

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

<p>KEELY ROBERTS, individually and as parent and next friend of C.R. and L.R., and JASON ROBERTS, individually and as parent and next friend of C.R. and L.R.,</p> <p>Plaintiffs,</p> <p>v.</p> <p>SMITH & WESSON BRANDS, INC., SMITH & WESSON SALES COMPANY, SMITH & WESSON, INC., BUDSGUNSHOP.COM, LLC, RED DOT ARMS, INC., ROBERT CRIMO, JR., and ROBERT CRIMO, III,</p> <p>Defendants.</p>	<p>Lead Case No. 1:22-cv-06169</p> <p>Related Case Nos. 1:22-cv-06178</p> <p style="padding-left: 40px;">1:22-cv-06181</p> <p style="padding-left: 40px;">1:22-cv-06183</p> <p style="padding-left: 40px;">1:22-cv-06171</p> <p style="padding-left: 40px;">1:22-cv-06185</p> <p style="padding-left: 40px;">1:22-cv-06186</p> <p style="padding-left: 40px;">1:22-cv-06190</p> <p style="padding-left: 40px;">1:22-cv-06191</p> <p style="padding-left: 40px;">1:22-cv-06193</p> <p style="padding-left: 40px;">1:22-cv-06359</p> <p style="padding-left: 40px;">1:22-cv-06361</p> <p>Lead Case Removed from Case No. 22 LA 00000497 in the Circuit Court of Lake County, Illinois</p> <p>Hon. Steven C. Seeger</p>
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**SMITH & WESSON’S RESPONSE TO PLAINTIFFS’
NOTICE OF SUPPLEMENTAL AUTHORITIES**

Plaintiffs claim that the recent decision in *Minnesota ex rel. Ellison v. American Petroleum Institute*, 63 F.4th 703 (8th Cir. 2023), and the denial of certiorari in a number of similar cases, are somehow “pertinent” to the issues before this Court. Plaintiffs are mistaken.

In *American Petroleum*, the Eighth Circuit recognized that simply listing a variety of potentially impacted federal interests was insufficient for federal question jurisdiction where the plaintiffs failed “to identify which specific elements of Minnesota’s claims require the court to . . . interpret and apply federal . . . law” *Id.* at 712. While this simple proposition is without controversy, it has no application to the determination before this Court.

In this case, Plaintiffs raise a quintessential federal question under the National Firearms Act (“NFA”) – a judicial determination to overturn decades of Congressional and agency regulation by having the Smith & Wesson M&P rifle labeled an NFA “machinegun.” Plaintiffs do not dispute that they allege this federal question, but to avoid federal jurisdiction, Plaintiffs argue that its resolution is not “necessary” to their action. But after Plaintiffs’ complaints are stripped of the facially insubstantial, implausible, or foreclosed state-law claims (an exercise federal courts routinely undertake in jurisdictional analysis) (ECF 48 at 7-14), this federal question is *the* purpose of this case. Indeed, Plaintiffs have admitted their goal is to obtain such a ruling under the NFA. (ECF 56 at 2-3.) State courts are not the proper venue for such a determination. The analogous case thus remains *New York v. Arm or Ally, LLC*, 2022 WL 17496413 (S.D.N.Y. Dec. 8, 2022), a lawsuit similar to this one in which the district court exercised federal question jurisdiction under *Grable & Sons Metal Products, Inc. v. Darue Engineering & Manufacturing*, 545 U.S. 308 (2005).

American Petroleum also is not “pertinent” to federal officer jurisdiction. Unlike here, the court in *American Petroleum* was not faced with a comprehensive and detailed regulatory scheme, directly applicable to the claims raised, where a firearm manufacturer had a statutorily imposed obligation for regulatory enforcement. In fact, the Eighth Circuit rejected federal officer jurisdiction because the allegedly fraudulent marketing was not “performed pursuant to . . . comprehensive and detailed [federal regulations].” *American Petroleum*, 63 F.4th at 714. As such, it simply is another case like *Bd. of Cnty. Comm’rs of Boulder Cnty. v. Suncor Energy (U.S.A.) Inc.*, 25 F.4th 1238, 1253 (10th Cir. 2022) (a case on which *American Petroleum* relies, 63 F.4th at 708, 715), in which a court found that a private company was merely regulated because the defendant was serving a private objective. (See ECF 48 at 5.)

Dated: May 26, 2023

Respectfully submitted,

Smith & Wesson Brands, Inc., Smith & Wesson Sales Company, Smith & Wesson, Inc., and American Outdoor Brands Corporation

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CERTIFICATE OF SERVICE

I hereby certify that on May 26, 2023, I caused Smith & Wesson's Response to Plaintiffs' Notice of Supplemental Authorities to be electronically filed using the court's electronic filing system, which will automatically send notice of the filing to all counsel of record.

/s/ Kenneth L. Schmetterer