

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

BONITA SHREVE, <i>et al.</i>)	
)	
<i>Plaintiffs,</i>)	
)	
v.)	Civil No.: 3:25-cv-214-SLH
)	
UNITED STATES POSTAL SERVICE, <i>et al.</i>)	
)	
<i>Defendants.</i>)	
_____)	

**PLAINTIFFS' RESPONSE IN OPPOSITION TO MOVANT STATES'
MOTION TO INTERVENE AS DEFENDANTS**

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INTRODUCTION

Intervention is the “legal procedure by which ... a third party is allowed to become a party to the litigation.” *United States ex rel. Eisenstein v. City of New York*, 556 U.S. 928, 933 (2009) (quoting Black’s Law Dictionary 840 (8th ed. 2004)). The Federal Rules of Civil Procedure provide two mechanisms for third-party intervention: intervention of right under Rule 24(a), and permissive intervention under Rule 24(b). Rule 24(a) allows nonparties to intervene only where they are “given a right to intervene by a federal statute” or they “claim[] an interest relating to the property or transaction that is the subject of the action, and [are] 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.” Fed. R. Civ. P. 24(a).

Movants do not claim a statutory right to intervene, so they must satisfy the requirements of Rule 24(a)(2). It is well-settled that, to intervene as of right, four requirements each must be met: (1) the application for intervention must be timely; (2) the applicant must have an interest relating to the property or transaction that is the subject of the action; (3) the applicant must be so situated that the disposition of the action may, as a practical matter, impair or impede his ability to protect that interest; and (4) the applicant’s interest must be inadequately represented by the existing parties to the suit. *Harris v. Pernsley*, 820 F.2d 592, 596 (3d Cir. 1987). This is a conjunctive test, and “each must be met to intervene as of right.” *Id.*

Meanwhile, permissive intervention under Rule 24(b) is permitted at the Court’s discretion when: (1) a timely application is made by the intervenor; (2) the intervenor’s claim or defense and the main action have a question of law or fact in common; and (3) intervention will not unduly delay or prejudice the adjudication of the rights of the original parties. *United States v. Territory of the Virgin Islands*, 748 F.3d 514, 524 (3d Cir. 2014). Permissive intervention “is within the

discretion of the district court.” *Brody v. Spang*, 957 F.2d 1108, 1124 (3d Cir. 1992). Thus, “if intervention as of right is not available, the same reasoning would indicate that it would not be an abuse of discretion to deny permissive intervention as well.” *Id.*

SUMMARY OF ARGUMENT

Movants Delaware, New Jersey, and New York have never found a gun control law they dislike. The atextual and ahistorical federal statute that Plaintiffs challenge here is no exception. Thus, Movants seek to intervene for no reason other than to do what they wish the federal government had done – *defend the statute*. But mere disagreement with Defendants’ litigation strategy does not suffice. Movants have no stake *of their own* in this case warranting intervention, and their Motion should be denied.

Movants are not entitled to intervene as of right, because they have no legally cognizable interest that a judgment in Plaintiffs’ favor would impair. First consider Movants’ assertions of some attenuated and derivative “pocketbook injury.” Movants claim that, in Section 1715’s absence, individuals will be free to mail firearms across state lines and into their states, in violation of Movants’ myriad gun control regimes. But not only are Movants’ vague and nonspecific allegations of increased law enforcement costs far too speculative to warrant intervention – indeed, they depend entirely on the future criminal acts of third parties – but also Movants fail to realize that *numerous other federal statutes* independently criminalize the parade of horrors Movants envision. And in any case, Movants cannot claim a “legally protectable” interest in using Section 1715 to help enforce their own unconstitutional gun control regimes. By placing their gun laws at issue, Movants bear the burden of assuring this Court of their laws’ constitutionality before they can articulate a “legally protectable interest” to intervene to defend them. But Movants failed to do so.

Nor do Movants have a “sovereign interest” in defending Section 1715. Movants complain that they have a right to enforce their own criminal laws, and without Section 1715, such enforcement will be more difficult. But Movants have no right to commandeer the *federal government* to aid in the enforcement of *state law*. No case stands for that proposition. Equally fatal to Movants’ case for intervention is their utter failure to demonstrate their Article III standing. By seeking *different relief* from Defendants – the dismissal of Plaintiffs’ Complaint “with prejudice” – binding precedent requires that Movants must show their own standing to intervene. They did not.

And that says nothing of the other issues with Defendants’ Motion, each of which serves as an independent ground for denial of intervention as of right. First, Movants do not assert any “claim or defense” of their own under the Federal Rules. Rather, they merely offer a defense *on Defendants’ behalf* – one that was Defendants’ alone to raise. Second, and relatedly, Defendants’ decision not to enforce Section 1715 is unreviewable.

For these reasons, Movants offer no persuasive argument in favor of permissive intervention, either. At most, this Court should allow Movants to proceed as amici curiae, provided Plaintiffs have the opportunity to respond to Movants’ merits arguments.

ARGUMENT

I. MOVANTS FAIL TO MEET THE FED. R. CIV. P. 24(a) STANDARD FOR INTERVENTION.

A. Movants Have No Legally Cognizable Interest to Protect Through Intervention.

1. Movants Articulate No Colorable “Pocketbook Injury.”

a. Other Federal Statutes Criminalize the Speculative Harms Movants Allege Will Befall Them.

Movants claim that, were Plaintiffs’ challenge to Section 1715 ultimately successful, “numerous individuals would then be able to use USPS to circumvent various restrictions that the Movant States place on firearms possession and transfer.” Brief in Support of Movant States’ Motion to Intervene as Defendants (“MTI”) at 9, ECF No. 46. As Movants tell it, “careful scrutiny at the point of sale or transfer is the most effective way of ensuring only non-dangerous individuals legally access handguns....” *Id.* And if Section 1715 were struck, Movants theorize, then “USPS will suddenly become a simple and readily-available mechanism that individuals could use to circumvent these transfer restrictions.” *Id.* at 9-10.

Of course, the types of firearm transfers Movants describe are “interstate transfers by mail....” MTI at 11; *see also id.* at 13 (describing how most firearms traced within Movant states “are traced to out-of-state FFLs,” and theorizing that Movants’ law enforcement will need to engage in “out-of-state travel” and “surveillance operations in and out of Movant States”); at 11 (describing common carrier notice requirements “for transportation [of firearms] in interstate commerce”); at 4 (same); Declaration of Eric Barlow (“Barlow Dec.”) ¶26, ECF No. 46-2 (“allowing direct shipment of weapons into New Jersey that New Jersey law prohibits”); Declaration of Michael W. Deyo (“Deyo Dec.”) ¶4, ECF No. 46-3 (“interdiction of firearms

illegally entering New York State”); Declaration of Colonel William D. Crotty (“Crotty Dec.”) ¶18, ECF No. 46-4 (“arranging direct shipments into the State”).

But Movants’ central theory – and thus their case for intervention – fails for one spectacularly simple reason that they have failed to comprehend. That is because 18 U.S.C. § 922(a)(3) independently criminalizes the interstate transfer of firearms not routed through a Federal Firearms Licensee (“FFL”) – the very “scrutiny at the point of sale or transfer” that Movants seek to preserve. Movants report that their laws “require that the transfer of handguns ... be conducted through a licensed retailer.” MTI at 9. But federal law does too.

