. 5, 2008), <http://www.backpacker.com/news-and-events/news/trail-news/guns-allowed-in-national-parks/>.

<sup>22</sup> Michel Jamison, *Glacier Park Officials: Rules About Guns in National Parks Not So Simple*, MISSOULIAN (Feb. 28, 2010), [http://missoulian.com/news/local/glacier-park-officials-rules-about-guns-in-national-parks-not/article\\_6d9d851c-2430-11df-a4db-001cc4c002e0.html](http://missoulian.com/news/local/glacier-park-officials-rules-about-guns-in-national-parks-not/article_6d9d851c-2430-11df-a4db-001cc4c002e0.html).

<sup>23</sup> *Id.*

<sup>24</sup> Stephen Dinan, *Parks Open to Holders of Concealed Guns*, WASHINGTON TIMES (Feb. 22, 2010), <http://www.washingtontimes.com/news/2010/feb/22/national-parks-will-open-gates-to-holders-of-concealed-guns/>.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> Ed O'Keefe, *Federal Government to Lift Restrictions on Guns in National Parks*, WASHINGTON POST (Feb. 19, 2010), <http://www.washingtonpost.com/wp-dyn/content/article/2010/02/18/AR2010021805124.html>.

Supporters of Section 512 cited the importance of states' rights and a unified system of gun regulations as reasons to pass the bill. However, they did not explain how gun users should know, for instance, when they have hiked from Wyoming into Montana in the Yellowstone backcountry, exposing themselves to differing state laws. Yellowstone stretches across three states, and each has different gun laws. A hip firearm covered by the edge of a jacket, for example, may count as concealed in one state and not in another.<sup>28</sup> Idaho recognizes nearly all out of state gun permits, while Wyoming recognizes permits from only 23 states.<sup>29</sup> Hikers trekking from Montana's Glacier National Park over the Canadian border into Waterton Lakes National Park may carry a firearm in Glacier, but must adhere to Canadian laws once passing the international boundary line. That is easier said than done, as Canada still requires that firearms be unloaded, encased, and not removed from a vehicle whilst inside the park.<sup>30</sup>

Section 512 instructs federal land, in the form of national parks, to defer to state law, but only with regards to the *possession* of firearms in national parks. It does not change existing federal law restricting the *use* of firearms in national parks, which is generally prohibited except in rare circumstances. Those include authorized hunting, target practice "at designated times and locations," and use "within a residential dwelling."<sup>31</sup> One park spokesman simply explains to visitors that the only justifiable shooting "is if you believe your life is in imminent danger."<sup>32</sup>

Guns may be allowed in national parks after the passage of Section 512, but historically, lawmakers had longstanding reasons for keeping firearms out of America's parks.

### *B. Early Gun Control on Public Lands*

The first public lands in the U.S. were created in 1781 when New York agreed to surrender to the burgeoning federal government its claim to unsettled territory extending westward to the Mississippi River. The other colonies slowly did the same, and by 1802, all territory west of the Appalachians became public land owned by the federal government. Later,

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<sup>28</sup> Yehle, *supra* note 2.

<sup>29</sup> Cory Hatch, *Yellowstone Tangled Up by New Rule on Guns*, JACKSON HOLE NEWS & GUIDE (Jan. 14, 2009), [http://www.jhnewsandguide.com/news/environmental/yellowstone-tangled-up-by-new-rule-on-guns/article\\_cd781889-4879-5232-8527-cf105cecc016.html](http://www.jhnewsandguide.com/news/environmental/yellowstone-tangled-up-by-new-rule-on-guns/article_cd781889-4879-5232-8527-cf105cecc016.html).

<sup>30</sup> *Waterton National Park: Prohibited Activities*, PARKS CANADA, <http://www.pc.gc.ca/eng/pn-np/ab/waterton/activ/activ7.aspx>. (last visited Mar. 16, 2017).

<sup>31</sup> 36 C.F.R. § 2.4 (2016).

<sup>32</sup> Jamison, *supra* note 22.



the U.S. government would purchase lands from other foreign powers in agreements like the Louisiana Purchase<sup>33</sup> and the Treaty of Guadalupe Hidalgo.<sup>34</sup> Still later, the federal government would begin to give away federally owned land to states, railroads, and homesteaders, in order to further the American dream of manifest destiny.

