

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM

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August 1, 2022

Mr. Mark P. Smith
President and Chief Executive Officer
Smith & Wesson Brands, Inc.
2100 Roosevelt Avenue
Springfield, MA 01104

Dear Mr. Smith:

I am writing to notify you that I have issued a subpoena to Smith & Wesson Brands, Inc. (“Smith & Wesson”) for documents related to your company’s manufacture and sale of AR-15-style firearms. Your company collects hundreds of millions of dollars selling assault weapons that are used in mass shootings, including the horrific murder of seven Americans and the wounding of dozens more during a Fourth of July parade in Highland Park, Illinois. This subpoena was necessitated by your unwillingness to voluntarily comply with the Committee’s investigation, including your refusal to testify about your company’s troubling business practices at the Committee’s July 27, 2022 hearing, and your refusal to voluntarily produce key information about your company’s sale of assault weapons to civilians.

The Committee’s Investigation into Gun Violence

Our country faces an urgent and growing crisis of gun violence, which is now the leading cause of death for children in the United States.¹ Eight of the 20 deadliest mass shootings in American history have taken place since 2014, and the number of mass shootings doubled between 2017 and 2021.² In 2022, there have already been more mass shootings recorded than days in the year.³

¹ *Firearms Overtook Auto Accidents as the Leading Cause of Death in Children*, National Public Radio (Apr. 22, 2022) (online at www.npr.org/2022/04/22/1094364930/firearms-leading-cause-of-death-in-children).

² *What Do Most Mass Shooters Have in Common? They Bought Their Guns Legally*, New York Times (May 16, 2022) (online at www.nytimes.com/2022/05/16/us/politics/legal-gun-purchase-mass-shooting.html?smid=url-share); Department of Justice and Federal Bureau of Investigation, *Active Shooter Incidents in the United States in 2021* (May 2022) (online at www.fbi.gov/file-repository/active-shooter-incidents-in-the-us-2021-052422.pdf/view).

³ Gun Violence Archive, *Past Summary Ledgers* (online at www.gunviolencearchive.org/past-tolls) (accessed June 1, 2022).

In 2019, the Committee launched an investigation into gun dealers that sell guns used in crimes.⁴ On April 28, 2022, the Committee released preliminary findings from its investigation, showing that a small number of gun dealers—particularly those in states with lax gun laws—have sold thousands of guns used in violent crimes.⁵

On May 26, 2022, in the wake of the mass shootings in Buffalo and Uvalde, the Committee opened an inquiry into five leading manufacturers of AR-15-style rifles, including your company, Smith & Wesson. The Committee sought documents and information related to your company’s manufacture, marketing, and sale of AR-15-style firearms.⁶ As explained in the May 26 letter, the Committee is investigating your company’s practices related to AR-15-style semiautomatic rifles and similar firearms to inform legislative efforts to achieve common-sense gun safety measures to save American lives.

On June 8, 2022, the Committee held a hearing to examine the causes and impacts of gun violence and evaluate measures needed to prevent further loss of life from firearms.⁷ The hearing included testimony from survivors of mass shootings and from gun industry experts, advocates, law enforcement, and elected officials who testified to gun manufacturers’ business and advertising practices. Nick Suplina, Vice President for Law and Policy at Everytown for Gun Safety, testified that AR-15-style rifles “are designed and are advertised to be able to inflict mass amount of damage in a short period of time.”⁸

In the days following the Committee’s June 8 hearing, Congress passed the Bipartisan Safer Communities Act, which requires enhanced background checks for buyers under the age of 21, closes the “boyfriend loophole,” provides federal grants for states to enact “red flag” laws, and enhances penalties for gun traffickers.⁹ This law is an important step, but it does not ban

⁴ Letter from Chairman Elijah E. Cummings, Committee on Oversight and Reform, to Acting Deputy Director Regina Lombardo, Bureau of Alcohol, Tobacco, Firearms and Explosives (Aug. 9, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-08-09.EEC%20to%20Lombardo-ATF%20re%20Gun%20Tracing.pdf>).

