

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MAYOR AND CITY COUNCIL OF)
BALTIMORE,)

Plaintiff,)

v.)

Case No. 1:23-cv-03762-RDM

BUREAU OF ALCOHOL, TOBACCO,)
FIREARMS AND EXPLOSIVES,)

Defendant.)

**NATIONAL SHOOTING SPORTS FOUNDATION, INC.’S RENEWED MOTION TO
INTERVENE**

National Shooting Sports Foundation, Inc. (“NSSF”), files this renewed motion to intervene in this case pursuant to Federal Rule of Civil Procedure 24(a) and (b). Plaintiff brought this case under the Freedom of Information Act, 5 U.S.C. § 552, to compel the Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”) to produce certain confidential and sensitive documents and information submitted to the ATF by, among others, retail and wholesale firearms dealers, firearms manufacturers, and firearms distributors. The NSSF is the trade association for the firearms industry, representing thousands of those firearms manufacturers, retailers, distributors, and wholesalers. Most if not all of the documents and information at issue were submitted to the ATF by NSSF members, and NSSF has a legally cognizable interest in protecting from public disclosure confidential and sensitive information about the lawful acquisition and disposition of firearms by its members and their customers. NSSF has standing to intervene in this case on behalf of itself and its members, and is the only entity that represents their interests in protecting the sought-after information from disclosure.

For the reasons above and as explained more fully in the accompanying memorandum in support, this Court should grant NSSF's renewed motion to intervene in this action.

Pursuant to Local Rule 7(m), counsel for NSSF has conferred with counsel for Plaintiff and the ATF. Plaintiff Mayor and City Council of Baltimore opposes NSSF's intervention. Pursuant to Local Rules 7(c) and 7(j), NSSF attaches to this motion a proposed order permitting intervention and a proposed answer to Plaintiff's complaint. NSSF also attaches the certificate required by Local Rule 7.1.

Respectfully Submitted this 19th day of March, 2024.

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ATTORNEYS FOR INTERVENOR NATIONAL SHOOTING
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CERTIFICATE OF SERVICE

I hereby certify that on March 19, 2024, I filed the foregoing via the Court's ECF filing system, which served a copy to all counsel of record.

*/s/ John Parker Sweeney*_____

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INTRODUCTION

The National Shooting Sports Foundation, Inc. (“NSSF”) submits this memorandum in support of its renewed motion to intervene pursuant to Federal Rule of Civil Procedure 24(a) and (b) to oppose public disclosure of agency records under the Freedom of Information Act, 5 U.S.C. § 552.

NSSF is the trade association for the firearms industry. NSSF’s membership includes thousands of federally licensed firearms manufacturers, distributors, and retailers, among others. NSSF’s federally licensed members are required by federal law to provide the Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”) confidential information about the acquisition and disposition of firearms. NSSF’s members – and NSSF itself – have interests in protecting that confidential information from public disclosure or from government use other than criminal law enforcement. NSSF respectfully renews its motion to intervene to protect these interests.

STATEMENT OF FACTS

Plaintiff Mayor and City Council of Baltimore’s (“Baltimore”) FOIA requests seek the release of four broad categories of documents:

The first request seeks “[r]ecords sufficient to identify the federally licensed firearms dealers that are the top ten sources of firearms recovered in Baltimore from 2018 through 2022,” as well as specific information about those firearms, including the time-to-crime of those firearms and the circumstances under which each firearm was recovered. (Doc. 1-1 at 2).

The second request seeks information about firearms recovered in Baltimore between 2018 and 2022 in connection with homicide, attempted homicide, aggravated assault, robbery, suicide, and attempted suicide.

The third and fourth requests seek all “[u]nderlying data **related to**” a report produced by ATF earlier this year on Baltimore crime guns traced and recovered from 2017 to 2021. (Doc. 1-1 at 3) (emphasis added). Among other things, the report identifies: (1) the top five source states and the top five source cities for crime guns traced and recovered in Baltimore; and (2) the top five recovery states and top five recovery cities for crime guns sourced to Baltimore.

The ATF denied Plaintiff’s request on September 30, 2023. (Doc. 1-2). Plaintiff filed suit, alleging that the ATF wrongfully withheld non-exempt responsive agency records in violation of the FOIA. (Doc. 1 at 14, ¶ 55).

On January 1, 2023, NSSF moved to intervene. (Doc. 11). Baltimore responded on February 7, 2024 (doc. 17), and NSSF replied on February 28, 2024 (doc. 23).

The Court denied NSSF’s initial motion to intervene on March 4, 2024. The Court found that it could not “on the present record, assess the nature of the alleged injury that NSSF invokes in support of its derivative standing” and “as the record now stands, the Court cannot determine whether disclosure of the records sought in this case would injure an NSSF member and, if so, how that member would be injured.”

NSSF now submits this renewed motion to intervene.

ARGUMENT

I. NSSF is entitled to intervene as of right under Rule 24(a).

Federal Rule of Civil Procedure 24(a) sets out the requirements for intervention as of right. Fed. R. Civ. P. 24(a)(2). Rule 24(a) entitles NSSF to intervene as of right where it shows: (1) that its motion is timely; (2) that it has an interest in the action; (3) that final disposition of the action “may as a practical matter impair or impede [NSSF’s] ability to protect that interest”; and (4) that the existing parties do not adequately represent NSSF’s interests. *Fund for Animals, Inc. v. Norton*,

322 F.3d 728, 731 (D.C. Cir. 2003) (citation omitted). NSSF must also demonstrate that it has Article III standing. *Bldg. & Constr. Trades Dep't, AFL-CIO v. Reich*, 40 F.3d 1275, 1282 (D.C. Cir. 1994). NSSF has standing and meets all four requirements under Rule 24(a).

A. NSSF has Article III standing to sue on behalf of its member FFLs.

A trade association has standing to bring suit on its members' behalf when: (1) its members would have standing in their own right; (2) "the interests it seeks to protect are germane to the organization's purpose"; and (3) "neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Hunt v. Wash. State Apple Adver. Comm'n*, 432 U.S. 333, 343 (1977); *see also Food Marketing Inst. v. Argus Leader Media*, 139 S. Ct. 2356, 2362 (2019). And to establish standing under Article III, an NSSF member would have to show: (1) injury-in-fact, (2) causation, and (3) redressability. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992).

In response to the Court's concerns in its March 4, 2024 order that it could not, "on the present record, determine whether disclosure of the records sought in this case would injure an NSSF member," NSSF has submitted in support of its renewed motion to intervene extensive affirmative proof demonstrating its Article III standing to intervene, including individual declarations and a summary of survey responses from 302 of its member FFLs detailing how they will be harmed by ATF's disclosure of the information sought by Baltimore's FOIA requests. (*See* Summary of NSSF Member Survey Responses, attached as Exhibit "1" to Salam Fatohi Declaration, itself attached as Exhibit "A"). The responses from specific, individual NSSF members, including those submitting personal declarations, demonstrate that the release of the ATF trace data Baltimore's FOIA requests seek would cause one or more NSSF members to suffer one or more of the following injuries in fact.

First. The release of any information related to any crime-gun trace harms the reputational and economic interests of all FFLs – regardless of whether a particular FFL has any connection to the trace at issue – by stigmatizing FFLs generally as facilitators of illegal gun trafficking and gun crimes.

Reputational harm and stigmatization are legally cognizable injuries sufficient to confer standing. For example, in *Meese v. Keene*, the Supreme Court held that a senator who wished to screen films produced by a foreign company had standing to challenge a law requiring the identification of such films as foreign “political propaganda” because that label could harm his reputation with the public and hurt his chances at reelection. 481 U.S. 465, 473–74 (1987). The senator, in other words, had standing to challenge an unwanted association with an undesirable label. *See also, e.g., Parsons v. U.S. Dep’t of Justice*, 801 F.3d 701, 712 (6th Cir. 2015) (“Stigmatization also constitutes an injury in fact for standing purposes.”) (citing *Heckler v. Matthews*, 465 U.S. 728, 739–40 (1984)); *Turkish Coal. Of Am., Inc. v. Bruininks*, 678 F.3d 617, 622–23 (8th Cir. 2012) (cognizable injury to reputation pled resulting from defendant labeling plaintiff’s website “unreliable”); *Foretich v. United States*, 351 F.3d 1198, 1213 (D.C. Cir. 2003) (“Case law is clear that where reputational injury derives directly from an unexpired and unretracted government action, that injury satisfies the requirements of Article III standing to challenge the action.”); *Doe v. Nat’l Bd. of Med. Exam’rs*, 199 F.3d 146, 153 (3d Cir. 1999) (holding that a student had standing to challenge a rule requiring that he be identified as “disabled” because such a label could harm the perception of him by “people who can affect his future and his livelihood”).

The record evidence in this case demonstrates that the release of ATF trace data results in concrete reputational and economic harm.

The ATF recently released a list of FFLs participating in the ATF’s Demand Letter 2 program. (See Doc. 23 at 12). That data has been used to wrongly label all FFLs – not only those participating in the Demand Letter 2 program – as facilitators of gun trafficking and other criminal activity.¹ See, e.g., *The Suppliers of America’s Gun Violence Epidemic*, BradyUnited.org, <https://www.bradyunited.org/reports/americas-gun-violence-suppliers> (last visited February 27, 2024); see also Nick Penzenstadler, *Gun shops that sell the most guns used in crime revealed in new list*, USA Today, February 15, 2024, <https://www.usatoday.com/story/news/investigations/2024/02/15/shops-selling-most-crime-guns-revealed-atf/72581120007/>.²

The NSSF member survey demonstrates that the reputational harm resulting from the release of ATF trace data that is then amplified through the media as seen with the Brady Report and USA Today article extends to all FFLs – not only those specifically identified in connection with a particular trace or ATF program. The survey responses overwhelmingly demonstrate that:

¹ The Brady Report and the USA Today article are merely specific examples of the ways in which FFLs are stigmatized as inherent facilitators of gun crimes. That risk of harm, exacerbated in recent years by the news media and public interest groups, arises from the release of ATF trace data, which both the ATF and Congress have explicitly recognized. The ATF has repeatedly “emphasize[d] that the appearance of a Federal firearms licensee (FFL) or a first unlicensed purchaser of record in association with a crime gun or in association with multiple crime guns in no way suggests that either the FFL or the first purchaser has committed criminal acts.” See, e.g., Bureau of Alcohol, Tobacco, Firearms and Explosives, *Crime Gun Trace Analysis Report: The Illegal Youth Firearms Market in Detroit* 17 (February 1999). And the Firearm Owners’ Protection Act and the 2012 Tiahrt Rider heavily restrict the use and disclosure of information and documents produced by FFLs to the ATF, one such restriction being that any information or document submitted by FFLs to the ATF “shall not be subject to subpoena or other discovery.” See Consolidated and Further Continuing Appropriations Act, 2012, Pub. L. No. 112-55, 125 Stat. 552, 609–10 (2011).