The General Land Office, created in 1812, was the first federal agency in charge of managing public domain lands in the United States.<sup>35</sup> The General Land Office oversaw the surveying, platting, and sale of the public lands in the Western United States and administered the disposal of public lands. Both Acts encouraged Western migration and settlement by providing land to pioneering settlers and squatters who were homesteading the West. As the 19<sup>th</sup> century progressed, Congress encouraged the settlement of the Western territories by enacting a wide variety of laws, including the Homesteading Laws and the Mining Law of 1872.<sup>36</sup>

The early 20<sup>th</sup> century marked a shift in federal land management priorities. The creation of the first national parks, forests, and wildlife refuges signaled a change in Congressional attitude toward public lands. The federal government began to realize that instead of using public lands to promote settlement, some lands should be held in public ownership due to their natural value. In 1946, the General Land Office merged with the United States Grazing Service to become the Bureau of Land Management (“BLM”).<sup>37</sup> When the BLM was initially created, there were over 2,000 unrelated and often conflicting laws for managing the public lands. The BLM had no unified legislative mandate until Congress enacted the Federal Land Policy and Management Act of 1976 (“FLPMA”).<sup>38</sup> However, even with conflicting laws, the BLM stayed true to its origins by acting largely as a graze-land permitting agency. Many BLM lands acted as de facto extensions of private ranches. Ranchers rode horses, drove cattle, and toted rifles over BLM land just as they did their own fields. Today, the BLM administers almost 250 million acres of public land, largely for grazing, mining, and recreation. The BLM continues to

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<sup>33</sup> Purchased from France in 1803. *See* LOUISIANA PURCHASE, ENCYCLOPAEDIA BRITANNICA (2016), <http://www.britannica.com/event/Louisiana-Purchase>.

<sup>34</sup> Purchased from Mexico in 1848. *See* TREATY OF GUADALUPE HIDALGO, ENCYCLOPAEDIA BRITANNICA (2016), <http://www.britannica.com/event/Treaty-of-Guadalupe-Hidalgo>.

<sup>35</sup> *A Long and Varied History*, BUREAU OF LAND MANAGEMENT, [http://www.blm.gov/wo/st/en/info/About\\_BLM/History.html](http://www.blm.gov/wo/st/en/info/About_BLM/History.html). (last visited Aug. 25, 2011).

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

allow the use of firearms on public lands, but it defers to state authorities in the enforcement of firearms regulations.<sup>39</sup>

Following the creation of the General Land Office, the second agency to manage public lands came about with the creation of the United States Forest Service (“Forest Service”). In 1897, President McKinley signed the Sundry Act, which contained an “Organic Act” provision that allowed for the protection and management of the United States forest reserves.<sup>40</sup> For the next eight years, forestry reserves were managed by forest agents employed by the General Land Office, under the Department of the Interior.<sup>41</sup> The Transfer Act of 1905 shifted management of forest reserves from the General Land Office to the brand new Forest Service, established within the Department of Agriculture.<sup>42</sup> Gifford Pinchot, a forester and politician, was the first United States Chief Forester, appointed during the presidency of Theodore Roosevelt.<sup>43</sup> Under Pinchot’s care, the new Forest Service was charged “to sustain the health, diversity, and productivity of the Nation’s forests and grasslands to meet the needs of present and future generations.”<sup>44</sup> Today, the Forest Service manages nearly 200 national forests and grasslands, which encompass approximately a quarter of federal public lands. The Forest Service allows the use of firearms on public lands in compliance with state law, but users cannot discharge a weapon within 150 yards of any structure or occupied area, within or into a cave, across or on a road or body of water, or in any manner that endangers a person.<sup>45</sup> Guns have become a contested issue in national forests in recent years, as United States Forest Service officers handled 8,500 shooting incidents across the country between 2010 and 2015.<sup>46</sup> Erin Connelly, supervisor of the Pike National Forest in Colorado, said, “Recreational sports shooting and its impacts have been an issue we’ve looked at intensely since the 1980s. There’s no easy answer.”<sup>47</sup> Her words

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<sup>39</sup> *Hunting and Target Shooting*, BUREAU OF LAND MANAGEMENT, [www.blm.gov/ca/st/en/prog/recreation/hunting.html](http://www.blm.gov/ca/st/en/prog/recreation/hunting.html). (last visited Oct. 08, 2014).

<sup>40</sup> Gerald W. Williams, *The USDA Forest Service: The First Century*, U.S. DEPT. AGRICULTURE (2005), [http://www.fs.fed.us/sites/default/files/media/2015/06/The\\_USDA\\_Forest\\_Service\\_TheFirstCentury.pdf](http://www.fs.fed.us/sites/default/files/media/2015/06/The_USDA_Forest_Service_TheFirstCentury.pdf).

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> *Shooting Sports*, U.S. FOREST SERVICE, <http://www.fs.fed.us/recreation/programs/trails/welcome.shtml>. (last visited March 28, 2013).

<sup>46</sup> Nick Penzenstadler, *Forests grapple with 8,500 gun incidents*, USA TODAY (Aug. 11, 2015), <http://www.usatoday.com/story/news/2015/08/10/forests-grapple-8500-gun-incidents/30903483/>.

