



May 4, 2026

Via Email (PCFederalRegister@usps.gov)

Director, Product Classification
U.S. Postal Service
475 L'Enfant Plaza SW, Room 4446
Washington, D.C. 20260-5015

Re: Proposed Amendments to Publication 52, Hazardous, Restricted, and Perishable Mail, 91 Fed. Reg. 16601 (FR Doc. 2026-06376)

Dear Director:

We, the Attorneys General of New Jersey, New York, Delaware, Arizona, California, Colorado, Connecticut, the District of Columbia, Hawai'i, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Mexico, Oregon, Rhode Island, Vermont, Virginia, and Washington (States), submit this comment objecting to the proposed rule entitled "Revised Mailing Standards for Firearms" (Proposed Rule), which the U.S. Postal Service (USPS) issued and published in the Federal Register on April 2, 2026.

The Proposed Rule purports to partially repeal 18 U.S.C. § 1715, by allowing individuals to directly receive concealable firearms via the U.S. mail without using a licensed retailer as intermediary, as that longstanding statute requires—even where such shipments violate state laws restricting the possession and transfer of firearms. The Rule is unlawful and ultra vires for that reason alone, as the Executive lacks authority to unilaterally invalidate a federal statute and sanction conduct that Congress has prohibited. But the Rule also threatens substantial harm to the States, as it imposes significant state law enforcement costs to respond to the systemic violations of state firearm safety laws it facilitates and impairs the effective enforcement of the States' laws regulating the types of firearms that may be possessed and who may possess firearms. Simply, the Rule threatens to make the U.S. mail "an instrumentality for the violation of local laws which prohibited the purchase and possession of weapons"¹—precisely the result Congress sought to prevent in enacting 18 U.S.C. § 1715. The States therefore urge USPS to withdraw the Proposed Rule, and at a minimum to clarify the terms "mailable firearms" and "nonmailable firearms" to ensure that the Rule does not create a mechanism for individuals to obtain firearms that are unlawful to possess in their respective states.

¹ *United States v. Powell*, 423 U.S. 87, 91 (1975).

I. The Proposed Rule Contravenes 18 U.S.C. § 1715 And Therefore Is Ultra Vires And Contrary To Law.

A. The Proposed Rule Is Contrary To Law.

The Proposed Rule avowedly contravenes 18 U.S.C. § 1715, which is binding on USPS notwithstanding the Executive’s erroneous view as to its constitutionality, and thus the Rule is ultra vires and contrary to law.² Congress enacted Section 1715 in 1927 to restrict the mailing of concealable firearms through the Postal Service, to “avoid having the Post Office serve as an instrumentality for the violation of local laws which prohibited the purchase and possession of weapons” and “to make it more difficult for criminals to obtain concealable weapons.”³ The statute provides that, as a general matter, “[p]istols, revolvers, and other firearms capable of being concealed on the person are nonmailable and shall not be deposited in or carried by the mails or delivered by any officer or employee of the Postal Service.” The statute does not prohibit the shipment of concealable firearms by private companies, such as FedEx or UPS, and expressly permits the shipment of firearms through the Postal Service by federally licensed firearms manufacturers and dealers. Federal statutes separately regulate firearm shipments by federal firearms licensees and common or contract carriers to ensure such firearms cannot be mailed to prohibited persons. Section 1715’s longstanding prohibition on mailing firearms has long been understood as a paradigmatic exercise of Congress’s authority over the postal system.

The Proposed Rule violates Section 1715 on its face, chiefly by declaring “pistols, revolvers, shotguns, and rifles” to be mailable.⁴ The Proposed Rule offers no justification for adopting this facially unlawful change beyond a statement that “[t]he Postal Service defers to [the Office of Legal Counsel’s] judgment as to the lawful scope of this criminal statute.”⁵ But the Office of Legal Counsel (OLC) does not have the authority to direct the Postal Service to violate a facially valid federal statute; indeed, no executive agency has such power.⁶ And as USPS is not formally bound by the OLC opinion, blindly following that opinion does not provide a sufficient explanation for USPS’s apparent refusal to consider good-faith arguments in support of Section 1715’s constitutionality. Whatever enforcement

² See 5 U.S.C. § 706(2)(A).

³ *Powell*, 423 U.S. at 91 (citing H.R. Rep. No. 610, 69th Cong., 1st Sess. (1926) and 66 Cong. Rec. 726 (1924)); see also *Stanford v. Lunde Arms Corp.*, 211 F.2d 464, 466 (9th Cir. 1954) (observing that the purpose of Section 1715 is to prevent criminals from circumventing “State laws” and “municipal regulations governing the sale of firearms within [] city limits” (quoting 66 Cong. Rec. 726 (1924)); cf. *Bondi v. Vanderstok*, 604 U.S. 458, 461 (2025) (noting that Congress, in enacting the Gun Control Act, similarly recognized potential for criminals to “evade state laws regulating in-person sales simply by purchasing guns through the mail”).

⁴ See 91 Fed. Reg. at 16603.

⁵ *Id.* at 16602.

⁶ See *Clinton v. City of New York*, 524 U.S. 417, 438 (1998) (“There is no provision in the Constitution that authorizes the President to enact, to amend, or to repeal statutes.”).

discretion the Postal Service may possess in individual cases does not extend to promulgating mailability determinations that directly contravene federal law.

B. OLC's Doubts As To The Federal Law's Constitutionality Lack Merit.

USPS's sole justification for this stark policy change is the OLC opinion, but OLC's determination that Section 1715 is unconstitutional in many of its applications is meritless, as this longstanding law does not implicate the text of the Second Amendment, and moreover is consistent with historical traditions of firearms regulation.

1. Section 1715 Does Not Implicate the Text of the Second Amendment.

The Second Amendment provides that “the right of the people to keep and bear Arms[] shall not be infringed.”⁷ This clause “guarantees the individual right to possess and carry weapons in case of confrontation.”⁸ Section 1715 does not implicate the plain text of the Second Amendment for two reasons.

First, “mailing arms” does not constitute keeping or bearing arms. As the Supreme Court has explained, the phrase to “[k]eep arms” was simply a common way of referring to possessing arms,” noting that Dr. Samuel Johnson “defined ‘keep’ as, most relevantly, ‘[t]o retain; not to lose,’ and ‘[t]o have in custody,’” while Noah Webster defined it as “[t]o hold; to retain in one’s power or possession.”⁹ Likewise, the Court has explained that the “natural meaning” of the phrase to “bear” arms is to “wear, bear, or carry upon the person or clothing or in a pocket, for the purpose of being armed and ready for offensive or defensive action in a case of conflict with another person.”¹⁰ The act of mailing arms is simply not encompassed by the plain meaning of these terms.

Nor does Section 1715 defeat the exercise of the right to carry or keep arms. To be sure, some courts have reasoned that the Second Amendment extends beyond possessing and carrying firearms.¹¹ But even then, “as [multiple] Circuits have recognized, such ‘ancillary rights’ are only protected to the extent that they are ‘necessary to the realization’ of the textually specified right to keep and bear arms.”¹² Thus, federal appellate courts have held

⁷ U.S. Const. amend. II.

⁸ *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1, 20 (2022) (quoting *District of Columbia v. Heller*, 554 U.S. 570, 592 (2008)) (alteration omitted).

⁹ *District of Columbia v. Heller*, 554 U.S. 570, 582 (2008).