² This disclosure was made notwithstanding the clear text of the Tiahrt rider, which “prohibits the expenditure of appropriated funds ‘to disclose...any information required to be kept by licensees pursuant to 923(g) or required to be reported pursuant to paragraphs (3) and (6) of such section.’” *Brady Center to Prevent Gun Violence v. U.S. Dep’t of Just.*, 410 F. Supp. 3d 225, 241 (D.D.C. 2019) (quoting § 923, 125 Stat. at 609–10) (Moss, J.). Such a disclosure underscores the need for NSSF to intervene in this matter to protect the interests of its members.

(1) “the release of crime-gun trace data create[s] the misimpression that all FFLs, not just those identified in connection with the released data, are inherently connected to gun trafficking, illegal straw purchases, and gun crimes”; (2) that misimpression causes “reputational harm to the firearms industry as a whole”; (3) industry-wide reputational harm, in turn, causes reputational harm to individual FFLs, even those “never identified as an FFL connected to a particular crime-gun trace”; and (4) reputational harm, in all forms, causes the following concrete economic harms to individual FFLs: (A) decreased sales, (B) increased costs associated with an increased risk of litigation by private plaintiffs and/or state or local governments, and (C) increased costs associated with increased regulatory scrutiny. (*See* Summary of NSSF Member Survey Responses, Exhibit “1” to Exhibit “A”).

One of NSSF’s member FFLs reported the release of trace data “serves no purpose other than to create a false impression in the mind of the public regarding the involvement of FFL’s in the criminal use of firearms,” and that “we take our responsibilities seriously and work very hard to maintain an exemplary reputation,” which is challenging enough without “having to worry about managing a reputational crisis.” Another member echoed that sentiment, emphasizing the concrete economic impact of those reputational harms: “if our shop’s name or even the [] shops from a specific state, region or locality, was [sic] included in such releases, I feel it would be detrimental to our overall financial bottom line.” (*Id.*) Other member FFLs reported that the release of ATF trace data “criminaliz[es] a very large industry” and “cast[s] doubt on the trustworthiness of licensees in general” and “any and all processes developed” by the ATF. (*Id.*) And one member FFL reported that a local news article about the released Demand Letter 2 data “has brought concerned comments from customers.” (*Id.*)

Approximately 90% of survey respondents answered that the release of any trace data reputationally and economically harms all FFLs, regardless of any one FFL's connection to the traces at issue. (*See* Summary of NSSF Member Survey Responses at 3). And the declarations from NSSF's member FFLs report the same risk of harm to their businesses resulting from the release of the information sought in Baltimore's FOIA requests. (*See* Declaration of Maryland FFL #1, attached as Exhibit "B" at 2–3, ¶ 11 ("The public disclosure of the information sought by the City of Baltimore's FOIA requests would harm me and my business. Disclosure would cause me and my business reputational harm" and would harm me and my business "through decreased firearm sales."); Declaration of Ohio FFL, attached as Exhibit "C" at 3, ¶ 13 ("Any misimpression about the general connection between all FFLs and gun trafficking, illegal straw purchases, and gun crime will cause me and my business reputational harm."); Declaration of Maryland FFL #2, attached as Exhibit "D" at 3, ¶ 12 (same)).³

All of which puts this case squarely within the associational standing holding from the Supreme Court's decision in *NAACP v. State ex rel. Patterson*, 357 U.S. 449 (1958). At issue in *Patterson* was whether the NAACP had associational standing to contest the disclosure of the names of the NAACP's Alabama members. In holding that the NAACP had associational standing, the Court noted that associational standing is most appropriate where the "rights of persons who are not immediately before the Court could not be effectively vindicated except through an appropriate representative before the Court." *Id.* at 459

The harm that Baltimore's FOIA request threatens is, as in *Patterson*, one of identification and association (or, in more plain terms, name and shame). The whole point of any challenge to

³ NSSF has filed a motion to file under seal those three declarations. This memorandum in support will maintain the anonymity of the declarants pending resolution of NSSF's motion to file under seal.

the FOIA requests is to avoid the public disclosure of FFLs who have any connection to a firearm recovered in connection with criminal activity in Baltimore. By filing on their own behalf, any intervenor FFLs would need to take a formal legal position that they engaged in transactions involving firearms recovered in connection with Baltimore crime. As in *Patterson*, “[t]o require that [the right to non-disclosure] be claimed by the [FFLs] themselves would result in nullification of the right at the very moment of its assertion.” 357 U.S. at 459. And as in *Patterson*, the NSSF’s intervention in this case protects its members from precisely that sort of Catch-22.⁴

Under D.C. Circuit precedent, “anonymity [of the names of NSSF’s member FFLs] is no barrier to standing on this record.” *Advocates for Highway & Auto Safety v. Fed. Motor Carrier Safety Admin.*, 41 F.4th 586, 594 (D.C. Cir. 2022). That is because “[n]aming members adds no essential information bearing on the injury component of standing” so long as “everything else about what [the association] alleged was real and showed that [the association’s members] possessed the kind of personal stake necessary for standing.” *Id.* (quoting *B.R. v. F.C.S.B.*, 17 F.4th 485, 493–494 (4th Cir. 2021)).

Second. There is a substantial likelihood that one or more of NSSF’s member FFLs will be identified in connection with one or more traces responsive to Baltimore’s FOIA requests.

Baltimore’s FOIA requests seek all “[u]nderlying data **related to**” a report produced by ATF earlier this year on Baltimore crime guns traced and recovered from 2017 to 2021. (Doc. 1-1 at 3) (emphasis added). Among other things, the report identifies: (1) the top five source states and

⁴ In its March 4 Order denying NSSF’s motion to intervene, the Court noted that a particular FFL “might not even oppose the disclosure.” While that is theoretically possible, it is likely that there were many Alabama members of the NAACP who would have been quite proud to be named as members of that organization. However, the fact remains that the purpose of seeking those names was the transparent effort of Alabama authorities to diminish the efficacy of the NAACP by subjecting its members in general to “public hostility.” *Patterson*, 357 U.S. at 462.

the top five source cities for crime guns traced and recovered in Baltimore; and (2) the top five recovery states and top five recovery cities for crime guns sourced to Baltimore. (*See id.*; *see also* ATF Report on Baltimore Crime Guns from 2017 to 2021, attached as Exhibit “E”).

The scope of those requests is expansive. The ordinary meaning of the words “related to” is “a broad one,” denoting any connection or reference between two things. *See Morales v. TransWorld Airlines, Inc.*, 504 U.S. 374, 383 (1992) (defining phrase to mean “having a connection with or reference to”); *see also FMC Corp. v. Holliday*, 498 U.S. 52, 58 (1990) (the phrase “related to” is “conspicuous for its breadth”). Baltimore has requested all underlying data related to the ATF’s determination of the top five source cities and states for crime guns traced and recovered in or sourced to Baltimore between 2017 and 2021. As a result, Baltimore has requested any underlying data having any connection with or reference to the ATF’s determinations, among others, that:

- Between 2017 and 2021, 13,336 crime guns were traced and recovered in Baltimore, only 8,057 of which were traced to known purchasers;
- Maryland was the source of 3,140 of the crime guns traced to known purchasers;
- Baltimore was the source of 1,435 of the crime guns traced to known purchasers;
- Virginia was the source of 1,248 of those crime guns traced to known purchasers;
- Georgia was the source of 566 of those crime guns traced to known purchasers;
- Pennsylvania was the source of 487 of those crime guns traced to known purchasers; and
- North Carolina was the source of 422 of those crime guns traced to known purchasers.

(*See* Exhibit “E” at 3–4).

Given the specificity of the ATF report to which Baltimore’s third and fourth FOIA requests refer, and the broad wording of those requests, Baltimore has quite literally requested every trace for every crime gun with a known purchaser that was recovered in Baltimore between 2017 and 2021.

Among the respondents to NSSF's member survey are Maryland-based FFLs who have received trace requests from the ATF between 2017 and 2021. The respondents also include FFLs from Florida, Virginia, Georgia, Pennsylvania, and North Carolina who received, between 2017 and 2021, trace requests from the ATF. That means NSSF's members include one or more FFLs who are virtually certain to be included in connection to at least one of the traces Baltimore seeks as part of its third and fourth FOIA requests.

Those FFLs would have standing to intervene on their own behalf to avoid two distinct injuries in fact.

The first is the FFLs' legally protectable privacy and/or proprietary interests in the sensitive and confidential information contained in the acquisition and disposition records disclosed to the ATF as part of any trace request. *See Food Marketing Inst. v. Argus Leader Media*, 139 S. Ct. 2356, 2362–66 (2019) (holding that information submitted to the government is “confidential” for purposes of FOIA if it is “customarily kept private” by the submitting entity and whether the information was provided to the government with an assurance of privacy); *Pub. Citizen Health Research Grp. v. FDA*, 185 F.3d 898, 900 (D.C. Cir. 1999) (recognizing that the submitter of documents to a government agency has a cognizable interest in maintaining the confidentiality of those documents). (*See also* Exhibit “B” (NSSF member FFL declarant stating that his business keeps acquisition and disposition records “strictly confidential” and “have never publicized any of th[at] information to any third party other than law enforcement when required to by law”); Exhibit “C” (same); Exhibit “D” (same)).

Congress recognized these protectable interests in the Firearm Owners' Protection Act of 1986, which prohibits the federal government from acquiring or maintaining these firearm acquisition and disposition records except in the course of a criminal investigation. 18 U.S.C. §

926(a)(3); *see also* Bureau of Alcohol, Tobacco, Firearms and Explosives, Fact Sheet: National Tracing Center 1 (2023) (“ATF’s National Tracing Center is only authorized to trace a firearm for a law enforcement agency involved in a bona fide criminal investigation.”). Similarly, a provision of the Consolidated and Further Continuing Appropriations Act of 2012, commonly referred to as the “Tiahrt Rider,” assures every entity producing information that the ATF will protect that information from public disclosure. *See* Consolidated and Further Continuing Appropriations Act, 2012, Pub. L. No. 112-55, 125 Stat. 552, 609–10 (2011) (codified at 18 U.S.C. § 923 note) (“[N]o person or entity . . . shall knowingly and publicly disclose such data.”); *see also Food Marketing Inst.*, 139 S. Ct. at 2362–63 (concluding that a characteristic of information that is “confidential” for FOIA purposes is that it is submitted to agency with assurances that the agency will keep the information private); *Brady Ctr to Prevent Gun Violence v. U.S. Dep’t of Just.*, 410 F. Supp. 3d 225, 241 (D.D.C. 2019) (quoting 125 Stat. at 609–10) (Moss, J.) (noting that the clear text of the Tiahrt rider “prohibits the expenditure of appropriated funds ‘to disclose . . . any information required to be kept by licensees pursuant to 923(g) or required to be reported pursuant to paragraphs (3) and (6) of such section’”).

