

No. 25-24

IN THE
SUPREME COURT OF THE UNITED STATES

JOSHUA CLAY MCCOY, ET
AL., on behalf of themselves
and all others similarly
situated as a Class,

Petitioners,

v.

BUREAU OF ALCOHOL,
TOBACCO, FIREARMS AND
EXPLOSIVES; ET AL.

Defendants

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

PROSPECTIVE-INTERVENOR'S MOTION TO INTERVENE AS
PETITIONER

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INTRODUCTION

The pending Petition for a writ of *certiorari* was filed on July 3, 2025 and the case awaits the Court’s decision as to it will be granted. The Petition was subject to a conference on November 14, 2025 with no order having been rendered and the case has not been relisted for conference in the interim.

At issue is a federal statutory scheme that categorically prohibits those under 21 years old from purchasing handguns from federally licensed dealers (“FFLs”)—the only lawful and regulated means to obtain new or previously-unowned firearms, submit to background checks, and safely exercise their right to armed self-defense. The Petitioners brought this action on behalf of themselves and a nationwide class of similarly situated individuals and seek to enjoin such laws as unconstitutional pursuant to the Second Amendment¹. The district court granted summary judgment for the Petitioners and certified the Class. The United States Court of Appeals for the Fourth Circuit reversed both

¹ The Original and Amended Complaint also brought claims pursuant to the Due Process Clause based on equal protection principles but the District Court did not rule on that issue due to the decision in favor of the Plaintiffs via the Second Amendment and the due process challenge was not addressed by the Fourth Circuit.

decisions. As a result, the Petitioners seek reversal of the Fourth Circuit's decisions on the merits and on behalf of the Class at issue.

In the Government's Brief in Opposition ("BIO"), it primarily relied on an argument suggesting that this case will become moot upon the last Petitioner turning 21 and, therefore, the Court should not take this case. In their Reply, the Petitioners adamantly disagreed and continue to disagree with that position given this Court's precedent concerning class actions and mootness. Nevertheless, Mr. Daniel Gibbs, Jr., the Prospective-Intervenor, seeks leave to intervene to ensure that his rights and those of the Class remain actively represented in spite of the passage of time and any impact it may have on the representative capacity of the Petitioners.

The Class, of which Mr. Gibbs is a part, accounts for approximately 10–14 million law-abiding Americans between the ages of 18 and 20-years-old who are otherwise able to purchase a handgun from a FFL but for the laws at issue. Mr. Gibbs turned 18 just four days prior to the Fourth Circuit's decision and could not have intervened prior to the case being appealed to this Court. *See* Exhibit A (Affidavit of Mr. Daniel Gibbs, Jr.). The undersigned counsel for Mr. Gibbs is also that of the

Petitioners and the Class. For the reasons stated herein, Mr. Gibbs should be granted leave to intervene.

ARGUMENT

I. Mr. Gibbs, The Prospective-Intervenor, Should Be Granted Leave To Intervene As A Petitioner.

This Court may permit parties to intervene in appropriate cases pursuant to its “general equity powers.” *See, e.g., United States v. Louisiana*, 354 U.S. 515, 516 (1957) (per curiam). The question whether to allow intervention occurs most frequently in original actions but also occurs in cases on this Court’s discretionary docket. *See, e.g., BNSF Ry. Co. v. EEOC*, 140 S. Ct. 109 (2019); *Gonzales v. Oregon*, 546 U.S. 807 (2005); *Insurance Co. of Pennsylvania v. Ben Cooper, Inc.*, 498 U.S. 894 (1990); *Banks v. Chicago Grain Trimmers*, 389 U.S. 813 (1967); *Hunter v. Ohio ex rel. Miller*, 396 U.S. 879 (1968); *Mullaney v. Anderson*, 342 U.S. 415, 416–17 (1952). Intervention is especially appropriate when the intervenor’s rights would be “vitally affected” by the ruling and where the party who had previously supported the intervenor’s position stops doing so. Stephen M. Shapiro, et al., *Supreme Court Practice* 427 (10th ed. 2013).

Mr. Gibb's rights are undoubtedly at issue, as he falls squarely within the Class of individuals categorically impacted by the laws at issue. As to whether the parties "who had previously supported" his position have "stopped doing so," that is an issue which remains subject to the debate the Government has raised. *See* BIO at 4–5. The Petitioners personally aging-out of the Class is irrelevant because the Class remains subject to re-certification in spite of the Fourth Circuit's decision below.