⁵ Letter from Chairwoman Carolyn B. Maloney, Committee on Oversight and Reform, to Acting Director Gary M. Restaino, Bureau of Alcohol, Tobacco, Firearms and Explosives (April 28, 2022) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2022-04-28.%20CBM%20to%20Restaino-ATF%20re%20Gun%20Violence%20and%20Tracing.pdf>).

⁶ Committee on Oversight and Reform, *Press Release: Chairwoman Maloney Launches Investigation into Manufacturers of Assault Weapons Used in Mass Shootings* (May 27, 2022) (online at <https://oversight.house.gov/news/press-releases/chairwoman-maloney-launches-investigation-into-manufacturers-of-assault-weapons>).

⁷ Committee on Oversight and Reform, *Hearing on The Urgent Need to Address the Gun Violence Epidemic* (June 8, 2022) (online at <https://oversight.house.gov/legislation/hearings/the-urgent-need-to-address-the-gun-violence-epidemic>).

⁸ *Id.*

⁹ Pub. L. No. 117-159.

assault weapons or implement other safety solutions that the gun industry has lobbied aggressively to prevent.¹⁰

Smith & Wesson's Obstruction

At the Committee's June 8 hearing, I announced that the Committee planned to hold a second hearing with gun manufacturers.¹¹ On July 6, 2022, the Committee invited you to appear at a hearing scheduled for July 20, 2022. The invitation letter explained that the hearing would "examine the role of the firearms industry in the gun violence epidemic, including with respect to the sale and marketing of assault weapons and the broad civil immunity that has been unfairly granted to manufacturers." The letter explained:

As the chief executive officer of a major firearms manufacturer that sells millions of assault weapons, your testimony is crucial to understand why your company continues to sell and market these weapons to civilians, what steps your company plans to take to protect the public, and what additional reforms are needed to prevent further deaths from your products.¹²

You initially accepted the invitation, with your lawyer stating he was "writing on behalf of Mr. Smith to accept your invitation and confirm that he will appear before your Committee on that day."¹³ However, just five days before the hearing, you abruptly reversed course and withdrew from the hearing. In a letter to the Committee, your counsel stated that you "will not be attending your July 20 hearing." He explained that you were withdrawing because of concern that you "might be the only industry CEO to appear" and that the hearing could be "inappropriately focused" on Smith & Wesson's business practices.¹⁴

Despite withdrawing from the hearing, your counsel promised that you would be "willing to participate in a hearing in which significant representation from the industry is present at the witness table alongside Mr. Smith." He asked the Committee to "inform us when you have determined a hearing date at which several other firearm manufacturers are willing and able to

¹⁰ *The Gun Lobby's Growing Divide*, Axios (June 4, 2022) (online at www.axios.com/2022/06/04/guncontrol-nra-red-flag-laws); *Gun Rights Groups Mobilizing to Counter Gun Control Bills, Either in the Senate or in the Courts*, Time (June 3, 2022) (online at <https://time.com/6184098/gun-rights-groups-congress-courts/>).

¹¹ Committee on Oversight and Reform, *Hearing on The Urgent Need to Address the Gun Violence Epidemic* (June 8, 2022) (online at <https://oversight.house.gov/legislation/hearings/the-urgent-need-to-address-the-gun-violence-epidemic>).

¹² Letter from Chairwoman Carolyn B. Maloney, Committee on Oversight and Reform, to Mark P. Smith, President and Chief Executive Officer, Smith & Wesson Brands, Inc. (July 6, 2022) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2022-07-06.CBM%20to%20Smith-Smith%20Wesson%20re%20Witness%20Invitation.pdf>).

¹³ Letter from Mark R. Paoletta to Chairwoman Carolyn B. Maloney, Committee on Oversight and Reform (July 8, 2022).