¹⁰ *Id.* at 584 (alterations omitted).

¹¹ *See, e.g., United States v. Vereen*, 152 F.4th 89, 95 (2d Cir. 2025) (“The right to keep arms, necessarily involves the right to purchase them, to keep them in a state of efficiency for use, and to purchase and provide ammunition suitable for such arms, and to keep them in repair.”); *but see, e.g., Drummond v. Robinson Twp.*, 9 F.4th 217, 230 (3d Cir. 2021) (noting that “no court, modern or otherwise, [holds] that the Second Amendment secures a standalone right to sell guns”).

¹² *Vereen*, 152 F.4th at 95 (collecting cases); *see also McRorey v. Garland*, 99 F.4th 831, 836–37 (5th Cir. 2024); *B & L Prods., Inc. v. Newsom*, 104 F.4th 108, 110, 119 (9th Cir.

that a law regulating modes of acquiring firearms “implicates the text of the Second Amendment only if it makes acquiring firearms sufficiently more difficult so as to meaningfully constrain individuals from keeping or bearing them.”¹³

Section 1715 does not “have the effect of eliminating the ability of law-abiding, responsible citizens to acquire firearms.”¹⁴ Section 1715 does not ban the sale of firearms in any way, nor does it even ban the transfer of concealable firearms through the Postal Service—it instead channels such USPS shipments through federally licensed manufacturers and dealers. And Section 1715 does not regulate or restrict the mailing of concealable firearms through private carriers. Comparably modest restrictions on the transfer of firearms “may make purchasing a firearm more inconvenient” but do not “amount to a Second Amendment burden.”¹⁵

Second, Section 1715 is a presumptively lawful “condition[] and qualification[] on the commercial sale of arms” that does not implicate the text of the Second Amendment.¹⁶

2024); *Teixeira v. Cnty. of Alameda*, 873 F.3d 670, 680 (9th Cir. 2017) (en banc); *United States v. Vlha*, 142 F.4th 1194, 1198 (9th Cir. 2025).

¹³ *Vereen*, 152 F.4th at 97; *see also Gazzola v. Hochul*, 88 F.4th 186, 196–97 (2d Cir. 2023) (collecting circuit precedents); *United States v. Manney*, 114 F.4th 1048, 1052 (9th Cir. 2024).

¹⁴ *Gazzola*, 88 F.4th at 196.

¹⁵ *Rigby v. Jennings*, 630 F. Supp. 3d 602, 613 (D. Del. 2022); *see also United States v. James*, 677 F. Supp. 3d 329, 344–45 (D.V.I. 2023) (holding that a law forbidding unlicensed individuals from transferring firearms to unlicensed individuals across state lines does not fall within the Second Amendment’s plain text); *B & L Prods.*, 104 F.4th at 119 (“[T]he Second Amendment does not elevate convenience and preference over all other considerations.”) (quoting *Teixeira*, 873 F.3d at 680 & n.13); *Vlha*, 142 F.4th at 1200 (holding that a federal law requiring a license to manufacture firearms “does not meaningfully constrain would-be purchasers from obtaining firearms”).

¹⁶ *Heller*, 554 U.S. at 626–27 & n.26; *see McDonald v. City of Chicago*, 561 U.S. 742, 786 (2010); *Bruen*, 597 U.S. at 81 (Kavanaugh, J., concurring). For similar reasons, Section 1715 is also a constitutional exercise of the government’s authority as a proprietor. Courts have “long held the view that there is a crucial difference, with respect to constitutional analysis, between the government exercising the power to regulate or license, as lawmaker, and the government acting as proprietor, to manage its internal operation.” *Kipke v. Moore*, 165 F.4th 194, 208 (4th Cir. 2026) (quoting *Engquist v. Or. Dep’t of Ag.*, 553 U.S. 591, 598 (2008)). That principle applies with full force to the Postal Service, as recognized by the Supreme Court in *United States v. Kokinda*, 497 U.S. 720, 725 (1990). “[T]he contrast between the regulation challenged here and the bans struck down in *Heller* and *McDonald* is stark. Those bans regulated wholly private activity and applied directly to every citizen in the respective jurisdictions.” *Bonidy v. U.S. Postal Serv.*, 790 F.3d 1121, 1126–27 (10th Cir. 2015) (upholding postal regulation against pre-*Bruen* Second Amendment challenge). By contrast, Section 1715 applies only to the carrying of the mail by the Postal Service itself; it does not apply to private carriers, and accordingly it “affects private citizens only insofar as they are doing business with the [Postal Service] [.]” *Id.* at 1127.

As the Supreme Court has observed, Congress enacted Section 1715 to “avoid having the Post Office serve as an instrumentality for the violation of local laws” regulating the sale of firearms.¹⁷ Similarly, the Ninth Circuit has explained that the purpose of Section 1715 is to prevent criminals from circumventing state and local “regulations governing the sale of firearms within [] city limits.”¹⁸

Section 1715 is thus a critical component of the longstanding partnership between state and federal governments to enforce commercial firearm regulations. The law “complements local commercial regulations, preventing individuals from sidestepping the lawful conditions and qualifications limiting the transfers of firearms,”¹⁹ while protecting postal workers and the public. In that sense, Section 1715 is analogous to the type of requirements routinely upheld as lawful commercial regulations on the sale of arms.²⁰

2. Section 1715 Is Consistent With the Nation’s Historical Traditions of Firearms Regulation.

Even if Section 1715 were to implicate the text of the Second Amendment (and it does not), the statute is constitutional because it “is consistent with this Nation’s historical tradition of firearm regulation.”²¹ *First*, there is no evidence to support a purported tradition of mailing firearms through the Postal Service. To the contrary, such conduct has been implicitly or explicitly prohibited for nearly the entirety of the Nation’s history. *Second*, Section 1715 is independently supported by several well-established traditions of firearms regulation aimed at preventing the misuse of firearms by dangerous persons.

i. The Postal Service Has Long Prohibited the Mailing of Firearms.

The U.S. Postal Service was established in 1792 and charged with delivering “letters, newspapers and packets.”²² The mailing of weapons was not contemplated by the Founders, nor would it have been practicable given the high costs of mailing. Sending a letter from Johnstown to Philadelphia would have cost seventeen cents in the late eighteenth-century; by contrast, sending a ten-pound Revolutionary-era musket would have cost \$108.80. Such

¹⁷ *Powell*, 423 U.S. at 91.

¹⁸ *Stanford*, 211 F.2d at 466.

¹⁹ *James*, 677 F. Supp. 3d at 345.

²⁰ *See, e.g., New York State Firearms Ass’n v. James*, 157 F.4th 232 (2d Cir. 2025) (background checks on ammunition sales); *McRorey v. Garland*, 99 F.4th 831 (5th Cir. 2024) (background checks and waiting periods); *Maryland Shall Issue, Inc. v. Moore*, 116 F.4th 211 (4th Cir. 2024) (en banc) (background check and licensing requirement for handgun purchases).

²¹ *Bruen*, 597 U.S. at 17.