The second is the FFLs’ legally protectable interest in avoiding the public incorrectly associating the FFLs with gun trafficking and other crimes. (*See* Exhibit “B” (NSSF member FFL stating that the release of trace data would cause “decreased firearm sales”). Baltimore does not dispute the fact that the Supreme Court has held that the public disclosure of information that incorrectly associates a party with criminal activity is an injury sufficient to confer standing. (*See* Doc. 21 at 12 (“To be sure, an injury suffered because of information disclosure can provide the basis for standing.”) (citing *TransUnion, LLC v. Ramirez*, 594 U.S. 413, 432 (2021))). In *TransUnion*, the plaintiffs sued a credit reporting agency for disseminating to third-parties credit

reports that had the potential to create the misimpression that the plaintiffs were associated with terrorist groups and serious criminal activity. *Id.* at 431–32. The Court held that the plaintiffs had standing to sue because “[t]he harm from being labeled a ‘potential terrorist’ bears a close relationship to the harm from being labeled a ‘terrorist,’” and the harm from being labelled a “terrorist . . . bears a sufficiently close relationship to the harm from a false and defamatory statement.” *Id.* at 433.

Baseless assumptions about an FFL engaging in criminal activity are similarly injurious, and under *TransUnion* the imminent disclosure of information sought in Baltimore’s FOIA requests is an injury-in-fact sufficient to confer standing. And that harm is particularized to NSSF’s member FFLs. *See Advocates for Highway & Auto Safety v. Fed. Motor Carrier Safety Admin.*, 41 F.4th 586, 592–93 (D.C. Cir. 2022) (holding that intervenor had associational standing based on anonymous survey of its members showing that at least one of intervenor’s members likely would be injured by challenged action).

A. NSSF has Article III standing to sue on its own behalf.

The injuries-in-fact that will result from the disclosure of ATF trace data are not limited to NSSF’s member FFLs. The NSSF itself will suffer an injury in fact as a result of the potential *stare decisis* and persuasive effects of a decision in favor of Baltimore in this case.

The NSSF, as the firearm industry’s trade association, represents the interests of countless FFLs, one of which is avoiding the “false impression in the mind of the public regarding the involvement of FFLs in the criminal use of firearms.” (*See Summary of NSSF Member Survey Responses* at 4). One way the NSSF does so is through representative litigation on behalf of its member FFLs in cases like these. An adverse ruling in favor of Baltimore in this case will spawn future FOIA requests and suits seeking ATF trace data, all the while increasing the likelihood that

those requests and lawsuits are successful and increasing the costs to NSSF of responding to the proliferation of new requests and lawsuits. *See NAACP v. State of Ala. ex rel. Patterson*, 357 U.S. 449, (1958) (“The reasonable likelihood that the Association itself through diminished financial support and membership may be adversely affected if production is compelled is a further factor pointing towards our holding that petitioner has standing to complain of the production order on behalf of its members.”); *Pollard v. Roberts*, 283 F. Supp. 248, 258 (E.D. Ark. 1968) (“Disclosure or threat of disclosure well may tend to discourage both membership and contributions thus producing financial and political injury to the party affected.”). (*See also* Exhibit “C” (“If this data is made public, there is no limit to future request of similar data by other cities, states, or advocacy groups.”)).

Denying NSSF’s request to intervene in this case would impair its ability to protect in future cases its member FFLs’ legally protectable privacy and/or proprietary interests in the sensitive and confidential information disclosed to the ATF as part of any trace request, as well as its ability in future cases to protect its member FFLs’ legally protectable interest in avoiding the public incorrectly associating the FFLs with gun trafficking and other crimes. *See, e.g., Wineries of the Old Mission Peninsula Assoc. v. Township of Peninsula*, 41 F.4th 767, 774 (6th Cir. 2022) (“This court has already acknowledged that potential stare decisis effects can be a sufficient basis for finding an impairment of interest.”); *Swinton v. SquareTrade, Inc.*, 960 F.3d 1001, (8th Cir. 2020) (“The risk that the movants will be bound by an unsatisfactory class action settlement’ satisfies the impairment requirement.”) (quoting *Tech. Training Assocs. v. Buccaneers Ltd. P’Ship*, 874 F.3d 692, 696–97 (11th Cir. 2017)); *Seneca Resources Corp. v. Township of Highland*, 863 F.3d 245, 256–57 (3d Cir. 2017) (an intervenor may show a tangible threat to its legal interests if “a determination of the action in the applicant's absence will have a significant stare decisis

effect”). *See also Little Rock School Dist. v. Pulaski County Special School Dist. No. 1*, 738 F.2d 82, 84 (8th Cir. 1984) (clarifying that there need not be “certainty that their interests will be impaired,” only that disposition “may” impair interests). And the impairment of NSSF’s ability to do so in this case and future cases is an injury in fact that is particular to NSSF and sufficient to directly confer standing to it. *See, e.g., Sierra Club v. Espy*, 18 F.3d 1202, 1207 (5th Cir. 1994) (“The issue of whether the NFMA bars even-aged logging affects the movants and, because of the precedential effect of the district court’s decision, an adverse resolution of the action would impair their ability to protect their interest.”).

The harm that would result in the potential *stare decisis* or persuasive effect of a ruling in Baltimore’s favor also brings this case within the ambit of *Patterson*. The interest in avoiding disclosure of trace data and the harms that result from disclosure is one held by each and every member FFL, so “all [NSSF] members are affected by” the challenged action in this case. 357 U.S. at 459. NSSF is therefore “the appropriate party” to intervene in this case “because it and its members are in every practical sense identical” for purposes of challenging disclosure of the trace data Baltimore seeks. *Id. Patterson* further supports NSSF’s intervention in this case because there is a “reasonable likelihood that [NSSF] itself through diminished financial support and membership may be adversely affected if [disclosure of the trace data] is compelled.” *Id.* at 459–60.

Ultimately, both on its own behalf or on behalf of its member FFLs, NSSF has met the requirements of Article III standing. And as to associational standing, protecting its members from injury flowing from producing information to the ATF is a core function of the NSSF – it is certainly, at minimum, a “germane” one. It also is not necessary for any individual NSSF member

to participate in this lawsuit because granting NSSF its requested relief will provide full redress to all NSSF members (and will be the most efficient use of judicial resources). Thus, NSSF has Article III standing to intervene in this case. *See Ctr. for Sustainable Economy v. Jewell*, 779 F.3d 588, 596–97 (D.C. Cir. 2015).

B. NSSF also meets the four requirements of Rule 24(a).

Rule 24(a) entitles NSSF to intervene as of right where it shows: (1) that its motion is timely; (2) that it has an interest in the action; (3) that final disposition of the action “may as a practical matter impair or impede [NSSF’s] ability to protect that interest”; and (4) that the existing parties do not adequately represent NSSF’s interests. *Fund for Animals, Inc.*, 322 F.3d at 731 (citation omitted).

First, NSSF’s motion to intervene is timely. To determine timeliness, this Court considers all relevant circumstances, including the proximity in time of the motion to intervene to the filing of the complaint, as well as any unfair prejudice existing parties would suffer as a result of intervention. *See Smoke v. Norton*, 252 F.3d 468, 471 (D.C. Cir. 2001).

NSSF filed this renewed motion to intervene within three months of Plaintiff filing its complaint, and it filed its original motion to intervene within two months of Plaintiff’s complaint and before the ATF filed its answer. (*See* Docs. 1, 11, 14). This Circuit has routinely determined that such a close temporal proximity supports a finding of timeliness. *See, e.g., Fund for Animals*, 322 F.3d at 735 (finding motion to intervene was timely because it was filed “less than two months after the plaintiffs filed their complaint”). And while “measuring the length of time passed is not in itself the determinative test,” *Roane v. Leonhart*, 741 F.3d 147, 151 (D.C. Cir. 2014) (internal quotation marks and citation omitted), intervention will not unfairly harm Plaintiff or the ATF. As of now, there has been no discovery or substantive progress in the case. *Cf. Navistar, Inc. v.*

Jackson, 840 F. Supp. 2d 357, 361 (D.D.C. 2012) (finding intervention motion timely when it was filed “before any discovery or substantive progress had been made in the case”). And the ATF’s motion for summary judgment is not due until April 15, 2024, while the Court has set a deadline of April 21, 2024 for NSSF to file an amicus brief in opposition to disclosure – NSSF’s participation will not, in other words, delay this case or any briefing deadlines. Intervention will not prejudice – unfairly or otherwise – any party, and NSSF’s motion is timely.

Second, NSSF has a cognizable interest in the subject of this action for the same reasons it has standing. *See Fund for Animals*, 322 F.3d at 735 (“Our conclusion that the NRD has constitutional standing is alone sufficient to establish that the NRD has ‘an interest relating to the property or transaction which is the subject of the action[.]’” (quoting Fed. R. Civ. P. 24(a)(2))).

Third, the disposition of Plaintiff’s FOIA suit would injure the privacy and/or proprietary interests of NSSF’s members and their customers and have the practical effect of impairing the NSSF’s ability to preserve the confidentiality of its members’ sensitive information. Injury is “especially obvious in FOIA litigation because if the plaintiff succeeds, the public release of the requested materials is both imminent and irreversible.” *100Reporters, LLC v. U.S. Dep’t of Justice*, 307 F.R.D. 269, 279 (D.D.C. 2014); *see also Swan v. SEC*, 96 F.3d 498, 500 (D.C. Cir. 1996) (“Once records are released, nothing in FOIA prevents the requester from disclosing the information to anyone else. The statute contains no provisions requiring confidentiality agreements or similar conditions.”).

The ATF explicitly recognizes the risk of significant harm associated with the public disclosure of gun trace information. It has repeatedly “emphasize[d] that the appearance of a Federal firearms licensee (FFL) or a first unlicensed purchaser of record in association with a crime gun or in association with multiple crime guns in no way suggests that either the FFL or the first

purchaser has committed criminal acts.” *See, e.g.*, Bureau of Alcohol, Tobacco, Firearms and Explosives, *Crime Gun Trace Analysis Report: The Illegal Youth Firearms Market in Detroit* 17 (February 1999).

So too did Congress. As discussed *supra*, the Firearm Owners’ Protection Act and the 2012 Tiahrt Rider heavily restrict the use and disclosure of information and documents produced by FFLs to the ATF. One such restriction is that any information or document submitted by FFLs to the ATF “shall not be subject to subpoena or other discovery.” 125 Stat. at 610.

Fourth, the ATF and Plaintiff do not adequately represent NSSF’s interest in protecting the confidentiality of its members’ sensitive information. The adequate representation “requirement of [Rule 24(a)] is satisfied if the applicant shows that representation of his interest ‘may be’ inadequate; and the burden of making that showing should be treated as minimal.” *Trbovich v. United Mine Workers of Am.*, 404 U.S. 528, 538 n.10 (1972); *accord Fund for Animals*, 322 F.3d at 735–36. And in the FOIA context, the D.C. Circuit has “often concluded that governmental entities do not adequately represent the interests of aspiring intervenors.” *Fund for Animals*, 322 F.3d at 736. A plaintiff’s interest lies in disclosure, the agency’s interest lies in appropriately responding to the plaintiff’s request, and the intervenor’s interest lies in protecting its confidential information. *Appleton v. F.D.A.*, 310 F. Supp. 2d 194, 197 (D.D.C. 2004); *see also Fund for Animals*, 322 F.3d at 737 (explaining that “partial congruence of interests . . . does not guarantee the adequacy of representation”). NSSF has satisfied the inadequate representation requirement of Rule 24(a).