¹⁴ Letter from Mark R. Paoletta to Chairwoman Carolyn B. Maloney, Committee on Oversight and Reform (July 15, 2022).

attend, and Mr. Smith will participate alongside other industry leaders at that time.” His letter did not identify any upcoming scheduling conflicts.¹⁵

The Committee accommodated your request to delay the hearing and identified July 27 as the rescheduled hearing date. The Committee also secured commitments from chief executives of Sturm, Ruger & Co. and Daniel Defense to attend the hearing. Despite your previous commitment to testify voluntarily, you once again refused to attend the Committee’s hearing. Your counsel stated for the first time that you would be “out of town” and “unavailable to testify” every day until Congress went out of session for the month-long district work period in August.¹⁶

Committee staff made several good-faith attempts to secure your voluntary participation, including offering that you could testify remotely, but your counsel continued to indicate you would not appear. On July 22, Committee staff explained to your counsel:

Given the importance of this hearing in light of recent mass shootings, Mr. Smith’s testimony is central to our investigation. If Mr. Smith refuses to appear, the Committee will be forced to take additional actions to obtain the information that we need.¹⁷

Your counsel responded that “Mr. Smith declines your invitation,” and refused to provide further information about your scheduling conflict during the July 27 hearing.¹⁸

Your company’s response to the Committee’s May 26, 2022, request for information and documents has also been deficient. In particular, the Committee requested revenue, profit, and sales information related to “semiautomatic rifles based on the AR platform and similar variants.” Your company, however, refused to voluntarily provide specific revenue, profit, or sales information for its AR-15-style firearms. Instead, you provided aggregate “long gun” revenues—a broad category that includes all guns designed to be held with two hands, including non-semi-automatic rifles and shotguns—and indicated that assault rifles make up more than half of overall long gun sales.

In a letter to the Committee, your counsel admitted that Smith & Wesson was refusing to produce “the specific numbers of MSRs [modern sporting rifles] sold as a subset of our long gun sales.” The letter asserted that the company was withholding this information because the “exact figure” of Smith & Wesson’s assault weapon sales was not “necessary” for the Committee’s investigation.¹⁹ On the contrary—as made clear in the Committee’s written request and follow-

¹⁵ *Id.*

¹⁶ Letter from Mark R. Paoletta to Chairwoman Carolyn B. Maloney, Committee on Oversight and Reform (July 18, 2022).

¹⁷ Email from Majority Staff, Committee on Oversight and Reform, to Mark R. Paoletta (July 22, 2022).

¹⁸ Letter from Mark R. Paoletta to Chairwoman Carolyn B. Maloney, Committee on Oversight and Reform (July 25, 2022).

¹⁹ Letter from Mark R. Paoletta to Chairwoman Carolyn B. Maloney, Committee on Oversight and Reform (July 8, 2022).

up efforts from Committee staff—determining Smith & Wesson’s revenue, profit, and sales figures for AR-15-style weapons is central to the Committee’s inquiry.²⁰

Need for a Subpoena

As the Committee has previously explained, your testimony was of particular importance to the Committee’s investigation and hearing. As the chief executive officer of one of the country’s largest firearms manufacturers that sells thousands of assault weapons, your testimony would have shed light on why your company continues to sell and market these weapons to civilians despite recent mass shootings with your products, what steps your company plans to take to protect the public, and what additional reforms are needed to prevent further deaths from your products.

