

July 18, 2022

**Via Email & Express Mail**

Samuel Levine  
Director, Bureau of Consumer Protection  
Federal Trade Commission  
600 Pennsylvania Ave., NW  
Washington, DC 20580

Dear Director Levine:

I am writing on behalf of the National Shooting Sports Foundation (“NSSF”), the firearm industry trade association, to express deep concern regarding recent public letters sent to the Federal Trade Commission (“FTC”) Bureau of Consumer Protection from special interest groups seeking to profit by attacking lawful gun ownership. These letters have employed an escalating series of misleading claims about firearm manufacturers that are members of NSSF, and the millions of Americans who exercise the Second Amendment rights to lawfully purchase firearms. I submit this letter to assist the FTC by calling attention to some of these deceptive tactics.

**I. An Advertising Campaign by Special Interests**

Over the last two years, Everytown for Gun Safety (“Everytown”), The Brady Campaign (“Brady”), Giffords Law Center (“Giffords”) and similar special interest groups have published a series of public letters falsely accusing NSSF members of violating the Federal Trade Commission Act.<sup>1</sup> In fact, Everytown filed another letter just this past Friday concerning another NSSF member company.<sup>2</sup> The groups’ accusations and apparent legal theories changed from one letter to the next, but in all cases, they portrayed themselves as disinterested advocates speaking on behalf of the American public and urging FTC action in the selfless pursuit of consumer protection. Nothing could be further from the truth.

---

<sup>1</sup> Brady et al., The Gun Industry’s Advertising: Effective, Deadly, and Actionable (April 7, 2022), <https://firearmsaccountability.org/FTCPetition.pdf> (hereinafter, “2022 Brady Letter”); Everytown et al., Letter to Federal Trade Commission (August 17, 2021), <https://everytownlaw.org/wp-content/uploads/sites/5/2021/08/2021.08.17-SW-FTC-Submission.pdf> (hereinafter, “2021 Everytown Letter”); Everytown et al., Complaint and Request for Investigation of Smith & Wesson Brands, Inc. (May 31, 2020), <https://everytownlaw.org/wp-content/uploads/sites/5/2020/06/ftc-letter.pdf> (hereinafter, “2020 Everytown Letter”).

<sup>2</sup> Daniel Defense, Makers of Gun Used in Uvalde Massacre, Face Complaint for Deceptive Teen Marketing (July, 15, 2022), <https://www.houstonchronicle.com/politics/texas/article/Makers-of-gun-used-in-the-Uvalde-school-massacre-17305727.php>



These special interest group letters are about cash, not consumer protection. They are advertisements, intended to support lucrative fundraising efforts.<sup>3</sup> Everytown's parent organization, for example, is a thriving commercial enterprise that generates more than \$84 million per year in revenue and employs numerous executives at more than \$200,000 per year.<sup>4</sup> It spends millions of dollars annually on top advertising firms, and its campaigns are aided by a billionaire.<sup>5</sup>

Everytown and its allied special interest groups fundraised directly off of their public letters to the FTC. They did not even try to hide it.<sup>6</sup>



Of course, there is nothing wrong with an organization exercising its First Amendment rights by advertising for its own commercial interests, but that should not be confused with independent civic advocacy. The objective of these groups is to advance their fundraising efforts by making sensational claims and enlisting the help of the FTC to harm what they see as the opposing interests of NSSF members. These letters should be viewed with the same skepticism as complaints from any other competitor.

<sup>3</sup> Advertisement, Black's Law Dictionary (2019) ("A commercial solicitation; an item of published or transmitted matter made with the intention of attracting clients or customers").

<sup>4</sup> Form 990, Everytown for Gun Safety Action Fund Inc. (2019), <https://projects.propublica.org/nonprofits/organizations/208802884/202003219349307780/full>.

