

4/28/2011

MINUTE ORDER. Pending before the Court is a contested motion to intervene as of right or, in the alternative, for permissive intervention filed by the National Rifle Association of America and Safari Club International (collectively, "NRA/SCI"). "NRA and SCI are organizations that promote and protect hunting and shooting sports and outdoor recreational activities." NRA/SCI Mot. at 1. NRA/SCI "collectively represents millions of Americans who use lead-based ammunition and fishing tackle for recreational activities, as part of their employment, and/or for self-defense." NRA/SCI Mot. at 1; see also NRA/SCI Mot. at 6-12 and Declarations cited therein. Rule 24(a)(2) of the Federal Rules of Civil Procedure provides that upon timely motion a party shall be permitted to intervene as a matter of right when the movant "claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest." In addition to satisfying the requirements of Rule 24(a)(2), a party seeking to intervene as of right must demonstrate that it has standing under Article III of the Constitution. *Fund for Animals v. Norton*, 322 F.3d 728, 731-32 (D.C. Cir. 2003) (to establish standing a prospective intervenor must demonstrate a concrete and imminent injury that is fairly traceable to the regulatory action and that is redressable by a favorable decision of the court). Plaintiffs oppose intervention of NRA/SCI both as of right and permissively, arguing that the prospective intervenors "have failed to meet their minimum burden to demonstrate that the existing parties will inadequately represent their interests" and that "the issues [NRA/SCI] seek to interject in this case will only delay litigation and result in prejudice to the original parties." Pls.' Opp'n at 2. For the following reasons, and largely for the reasons given by the prospective intervenors, the Court concludes that NRA/SCI are entitled to intervene in this matter as of right. First, no party contests that NRA/SCI's motion was timely filed, as it was filed before the federal defendants responded to the complaint. Second, the Court concludes that NRA/SCI has standing to intervene on behalf of its members. See *Hunt v. Washington State Apple Adver. Comm'n*, 432 U.S. 333, 343 (1977) (setting out the standard for associational standing). Specifically, the Court finds that NRA/SCI has demonstrated that their members would have standing in their own right because NRA/SCI members use lead-based ammunition and lead-based fishing gear for their hunting, shooting and fishing activities, and their ability to use those items would be significantly impaired if plaintiffs are successful in obtaining the regulations they seek. NRA and SCI members, therefore, have "an interest relating to the property or transaction which is the subject of the action." Fed. R. Civ. P. 24(a)(2); see also *Fund for Animals*, 322 F.3d at 735 (demonstration of standing is sufficient to establish an interest in the subject matter of the litigation). Third, NRA/SCI has demonstrated that the disposition of this action "may as a practical matter impair or impede [their] ability to protect [their] interest[s]." Fed. R. Civ. P. 24(a)(2). NRA/SCI and their members currently benefit from the agency's determination that it has no authority to regulate lead ammunition and fishing sinkers. Plaintiffs have asked

this Court to order EPA to develop and implement regulations for lead shots, bullets, and fishing sinkers under the Toxic Substances Control Act because these items present an "unreasonable risk of injury to health or the environment." Compl. 7. If the Court were to grant plaintiffs' requested relief, the ability of NRA and SCI members to participate in hunting, shooting, and fishing would be impeded as they would be "forced to abandon hunting and shooting with some of their firearms" and would be "deprived of [their] choice of ammunition and fishing gear." NRA/SCI Mot. at 16; see also NRA/SCI Mot. at 16 (discussing the "chilling effect" that plaintiffs' proposed regulations would have on the hunting and fishing community, and explaining how the regulations would result in "reduced funds for wildlife and habitat conservation"). The Court therefore finds that plaintiffs' requested relief, if granted, would impair the protectable interests of NRA/SCI and their members. This leaves only the question of whether NRA/SCI's interest is "adequately represented by existing parties." Fed. R. Civ. P. 24(a)(2). "The Supreme Court has held that this 'requirement of the Rule 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.'" Fund for Animals, 322 F.3d at 735 (citing *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n.10 (1972)). Despite plaintiffs' protestations to the contrary, the Court finds that the rights of NRA/SCI members "to cast their bullets and fishing sinkers" is not adequately represented by "existing defendant-intervenors who manufacture, process, distribute, use and dispose of lead shot, bullets, and sinkers." Pls.' Opp'n at 5. Specifically, the Court is persuaded that "the interests of those who are involved in the production of a product are not necessarily the same as those of the end user of that product." NRA/SCI Mot. at 20-21; see also NRA/SCI Reply at 2-9. Nor are the rights of NRA/SCI members adequately represented by the federal defendants. See Fund for Animals, 322 F.3d at 736-37 (noting that the D.C. Circuit has often concluded that governmental entities do not adequately represent the interests of prospective intervenors). Accordingly, the Court finds that NRA/SCI are entitled to intervene as of right, and it is hereby ORDERED that [20](#) the motion of the National Rifle Association of America and Safari Club International to intervene as defendants pursuant to Rule 24(a)(2) of the Federal Rules of Civil Procedure is GRANTED. The Clerk of the Court is directed to file [20-12] the Proposed Answer attached to NRA/SCI's motion to intervene. Finally, the Court declines to adopt plaintiffs' recommendation to limit the scope of NRA/SCI's participation in this litigation at this time; however, the Court may direct joint or coordinated briefing as appropriate. Signed by Judge Emmet G. Sullivan on April 28, 2011. (lcegs1) (Entered: 04/28/2011)