What’s more, as the Court noted in its March 4, 2024 Order, the ATF has not asserted that its withholding of the requested trace data was justified under FOIA Exemptions 4 and 6. (*See also* Doc. 1-2 at 2). Instead, the ATF has taken the position that the requested trace data is precluded

from release only under FOIA Exemption 3 and the Tiahrt Rider. NSSF and its member FFLs have an interest in protecting this information that is demonstrably distinct from the ATF's. This data constitutes both "trade secrets or commercial or financial information that is confidential or privileged," and "[i]nformation that, if disclosed, would invade another individual's personal privacy." ATF's position makes it clear that some other party must protect this information from being disclosed on those bases. ATF's failure to assert all plausible defenses to disclosure demonstrates the inadequacy of its representation of the interests of NSSF and its members in avoiding disclosure.

II. NSSF should be permitted to intervene under Rule 24(b).

In the alternative, this Court should permit NSSF to intervene under Rule 24(b), which allows the Court considerable discretion to permit anyone to intervene who "has a claim or defense that shares with the main action a common question of law or fact." Fed. R. Civ. P. 24(b)(1)(B). When determining whether to allow permissive intervention, courts "must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights." *100Reporters*, 307 F.R.D. at 286 (quoting Fed. R. Civ. P. 24(b)(3)). All requirements for permissive intervention are met in this case.

First, as noted above, NSSF's motion is timely.

Second, NSSF's position that the Court should not order public disclosure of confidential and sensitive information share common questions of law and fact with both Plaintiff's claims and ATF's anticipated defenses. ATF has already denied Plaintiff's FOIA request on the ground that "the Tiahrt Rider prohibits disclosure of the information under Exemption 3 of FOIA." (*See* Doc. 1 at 4, ¶ 11). While NSSF agrees with ATF that Plaintiff is not entitled to the information sought in its FOIA request, NSSF's arguments against disclosure are not limited to Exemption 3 of FOIA

or the Tiahrt Rider, including in addition and without limitation Exemptions 4 and 6 as well. The basic overlap between NSSF's and ATF's positions about the propriety of Plaintiff's FOIA requests, however, is more than sufficient to meet Rule 24(b)'s commonality requirement. *See 100Reporters*, 307 F.R.D. at 286 (finding commonality requirement met where intervenor, a private party, and federal agency both opposed disclosure of information sought in Plaintiff's FOIA request). And NSSF's arguments and interest in preventing disclosure are different from, and more robust than, those of ATF, militating towards allowing permissive intervention for NSSF.

Finally, intervention at this early stage will not cause undue delay or prejudice because, as discussed above, the Court has established a briefing schedule for the parties to file motions for summary judgment that will not be delayed or interfered with by allowing NSSF to intervene. *Atl. Refinishing & Restoration, Inc. v. Travelers Cas. & Sur. Co. of Am.*, 272 F.R.D. 26, 29 (D.D.C. 2010) (finding that permissive intervention would not delay case or prejudice existing parties when motion to intervene filed before the scheduling of the initial status hearing).

CONCLUSION

For the reasons above, NSSF respectfully requests that this Court grant its renewed motion to intervene in this action.

Respectfully submitted this 19th day of March 2024,

BRADLEY ARANT BOULT CUMMINGS LLP

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ATTORNEYS OF RECORD FOR INTERVENOR
NATIONAL SHOOTING SPORTS FOUNDATION, INC.

CERTIFICATE OF SERVICE

I hereby certify that on March 19, 2024, I caused the foregoing to be filed via the Court's ECF filing system, which automatically served a copy to all counsel of record.

/s/ John Parker Sweeney _____

6. Among NSSF's members are FFLs operating in Baltimore County, Maryland, and other areas near Baltimore City. Also included among NSSF's members are FFLs whose principal places of business are located outside Baltimore City and the surrounding areas but still regularly conduct firearms transactions with Baltimore City and other Maryland residents. Those licensed retailers are legally eligible under state and federal laws to acquire, possess, purchase, repair, supply, and/or transfer (sell) to non-licensees (consumers) firearms, firearm attachments, accessories, and/or firearm parts. They do so, conducting regular firearms transfers with Baltimore City and other Maryland residents, rifles, and shotguns to residents of other states provided the sale would be lawful in both Maryland and the purchasers state of residence.

7. I am familiar with the requirements that federal law imposes on licensed retailers, including the requirement that they maintain an acquisition and disposition record ("A&D record") for any firearm they take into their inventory (acquisition) and every firearm they dispose of (disposition) including the transfer to a non-licensee.

8. I am familiar with the requirement that federal law imposes on licensed retailers to complete and maintain a Firearms Transaction Record (ATF Form 4473) for any firearm they transfer to a non-licensee.

9. I know that federal law imposes on licensed retailers the requirement that they respond in a timely manner to trace requests from the federal Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF") and to provide information from, and access to, their A&D record and ATF Form 4473s.

10. Those records include confidential personal information of any person or entity with whom an FFL is doing business, including personally identifying information like their full name, race and ethnicity, sex, date of birth, social security number, home address, as well as

confidential and sensitive business and commercial information, and of course confidential information about the firearm(s) involved in the transaction.

11. I am also familiar with ATF “crime gun traces” and the information the ATF seeks from licensed retailers as part of a trace, information that includes the confidential and sensitive information identified in the preceding paragraph.

12. I know that when a licensed retailer is contacted in connection with a trace request ATF does not disclose to the licensed retailer any information about the circumstances surrounding the reason why the firearm is being traced. ATF does not inform the licensed retailer where the subject firearm was recovered, or which law enforcement agency has requested the trace request or for what purpose. The only information ATF provides to the licensed retailer is the make, model and serial number of the subject firearm so that the licensed retailer can search their A&D record and ATF Form 4473s to identify the purchaser to whom the firearm was transferred (sold).

13. I am also familiar with the ATF firearm tracing process. To carry out its firearms tracing functions, ATF maintains the Firearms Tracing System, which is a law enforcement information database. The Firearms Tracing System is maintained at the National Tracing Center (“NTC”). In response to requests from law enforcement, the NTC provides ATF field agents and other law enforcement agencies with Firearms Trace Result Reports commonly referred to as “trace data,” as well as investigative leads obtained from the traced firearm. Firearms tracing begins when a law enforcement agency discovers a firearm at a crime scene and seeks to learn the origin or background of that firearm in order to develop law enforcement investigation leads. ATF tracing is a process of tracking the movement of a firearm from its manufacture or import to its introduction into U.S. commerce by the manufacturer, importer through the distribution chain, or

wholesaler/retailer to identify an unlicensed purchaser. That information may help link a suspect to a firearm in a criminal investigation and identify potential illegal firearm traffickers.

14. The City of Baltimore is located within the State of Maryland.

15. I have reviewed and am familiar with ATF Firearms Trace Data: Maryland – 2022, Data Source: Firearms Tracing System, January 1, 2022 – December 31, 2022, available at <https://www.atf.gov/resource-center/firearms-trace-data-maryland-2022#source-stateslast> reviewed on March 15, 2024). The report lists the “Top 15 Source States for Firearms with a Maryland Recovery.”

16. I am also familiar with a 2022 ATF Report on trace data for crime guns recovered in Baltimore between 2017 and 2021. According to the report, for crime guns traced and recovered in Baltimore between 2017 and 2021, the top five source states were: Maryland, Virginia, Georgia, Pennsylvania, and North Carolina.

17. In my role as NSSF’s Research Director, in March of 2024 I oversaw a survey of NSSF licensed retail members (FFLs) in the following states: Maryland, Virginia, Georgia, North Carolina, Pennsylvania, South Carolina, West Virginia, Ohio, Florida, Texas, Delaware, Alabama, Tennessee, and Kentucky.¹

18. The survey asked the NSSF’s member FFLs the following questions:

- a. Are you still operating as a federally licensed firearms retailer?
- b. In which state is your FFL operating?

¹ I selected these states because they, along with the District of Columbia, are the top 15 sources of firearms traced and recovered in Maryland for 2022. The District of Columbia was not selected for purposes of the survey because NSSF has no FFL members in D.C.

- c. Since 2017, have you received trace requests from ATF for firearms lawfully sold to non-licensees?
- d. Do you maintain strict confidentiality of all acquisition and disposition records, including ATF Form 4473s, for all firearms in your inventory, except when disclosure is required by state or federal law, e.g., responding to an ATF trace request?
- e. Would being publicly identified as an FFL connected to one or more traces create the misimpression that you or your business engaged in criminal or other wrongdoing?
- f. Would any such misimpression harm the reputation of your business in your community or with your customers? (Cause you or your business to suffer reputational harm)
- g. Would any such misimpression cause you or your business to suffer economic harm, such as decreased sales?
- h. Would any such misimpression cause you to incur increased costs as a result of increased regulatory oversight, e.g., an unscheduled compliance inspection by ATF or state licensing authorities?
- i. Would being publicly identified as an FFL connected to one or more traces cause you to fear being sued by private plaintiffs and/or state or local governments under theories like “public nuisance” or “aiding and abetting” sales to illegal straw purchasers?

- j. Would the release of crime-gun trace data create the misimpression that all FFLs, not just those identified in connection with the released data, are inherently connected to gun trafficking, illegal straw purchases, and gun crimes, causing reputational harm to the firearms industry as a whole?
- k. Would a general misimpression about the connection between FFLs and gun trafficking and gun crimes, and the resulting industry-wide reputational harm, harm you and your business, even if you and your business are never identified as an FFL connected to a particular crime-gun trace?
- l. Would you be more or less likely to voluntarily cooperate with ATF if ATF released your businesses name and information about lawful sales of firearms later recovered by law enforcement and traced?
- m. Recently, ATF for the first time ever, released to Brady United and USA Today the identify of dealers who are on ATF's Demand Letter 2 program. USA Today published an article titled "Gun shops that sell the most guns used in crime revealed in new list," a headline that leaves the reader with the impression that the named dealers are responsible for the criminal acquisition and misuse of traced firearms, and Brady United issued a press release. Was your business named in the ATF's FOIA release of the list of dealers on Demand Letter 2? Given the ATF's recent release of the Demand Letter 2 list, are you concerned about ATF releasing your name and information about trace requests you received?
- n. Would you be harmed if this information (the member FFL's name and information about trace requests it has received) was released?

- o. Was your business named in the ATF's FOIA release of the list of dealers on Demand Letter 2?
- p. Do you have an opinion about how the release of crime-gun trace data could harm your business, your reputation, or the firearms industry as a whole? If so, please give a short comment here:
- q. May we contact you about your responses to this survey?

