

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

CALEB BARNETT, <i>et al.</i> , Plaintiffs, vs. KWAME RAOUL, <i>et al.</i> , Defendants.	Case No. 3:23-cv-209-SPM ** designated Lead Case
DANE HARREL, <i>et al.</i> , Plaintiffs, vs. KWAME RAOUL, <i>et al.</i> , Defendants.	Case No. 3:23-cv-141-SPM
JEREMY W. LANGLEY, <i>et al.</i> , Plaintiffs, vs. BRENDAN KELLY, <i>et al.</i> , Defendants.	Case No. 3:23-cv-192-SPM
FEDERAL FIREARMS LICENSEES OF ILLINOIS, <i>et al.</i> , Plaintiffs, vs. JAY ROBERT “JB” PRITZKER, <i>et al.</i> , Defendants.	Case No. 3:23-cv-215-SPM

**PLAINTIFF NATIONAL SHOOTING SPORTS FOUNDATION, INC.’S
ANSWERS TO THE STATE DEFENDANTS’
SECOND SET OF INTERROGATORIES**

The National Shooting Sports Foundation, Inc. (“NSSF”), by its undersigned attorneys, responds to the State Defendants’ Second Set of Interrogatories as follows:

15. With respect to NSSF's *Detachable Magazine Report* (1990–2021) (“Magazine Report”), produced at NSSF 001994–NSSF 001997, identify all documents, communications, and other information relied upon in the preparation of the Magazine Report that NSSF has deleted, destroyed, expunged, returned, relinquished, or otherwise no longer retains.

ANSWER: NSSF objects to this Interrogatory as overbroad, harassing, argumentative, and unduly burdensome, especially to the extent that it calls for “all documents, communications or other information” on the topic at issue, which is facially overbroad and unreasonable. The burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, each party’s resources, and the importance of the proposed discovery in resolving the issues in the case. As such, this discovery is not “proportional to the needs of the case” under Federal Rule of Civil Procedure 26(b)(1).

Without waiving and subject to these objections, the pertinent information used to prepare the Magazine Report was an aggregated dataset that NSSF has already produced in this litigation. NSSF engaged a third-party, online-survey provider to gather the survey responses from members of the firearm industry for the *Detachable Magazine Report* (1990-2021). Participants completed the survey on that online platform, which housed the responses. NSSF did not house individual responses to the survey. Each time a response was recorded on the online platform, NSSF’s Salam Fatohi logged into NSSF’s account for the online-survey provider, reviewed the response, and then collected the response (i.e., number of magazines) by aggregating it into a master Excel spreadsheet that was used to create the *Detachable Magazine Report* (1990-2021).

To be clear, the data for the *Detachable Magazine Report* (1990-2021) was never deleted or destroyed—it was transferred from the third-party online platform to NSSF’s master

Excel spreadsheet. A copy of that master Excel spreadsheet, which houses all the underlying data used for the *Detachable Magazine Report* (1990-2021), was previously produced at NSSF 002323. As explained, the data in this spreadsheet is duplicative of multiple pieces of information that were housed only on the third-party online platform. Separately, and in response to its outreach efforts, NSSF did directly receive a limited quantity of information by way of email response to survey questions (i.e., not through the third-party online platform), and those emails have been retained and produced to the State in this litigation (with the identity of the respondent redacted to preserve confidentiality).

While individual survey responses housed on the third-party online platform were not retained after they were aggregated into the master spreadsheet, the aggregated data was. NSSF transferred from the third-party online platform to NSSF's master Excel spreadsheet in accordance with the organization's longstanding policy of keeping the identity and competitively sensitive data of its members confidential. Over the course of many years, NSSF has earned the trust of its members and respondents for its surveys of the industry by agreeing and promising that their proprietary information will be kept confidential, which sometimes includes expunging certain data after it has otherwise been aggregated for the purpose of the matter at hand. This promise and practice is particularly important when using a third-party entity. Indeed, NSSF takes steps to ensure the confidentiality of its members in many routine aspects of its operations. For example, NSSF does not share members' sales data for dues beyond a strictly need-to-know basis. In contrast, neither the identity of the NSSF members that responded to the survey nor their proprietary and competitively sensitive information is pertinent to any issue in this litigation.

In the invitation to participate in the *Detachable Magazine Report* (1990-2021), NSSF promised: “Your responses will be kept confidential and aggregated with other responses so that no individual company’s information will be identified in the final report. Only the NSSF Research team will have access to your responses and once the responses are aggregated and the report published, NSSF will permanently destroy/delete all individual responses.” NSSF upheld its end of the bargain by recording the survey responses into the aggregated dataset maintained in the master Excel spreadsheet, but not recording and maintaining the individual, member-identifying responses housed on the online survey provider’s platform. Moreover, it is common practice in survey methodology to keep the identity of the respondent confidential. To the best of NSSF’s knowledge, the online survey provider does not retain a back-up copy of the data once it has been deleted or discarded.

NSSF had no need or intent to separately collect, record, and maintain individual survey responses, and it never housed all such responses. NSSF recorded and maintained only the data that was used to fulfill the purpose of the survey—to provide an estimation of the aggregated (or total) number of certain types of magazines produced over a set number of years. Nor is it reasonable or proportional to the needs of this litigation for the NSSF to have been required to maintain data on the third-party survey website because, *inter alia*, NSSF lacked the ability to control the security of the website. Because individual survey responses were required to be kept strict confidentiality, the only efficient and reasonable means of handling such information was to collect data for aggregation purposes and not retain such data on the third-party site.