²² An Act to establish the Post-Office and Post Roads within the United States, 2 Cong. Ch. 7, 1 Stat. 232 § 2 (Feb. 20, 1792); *see also* Timothy Pickering, *Instructions to the Deputy Postmasters* (1792), reprinted in I Richard R. John, *The American Postal Network 1792-1914* 3-5 (Pickering & Chatto 2012).

an amount would have been ruinously expensive at a time when “the average rate of wages the land over was . . . sixty-five dollars a year, with food, and, perhaps, lodging.”²³

An 1838 directive from the Postmaster General to his employees similarly stipulated that the service would be used for “three classes of postage,” namely “letters,” “newspapers,” or “pamphlets.”²⁴ While the Postmaster General contemplated that something might be put in the mail “which is not either a newspaper, a pamphlet, or a magazine,” all of the exemplars that he identified were paper communications: “handbills, printed or written; prices current, sealed or unsealed; proposals for new publications; circulars, lottery bills and advertisements, blank forms, deeds, law processes, policies of insurance, and manuscript copy for publication.”²⁵ Moreover, the Postmaster General instructed employees to “exclude from the mail packets of every description weighing more than three pounds, and all articles that would hazard the security of the mails, or expose them to be worn or defaced,”²⁶ a requirement that in effect precluded the shipment of firearms.

Congress reorganized the post office in 1863 and specified a limited list of what constituted “mailable matter,” divided into three classes.²⁷ First class mail included “all correspondence, wholly or partially in writing,” with some exceptions designated third class.²⁸ Second class mail included “all mailable matter exclusively in print, and regularly issued at stated periods,” in other words, periodicals like newspapers and magazines.²⁹ And “[t]he third class embraces all other matter which is or may hereafter be by law declared mailable; embracing all pamphlets, occasional publications, books, book manuscripts, and proof sheets, whether corrected or not, maps, prints, engravings, blanks, flexible patterns, samples and sample cards, phonographic paper, letter envelopes, postal envelopes, or wrappers, cards, paper, plain or ornamental, photographic representations of different types, seeds, cuttings, bulbs, roots, and scions.”³⁰ Notably, firearms were not included in Congress’ list of mailable matter.

The 1872 Post Office Act similarly contained statutory provisions that had the effect of excluding firearms.³¹ The act expanded the scope of third class mail to include new

²³ 2 John Bach McMaster, *A History of the People of the United States, from the Revolution to the Civil War* 617 (1919).

²⁴ Letter from Robert Johnson, Second Assistant Postmaster General (March 1838); see also Arthur W. Austin, *A Memorandum Concerning the Charlestown Post-Office* (Jan. 27, 1834), reprinted in John, *supra* at 92 (discussing the contents of the mail as “letters, newspapers and pamphlets”).

²⁵ *Id.*

²⁶ *Id.*

²⁷ *An Act to Amend the Laws Relating to the Post-Office Department*, ch. 71, §§ 19-20, 12 Stat. 701 (1863).

²⁸ *Id.* § 20.

²⁹ *Id.*

³⁰ *Id.*

³¹ *An Act to Revise, Consolidate, and Amend the Statutes Relating to the Post-Office Departments*, ch. 335, 17 Stat. 283 (1872).

examples (such as “posters” and “samples of metals”) as well as a provision allowing the Postal Service to accept “all other matter which may be declared mailable by law, and all other articles not above the weight proscribed by law.”³² But that weight limit would have excluded virtually all firearms, since by statute “[a]ll matter of the third class, excepting books and other printed matter . . . shall not exceed twelve ounces in weight.”³³

In 1879, Congress enacted the Classification Act of 1879, which created a fourth class of mail consisting of “merchandise.”³⁴ The new class encompassed “all matter not embraced in the first, second, or third class, which is not in its form or nature liable to destroy, deface, or otherwise damage the contents of the mail bag, or harm the person of any one engaged in the postal service,” subject to a four-pound limit.³⁵ There is no indication in the considerable legislative history of the Classification Act that Congress intended to make firearms mailable; however, the 1887 edition of the Postal Regulations for the first time stated that “[p]istols or revolvers, in detached parts, may be sent in the mails,” subject to examination by the mailing postmaster.³⁶

The change in policy led to substantial concerns. For example, the Postmaster General complained to Congress in 1904 that “loaded revolvers and other explosives are continually intercepted in the mails and consigned to the Dead-Letter Office Museum. Some adequate punishment should be provided for those who thus recklessly endanger the lives of mail clerks.”³⁷ And in 1925 the Postmaster General warned in his annual message to Congress that “[i]n many jurisdictions [the mailability of guns] operates to defeat local laws and regulations prohibiting the purchase and possession of such articles. Many complaints have been received in this connection and it is believed that the department should not be compelled to carry firearms under these conditions.”³⁸

In response, Congress drafted legislation to prevent “the enormous traffic in firearms of this [concealable] character sent into communities where the addresses are undoubtedly barred from making local purchases.”³⁹ The measure was endorsed “by the police authorities

³² *Id.* § 133.

³³ *Id.* Few if any weapons at the time would have weighed less than the Postal Service’s twelve-ounce limit. Perhaps the most popular revolver of the time, the Colt Model 1851 Navy, weighed two pounds, ten ounces. *See* Rick Sapp, *Standard Catalog of Colt Firearms* 43 (Gun Digest Books 2007). Even the Colt Model 1849 “Pocket” revolver “weighed a mere 1 lb., 11 oz.” in its typical configuration. *Id.* at 41.

³⁴ *An Act Making Appropriations for the Service of the Post Office Department for the Fiscal Year Ending June Thirtieth, Eighteen Hundred and Eighty, and for Other Purposes*, ch. 180, § 7, 20 Stat. 355, 358 (1879).

³⁵ *Id.* § 20.

³⁶ *Postal Laws and Regulations of the United States of America* § 370(10), at 155 (1887).

³⁷ *Annual Report of the Postmaster-General of the United States for the Fiscal Year Ended June 30, 1904*, at 7 (1904).

³⁸ *Annual Report of the Postmaster General for the Fiscal Year Ended June 30, 1925*, at 65 (1925).

³⁹ 66 Cong. Rec. 727 (1924) (statement of Rep. John F. Miller (R-Wash.)).

of substantially every large city in America.”⁴⁰ The bill passed the House overwhelmingly.⁴¹ It was subsequently enacted in 1927.⁴²

The Congresses that considered and ultimately passed the prohibition on mailing firearms in the Postal Service expressly determined it to be constitutional under the Second Amendment.⁴³ While Congressman Thomas Blanton raised constitutional objections to the proposed legislation, suggesting that the Postmaster General was “trying to take away from the law-abiding people the constitutional right to keep firearms in their homes,”⁴⁴ the bill’s proponents emphasized its constitutionality, with Congressman Morton Hull emphasizing that “[t]here is not a single line or word in the proposed act that prevents a man having a firearm in his home under any constitutional guaranty that he has.”⁴⁵ The bill’s leading proponent, Congressman C. William Ramseyer similarly emphasized that “this bill does not undertake to regulate the States. The only thing it undertakes to do is to tell the person who wants a pistol that he can not use an agency of the Federal Government to transport the pistol.”⁴⁶

These views were bolstered by the complete absence of legal challenges to pre-1879 statutes and regulations that implicitly barred the mailing of firearms by the Postal Service. “The United States Postal Service is unquestionably a federal program,” to which federal law and the federal Constitution apply directly.⁴⁷ The Postal Service had accordingly been subject to suit for Second Amendment violations since the Nation’s founding.⁴⁸ The fact that neither the founding generation nor any of the generations after brought such suits despite this prohibition being in effect nearly continuously is a strong indication that they did not view the Second Amendment as requiring the shipping of guns by mail.⁴⁹

To be sure, the sending of certain light firearms by mail was understood to be legal from 1879 through 1926, but that gets little weight in the Second Amendment analysis because Congress’ action in legalizing the mailing of firearms weighing under four pounds in 1879 contained no indication that it did so based on any belief that the Constitution required

⁴⁰ *Id.*

⁴¹ *See id.* at 737.