<sup>5</sup> *Id.*; Form 990, Everytown for Gun Safety Action Fund Inc. (2018), [https://projects.propublica.org/nonprofits/display\\_990/208802884/06\\_2020\\_prefixes\\_20-23%2F208802884\\_201812\\_990O\\_2020061217189577](https://projects.propublica.org/nonprofits/display_990/208802884/06_2020_prefixes_20-23%2F208802884_201812_990O_2020061217189577); Mike Bloomberg Offers to 'Match Every Donation' to Fight Gun Violence, Philanthropy N.Y. (Oct. 5, 2017), <https://philanthropynewyork.org/news/mike-bloomberg-offers-match-every-donation-fight-gun-violence>.

<sup>6</sup> Press Release, Giffords Law Center, Brady, and March For Our Lives File FTC Petition against Gun Industry Advertising Practices (Apr. 7, 2022), <https://giffords.org/press-release/2022/04/giffords-law-center-brady-and-march-for-our-lives-file-ftc-petition/>; Press Release, Everytown Calls on the FTC to Investigate Smith & Wesson's Dangerous Assault Rifle Marketing Practices (June 2, 2020), <https://everytownlaw.org/case/everytown-calls-on-the-ftc-to-investigate-smith-wessons-dangerous-assault-rifle-marketing-practices/#press>.



Moreover, the groups' fundraising goals go hand-in-hand with their objective of harming NSSF members by imposing the burdens of litigation.<sup>7</sup> As in other contexts involving competitors, these special interest groups seek to profit by maximizing the challenges NSSF members face in operating their businesses. Indeed, these groups have made litigation a central part of their donor strategy.<sup>8</sup> They have been involved in lawsuits against NSSF members for years (and fundraised off of those efforts too).<sup>9</sup>

## II. FTC Must Protect its Independence

Independence is central to the FTC's mission and identity.<sup>10</sup> In the current political climate, in which seemingly all parts of government face intense pressures to bow to a variety of activists, the FTC must zealously guard that independence. This means that it should not allow itself to be drawn into ideological crusades by deep-pocketed special interests, to compromise itself through perceived conflicts of interest, or to be bullied through the courts.

Unfortunately, the FTC is not the first government agency to face a pressure campaign from anti-gun special interest groups. Everytown went so far as to sue (unsuccessfully) the Bureau of Alcohol, Tobacco, Firearms and Explosives for having the temerity to uphold the law in the face of Everytown's demands.<sup>11</sup> I have no doubt that these special interest groups will similarly place maximum pressure on the FTC to serve the groups' agenda, and respectfully urge the FTC not to lend the great weight of government power to their private crusade. These groups have more than enough high-powered lawyers at their disposal to advocate for themselves.<sup>12</sup>

## III. Misleading and Deceptive Claims Regarding Firearm Manufacturers

The special interest groups' public letters to the FTC have been misleading in several respects. I am loath to dignify the groups' fundraising efforts with a point-by-point rebuttal, and their arguments are so fluid that such a response would likely be futile. Still, there are a few points that cannot remain unaddressed.

---

<sup>7</sup> See, e.g., Am. Complaint, *Smith & Wesson Brands, Inc. v. Grewal*, No. 2:20-CV-19047 (D.N.J. filed March 10, 2021) ¶¶ 18-39.

<sup>8</sup> Jessica Silver-Greenberg & Ben Protess, *Gun Control Advocates Find a Deep-Pocketed Ally in Big Law* (Dec. 7, 2016), <https://www.nytimes.com/2016/12/07/business/dealbook/gun-control-big-law-firms.html>; Firearms Accountability Counsel Taskforce, <https://firearmsaccountability.org/>.

<sup>9</sup> See Press Release, Smith & Wesson Settlement (Mar. 17, 2000), <https://www.bradyunited.org/legal-case/smith-wesson-settlement>; see also Press Release, Everytown Law Represents Kansas City, Missouri In Suit Against Gun Manufacturer (Jan. 7, 2020), <https://www.everytown.org/press/everytown-law-represents-kansas-city-missouri-in-suit-against-gun-manufacturer-dealers-and-alleged-traffickers-for-contributing-to-local-gun-violence/>.

