UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

CORNERSTONE CREDIT UNION LEAGUE and CONSUMER DATA INDUSTRY ASSOCIATION,

Plaintiffs,

v.

CONSUMER FINANCIAL PROTECTION BUREAU and RUSSELL VOUGHT in his official capacity as Acting Director of the CFPB,

Defendants.

Civil Action No. 4:25-cv-00016-SDJ

PLAINTIFFS' MEMORANDUM IN OPPOSITION TO PUTATIVE DEFENDANT-INTERVENORS' MOTION TO INTERVENE

Plaintiffs Cornerstone Credit Union League ("Cornerstone") and Consumer Data Industry Association ("CDIA") submit this Memorandum in Opposition to the Motion to Intervene filed by putative defendant-intervenors' New Mexico Center on Law and Poverty ("NMCLP"), Tzedek DC, David Deeds, and Harvey Coleman (collectively, "Putative Intervenors").

INTRODUCTION

Putative Intervenors seek to intervene in a stayed proceeding based largely on a policy preference for a particular outcome and premature speculation that the government will not adequately represent the Putative Intervenors' interests. Such arguments are not sufficient to justify either mandatory or permissive intervention.

This case is a straightforward Administrative Procedure Act ("APA") challenge to an unlawful federal rule. Earlier this year, the Consumer Financial Protection Bureau ("CFPB" or "Bureau") published a rule prohibiting creditors from considering medical debt when making credit decisions and, to help ensure compliance with this new provision, banning medical debt information from consumer reports (also known as credit reports) provided to creditors. The same day the rule issued, Plaintiffs sued, alleging that the rule contravened the Fair Credit Reporting Act ("FCRA") and was arbitrary and capricious. Plaintiffs also moved for a preliminary injunction, as the rule had a sixty-day compliance deadline and imposed unrecoverable compliance costs on both consumer reporting agencies ("CRAs") and creditors.

After the preliminary injunction was fully briefed, the leadership of the CFPB changed. President Trump appointed a new acting Director, who in turn ordered a Bureau-wide work pause. The President had previously ordered executive branch agencies—including the CFPB—to take sixty days and reconsider whether not-yet-effective rules were lawful and consistent with the administration's policy goals. The Plaintiffs and the CFPB jointly requested a three-month

preliminary injunction to give the Bureau time to reevaluate its position. This Court entered that injunction and stayed the litigation until May 7.

Even though the CFPB has not changed its position or taken further action on the medical debt rule, Putative Intervenors—two organizations that assist individuals with medical debt, and two individuals with medical debt on their consumer reports—now seek to intervene in the stayed proceedings. But this is procedurally improper. The associational intervenors lack a legally protectable interest in the proceedings other than political alignment with the rule and the risk of downstream consequences from the proceeding. And no intervenor has rebutted the presumption that the Bureau (as a government defendant) is adequate to defend federal policy. Thus, the Putative Intervenors cannot intervene as of right. And this Court should deny permissive intervention, as the Putative Intervenors have no relevant claims or defenses and would add little to the litigation, risking prejudice to Plaintiffs' rights and interests for no appreciable benefit.

BACKGROUND

On January 7, 2025, the CFPB promulgated the Prohibition on Creditors and Consumer Reporting Agencies Concerning Medical Information (Regulation V), 90 Fed. Reg. 3276 (Jan. 14, 2025) ("Rule"). The Rule generally bars creditors from considering medical debt information when making credit decisions and prohibits CRAs from including such information on consumer reports. *Id.* at 3372–74. The same day as the Rule was published, Plaintiffs sued the CFPB and its Director, alleging that the Rule violated the plain language of FCRA. FCRA expressly permits CRAs to report (and creditors to consider) coded medical debt information in connection with a credit transaction, *see* 15 U.S.C. § 1681b(g)(1)–(2), and it is black letter law that an agency cannot prohibit by regulation what Congress has authorized by statute, ECF 1, ¶¶ 60–80. Plaintiffs further alleged that the Rule was arbitrary and capricious because the Bureau relied on insufficient data,

underestimated the economic consequences of its action, and created fundamental contradictions in the regulatory scheme. *Id.* ¶¶ 95–112.