⁴² *See* 68 Cong. Rec. 2805.

⁴³ *Cf. Vidal v. Elster*, 602 U.S. 286, 304 (2024) (including laws passed in 1911 and 1946 in considering the First Amendment’s historic tradition as applied to trademark law).

⁴⁴ 66 Cong. Rec. 736 (1924) (statement of Rep. Thomas Blanton).

⁴⁵ 66 Cong. Rec. 728 (1924) (statement of Rep. Morton Hull).

⁴⁶ 66 Cong. Rec. 728 (1924) (statement of Rep. C. William Ramseyer).

⁴⁷ *Straus v. United States Postal Service*, 296 F. Supp. 3d 705, 708 n.3 (E.D. Pa. 2017) (citing U.S. Const. art I, § 8, cl. 7).

⁴⁸ *See United States v. Cruikshank*, 92 U.S. 542, 553 (1875) (Second Amendment’s effect is “to restrict the powers of the national government”).

⁴⁹ *See Antonyuk v. James*, 120 F.4th 941, 990 (2d Cir. 2024) (finding history probative where “the record not only lacks any successful challenges” to historical measures, “but also lacks any challenges at all.”).

it.⁵⁰ Indeed, the States’ review of the voluminous legislative history of the 1879 Act revealed no reference to firearms at all. Conversely, the Congresses that debated and enacted Section 1715 thought deeply about its constitutional implications, passed it overwhelmingly, and thus “carried over” a Founding-era tradition of restricting firearms shipment “into federal statutory law.”⁵¹ The Postal Service cannot cavalierly disregard this explicit congressional directive.

ii. Section 1715 Is Consistent With Numerous Traditions Of Firearms Regulation.

In determining whether a modern law is consistent with historical tradition, courts evaluate whether the historical precedents supporting the modern law are “relevantly similar”; that is, whether they burden an individual’s Second Amendment rights for comparable reasons and in comparable respects.⁵² A contemporary law may be “analogous enough to pass constitutional muster” even where it “does not precisely match its historical precursors”; in other words, the government need not identify a “dead ringer” or “historical twin” to support a modern firearm regulation, so long as the law “comport[s] with the principles underlying the Second Amendment.”⁵³

The Supreme Court has already explained that the purpose of Section 1715 is “to avoid having the post office serve as an instrumentality for the violation of local laws which prohibited the purchase and possession of weapons,” and “to make it more difficult for criminals to obtain concealable weapons.”⁵⁴ The statute therefore requires that handguns be mailed via a federally-licensed dealer, who can ship the weapon safely, verify the recipient’s identity and that the recipient is not prohibited from obtaining the weapon, and conduct any background checks required by state or federal law. While the precise contours of Section 1715 are “by no means identical” to historical precedents, they are sufficiently analogous to two distinct regulatory traditions: background checks and licensing laws and regulations on the shipment and distribution of dangerous weapons.

Background checks and licensing laws. “Since the founding, our Nation’s firearm laws have included provisions preventing individuals who threaten physical harm to others from misusing firearms.”⁵⁵ Accordingly, federal, state, and local governments across the country have enacted laws prohibiting certain classes of potentially dangerous persons, such as felons, drug users, persons with major mental health issues, and persons implicated in domestic violence from acquiring firearms.⁵⁶ Governments have also passed licensing laws

⁵⁰ See *Bruen*, 597 U.S. at 66, 69.

⁵¹ *Vidal*, 602 U.S. at 304.

⁵² See *Bruen*, 597 U.S. at 28–29 (quotation marks omitted).

⁵³ See *United States v. Rahimi*, 602 U.S. 680, 692 (2024); *Bruen*, 597 U.S. at 30.

⁵⁴ *Powell*, 423 U.S. at 91 (citing H.R. Rep. No. 610, 69th Cong., 1st Sess. (1926); 66 Cong. Rec. 726 (1924)).

⁵⁵ *Rahimi*, 602 U.S. at 690.

⁵⁶ See, e.g., 18 U.S.C. § 922(g); 18 Pa.C.S. § 6105; N.J. Stat. Ann. § 2C:58-3(c); N.J. Stat. Ann. §§ 2C:58-20 to 2C:58-32; N.J. Stat. Ann. §§ 2C:25-17 to 2C:25-35; Del. Code Ann. tit.

and background check requirements to ensure that dangerous persons do not obtain firearms.⁵⁷ Likewise, federal courts have treated shall-issue licensing laws aiming to verify that a pistol permit holder is law-abiding and responsible as “presumptively constitutional.”⁵⁸

Section 1715’s longstanding prohibition is integral to the proper functioning of each of the laws above, and the historical traditions that undergird them. For instance, opening the mail to handguns would newly allow for weapons to be sent directly to unlicensed persons or persons who could not pass a federal or state background check, resulting in an increased number of prohibited persons obtaining firearms. Such a sudden expansion in opportunities for the illicit transfer of guns without federal and state recordkeeping requirements would also undermine the established national tracing system and create new obstacles for law enforcement to solve violent crimes. The Second Amendment does not dictate such an outcome.

Regulation on the shipment and distribution of weapons. Section 1715 is similarly well-grounded in the Founding-era tradition of regulating the distribution of deadly weapons. During the colonial era and up to the founding, “colonial governments substantially controlled the firearms trade.”⁵⁹ While much of colonial policy focused on “ensuring that the populace was well-armed,” the colonies also recognized the dangers inherent in their arms falling into the hands of dangerous persons, and enacted laws restricting the transport or sale of weapons to persons who were perceived of as threatening—or even to law-abiding citizens of other colonies. For example, while Virginia law provided that all persons were at “liberty to sell armes and ammunition to any of his majesties loyall subjects inhabiting *this colony*,” that liberty “did not, however, extend to sales to others.”⁶⁰ The colonies “also tightly regulated the transportation of both gunpowder and ammunition.”⁶¹

11, §§ 1448, 1448D(f); N.Y. Penal Law § 265.17; Mass. Gen. Laws ch. 140, § 121F; *see also Pitsilides v. Barr*, 128 F.4th 203, 211 (3d Cir. 2025) (“Legislatures historically prohibited possession by categories of persons based on a conclusion that the category as a whole presented an unacceptable risk of danger if armed.” (quoting *United States v. Jackson*, 110 F.4th 1120, 1128 (8th Cir. 2024))).

⁵⁷ *See, e.g.*, 18 U.S.C. § 922(t); 18 Pa.C.S. § 6111; N.J. Stat. Ann. § 2C:58-3(a)(3), (b); Del. Code Ann. tit. 11, § 1448D(h); N.Y. Gen. Bus. L. § 898; Mass. Gen. Laws ch. 140, §§ 129B, 131, 131F. The constitutionality of background check laws is not in doubt. *See, e.g., Bruen*, 597 U.S. at 38 n.9; *see also Range v. Attorney General*, 124 F.4th 218, 282–83 (3d Cir. 2024) (Matey, J., concurring).