When the District Court certified the propriety of the class action, the class of unnamed persons described in the certification acquired a legal status separate from the interest asserted by appellant. We are of the view that this factor significantly affects the mootness determination.

Sosna v. Iowa, 419 U.S. 393, 399 (1975) (finding that the mootness of the individual petitioners' claims due to the passage of time did not render the case moot for the previously certified class they were representing); *see also United Airlines, Inc. v. McDonald*, 432 U.S. 385 (1977); *Deposit Guar. Nat'l Bank v. Roper*, 445 U.S. 326 (1980).

Nevertheless, the Government relies on the argument that Mr. Justin Fraser's eventual aging-out of the Class renders the case moot as he is the youngest of the named Petitioners. BIO at 4–5. Should that position be correct, Mr. Gibbs' interests will no longer be adequately protected. Intervention resolves that issue altogether and saves this Court's time.

Even more, if the Government is not correct, there is no harm in allowing Mr. Gibbs to intervene.

Mr. Gibbs respectfully seeks intervention out of an abundance of caution so as to ensure that his interests and those of the Class remain preserved. He has a concrete interest in the laws at issue and that interest will be substantially affected by the resolution of this case. While the Petitioners have protected Mr. Gibbs' interests so far, that would change should this Court find that the Petition is moot. For the sake of Mr. Gibbs' interests, and those of the millions of Americans similarly situated, the Court should grant the motion to intervene.

A. Mr. Gibbs Is A Party of Interest Per The Class And Will Continue To Represent The Interests of Such Class With Intervention.

Mr. Gibbs maintains all of the factors for a qualified petitioner in this case. *See* Exhibit A. He is 18, not yet 21. He is a natural-born American citizen who lacks any disqualifying personal history—whether criminal, substance-related, military-related, or mental health-related, that would otherwise prohibit him from firearm ownership or the ability to purchase a handgun from a federally licensed firearm dealer. He falls squarely within the defined Class that the district court certified. His

sworn affidavit is not lacking of any material factual attestation that was present for the original plaintiffs in this case. The Government concedes there is no factual dispute that persons in Mr. Gibbs' position are facially and categorically disqualified from purchasing handguns from federally licensed firearm dealers per the laws at issue. As a result, Mr. Gibbs' rights are directly impacted by this case and he will receive relief should the Petitioners prove successful.

B. Intervention Is Appropriate In This Circumstance.

This Court's rules do not set forth a standard for determining when intervention is appropriate but this Court made clear that it looks to the "Federal Rules of Civil Procedure, and the general equity powers of the Court," for guidance. *Louisiana*, 354 U.S. at 516. Both the federal rules and principles of equity justify intervention.

1. Intervention Is Supported By The Underlying Purposes and Considerations Required By Fed. R. Civ. P. 24.

While the Federal Rules of Civil Procedure are not binding on this Court, they provide insight into the "policies underlying intervention" that "may be applicable in appellate courts." *Int'l Union v. Scofield*, 382 U.S. 205, 216 n.10 (1965). Notably, the district court previously allowed one of the current petitioners, Mr. Justin Fraser, to also intervene *after*

its decision on the merits as Mr. Fraser turned 18 subsequent to the case having been filed and Mr. Fraser raised the same concerns in support of intervention that are presented by Mr. Gibbs.

The relevant rule is Fed. R. Civ. P. 24, which permits intervention of right in some cases and permissive intervention in others. After considering the Rules and Mr. Fraser's reasoning, the district court found that Rule 24 was satisfied and allowed him to join the suit. This Court should do the same for Mr. Gibbs, as the policies underlying intervention are adequately presented. Parties that file a "timely" motion have a right to intervene if they have "an interest relating to the property or transaction that is the subject of the action," and if they are "so situated that disposing of the action may as a practical matter impair or impede [their] ability to protect [their] interest, unless existing parties adequately represent that interest." Fed. R. Civ. P. 24(a)(2). Parties without a right to intervene can seek permission to do so anyway.

Courts may grant a timely motion for permissive intervention by any party that "has a claim or defense that shares with the main action a common question of law or fact." Fed. R. Civ. P. 24(b)(1)(A). When deciding whether to allow permissive intervention, courts "must consider

whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights." Fed. R. Civ. P. 24(b)(3). Mr. Gibbs meets every requirement.