Three days after filing their complaint, Plaintiffs moved for a preliminary injunction. ECF 9. They explained that the Rule, in addition to being contrary to law, imposed unrecoverable compliance costs on CDIA, Cornerstone, and the CRAs and credit unions that make up their membership. *Id.* at 15. The CFPB opposed the motion, countering that the Rule was consistent with FCRA and that injunctive relief was not warranted on the facts. ECF 16. A preliminary injunction hearing was scheduled for February 10. ECF 17.

After the motion was fully briefed, newly inaugurated President Trump replaced the Bureau's director, naming Treasury Secretary Scott Bessent as Acting Director. A.J. Dhaliwal et al., *Treasury Secretary Scott Bessent Appointed as Acting CFPB Director*, Nat'l L. Rev. (Feb. 7, 2025), https://tinyurl.com/nckjjzha. The President also issued an executive order instructing agencies to "consider postponing for 60 days … the effective date for any rules … [that] have not taken effect, for the purpose of reviewing any questions of fact, law, and policy that the rules may raise." Regulatory Freeze Pending Review (Jan. 20, 2025), https://tinyurl.com/bddm698c.

In light of these changes, and after consultation with Plaintiffs, the CFPB filed an unopposed motion requesting a preliminary injunction that would stay the effective date of the Rule for 90 days pursuant to 5 U.S.C. § 705. ECF 23. The CFPB also moved to stay the litigation for 90 days and postpone the preliminary injunction hearing. *Id.* This Court granted the motion, extending litigation deadlines until May 7, and rescheduling the preliminary injunction hearing for May 12, 2025. ECF 24.

Since then, there have been further changes at the Bureau. The President nominated Jonathan McKernan to serve as the permanent Director of the Bureau, and Russell Vought—the

new head of the Office of Management and Budget ("OMB")—replaced Secretary Bessent as Acting Director. President Trump also issued a second executive order directing agencies to review "all regulations subject to their sole or joint jurisdiction for consistency with law and Administration policy." Ensuring Lawful Governance and Implementing the President's "Department of Government Efficiency" Deregulatory Initiative (Feb. 19, 2025), https://tinyurl.com/24drvycf. The order directed Agency heads to submit analyses to OMB within 60 days. *Id.* It has only been three weeks since that executive order, and the CFPB has not taken any regulatory action on the Rule or withdrawn its opposition to the motion for a preliminary injunction that Plaintiffs filed in this Court.

Nevertheless, on February 24, Putative Intervenors sought to enter this litigation as defendants. *See* Mot. to Intervene ("Mot."), ECF 26. Tzedek DC and NMCLP are organizations that assist individuals with medical debt; David Deeds and Harvey Coleman are individuals with medical debt who believe that the removal of medical debt from their consumer reports will help their credit prospects. *Id.* at 8–10. They claim that they have an interest in the Rule becoming effective and fear that the CFPB will not defend the Rule as "robust[ly]" as they would like. *Id.* at 15. They sought to intervene as of right or with this Court's permission under Federal Rules of Civil Procedure 24(a) and (b).

LEGAL STANDARD

Strangers to an action may intervene in one of two circumstances. First, a court *must* allow intervention where a party is "given an unconditional right to intervene by a federal statute" or the party "claims an interest relating to the property or transaction that is the subject of the action, and is 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). Second, a court *may* permit intervention where a statute gives a party "a conditional

right to intervene," or if a party "has a claim or defense that shares with the main action a common question of law or fact." *Id.* 24(b)(1). In "exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights." *Id.* 24(b)(3). In both mandatory and permissive intervention, "[i]t is the movant's burden to establish the right to intervene." *La Union del Pueblo Entero v. Abbott*, 29 F.4th 299, 305 (5th Cir. 2022).

ARGUMENT

Putative Intervenors have failed to satisfy either standard for intervention. The two organizations lack any legally protected interest that is sufficient to intervene as of right. And although the two individual Putative Intervenors may be intended beneficiaries of the Rule, the Putative Intervenors as a group have not identified concrete evidence that the CFPB will fail to protect their interests. Furthermore, no Putative Intervenor has a common claim or defense to the CFPB, so permissive intervention is inappropriate. This Court should deny the motion.