⁵⁸ *United States v. Peterson*, 161 F.4th 331, 339 (5th Cir. 2025) (quoting *Md. Shall Issue, Inc. v. Moore*, 116 F.4th 211, 216, 227 (4th Cir. 2024) (en banc)); *accord Giambalvo v. Suffolk County*, 155 F.4th 163, 181 (2d Cir. 2025).

⁵⁹ *Teixeira*, 873 F.3d at 685.

⁶⁰ *Id.* at 685 n.18 (quoting 2 William Waller Henig, *The Statutes at Large: Being a Collection of All the Laws of Virginia* 403) (emphasis added).

⁶¹ *Vereen*, 152 F.4th at 100 (collecting historical sources); *see United States v. Barnes*, Crim. No. 23-12, 2024 WL 33228593, at *4–5 (D. Del. 2024) (surveying colonial regulation of trade in gunpowder).

The practice of denying firearm and ammunition sales to potential threats continued into the eighteenth century, with New York Governor George Clinton writing to London in 1744 that he had “issued [] Proclamations to forbid the Exportation of Gun powder, or the supplying the French with any kind of provisions, warlike stores, or merchandizes.”⁶² And it continued into the early United States, as the Third Congress—which included James Madison, the drafter of the Second Amendment—passed a law declaring that “it shall not be lawful to export from the United States any cannon, muskets, pistols, bayonets, swords, cutlasses, musket balls, lead” and other weapons and ammunition “for and during the term of one year.”⁶³

These statutes are not identical to Section 1715’s prohibition on sending firearms in the mail, but they need not be and they are “relevantly similar” in the way contemplated by the Supreme Court’s precedents.⁶⁴ Specifically, both Section 1715 and the historical analogues restricted the shipment of firearms and ammunition in some ways while permitting law-abiding citizens to obtain firearms and ammunition locally. And the shared purpose of Section 1715 and the historical analogues was to prevent weapons from being transported to persons who could potentially “pose a threat to the orderly functioning of society.”⁶⁵ These similarities are amply sufficient to support the constitutionality of Section 1715.⁶⁶

II. The Proposed Rule Also Imposes Significant Harms On States And The Public.

By enabling individuals to use USPS to mail firearms within and across state lines without a background check and without using Federal Firearms Licensees (FFL) as intermediaries, the Proposed Rule harms States in multiple ways. USPS does not acknowledge or consider or effectively respond to any of this—even though they are the very interests at the heart of 18 U.S.C. § 1715 itself.⁶⁷

First, the States will face increased law enforcement and administrative costs in response to the circumvention of state firearm safety laws that the Rule facilitates—including the circumvention of laws that limit who may possess firearms, and what firearms they may lawfully possess. All States maintain some limits on who may possess firearms, from limits on violent felons and domestic abusers to those who have refused to go through a background

⁶² VI John Broadhead, *Documents Relative to the Colonial History of the State of New-York* 254-55 (1855).

⁶³ An Act Prohibiting for a limited time the Exportation of Arms and Ammunition, and encouraging the Importation of the same, 3 Cong. ch. 33, 1 Stat. 369 (May 22, 1794).

⁶⁴ See *Rahimi*, 602 U.S. at 692; *Bruen*, 597 U.S. at 29.

⁶⁵ *Waulk*, No. 20-cr-31-1, 2024 WL 3937489, at *7 (W.D. Pa. Aug. 26, 2024) (recognizing tradition of preventing dangerous persons from accessing firearms “to protect the public from the violence and disorder” posed by such individuals).

⁶⁶ See *Rahimi*, 602 U.S. at 680 (“[T]he Second Amendment permits more than just regulations identical to those existing in 1791.”).

⁶⁷ See *Powell*, 423 U.S. at 91 (1975) (finding that Section 1715 exists “to avoid having the Post Office serve as an instrumentality for the violation of local laws which prohibited the purchase and possession of weapons”).

check to minors. For example, a range of States prevent possession of firearms by those who “pose a danger to self or others” or are otherwise statutorily barred based on, *e.g.*, their prior convictions.⁶⁸ To effectuate those restrictions, States like Delaware, New Jersey, New York, and Massachusetts all require that individuals first obtain a permit to legally purchase and/or obtain a handgun and certain other firearms, and state laws ensure that the issuance of such permits is predicated upon the applicant reviewing a basic firearms safety course, being fingerprinted, and undergoing an individualized background search by law enforcement that reviews, among other things, their criminal history and mental health history.⁶⁹ And because careful scrutiny at point of sale or transfer is the most effective way of ensuring that only non-dangerous individuals are in fact legally obtaining handguns,⁷⁰ the States’ laws require that transfers of handguns—whether via sale, purchase, gift or other transfers—be conducted through a licensed retailer.⁷¹ Unfortunately, the Proposed Rule would make USPS a readily-available mechanism that individuals could use to circumvent these transfer restrictions.

In addition to restricting who may possess firearms, States limit the types of concealable firearms that may be possessed in a range of ways—such as prohibitions on ghost guns,⁷² firearm silencers,⁷³ and assault firearms.⁷⁴ Yet the Proposed Rule includes at least some of

⁶⁸ N.J. Stat. Ann. § 2C:58-3(c); *see also* N.Y. Penal Law § 400.00(1)(b); Del. Code Ann. tit. 11, § 1448(a); Mass. Gen. Laws ch. 140, § 121F.

⁶⁹ *See* N.J. Stat. Ann. § 2C:58-3; *cf.* N.Y. Penal Law § 400.00(1), (4); Del. Code Ann. tit. 11, § 1448D(h)–(i); Mass. Gen. Laws ch. 140, §§ 129B, 131, 131P; *see also* Cal. Pen. Code §§ 31610 to 31670, 28160, 28220; Conn. Gen. Stat §§ 29-33(b), 29-28, 29-36f; D.C. Code §§ 7-2502.01(a), 7-2502.03, 22-4504(a), 7-2509.02; Haw. Rev. Stat. § 134-2; Minn. Stat. § 624.7131; Or. Rev. Stat. §§ 166.412, 166.434, 166.436, 166.505; Wash. Rev. Code § 9.41.121.

⁷⁰ *See* U.S. Dep’t of Justice, Off. of Inspector General, *Audit of the Handling of Firearms Purchase Denials Through the National Instant Criminal Background Check System* at 14-32 (Sept. 2016), *available at* <https://tinyurl.com/4ttnhuxt>.

⁷¹ *See, e.g.*, N.J. Stat. Ann. § 2C:58-3(a)(2); N.Y. Gen. Bus. Law § 898; Del. Code Ann. tit. 11, §§ 1448A(a), 1448D; Cal. Pen. Code §§ 26500, 27545, 27585, 28050; D.C. Code §§ 7-2505.01, 7-2505.02(a), 7-2505.02(c); Mass. Gen. Laws ch. 140, §§ 122, 128A; Minn. Stat. § 624.7134 (transfers through licensed retailers required when both private parties unlicensed); Or. Rev. Stat. §§ 166.412, 166.435, 166.438; Vt. Stat. Ann. tit. 13, § 4019(b)(1); Wash. Rev. Code § 9.41.113.