<sup>47</sup> *Id.*

reflect a battle between gun users and public land protection that has raged since the early days of the National Park Service and has since spread to other federal lands.

### C. *The Birth of National Parks*

Yellowstone, the world's first national park, was established by an act of Congress and signed into law by President Ulysses S. Grant on March 1, 1872. The act of dedication states "that the tract of land in the Territories of Montana and Wyoming . . . is hereby reserved and withdrawn from settlement, occupancy, or sale under the laws of the United States, and dedicated and set apart as a public park or pleasuring ground for the benefit and enjoyment of the people."<sup>48</sup> When Yellowstone was created, the concept of a national park was foreign even to those founders laying the groundwork for the park itself. It was, however, uniquely American. Europeans boasted about their countries' long histories, their castles, and their battlegrounds; colonial Americans had no lengthy history or stone ramparts to flaunt, but they had scenery that was unmatched in the entirety of the civilized world. In the early 1800s, an American landscape painter named Thomas Cole wrote an "Essay on American Scenery," wherein he noted that although North America did not have the storied past of Europe, "American scenery . . . has features, and glorious ones, unknown to Europe. The most distinctive, and perhaps the most impressive, characteristic of American scenery is its wildness."<sup>49</sup>

The Romantic and Transcendentalist writers and thinkers of the 19<sup>th</sup> Century promoted the idea that the divine could be found in nature, and that nature was essential to man's sanity and peace of mind.<sup>50</sup> Thoreau, for instance, promoted the idea of nature as a site of restoration and renewal, both physically and spiritually. By the mid-1800s, North Americans had come to accept wilderness as precious, and politicians and activists were starting to recognize the need for wild preserves. God came to be understood as existing *within* wilderness, rather than outside of it. Christian stewardship charged humans to protect other animate and inanimate objects of God's creation,<sup>51</sup> and the Psalms suggested "that human domination of nature means ruling it in a way consistent with being

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<sup>48</sup> HIRAM MARTIN CHITTENDEN, *YELLOWSTONE NATIONAL PARK: HISTORICAL & DESCRIPTIVE* 77-78 (1941).

<sup>49</sup> RODERICK NASH, *WILDERNESS AND THE AMERICAN MIND* 80-81 (3d ed. 1982).

<sup>50</sup> *Id.* at 44.

<sup>51</sup> Andrew Holden, *In Need of New Environmental Ethics for Tourism?*, 30 *ANNALS OF TOURISM RESEARCH* 94, 98 (2003).

responsible to God for his realm.”<sup>52</sup> Yellowstone National Park was created in the United States in 1872, the Sierra Club was founded twenty years later, and by 1910 the Boy Scouts of America had launched, teaching young boys everywhere to reclaim the primitive survival skills of original man.

The United States was well on its way to becoming a country of environmentalists and preservationists. “Americans developed a national pride of the natural wonders in this nation and they believed that they rivaled the great castles and cathedrals of Europe,” explains David Barna, National Park Service Chief of Public Affairs.<sup>53</sup> But even as public support for the burgeoning national park system grew throughout the early 20<sup>th</sup> Century, the parks themselves lacked protection and funding. Private commercial interests, including hotels, railroads, ranches, and sawmills, saw great profit potential in the parks and began to exploit their resources—often relatively unchecked.<sup>54</sup> In 1916, in response to a proposal to dam Yosemite’s Hetch Hetchy Valley,<sup>55</sup> lawmakers and citizens had to decide for the first time what the designation of a “national park” actually meant. The city of San Francisco dammed the Tuolumne River in Yosemite National Park to provide water to the Bay Area. Vast public outcry ensued, and the National Park Service was created to extend protection in the form of a cohesive national agency to the nascent national parks, which had previously been managed under “a haphazard arrangement.”<sup>56</sup>

Weapons originally were prohibited in national parks to prevent “opportunistic poaching” of wildlife.<sup>57</sup> A 1908 Yellowstone National Park regulation, for example, required that visitors “having firearms, traps, nets, seines or explosives” surrender the weapons at the entrance unless they received written permission from the park superintendent.<sup>58</sup> The first firearm regulations that applied to the National Park Service were put in place in 1936, when the Department of the Interior restricted gun

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<sup>52</sup> DAVID PEPPER, *ECO-SOCIALISM: FROM DEEP ECOLOGY TO SOCIAL JUSTICE* 152 (1996).

<sup>53</sup> *National Parks – In the Beginning*, NATIONAL GEOGRAPHIC TRAVELER, available at <http://travel.nationalgeographic.com/travel/national-parks/early-history/>. (last visited March 18, 2016).

<sup>54</sup> *Id.*

<sup>55</sup> Jessica Almy, *Taking Aim at Hunting on National Park Service Lands*, 18 N.Y.U. ENVTL. L. J. 184 (2010).

