



MOUNTAIN STATES LEGAL
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January 6, 2025

Lead Objector: Gregg Sutherland, 303-956-6128, 16698 W 1st Avenue, Golden, CO 80401
Project Name: Integrated Management of Target Shooting on the Pike National Forest #57807
Responsible Official: Ryan Nehl
Summary Statement: The proposed dispersed shooting ban in the Pike National Forest violates the Second Amendment to the United States Constitution.

Dear Mr. Nehl,

Gregg Sutherland, along with Mountain States, files this objection to the United States Forest Service (USFS) proposal to limit the right of the people to keep and bear arms through the Integrated Management of Target Shooting on the Pike National Forest Final Environmental Assessment, herein referred to as the Final EA.

In Mr. Sutherland's previous objection, he addressed the sweeping impact that the Final EA would have on all those attempting to exercise their right to keep and bear arms in the Pike National Forest by stating that such a "ban is unfair to the vast majority of safe and law-abiding target shooters in the National Forest." *See* Gregg Sutherland Response to Pike Nat'l Forest Shooting Ban, 1. The fact that the proposed action restricts arms bearing conduct on almost 800,000 acres of public land means that the text of the Second Amendment is implicated.

While we understand that the USFS retains the authority to manage the National Forest System through projects like the Final EA, the USFS is still bound by the limits imposed on it by the U.S. Constitution and cannot, therefore, encroach upon the individual right to keep and bear arms maintained within the Second Amendment without first establishing that there is a historical analogue supporting such action.

I. Prohibiting Dispersed Target Shooting on a Majority of the Pike National Forest is an Unprecedented and Unconstitutional Move that Violates the Second Amendment.

¹ Mountain States Legal Foundation is a non-profit, public interest, law firm in Lakewood, Colorado. Since its founding in 1977, Mountain States has used *pro bono* litigation to fight for and restore the rights enshrined in the Constitution. We protect individual liberty, the right to own and use property, the principles of limited and ethical government, and the benefits of free enterprise. In addition to this, Mountain States fights to protect Americans' natural and fundamental right to self-defense, and we represent individuals and organizations challenging infringements on the constitutionally protected right to keep and bear arms.

By restricting the people's right to engage in dispersed target shooting within the Pike National Forest, the USFS is attempting to regulate arms-bearing conduct in violation of the Second Amendment to the United States Constitution. This is the case because the proposed action under the Final EA would close 72% of the Pike National Forest to dispersed target shooting, rendering almost 800,000 acres unavailable to those who wish to engage in the type of firearms related activity that has been common in this region since long before the national forest was established. This unprecedented curtailment will restrict the right of the people to keep and bear arms.

In 2022, the Supreme Court in *New York State Rifle & Pistol Ass'n, Inc. v. Bruen* clarified exactly when the Second Amendment safeguards an individual right to keep and bear arms. The Court stated that "[w]hen the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct", and the government is required to "justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation." *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 24 (2022).

The proposed action within the Final EA – which would prevent law-abiding citizens from using firearms in 72% of the Pike National Forest – necessarily implicates the plain text of the Second Amendment. Because of that, it is up to the government – in this case, the USFS – to justify the action by linking it to a relevantly similar regulation from the Founding era.

But, when it comes to the Final EA, there are no firearm regulations from the Founding era that similarly restricted the exercise of the People's right to keep and bear arms on such a large swath of public land. As created under *Bruen* and further ensconced under *U.S. v. Rahimi*, a challenged regulation must be "relevantly similar" to a historical analogue from the time of the founding in order to be considered consistent with this nation's history and tradition of firearms regulation, and therefore constitutional. 602, U.S. 680, 144 S. Ct. 1889 (2024). The Supreme Court has reiterated that both "how" and "why" a challenged regulation burdens the second amendment are the key considerations within this "relevantly similar" analysis. *Id.* Both *Bruen* and *Rahimi* have revealed common features of regulations that showcase the sort of disparity that the Supreme Court found unable to pass constitutional muster and therefore could not be seen as relevantly similar for the purposes of a Second Amendment analysis. The Court, in both cases, analyzed various founding-era statutes and compared between the two: the regulation's scope, the duration of the regulations' application, and the corresponding penalties for violation. If there is too large a discrepancy between the challenged regulation and the purported historical analogue on any of these features, then the regulation is deemed inconsistent with this Nation's history and tradition of firearms regulation. As the Final EA stands, the proposed action will inevitably lead to regulations that create such a drastic disparity and have no legal basis in founding-era statutes. Simply put, the proposed actions are unconstitutional under the Second Amendment.

Because of this, there is no legal justification for the proposed action under the Final EA; and if the USFS goes forward with it, those provisions of the Final EA that contravene the individual liberties that the Second Amendment is designed to protect will undoubtedly be successfully challenged in court.

II. Conclusion

Considering this unconstitutional deficiency, we respectfully ask the United States Forest Service to reject its current proposed action, restart its analysis in light of this deficiency and propose an action that is consistent with the Second Amendment.

We thank you for the opportunity to write on this important matter.

Respectfully Submitted,

/s/ Robert A. Welsh

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