⁷² *See* N.J. Stat. Ann. § 2C:39-3(n); N.Y. Penal Law §§ 265.60 to 64; Cal. Pen. Code §§ 23920, 27530, 29180; Conn. Gen. Stat § 29-36(a); D.C. Code §§ 7-2502.01(a), 7-2502.02(a)(8), 7-2505.01; Haw. Rev. Stat. § 134-8 (a); Mass. Gen. Laws ch. 140, § 121C; Or. Rev. Stat. §§ 166.266, 166.267; Vt. Stat. Ann. tit. 13, § 4083; Wash. Rev. Code § 9.41.040(1)(ii).

⁷³ *See* N.J. Stat. Ann. § 2C:39-3(c); N.Y. Penal Law § 265.02(2); Del. Code Ann. tit. 11, § 1444(a)(3); Ariz. Rev. Stat. § 13-3101(A)(8)(a)(ii); Haw. Rev. Stat. § 134-8(a); Mass. Gen. Laws ch. 269, § 10A; Or. Rev. Stat. § 166.272; Vt. Stat. Ann. tit. 13, § 4010.

⁷⁴ *See* N.J. Stat. Ann. § 2C:39-5(f); N.Y. Penal Law §§ 265.02(7), 265.00(22); Del. Code Ann. tit. 11, §1466; Cal. Pen. Code §§ 30515, 30600, 30605; Conn. Gen. Stat. §§ 53-202a, 53-202c; D.C. Code §§ 7-2502.01(a), 7-2502.02(a)(6); Haw. Rev. Stat. §§ 134-4 (e), 134-8

these devices within its definition of “mailable firearms.” For instance, at least three classes of weapons—the TEC-9, TEC-22, and Uzi-type semiautomatic guns, along with all substantially identical firearms—are banned in New Jersey as “assault firearms” but all fall within the “pistols” that the Rule specifies are “mailable firearms.”⁷⁵ Further, the Rule is ambiguous about whether it includes firearm silencers within mailable firearms; while it specifies that nonmailable firearms include those identified in section 431.2, “Firearms Subject to the National Firearms Act,” section 431.2 troublingly enumerates the majority of items restricted by the National Firearms Act (NFA) with the exception of silencers, suggesting these are excluded from “nonmailable firearms.”⁷⁶ Absent clarification that “[l]awful firearms” excludes weapons that are unlawful under state law, and particularly given the uncertainty as to how USPS is going to police the line between these categories, the foreseeable result is that the Rule will facilitate shipment of silencers. So not only would prohibited persons have a new way to obtain firearms in violation of state law, but those prohibited persons would suddenly have new paths to access certain prohibited firearms as well.⁷⁷

The Proposed Rule would disrupt these careful regulatory systems that limit the ability of criminals to access firearms, let alone firearms prohibited by state law, like assault pistols. Simply put, in opening USPS to undetected firearm shipments, the Rule would enable a flood of concealable arms mailed into the States that do not pass through licensed entities, impairing the effective enforcement of their regulatory schemes. That risk is exacerbated by a number of important features of this rule. Unlike private carriers who are subject to statutory safety measures if they choose to transport firearms by mail,⁷⁸ USPS does not consider itself a common carrier and thus such safety protections evidently would not apply. Nor does USPS have any statutory obligation to ensure the packages it ships comply with state laws on the acquisition or transfer of firearms. The Rule does not fill that regulatory gap, as it

(a); Mass. Gen. Laws ch. 140, § 131M; Vt. Stat. Ann. tit. 13, §§ 4021 to 4022; Wash. Rev. Code § 9.41.390.

⁷⁵ N.J. Stat. Ann. § 2C:39-1(w); *see also* N.Y. Penal Law § 265.00(22)(c) (including similar pistols in definition of prohibited assault weapons); *compare* 91 Fed. Reg. 16,601, 16,603.

⁷⁶ *Compare* 91 Fed. Reg. 16,601, 16,603, *with* 26 U.S.C. § 5845(a) (restricting “silencers” along with other items that are listed in section 431.2 of the Rule); *see, e.g., NLRB v. SW General, Inc.*, 580 U.S. 288, 302 (2017) (noting canon that expression of a group of commonly associated items “excludes another left unmentioned”).

⁷⁷ In addition to careful statutes governing who may possess firearms and what firearms they may possess, some States have limitations on the number of firearms which a civilian may purchase in a given time period, limiting the number of handguns that one person may purchase in a specified period. *E.g.*, N.J. Stat. Ann. § 2C:58-3(i) (one handgun in a thirty-day period); N.Y.C. Admin. Code § 10-302.1 (one every ninety days). When handgun transfers go through licensed retailers (as these state laws require), those provisions are readily enforced because retailers access the relevant databases before completing a sale, and must refuse to sell handguns to persons who exceed this purchasing limit. N.Y.C. Admin. Code § 10-302.1(c)–(d). But opening USPS to handguns lets individuals bypass these retailers and thereby evade state restrictions on gun sales—leading to greater costs for the States to enforce their laws.

⁷⁸ *See* 18 U.S.C. § 922(e), (f)(1), (f)(2).

states only that “[m]ailers must comply with ... state and local laws” and USPS “*may* require confirmation” that a firearm is “eligible for mailing”—but makes no provision for USPS to enforce compliance with state laws.⁷⁹ Indeed, USPS would no doubt claim intergovernmental immunity if any State sought to require its shipments to comply with state laws.⁸⁰ So while the States could bring actions against individuals who ship or receive firearms unlawfully, they cannot count on the key tool of going after the *shipper* that facilitated systematic violations of their laws. Simply put, USPS would now provide individuals with the ability to ship firearms within their States and across state lines *without* going through FFLs (and the requisite safety checks to which FFLs are subject)—and without complying with state law or facing state sanction.⁸¹

The resulting costs and burdens on state law enforcement would be substantial. States would have to create entirely new investigative and tracking structures to account for the unregulated mailing of concealable firearms through USPS, including the costs of personnel, infrastructure, training and deployment. Indeed, the very OLC opinion on which the Proposed Rule so heavily relies emphasizes that enjoining enforcement of Section 1715 would allow individuals to directly mail firearms without having to first “deliver the firearm to a [FFL] dealer,”⁸²—precisely the unregulated trafficking in firearms that facilitates systemic violations of state laws and increased law enforcement costs to detect and prosecute them. That the harms involve third party criminal acts is of no moment; they are the “predictable” result of the Rule.⁸³

The harms do not stop there: because the Rule would permit concealable firearms to be shipped between individuals with weak identification verification (or no verification at all, for intrastate shipments), and bypassing the use of FFLs,⁸⁴ this would significantly hamper not just state efforts to ensure compliance with longstanding laws at the point of transfer, but also state and local criminal investigations that rely upon systems like eTrace, which can only identify an initial purchase from an FFL, and does not in most cases have a mechanism

⁷⁹ See 91 Fed. Reg. 16,601, 16,604 (emphasis added). The Rule’s tracking and signature requirements for interstate shipments to non-FFLs likewise does not obligate USPS to enforce compliance with applicable state laws. Moreover, while USPS can obtain warrants to search a package upon a showing of probable cause, see 39 C.F.R. § 233.11, it is unclear how USPS would show that any given package gives rise to particularized suspicion where the OLC Opinion, on which USPS now relies, dictates that firearms as a category are permissible and USPS has not expressed any intention to devote the resources needed to screen for firearms. Instead, the far more likely outcome under the Proposed Rule is that when an individual seeks to place a concealable handgun in the mail, USPS would ship it.

⁸⁰ See *United States v. Washington*, 596 U.S. 832, 835 (2022) (discussing immunity).