Smith & Wesson was the second-most prolific manufacturer of rifles in the nation in 2020.²¹ The Committee’s investigation found that five leading gun manufacturers, including Smith & Wesson, have amassed over \$1 billion in revenue over the past decades selling AR-15-style rifles.²² In your company’s latest annual report, Smith & Wesson reported sales of \$1.1 billion—the highest sales in the company’s nearly 170-year history.²³ While your company refused to provide information specific to AR-15-style rifles, the limited information provided shows that your company brought in at least \$125 million from AR-15 style rifles in 2021 alone.²⁴

Even as your company is reaping growing revenue from assault rifles, your weapons are being used in deadly mass shootings with increasing frequency. Just this past Independence Day, a gunman opened fire on a Fourth of July parade in Highland Park, Illinois, using a Smith

²⁰ See, e.g., Committee on Oversight and Reform, *Memorandum: The Committee’s Investigation into Gun Industry Practices and Profits* (July 27, 2022) (examining in detail revenues and sales figures for AR-15-style rifles from five manufactures and noting lack of complete data from Smith & Wesson) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2022.07.27%20Supplemental%20MEMO%20for%20the%207-27-2022%20FC%20Gun%20Manufacturer%20Hearing.pdf>).

²¹ Bureau of Alcohol, Tobacco, Firearms and Explosives, *2020 Annual Firearms Manufacturers and Export Report (AFMER)* (online at www.atf.gov/resource-center/2020-annual-firearms-manufacturers-and-export-report-afmer) (accessed July 28, 2022).

²² Committee on Oversight and Reform, *Memorandum: The Committee’s Investigation into Gun Industry Practices and Profits* (July 27, 2022) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2022.07.27%20Supplemental%20MEMO%20for%20the%207-27-2022%20FC%20Gun%20Manufacturer%20Hearing.pdf>).

²³ Smith & Wesson, Brands, Inc., *2021 Annual Report* (online at <https://ir.smith-wesson.com/static-files/9b53914e-9247-48e8-bd3e-1ea7360cebd3>) (accessed July 28, 2022).

²⁴ Committee on Oversight and Reform, *Memorandum: The Committee’s Investigation into Gun Industry Practices and Profits* (July 27, 2022) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2022.07.27%20Supplemental%20MEMO%20for%20the%207-27-2022%20FC%20Gun%20Manufacturer%20Hearing.pdf>).

& Wesson M&P AR-15-style rifle.²⁵ Seven people were killed and 46 others were injured.²⁶ A Smith & Wesson firearm was also used in the 2018 Parkland, Florida, school shooting that killed 17 people and injured 17 others.²⁷ Your company's firearms were also used in the 2015 San Bernardino, California, terrorist attack that killed 14 people and injured 24 others, and the 2012 Aurora, Colorado, movie theater mass shooting that killed 12 people and injured 70 others.²⁸

Despite the enormous harm inflicted by your product, your company informed the Committee that it makes no effort to track or monitor injury, deaths, or crimes associated with the AR-15-style rifles you manufacture, even though this data is included in a tracing process run by the Bureau of Alcohol, Tobacco, Firearms and Explosives.

The Committee's investigation also found that, despite these horrific mass shootings, Smith & Wesson's marketing campaigns have consistently contained dangerous themes and messages. As shown in the Committee's July 27, 2022 memorandum, your advertisements emphasize the AR-15-style rifle's military roots and seek to appeal to consumers' masculinity.²⁹

Smith & Wesson has also claimed military and law enforcement endorsements for its products in advertisements. Among the materials you produced is an advertisement depicting a Smith & Wesson M&P rifle as "the chosen one" that is "selected by professionals." The advertisement features the insignia of police, sheriff, highway patrol, and other law enforcement.³⁰ These claims are currently the subject of a complaint to the Federal Trade Commission, which alleges that your advertisements contain false endorsements from military and law enforcement.³¹

Another Smith & Wesson advertisement obtained by the Committee combines the promise of an adrenaline rush with violent undertones. It depicts spent shell casings, the

²⁵ *Highland Park Suspect Confessed to the July 4th Shooting, Prosecutors Say*, National Public Radio (July 6, 2022) (online at www.npr.org/2022/07/06/1109987663/highland-park-parade-shooting-suspect-robert-crimo-iii).