<sup>10</sup> See, e.g., 15 U.S.C § 41; William E. Kovacic & Marc Winerman, *The Federal Trade Commission As an Independent Agency: Autonomy, Legitimacy, and Effectiveness*, 100 Iowa L. Rev. 2085, 2089 (2015).

<sup>11</sup> *Everytown for Gun Safety Support Fund v. Bureau of Alcohol, Tobacco, Firearms & Explosives*, 984 F.3d 30 (2d Cir. 2020).

<sup>12</sup> See note 7, *supra*.



**First**, these special interest groups are wrong to treat the U.S. Constitution as some sort of technical obstacle to be overcome.<sup>13</sup> It is not a barrier to the FTC mission; it is the lodestar that should guide all the FTC's decisions. The Constitution indisputably confers "an individual right to keep and bear arms."<sup>14</sup> This includes a "right to bear arms in public for self-defense."<sup>15</sup> And this "enshrinement of constitutional rights takes certain policy choices off the table."<sup>16</sup>

These groups are likewise wrong to argue that the First Amendment implications of the actions they urge the FTC to take can be glossed over, and that administrative subpoenas are somehow exempt from constitutional scrutiny.<sup>17</sup> They claim to be "prepared to present supplemental information to the FTC concerning any potential First Amendment challenges."<sup>18</sup> Yet, that position—which amounts to "trust me"—belies the gravity of the infringement on Constitutional rights that they urge the FTC to embark upon. The groups' failure to make even a colorable attempt at justifying their novel constitutional arguments to the FTC is inexcusable.<sup>19</sup>

As NSSF member Smith & Wesson has had to point out in other contexts involving the same special interest groups, cases invalidating subpoenas on First Amendment and other constitutional grounds are legion.<sup>20</sup> Even the threat of a subpoena with an investigation can chill First Amendment rights.<sup>21</sup> Furthermore, the Supreme Court has specifically recognized that "the power of compulsory process [must] be carefully circumscribed when the investigative process tends to impinge upon such highly sensitive areas as freedom of speech[.]"<sup>22</sup>

The special interest groups' invitation to the FTC to ignore the Constitution is unethical and deeply misleading.

**Second**, the fact that firearms are useful for self-defense is beyond question. Any suggestion to the contrary is gaslighting. While statistical survey results on the subject vary, there is no survey taken that does not reveal a significant number of incidents in

---

<sup>13</sup> See 2022 Brady Letter at 32 (arguing that the Constitution "should not deter the FTC").

<sup>14</sup> *D.C. v. Heller*, 554 U.S. 570, 595 (2008) (citing U.S. Const. amnd. II).

<sup>15</sup> *N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen*, No. 20-843, 2022 WL 2251305, at \*34 (U.S. June 23, 2022).

<sup>16</sup> *Heller*, 554 U.S. at 636.

<sup>17</sup> See 2022 Brady Letter at 32.

<sup>18</sup> *Id.* at 33.

<sup>19</sup> This omission is particularly notable because the Supreme Court reiterated in *Bruen* that, "[w]hen the Government restricts speech, the Government bears the burden of proving the constitutionality of its actions." *Bruen*, 2022 WL 2251305, at \*11 (quoting *United States v. Playboy Entertainment Group, Inc.*, 529 U.S. 803, 816 (2000)).

<sup>20</sup> See, e.g., *In re Rule 45 Subpoenas Issued to Google LLC and LinkedIn Corp. Dated July 23, 2020*, No. 20-80141, 2020 WL 7202818 (N.D. Cal. Dec. 7, 2020); *In re Rule 45 Subpoena Issued to Cablevision Sys.*, No. 08-347, 2010 WL 2219343 (E.D.N.Y. Feb. 5, 2010); *Heartland Surgical Specialty Hosp., LLC v. Midwest Div., Inc.*, No. 05-2164, 2007 WL 852521 (D. Kan. Mar. 16, 2007); *Local 1814, Int'l Longshoremen's Ass'n, AFL-CIO v. Waterfront Comm'n of N.Y. Harbor*, 512 F. Supp. 781 (S.D.N.Y. 1981).