Because even without Section 1715, federal law still requires interstate transfers of firearms to be conducted through an FFL, each of Movants’ derivative hand-wringing claims fails as well. First, Movants point to their outlier state laws that condition the acquisition of firearms on the meeting of certain stringent criteria, or the obtaining of a special permit or license. MTI at 9. But again, Section 922(a)(3) requires all firearms moving into Movants’ states to go through an FFL, and thus any New Jersey, New York, or Delaware FFL receiving an out-of-state firearm and transferring it to one of Movants’ residents will ensure that Movants’ laws are followed.

Next, Movants distress that the absence of Section 1715 will allow USPS to facilitate the free flow of firearms into their states,¹ including certain categories of firearms that Movants’ laws

¹ Interestingly enough, although demanding that this Court keep Section 1715 in place and thus prevent some fictional flow of firearms into *their* states, Movants do not apply the same principles to so-called “medical providers” in their states who ship life-ending abortion drugs into *other* states. For example, New York Governor Kathy Hochul took to social media (<https://x.com/GovKathyHochul/status/1892578137352921302>) to post a video rejecting Louisiana’s request for extradition of a “doctor” who was indicted on felony charges for prescribing “medication” to a Louisiana minor who then experienced a medical emergency. *See Louisiana Issues Arrest Warrant for New York Doctor Indicted for Prescribing Abortion Pill*, [CNN](https://www.cnn.com/2025/02/01/us/louisiana-abortion-doctor/index.html) (Feb. 1, 2025), <https://tinyurl.com/4p5hppj6>. And after Texas sued a New York abortion doctor in state court, New York Attorney General Letitia James intervened to protect the free flow of New York abortion drugs into Texas. *See* Letter from Ester Murdukhayeva, Deputy Solicitor General,

prohibit. MTI at 10-11. But again, Movants miss the mark. Their consternation about the unregulated transfer of “firearm silencers” (MTI at 10) is misplaced, because federal law requires that any such transfer of a National Firearms Act (“NFA”) firearm be done only after receiving ATF approval. 26 U.S.C. § 5861. Moreover, “ATF will not approve the transfer of an NFA firearm to a non-FFL/SOT residing in a State other than the State in which ... the transferor resides. Such interstate transfers would violate the GCA.”² And so the unregulated shipment of NFA firearms like “silencers” via the Post Office would net both transferee *and* transferor a maximum 10-year prison sentence. 26 U.S.C. § 5871. A number of federal laws and regulations still prohibit the parade of horrors Movants describe.

The same is true with respect to Movants’ anxiety about “sawed-off shotguns” and “assault firearms,” which “are prohibited ... under New Jersey law” (MTI at 10-11), and their unease about persons circumventing New Jersey’s one-gun-a-month and New York’s one-gun-per-three-months (*id.* at 10 n.1) statutes. In both cases, 18 U.S.C. § 922(a)(3) requires every interstate transfer to be routed through an FFL, and 18 U.S.C. § 922(b)(2) prohibits any FFL from transferring a firearm to a person that would place the transferee in violation of state law.

Each of these independent federal prohibitions would continue to operate in the absence of Section 1715, thus altering nothing about the interstate firearm transfer status quo Movants seek to preserve. No “disrupt[ion]” of Movants’ “careful regulatory systems” (MTI at 11) would occur

to Hon. David M. Gandin (Sept. 8, 2025), <https://tinyurl.com/yckf6cua>. Meanwhile, Delaware has enacted legislation specifically to guarantee the continued free flow of abortifacients from Delaware into other states. See Sarah Mueller, *‘They’re Not Going to Help’: Texas Attorney General Sues Delaware Abortion Provider in First Rest of State’s Shield Law*, WHYY (Jan. 29, 2026), <https://tinyurl.com/3kb8mz97>. If Movants were in fact so keen on protecting human life (MTI at 14-17), they should “first cast the beam out of [their] own eye.” Matthew 7:3-5.

² National Firearms Act Handbook § 9.3 (Apr. 2009), <https://tinyurl.com/33nue6cv>.

because, even if USPS did not enforce Section 1715, the rest of the Gun Control Act and the National Firearms Act’s regulatory frameworks remain.³

b. Movants’ Unqualified “Pocketbook Injury” Declarants Are Short on Details.

But even if any of Movants’ concerns about still-federally-unlawful firearm transfers were correct (they are not), Movants’ argument still goes nowhere. That is because Movants have failed to explain how invalidation of Section 1715 would create any foreseeable “substantial ... costs and burdens on state law enforcement....” MTI at 12. Indeed, Movants provide zero details on how “substantial” these hypothesized new “costs and burdens” will be. *See* Barlow Dec. at 10-14 (making broad, general assertions without details); Deyo Dec. at 6-7 (similarly vague); Crotty Dec. at 9-11 (vague words like “increase,” “additional,” “greater,” and “more”).

³ Movants do acknowledge the existence of *other* federal laws that would alleviate the parade of horrors they imagine. MTI at 3-4 (citing 18 U.S.C. §§ 922(e), (f)(1), and (f)(2)). But they claim that these laws do not apply, because “USPS does not understand itself to be a common carrier.” MTI at 3. Courts have said otherwise. *See Dex Media, Inc. v. Tax Appeals Tribunal*, 180 A.D.3d 1281, 1283 (N.Y. App. Div. 2020) (“a fundamental difference between a common carrier, like the USPS, and a contract carrier is that the common carrier holds itself out to the public as a carrier, in such a manner as to incur liability if it were to refuse to carry for any individual who chose to employ its services”); *Ryan v. United States*, 156 F. Supp. 2d 900, 907 n.6 (N.D. Ill. 2001) (“It is at least arguable that ... the USPS is a common carrier of goods.”); *New York v. UPS*, 131 F. Supp. 3d 132, 142-43 (S.D.N.Y. 2015) (citing “statement of Rep. Weiner, House sponsor of the PACT Act,” who opined that “[t]here’s only one common carrier that today still delivers tobacco through the mail – the United States Postal Service”). Indeed, when Congress wants to exempt USPS from common carrier status for purposes of taxation, it does so explicitly. *See* 15 U.S.C. § 375(3). Of course, even if USPS is not a common carrier, USPS maintains its own shipping regulations on firearms contained in Publication 52, § 432. *See Mailability, USPS Postal Explorer*, <https://tinyurl.com/3evmtb2r> (last visited Mar. 23, 2026) (“mailers must submit, at the time of mailing, an affidavit signed by the addressee certifying that the addressee is qualified to receive the firearm”). Movants fail to engage with any of this, or explain how, without Section 1715, USPS will become some Wild West transporter of illegal firearms. And, ironically, despite acknowledging that “federal law authorizes individuals to mail firearms via common carriers” such as UPS and FedEx (MTI at 1), Movants never acknowledge their anti-gun allies’ concerted efforts to deprive people of *that* option, too. *See, e.g., GLC Letter to FedEx, Giffords L. Ctr.* (Aug. 16, 2022), <https://tinyurl.com/2fhjxr3r>; William Lawson, *UPS Imposes Shipping Restrictions on Firearms, GunMag Warehouse* (Oct. 13, 2022), <https://tinyurl.com/4bjmprk2>.

In fact, each of Movants' declarations alleging "pocketbook injury" is offered not by a financial entity or official, but by law enforcement. For example, a New Jersey "Senior Investigator" "expect[s]" law enforcement costs to increase (Barlow Dec. ¶¶1, 61) and would "likely require additional personnel...." *Id.* ¶53. Meanwhile, New York's State Police "General Counsel" believes there would be a "likely increase in trafficked" firearms that would either "necessitate additional personnel commitments or the reassignment of existing personnel...." Deyo Dec. ¶¶2, 21. Finally, Delaware's State Police "Colonel" posits that he will "likely need to divert more resources," that it is "reasonable to assume" crime will increase, and that it is "logical that" costs will increase. *See* Crotty Dec. ¶¶2, 47, 46.