To the extent NSSF solicited participation in the survey for the *Detachable Magazine Report* via emails to individuals/entities, NSSF has agreed to produce those emails (with

identities redacted to maintain confidentiality) and any responsive information in those emails is incorporated by reference herein pursuant to Federal Rule of Civil Procedure 33(d).

16. With respect to documents, communications, and other information within the scope of the preceding Interrogatory No. 15, identify who at NSSF was involved in the deletion, destruction, expungement, return, or relinquishment; the date on which the deletion, destruction, expungement, return, or relinquishment occurred; and the reason or rationale for the deletion, destruction, expungement, return, or relinquishment.

ANSWER: NSSF objects to this Interrogatory as overbroad, harassing, argumentative, and unduly burdensome, especially to the extent that it calls for “all documents, communications or other information” on the topic at issue, which is facially overbroad and unreasonable. The burden or expense of the proposed discovery, given this plain overbreadth, outweighs its likely benefit, taking into account the needs of the case, each party’s resources, and the importance of the proposed discovery in resolving the issues in the case. As such, this discovery is not “proportional to the needs of the case” under Federal Rule of Civil Procedure 26(b)(1).

Without waiving and subject to these objections, the emails referenced in response to Interrogatory No. 15 were archived and have been produced to the State. As explained in response to Interrogatory No. 15, the spreadsheet referenced throughout NSSF’s response to Interrogatory No. 15 was not deleted and was produced in this case. NSSF’s research department had sole control of NSSF’s account with the third-party, online survey provider used to house the individualized survey responses for the *Detachable Magazine Report* (1990-2021). Individual survey responses housed by the third-party provider were received from

approximately May to December of 2023), and were not retained after aggregation. Collecting and retaining individual responses was never the purpose, intent, or practice of NSSF with respect to this report. As discussed above in response to Interrogatory No. 15, the data was aggregated and retained in the master Excel spreadsheet produced at NSSF 002323. Further responding, NSSF incorporates by reference the discussion on confidentiality and the process for maintaining data as discussed above in response to Interrogatory No. 15.

17. With respect to the chart titled “Modern Sporting Rifle Production in the United States 1990-2021,” appearing at NSSF 000041 (“MSR Chart”), identify all documents, communications, and other information relied upon in the preparation of the MSR Chart that NSSF has deleted, destroyed, expunged, returned, relinquished, or otherwise no longer retains.

ANSWER: NSSF objects to this Interrogatory as duplicative of prior requests, overbroad, harassing, argumentative, and unduly burdensome, especially to the extent that it calls for “all documents, communications or other information” on the topic at issue, which is facially overbroad and unreasonable. The burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, each party’s resources, and the importance of the proposed discovery in resolving the issues in this case. As such, this discovery is not “proportional to the needs of the case” under Federal Rule of Civil Procedure 26(b)(1).

Without waiving and subject to these objections, NSSF states that such documents are available and have previously been produced to the State in this litigation. For example, archived, redacted correspondence soliciting participation in the survey providing the basis for the “Modern Sporting Rifle Production in the United States 1990-2021” report was produced on

June 12, 2024. NSSF also produced the spreadsheet with the individual responses (to maintain confidentiality, entities names were redacted). The purpose of this Interrogatory is unclear, but for clarity, NSSF did not use a third-party entity as part of the report that forms the basis of this request.

18. With respect to documents, communications, and other information within the scope of the preceding Interrogatory No. 17, identify who at NSSF was involved in the deletion, destruction, expungement, return, or relinquishment; the date on which the deletion, destruction, expungement, return, or relinquishment occurred; and the reason or rationale for the deletion, destruction, expungement, return, or relinquishment.

ANSWER: NSSF incorporates by reference its objections and responses to Interrogatory No. 17. Further responding, no person. While Mr. Fatohi identified at deposition that his emails soliciting participation in this survey were deleted in accordance with NSSF's agreement with its members, NSSF maintained an archived copy of his correspondence, which were produced in this litigation on June 12, 2024. Identities of such participants were redacted for confidentiality reasons.

Dated: July 15, 2024

Respectfully submitted,

PAUL D. CLEMENT*
ERIN E. MURPHY*
MATTHEW D. ROWEN*
NICHOLAS A. AQUART *
CLEMENT & MURPHY, PLLC
706 Duke Street
Alexandria, VA 22314
(202) 742-8900

* *pro hac vice*

/s/ Andrew A. Lothson
ANDREW A. LOTHSON*
SWANSON, MARTIN & BELL, LLP
330 N. Wabash
Suite 3300
Chicago, IL 60611
alothson@smbtrials.com

GARY C. PINTER
SWANSON, MARTIN & BELL, LLP
103 W. Vandalia Street
Suite 215
Edwardsville, IL 62025
(618) 655-3131
gpinter@smbtrials.com

*Counsel for Plaintiff National Shooting
Sports Foundation, Inc.*

VERIFICATION

I declare under penalty of perjury under the laws of the United States of America that the foregoing answers within the above responses to the Interrogatories are true and correct.

/s/ Salam Fatohi

Salam Fatohi, on behalf of the National
Shooting Sports Foundation, Inc.

Dated: July 15, 2024

CERTIFICATE OF SERVICE

The undersigned attorney certifies that a copy of the foregoing was served upon counsel of record for the Defendants by e-mail on July 15, 2024, including the following:

Christopher Wells
christopher.wells@ilag.gov

John Hazinski
John.Hazinski@ilag.gov

/s/ Andrew A. Lothson
Andrew A. Lothson