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ARTICLE

FROM FEAR OF CRIME TO FEAR OF NATURE: THE PROBLEM WITH PERMITTING LOADED, CONCEALED FIREARMS IN NATIONAL PARKS

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During the 1988 United States presidential race, then-Vice President George H.W. Bush attacked the Democratic nominee, Michael S. Dukakis, with a TV campaign advertisement featuring an image of Willie Horton, an African-American convicted murderer serving a life sentence without the possibility of parole, who had committed a brutal rape and assault while on a weekend pass from prison.¹ Although Dukakis had been Governor of Massachusetts at the time of Horton's release, he was not responsible for creating the prison furlough program, which had been signed into law by his predecessor, Republican Governor Francis W. Sargent. Nevertheless, the advertisement served to strengthen the Republican-engineered depiction of Democrats as soft on crime and helped win the election for Bush.²

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¹ JOE DOMANICK, CRUEL JUSTICE: THREE STRIKES AND THE POLITICS OF CRIME IN AMERICA'S GOLDEN STATE 137 (2004); MARC MAUER, RACE TO INCARCERATE 63 (2001); *see also* ROBERT J. BURSIK, JR. & HAROLD G. GRASMICK, NEIGHBORHOODS AND CRIME: THE DIMENSIONS OF EFFECTIVE COMMUNITY CONTROL 90 (1994).

² DOMANICK, *supra* note 1; *see also* MARC MAUER & MEDA CHESNEY-LIND, *Introduction to INVISIBLE PUNISHMENT: THE COLLATERAL CONSEQUENCES OF MASS IMPRISONMENT* 1, 10 (Marc Mauer & Meda Chesney-Lind eds., 2002); PETER Y. SUSSMAN, *Media on Prisons: Censorship and*

Although “no politician wants to risk being targeted by a Willie Horton-style attack ad blaming him for releasing a dangerous criminal back into society,”³ during the 2008 presidential race, the candidates devoted significantly less attention to issues of criminal justice. According to one report, the shift in focus stemmed from the fact that issues of crime and law enforcement (as distinct from issues of terrorism) have become far less partisan than they used to be.⁴ Other factors included declining crime rates and “an electorate less anxious about public safety.”⁵

While it is true that neither candidate played “the fear card”⁶ as George H.W. Bush did in 1988, in some segments of the population, fear of crime is still quite prevalent. What has changed, then, is not the presence of fear, but the types of places that engender such fear of crime.

Normally, the phrase “fear of crime” evokes images of urban areas,⁷

Stereotypes, in *INVISIBLE PUNISHMENT: THE COLLATERAL CONSEQUENCES OF MASS IMPRISONMENT* 258, 259 (Marc Mauer & Meda Chesney-Lind eds., 2002); *see generally* JOHN DICKER, *THE UNITED STATES OF WAL-MART* 91 (2005) (writing broadly about the role of fear in campaigns and quoting Mike Leonard, a retired UFCW vice president, for the proposition that “[f]ear is really the issue, and who wins on that issue wins the campaign”); JAY LIVINGSTON, *CRIME AND CRIMINOLOGY* 38 (2d ed., 1996) (contending that crime “has figured in political campaigns at every level of government, and the debate at times has seemed to appeal more to emotions than to reason”).

³ Editorial, *Pardon the Norfolk Four*, N.Y. TIMES, Nov. 17, 2008, at A26.

⁴ *See* Solomon Moore, *Records of Obama and McCain as Lawmakers Reflect Differences on Crime*, N.Y. TIMES, Oct. 31, 2008, at A20. As Marc Mauer, Executive Director of the Sentencing Project, a nonprofit organization devoted to criminal justice reform, explained in the week preceding the election, “[t]he political climate has shifted. Democrats and Republicans both embrace a more evidence-based approach to public safety that looks at program and policies that work.” *See id.*

⁵ *Id.*; *see also* CHRISTOPHER KUDLAC, *PUBLIC EXECUTIONS: THE DEATH PENALTY AND THE MEDIA* 96 (2007) (quoting David Von Drehle of *The Washington Post*: “Something in the zeitgeist has changed, you have the rise in terrorism as bogeyman in the closet that has replaced the serial killer, and a decrease in the murder rate has people less worried. In the mid 70s to early 1990s serial killers were the big story, but not anymore.”).

⁶ *See* SUSSMAN, *supra* note 2, at 259.

⁷ *See, e.g.*, Paul Giblyn, *Two Serial Killers, Acting Independently, Terrorize Phoenix*, N.Y. TIMES, July 18, 2006, at A14; Andrew Jacobs, *A Bleeding City, Seeking More Than a Band-Aid*, N.Y. TIMES, May 21, 2006, at 30; *see also* Julie Berry Cullen & Steven D. Levitt, *Crime, Urban Flight, and the Consequences for Cities*, 81(2) THE REV. OF ECON. & STAT. 159, 159-69 (1999); John H. Schweitzer, June Woo Kim & Juliette R. Mackin, *The Impact of the Built Environment on Crime and Fear of Crime in Urban Neighborhoods*, 6(3) J. OF URBAN TECH. 59, 59-73 (1999); YOLANDA M. SCOTT, *FEAR OF CRIME AMONG INNER-CITY AFRICAN AMERICANS* (2001); Herbert Williams & Antony M. Pate, *Returning to First Principles: Reducing the Fear of Crime in Newark*, 33 CRIME & DELINQ. 53 (1987); *see generally* Richard H. Burr, *Representing the Client on Death Row: The Politics of Advocacy*, 59 UMKC L. REV. 1, 13-14 (1990) (arguing that the fear of crime and street violence has driven the expansion of the federal death penalty); PIETRO C. NIVOLA, *LAWS OF THE LANDSCAPE: HOW POLICIES SHAPE CITIES IN EUROPE & AMERICA* 7, 71 (1999) (explaining that “businessmen frequently identify crime as the major impediment to locating in the inner city” and stating that “there is simply no way this country can end the headlong retreat of families and

such as a dark alley near a public housing project⁸ or an unlit playground or park.⁹ More recently, however, state and national parks—the very

firms from . . . cities without an even sharper and sustained reduction in their levels of violence”); cf. Paul Vitello, *New Police Forces Can Fill Gaps in Coverage (and Gaps in Municipal Budgets)*, N.Y. TIMES, Aug. 7, 2006, at A14 (describing fear of crime in the suburban village of Mineola, N.Y.).