19. NSSF received responses from 302 identified firearm retailer members during a one-week survey.

20. To protect the privacy interests of the NSSF's member FFLs, I have prepared, for each of the survey questions listed in paragraph 18 of this Declaration, a summary of the member FFLs' responses. A true and correct copy of that summary is attached to this Declaration as Exhibit "1."

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 18, 2024.



SALAM FATOHI

SUMMARY OF NSSF’S MEMBER FFL SURVEY RESPONSES

In March of 2024, NSSF issued a survey to its dealer (retailer) member FFLs. This Exhibit: summarizes the general demographic information of the survey respondents; summarizes the member FFLs’ responses to the below questions; and compiles specific comments from NSSF’s member FFLs detailing how the release of ATF trace data would harm them and the firearms industry more generally.

GENERAL RESPONDENT INFORMATION:

302 of NSSF’s member FFLs responded to the March 2024 survey. Of those respondents, 280 hold an active federal firearms license. Those FFLs currently operate in the following 14 states (the number of respondents operating in each state is denoted parenthetically):

Alabama (7)
Delaware (4)
Florida (40)
Georgia (19)
Kentucky (8)
Maryland (13)
North Carolina (23)
Ohio (22)
Pennsylvania (24)
South Carolina (8)
Tennessee (12)
Texas (76)
Virginia (21)
West Virginia (3)

SUMMARY OF RESPONSES TO SPECIFIC SURVEY QUESTIONS:

For each of the following survey questions, NSSF has summarized the number of “yes” and “no” responses. Please note that not all 302 respondents provided answers for all survey questions.

Are you still operating as a federally licensed firearms retailer?

Yes: 280

No: 22

Since 2017, have you received trace requests from ATF for firearms lawfully sold to non-licensees?

Yes: 203

No: 76

Would being publicly identified as an FFL connected to one or more traces create the misimpression that you or your business engaged in criminal or other wrongdoing?

Yes: 253

No: 27

Would any such misimpression harm the reputation of your business in your community or with your customers?

Yes: 251

No: 2

Would any such misimpression cause you or your business to suffer economic harm, such as decreased sales?

Yes: 252

No: 1

Would any such misimpression cause you to incur increased costs as a result of increased regulatory oversight, e.g., an unscheduled compliance inspection by ATF or state licensing authorities?

Yes: 237

No: 16

Would being publicly identified as an FFL connected to one or more traces cause you to fear being sued by private plaintiffs and/or state of local governments?

Yes: 251

No: 27

Would the release of crime-gun trace data create the misimpression that all FFLs, not just those identified in connection with the released data, are inherently connected to gun trafficking, illegal straw purchases, and gun crimes, causing reputational harm to the firearms industry as a whole?

Yes: 261

No: 16

Would a general misimpression about the connection between FFLs and gun trafficking and gun crimes, and the resulting industry-wide reputational harm, harm you and your business, even if you and your business are never identified as an FFL connected to a particular crime-gun trace?

Yes: 261

No: 16

Given the ATF's recent release of the Demand Letter 2 list, are you concerned about ATF releasing your name and information about trace requests you received?

Yes: 239

No: 41

Would you be harmed if this information (the member FFL's name and information about trace requests it has received) was released?

Yes: 257

No: 20

Recently, ATF for the first time ever, released to Brady United and USA Today the identify of dealers who are on ATF's Demand Letter 2 program. USA Today published an article titled "Gun shops that sell the most guns used in crime revealed in new list," a headline that leaves the reader with the impression that the named dealers are responsible for the criminal acquisition and misuse of traced firearms, and Brady United issued a press release. Was your business named in the ATF's FOIA release of the list of dealers on Demand Letter 2?

Yes: 23

No: 163

Unsure: 94

SPECIFIC COMMENTS FROM MEMBER FFLS:

The March 2024 survey also invited member FFLs to provide any other comments about "how the release of crime-gun trace data could harm your business, your reputation, or the firearms industry as a whole." The following are responses from individual NSSF member FFLs detailing how the release of ATF trace data would harm them and/or the firearms industry more generally:

“We were specifically named in [a local news] article (they are owned by USA Today), and this has brought concerned comments from customers. This WILL result in a decrease of new customer acquisition as it implied we were breaking the law, which we were not.”

“The public misinterprets this data, especially when reported on by local media. We recently experienced this with a[n] article released by [a local publication].”

“This [the release of trace data] would be hurt my business. No doubt about that!”

“I believe gun buyers would shy away from FFL gun dealers listed in the Newspaper or Nightly News.”

“While my business was not specifically listed, one of my father’s FFL retail businesses was listed. As we are in the same general area and our stores are closely aligned. Any further publications of this type of seemingly negative data could conceivably damage the reputation of my store, from perceived association.”

One respondent said that “misleading press headlines . . . 100%” harm his business.

“Due to news media slanting a certain way on firearms in general, yes there is a high probability that if our shops name or even the grouping shops from a specific state, region or locality, was included in such releases, I feel it would be detrimental to our overall financial bottom line.”

One respondent commented that the release of Demand Letter 2 data “criminaliz[es] a very large industry.”

One respondent commented that the release of trace data “cast[s] doubt on the trustworthiness of licensees in general,” as well as “any and all processes developed” by the ATF, both of which harm FFLs.

One Maryland-based respondent commented on the release of trace data that “[t]his information is misleading. Those that do not understand the reasons for firearm traces could be severely misled that this is only secondary to crime association.”

One Maryland-based respondent commented that the release of trace data “would make it look like I am putting guns in the hands of people who cannot own a gun and commit crimes with them” and that “I am doing this on purpose.”

One respondent commented that the release of trace data “serves no purpose other than to create a false impression in the mind of the public regarding the involvement of FFL’s in the criminal use of firearms,” that “we take our responsibilities seriously and work very hard to maintain an exemplary reputation,” which is challenging enough without “having to worry about managing a reputational crisis.”

One respondent commented that “[b]eing compliant with ATF is our number one goal. It’s frustrating that the information released [as part of the Demand Letter 2 publication] made it sound like we were not compliant and was detrimental to my business as the local tv station and website posted an article. Also being in a smaller market makes news travel fast and we have worked so hard with the community to maintain our local small business success. An article like that can destroy a local business.”

One respondent commented that the release of trace data will confuse the public because they do not “understand[] how the reporting works and will only think that shops are doing illegal transactions.”

Click [HERE](#) for an explanation of the data.

BALTIMORE, MD

FFL BURGLARIES, ROBBERIES, & LARCENIES, 2017 - 2021

Total Theft Incidents

14

Total # of Firearms Involved

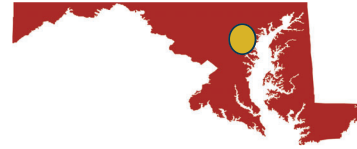
114

Average # of Firearms Involved per Theft Incident

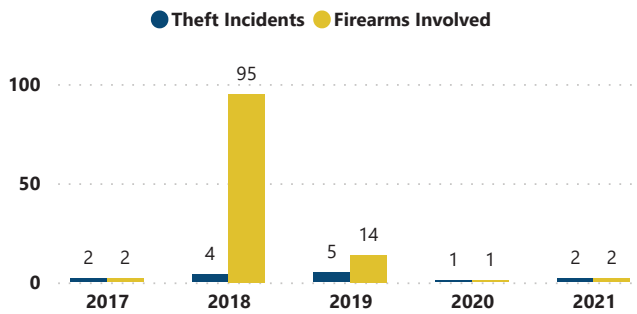
8

Median # of Firearms Involved per Theft Incident

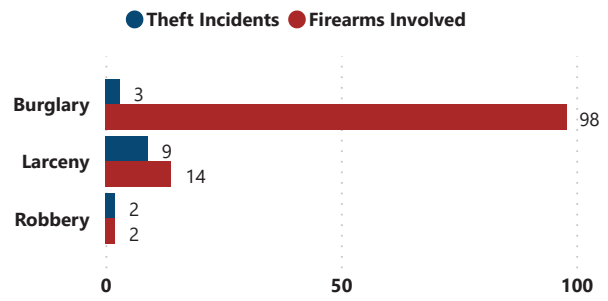
1



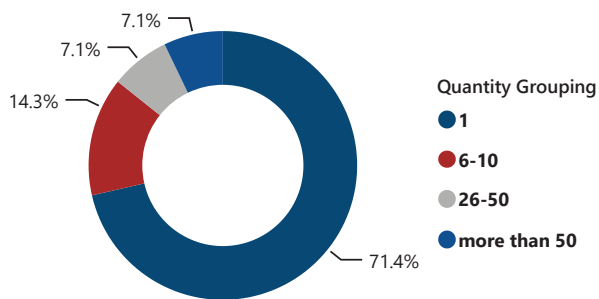
Total # of Incidents and Firearms Involved by Theft Year



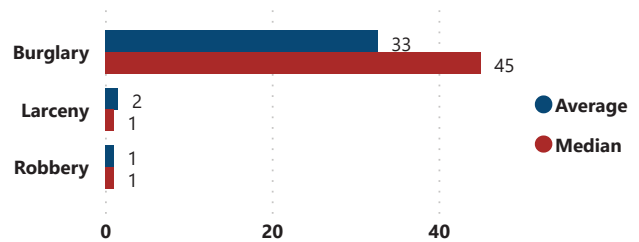
Total # of Incidents and Firearms Involved by Theft Type



% of Thefts by Number of Firearms Stolen



Average and Median # of Firearms Involved per Theft Incident by Theft Type



Thefts and Firearms Stolen by FFL Type

FFL Type	Total Incidents	% Total Incidents	Total # Firearms Involved	% Total Firearms Involved
01	12	85.7%	68	59.6%
03	1	7.1%	45	39.5%
07	1	7.1%	1	0.9%
Total	14	100.0%	114	100.0%

Firearms Stolen by Weapon Type

Weapon Type	Total # Firearms Involved	% of Total
PISTOL	68	59.6%
RIFLE	29	25.4%
REVOLVER	13	11.4%
SHOTGUN	4	3.5%
Total	114	100.0%

RECOVERED FIREARMS ASSOCIATED WITH ALL FFL BURGLARIES, ROBBERIES, & LARCENIES WITHIN CITY, 2017 - 2021

Total Theft Incidents w/ at Least 1 Recovered Firearm

16

Total # of Recovered Firearms

31

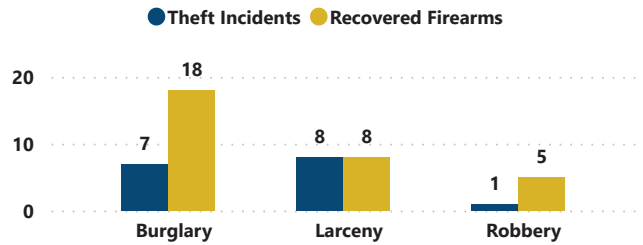
Average # of Firearms Recovered per Theft Incident w/ at Least 1 Recovered Firearm