⁸¹ See, e.g., Cal. Pen. Code § 27585 (prohibiting a California resident from importing or bringing into California a firearm that was purchased or obtained outside of California unless the firearm is first delivered to a licensed dealer); *id.* § 27590(c)(7) (permitting felony or misdemeanor punishment if the violation of section 27585 involved a handgun).

⁸² 49 Op. O.L.C. (Jan. 15, 2026) (slip op. at 6).

⁸³ *Dep’t of Com. v. New York*, 588 U.S. 752, 768 (2019).

⁸⁴ See 91 Fed. Reg. 16,601, 16,604.

for tracing guns transferred to another person (whether formally or informally). For example, in 2023, eTrace successfully identified a crime firearm’s purchaser and source state in 68% of searches in New York,⁸⁵ 69% of searches in New Jersey,⁸⁶ and 79% of searches in Delaware. If concealable firearms can circumvent FFLs through USPS, state law enforcement will have a reduced probability of identifying the path a firearm traveled before it was used in the crime. And even more critically, the vast majority of crime guns recovered in New York and New Jersey—81% and 79%, respectively—are traced to out-of-state FFLs.⁸⁷ By explicitly allowing individuals to circumvent FFLs, the Rule will subject the States’ law enforcement to increased firearms trafficking and the associated increase in monitoring, investigating and prosecuting those cases. It will also require law enforcement in the States to undertake more resource-intensive methods to generate investigative leads to identify the source of a crime gun, including in-person interviews, long-term surveillance operations of suspects, out-of-state travel to interview trafficking suspects, and coordinated interview or surveillance operations in and out of the undersigned States.

The problem is especially acute as it relates to the States’ restraining-order regimes, which ensure that a person who is in a mental health crisis or subject to a domestic-violence restraining order can no longer have firearms.⁸⁸ Under New Jersey’s Extreme Risk Protective Order (ERPO) Act, for instance, law enforcement officers or family members can seek a court order temporarily preventing a person from possessing firearms if they are found to pose a danger to themselves or others by having firearms.⁸⁹ A law enforcement affidavit supporting an ERPO petition must explain the officer’s reason for believing the person has firearms in the home or location to be searched.⁹⁰ But while law enforcement may know if the person has a firearm they received through an FFL (which must record such transactions),⁹¹ they may not know of any firearms the person obtained via USPS—and thus are less likely to support an ERPO petition in those cases, undermining the Act’s enforcement. Notably, the harm materializes even if the person otherwise lawfully could possess firearms (as

⁸⁵ See U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives, *Firearms Trace Data: New York–2023*, (Dec. 9, 2024), <https://www.atf.gov/firearms/report/firearms-trace-data/firearms-trace-data-new-york-2023> (“*Firearms Trace Data: New York–2023*”).

⁸⁶ See U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives, *Firearms Trace Data: New Jersey–2023* (Dec. 9, 2024), <https://www.atf.gov/firearms/report/firearms-trace-data/firearms-trace-data-new-jersey-2023> (“*Firearms Trace Data: New Jersey–2023*”).

⁸⁷ See *Firearms Trace Data: New York–2023*; *Firearms Trace Data: New Jersey–2023*.

⁸⁸ See, e.g., Extreme Risk Protective Order (ERPO) Act, N.J. Stat. Ann. §§ 2C:58-20 to 2C:58-32; Prevention of Domestic Violence Act, N.J. Stat. Ann. §§ 2C:25-17 to 2C:25-35; N.Y. Crim. Pro. Law § 530.14; Del. Code Ann. tit. 10, § 7704; Del. Code Ann. tit. 11, §§ 1448 (a)(6), (a)(7); Ariz. Rev. Stat. § 13-3602(G)(4); Cal. Fam. Code § 6389; Cal. Pen. §§ Code 18205, 29825; Cal. Welf. & Inst. Code § 8103; Conn. Gen. Stat. § 29-38c; D.C. Code §§ 7-2510.01 to 7-2510.16; Haw. Rev. Stat. §§ 134-61 to 134-72; Mass. Gen. Laws ch. 140, §§ 131R to 131Y; Minn. Stat. § 624.713, subd. 1(12), (13), (14); Or. Rev. Stat. §§ 166.255, 166.527; Vt. Stat. Ann. tit. 13, § 4053; Wash. Rev. Code § 9.41.040(2)(a)(ii).

⁸⁹ N.J. Stat. Ann. § 2C:58-23(e).

⁹⁰ *Id.* § 2C:58-23(b).

⁹¹ See 18 U.S.C. § 923(g); 27 C.F.R. § 478.124.

he could before the domestic violence or ERPO order issued)—underscoring that the harm to States even goes beyond criminal actors.

Second, the Rule likewise threatens the States’ sovereign interests in the integrity and effective enforcement of their laws. As explained above, under this rule, USPS would—for the first time—be a vehicle for delivering firearms to and within States that contravene state laws. After all, as explained above, USPS holds the view that it need not comply with statutory obligations to ensure the packages it carries comply with state laws on the acquisition or transfer of firearms because it is not a common carrier—and as noted, would presumably claim immunity if a State ultimately attempted to require it to comply with such laws. Nor does the Rule include any provision for USPS to police compliance with state restrictions on firearms possession and transfer. Turning USPS into “an instrumentality for the violation of local laws” is precisely what Congress sought to avoid in enacting 18 U.S.C. § 1715⁹²—yet the Rule would have that very effect.

Indeed, the Proposed Rule allows individuals to directly ship into the States specific weapons that are prohibited by state laws—because it purports to rely on OLC’s own view as to which firearms laws are or are not constitutional, even if no court has ever invalidated the relevant state statute. In particular, the Proposed Rule includes “pistols” and “rifles” within the category “[l]awful firearms” that are mailable, while noting that USPS “defers to OLC’s judgment as to the lawful scope of [18 U.S.C. § 1715].”⁹³ The scope of those terms thus may be dictated by DOJ’s unilateral positions regarding which arms are constitutionally protected—even as those positions conflict with the States’ statutes in multiple areas. Just last year, for example, DOJ argued firearm silencer bans, which multiple States enforce,⁹⁴ are unconstitutional.⁹⁵ DOJ likewise recently argued that New Jersey’s assault weapons ban is unconstitutional—a law that covers some concealable arms that fall within Section 1715’s sweep.⁹⁶ In other words, by adopting DOJ’s understanding of “lawful firearms,” the Rule would directly enable the mailing of certain pistols into the States that are prohibited by their own state criminal laws. USPS should instead clarify that “[l]awful firearms” does not include arms that are unlawful under state law.

The Proposed Rule relatedly harms States by providing a readily-accessible mechanism for transfers of firearms that bypass FFLs. Under the status quo, FFLs shoulder the

⁹² *United States v. Powell*, 423 U.S. 87, 91 (1975).

⁹³ 91 Fed. Reg. 16,601, 16,602; *see id.* at 16,603 (defining “mailable firearms” as “[l]awful firearms, including pistols, revolvers, shotguns, and rifles”).

⁹⁴ *See e.g.*, N.J. Stat. Ann. § 2C:39-3(c); N.Y. Penal Law § 265.02(2); Del. Code Ann. tit. 11, § 1444(a)(3); Ariz. Rev. Stat. § 13-3101(A)(8)(a)(ii); Cal. Pen. Code § 33410; Haw. Rev. Stat. § 134-8(a); Mass. Gen. Laws ch. 269, § 10A; Or. Rev. Stat. § 166.272; *cf.* Vt. Stat. Ann. tit. 13, § 4010.