⁸ Fernanda Santos, *New Take on Public Housing: Destroying It To Save It*, N.Y. TIMES, Aug. 7, 2006, at A14. Note that such fear is not limited to the United States. See, e.g., Shahid Alvi, Martin D. Schwartz, Walter S. DeKeseredy & Michael O. Maume, *Women's Fear of Crime in Canadian Public Housing*, 7 VIOLENCE AGAINST WOMEN 638, 661 (2001).

⁹ See Frances E. Kuo & William C. Sullivan, *Environment and Crime in the Inner City: Does Vegetation Reduce Crime?*, 33 ENV'T & BEHAV. 343, 345 (May 2001) (“[D]ense vegetation provides potential cover for criminal activities, possibly increasing the likelihood of crime and certainly increasing the fear of crime. Large shrubs, underbrush, and dense woods all substantially diminish visibility and therefore are capable of supporting criminal activity.”); see also Editorial, *A Park in Newark*, N.Y. TIMES, Oct. 23, 2008, at A36; JAGNA WOJCICKA SHARFF, KING KONG ON 4TH STREET: FAMILIES AND THE VIOLENCE OF POVERTY ON THE LOWER EAST SIDE 223 (1998).

Fear of crime emerged as a central consideration of criminology in the late 1960s. See, e.g., ALBERT D. BIDERMAN, LOUISE A. JOHNSON, JAMIE MCINTYRE & ADRIANNE W. WEIR, REPORT ON A PILOT STUDY IN THE DISTRICT OF COLUMBIA ON VICTIMIZATION AND ATTITUDES TOWARD LAW ENFORCEMENT (U.S. Gov't Printing Office 1967); PHILIP H. ENNIS, CRIMINAL VICTIMIZATION IN THE UNITED STATES: A REPORT OF A NATIONAL SURVEY (U.S. Gov't Printing Office 1967); ALBERT J. REISS, JR., STUDIES IN CRIME AND LAW ENFORCEMENT IN MAJOR METROPOLITAN AREAS (U.S. Gov't Printing Office 1967). Since then, it has become the subject of extensive research in criminology and related fields. See, e.g., Richard Bennett & Jeanne Flavin, *Determinants of Fear of Crime: The Effect of Cultural Setting*, 11 JUST. Q. 357-381 (1994); VALERIE J. CALLANAN, FEEDING THE FEAR OF CRIME (2004); Ted Chiricos, Michael Hogan & Marc Gertz, *Racial Composition of Neighborhood and Fear of Crime*, 35 CRIMINOLOGY, 107-131 (1997); Ezzat Fattah, *Research on Fear of Crime: Some Common Conceptual and Measurement Problems*, in FEAR OF CRIME AND CRIMINAL VICTIMIZATION 45-70 (Wolfgang Bilsky, Christian Pfeiffer & Peter Wetzels eds., 1993); KENNETH F. FERRARO, FEAR OF CRIME: INTERPRETING VICTIMIZATION RISK (1995); James Garofalo & John Laub, *The Fear of Crime: Broadening Our Perspective*, 3 VICTIMOLOGY 242-253 (1978); Pamela Wilcox Rountree, *A Reexamination of the Crime-Fear Linkage*, 35 J. OF RES. IN CRIME & DELINQ. 241-372 (1998); Setha Low, *The Edge and the Center: Gated Communities and the Discourse of Urban Fear*, 103(1) AM. ANTHROP. 45, 45-58 (2001); SETHA LOW, BEHIND THE GATES: LIFE, SECURITY, AND THE PURSUIT OF HAPPINESS IN FORTRESS AMERICA 53-97, 111-31 (2003); Pamela Wilcox Rountree & Kenneth C. Land, *Perceived Risk Versus Fear of Crime: Empirical Evidence of Conceptually Distinct Reactions in Survey Data*, 74 SOC. FORCES 1353-1376 (1996); Wesley Skogan, *Fear of Crime and Neighborhood Change*, in COMMUNITIES AND CRIME 203-29 (Albert J. Reiss, Jr. & Michael Tonry eds., 1986).

For an overview of the fear of crime, its origins, its importance, the role of the media in its construction, and its effects on criminal justice policy and the politics of law and order, see BURSIK & GRASMICK, *supra* note 1, at 90-111; LIVINGSTON, *supra* note 2, 12-49; SCOTT, *supra* note 7; see also Josh Lauer, *Drive to Extremes: Fear of Crime and the Rise of the Sport Utility Vehicle in the United States*, 1 CRIME MEDIA CULTURE, 149, 154-57 (2005) (distinguishing the fear of crime from crime rates and stating that “‘fear of crime,’ as opposed to actual rates of victimization, did not exist as an articulated social problem until the late 1960s, and it soon became a popular index for assessing the civic health of the nation. . . . [C]ontrary to commonsense assumptions, fear of crime often exceeds the actual risk of personal harm.”).

For a discussion of how fear of crime is conceptualized and distinguished from “worry about crime,” see BURSIK & GRASMICK, *supra* note 1, at 91-93.