2

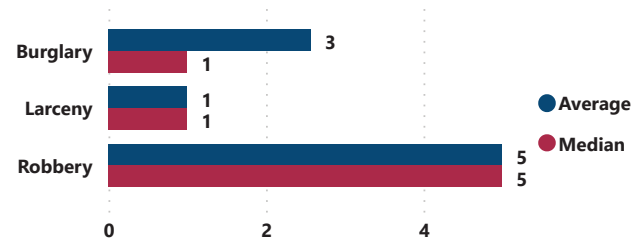
Median # of Firearms Recovered per Theft Incident w/ at Least 1 Recovered Firearm

1

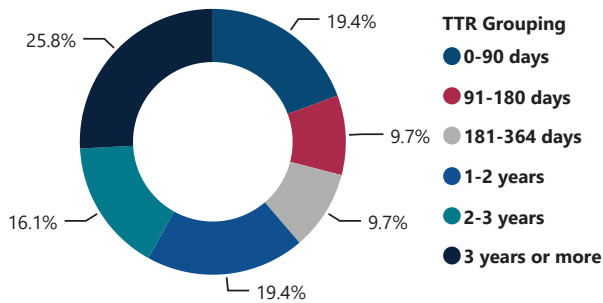
Total # of Theft Incidents Involving at Least 1 Recovered Firearm by Theft Type



Average and Median # of Firearms Recovered per Theft Incident Involving at Least 1 Recovered Firearm by Theft Type



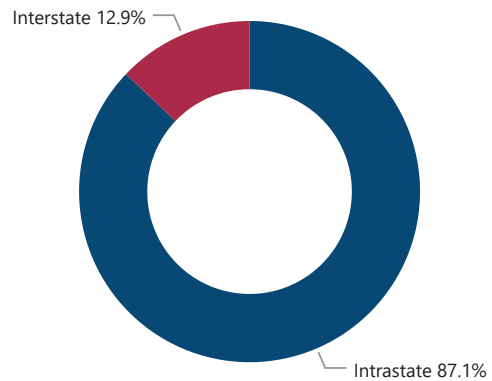
% Total of Recovered Firearms by Time-to-Recovery Grouping



Recovered Firearms by Possessor Age

Possessor Age Grouping	# of Recovered Firearms	% of Total Recovered Firearms w/ Possessor Age Determined
17 and below	1	4.00%
18-24	9	36.00%
25-34	11	44.00%
35 and older	4	16.00%
Total	25	100.00%

% Total of Recovered Firearms by Theft-to-Recovery Location



Distance Between FFL Theft Location and Recovery Location

Distance (Miles) from FFL Theft to Recovery Location	# of Recovered Firearms	% of Total Recovered Firearms w/ Distance Measured
(A) 0-10	12	50.00%
(B) 11-25	5	20.83%
(C) 26-50	4	16.67%
(D) 51-100	1	4.17%
(G) More than 300	2	8.33%
Total	24	100.00%

Top Recovery Cities Associated with Theft City

BALTIMORE MD



CRIME GUNS RECOVERED AND TRACED, 2017 - 2021

Traced Crime Guns

13,336

Traced Crime Guns to a Known Purchaser

8,057

Median TTC (Years)

5.3

Median Age of Possessor

31

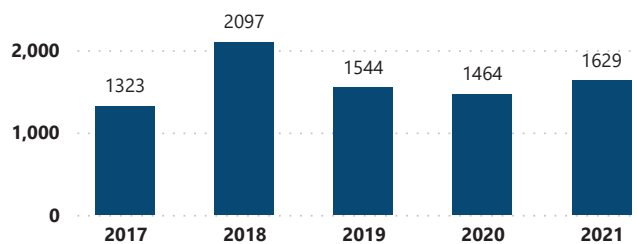
Top Source States

Source State	# of Recovered Crime Guns
MD	3,140
VA	1,248
GA	566
PA	487
NC	422
Total	5,863

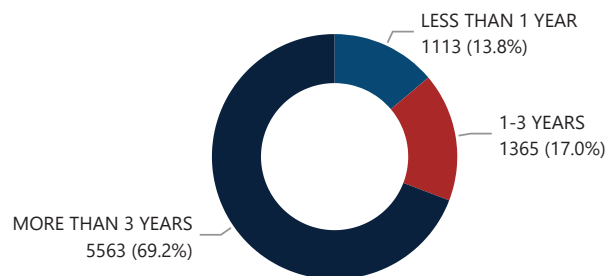
Top Source Cities

Source City	Source State	# of Recovered Crime Guns
BALTIMORE	MD	1,435
GLEN BURNIE	MD	210
TIMONIUM	MD	160
HALETHORPE	MD	113
HANOVER	MD	108
Total		2,026

Crime Guns Traced to a Known Purchaser by Year



Crime Guns by TTC Grouping



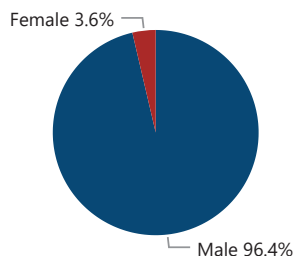
Crime Guns by Possessor Age

Possessor Age Group	# of Recovered Firearms	% of Total Recovered Firearms w/ Possessor Age Determined
17 and below	335	4.5%
18-21	1,282	17.3%
22-24	1,057	14.2%
25-34	2,747	37.0%
35-44	1,216	16.4%
45-54	477	6.4%
55-64	198	2.7%
65 and Over	106	1.4%
Total	7,418	100.0%

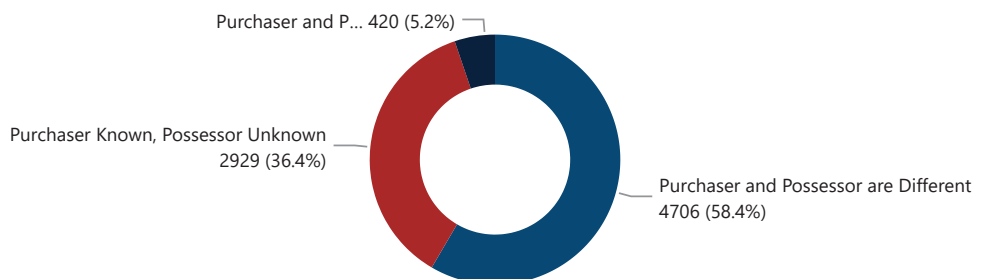
Crime Guns by FFL-to-Recovery Location

Distance (Miles) from FFL to Recovery Location	# of Recovered Firearms	% of Total Recovered Firearms w/ Distance Measured
0 - 10	1,775	24.1%
11 - 25	775	10.5%
26 - 50	477	6.5%
51 - 100	694	9.4%
101 - 200	975	13.2%
201 - 300	470	6.4%
More than 300	2,206	29.9%
Total	7,372	100.0%

Crime Guns by Possessor Gender



Crime Guns by Purchaser/Possessor Grouping when Purchaser is Known



CRIME GUNS SOURCED FROM THIS CITY, 2017 - 2021

Traced Crime Guns

3,102

Traced Crime Guns to a Known Purchaser

2,630

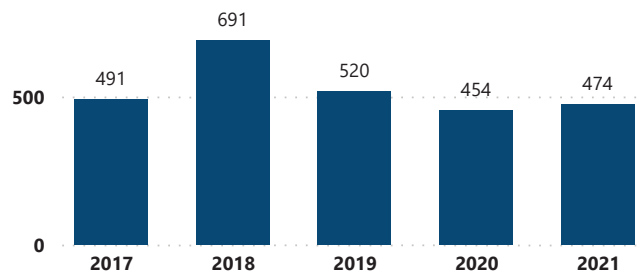
Median TTC (Years)

10.5

Median Age of Purchaser

32

Crime Guns Traced to a Known Purchaser by Year



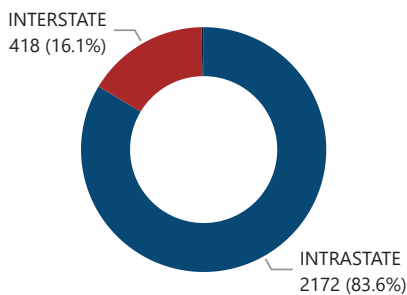
Top Recovery States

Recovery State	Recovered Crime Guns
MD	2,172
PA	80
DC	57
FL	32
VA	28
Total	2,369

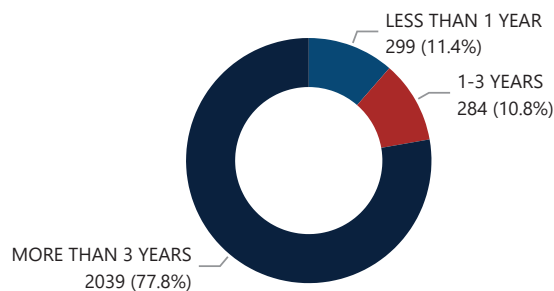
Top Recovery Cities

Recovery City/State	Recovered Crime Guns
BALTIMORE, MD	1,435
PASADENA, MD	79
WASHINGTON, DC	57
GLEN BURNIE, MD	46
Total	1,617

Crime Guns by Source-to-Recovery Location



Crime Guns by TTC Grouping



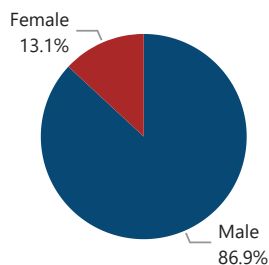
Crime Guns by Purchaser Age

Purchaser Age Group	# of Recovered Firearms	% of Total Recovered Firearms w/ Purchaser Age Determined
18-21	94	3.7%
22-24	268	10.7%
25-34	874	34.8%
35-44	585	23.3%
45-54	367	14.6%
55-64	195	7.8%
65 and Over	127	5.1%
Total	2,510	100.0%

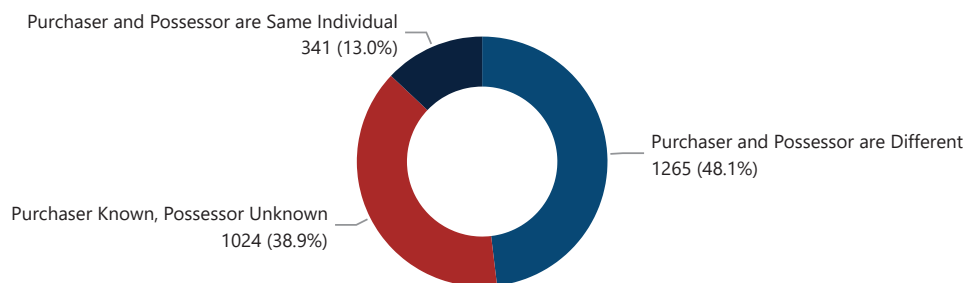
Crime Guns by Purchaser-to-FFL Location

Distance (Miles) from Purchaser's Known Residence to FFL Location	# of Recovered Firearms	% of Total Recovered Firearms w/ Distance Measured
0 - 10	1,717	71.9%
11 - 25	440	18.4%
26 - 50	188	7.9%
51 - 100	26	1.1%
101 - 200	4	0.2%
201 - 300	1	0.0%
More than 300	11	0.5%
Total	2,387	100.0%