I. Putative Intervenors are not entitled to intervene as a matter of right.

First, Putative Intervenors have failed the requirements for mandatory intervention. To intervene as of right, a non-party applicant must demonstrate: (1) that he has made a timely application for intervention, (2) that he has "an interest relating to the property or transaction which is the subject of the action," (3) that he is "so situated that the disposition of the action may, as a practical matter, impair or impede his ability to protect that interest," and (4) that his interest is "inadequately represented by the existing parties to the suit." *Texas v. United States*, 805 F.3d 653, 657 (5th Cir. 2015) (quotation omitted). A putative intervenor must demonstrate each of these four elements. *Sierra Club v. Espy*, 18 F.3d 1202, 1205 (5th Cir. 1994). Although Rule 24 is to be construed liberally, "[l]iberality does not equate with rights of indiscriminate intervention and the rule continues to set bounds that must be observed." *United States v. Tex. E. Transmission Corp.*, 923 F.2d 410, 413 (5th Cir. 1991) (quotation omitted) (alteration in original). Courts must

scrutinize intervention claims to ensure that the requirements are met, intervention is in the interest of justice, and no prejudice to existing parties would result. *See Texas*, 805 F.3d at 657.

A. The Putative Intervenor associations lack a direct, substantial, and legally protectable interest in the litigation.

The two Putative Intervenor associations—Tzedek DC and NMCLP—lack the kind of interest necessary to intervene as of right. "[I]ntervention of right … requires a direct, substantial, legally protectable interest in the proceedings." *New Orleans Pub. Serv., Inc. v. United Gas Pipe Line Co.* ("*NOPSI*"), 732 F.2d 452, 463 (5th Cir. 1984) (en banc) (quotation and brackets omitted). A "legally protectable interest" is "one which the *substantive* law recognizes as belonging to or being owned by the applicant." *Id.* at 464. In other words, an intervenor must demonstrate the "kind of interest" that courts recognize as substantial enough to justify intervention. *See* 7C Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 1908.1, Westlaw (last updated June 2024). Certain supposed "interests" are unequivocally out of bounds: "[A] generalized preference that the case come out a certain way" is insufficient. *Texas*, 805 F.3d at 657. So is an advocacy organization's ideological alignment with one side. *Id.* at 658 (citing *Northland Fam. Plan. Clinic, Inc. v. Cox*, 487 F.3d 323, 343 (6th Cir. 2007)). And the fact that a final judgment could inflict "incidental effects" on a putative intervenor—even quantifiable economic effects—is insufficient to justify intervention where those effects are "several degrees removed from the issues that are the backbone of the litigation." *E. Bay Sanctuary Covenant v. Biden*, 102 F.4th 996, 1002 (9th Cir. 2024) (quotation and brackets omitted); *accord NOPSI*, 732 F.2d at 470 (finding no entitlement to intervene based "only on an economic interest").

The interests that Tzedek DC and NMCLP assert are nearly indistinguishable from these prohibited interests. Both organizations' missions align with the purported policy aims of the Rule. Tzedek DC offers legal and financial counseling to those with medical debt, and NMCLP does

community outreach and advocates for legislative reforms that would benefit medical debt holders. Mot. 9–11. They claim that if medical debt is removed from consumer reports, they can spend fewer resources on these activities and more time on other objectives. *Id.* In essence, they prefer that this Court uphold the Rule because it will have incidental effects on the way they structure their nonprofits and spend organizational resources. That is not enough, however. *Cf. FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 394 (2024) ("[A]n organization … cannot spend its way into standing simply by expending money to … advocate against the defendant's action.").