For studies that have attempted to gauge fear of crime, see, e.g., Jeanette Covington & Ralph B. Taylor, *Fear of Crime in Urban Residential Neighborhoods: Implications of Between- and*

places individuals visit to escape the stress and speed of the city¹⁰—have become the places to be feared.¹¹ According to Gary Marbut of the Montana Shooting Sports Association, “If you’re hiking in the backcountry and there’s a problem with a criminal or an aggressive animal, there’s no 911 box where you can call the police and have a 60-second response time.”¹² Similarly, the National Rifle Association (“NRA”) contends that park visitors are at risk of attack by wildlife and methamphetamine addicts, and that women are in jeopardy of being raped.¹³

Framing the issue as one of states’ rights, the U.S. Department of the Interior (“DOI”), through the National Park Service and the Fish and Wildlife Service, and with support from the NRA, proposed changes to federal regulations in the spring of 2008 to permit visitors to national parks to carry loaded, concealed firearms if the state in which the national park is located contains provisions permitting individuals to

Within-Neighborhood Sources for Current Models, 32 SOC. Q. 231-249 (1991); Kenneth F. Ferraro & Randy LaGrange, *The Measurement of Fear of Crime*, 57 SOC. INQUIRY 70-101 (1987); Allen E. Liska, Andrew Sanchirico & Mark D. Reed, *Fear of Crime and Constrained Behavior: Specifying and Estimating a Reciprocal Effects Model*, 66 SOC. FORCES 827-837 (1988); Edmund McGarrell, Andrew Giacomazzi & Quint Thurman, *Neighborhood Disorder, Integration, and the Fear of Crime*, 14 JUSTICE Q. 479-500 (1997); see also WESLEY G. SKOGAN, *DISORDER AND DECLINE* (1990); WESLEY G. SKOGAN & SUSAN M. HARTNETT, *COMMUNITY POLICING, CHICAGO STYLE* (1997); Ralph B. Taylor, *BREAKING AWAY FROM BROKEN WINDOWS* (2001).

For a discussion of some of the issues and challenges in measuring “fear of crime,” see, e.g., *id.* at 93-95; Bahram Haghighi & Jon Sorensen, *America’s Fear of Crime*, in *AMERICANS VIEW CRIME AND JUSTICE: A NATIONAL PUBLIC OPINION SURVEY* 16-30 (Timothy J. Flanagan & Dennis R. Longmire eds., 1996).

For a discussion of how research on the fear of crime often under-represents inner-city African-American residents, see SCOTT, *supra* note 7.

¹⁰ William Cronon, *The Trouble with Wilderness; or, Getting Back to the Wrong Nature*, in *UNCOMMON GROUND: RETHINKING THE HUMAN PLACE IN NATURE* 69, 69, 76 (William Cronon ed., 1996) (contending that “[f]or many Americans wilderness stands as the last remaining place where civilization, that all too human disease, has not fully infected the earth,” and describing how in the times of Rousseau, “the belief [was] that the best antidote to the ills of an overly refined and civilized modern world was a return to simpler more primitive living”); see also *id.* at 78 (describing how wilderness came to represent for Americans “a highly attractive natural alternative to the ugly artificiality of modern civilization”).

¹¹ See, e.g., Brenda Goodman, *Killing of a Young Hiker Puts North Georgia on Edge*, N.Y. TIMES, Jan. 14, 2008, at A12.

¹² Richard Simon & Judy Pasternak, *Feds Ready to Ease National Parks Firearm Ban*, L.A. TIMES, Feb. 23, 2008, available at www.latimes.com/news/nationworld/washingtondc/la-na-guns-23feb23,0,1645643.story.

¹³ Jim Robbins, *Rule Change Would Permit Weapons in National Parks*, N.Y. TIMES, May 30, 2008, available at www.nytimes.com/2008/05/30/us/30guns.html (quoting NRA chief lobbyist, Chris W. Cox: “You read stories about people attacked by animals or who stumble upon meth labs or women who are raped in a national park. We don’t believe law-abiding citizens should be kept from protecting themselves and their families in national wildlife refuges or in national parks.”).

carry loaded, concealed firearms in their state parks.¹⁴ Opponents argued that the NRA had overstated the presence of violent crime and the risk of wildlife attacks, and that the regulation would hamper conservation, recreation, and tourism.¹⁵ Despite these objections, in early December 2008, DOI published the new rule enabling individuals to carry loaded, concealed firearms in national parks and refuges, provided the individual has a concealed weapons permit and the state where the park or refuge is located allows concealed firearms.¹⁶ On January 6, 2009, before the new rule could take effect, the National Parks Conservation Association, the Coalition of National Park Service Retirees, and the Brady Campaign to Prevent Gun Violence filed a lawsuit in the U.S. District Court for the District of Columbia seeking an injunction against enforcement of the rule.¹⁷

After President Obama's inauguration, there was hope that the new administration would overturn the rule.¹⁸ In February 2009, the new Interior Secretary, Ken Salazar, asked for a ninety-day internal assessment of the rule's environmental impacts.¹⁹ In the meantime, the Department of Justice attempted to block the preliminary injunction sought by environmental groups.²⁰ On March 19, 2009, U.S. District Judge Colleen Kollar-Kotelly blocked implementation of the rule. In her memorandum opinion, Judge Kollar-Kotelly ordered DOI to indicate its proposed course of action in response to the preliminary injunction by April 20, 2009.²¹

In this short paper, we first briefly describe the current regulations set forth under 36 C.F.R. § 2.4 and 50 C.F.R. § 27.42, the new rule, and three legislative measures intended to address the issue at hand (S.2619,

¹⁴ See General Regulations for Areas Administered by the National Park Service and the Fish and Wildlife Service, 73 Fed. Reg. 23,388-89 (proposed Apr. 30, 2008) (amending 36 C.F.R. pt. 2 and 50 C.F.R. pt. 27).

¹⁵ See *infra* notes 47-53 and accompanying text.

¹⁶ 73 Fed. Reg. 74,996 (Dec. 10, 2008) (final rule amending 36 C.F.R. pt. 2 and 50 C.F.R. pt. 27); see also Associated Press, *National Briefing: Washington: Concealed Weapons Allowed in Parks*, N.Y. TIMES, Dec. 6, 2008, at A13; Editorial, *We Don't Feel Safer*, N.Y. TIMES, Dec. 10, 2008, at A40.