First, and for the reasons already discussed, Mr. Gibbs has "an interest in ... the subject of this action." Fed. R. Civ. P. 24(a)(2). Because he wishes to challenge the laws at issue and advance the interests of the Class, he has a "claim that shares with the main action a common question of law or fact." Fed. R. Civ. P. 24(b)(1)(B). Even more, he is a resident of the Fourth Circuit and has an interest in this case being resolved on the merits. Without such, he will be bound by the same Circuit precedent that the Petitioners seek to reverse.

Second, given the Government's stated intent to argue that the Petition will be moot due to the aging of individual Petitioners, it is at least suspect, *arguendo*, that the "existing parties" will "adequately represent" Mr. Gibbs' interests and those of the Class at-large. Fed. R. Civ. P. 24(a)(2). Finally, the request is "timely," Fed. R. Civ. P. 24(a)(1) & (b)(1), and the intervention will not "delay or prejudice the adjudication of the original parties' rights." Fed. R. Civ. P. 24(b)(3). "Timeliness is to be determined from all the circumstances," not simply the stage of the

case at which the party sought to intervene. *NAACP v. New York*, 413 U.S. 345, 366 (1973); *see also United Airlines, Inc.*, 432 U.S. at 395–96. Thus, a party acts timely if it moves to intervene “promptly” once it is clear that doing so is necessary to protect its interests. *United Airlines*, 432 U.S. at 394. Mr. Gibbs was not yet 18 when this case was initiated or final in district court. He was not in a position to intervene at that stage. He was not 18 when the case was appealed or argued in the Fourth Circuit and turned 18 just four days before the Fourth Circuit rendered its decision now before this Court. Due to his age, his first opportunity to intervene comes before this Court and the Petition remains subject to review. Judged according to Rule 24’s standards, his motion to intervene is timely.

Because Mr. Gibbs will challenge the same laws at issue on behalf of the same Class of which he is a member, he will effectively join or, at worst, step into the same posture as other Petitioners and be able to argue on behalf of himself and the Class in the same fashion. Intervention will not and cannot “unduly delay or prejudice” any of the original parties’ rights. Fed. R. Civ. P. 24(b)(3). In sum, the policies

embodied by intervention per Rule 24 support allowing Mr. Gibbs to intervene.

2. Allowing Intervention Will Serve The Interests of Justice.

a. Denying Intervention Will Impede A Resolution of A Nationwide Issue Impacting Millions of Americans.

Though all Petitioners argue that their “aging-out” of the purchase restrictions at issue do not undermine the validity and viability of the claims presented by the Class they represent, the Government’s suggestion otherwise warrants Mr. Gibbs’ attempt to intervene. Assuming, *arguendo*, that the Government’s position is correct regarding these older Petitioners, a denial of intervention *may* impede the Class’s resolution of claims and would undermine the rights of Mr. Gibbs and the millions of similarly situated Americans between 18 and 21 years old. This is not a situation in which the injury is capable of repetition but evading review in the traditional sense, as any given plaintiff could only be impacted once, albeit for a three-year-period. The Government knows this and relied on it as its primary defense both in its refusal to seek *certiorari* review from the Fifth Circuit’s decision in *Reese v. ATF*, 127 F.4th 583 (5th Cir. 2025), and now in its opposition to the Petitioner’s

petition for *certiorari*. See Letter from D. John Sauer, Solicitor Gen., U.S. Dep't of Justice, to Hon. Mike Johnson, Speaker, U.S. House of Representatives (July 25, 2025) (explaining decision not to appeal the *Reese* decision); BIO at 4–5.

This is a *sui generis* situation in some respects and warrants the Court's equitable relief. The pace of litigation places a final merits decision at risk for any single plaintiff due to practical consideration. For example, Mr. Justin Fraser was not yet 18 when the suit was initiated in district court yet once he turned 18, he sought leave to intervene. Now, years later, he is 21 and the youngest of the Petitioners. Due to the inevitable duration of district and appellate court proceedings, it is effectively impossible² for any single eighteen-year-old to get final relief by the time they are 21. Cf. *Gerstein v. Pugh*, 420 U.S. 103, 110 n.11 (1975); see also *Hirschfeld v. ATF*, 5 F.4th 407 (4th Cir. 2021) (finding

² Absent intervention or this Court finding that the Class is otherwise maintained by the current Petitioners, the only way an individual could practically seek relief is to be privy to a group with organizational standing and, even then, no organization could provide the nationwide relief that a Rule 23 class offers. An individual's access to justice cannot be restricted to the whims of organizational standing or be outside of this Court's scope merely due to the temporality of any given infringement and the natural, practical delays of our federal litigation system.

same laws at issue unconstitutional), *vacated as moot*, 14 F.4th 322 (4th Cir. 2021). By allowing Mr. Gibbs' to intervene at this juncture, he will preserve his Second Amendment rights and advance those of millions, along with their right to access justice from this Court, which are otherwise structurally denied based on the age restrictions at issue. Intervention will ensure a final decision is granted on the merits, regardless of outcome.

b. There Is No Prejudice To The Defendants And Intervention Advances The Interests of Judicial Economy.