Of course, while each of these declarants no doubt is knowledgeable about law enforcement operations, none has established his qualifications to provide financial or budgetary estimates. In fact, rather than provide numerical specifics, all Movants' declarants can do is *guess*. *See* Barlow Dec. ¶27 ("In my judgment...."); ¶60 ("it is reasonable to assume"); Crotty Dec. ¶19 ("In my judgment...."). Movants' declarants provide no details such as (i) how many new personnel they expect to be required, (ii) what it costs to hire new employees, (iii) how much out-of-state travel or other investigative processes would be required, etc.

Contrast Movants' entirely nonspecific declarations with the highly detailed declarations submitted by individuals with financial qualifications in other actions, such as in *Texas v. BATFE*, No. 2:24-cv-00089-Z (N.D. Tex.). *See, e.g.*, Declaration of Murl E. Miller, Chief Counsel of Texas Comptroller of Public Accounts ¶¶12, 13, *Texas v. BATFE*, No. 2:24-cv-00089-Z (N.D. Tex. May 31, 2024), ECF No. 61-3 (listing reduction of specific taxes from ATF's "Engaged in the Business" Final Rule); Declaration of Lucius L. Morris, II, Louisiana Department of Revenue ¶¶10,14, *Texas v. BATFE*, No. 2:24-cv-00089-Z (N.D. Tex. May 31, 2024), ECF No. 59-1 (anticipating a "10% or

greater decrease” in lawful gun sales and loss of “State sales and use tax revenue”); *see also Texas v. BATFE*, 737 F. Supp. 3d 426, 434 (N.D. Tex. 2024) (one declarant “describing a ‘30% loss in reservations and attendance at [gun] shows’ and ‘a loss of about \$150,000 over the last six weeks’ due to a reduction in ‘attendance, sales of tables, and people coming to sell’ firearms.”). *Those* are allegations of a pocketbook injury. Movants’ guesstimates at the highest level of generality – “more,” “greater,” and “additional” – are not.

c. Invalidation of Section 1715 Might Actually Save Movants Money.

Movants theorize that, without Section 1715’s prohibition, they “will have to create an entirely new investigative and tracking structure” within their respective states, which will “includ[e] the costs of personnel, infrastructure, training, and deployment.” MTI at 12. Movants obliquely cite their declarations in support but, as noted, do not provide further explanation or details of these “entirely new ... law enforcement ... structure[s].” *Id.* And for good reason, because Movants immediately backtrack, asserting that, in fact, “the vast majority of crime guns recovered in New York and New Jersey” *already* “are traced to out-of-state FFLs.” *Id.* at 13; *see also* Barlow Dec. ¶2 (discussing existing “use of the mail to transport contraband,” including firearms “trafficked in and into New Jersey”). In other words, Section 1715 will not lead to anything “entirely new,” but rather – if anything – more of the same – an “increase in monitoring, investigating, and prosecuting....” Barlow Dec. ¶¶52, 42.

The basis for Movants’ fears of increased costs also falls apart under analysis, for two reasons. *First*, they claim that, “because concealable firearms can be shipped virtually anonymously, bypassing the use of FFLs ... this would significantly hamper ... criminal investigations that rely upon systems like [ATF’s] eTrace, which can identify the FFL that sold a given firearm and the individual who purchased it from the FFL.” MTI at 12. According to

Movants, without Section 1715, “state law enforcement will have a reduced probability of identifying the path a gun traveled....” *Id.*

But Movants fail to comprehend how eTrace works. For starters, a successful firearm “trace” does not necessarily result in apprehension of a criminal. Rather, ATF will have successfully identified only what it calls the firearm’s “first retail purchaser,”⁴ who is most often not the actual criminal possessor. *See* Barlow Dec. ¶38 (“the purchaser and the person who used the gun in a crime were the same individual in only 8% of instances”). Next, the vast majority of what Movants call “crime guns” (MTI at 13) are not, in fact, guns used in crime; as a CRS report explains, “it is not possible to determine if traced firearms are related to criminal activity.”⁵ Finally, there is no available data on how many actual crimes are solved by tracing firearms, as “[t]he ATF tracing system is an operational system designed to help law enforcement agencies.... It was not designed to collect statistics.”⁶

But even if eTrace were everything Movants make it out to be, Section 1715’s invalidation would change nothing about the eTrace investigative process. Instead, eTrace would work as always – identifying the “first retail purchaser” of a given firearm, who Movants report almost always are from “out-of-state FFLs” – meaning out-of-state first purchasers. From there, as Movants explain, they would – as always – follow those “investigative leads to identify the source of a crime gun.” MTI at 13. Nothing about eTrace will be “hamper[ed]” by Section 1715’s invalidation, nor will there be any “reduced probability of identifying the path a gun traveled.” *Id.*

⁴ *eTrace: Internet-Based Firearms Tracing and Analysis*, BATFE (Mar. 2010), <https://tinyurl.com/55hssu6p>.

⁵ David B. Kopel, *Do Federal Gun Traces Accurately, Reflect Street Crime?*, Indep. Inst. (Feb. 5, 1993), <https://tinyurl.com/ywzkzfrjs>.

⁶ *Setting the Record Straight on BATF Firearms Traces*, NRA ILA (Jan. 10, 2004), <https://tinyurl.com/2zxycuw>.

at 12, 13. The eTrace process, and Movants' investigative processes, will work exactly the same as they do now. That cannot be the basis for intervention.

Second, Movants claim they will have "to undertake more expensive and time-consuming methods to generate investigative leads" and prosecute cases. MTI at 13. But as noted, Movants fail to provide specifics – and for good reason, since the opposite in fact may be true. Consider two scenarios. In the first, an out-of-state firearm trafficker purchases a handgun in Pennsylvania. He wishes to traffic it to a New Jersey resident – a convicted felon. Undaunted by 18 U.S.C. § 924's dual fifteen-year and five-year felonies for transfer to a prohibited person (922(d)(1)) and interstate transfer (922(a)(5)), respectively, this trafficker nevertheless is deterred by Section 1715's prohibition (and its maximum *two-year* imprisonment) on mailing the handgun. So instead of shipping, he drives across the border, meets in a dark alley in Camden, and the illicit sale is consummated. That is the type of crime that Movants claim they already investigate and prosecute.

Under the second scenario, the Pennsylvania trafficker does not have to contend with Section 1715. So, he simply visits his local Post Office and sends off a package to be received by the New Jersey felon. Movants object, saying this will make their jobs infinitely harder. But how? A back-alley firearm transaction is inherently difficult to detect or prove. Yet a transaction through USPS will create (i) a label with the shipper and recipient's names and addresses, (ii) often a financial transaction in the form of a credit card swipe, (iii) a second traceable financial transaction in the form of electronic payment from the felon to the trafficker, (iv) most likely some sort of surveillance footage of the shipment being placed into the mail at the Post Office, and (v) a government record of the delivery to the felon (if that even occurs). Meanwhile, each step of the way, the government has the fruits and instrumentalities of the crime in its possession – able at any

time to obtain a warrant⁷ and investigate the mail upon the showing of probable cause. Movants fail to explain how the investigative process will be harder without Section 1715. In all likelihood, the Post Office’s involvement will make investigations easier, detect illicit firearm shipments before they occur,⁸ and even create evidence to be offered in prosecutions.

