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National Parks deserve more than Rube-Kempthorne gun rights scheme!

For years gun rights groups [1] and members of Congress [2] have been prodding the Department of Interior to repeal their gun carry ban in National Parks by simply adopting the long proven Department of Agriculture rule, 36CFR261.8, which simply assimilates state gun laws onto National Forests. [3]

In response, Secretary of the Interior Dick Kempthorne has now issued a Notice of Rulemaking [4] purporting to repeal the national park gun carry ban, but upon inspection, Kempthorne's complex and vague scheme would provide few gun rights and serve as a source of controversy for years to come.

The proposed rule augments the current National Park gun ban at 36CFR2.4 with the following:

“A person may possess, carry, and transport concealed, loaded, and operable firearms within a national park area in the same manner, and to the same extent, that a person may lawfully possess, carry, and transport concealed, loaded and operable firearms in any state park, or any similar unit of state land, in the state in which the federal park, or that portion thereof, is located, provided that such possession, carrying and transporting otherwise complies with applicable federal and state law.” (emphasis added).

OBJECTION #1: Vagueness. Remember folks – 36CFR2.4 identifies a criminal offense. Gun carry in a park is a crime unless the proposed exception applies, so how is anyone supposed to know what the collateral law of a state is for a “similar unit of state land?” Answer – not ‘till your trial judge tells you! And in the meantime, park rangers and gun rights groups will argue for decades over what the law is on a “similar unit of state land” because in many or most states, it depends – local parks, state parks, regional parks, often have conflicting gun carry regulations in the same state!

OBJECTION #2: Requirement to conceal. So where did this come from? Who conceals their handgun while hiking on a hot sweaty trail all day? In most states, and therefore in most National Forests, no permit is needed to open carry handguns (“the right”), but in all states but Alaska and Vermont, a permit is required to conceal handguns (“the privilege”) [5]. Due to the refusal of most states to freely accept other states’ concealed handgun permits like they do driver’s licenses, the requirement to conceal in National Parks means that few permit holders will be able to carry concealed handguns in National Parks outside their home state even if the state they are visiting allows concealed carry on the proverbial “similar unit of state land.”

OBJECTION #3: Lack of “consistency in firearms policy across federal public land management agencies.” [6] Most people know what state they are in at any one time – but what about hiking or driving in a state where National Parks and Forests are contiguous – cross over that invisible line, you might commit a crime.

But all's not lost – the Interior Department's of Notice of Rulemaking provides for public comment, and public comment the Department will get demanding that the RubeKempthorne gun rights proposal be replaced with the long proven Department of Agriculture rule, 36CFR261.8, which simply assimilates state gun laws onto federal land..

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Footnotes

[1] See the second and still pending petition for rulemaking filed by the Virginia Citizens Defense League and signed onto by gun rights groups across America representing over a million Americans requesting that the Department of Interior assimilate state gun laws onto National Parks using the Department of Agriculture's 36CFR261.8 as a model, available at http://www.vcdl.org/pdf/VCDLPRM_010408.pdf.

[2] E.g., Senate letter to Secretary Kempthorne, Dec. 14, 2007 (urging adoption of gun carry regulations in national Parks which are both "in accordance with the laws of the host state" and with "consistency in firearms policy across federal public land management agencies"), available at http://www.nraila.org/Media/PDFs/kempthorne_ltr.pdf.

[3] Notice the beauty and elegance of 36CFR261.8 which simply provides:

TITLE 36--PARKS, FORESTS, AND PUBLIC PROPERTY
CHAPTER II--FOREST SERVICE, DEPARTMENT OF AGRICULTURE
PART 261_PROHIBITIONS--Table of Contents
Subpart A_General Prohibitions

Sec. 261.8 Fish and wildlife.

The following are prohibited to the extent Federal or State law is violated:

(a) Hunting, trapping, fishing, catching, molesting, killing or having in possession any kind of wild animal, bird, or fish, or taking the eggs of any such bird.

(b) Possessing a firearm or other implement designed to discharge a missile capable of destroying animal life.

(c) Possessing equipment which could be used for hunting, fishing, or trapping.

(d) Possessing a dog not on a leash or otherwise confined.

(e) Curtail the free movement of any animal or plant life into or out of a cave, except as authorized to protect a cave resource.

[42 FR 2957, Jan. 14, 1977, as amended at 46 FR 33520, June 30, 1981; 59 FR 31152, June 17, 1994]

[4] http://federalregister.gov/OFRUpload/OFRData/2008-09606_PI.pdf

[5] Except in Wisconsin and Illinois which bans conceal carry altogether. Illinois allows open carry on foot in unincorporated areas, and Wisconsin allows open carry on foot throughout the state.

[6] See request by US Senate members at n. 2, *supra*.