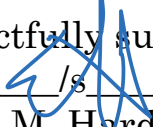
Aside from the prospect that the Government will have to defend the merits of the laws at issue once and for all, there is no prejudice. Mr. Gibbs' factual assertions, sworn under oath, are not materially different than those of all the Petitioners. This case presents a purely legal issue. Mr. Gibbs is represented by the same counsel as the Petitioners and the Class, so there will be full-continuity in briefing, argument, and strategy and hence no delay or surprise caused by intervention. Alternatively, should intervention be denied and the Government prove correct, *arguendo*, that the Petition should be struck for mootness, there will be a continuous need to file the same facial challenge to these laws in

various courts throughout the United States over and over again with no guarantee that a final resolution on the merits can ever be achieved. Not only will the interests of millions of Americans continue to be in jeopardy, but the Government and the judiciary as a whole will suffer due to structural inefficiencies and strain on resources. Granting intervention eliminates that threat and preserves all elements for a final review on this nationwide issue for a nationwide class should the Court decide to grant the Petition on the merits.

CONCLUSION

WHEREFORE, the Prospective-Intervenor, Mr. Daniel Gibbs, Jr., respectfully requests and moves for this Court to GRANT his Motion to Intervene and ORDER that he is to be added as a party in his personal capacity and as a Class representative of those similarly situated before the Court which remains pending *certiorari* review.

Respectfully submitted,

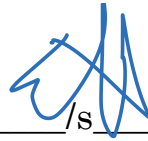


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Certificate of Service and Compliance

I, the undersigned counsel, hereby certify that a copy of the foregoing was mailed this 29th day of April, 2026 to the Supreme Court of the United States and filed via the electronic filing system and the necessary copy was sent via USPS certified mail to the Supreme Court of the United States and to opposing counsel for the Defendants at:

Solicitor General of the United States,
Room 5616, Department of Justice,
950 Pennsylvania Ave., N. W.,
Washington, DC 20530-0001



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EXHIBIT A

McCoy, et al. v. BATFE, et al.

Rec. No. 25-24

Affidavit of Mr. Daniel Gibbs, Jr., Prospective-Intervenor

AFFIDAVIT OF MR. DANIEL GIBBS, JR.

1. My name is Daniel Gibbs Jr. and I reside at 2835 Chelsea Rd., West Point, VA 23181 and am a full-time student attending Hampden Sydney College.
2. My birthday is June 14, 2007. I am currently eighteen years old.
3. I am a natural born citizen of the United States of America who has attained the age of 18 but am not yet 21 years old.
4. I have never been convicted of a felony.
5. I am not a fugitive from justice.
6. I have never been discharged from the Armed Forces under dishonorable conditions.
7. I am not an unlawful user of or addicted to any controlled substances.
8. I have never been adjudicated as mentally defective or committed to a mental institution.
9. I am not on parole or probation.
10. I am not under indictment or restraint.
11. But for the laws at issue in this suit which prohibit me from being able to purchase a handgun from a federally licensed firearm dealer, I would do so.
12. I respectfully request for leave to intervene as a named Petitioner in this matter and will act as a qualified representative of the Class which was originally certified by the United States District Court for the Eastern District of Virginia in this case and which remains pending consideration before this Court.

VERIFICATION

Daniel Gibbs Jr. (SEAL)
Mr. Daniel Gibbs, Jr.

STATE OF VIRGINIA AT LARGE

CITY/COUNTY OF Prince Edward, to-wit:

This day personally appeared before me, Daniel Caleb Gibbs Jr., who is personally known to me and who, under penalty of perjury, made oath that the allegations set forth in the foregoing affidavit, according to the best of his knowledge, information, and belief, are true and correct.

Subscribed and sworn to before me this 27th day of April, 2026.

My commission expires: February 28, 2029.

Stacie Jakubec Fraser
Notary Public STACIE JAKUBEC FRASER

7712931
Registration Number