<sup>21</sup> *White v. Lee*, 227 F.3d 1214, 1229 (9th Cir. 2000).

<sup>22</sup> *Sweezy v. New Hampshire*, 354 U.S. 234, 245 (1957).



which firearms are effectively used—often simply by brandishing them to ward off an attacker—for personal self-defense. What these special interest groups are really arguing is that the cost-benefit of such use weighs against gun ownership. That policy decision or opinion hardly is an issue of fraud. And it is not on table for consideration.<sup>23</sup>

Moreover, the special interest groups' description of firearm industry advertising as "guns as a safe means of protection" is highly misleading. NSSF members do not claim that firearms are not dangerous. On the contrary, they include prominent safety warnings in their user manuals, which encourage owners to seek training before using their products, precisely *because* firearms can be dangerous. Indeed, that is the fundamental reason that firearms are useful for self-defense and the exercise of Second Amendment rights. If firearms were not capable of being dangerous, they would be as useless as a match that cannot burn or a saw that cannot cut.

For example, a family in Harris County, Texas pulled up in front of their home just after midnight, when two alleged would-be robbers attempted to enter the vehicle from the backseat, where the family's two infant children were seated.<sup>24</sup> The father, who was lawfully carrying a firearm, fired on the assailants from inside the vehicle, striking both men.<sup>25</sup> The family was able to escape unharmed.

A Lithia, Florida man was inside his home when two masked intruders barged in, held him at gunpoint and grabbed his 11-year-old daughter.<sup>26</sup> One of the intruders pistol-whipped him while another kicked him repeatedly in the head.<sup>27</sup> The man was saved when his wife, who was eight months pregnant, retrieved the family's AR-15 rifle and fired on the attackers, killing one and causing the other to flee.<sup>28</sup>

Similarly, in Philadelphia, Pennsylvania, a man was standing in front of his home when a would-be robber pointed a gun at him and announced a robbery.<sup>29</sup> The homeowner, who was licensed to carry a firearm, drew his own weapon and shot the attacker.<sup>30</sup> According to police, the homeowner "turned the tables on a would-be robber and shot him in the head."<sup>31</sup>

---

<sup>23</sup> See notes 13-15, *supra*.

<sup>24</sup> Brhe Berry, *Father Shoots 2 16-year-old Suspects Accused of Trying to Rob Family in NW Harris County*, ABC13 (July 11, 2022), <https://abc13.com/father-shoots-robbery-suspects-infant-children-in-the-car-attempted-northwest-harris-county-feather-creek-drive-shots-fired/12042484/>.

<sup>25</sup> *Id.*; Anders Hagstrom, *Texas Father Shoots Pair of Teens who Attempted to Rob Car with Infants Inside*, Fox News (July 11, 2022), <https://www.foxnews.com/us/texas-father-shoots-pair-teens-attempted-rob-car-infants-inside>.

<sup>26</sup> Dave Jordan, *Victim of Violent Home Invasion Speaks; Credits Wife With Saving His Life With AR-15*, Bay News 9 (Nov. 1, 2019), <https://www.baynews9.com/fl/tampa/news/2019/11/01/victim-of-violent-home-invasion-speaks--credits-wife-with-saving-his-life#>

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> Dan Stamm, *Man Shoots, Kills Would-Be Robber in Front of South Philly Home, Police Say* (May 12, 2022), <https://www.nbcphiladelphia.com/news/local/south-philly-bike-robbery-shooting/3236665/>.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*