Movants offer one final argument. Noting that their states have enacted a number of red flag laws and protective order statutes, Movants theorize that they are entitled to maintain universal firearm registration so that “law enforcement will know if [a] person has a firearm...” MTI at 13-14; Barlow Dec. ¶17 (“each handgun transfer is documented and traceable”). As Movants theorize, “the harm to States even goes beyond criminal actors,” because any person at any time could become prohibited, even an eligible gun owner “before the domestic violence or ERPO order issued...” MTI at 14. But aside from treating every law-abiding American as a criminal-in-waiting, along with the blatant unconstitutionality of the universal firearm registration scheme Movants propose, plus the unconstitutionality of their *ex parte* red flag firearm confiscation regimes in the first place, the fact remains that 18 U.S.C. § 922(a)(3) regulates all transfers of firearms across state lines, channeling such transfers through FFLs. This means that any firearm sold within Movants’ borders would comply with their state laws. And even if it were otherwise, as detailed in Section I(A)(1)(e), *infra*, Movants cannot base intervention on their desire to effectuate their unconstitutional firearm regimes.

⁷ Or not. As Defendant USPIS explains, only First-Class mail – and its maximum weight of 13 ounces, far lighter than just about any handgun – “cannot be opened without a search warrant. ... Other classes of mail do not contain private correspondence and therefore may be opened without a warrant.” *FAQs, USPIS* (2019), <https://tinyurl.com/f66wnrv2>.

⁸ Indeed, USPS reports that it conducts an X-ray examination of many packages. *Mail Security, USPS* (Dec. 5, 2019), <https://tinyurl.com/36r6m8n8>. Meanwhile, the mail is also put through a “biohazard detection system.” Megan Hiler, *How US Postal Service Protects You from Dangerous Packages, WILX* (Oct. 25, 2018), <https://tinyurl.com/ye26trru>. So authorities likely will discover handguns shipped across state lines.

d. Movants’ Allegations of “Pocketbook Injury” Are Too Attenuated and Speculative.

Movants claim “direct pocketbook harms” from “increased state law enforcement costs and increased administrative costs” as the “kinds of injuries that can give rise to a protectible interest under Rule 24(a).” MTI at 7. In support, Movants cite nine cases. *See id.* at 7-8. But each is distinguishable, and none supports the proposition that simply *any* vague and indefinite downstream expenditure will suffice.

For example, *Kleissler v. U.S. Forest Serv.*, 157 F.3d 964, 972 (3d Cir. 1998), and *Nat’l Parks Conservation Ass’n v. EPA*, 759 F.3d 969, 976 (8th Cir. 2014), featured impending, business-disruptive economic consequences to intervenors that were directly tied to the outcome of the litigation. *Biden v. Nebraska*, 600 U.S. 477, 490 (2023), *Gen. Land Office v. Biden*, 71 F.4th 264, 274 (5th Cir. 2023), *Texas v. Biden*, 10 F.4th 538, 547 (5th Cir. 2021), and *California v. BATFE*, 718 F. Supp. 3d 1060, 1076-77 (N.D. Cal. 2024), each granted intervention after highly specific, *numerical* allegations of increased costs of the sort that Movants do not even begin to provide here.⁹ *See* Section I(A)(1)(b), *supra*. Next, in *New Jersey v. EPA*, 989 F.3d 1038, 1046 (D.C. Cir. 2021), Movants misattribute *to the court* what the intervenors simply “d[id] not dispute....” And Movants’ two remaining cases are similarly inapplicable. *Pennsylvania v. President U.S.*, 888 F.3d 52 (3d Cir. 2018), stands only for the proposition that movants “to intervene as defendants *and seek the same relief* as the federal government . . . need not demonstrate Article III standing,” *id.* at 57 n.2 (emphasis added) (*see* Section I(A)(3), *infra*), while *Va. House of Delegates v. Bethune-*

⁹ Movants devote significant discussion to *California*, recognizing that it is perhaps their most helpful case. *See* MTI at 8. But as Movants acknowledge, that case is now on appeal to the Ninth Circuit. *See id.* And as Plaintiffs explain, *infra*, the Ninth Circuit rejected Movants’ theory in *E. Bay Sanctuary Covenant v. Biden*, 102 F.4th 996 (9th Cir. 2024), less than three months after the district court decided *California*. So that lone district court decision is unpersuasive authority.

Hill, 587 U.S. 658, 665 (2019), featured a legislative body that sought to defend its *own* legislation. Neither case supports Movants’ attenuated and nonspecific theories of harm here.

Movants’ theory of intervention is that, without Section 1715, (i) persons will seek to unlawfully ship handguns through USPS in violation of state and other federal laws, (ii) USPS will unquestioningly and unknowingly transport those handguns into Movants’ states, (iii) residents of Movant states will willingly receive the firearms without detection by authorities, (iv) this will drive up crime by state residents who acquire firearms in violation of state (and federal) law, (v) such criminal entities would not be able to unlawfully acquire illicit firearms (in ways far simpler than through the complex interstate trafficking networks of the sort Movants envision), and (v) the resulting crime will necessitate some indeterminate measure of “increased state law enforcement costs and increased administrative costs and burden” to respond.

In other words, Movants’ theory of harm to support intervention is based not on the actions of the parties here or the legal determinations made in this case, but instead on a series of subsequent, speculative, hypothetical, and attenuated actions by third parties engaged in criminal activity. *Cf. Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 410 (2013) (rejecting allegation of harm which “relies on a highly attenuated chain of possibilities”); *Rizzo v. Goode*, 423 U.S. 362, 372 (1976) (rejecting harm based on “what one of a small, unnamed minority of policemen might do to them in the future”); *Kowalski v. Tesmer*, 543 U.S. 125, 130 (2004) (no harm based on hypothetical “future attorney-client relationship with as yet unascertained Michigan criminal defendants”); *Simon v. E. Ky. Welfare Rts. Org.*, 426 U.S. 26, 41-42 (1976) (standing cannot rely on “the independent action of some third party not before the court”).¹⁰

¹⁰ Worse still, Movants assume that invalidation of Section 1715 will result in *new* crime – apparently because criminals are not *presently* shipping handguns using the mail. On the contrary, such crimes are already happening, as Plaintiffs’ collection of over one hundred recent Section

Contrast Movants’ rabbit hole theory with the wealth of authority denying intervention predicated on such speculative and remote injuries, especially financial ones. *See, e.g., Harris v. Pernsley*, 820 F.2d 592, 601 (3d Cir. 1987) (“To intervene as of right ... the applicant must do more than show that his or her interests may be affected in some incidental manner.”); *Standard Heating & Air Conditioning Co. v. City of Minneapolis*, 137 F.3d 567, 571 (8th Cir. 1998) (no intervention when a “sequence of events would have to occur for the interests ... to be impacted by a successful challenge,” and no “showing that these events are likely”); *United States v. Metro. St. Louis Sewer Dist.*, 569 F.3d 829, 839 (8th Cir. 2009) (“even a significant economic stake in the outcome of the litigation is not a significantly protectable interest”); *Wash. Electric Coop., Inc. v. Mass. Municipal Wholesale Electric Co.*, 922 F.2d 92, 97 (2d Cir. 1990) (“An interest that is remote from the subject matter of the proceeding, or that is contingent upon the occurrence of a sequence of events before it becomes colorable, will not satisfy the rule.”); *Manasota-88, Inc. v. Tidwell*, 896 F.2d 1318, 1322 (11th Cir. 1990) (denying intervention where harms to interests are “purely a matter of speculation at this time”).