<sup>56</sup> *Id.*

<sup>57</sup> Richard Simon & Judy Pasternak, *Feds Ready to Ease National Parks Firearm Ban*, L.A. TIMES (Feb. 23, 2008), [www.latimes.com/news/nationworld/washingtondc/la-na-guns23feb23,0,1645643.story](http://www.latimes.com/news/nationworld/washingtondc/la-na-guns23feb23,0,1645643.story).

<sup>58</sup> *Id.*

possession and use to further prevent poaching.<sup>59</sup> Visitors to national parks were required to surrender their firearms to a park officer upon entering the national park, unless they received written permission from the park superintendent to carry their weapons through the park.<sup>60</sup> Even with permission, any guns entering the national parks had to be “sealed,” or rendered temporarily inoperable.<sup>61</sup>

The Park Service firearm policy was enhanced in 1983 to prohibit possessing, carrying, or using a firearm outside of certain approved areas and hunting seasons, with an exception for firearms kept in a car or mobile home “when such implements are rendered inoperable or packed, cased or stored in a manner that will prevent their ready use.”<sup>62</sup> The revision effectively mandated that visitors store their guns, unloaded, in a car trunk or equivalent while in a national park. That regulation lasted from the Reagan administration through three other administrations, before finally being eliminated with the enactment of Section 512 in 2010.

The debate surrounding the possession and use of firearms in national parks correlates closely to the uses for which citizens feel the parks are designated. Because national parks are set aside for reasons much different than national forests and BLM land, for instance, many citizens feel that they deserve different, and perhaps stricter, regulations.

## II. PURPOSE OF THE NATIONAL PARKS

At the heart of the debate about guns in national parks is the purpose of the national parks themselves. Congress established the National Park Service in 1916 to:

[P]romote 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 . . . 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.<sup>63</sup>

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<sup>59</sup> 1 Fed. Reg. 672 (June 27, 1936).

<sup>60</sup> Almy, *supra* note 55.

<sup>61</sup> A BRIEF HISTORY OF NATIONAL PARK SERVICE REGULATIONS ON FIREARMS, <http://www.mountainx.com/files/npsfirearmregs.pdf>. (last visited Feb. 28, 2016).

<sup>62</sup> 48 Fed. Reg. 30252 (June 30, 1983) (to be codified at 36 C.F.R. pt. 2.4).

<sup>63</sup> Act to Establish a National Park Service, Pub. L. No. 64-235, § 1, 39 Stat. 535 (1916).

The National Park Service, then, must balance a dual mandate: to make parks available for visitor enjoyment, and to conserve resources “unimpaired.” The Park Service impairment mandate puts the decisions about which activities are allowed in parks squarely in the hands of the Park Service itself.<sup>64</sup> It is left to determine which activities should or should not be allowed to take place within national parks. Because courts err on the side of giving agencies discretion when interpreting their own mandates,<sup>65</sup> the only time the Park Service is truly forced to accept an interpretation different from its own is when Congress steps in. Absent Congressional direction, the Park Service is free to define its mission to protect resources “unimpaired” as it sees fit. The Park Service defines impairment as: “[A]n impact that . . . would harm the integrity of park resources or values, including the opportunities that otherwise would be present for the enjoyment of those resources or values.”<sup>66</sup>

This interpretation puts the Park Service in charge of protecting “resources and values” of national parks, raising the question of what constitutes “resources and values.” Are they merely natural resources, such as flora and fauna? Or do they include more intangible values, such as visitor experience? The Park Service’s Management Policies includes intangibles in its definition of “resources and values,” including “*the park’s role in contributing to the national dignity, the high public value and integrity, and the superlative environmental quality of the national park system, and the benefit and inspiration provided to the American people by the national park system.*”<sup>67</sup>

Thus, the Park Service’s charge to protect resources and values from impairment raises the question of whether firearms are one of the values for which parks should be protected, or if they are an impairment to the “national dignity, the high public value and integrity . . . and the benefit and inspiration provided to the American people by the national park system.”<sup>68</sup> This note argues that one of the most important purposes that national parks serve is that of inspiration; if visitors are unable escape to national parks to find serenity and insight due to the presence of guns, then the purpose of the parks is necessarily tainted. The presence of firearms in national parks might well foster a fear of nature that could prevent individuals from forming the type of bonds with nature that often provide the impetus for environmental protection.

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<sup>64</sup> *Management Policies 2006*, § 1.4.5, NAT’L PARK SERVICE., <http://www.nps.gov/policy/MP2006.pdf>.

<sup>65</sup> See *Chevron, U.S.A., Inc. v. NRDC, Inc.*, 467 U.S. 837 (U.S. 1984).

<sup>66</sup> *Id.*

<sup>67</sup> *Management Policies 2006*, *supra* note 64, at § 1.4.6 (emphasis added).