In these cases, and countless others, Americans used firearms because they were the tool uniquely capable of helping them defend their lives, or the lives of their family members.<sup>32</sup> The special interest groups seek to take that right away because they have an infantilizing view of American citizens. They argue that it is the role of the FTC to deprive individuals of the right to protect themselves with firearms because those dangerous tools might hurt them.<sup>33</sup>

The Constitution, however, reflects the opposite policy decision. It entrusts Americans with the right to keep and bear arms for self-defense, despite the innate potential dangers of firearms. Indeed, “self-defense is a central component of the Second Amendment.”<sup>34</sup> Advocating self-defense, therefore, cannot constitutionally be subject to government regulation or investigation because the Second Amendment itself reflects a judgment by the American people that the benefits of owning firearms for self-defense outweigh the costs.<sup>35</sup> That debate was settled at the Founding.<sup>36</sup>

**Third**, the analogy to cigarette advertising ignores important characteristics of firearms.<sup>37</sup> While there is no legitimate purpose for a minor using cigarettes (and most states prohibit minors from possessing or using them), there are legitimate reasons for minors, properly supervised by adults, to use firearms. Across this country, parents routinely introduce children to the shooting sports, including to pass on the importance of firearm safety and responsible gun ownership. This practice is common, longstanding, and legal. Indeed, the special interest group letters include a number of images depicting just such teaching of responsible firearms use.<sup>38</sup> Plainly, the special interest groups cite no evidence that any NSSF member’s ad caused any minor to use a firearm improperly.<sup>39</sup>

**Fourth**, the special interest groups engage in wanton cherry-picking of facts in a transparent attempt to mislead the FTC and the groups’ potential donors.<sup>40</sup> For instance, the groups argue that Smith & Wesson’s M&P® brand is deceptive because

---

<sup>32</sup> *Defensive Gun Uses in the U.S.*, Heritage Foundation (Updated June 21, 2022), [https://datavisualizations.heritage.org/firearms/defensive-gun-uses-in-the-us/?\\_ga=2.220366554.35059545.1602602631-1883045864.1599833487](https://datavisualizations.heritage.org/firearms/defensive-gun-uses-in-the-us/?_ga=2.220366554.35059545.1602602631-1883045864.1599833487); accord *Heller*, 554 U.S. at 628 (“the inherent right of self-defense has been central to the Second Amendment right. The handgun ban amounts to a prohibition of an entire class of ‘arms’ that is overwhelmingly chosen by American society for that lawful purpose.”).

<sup>33</sup> See 2022 Brady Letter at 16-25.

<sup>34</sup> *Bruen*, 2022 WL 2251305, at \*13 (internal quotation marks omitted).

<sup>35</sup> See *Heller*, 554 U.S. at 611.

<sup>36</sup> *Id.* at 595 & 636.

<sup>37</sup> See 2022 Brady Letter at 26 & 40, n.103; 2021 Everytown Letter at 4-5.

<sup>38</sup> See 2020 Everytown Letter at 20-23 (showing several images of adults teaching children use firearms safely, including with captions such as, “Start thinking about safety before you pull your firearm out of the bag.”)

<sup>39</sup> See Statement of Commissioner Mary L. Azcuenaga, *R.J. Reynolds Tobacco Co.*, No. 9285 (F.T.C. 1994) (discussing the issue of causation and noting, “The dispositive issue here . . . was whether the record showed a link between the Joe Camel advertising campaign and increased smoking among children . . .”).

<sup>40</sup> Misrepresentations or omissions of material fact constitute deceptive acts or practices prohibited by Section 5(a) of the FTC Act. 15 U.S.C. § 45(a).



Smith & Wesson does not make enough military and police sales.<sup>41</sup> Setting aside that the M&P® trademark is not an advertising claim, the groups' argument deceptively omits that the name alludes to the company's history dating back to the Model 1899 Military and Police Revolver.<sup>42</sup> This information is readily available through a quick Google search but does not appear anywhere in the special interest groups' letters.