¹⁷ See National Parks Conservation Ass'n, Press Release, *Parks Advocates File Lawsuit to Keep Loaded, Concealed Firearms Out of National Parks* (Jan. 7, 2009), available at www.npca.org/media_center/press_releases/2009/lawsuit_010709.html (last visited Jan. 8, 2009) (describing the lawsuit).

¹⁸ See, e.g., Editorial, *Undoing the Damage Done*, N.Y. TIMES, Jan. 25, 2009, at WK9.

¹⁹ See Editorial, *Two Early Tests on Guns*, N.Y. TIMES, Feb. 20, 2009, at A30.

²⁰ See *id.*

²¹ See *Brady Campaign to Prevent Gun Violence v. Salazar*, Nos. 08-2243 CKK, 09-013 CKK, 2009 WL 763091 (D.D.C. March 19, 2009) (memorandum opinion).

H.R. 5434, and H.R. 5646).²² We then turn to some of the environmental arguments against the rule changes before offering our own—namely that the regulation 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.

I.

Under existing regulations, it is not unlawful to bring firearms into national parks. With few exceptions, though, these firearms need to be unloaded and safely stowed. Section 2.4(a)(2) of Title 36 provides, in part:

Weapons, traps or nets may be carried, possessed or used:

(i) At designated times and locations in park areas where:

(A) The taking of wildlife is authorized by law . . . ;

(B) The taking of fish is authorized by law

(ii) When used for target practice at designated times and at facilities or locations designed and constructed specifically for this purpose and designated pursuant to special regulations.²³

Section 2.4(a)(3) further provides that “[t]raps, 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.”²⁴ Finally, under Section 2.4(d), permits to carry or possess a weapon, trap, or net may be issued:

(1) When necessary to support research activities

(2) To carry firearms for persons in charge of pack trains or saddle horses for emergency use.

(3) For employees, agents or cooperating officials in the performance of their official duties.

(4) To provide access to otherwise inaccessible lands or waters contiguous to a park area when other means of access are otherwise impracticable or impossible.²⁵

²² At the time of this writing, the new rule has not yet taken effect, and the final impact of the pending lawsuit is unknown. Therefore, we refer to the regulations currently in force in the present tense.

²³ 36 C.F.R. § 2.4(a)(2) (Westlaw 2009).

²⁴ *Id.* § 2.4(a)(3).

²⁵ *Id.* § 2.4(d).

Similarly, Part 27 of Title 50 provides that individuals may not carry, possess, or discharge firearms, fireworks, or explosives on national wildlife refuges unless specifically authorized to do so.²⁶ Individuals may, however, possess, use, or transport firearms on national wildlife refuges for the purpose of public hunting or “the taking of specimens of wildlife for scientific purposes,” or if they have been authorized to possess or use firearms for the protection of property or for field trials.²⁷ In addition, individuals may carry inoperable, unloaded firearms in vehicles and boats.²⁸ Thus, Part 27 of Title 50, like Part 2 of Title 36, generally prohibits visitors from possessing operable and loaded firearms except when used for certain specified activities in designated areas.

On April 30, 2008, DOI proposed to amend the regulations currently codified at 36 C.F.R. Part 2 and 50 C.F.R. Part 27, which, as noted above, provide guidance and controls for the possession and transportation of firearms in national park areas and national wildlife refuges.²⁹ The background accompanying the proposed rule read, in part:

A core tenet of our system of government is that States have the prerogative to develop their own policies and standards in many areas, and this principle has long been honored with respect to policies governing the possession of firearms.

. . . .

The Department’s intent in undertaking this rulemaking process is to better respect the ability of states to determine who may lawfully possess a firearm within their borders while preserving the Federal government’s authority to manage its lands, buildings, and facilities. Mindful of that objective, the Department proposes 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. In this regard, the proposal is not designed to authorize firearms possession in federal facilities, or when otherwise forbidden by state or federal law. Rather, the Department’s proposed rule is intended to respect state authority in a similar manner to that adopted in existing regulations by the Bureau of Land Management and the U.S. Forest Service. Each of these agencies authorizes the possession of loaded and concealed weapons consistent

²⁶ 50 C.F.R. § 27.41 (Westlaw 2009).

²⁷ *Id.* § 27.42(a), (c), (d).

²⁸ *Id.* § 27.42(b).

²⁹ General Regulations for Areas Administered by the National Park Service and the Fish and Wildlife Service, 73 Fed. Reg. 23,388-89 (proposed Apr. 30, 2008) (amending 36 C.F.R. pt. 2 and 50 C.F.R. pt. 27).

with the applicable authorities of the state in which the lands are located.

....

The Department believes that the proposed amendments give greater effect to principles of Federalism while maintaining protection of visitors and the values that have led to the establishment of park areas and wildlife refuges.

During the comment period on this proposed regulation, which was extended until August 8, 2008,³⁰ DOI received more than 100,000 comments.³¹ After the comment period closed, DOI received requests, pursuant to section 553(e) of the Administrative Procedure Act, 5 U.S.C. § 553(e), and 43 C.F.R. Part 14, to withdraw the proposed regulation.³² Despite these requests, DOI issued the new rule, which is now the subject of litigation.

In the second session of the 110th Congress, prior to, but anticipating the issuance of the DOI's proposed amendments, Senator Tom Coburn (R-Oklahoma) introduced Senate Bill 2619, a bill "[t]o protect innocent Americans from violent crime in national parks," short-titled the "Protecting Americans from Violent Crime Act of 2008." The bill specifically objects to 36 C.F.R. § 2.4(a)(1) and 50 C.F.R. § 27.42,³³ stating that such regulations "prevent individuals complying with Federal and State laws from exercising the second amendment rights of the individuals while at units of—(A) the National Park System; and (B) the National Wildlife Refuge System."³⁴ Senate Bill 2619 would require "[f]ederal laws [to] make it clear that the second amendment rights of an individual at a unit of the National Park System or the National Wildlife

³⁰ Nat'l Parks Conserv. Ass'n, *Keep Parks Safe: Say No to Loaded Guns in Our National Parks*, www.npca.org/keep_parks_safe (last visited Oct. 19, 2008). The initial comment period ended June 30, 2008. See 73 Fed. Reg. at 23,388 (Apr. 30, 2008).