²⁶ *Id.*

²⁷ *A City that Makes Guns Confronts Its Role in the Parkland Mass Shooting*, New York Times (Mar. 22, 2018) (online at www.washingtonpost.com/business/economy/a-city-that-makes-guns-confronts-its-role-in-the-parkland-mass-shooting/2018/03/22/529d9874-2bc0-11e8-b0b0-f706877db618_story.html).

²⁸ *Aurora Gunman's Arsenal: Shotgun, Semiautomatic Rifle and, at the End, a Pistol*, New York Times (July 23, 2012) (online at www.nytimes.com/2012/07/24/us/aurora-gunmans-lethal-arsenal.html); *Guns Used in San Bernardino Shooting Were Purchased Legally from Dealers*, Washington Post (Dec. 3, 2015) (online at www.washingtonpost.com/world/national-security/suspects-in-san-bernadino-shooting-had-a-small-arsenal/2015/12/03/9b5d7b52-99db-11e5-94f0-9eeaff906ef3_story.html).

²⁹ Committee on Oversight and Reform, *Memorandum: The Committee's Investigation into Gun Industry Practices and Profits* (July 27, 2022) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2022.07.27%20Supplemental%20MEMO%20for%20the%207-27-2022%20FC%20Gun%20Manufacturer%20Hearing.pdf>).

³⁰ *Id.*

³¹ Letter from Brady: United Against Gun Violence and Everytown for Gun Safety to Acting Director Samuel Levine, Bureau of Consumer Protection, Federal Trade Commission (Aug. 17, 2021) (online at <https://everytownla.org/wp-content/uploads/sites/5/2021/08/2021.08.17-SW-FTC-Submission.pdf>).

company's M&P rifle, and the caption "Kick Brass."³² The advertisement claims the rifle will deliver "Pure Adrenaline."³³

At the Committee's July 27, 2022 hearing, Committee Members addressed important issues related to gun manufacturers' sales and marketing of assault weapons with the chief executives of Ruger and Daniel Defense—including the gun industry's profits at the expense of the American people, the reckless and dangerous marketing by gun manufacturers to sell their products, the lack of safety monitoring by these companies, and the companies' response to mass shootings using their products. The Committee was unable to question you about any of these topics because you refused to appear.

In light of your refusal to comply voluntarily with the Committee's investigation, I have issued a subpoena for documents from your company to obtain key information needed for the Committee's investigation.

The Committee on Oversight and Reform is the principal oversight committee of the House of Representatives and has broad authority to investigate "any matter" at "any time" under House Rule X.³⁴ The Supreme Court has made clear that Congress has broad authority to inquire about a wide array of topics that could be the subject of legislation and appropriations:

The power of inquiry has been employed by Congress throughout our history, over the whole range of the national interests concerning which Congress might legislate or decide upon due investigation not to legislate; it has similarly been utilized in determining what to appropriate from the national purse, or whether to appropriate. The scope of the power of inquiry, in short, is as penetrating and farreaching [sic] as the potential power to enact and appropriate under the Constitution.³⁵

Combatting the gun violence epidemic and addressing troubling business practices that lead to the death of innocent people are undoubtedly subjects "on which legislation could be had."³⁶ Congress's intent to legislate in these areas is demonstrated by the wide variety of legislative proposals to reduce gun violence, increase firearm safety, and address irresponsible

³² Committee on Oversight and Reform, *Memorandum: The Committee's Investigation into Gun Industry Practices and Profits* (July 27, 2022) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2022.07.27%20Supplemental%20MEMO%20for%20the%207-27-2022%20FC%20Gun%20Manufacturer%20Hearing.pdf>).

³³ *Id.*

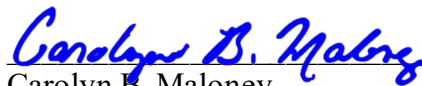
³⁴ House rule X, clause 4(c)(2).