<sup>68</sup> *Id.*

National parks have both shaped and been shaped by the wilderness ethos and the spiritual paradigms of American society. Environmental discourse echoes biblical lexicon; mountains are “majestic,” glaciers are “awe-inspiring,” lakes are “pure” and no patch of cultivated parkland could compare to a “virgin forest.” For many outdoorsmen, whether religious, agnostic or atheist, natural spaces possess a spiritual quality. Americans and international visitors alike escape to national parks to find a quiet, peaceful sanctuary away from the hustle of urban life. It is their right, as visitors, to customize their national park experience; national parks are set aside, after all, “for the people.” The possession of firearms fundamentally alters a national park experience, both for the visitor with the weapon and for those visitors without.

Don Ihde, a leading philosopher of technology, claims that “the human-gun relation transforms the situation from any similar situation of a human without a gun.”<sup>69</sup> By focusing on what it is like for a flesh-and-blood human to actually be in possession of a gun, Ihde describes a “lived experience” that is inherently different than that of a person without a gun.<sup>70</sup> To someone with a gun, the world readily takes on a distinct shape. It not only offers people, animals, and things to interact with, but also potential targets. The mere possession of a firearm in a space that makes a person uncomfortable, like the wilderness of a national park, is an invitation to use the weapon to mitigate that discomfort. Gun owners who are comfortable with their weapon and with the outdoors will argue that a gun owner who nervously shoots at an animal, or drunkenly or angrily discharges his weapon in a campground, is the exception rather than the rule. But the fact remains that the allowance of firearms in parks creates opportunities for gun use. People who would once have gotten in a fistfight instead shoot the person who provoked them; people are shot by mistake or by accident. The Ranger Lodge of the Fraternal Order of Police maintains that

crime statistics show that the presence of a loaded weapon greatly increases the chance that it might be used in the heat of a domestic dispute. Unfortunately, we respond to an alarming number of such disputes in our campgrounds, inholdings and commercial lodgings each year. Even without loaded guns available to the people involved, responding to and diffusing

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<sup>69</sup> Evan Selinger, *The Philosophy of the Technology of the Gun*, THE ATLANTIC (July 23, 2012), <https://www.theatlantic.com/technology/archive/2012/07/the-philosophy-of-the-e-technology-of-the-gun/260220/>.

<sup>70</sup> *Id.*

such situations is extremely dangerous to both the families camping in the area and the responding rangers.<sup>71</sup>

The prevalence of guns in national parks also upsets the balance of power between visitors. Where once, every man or woman who stood at the foot of a mountain or the edge of canyon was equal in his or her own mortality, now the man or woman who packs a concealed carry weapon has an edge. Where once wild animals, raging rivers, and inclement weather were a visitor's greatest concerns, now he must worry about an armed civilian losing his temper, mistaking a hiker for a predator, or opting for target practice on the trail. Butch Farabee, a former acting superintendent at Montana's Glacier National Park, argues that "parks have long been sanctuaries for both animals and people. There need to be places in this country where people can feel secure without guns and know that the guy in the campground across the way does not have one."<sup>72</sup> Likewise, Bill Wade, former superintendent of the Shenandoah National Park in Virginia and current Executive Council Chairman of the Coalition of National Park Service Retirees, questions "How many of you would want to go out there if you knew that people were running up and down the Appalachian Trail with guns?"<sup>73</sup>

National parks now list frequently asked questions on their website that highlight visitor concerns about guns, including the questions, "I am worried that having firearms in national parks will affect the safety of my family and the experience we hope to have. Should I still come?"; "My family and I come here to enjoy the peacefulness of the park – why is the National Park Service allowing people to bring firearms?" and; "I am frightened by firearms and am leaving the park. Can I have my entrance fee refunded?"<sup>74</sup> Questions such as these demonstrate that not all national park visitors are comfortable with the idea of encountering a fellow hiker with a gun on his hip. Because national parks were designed to be inclusive to all Americans, a regulation that allows firearms in parks, which makes some visitors wary and concerned for their safety, should not be allowed. Additionally, visitor possession of guns in national parks has created extra

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<sup>71</sup> Avi Brisman & Alison Rau, *From Fear of Crime to Fear of Nature: The Problem with Permitting Loaded, Concealed Firearms in National Parks*, 2 GOLDEN GATE U. ENVTL. L.J. 255, 265 (citing the Letter from John T. Waterman, President, Ranger Lodge, Fraternal Order of Police, to Dick Kempthorne, U.S. Sec'y of the Interior (Jan. 27, 2008)).

<sup>72</sup> Richard Simon & Judy Pasternak, *Feds Ready to Ease National Parks Firearm Ban*, L.A. Times (Feb. 23, 2008), [www.latimes.com/news/nationworld/washingtondc/la-na-guns23feb23,0,1645643.story](http://www.latimes.com/news/nationworld/washingtondc/la-na-guns23feb23,0,1645643.story).