The Ninth Circuit’s recent decision in *E. Bay Sanctuary Covenant v. Biden*, 102 F.4th 996 (9th Cir. 2024), is particularly instructive. There, the Ninth Circuit denied five states – Alabama, Georgia, Kansas, Louisiana, and West Virginia – intervention under Fed. R. Civ. P. 24(a)(2), where the “States claim[ed] an interest in ... reduc[ing] unlawful immigration, thereby minimizing state expenditures....” *Id.* at 1000. As the court reasoned, “states have no legally protectible interest in

1715 prosecutions demonstrates. *See* ECF No. 53 at 9-11 n.9; *see also* ECF No. 27 at 10-11 (discussing DOJ’s prosecution of “multi-defendant, multi-count cases involving firearms trafficking and illegal aliens,” most of which involve additional federal gun charges, *see* ECF No. 53 at 9 n.9). Movants offer no causal connection, or even a colorable correlative theory, between an absence of Section 1715 and their feared increase in crime. Nor do they explain how Section 1715’s two-year penalty deters people who otherwise face many more years in prison for shipping guns to prohibited persons across state lines.

compelling enforcement of federal ... policies....” *Id.* at 1002. And in any case, the states’ claimed “interest in minimizing their expenditures” on illegal aliens was too “attenuated and speculative” to support intervention as of right. *Id.* Indeed, “[e]ven if” disposition of the case might have “affect[ed] state expenditures ... such incidental effects [we]re not at issue in the litigation....” *Id.*

The parallels here are clear. Movants’ hypothetical and attenuated “pocketbook harms” from “increased state law enforcement costs and increased administrative costs” (MTI at 7) are nothing more than complaints of possible increases to derivative “expenditures”¹¹ resulting from the cessation of “enforcement of federal ... policies....” *E. Bay Sanctuary Covenant*, 102 F.4th at 1002. Not only that, but any speculative and theoretical increased law enforcement costs to Movants due to the absence of Section 1715 pales in comparison to the very real billions of dollars incurred annually by states in dealing with illegal immigration.¹² Movants offer no reason to depart from the Ninth Circuit’s conclusion in *E. Bay Sanctuary Covenant* here. Not only is Movants’ theory of pocketbook injuries far too speculative and attenuated to warrant intervention, but also Movants can have no protectible interest in the continued federal enforcement of an *unconstitutional* federal law to better help them enforce their own *unconstitutional* state gun laws.

¹¹ *But see Wyoming v. Oklahoma*, 502 U.S. 437, 448 (1992) (citing courts of appeals that have denied standing to states where “actions taken by United States Government agencies had injured a State’s economy and thereby caused a decline in general tax revenues”); *California v. Texas*, 593 U.S. 659, 674, 678 (2021) (rejecting states’ arguments of “indirect injury in the form of the increased use of (and therefore cost to) state-operated medical-insurance programs” as resting on a “highly attenuated chain of possibilities”); *El Paso County v. Trump*, 982 F.3d 332, 340 (5th Cir. 2020) (finding no standing where cancellation of military contracts “would reduce economic activity” and “cause the loss of general tax revenues”).

¹² The Federation for American Immigration Reform estimates that illegal immigration cost Alabama \$524 million (<https://tinyurl.com/3y37h8xp>), Georgia \$3 billion (<https://tinyurl.com/4s69kben>), Kansas \$603 million (<https://tinyurl.com/2p6tzxab>), Louisiana \$604 million (<https://tinyurl.com/mrypmfah>), and West Virginia \$40 million (<https://tinyurl.com/y7msmy22>), for a total of \$4.7 billion in 2023 alone.

e. Movants Cannot Assert a Legally Cognizable Interest in the Enforcement of Patently Unconstitutional Gun Control Schemes.

Movants' request for intervention has a high hurdle to overcome, and one that Movants' intervention motion does not acknowledge. Movants wish to intervene to defend "their own laws on prohibited weapons and prohibited persons alike," and allege "enormous law enforcement interests" in enforcing the same. MTI at 24. But to intervene that under Fed. R. Civ. P. 24(a), a movant must show a "sufficient interest in the litigation" that is "significantly protectable." *Pennsylvania*, 888 F.3d at 58. And that interest must be "direct, substantial, and legally protectable." *Wash. Electric Coop.*, 922 F.2d at 97 (citing *Donaldson v. United States*, 400 U.S. 517, 531 (1971)).

But Movants' state laws are not "legally protectable." Virtually all – if not every one – of the statutes Movants wish to enlist Section 1715 to enforce are patently unconstitutional under the Second and Fourteenth Amendments. And, because it is axiomatic that "neither the Government nor the public generally can claim an interest in the enforcement of an unconstitutional law," *ACLU v. Reno*, 929 F. Supp. 824, 866 (E.D. Pa. 1996),¹³ in order for this Court to find that Movants have a "legally cognizable interest" justifying intervention, it first must find that Movants' relevant statutory schemes are constitutionally sound. They are not. Were it otherwise, Movants' intervention could be based on the desire to conscript Section 1715 to assist with state-level constitutional violations. Furthering laws that violate enumerated rights is not a "legally protectable interest."

¹³ See also *Amalgamated Transit Union Loc. 85 v. Port Auth. of Allegheny Cnty.*, 39 F.4th 95, 109 (3d Cir. 2012) (a government "suffers no legitimate harm from not enforcing an unconstitutional policy"); *ACLU v. Ashcroft*, 322 F.3d 240, 247 (3d Cir. 2003) ("Government does not have 'an interest in the enforcement of an unconstitutional law'").

The Supreme Court has explained that, “when the Second Amendment’s plain text covers an individual’s conduct, the Constitution presumptively protects that conduct.” *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1, 17 (2022). In other words, a firearm regulation “is *presumptively unconstitutional* unless the government can show that it fits within a relevant tradition of historical firearms regulation.” *Koons v. Att’y Gen. N.J.*, 156 F.4th 210, 286 (3d Cir. 2025) (Porter, J., concurring in the judgment in part and dissenting in part) (emphasis added).¹⁴ Indeed, “[o]nly if a firearm regulation is consistent with this Nation’s historical tradition *may* a court conclude that the individual’s conduct falls outside the Second Amendment’s ‘unqualified command.’” *Bruen*, 597 U.S. at 17 (emphases added). And thus “only if” Movants’ “own laws” can meet that historical burden can this Court conclude that Movants have a “legally protectable” interest justifying their intervention in this litigation.

But each of Movants’ radical gun control laws fails to clear the Second Amendment’s textual starting gate. First, the Supreme Court has explained that the Second Amendment’s protection of “the people” creates a “strong presumption” that “all Americans” enjoy the right to keep and bear arms. *District of Columbia v. Heller*, 554 U.S. 570, 581 (2008).¹⁵ Second, the right to “keep and bear” arms covers not only ownership, possession, and carry, *Heller*, 554 U.S. at 582-84, but also “those closely related acts necessary to their exercise,” *Luis v. United States*, 578 U.S. 5, 26 (2016) (Thomas, J., concurring in the judgment), such as purchase, acquisition, shipment, and receipt. *See* ECF No. 24 at 20 (collecting cases). Third, the “Second Amendment extends, *prima facie*, to all instruments that constitute bearable arms, even those that were not in existence

¹⁴ Consistent with Judge Porter’s methodological criticisms of the *Koons* panel’s majority opinion, the Third Circuit subsequently vacated *Koons* for rehearing en banc. *See* 162 F.4th 100 (3d Cir. 2025).