³⁵ *Barenblatt v. U.S.*, 360 U.S. 109, 111 (1959). *See also Trump v. Mazars USA, LLP*, 591 U.S. ___ (2020) ("This 'power of inquiry—with process to enforce it—is an essential and appropriate auxiliary to the legislative function.' Without information, Congress would be shooting in the dark, unable to legislate 'wisely or effectively.' The congressional power to obtain information is 'broad' and 'indispensable.' It encompasses inquiries into the administration of existing laws, studies of proposed laws, and 'surveys of defects in our social, economic or political system for the purpose of enabling the Congress to remedy them.'") (citations omitted).

³⁶ *McGrain v. Daugherty*, 273 U.S. 135, 177 (1927).

gun industry business practices.³⁷ Indeed, just two days after the Committee's July 27 hearing, the House of Representatives approved a ban on assault weapons.³⁸ That legislation is now pending in the Senate. Information obtained from Smith & Wesson may inform these and other proposals and help Congress determine how to effectively regulate the powerful and deadly weapons of war being sold by gun manufacturers, examine the effect of immunity statutes on gun industry behavior, and curb irresponsible marketing that appeals to extremists and white supremacists.

Sincerely,



Carolyn B. Maloney
Chairwoman

cc: The Honorable James Comer, Ranking Member

³⁷ See, e.g., H.R. 8 (establishing background check requirements for firearm transfers between unlicensed private parties); H.R. 647 (restricting the sale of shotguns and rifles across state lines); H.R. 748 (establishing a framework to regulate the storage of firearms on residential premises); H.R. 825 (authorizing the Centers for Disease Control and Prevention to conduct research on firearms safety or gun violence prevention); H.R. 1004 (establishing requirements for gun owners to be covered by a liability insurance policy); H.R. 1006 (creating new requirements regarding firearm transfers at gun shows); H.R. 1007 (establishing gun trafficking as a standalone federal offense); H.R. 1008 (establishing a framework to regulate handguns as consumer products); H.R. 1808 (prohibiting the sale, manufacture, transfer, or possession of assault weapons); H.R. 1207 (enhancing requirements for the sale, purchase, shipment, and transport of ammunition, including that the ammunition sales take place in person); H.R. 1446 (enhancing the amount of time that a federal firearms licensee must wait to receive a completed background check prior to transferring a firearm to an unlicensed person); H.R. 1752 (establishing a three-day waiting period for certain handgun transfers); H.R. 2282 (removing limitations on the authority of the Bureau of Alcohol, Tobacco, Firearms and Explosives to conduct activities related to the administration of federal firearms laws, including limitations on the use of firearms tracing data); H.R. 2377 (authorizing and establishing procedures for federal courts to issue extreme risk protection orders); H.R. 2510 (prohibiting the sale, manufacture, transfer, or possession of a large capacity magazines); H.R. 2715 (requiring background check requirements for the sale and transfer of ammunition); H.R. 2814 (repealing the *Protection of Lawful Commerce in Arms Act*); H.R. 3509 (establishing a framework for a minimum safety standard for firearm locks and safes); H.R. 3088 (creating a framework to regulate the manufacture, sale, and purchase of ghost guns); H.R. 3929 (expanding the categories of persons who are prohibited from receiving or possessing a firearm, including those convicted of a misdemeanor hate crime); H.R. 4136 (directing the Department of Justice to award competitive grants to nonprofit organizations to purchase and distribute firearm locking devices to firearm owners); H.R. 4225 (prohibiting the publishing of digital instructions for programming a three-dimensional printer to make a firearm); H.R. 4804 (requiring the national instant criminal background check system to notify federal, state, and local law enforcement agencies if a firearms-related background check determines that an individual is ineligible to receive a firearm); H.R. 5678 (establishing a code of conduct for federal firearms licensees); H.R. 7910 (implementing multiple measures to mitigate gun violence, including raising the age to purchase a firearm, establishing new federal crimes for gun trafficking, and the regulation of ghost guns); H.R. 8570 (directing the Federal Trade Commission to produce a report on the dangerous practices in the marketing of firearms).

³⁸ H.R. 1808.