³¹ Telephone Interview with Mark Lawyer, U.S. Dep't of the Interior, Oct. 29, 2008 (by Alison Rau); see also Warren Richey, *Bid to Allow Guns in National Parks*, CHRISTIAN SCI. MONITOR, Aug. 19, 2008. The official comments on the proposed changes may be found at www.regulations.gov (in the document search field, enter: FWS-R9-NSR-2008-0062) (last visited Feb. 19, 2009).

³² See Letter from William Wade, Coalition of National Park Service Retirees, to Secretary of the Interior Dick Kempthorne, Assistant Secretary of Fish and Wildlife and Parks R. Lyle Lavery, Director of the National Park Service Mary A. Bomar, and Director of U.S. Fish and Wildlife Service Dale Hall, Oct. 8, 2008, available at www.npca.org/keep_parks_safe/pdf/CNPSR_report_letter_10_8_08.pdf.

³³ Protecting Americans from Violent Crime Act of 2008, S. 2619, 110th Cong. (2008), §2(2)-(3), available at www.govtrack.us/congress/bill.xpd?bill=s110-2619.

³⁴ S. 2619 § 2(4).

Refuge System should not be infringed.”³⁵ The bill would prevent the Secretary of the DOI from promulgating or enforcing any regulation that prohibits an individual from possessing assembled or functional firearms in any unit of the National Park System or the National Wildlife Refuge System.³⁶

On September 12, 2008, the Senate Committee on Energy and Natural Resources voted 18-5 to pass the Protecting Americans from Violent Crime Act of 2008. The legislation now awaits consideration by the full Senate at a time to be determined by Majority Leader Harry Reid (D-Nevada).³⁷

House Bill 5434, sponsored by Representative Jeb Hensarling (R-Texas) is also short-titled “Protecting Americans from Violent Crime Act of 2008” and contains exactly the same text as Senate Bill 2619.³⁸ On February 19, 2008, House Bill 5434—the House counterpart to Senate Bill 2619—was referred to the House Subcommittee on Fisheries, Wildlife, and Oceans, where it has remained.

Finally, Representative Paul Broun (R-Georgia) has introduced House Bill 5646, a bill

[t]o protect the second amendment rights of individuals to carry firearms and ammunition in units of the National Park System and the National Wildlife Refuge System and to require that hunting activities be a land use in all management plans for Federal land to the extent that such use is not clearly incompatible with the purposes for which the Federal land is managed.³⁹

The bill, short-titled the “Protecting the Second Amendment and Hunting Rights on Federal Lands Act of 2008,” and introduced in the House Natural Resources Committee, contains the following findings:

(2) People in the United States use firearms over 2,000,000 times a

³⁵ *Id.* § 2(6).

³⁶ *Id.* § 3. The individual may not possess a firearm if he or she is otherwise prohibited by law from doing so or if such possession would run afoul of the law of the State in which the unit of the National Park System or the National Wildlife Refuge System is located. *See id.* § 3(1), (2).

³⁷ Press Release, U.S. Senator Jim DeMint (R-South Carolina), DeMint, Coburn Bill Protecting Gun Rights in National Parks Passes Energy Committee: Legislation Will Allow Americans to Protect Themselves from Violent Crimes (Sept. 12, 2008), *available at* <http://demint.senate.gov> (go to News Room/Press Releases, and select the date of the press release).

³⁸ Protecting Americans from Violent Crime Act of 2008, H.R. 5434, 110th Cong. (2008), *available at* www.govtrack.us/congress/bill.xpd?bill=h110-5434.

³⁹ Protecting the Second Amendment and Hunting Rights on Federal Lands Act of 2008, H.R. 5646, 110th Cong. (2008), *available at* www.govtrack.us/congress/billtext.xpd?bill=h110-5646.

year for self-defense.

(3) States that have enacted legislation expanding the rights of residents to use firearms for self-defense have witnessed a decrease in firearm-related crime.

(4) . . . Federal regulations generally prohibit persons from possessing firearms in units of the National Park System and the National Wildlife Refuge System.⁴⁰

The bill then provides that “[n]o Federal regulation shall restrict any individual from possessing or carrying a firearm or ammunition if that restriction is based in whole or in part upon the fact that the individual is in a unit of the National Park System or the National Wildlife Refuge System.”⁴¹

While the findings set forth in H.R. 5646 specifically mention self-defense and claim that firearms help to *decrease* instances of firearm-related crime, the rest of Section 2 of the proposed legislation more or less resembles Senate Bill 2619 and House Bill 5434. Where Representative Broun’s proposed legislation diverges is in Section 3, where the bill would “*require* that hunting activities be a land use in all management plans for Federal land to the extent that such use is not clearly incompatible with the purposes for which the Federal land is managed.”⁴² House Bill 5646 requires the head of any agency with jurisdiction over Federal land to ensure that hunting activities are allowed as a use of such land when developing or considering approval of a management plan for any Federal land.⁴³ The bill further provides that if hunting activities are not allowed or are restricted on Federal land, the head of the agency with jurisdiction over such land must set forth the specific reasons why hunting activities are not allowed or are restricted.⁴⁴ House Bill 5646 then clarifies that “fee[s] charged by any entity related to hunting activities on Federal land under the jurisdiction of the Secretary [of the DOI] that [are] in excess of that needed to recoup costs of management of the Federal land shall be deemed to be a restriction on hunting.”⁴⁵

On March 18, 2008, House Bill 5646 was referred to the House Subcommittee on Fisheries, Wildlife, and Oceans.⁴⁶ The bill currently

⁴⁰ *Id.*

⁴¹ *Id.* § 2(b).