¹⁵ *Accord Range v. Att’y Gen. U.S.*, 124 F.4th 218 (3d Cir. 2024) (protecting some felons); *Lara v. Comm’r Pa. State Police*, 125 F.4th 428 (3d Cir. 2025) (protecting 18-to-20-year-olds).

at the time of the founding,” *Heller*, 554 U.S. at 582, and “covers modern instruments that facilitate armed self-defense.” *Bruen*, 597 U.S. at 28. And fourth, because the Second Amendment’s prefatory militia clause “announces a purpose” for the right’s codification, the Amendment must protect, at a *minimum*, those persons, activities, and arms that give effect to the clause’s militia guarantee. *Heller*, 554 U.S. at 577.

In contrast to these principles and the Second Amendment’s “unqualified command” (*Bruen*, 597 U.S. at 17), Movants’ statutory schemes restrict quintessentially “arms-bearing conduct,” and so Movants “bear[] the burden to ‘justify [their] regulation[s]’ if they wish to claim a legally cognizable interest in enforcement. *United States v. Rahimi*, 602 U.S. 680, 691 (2024). Indeed, New Jersey’s “Firearms Purchaser Identification Card (FPIC) [and] Permit to Purchase a Handgun (HPP)” scheme (MTI at 9) restricts the acquisition – and therefore the keeping and bearing – of arms at the outset, setting a default condition of *no* firearm possession *unless* the government gives its permission.¹⁶ The same is true for Movants’ universal background-check regimes and New Jersey’s one-gun-a-month rationing scheme. *See* MTI at 9, 10 n.1; *see Nguyen v. Bonta*, 140 F.4th 1237 (9th Cir. 2025) (striking California’s one-gun-a-month law as unconstitutional).¹⁷ Likewise, Movants’ laws restricting so-called “ghost guns,” silencers, and “assault firearms” (MTI at 10) run headlong into the Second Amendment’s presumptive textual protection of “all instruments that constitute bearable arms....” *Heller*, 554 U.S. at 582. And so too do Movants’ “restraining-order regimes” (MTI at 13) implicate the Second Amendment’s plain

¹⁶ *See Benton v. Platkin*, No. 1:24-cv-07098-KMW-MJS (D.N.J.) (challenging New Jersey’s handgun purchase permit scheme); MTI at 9 (citing New York’s licensing statute, N.Y. Penal Law § 400.00); *cf. Antonyuk v. James*, 120 F.4th 941 (2d Cir. 2024) (striking a portion of New York’s licensing statute as unconstitutional).

¹⁷ *See also Benton v. Platkin*, No. 1:24-cv-07098-KMW-MJS (D.N.J.) (challenging New Jersey’s one-gun-a-month law).

text, which deprive members of “the people” from “keep[ing]” or “bear[ing]” “Arms” during their pendency. Each of these laws is “presumptively unconstitutional” until Movants demonstrate otherwise.

Seeking intervention to use Section 1715 to support their radical and outlier gun control regimes, Movants have placed the constitutionality of each of these statutes at issue in this Court. Yet at no point have Movants even begun to meet their historical burden under *Bruen* to prove their statutes’ consistency with Founding-era historical tradition. This case is no vehicle to aid in Movants’ enforcement of their unconstitutional gun control laws, and this Court should deny intervention for that reason alone.

2. Movants’ “Sovereign Interests” Do Not Rest on the Validity of Section 1715.

Movants next claim that invalidation of Section 1715 jeopardizes their “sovereign interests.” MTI at 14-19. But their supporting arguments range from untenable to absurd.

First, Movants claim that the relief Plaintiffs seek would damage “the integrity and effective enforcement of [Movants’] state laws.” MTI at 14. Starting with the “power to create and enforce a legal code,” Movants assert that “the ‘violation of [a government’s] law’ constitutes an ‘injury to its sovereignty’ ... particularly as to the enforcement of its own criminal laws.” *Id.* at 14-15. But none of Movants’ supporting authorities moves the ball, because Plaintiffs’ challenge plainly has nothing to do with Movants’ ability to enact their own state laws or to prosecute violations thereof.

Indeed, immediately after declaring their purported “sovereign interests,” Movants shift the goal posts. Obviously, they do not claim that Section 1715 itself violates state law; even if it did (it does not), the Supremacy Clause would foreclose any challenge. Instead, Movants speculate that, “[i]f Section 1715 is declared unconstitutional, the resulting gap in the federal regulations

will spark a flood of concealable arms mailed into the Movant States, sharply impairing the integrity of Movant States' regulatory schemes." MTI at 15. But a state has no right to demand that Congress plug perceived regulatory gaps at the federal level, or to require the federal government to help enforce state law. If *Printz v. United States*, 521 U.S. 898 (1997), stands for the proposition that the federal government cannot commandeer the states to enforce federal law, even more obvious is the principle that the states cannot commandeer the federal government to assist in the enforcement of state law. Were Congress to simply repeal Section 1715, Movants would have no right to do anything about it, because Congress controls the federal code, not the Attorney General of New York. There is no difference here.

United States v. Texas, 599 U.S. 670 (2023), forecloses Defendants' "sovereign interest" claim. That case involved a situation where "[t]he States essentially want[ed] the Federal Judiciary to order the Executive Branch to alter its arrest policy..." *Id.* at 674. But the Court rejected that demand, even though it acknowledged "the States would incur costs as a result of" the "Department's failure to comply with" federal law. *Id.* at 675, 674. Nevertheless, as the Court explained, there is no "precedent, history, or tradition of courts ordering the Executive Branch to change its arrest or prosecution policies." *Id.* at 677.

But that is precisely the basis of Movants' "sovereign interests" claim here – that the federal government *owes it to them* to maintain and enforce Section 1715 and (purportedly) therefore control the flow of firearms into their states through the mail, so as to help preserve the effectiveness of Movants' statutory regimes. MTI at 15 (overturning Section 1715 would "turn[] USPS into a tool for violating state sovereign laws," because "there will be no statute or regulation which obligates USPS to ensure that all mailed handguns pass through FFL intermediaries to lawfully permitted recipients"). But Movants cite no legal principle that obliges the federal

government to assist in enforcement of state law. *See Texas*, 599 U.S. at 681 (“If the Court green-lighted this suit, we could anticipate complaints in future years about alleged Executive Branch under-enforcement of ... gun laws.... We decline to start the Federal Judiciary down that uncharted path.”).

Movants’ demands have even less justification here than in *Texas*. In *Texas*, the movant states had alleged a fact pattern that “rarely arises” – the alleged failure to comply with “statutory mandates” that “*require* the Executive Branch to make arrests....” *Texas*, 599 U.S. at 684, 674, 684. But there are no independent “statutory arrest mandates” (*id.* at 682) here. No federal law required Congress to enact Section 1715, and no other statute mandates that USPS stop Americans from shipping handguns through the mail. *See* MTI at 15 (conceding that “USPS has no statutory obligation to ensure that the packages it transports comply with state laws”).

Movants’ “sovereign interests” argument is therefore based on nothing more than their naked demand that the federal government must enforce federal law in order to help Movants enforce their state laws. But there is precisely zero legal authority supporting such a claim. *See Texas*, 599 U.S. at 680 n.3 (no standing because “in our system of dual federal and state sovereignty, federal policies frequently generate indirect effects on state[s]”). This certainly does not rise to the level of a “protect[able] ... interest” permitting intervention under Fed. R. Civ. P. 24(a)(2).