Crime Guns by Purchaser Gender



Crime Guns by Purchaser/Possessor Grouping when Purchaser is Known



RECOVERED CRIME GUN CHARACTERISTICS, 2017 - 2021

Most Frequently Traced
Crime Gun Type

PISTOL

Most Frequently Traced
Crime Gun Caliber

9

Most Frequently Traced Crime Gun
Make-Type-Caliber

GLC-P-9

Suspected PMFs
Recovered and Traced

644

Most Common Types of Crime Guns Recovered and Traced

Weapon Description	2017	% Change 2017-2018	2018	% Change 2018-2019	2019	% Change 2019-2020	2020	% Change 2020-2021	2021	% Change 2017-2021	Total
PISTOL	1,156	60.6 %	1,857	-19.2 %	1,500	4.8 %	1,572	18.2 %	1,858	60.7 %	7,943
REVOLVER	441	114.1 %	944	-60.8 %	370	-7.6 %	342	-25.1 %	256	-42.0 %	2,353
RIFLE	212	214.6 %	667	-61.2 %	259	-27.0 %	189	10.1 %	208	-1.9 %	1,535
SHOTGUN	195	202.1 %	589	-62.3 %	222	-45.9 %	120	54.2 %	185	-5.1 %	1,311
Total	2,004	102.4 %	4,057	-42.1 %	2,351	-5.4 %	2,223	12.8 %	2,507	25.1 %	13,142

Top Crime Gun Calibers

Caliber	# of Recovered Crime Guns
9	3,817
22	1,676
40	1,388
12	976
380	902
38	856
45	834
32	568
357	394
25	357
Total	11,768

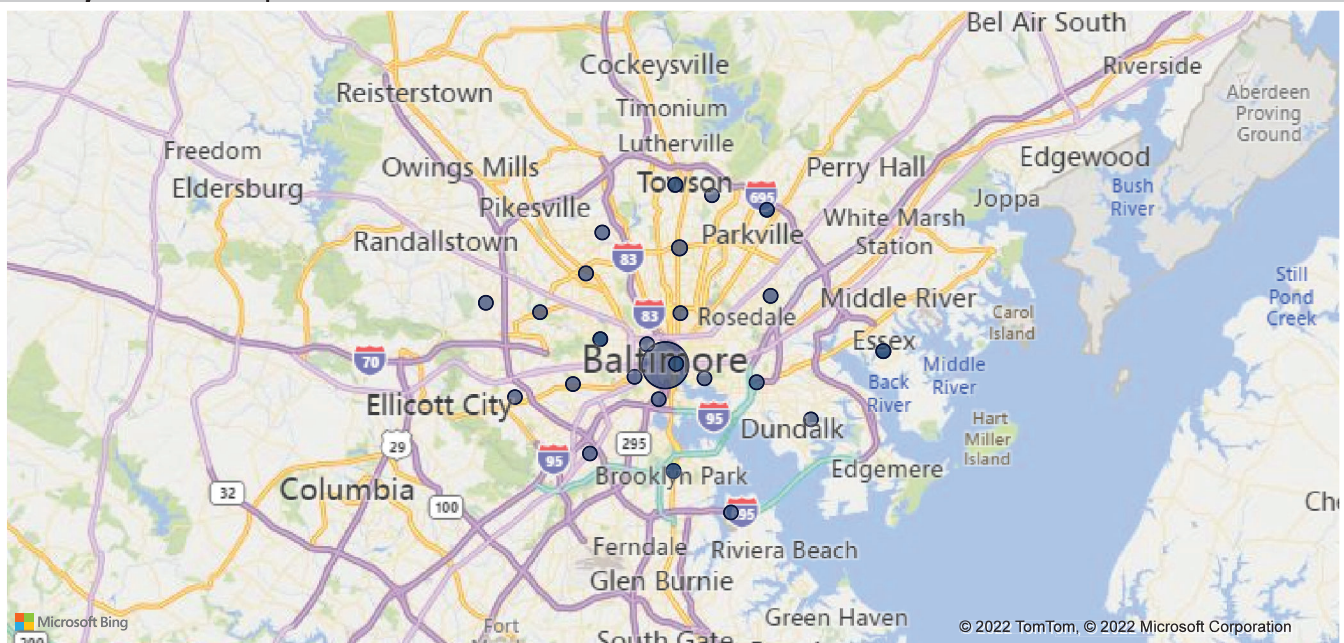
Top Crime Gun Type-Caliber Combinations

Weapon Type-Caliber	# of Recovered Crime Guns
P-9	3,742
P-40	1,363
S-12	976
P-380	897
PR-38	834
P-45	776
R-22	671
PR-22	538
P-22	440
PR-32	414
Total	10,651

Top Crime Gun Make-Type-Caliber Combinations

Make-Weapon Type-Caliber	# of Recovered Crime Guns
GLC-P-9	559
TAS-P-9	555
GLC-P-40	497
SW-P-9	396
POR-P-9	371
SR-P-9	345
SW-P-40	342
SW-PR-38	254
SKY-P-9	205
MOS-S-12	188
Total	3,712

Recovery Locations for Suspected PMF Traces



BALLISTIC EVIDENCE IN NIBIN, 2017 - 2021

Total Casings and Test Fires

16,283

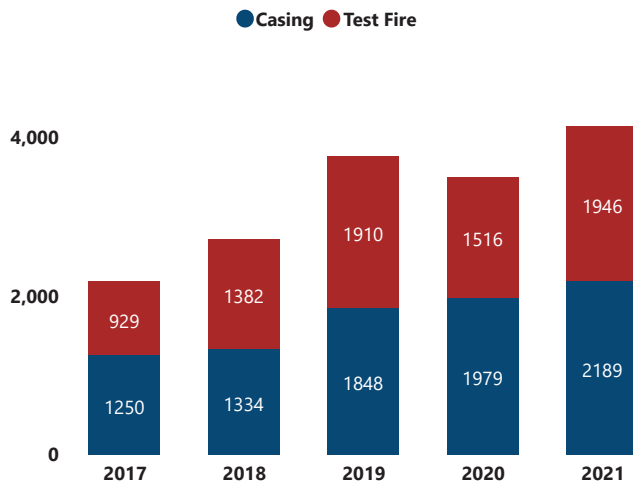
Casings and Test Fires with NIBIN Leads

5,911

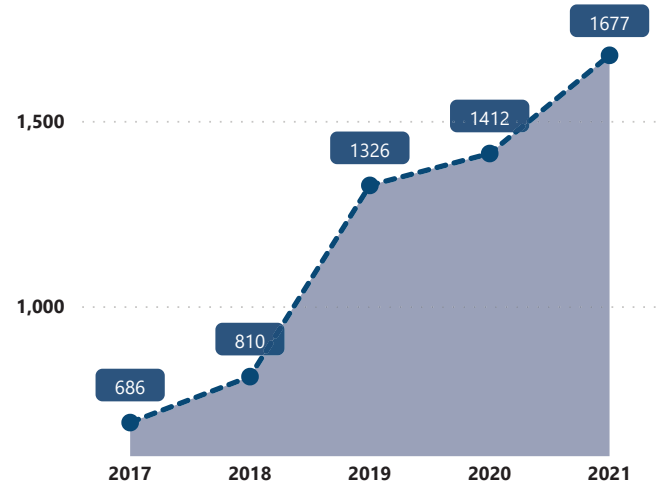
Lead Rate

36.3%

Total Casings and Test Fires by Year



Total Casings and Test Fires with Leads by Year



RECOVERED PISTOLS IN NIBIN, 2017 - 2021

Total Pistols

6,501

Pistols with Leads

1,166

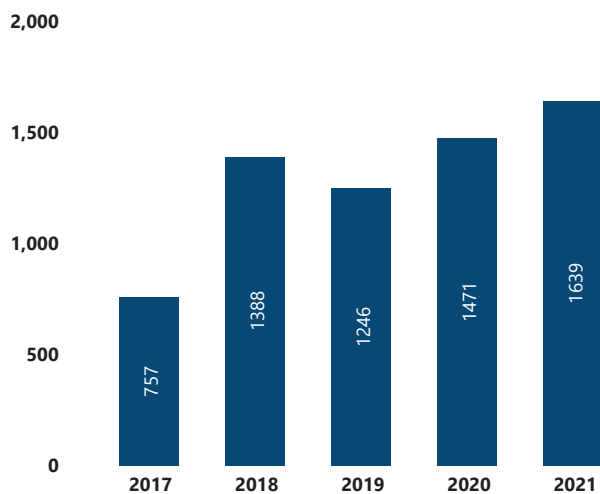
Lead Rate

17.9%

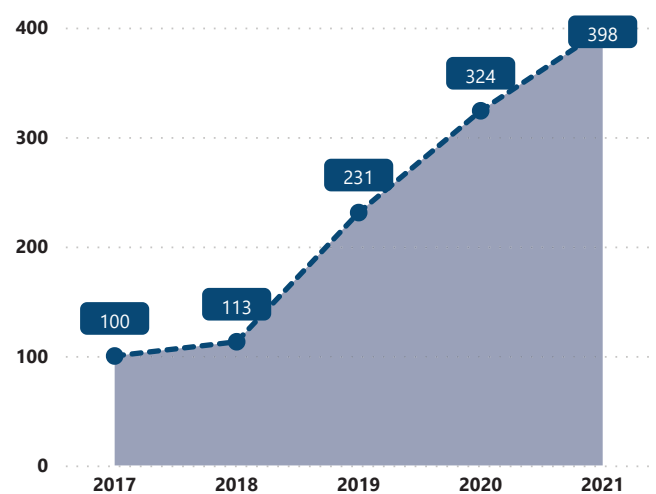
Median TFS (Years)

4.0

Total Pistols by Year



Total Pistols with Leads by Year



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MAYOR AND CITY COUNCIL OF)
BALTIMORE,)

Plaintiff,)

v.)

Case No. 1:23-cv-03762-RDM

BUREAU OF ALCOHOL, TOBACCO,)
FIREARMS AND EXPLOSIVES,)

Defendant.)

**[PROPOSED] ORDER GRANTING NATIONAL SHOOTING SPORTS
FOUNDATION’S RENEWED MOTION TO INTERVENE**

Upon consideration of the renewed motion to intervene filed by National Shooting Sports Foundation, Inc. (“NSSF”), any responses filed by the parties, and the record in this case, the Court:

GRANTS NSSF’s motion to intervene and **ORDERS** that NSSF be permitted to intervene in this case. The Court further **ORDERS** that, pursuant to Local Civil Rule 7(j), the Answer attached to NSSF’s motion to intervene is deemed to have been filed and served on this date.