<sup>73</sup> *Id.*

<sup>74</sup> *Firearms Q and A*, NATIONAL PARK SERVICE, <http://www.nps.gov/appa/learn/management/questions-and-answers.htm>. (last visited Feb. 21, 2016).



hazards for wildlife, and park rangers find themselves concerned about increased poaching.

### III. WILDLIFE PROTECTION AND POACHING CONCERNS

Supporters of allowing guns in national parks are primarily concerned with protecting themselves and their families against wildlife. Many park visitors, like Ella Marie Tucker's father, described above, bring firearms into the wilderness to protect against mega fauna, namely bears. Yet historically, bear attacks are far less likely to occur in national parks than traffic accidents or deaths by drowning. In Glacier National Park, a park known for its remoteness and abundance of bear habitat, there have been only ten bear-related human deaths since the park was created in 1910.<sup>75</sup>

Guns provide far less protection against bears than most visitors understand. Per federal regulations, a gun can only be legally discharged in a national park when the shooter's life is endangered. Additionally, the grizzly bear, one of three species of bears found in the United States National Parks, is federally protected in the Lower 48 States as a threatened species.<sup>76</sup> Thus, it is a violation of the Endangered Species Act to shoot one, except in self-defense and defense of others during an imminent attack.<sup>77</sup> The only time a gun owner could legally shoot at any bear in a national park would be if the bear were actively charging him. Unless the shooter was an experienced gunman with practice shooting accurately under extreme stress, it is unlikely he would be able to both fire the gun and hit the charging bear. Unfortunately, studies show that even the most experienced gun handlers generally do not react quickly enough to respond to a charging bear with an accurate shot.<sup>78</sup>

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<sup>75</sup> Justin Franz and Dillon Tabish, *Officials: West Glacier Cyclist Collided with Bear Before Fatal Attack*, THE FLATHEAD BEACON (July 2, 2016), <http://flatheadbeacon.com/2016/07/02/search-bear-killed-man-near-glacier-park-winds/>.

<sup>76</sup> The three species include the American black bear (*Ursus americanus*), the grizzly or brown bear (*Ursus arctos*), and the polar bear (*Ursus maritimus*). *North America's Bears*, GET BEAR SMART SOCIETY, <http://www.bearsmart.com/about-bears/north-americas-bears/>. (last visited March 18, 2016).

<sup>77</sup> *Bear Spray vs. Bullets: Which Offers Better Protection?*, U.S. FISH AND WILDLIFE SERVICE, <https://www.fws.gov/mountain-prairie/species/mammals/grizzly/bear%20spray.pdf>. (last visited Feb. 28, 2016).

<sup>78</sup> Brigham Young University, *Using a Gun in Bear Encounters Doesn't Make You Safer*, SCIENCE DAILY (March 6, 2012), <https://www.sciencedaily.com/releases/2012/03/120306131921.htm>.

Several studies prove that firearms are not a viable deterrent for bears, even if the gun handler has the presence of mind and deadly aim required to shoot a charging bear. Evidence of human-bear encounters suggests that shooting a bear can escalate the seriousness of an attack, while encounters where firearms are not used are less likely to result in injury or death of either the human or the bear.<sup>79</sup> The Park Service, the U.S. Fish and Wildlife Service, and numerous private entities all suggest carrying pepper spray to protect against bears, rather than firearms.<sup>80</sup> The Fish and Wildlife Service notes that during

investigations of human-bear encounters since 1992, persons encountering grizzlies and defending themselves with firearms suffer injury about 50% of the time. During the same period, persons defending themselves with pepper spray escaped injury most of the time, and those that were injured experienced shorter duration attacks and less severe injuries.<sup>81</sup>

Consider that, with a firearm, a person must raise the gun (or pull it out of a holster), aim, fire, and hit a rapidly moving target with a bullet the size of a AAA battery. With pepper spray, a hiker can fire right from the holster, putting up a wide fog of deterrent. Pepper spray allows a hiker to respond instantly, with a higher likelihood of hitting the bear.

Studies by biologist Stephen Herrero and others indicate that pepper spray works on charging bears about 90 to 96 percent of the time.<sup>82</sup> Mark Matheny, a hunter who was seriously mauled by a grizzly and who subsequently began a career devoted to bear self-defense and the manufacture of pepper spray, explains how a mere blast of cayenne aerosol can stop an angry bear: “Chemically, pepper spray is an inflammatory agent, an irritant, that gets into the bear’s mucus membranes, causing temporary blindness, choking, and difficulty breathing. In many cases, they go off hacking and coughing.”<sup>83</sup>

Researchers and interns with the Northern Divide Grizzly Bear Project, who hiked hundreds of miles of trail through grizzly bear habitat in Northern Montana in the 2000s as part of a study to estimate grizzly

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<sup>79</sup> U.S. FISH AND WILDLIFE SERV., *supra* note 77.