⁴² *Id.* § 3(a) (emphasis added).

⁴³ *Id.* § 3(b).

⁴⁴ *Id.* § 3(c).

⁴⁵ *Id.*

⁴⁶ See www.govtrack.us/congress/bill.xpd?bill=h110-5646 (scroll down to “Last Action”),

remains in this subcommittee.

II.

As noted above, environmental groups and other concerned stakeholders have opposed DOI's regulatory changes as well as the various legislative efforts in the U.S. Senate and House. One of the chief concerns has been that the new regulation could impede efforts by park rangers to prevent poaching, "a chronic problem in many national parks throughout the country that is growing because of an increase in the illegal international animals parts trade."⁴⁷ The Ranger Lodge of the Fraternal Order of Police, in particular, has argued that "National Parks are the last islands of safe habitat for our nation's wildlife" and that the new regulation would pose an increased ecological threat to wildlife that could constitute a violation of the intent of the Wilderness Act and the National Environmental Policy Act.⁴⁸

Others have stressed that the increased presence of ready-to-fire weapons would adversely affect the national park experience.⁴⁹ These stakeholders assert that proponents of the new regulation have misstated the crime problem in national parks. National parks are relatively crime-free, they claim, and with 270 million visitors a year, the probability of becoming a victim of a violent crime is 1 in 708,333—less than the

(last visited Mar. 14, 2009).

⁴⁷ Letter from Ass'n of Nat'l Park Rangers, Coalition of Park Serv. Retirees, and U.S. Park Rangers Lodge, Fraternal Order of Police, to U.S. Senate (Feb. 1, 2008), *available at* www.npca.org/keep_parks_safe/pdf/rangergunletter.pdf [hereinafter *Ranger Groups Letter to Senate*]; *see also* Letter from Thomas C. Kiernan, President, National Parks Conservation Ass'n, to Dick Kempthorne, U.S. Sec'y of the Interior (Jan. 16, 2008), *available at* www.npca.org/keep_parks_safe/pdf/npca_ltr_kempthorne_011608.pdf; 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), *available at* www.npca.org/media_center/pdf/fop_to_kempthorne_guns_nat_parks.pdf [hereinafter *Ranger Lodge Letter*]; Letter from former directors of the Nat'l Park Serv. to Dick Kempthorne, U.S. Sec'y of the Interior (Apr. 3, 2008), *available at* www.npca.org/keep_parks_safe/pdf/nps_directors_letter_4_3_08.pdf; Editorial, *Armed to Kill in National Parks?*, CHRISTIAN SCI. MONITOR, May 6, 2008 [hereinafter *Armed to Kill*].

Note that the Association of National Park Rangers, the Coalition of Park Service Retirees, and the U.S. Park Rangers Lodge, Fraternal Order of Police, submitted their joint letter to the U.S. Senate urging the full Senate to vote against Senator Tom Coburn's (R-Oklahoma) amendment (#3967) to Senate Bill 2483, the National Forests, Parks, Public Land, and Reclamation Projects Authorization Act of 2007, sponsored by Senator Jeff Bingaman (D-New Mexico). Senator Coburn's amendment contained much of the same language as in Senate Bill 2619. On June 11, 2008, Senate Bill 2483 was indefinitely postponed by the Senate by unanimous consent. *See* www.govtrack.us/congress/bill.xpd?bill=s110-2483 (scroll down to "Last Action") (last visited Mar. 14, 2009).

⁴⁸ *Ranger Lodge Letter*, *supra* note 47.

⁴⁹ *See, e.g., Ranger Groups Letter to Senate*, *supra* note 47; *see generally* Goodman, *supra* note 11.

chance of being struck by lightning over a lifetime.⁵⁰ For these opponents of the proposed regulation, adding more loaded guns to the mix would make the parks *less* safe. For example, 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 lodging each year. Even without loaded guns available to the people involved, responding to and diffusing [sic] such situations is extremely dangerous to both the families camping in the area and the responding rangers. Two years ago, to protect himself and nearby families, a ranger was forced to shoot and kill an individual involved in a domestic dispute in a campground. The suspect had a club. Had he been armed with a gun, the situation would have been far, far worse. Our members are certain that the low incidence of violent crime in our National Parks is a direct result of parks being viewed as places where guns are discouraged and loaded guns are prohibited.⁵¹

Similarly, Butch Farabee, a former acting superintendent at Montana's Glacier National Park, argues that "[p]arks 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."⁵² 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?"⁵³

Elsewhere, one of us has attempted to show how the fear of crime in and of urban areas may induce individuals to engage in environmentally degrading behaviors and practices. For example, in *Double Whammy: Collateral Consequences of Conviction and Imprisonment for*

⁵⁰ *Armed to Kill*, *supra* note 47; Richey, *supra* note 31.

⁵¹ *Ranger Lodge Letter*, *supra* note 47; *see also* *Armed to Kill*, *supra* note 47 (arguing that "[a]dding guns to the mix could sadly escalate tense encounters" over campground sites and on crowded roads in national parks).

⁵² Simon & Pasternak, *supra* note 12 (quoting Butch Farabee).

⁵³ *Id.* (quoting Bill Wade); *see also* Richey, *supra* note 31 ("As a woman who often hikes alone in the national parks, I have rarely feared for my personal safety. However, if this rule change is implemented I will be faced with the possibility that the next person I meet on the trail may carry a loaded gun. . . . This does nothing to make me feel safer.") (quoting an unnamed woman from Sparks, Maryland) (omission in original).