Similarly, the groups trumpet purported "public health evidence demonstrating that guns make people less safe, not more safe, particularly when guns are kept in the home" while deceptively omitting the enormous limitations on those studies that even the researchers themselves admit.<sup>43</sup> The researchers behind one such study were quoted by the Associated Press admitting they "could not determine which victims were killed by the handgun owners or with the in-home weapons. They couldn't account for illegal guns and looked only at handguns, not rifles or other firearms. The dataset also was limited to registered voters in California who were twenty-one (21) and older. It's not clear that the findings are generalizable to the whole state, let alone to the rest of the country . . . ."<sup>44</sup> Again, this information is readily available through a quick Google search but does not appear anywhere in the groups' fundraising letters to the FTC.

In another example, the groups argue that advertising firearms for self-defense is unfair and deceptive because of studies regarding the marksmanship of police officers in gunfights. They say, "it is extremely difficult even for trained professionals" to "reliably and accurately use a gun in self-defense."<sup>45</sup> This argument also cherry-picks facts. It conspicuously omits that the very same literature finds that police discharging firearms in the line of duty is exceedingly rare.

Police officers, by and large, are not experienced gunfighters. "In New York City, an analysis of the more than half a million stop, question, and frisk report worksheets filed in 2006 shows that police *pointed their weapons* at suspects in about 0.5 percent of filed reports."<sup>46</sup> "Statistically, it is unlikely that an officer will *ever* discharge his or her weapon during his or her entire career on the police force."<sup>47</sup>

Accordingly, the argument that police officers are inherently more experienced at using firearms in self-defense than civilians is contradicted by the very same literature that the special interest groups rely on. Again, the special interest groups fail to disclose

---

<sup>41</sup> See 2020 Everytown Letter at 2-3, 10-15.

<sup>42</sup> History of M&P, <https://www.smith-wesson.com/article/history-mp#:~:text=Called%20the%20Model%2039%2C%20this,law%20enforcement%20agency%20in%20the>.

<sup>43</sup> 2022 Brady Letter at 16-18 (citing David M. Studdert et al., *Handgun Ownership and Suicide in California*, 382 New England J. Medicine 2220, 2224 (2020)).

<sup>44</sup> Mike Stobbe, *Study Finds Higher Homicide Risk in Homes with Handgun*, Associated Press (Apr. 4, 2022), <https://apnews.com/article/science-health-homicide-d11c8f4aco7888b19309c3e1ff2ae3c9> (discussing the Studdert study).

<sup>45</sup> 2022 Brady Letter at 23.

<sup>46</sup> Bernard D. Rostker et al., *Evaluation of the New York City Police Department Firearm Training and Firearm-Discharge Review Process*, Rand Centr. On Quality Policing, at 8 (2008) (emphasis added), [http://www.nyc.gov/html/nypd/downloads/pdf/public\\_information/RAND\\_FirearmEvaluation.pdf](http://www.nyc.gov/html/nypd/downloads/pdf/public_information/RAND_FirearmEvaluation.pdf).

<sup>47</sup> *Id.* at 13 (emphasis added).

that fact. And they likewise do not address the fact that, despite how unlikely police officers are to fire their weapons in self-defense, officers across the country continue to carry firearms every day. Perhaps these special interest groups hope to take away those weapons too.

\* \* \*

Everytown, Brady, Giffords and their fellow anti-gun special interest groups seek to raise money by publicly disparaging NSSF members in every forum. They have sought through the White House, Congress, state capitols, and the courts to burden our members' businesses as much as possible for the benefit of their own bottom lines. Now, they have asked the FTC to throw the great weight of its credibility and authority behind their enterprise. I respectfully urge the FTC to decline to make itself an instrument of special interests so openly hostile to the Constitution and the truth.

Respectfully submitted,

A handwritten signature in cursive script, reading "Lawrence G. Keane".

Lawrence G. Keane

LGK/cj