Second, Defendants assert a sort of reverse-Supremacy Clause argument. MTI at 16-17. They claim that, “if this Court adopts DOJ’s position that Section 1715 is unconstitutional ... Movant States’ regulatory frameworks will be substantially impaired,” because the OLC’s positions on Section 1715 “conflict with Movant States’ in multiple areas.” *Id.* at 16. As Movants detail, DOJ has – in recent litigation – taken legal positions contrary to Movants’ laws on silencers,

“assault weapons,” and “assault firearms,” and so “adopting DOJ’s position as to the permissible scope of Section 1715 would directly enable mailing of certain firearms into Movant States that Movant States have prohibited by their own state criminal laws – a clear sovereign harm.” *Id.* at 17.

But Movants miss the mark. For starters, state law cannot dictate how federal law is to be interpreted or enforced. Rather, it is axiomatic that “the States have no power ... to retard, impede, burden, or in any manner control, the operations of the constitutional laws enacted by Congress.” *McCulloch v. Maryland*, 17 U.S. 316, 436 (1819); *see also Mayo v. United States*, 319 U.S. 441, 445 (1943) (“[T]he activities of the Federal Government are free from regulation by any state. No other adjustment of competing enactments or legal principles is possible.”). Movants’ “sovereign interest” claim fails to clear the starting gate.

3. Movants Were Required to Establish Their Article III Standing, but Failed to Do So.

Movants claim that there is a “higher showing of interest needed to establish Article III standing,” and a “lower burden required for intervention.” MTI at 8. And although Movants cite Supreme Court and Third Circuit cases for the proposition that “an intervenor can satisfy the test for intervention without independently establishing Article III standing where intervenor seeks same relief as an existing defendant” (MTI at 8-9), here Movants quite clearly *do not seek* the same relief as Defendants.

Indeed, Defendants argued that “the Court should enter judgment in favor of Defendants and dismiss this case for lack of jurisdiction” (ECF No. 27 at 18) – essentially, a motion to dismiss. But Movants seek something quite different. They “respectfully request that the Court [i] deny plaintiffs’ motion for summary judgment, [ii] grant the federal defendants’ and state intervenors’ cross-motions for summary judgment, [iii] dismiss the complaint in its entirety *and with prejudice*,

and [iv] grant such *other and further relief* as it deems just and proper.” ECF No. 46-7 at 23 (emphases added).

Of course, what Defendants seek – dismissal “for lack of jurisdiction” – requires dismissal *without* prejudice – not *with* prejudice as Movants seek. *See Barclift v. Keystone Credit Servs., LLC*, 93 F.4th 136, 148 (3d Cir. 2024) (“Although the District Court correctly held that [plaintiff] lacked a concrete injury, it erred in dismissing her complaint with prejudice. ‘Because the absence of standing leaves the court without subject matter jurisdiction to reach a decision on the merits, dismissals “with prejudice” for lack of standing are generally improper.’ ... [W]e will modify the District Court’s order to dismiss the complaint without prejudice....”). Since Movants seek something different than – and in addition to – what Defendants have sought, Movants must show their Article III standing to litigate this case. *Town of Chester v. Laroe Estates, Inc.*, 581 U.S. 433, 439 (2017) (“an intervenor of right must have Article III standing in order to pursue relief that is different from that which is sought by a party with standing”); *Ctr. for Biological Diversity v. DOI*, 640 F. Supp. 3d 59, 65 (D.C. Cir. 2024) (“a prospective intervenor must have standing under Article III of the Constitution”). Since Movants have not even attempted to demonstrate standing – in fact, they expressly disclaim any need to do so¹⁸ – this Court must deny their intervention on that basis alone.

¹⁸ Nor could Movants establish an injury to them that might confer standing. For starters, Movants are not injured by the absence of Section 1715 or the OLC opinion, their allegations of harm are speculative and tangential, and they have no right to have the federal government enact and enforce laws of Movants’ choosing. *See* Sections I(A)(1)(d) & I(A)(2), *supra*. Second, any supposed harm to Movants is traceable only to the criminal acts of third parties, not any party in this case. *See* Section I(A)(1)(d), *supra*. And third, this Court cannot redress Movants’ grievances, because it cannot override an exercise of prosecutorial discretion. *See* Section I(C), *infra*.

B. Rather than Advance *Their Own Claims or Defenses*, Movants Improperly Seek to Litigate *on Behalf of the United States*.

Federal Rule of Civil Procedure 24(c) requires that a “motion to intervene must ... set[] out the claim or defense for which intervention is sought.” But the legal questions at issue in this case do not involve any substantive legal right – a claim or defense – *of Movants*. Rather, they seek to offer a defense *on behalf of Defendants* – one that is Defendants’ alone to raise. Indeed, Movants could bring no independent “claim” of their own against Section 1715 – the statute governs interactions between individuals and the Post Office, not states. Similarly, Movants seek “to provide the Second Amendment defense” to Section 1715 (MTI at 1), offering legal arguments *in support of Defendants*, not any defense of Movants themselves. Such a role – offering additional arguments in support of an existing party – is uniquely the job of an amicus curiae, as explained *infra*.

Tellingly, Movants have not asserted that they have state statutes that parallel Section 1715 – doubly prohibiting the USPS shipment of handguns. If they did, Movants might argue that this Court’s determination of Section 1715’s constitutionality naturally implicates the constitutionality of their own parallel state statutes, making intervention appropriate for Movants to offer *their own “defense” of their own laws*. *Cf. Cameron v. EMW Women’s Surgical Ctr., P.S.C.*, 595 U.S. 267, 278 (2022) (emphasis added) (“The importance of ensuring that States have a fair opportunity to defend *their laws* in federal court has been recognized by Congress.”). On the contrary, Movants simply disagree with the way in which existing parties – Defendants – have asserted *their* defense of Section 1715. But that does not suffice for intervention.

This reading is confirmed by other provisions of the Federal Rules of Civil Procedure. For example, Fed. R. Civ. P. 8(b)(1)(A) requires that, in any responsive pleading, a pleader “must state in short and plain terms *its* defenses....” Indeed, Fed. R. Civ. P. 24(c) requires a putative

intervenor’s motion to “be accompanied by [such] a pleading....” But Movants’ proposed Answer (ECF No. 46-1) and proposed Cross-Motion (ECF No. 46-7) do not do this, instead offering defenses on behalf of *Defendants*.¹⁹ Separately, Fed. R. Civ. P. 24(a)(1) allows intervention by anyone “given an unconditional right to intervene by a federal statute,” and 28 U.S.C. § 2403(b) permits a “State to intervene” in a case “wherein the constitutionality of any statute of that State affecting the public interest is drawn in question,” something Movants have not alleged here. Meanwhile, with respect to the constitutionality of *federal* statutes, Section 2403(a) gives the right of intervention *only to the federal government* – not to the states. Movants’ theory of intervention would undo the Federal Rules’ carefully constructed rules for intervention, and would allow state intervention anytime (i) a state disagreed with DOJ’s litigation strategy and (ii) could articulate some theoretical downstream economic harm stemming from an adverse decision. That is not the law.

This reading is further confirmed by *Donaldson v. United States*, 400 U.S. 517 (1971). There, the IRS sued an employer and its accountant to obtain information about Donaldson’s finances. *Id.* at 519. And the Supreme Court rejected Donaldson’s intervention, as he merely had raised defenses he wished the parties had raised, but chose not to. *See id.* at 531 (“This asserted interest ... is nothing more than a desire ... to counter and overcome [the parties’] willingness, under summons, to comply and to produce records.”).