Sustainable Communities and the Environment, Brisman argued that the fear of crime leads to the “flight from blight”⁵⁴ and the unlimited outward extension of metropolitan areas or “edgeless cities.”⁵⁵ Such sprawling growth destroys green space and turns agricultural land into land for residential or business use, thereby adversely affecting water quality and contributing to the loss of biodiversity.⁵⁶ In contrast to their urban brethren, those living in the suburbs tend to drive more frequently and over longer distances to work and to obtain basic amenities, which contributes to air pollution and deteriorating water quality.⁵⁷ Often the vehicles of choice are sport utility vehicles (SUVs)—fuel-inefficient, environmentally destructive *lusus naturae*⁵⁸ that prey on and further contribute to individuals’ fear of violence and crime.⁵⁹

In this paper, we wish to draw a different connection between fear of crime and negative environmental impacts. We argue that fear of crime in nature (i.e., in national parks) may well lead to fear of nature itself—what Richard Louv, author of *Last Child in the Woods: Saving Our Children from Nature-Deficit Disorder*, refers to as “nature-fear.”⁶⁰ While fear of nature may not result in the type of environmentally degrading behaviors and practices that may stem from urban fear of crime, “nature fear” can disrupt or inhibit the formation of bonds between individuals and natural places—the types of bonds that often form the foundation for “green consciousness”⁶¹ and an environmental

⁵⁴ Avi Brisman, *Double Whammy: Collateral Consequences of Conviction and Imprisonment for Sustainable Communities and the Environment*, 28 WM. & MARY ENVTL. L. & POL’Y REV. 423, 461 n.164 (2004) [hereinafter Brisman, *Double Whammy*] (quoting PIETRO S. NIVOLA, *LAWS OF THE LANDSCAPE: HOW POLICIES SHAPE CITIES IN EUROPE AND AMERICA* 91 (1999)).

⁵⁵ *Id.* at 431; 454 (quoting Gregory D. Squires, *Urban Sprawl and the Uneven Development of Metropolitan America*, in *URBAN SPRAWL: CAUSES, CONSEQUENCES, AND POLICY RESPONSES* 1, 2 (Gregory D. Squires ed., 2002)).

⁵⁶ *Id.* at 431, 456-59. While there are countless sources discussing the adverse environmental and human health impacts of sprawl, a particularly good overview may be found in William Buzbee, *Sprawl's Political-Economy and the Case for a Metropolitan Green Space Initiative*, 32 URB. LAW. 367, 368-69, 372-73 (2000).

⁵⁷ Brisman, *Double Whammy*, *supra* note 54, at 456-58; see also Avi Brisman, *Crime-Environment Relationships and Environmental Justice*, 6 SEATTLE J. FOR SOC. JUST. 727, 765 (2008) [hereinafter Brisman, *Crime-Environment Relationships*]; Buzbee, *supra* note 56, at 368-69, 372-73.

⁵⁸ Avi Brisman, *It Takes Green to Be Green: Environmental Elitism, “Ritual Displays,” and Conspicuous Non-Consumption*, 85(2) N.D. L. REV. (forthcoming 2009) [hereinafter Brisman, *It Takes Green*].

⁵⁹ See Brisman, *Double Whammy*, *supra* note 54, at 462-71; Brisman, *Crime-Environment Relationships*, *supra* note 57, at 765.

⁶⁰ RICHARD LOUV, *LAST CHILD IN THE WOODS: SAVING OUR CHILDREN FROM NATURE DEFICIT DISORDER* 144 (2006).

⁶¹ Brisman, *It Takes Green*, *supra* note 58.

ethos geared towards conservation and protection.

III.

At the outset, it is important to acknowledge that fear of nature is not a new phenomenon. As William Cronon explains in his influential essay, *The Trouble with Wilderness; or, Getting Back to the Wrong Nature*:

Go back 250 years in American and European history, and you do not find nearly so many people wandering around remote corners of the planet looking for what today we would call “the wilderness experience.” As late as the eighteenth century, the most common usage of the word “wilderness” in the English language referred to landscapes that generally carried adjectives far different from the ones they attract today. To be a wilderness was to be “deserted,” “savage,” “desolate,” “barren”—in short, a “waste,” the word’s nearest synonym. Its connotations were anything but positive, and the emotion one was most likely to feel in its presence was “bewilderment” or terror.

. . . Wilderness, in short, was a place to which one came only against one’s will, and always in fear and trembling.⁶²

As an example, consider William Wordsworth’s depiction in *The Prelude* of his encounter with nature in all its alien force after he has crossed the Alps and is descending through Gondo Gorge:

The immeasurable height
Of woods decaying, never to be decayed,
The stationary blasts of waterfalls,
And everywhere along the hollow rent
Winds thwarting winds, bewildered and forlorn,
The torrents shooting from the clear blue sky,
The rocks that muttered close upon our ears—
Black drizzling crags that spake by the wayside
As if a voice were in them—the sick sight
And giddy prospect of the raving stream,
The unfettered clouds and region of the heavens,
Tumult and peace, the darkness and the light . . .⁶³

⁶² Cronon, *supra* note 10, at 70-71 (footnote omitted).

⁶³ William Wordsworth, “The Prelude,” bk. VI, ll. 556-67, in *THE POETICAL WORKS OF WORDSWORTH* 536 (Thomas Hutchinson ed., Oxford Univ. Press 1936) (1805).

Similarly, in *Mont Blanc*, Percy Bysshe Shelley describes looking into the Ravine of Arve, a river that has cut a canyon through the vale of Chamonix:

Far, far above, piercing the infinite sky,
 Mont Blanc appears,—still, snowy, and serene—
 Its subject mountains their unearthly forms
 Pile around it, ice and rock; broad vales between
 Of frozen floods, unfathomable deeps,
 Blue as the overhanging heaven, that spread
 And wind among the accumulated steeps;
 A desert peopled by the storms alone,
 Save when the eagle brings some hunter's bone,
 And the wolf tracks her there—how hideously
 Its shapes are heaped around! rude, bare, and high,
 Ghastly, and scarred, and riven. . . .⁶⁴

While “fear” may properly describe Wordsworth’s and Shelley’s experiences in nature, it is a “fear” more akin to awe than to deep anxiety over the possibility of victimization. Wordsworth looks at the mountains and rocks and rivers and skies as icons of the sublime—as symbols of God’s presence on Earth. According to Cronon, “[w]hat Wordsworth described was nothing less than a religious experience, akin to that of the Old Testament prophets as they conversed with their wrathful God.”⁶⁵ For the atheist Shelley, on the other hand, the hideousness of nature—the fearsome mountains and rocks and rivers and skies—reveal the absence of God. Shelley’s fear is different from what Wordsworth experiences, but neither trembles in terror at the thought of assault and battery.