NSSF’s motion for summary judgment is due on or before April 15, 2024, and its reply in opposition to Plaintiff’s motion for summary judgment is due on or before June 21, 2024.

Done this _____ day of _____, 2024

United States District Judge

Attorneys to be notified of entry of proposed order pursuant to Local Civil Rule 7(k):

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Pardis Gheibi

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MAYOR AND CITY COUNCIL OF)
BALTIMORE,)
)
Plaintiff,)
)
v.)
)
BUREAU OF ALCOHOL, TOBACCO,)
FIREARMS AND EXPLOSIVES,)
)
Defendant.)

Case No. 1:23-cv-03762-RDM

ANSWER OF INTERVENOR NATIONAL SHOOTING SPORTS FOUNDATION, INC.

Intervenor National Shooting Sports Foundation, Inc. (“NSSF”), by and through its undersigned counsel of record, submits this Answer to Plaintiff’s Complaint (Doc. 1). Intervenor’s Answer responds to specific allegations using the same paragraph numeration as the Complaint. Any allegation not specifically admitted is denied.

INTRODUCTION

1. The news reports about Izaiah Carter’s death speak for themselves. NSSF lacks sufficient knowledge to form a belief about the truth of the allegations in this paragraph and denies them on that basis.

2. The news reports about Maya Morton’s death speak for themselves. NSSF lacks sufficient knowledge to form a belief about the truth of the allegations in this paragraph and denies them on that basis.

3. The news reports about the shootings described in this paragraph speak for themselves. NSSF lacks sufficient knowledge to form a belief about the truth of the allegations in this paragraph and denies them on that basis.

4. The reports about Baltimore homicide statistics speak for themselves. However, NSSF lacks sufficient knowledge to form a belief about the truth of the allegations in this paragraph and denies them on that basis.

5. NSSF lacks sufficient knowledge to form a belief about the truth of the allegations in this paragraph and denies them on that basis.

6. NSSF lacks sufficient knowledge to form a belief about the truth of the allegations in this paragraph and denies them on that basis.

7. NSSF lacks sufficient knowledge to form a belief about the truth of the allegations in this paragraph regarding Baltimore's knowledge and denies them on that basis. NSSF denies all other allegations in this paragraph.

8. NSSF admits that the ATF maintains a Firearms Trace System database that houses information generated by the ATF's firearm tracing process. NSSF denies the other allegations in this paragraph.

9. NSSF admits that Mayor Scott filed with the ATF a Freedom of Information Act request on behalf of the City of Baltimore, which speaks for itself.

10. The allegations in this paragraph are legal conclusions, and no response is required. To the extent a response is required, the allegations in this paragraph are denied.

11. NSSF admits that the ATF denied Plaintiff's FOIA request; NSSF also admits that the ATF's denial was based in part on the current version of the Tiahrt Rider. NSSF denies the other allegations in this paragraph.

12. The allegations in this paragraph are legal conclusions, and no response is required.

To the extent a response is required, the allegations in this paragraph are denied.

13. The allegations in this paragraph are legal conclusions, and no response is required.

To the extent a response is required, the allegations in this paragraph are denied.

14. NSSF admits that Plaintiff has sought injunctive and other relief relating to the ATF's denial of Plaintiff's FOIA requests. The remaining allegations in this paragraph are legal conclusions, and no response is required. To the extent a response is required, the remaining allegations in this paragraph are denied.

JURISDICTION AND VENUE

15. Admitted.

16. Admitted.

17. The allegations in this paragraph are legal conclusions, and no response is required.

To the extent a response is required, NSSF lacks sufficient knowledge to form a belief about the truth of the allegations in this paragraph and denies them on that basis.

PARTIES

18. Admitted.

19. Admitted.

FACTS

20. NSSF admits that the ATF maintains a Firearms Trace System database that houses information generated by the ATF's firearm tracing process. NSSF lacks sufficient knowledge to form a belief about the truth of the remaining allegations as written in this paragraph and denies them on that basis.

21. NSSF lacks sufficient knowledge to form a belief about the truth of the allegations in this paragraph and denies them on that basis.

22. NSSF lacks sufficient knowledge to form a belief about the truth of the allegations in this paragraph and denies them on that basis.

23. NSSF lacks sufficient knowledge to form a belief about the truth of the allegations in this paragraph and denies them on that basis.

24. The allegations in this paragraph are legal conclusions, and no response is required. To the extent a response is required, NSSF denies the allegations in this paragraph.

25. The allegations in this paragraph are legal conclusions, and no response is required. To the extent a response is required, NSSF admits that the currently operative version of the Tiahrt Rider was approved by Congress in 2012; NSSF denies the remaining allegations in this paragraph.

26. The allegations in this paragraph are legal conclusions, and no response is required. To the extent a response is required, NSSF admits that the quoted language in this paragraph appears in the current version of the Tiahrt Rider. NSSF denies the remaining allegation in this paragraph.

27. The allegations in this paragraph are legal conclusions, and no response is required. To the extent a response is required, NSSF admits that the quoted language in this paragraph appears in the current version of the Tiahrt Rider. NSSF denies the remaining allegation in this paragraph.

28. The allegations in this paragraph are legal conclusions, and no response is required. To the extent a response is required, NSSF admits that the quoted language in this paragraph appears in the current version of the Tiahrt Rider. NSSF denies the remaining allegation in this paragraph.

29. The allegations in this paragraph are legal conclusions, and no response is required. To the extent a response is required, NSSF admits that the quoted language in this paragraph appears in the current version of the Tiahrt Rider. NSSF denies the remaining allegation in this paragraph.

30. The allegations in this paragraph are legal conclusions, and no response is required. To the extent a response is required, the allegations in this paragraph are denied.

31. Denied.

32. NSSF admits that the ATF has issued reports based on tracing data. NSSF lacks sufficient knowledge to form a belief about the truth of the remaining allegations in this paragraph and denies them on that basis.

33. NSSF lacks sufficient knowledge to form a belief about the truth of the allegations in this paragraph and denies them on that basis.

34. Denied.

35. Denied.

36. NSSF admits that Mayor Scott filed with the ATF a Freedom of Information Act request on behalf of the City of Baltimore. NSSF denies all remaining allegations in this paragraph. NSSF specifically denies the allegation that the requested records “would serve as ‘critical tools for the City of Baltimore to address gun violence.’”

37. NSSF admits that Plaintiff’s first FOIA request sought from the ATF the information described in this paragraph. NSSF denies the other allegations in this paragraph.

38. NSSF admits that Plaintiff’s second FOIA request sought from the ATF the information described in this paragraph. NSSF denies the other allegations in this paragraph.

39. Admitted.

40. NSSF admits that Plaintiff's third FOIA request sought from the ATF the information described in this paragraph. NSSF denies the other allegations in this paragraph.

41. NSSF admits that Plaintiff's FOIA requests contended that the Tiahrt Rider "is not a FOIA-withholding statute." NSSF denies the other allegations in this paragraph. NSSF specifically denies Plaintiff's allegation that the ATF erroneously withheld the information sought in Plaintiff's FOIA requests.

42. Denied.

43. NSSF lacks sufficient knowledge to form a belief about the truth of the allegations in this paragraph and denies them on that basis.

44. Denied.

45. NSSF admits that the ATF denied Plaintiff's FOIA request.

46. NSSF admits that this paragraph accurately quotes portions of the ATF's denial letter. NSSF denies all other allegations in this paragraph.

47. The allegations in this paragraph are legal conclusions, and no response is required. To the extent a response is required, the allegations in this paragraph are denied

48. NSSF admits that this paragraph accurately quotes portions of the ATF's denial letter. NSSF denies all other allegations in this paragraph.

49. NSSF admits that this paragraph accurately quotes portions of the ATF's denial letter. NSSF denies all other allegations in this paragraph.

50. The allegations in this paragraph are legal conclusions, and no response is required. To the extent a response is required, the allegations in this paragraph are denied

51. Admitted.

52. NSSF lacks sufficient knowledge to form a belief about the truth of the allegations in this paragraph and denies them on that basis.

53. NSSF lacks sufficient knowledge to form a belief about the truth of the allegations in this paragraph and denies them on that basis.

54. NSSF lacks sufficient knowledge to form a belief about the truth of the allegations in this paragraph and denies them on that basis.

COUNT I

55. NSSF incorporates all prior denials consistent with Plaintiff's reincorporation of all prior allegations into this paragraph.

56. NSSF admits that FOIA grants access to certain federal agency records. NSSF denies all other allegations in this paragraph.

57. Denied.

58. Denied.

59. Denied.

60. Denied.

REQUEST FOR RELIEF

Intervenor denies the allegations in the WHEREFORE paragraph and denies that Plaintiff is entitled to any relief, including specifically the relief sought in subparagraphs (a)–(c).

AFFIRMATIVE DEFENSES

Intervenor asserts the following affirmative defenses. Discovery and investigation of this case are not yet complete, and Intervenor reserves the right to amend this Answer by adding, deleting or amending defenses as may be appropriate:

FIRST DEFENSE

The Complaint fails to state a claim for which relief can be granted under Federal Rule of Civil Procedure 12(b)(6).

SECOND DEFENSE

Any document withheld in full or in part is subject to one or more exemptions under the Freedom of Information Act, 5 U.S.C. § 552.

THIRD DEFENSE

The Tiahrt Rider prohibits disclosure under the Freedom of Information Act, 5 U.S.C. § 552, of the documents withheld in full or in part.

Respectfully submitted this 19th day of March 2024,

BRADLEY ARANT BOULT CUMMINGS LLP

/s/John Parker Sweeney

John Parker Sweeney, Esq. (#914135)

James W. Porter, III, Esq. (#999070)

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ATTORNEYS FOR INTERVENOR NATIONAL SHOOTING
SPORTS FOUNDATION, INC.

CERTIFICATE OF SERVICE

I hereby certify that on March 19, 2024, I filed the foregoing via the Court's ECF filing system, which served a copy to all counsel of record.

/s/John Parker Sweeney

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MAYOR AND CITY COUNCIL OF)	
BALTIMORE,)	
)	
Plaintiff,)	
)	
v.)	
)	Case No. 1:23-cv-03762-RDM
BUREAU OF ALCOHOL, TOBACCO,)	
FIREARMS AND EXPLOSIVES,)	
)	
Defendant.)	

CERTIFICATE REQUIRED BY LCvR 26.1 OF THE LOCAL RULES OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA AND FEDERAL RULE OF CIVIL PROCEDURE 7.1

I, the undersigned, counsel of record for intervenor National Shooting Sports Foundation, Inc. (“NSSF”) certify that to the best of my knowledge and belief, the following are parent companies, subsidiaries, affiliates, or companies which own at least 10% of the stock of NSSF which have any outstanding securities in the hands of the public: None. These representations are made in order that the judges of this Court may determine the need for recusal.

Respectfully submitted this 19th day of March 2024,

BRADLEY ARANT BOULT CUMMINGS LLP

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ATTORNEYS OF RECORD FOR INTERVENOR
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