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> Rob Cheny, *Research: Bear Spray Stops Angry Grizzlies Better Than Guns*, THE MISSOULIAN (March 25, 2012), [http://missoulian.com/news/state-and-regional/research-bear-spray-stops-angry-grizzlies-better-than-guns/article\\_b0d338b6-7638-11e1-b809-0019bb2963f4.html](http://missoulian.com/news/state-and-regional/research-bear-spray-stops-angry-grizzlies-better-than-guns/article_b0d338b6-7638-11e1-b809-0019bb2963f4.html).

<sup>83</sup> Anthony Acerrano, *What’s the Best Way to Defend Yourself if You Run into a Grizzly While Hunting—or if a Grizzly Tries to Run Into You?*, SPORTS AFIELD, <http://www.sportsafield.com/content/grizzly-defense>.

bear population size and habitat, carried pepper spray instead of firearms as bear deterrent. Furthermore, several researchers, questioned just before the implementation of Section 512 in late 2008, were visibly angry that guns would now be allowed in national parks. Due to the nature of their work, the researchers spent ten to twelve hours per day hiking quickly, and often quietly, through bear habitat. Some researchers, while turning a corner or hiking quickly through a brushy area, had surprised groups of nervous tourists who had their bear spray uncapped and ready to fire at the unsuspecting researcher, thinking he was a grizzly bear. One of those researchers wryly noted that he would far rather have a nervous tourist fire pepper spray at him than a handgun.

Park rangers also worry that visitors carrying firearms in national parks might make poaching wild animals an easier task. They note that in the past, when a backcountry park ranger noticed a tourist strolling through the wilderness with a rifle, it was a pretty solid guess that he was a poacher. Now, that simple test is no longer applicable. Many national parks are being steadily degraded by thieves who have little trouble evading the severely understaffed park rangers. For big money that is paid by unscrupulous buyers, these thieves, or poachers, brazenly enter parks and commit crimes against the very resources the Park Service is supposed to protect.

Because national parks have a well-documented dearth of backcountry park rangers, it is extraordinarily difficult for them to monitor every tourist for proper firearm use. The 417 parks, monuments, and other units run by the Park Service depend on roughly 8,000 seasonal employees to supplement the work of about 12,000 permanent and temporary employees and some 400,000 volunteers.<sup>84</sup> Even then, the Park Service does not have enough manpower to oversee the 84 million acres or 302.7 million annual visitors under its care.<sup>85</sup> Visitors who fire their weapons within hearing distance of other visitors, government buildings, or rangers might be reported and receive a citation. However, many Western national parks are large enough that a person could be well out of hearing distance of another human being for days.

The size of the park, coupled with the small number of rangers, makes poaching easier, as rangers may not ever come across the hunted animal's carcass or evidence of the hunt. This raises concerns that poaching may have already increased in parks, but rangers may not be aware of it because

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<sup>84</sup> Katia Hetter, *National Parks Can Hire for Summer, Despite Trump Freeze*, CNN (Feb. 2, 2017), <http://www.cnn.com/2017/02/02/travel/national-park-service-federal-freeze-waiver/>.

<sup>85</sup> *Id.*

they simply do not have the personnel to accurately monitor the wildlife population in remote parts of national parks.

Beyond regulatory concerns, firearms bring an experience to public lands that many visitors may not expect or want. Because of their unique status as public treasures held in common for the American people, national parks could arguably be considered “sensitive places” and thus, gun-free zones.

#### IV. “SENSITIVE SPACES” AND THE SECOND AMENDMENT

Any modern Second Amendment analysis must now begin with the Supreme Court’s seminal decision in *District of Columbia v. Heller*, which held that the Second Amendment codified a “pre-existing” right that allows individuals to keep and bear arms.<sup>86</sup> The Court noted that the right to keep and bear arms was understood by the founding generation to encompass not only militia service, but also “self-defense and hunting,”<sup>87</sup> and that, indeed, self-defense constituted “the central component of the right.”<sup>88</sup> Moreover, the Court observed, the right to self-defense is at its zenith within the home “where the need for defense of self, family, and property is most acute.”<sup>89</sup> The Court did not decide whether, or to what extent, the Second Amendment protects a right to self-defense outside of the home.<sup>90</sup> Two years after *Heller*, in *McDonald v. City of Chicago*,<sup>91</sup> the Court concluded that the Fourteenth Amendment protects against state infringement the same individual right that is protected from federal infringement by the Second Amendment.<sup>92</sup> In both federal and state contexts, then, private individuals are entitled to carry weapons for their own defense.