Eventually, Romantic bewilderment in and of nature gave way to Transcendental sternness, stoicism, and loneliness (e.g., Thoreau), and then to the “welcome ecstasy” of the “inhuman beauty” of nature expressed by John Muir—the type of sentiments that gave rise to the modern environmental movement and the desire to seek out and set aside national parks and wilderness areas.⁶⁶ It is doubtful that Wordsworth and Shelley would have felt less fear had they been equipped with loaded Magnums or AK-47s.

Unfortunately, the NRA and other proponents of changes to the current regulations have stoked the fear of crime in nature to the point

⁶⁴ Percy Bysshe Shelley, “Mont Blanc,” 1.60-71 in *SHELLEY: POETICAL WORKS* 533 (Thomas Hutchinson ed., Oxford Univ. Press 1960) (1816).

⁶⁵ Cronon, *supra* note 10, at 74.

⁶⁶ *See id.* at 72-75.

where individuals may fear venturing into national parks and wilderness areas as a whole. Granted, some may simply add a loaded firearm to their camping supplies before heading to the parks. For others, the option of carrying a loaded firearm has not mitigated their fear, and they have subsequently altered their outdoor exercise activities.⁶⁷ And for still others, the fear of those *with weapons*, rather than the fear of rape or attack by methamphetamine addicts, may deter experiences with nature in national parks and wildlife areas.

Even before the changes to the current regulations set forth under 36 C.F.R. § 2.4 and 50 C.F.R. § 27.42, Louv bemoaned the type of fear that would keep people from venturing into natural places:

Children and adults are even beginning to see nature as our natural enemy—a bogeyman, a stand-in for other, less identifiable reasons for fear

A few years ago, a motel handyman confessed to the FBI that he killed three Yosemite sightseers just outside the national park, and later decapitated a naturalist in the park. Other recent stories may have jarred Americans' confidence in the outdoors. In Washington's Olympic National Park in 1998, there were eighty-two break-ins, forty-seven cases of vandalism, sixty-four incidents involving drug and alcohol abuse, one sexual assault, and one aggravated assault with a weapon. The park's rangers now carry semi-automatic weapons. Also in 1998, in the Great Smoky Mountains, a deranged landscaper who enjoyed singing gospel music shot and killed National Park Service ranger Joe Kolodski. Elsewhere, two park rangers were shot, one fatally, in Oregon's Oswald West State Park.⁶⁸

Whereas the NRA and other proponents of the rule changes would regard the incidents in Washington's Olympic National Park and the Great Smokey Mountains as proof of the need to permit individuals to carry loaded, concealed weapons in national parks, we believe, as does Louv, that linking nature with crime and fear prevents parents and children from having direct contact with the outdoors. As Louv further argues:

Most children today are hard-pressed to develop a sense of wonder, to induce . . . the "spirit of place" while playing video games or trapped inside a house because of fear of crime. Asked to name their favorite special places, children often describe their room or an attic—

⁶⁷ See Goodman, *supra* note 11.

⁶⁸ LOUV, *supra* note 60, at 128-29.

somewhere quiet.

....

Fear is the most potent force that prevents parents from allowing their children the freedom they themselves enjoyed when they were young. Fear is the emotion that separates a developing child from the full, *essential* benefits of nature. Fear of traffic, of crime, of stranger-danger—and of nature itself.⁶⁹

Children and adults who do not venture into nature do not receive the many benefits of such experiences.⁷⁰ They may also fail to form bonds with outdoor green spaces and places, which may translate into failing to act in environmentally benevolent or beneficent ways.⁷¹ These individuals, besieged by fear and suffering from “nature deficit disorder,” may also find themselves unable to forge relationships with others and develop a sense of community. Louv warns that

as more parents keep their children inside the house or under rigid control, youngsters will be deprived of chances to become self-confident and discerning, to interact with neighbors, or to learn how to build real community—which is one defense against sociopaths

Parents may now buy a cheerfully colored, three-ounce bracelet called the global positioning system (GPS) personal locator, and lock it on their child’s wrist. If the water-resistant bracelet is cut or forcefully removed, its continuous signal activates an alarm and notifies the manufacturer’s emergency operators. At least at first glance, resistance to global personal tracking seems not only futile but also selfish—because we love our children and want to protect them. But guaranteed safety, or the illusion of it, can only be bought at a dangerous price. Imagine future generations of children who have been raised to accept the inevitability of being electronically tracked every day, every second, in every room of their lives, in the un-brave new world. Such technology may work in the short run, but it may also create a false sense of security and serve as a poor substitute for the proven antidotes to crime: an active community, more human eyes on the streets, and self-confident children.⁷²

⁶⁹ *Id.* at 95, 123.

⁷⁰ See Brisman, *Crime-Environment Relationships*, *supra* note 57, at 764; Avi Brisman, *Toward a More Elaborate Typology of Environmental Values: Liberalizing Criminal Disenfranchisement Laws and Policies*, 33 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 283, 400 n.572, 403 n.580 and accompanying text (2007).

⁷¹ Brisman, *Crime-Environment Relationships*, *supra* note 57, at 764.

⁷² LOUV, *supra* note 60, at 127-28.

Curbing the presence of loaded, concealed weapons in national parks may help keep people coming to those parks. Stoking the flames of fear may keep people out of the parks and packing heat. And with fewer visitors to form emotional or spiritual attachments to these natural areas, the less likely it is that there will be resistance to increased logging or mining in national parks. But facilitating resource extraction and encouraging firearm possession may be the whole purpose for the proposed changes anyway.