As the Court acknowledged, even though Donaldson certainly had a financial stake in the outcome of the case – his tax liability was at stake – he had no “proprietary interest” or “privilege”

¹⁹ This Court need look no further than Movants’ proposed brief in support of their Motion for Summary Judgment. Movants’ signature block easily could be replaced with Defendants’, and no one would be the wiser. In other words, Movants are merely making the arguments they wish *Defendants* had made.

of his own to assert about the information being sought. *Id.* at 530. As the Court concluded, Donaldson’s desire to “counter and overcome [the witness-respondents’] willingness, under summons, to comply and to produce records ... cannot be the kind contemplated by Rule 24(a)(2).” *Id.* at 531. That is exactly what Movants seek to do here – to counter what they perceive as some unwillingness on the part of Defendants to offer certain arguments in defense of this case. But *Donaldson* forecloses intervention on that basis.

C. DOJ’s Decision Not to Prosecute Is Unreviewable.

Intervenors make the argument that Section 1715 must be upheld and enforced, so that Movants’ state gun control regimes are preserved. *See* MTI at 14-17. In other words, they object not only to Plaintiffs’ challenge to the statute, but also the OLC opinion wherein DOJ disclaims enforcement. But it is well settled that the Executive’s exercise of prosecutorial discretion not to prosecute is entirely unreviewable by the Courts. *United States v. Nixon*, 418 U.S. 683, 693 (1974) (“Executive Branch has exclusive authority and absolute discretion to decide whether to prosecute a case”); *United States v. Armstrong*, 517 U.S. 456, 464 (1996) (“Attorney General and United States Attorneys retain ‘broad discretion’ to enforce the Nation’s criminal laws”); *Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985) (“an agency’s decision not to prosecute or enforce ... is a decision generally committed to an agency’s absolute discretion,” finding “general unsuitability for judicial review of agency decisions to refuse enforcement” because, “when an agency refuses to act, it generally does not exercise its *coercive* power over an individual’s liberty or property rights, and thus does not infringe upon areas that courts are often called upon to protect”).²⁰

²⁰ *See also* *Fussell v. Bondi*, 2026 U.S. Dist. LEXIS 53909, at *5-6 (W.D. Wash. Mar. 16, 2026) (“Petitioners seek to compel federal law enforcement officials to prosecute purported violations of federal law. ... Petitioners themselves are ‘neither prosecuted nor threatened with prosecution’ and thus have no standing to challenge the Department of Justice’s enforcement

The Supreme Court has recently confirmed this principle. In *United States v. Texas*, 599 U.S. 670, 678 (2023), the Court determined that a group of states could not sue to force the executive to enforce this Nation’s immigration laws because, “under Article II, the Executive Branch possesses authority to decide ‘how to prioritize and how aggressively to pursue legal actions against defendants who violate the law.’” Thus, to the extent Movants seek intervention to ensure that Section 1715 is vigorously enforced by Defendants, this Court is powerless to grant such relief.

II. WITHOUT ANY CLAIM OR DEFENSE OF THEIR OWN, MOVANTS’ REQUEST FOR PERMISSIVE INTERVENTION SHOULD BE DENIED.

As Movants articulate, “[p]ermissive intervention is appropriate where ... the proposed intervenor shows it ‘has a claim or defense that shares with the main action a common question of law or fact.’” MTI at 23. But as explained in Section I(B), *supra*, Movants have identified no “claim or defense” of their own. This Court therefore should exercise its “broad discretion” (MTI at 23) and deny Movants’ motion.

For example, Movants obviously raise no challenge to Section 1715. Any independent challenge they might bring to the OLC opinion would be dead on arrival, since the Attorney General’s exercise of discretion *not* to prosecute enjoys absolute immunity from challenge. *See* Section I(C), *supra*. Likewise, Movants offer no defense of their own, such as opposing Plaintiffs’ motion on the basis of some state law whose constitutionality will be called into question if Section 1715 is struck down. While *that* sort of assertion might give rise to a “common claim or defense,” merely desiring the upholding of a uniquely federal statute dealing with a uniquely federal issue within a uniquely federal agency does not cut it.

priorities or alleged prosecutorial inaction,” because “Plaintiffs have no legally cognizable interest in the prosecution of another no matter what statute they seek to have enforced.”).

Without any claim or a defense *of their own*, Movants seek merely to offer the defense that they *wish* Defendants would have offered, but which is Defendants' alone to provide. Movants admit as much, stating their desire “to intervene to provide the Second Amendment defense that no other party currently will.” MTI at 1; *see also id.* at 23 (“Movant States simply offer an additional merits-based defense of the same federal statute that the Federal Defendants have for the first time declined to provide”). But as discussed in Section III, *infra*, that is the sort of role that an amicus curiae brief can fill, and Movants offer no persuasive reason why this Court should exercise its “broad discretion” to grant them permissive intervention.

III. IF ANYTHING, MOVANTS SHOULD BE GRANTED LEAVE TO PARTICIPATE AS AMICI CURIAE.

Movants wish “to provide the Second Amendment defense [of Section 1715] that no other party currently will.” MTI at 1. But that defense is Defendants' alone to provide. Thus, any proper role for Movants in defending the constitutionality of Section 1715 is as amici curiae, not intervenors. As the Fifth Circuit explains:

“[a]dditional parties always take additional time. Even if they have no witnesses of their own, they are the source of additional questions, briefs, arguments, motions and the like which tend to make the proceeding a Donnybrook Fair. Where he presents no new questions, a third party can contribute usually most effectively and always most expeditiously by a brief amicus curiae and not by intervention.” [*Bush v. Viterna*, 740 F.2d 350, 359 (5th Cir. 1984) (citing *Crosby Steam Gage & Valve Co. v. Manning, Maxwell & Moore, Inc.*, 51 F. Supp. 972, 973 (D. Mass. 1943)).]

Here, Movants present “no new questions” – they “simply offer an additional merits-based defense,” asserting that “this Court will benefit from adversarial briefing on the merits of the Second Amendment issue.” MTI at 23. Perhaps. But Movants have offered no colorable theory as to why their arguments cannot be fully considered if filed via an amicus brief. *See Hairr v. First Jud. Dist. Ct.*, 132 Nev. 180, 188 (2016) (“Providing further reason to deny the writ petition as to permissive intervention, the district court invited petitioners to submit briefs on determinative

issues as amici curiae.”). Plaintiffs would have no objection to the filing of such an amicus brief, provided they be granted the ability to reply.²¹ Indeed, courts routinely appoint amici²² to argue cases when the government refuses to defend a statute.²³

CONCLUSION

For the foregoing reasons, Movant States’ Motion to Intervene as Defendants should be denied.

Dated: March 23, 2026

Respectfully submitted,

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²¹ Should this Court grant intervention, Plaintiffs likewise request the opportunity to reply to Movants’ Motion for Summary Judgment, ECF No. 46-7.

²² See, e.g., Marty Lederman, *Understanding Standing: The Court’s Article III Questions in the Same-Sex Marriage Cases (III)*, SCOTUSblog (Jan. 19, 2013), <https://tinyurl.com/muavpsxs> (collecting cases).

²³ Even if this Court were to grant intervention to in-Circuit Movants Delaware and New Jersey, it should deny intervention as to out-of-Circuit New York. Each time Movants identify their purported interests that they claim will be affected, they cite multiple such laws from each state. Movants identify no interest that is unique to New York, much less one that the other Movants will not fully and vigorously defend.

CERTIFICATE OF SERVICE

I hereby certify that, on March 23, 2026, Plaintiffs served the foregoing filing on all parties in this matter via the Court's electronic filing system.

Dated: March 23, 2026

/s/ Oliver M. Krawczyk
Oliver M. Krawczyk