⁹⁵ *See* Br. for United States as Amicus Curiae at 24 n.10, *Barnett v. Raoul*, No. 24-3060, ECF No. 83 (7th Cir. June 13, 2025); Government’s Supp. Resp. to Pet. for Reh’g En Banc at 1, *United States v. Peterson*, No. 24-30043, ECF No. 135 (5th Cir. May 29, 2025).

⁹⁶ *See* Br. for United States as Amicus Curiae at 4, *ANJRPC v. Att’y Gen. N.J.*, No. 24-2415, ECF No. 95 (3d Cir. Sept. 18, 2025).

burden of confirming compliance with state and federal law⁹⁷—including by referring each transferee for a background check⁹⁸ and verifying that state law allows such transferee to own the particular weapon mailed.⁹⁹ But the Rule purports to do away with this requirement, stating that “[n]on-FFL owners may mail Mailable Firearms to themselves or another person in another state.”¹⁰⁰ Persons residing in and outside of the States could thus directly mail firearms (including those that are themselves unlawful to possess in some states, such as assault firearms under 16 inches) through USPS in violation of state law.¹⁰¹ And because the States’ laws require that the vast majority of handgun transfers occur through licensed retail dealers,¹⁰² the Rule will hinder States’ regulations of legal handguns as well. Indeed, the Proposed Rule would similarly enable individuals to circumvent 18 U.S.C. § 922(a)(3), which generally requires interstate firearm transfers to occur through licensed firearm dealers. USPS, again, does not take steps to prevent this natural consequence of the Rule, as it states merely that intrastate shipments are “[s]ubject to state, territory, or district regulations”¹⁰³ but makes no provision for USPS to ensure mailers comply with those state and local laws. That will have profound real-world impacts; in New Jersey alone, over 1,700 persons were denied a Firearms Purchaser Identification Card or Handgun Purchase Permit or denied at a point-of-sale background check in 2025—whether because they have a felony conviction, are subject to a domestic violence temporary restraining order, or meet some other disqualifier. But those prohibited-persons can now evade the state laws and background

⁹⁷ See 18 U.S.C. §§ 922(b)(2), (t)(1).

⁹⁸ 18 U.S.C. § 922(t)(1).

⁹⁹ See 27 C.F.R. § 478.99(b)(2) (2025).

¹⁰⁰ 91 Fed Reg. 16,601, 16,604.

¹⁰¹ These States restrict the possession of ghost guns, *see, e.g.*, N.J. Stat. Ann. § 2C:39-3(n); N.Y. Penal Law §§ 265.60 to 265.64; Cal. Pen. Code §§ 23920, 27530, 29180; Conn. Gen. Stat. § 29-36(a); D.C. Code §§ 7-2502.01(a), 7-2502.02(a)(8); Haw. Rev. Stat. § 134-8(a); Mass. Gen. Laws ch. 140, § 121C; Or. Rev. Stat. §§ 166.266, 166.267; Vt. Stat. Ann. tit. 13, § 4083; Wash. Rev. Code § 9.41.040(1)(a)(ii), short-barreled rifles, *see, e.g.*, N.J. Stat. Ann. §§ 2C:39-1(o), 2C:39-3(b); N.Y. Penal Law § 265.00(3)(c); Del. Code Ann. tit. 11, § 1444(a)(4); Ariz. Rev. Stat. § 13-3101(A)(8)(a)(iv); Cal. Pen. Code § 33215; Haw. Rev. Stat. § 134-8(a); Or. Rev. Stat. § 166.272; Wash. Rev. Code § 9.41.190(1)(a), firearm silencers, *see, e.g.*, N.J. Stat. Ann. § 2C:39-3(c); N.Y. Penal Law § 265.02(2); Del. Code Ann. tit. 11, § 1444 (3), Ariz. Rev. Stat. § 13-3101(A)(8)(a)(ii); Cal. Pen. Code § 33410; Haw. Rev. Stat. § 134-8(a); Mass. Gen. Laws ch. 269, § 10A; Or. Rev. Stat. § 166.272, and assault firearms, *see, e.g.*, N.J. Stat. Ann. § 2C:39-5(f); N.Y. Penal Law §§ 265.02(7), 265.00(22); Del. Code Ann. tit. 11, § 1466; Cal. Pen. Code §§ 30515, 30600, 30605; Conn. Gen. Stat. §§ 53-202a, 53-202c; D.C. Code §§ 7-2502.01(a), 7-2502.02(a)(6); Haw. Rev. Stat. §§ 134-4(e), 134-8(a); Mass. Gen. Laws ch. 140, § 131M; Vt. Stat. Ann. tit. 13, §§ 4021, 4022; Wash. Rev. Code § 9.41.390.

¹⁰² *See, e.g.*, N.J. Stat. Ann. § 2C:58-3(a)(2); N.Y. Gen. Bus. Law § 898; Del. Code Ann. tit. 11, §§ 1448A(a), 1448D; Cal. Pen. Code §§ 26500, 27545, 27585, 28050; D.C. Code §§ 7-2505.01, 7-2505.02(a), 7-2505.02(c); Mass. Gen. Laws ch. 140, §§ 122, 128A; Minn. Stat. § 624.7134; Or. Rev. Stat. §§ 166.412, 166.435, 166.438; Vt. Stat. Ann. tit. 13, § 4019(b)(1); Wash. Rev. Code § 9.41.113.

¹⁰³ 91 Fed Reg. 16,601, 16,604.

checks that are designed to screen out such individuals by receiving firearms directly via the U.S. mail.

Not only does the Proposed Rule harm States’ sovereign and law enforcement interests, but it reflects arbitrary and capricious decisionmaking by failing to consider these harms and failing to consider other ways to address them.¹⁰⁴ USPS departs from nearly a century of unbroken administration policy with no explanation other than that it is deferring to OLC’s judgment as to 18 U.S.C. § 1715’s constitutionality—but that judgment is itself flawed, and it entirely ignores that the States have relied for a century on the protections this statute is specifically designed to afford them. The Rule also fails to consider any reasonable alternatives—such as USPS taking greater steps to ensure the packages it carries comply with applicable state laws—and wholly fails to acknowledge or consider the serious harms it imposes on States’ sovereign and fiscal interests. Instead, it simply declares that it will no longer follow Section 1715, whatever the immediate and significant harms to States, the integrity of their laws, and the efficacy of their law enforcement.

* * *

The States urge USPS to withdraw the Proposed Rule, and at a minimum to clarify the definitions of the terms “mailable firearms” and “nonmailable firearms.”

Sincerely,



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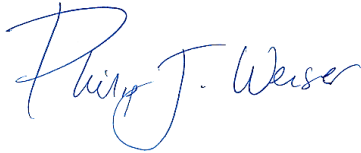
¹⁰⁴ See 5 U.S.C. § 706(2)(A).



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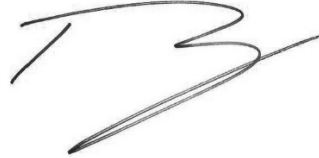
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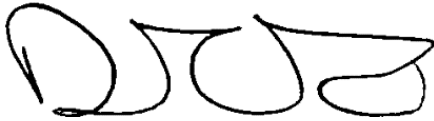
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