Notwithstanding the Court’s opinions protecting individual gun possession from “infringement,” the Court itself has proposed certain situations wherein regulations might be “presumptively lawful.”<sup>93</sup> The Court’s opinion in *Heller* tentatively suggested a list of regulations,

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<sup>86</sup> 554 U.S. 570, 595 (U.S. 2008).

<sup>87</sup> *Id.* at 599.

<sup>88</sup> *Id.*

<sup>89</sup> *Id.* at 628.

<sup>90</sup> *See* United States v. Masciandaro, 638 F.3d 458, 467 (4th Cir. 2011) (noting that “a considerable degree of uncertainty remains as to the scope of that right beyond the home”).

<sup>91</sup> *McDonald v. City of Chicago*, 561 U.S. 742 (U.S. 2010).

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

including bans on the possession of firearms by felons and the mentally ill, bans on carrying firearms in “sensitive places” such as schools and government buildings, laws restricting the commercial sale of arms, bans on the concealed carry of firearms, and bans on weapons “not typically possessed by law-abiding citizens for lawful purposes.”<sup>94</sup> The Supreme Court has not defined what exactly constitutes a “sensitive place,” but in a case decided just after the passage of Section 512, the Fourth Circuit concluded that the government had “a substantial interest in providing for the safety of individuals” who visit national parks.<sup>95</sup> An argument could be made that the government’s interest in providing for the safety of park visitors rises to the same level of interest the government has for the safety of school children or government employees, and thus a national park should be considered a “sensitive place” subject to a firearm-ban.

## V. CONCLUSION

Wallace Stegner once wrote that mankind is “the most dangerous species of life on the planet, and every other species, even the earth itself, has cause to fear our power to exterminate. But we are also the only species which, when it chooses to do so, will go to great effort to save what it might destroy.”<sup>96</sup> As humans exercise our ability to transform the world around us, we knowingly set aside national parks and wilderness spaces as restraints on our own power. We need national parks as antidotes to our constant expansion and development in urban areas, our politics, and our potential for violence. As William Cronon writes:

the striking power of the wild is that wonder in the face of it requires no act of will, but forces itself upon us—as an expression of the nonhuman world experienced through the lens of our cultural history—as proof that ours is not the only presence in the universe.<sup>97</sup>

When faced with towering mountain peaks, earth-shaking avalanches, and mercurial weather that strikes the fear of God into mountaineers’ hearts, we recognize both our own mortality and insignificance.

The possession of firearms is guaranteed to the American people through the text of the Second Amendment, at least as it is currently

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<sup>94</sup> *Id.*

<sup>95</sup> *United States v. Masciandaro*, 638 F.3d 458, 473-474 (4th Cir. 2011).

<sup>96</sup> WALLACE STEGNER, *THIS IS DINOSAUR: ECHO PARK COUNTRY AND ITS MAGIC RIVERS* 17 (1955) (italics in original).

<sup>97</sup> WILLIAM CRONON, *UNCOMMON GROUND: RETHINKING THE HUMAN PLACE IN NATURE* 88 (1996).

understood. That right shall not be infringed, under power of the Constitution. But are guns necessary in national parks? We set wilderness aside in the form of national parks—our nation’s greatest ecological, geological, and biological treasures—so that we can escape to our own private Eden whenever we have need. Guns have no place in that sanctuary, and so we should leave them behind, in the world of finances, and politics, and violent social turmoil. We preserve wilderness areas as spaces that are home to flora, fauna, and landscapes that, while not necessarily beyond our control, have little need of us. Our continued existence commands only a minute place in their world; they recall for us a creation greater than ourselves. Our responsibility as stewards of the earth is not to decide *whether* to preserve aesthetically spectacular, geologically significant, and ecologically sensitive natural spaces, but *how*.

Public lands such as the BLM and the Forest Service provide spaces for multi-use activities like logging, mining, hunting, and toting guns; national parks, due to their unique cultural status as natural preserves, should be gun-free spaces. David Barna, National Park Service Chief of Public Affairs, put it this way:

Never in its 200 years has this nation needed the National Park System more. It stands as a collective memory of where we have been, what sacrifices we have made to get here, and who we mean to be. By investing in the preservation, interpretation, and restoration of these symbolic places, we offer hope and optimism to each generation of Americans.<sup>98</sup>

Americans may stand for their Second Amendment rights, their personal freedoms, and their individuality on every street corner in this country. In our national parks, however, let us come together as a nation and choose “who we mean to be”; hikers, boaters, bird-watchers, families, and peaceful nature enthusiasts, forging our own small histories within “America’s best idea.”<sup>99</sup>

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<sup>98</sup> U.S. NATIONAL PARKS SERV., *supra* note 64.

<sup>99</sup> Stegner, *supra* note 1.