The Putative Intervenor associations' interests also look nothing like the interests that the Supreme Court and Fifth Circuit have recognized as sufficient for intervention. For example, a "protectable property interest[] in existing … contracts" is a sufficient interest to justify intervention. *Sierra Club*, 18 F.3d at 1207. But neither Tzedek DC nor NMCLP has a property or contractual interest in the continued existence of the Rule. Nor do they have a protected statutory or constitutional interest that would be interfered with if this Court grants Plaintiffs' request for a preliminary or permanent injunction. *Texas*, 805 F.3d at 660. Instead, these organizations' work is tangent to the Rule—they help individuals who struggle with medical debt. *See* Mot. 3. They have structured their work with the *expectation* that the Rule will be implemented, but Putative Intervenors identify no case where such an expectation counted as a legally protected interest.

Accepting Putative Intervenors' proffered interest would expand the universe of possible mandatory intervenors to an uncontrollable size. Issue advocacy and social groups who support the CFPB's policy goals invariably spend resources to effect or assist those aims; such efforts are unnecessary if the CFPB promulgates certain rules, and will be necessary if those rules are invalidated. Under Putative Intervenors' theory, anyone who spends money to advance the goals

of a government policy would have an interest supporting mandatory intervention if the legality of that policy was challenged. Indeed, Putative Intervenors suggest that an organization that *intends* to spend money on a cause in the absence of a government policy has an interest sufficient for mandatory intervention. That would strip Rule 24(a)'s "interest" requirement of all its meaning.

The two individual intervenors at least assert a narrower interest—they allege that they are intended beneficiaries of the Rule. Mot. 8. The intended beneficiaries of a regulatory scheme often have a cognizable interest sufficient to intervene as of right. *Wal-Mart Stores, Inc. v. Tex. Alcoholic Beverage Comm'n*, 834 F.3d 562, 569 (5th Cir. 2016). That is, those within the "zone of interests" that a rule is meant to protect have a legally protected interest in its defense. *See Brumfield v. Dodd*, 749 F.3d 339, 344 (5th Cir. 2014).

But the organizational intervenors do not even claim to be intended beneficiaries of the Rule. They instead offer two theories for why their interest is sufficient for mandatory intervention, but neither is persuasive. *First*, Tzedek DC and NMCLP claim that it would be "easier" to do their work if they did not have to address medical debt on consumer reports. Mot. 9–10. But such a generic and malleable interest is too widely shared to serve as the basis for mandatory intervention.[1] For instance, another court in this circuit recently denied intervention to organizations that argued an adverse ruling could "make their work immeasurably more difficult," and "forc[e]" them "to expend additional resources to protect their respective missions." *Def. Distributed v. U.S. Dep't of State*, 2018 WL 3614221, at *3 (W.D. Tex. July 27, 2018) (quotations omitted); *see also Mississippi v. Becerra*, 2023 WL 5668024, at *4 n.5 (S.D. Miss. July 12, 2023)

[1] Nor does it accurately describe the Rule. The Rule does not remove all medical debt from all consumer reports. Instead, it prohibits creditors from considering medical debt as part of a credit decision, and prohibits CRAs from including medical debt on consumer reports provided to creditors. Medical debt can still be included in reports provided for non-credit purposes.

(doubting that an intervenor's interest "in limiting the financial resources it must spend to" achieve certain policy goals was "[]sufficient for intervention under Rule 24(a)(2)"). That makes good sense, as such burdens—while tangible—are plainly incidental to the operation of the challenged rule. This Court should follow those courts' lead and deny intervention based on the same interest.

Second, the associations claim they deserve special solicitude because they are public interest organizations. Mot. 9. True, "[t]he interest requirement may be judged by a more lenient standard if the case … is brought by a public interest group." *Brumfield*, 749 F.3d at 344 (quotation omitted). But "[a] court must be circumspect about allowing intervention of right by public-spirited citizens in suits by or against a public entity for simple reasons of expediency and judicial efficiency." *City of Houston v. Am. Traffic Sols., Inc.*, 668 F.3d 291, 294 (5th Cir. 2012). Thus, although this principle is sometimes stated broadly, it has actually been applied narrowly in cases where the intervenors were *themselves* "intended beneficiaries" of the rule they sought to defend. *See, e.g.*, *Brumfield*, 749 F.3d at 344. For example, parents who were direct beneficiaries of a voucher program were permitted to intervene in litigation over that program. *Id.* Organizations directly regulated by a state law were allowed to intervene on behalf of that law. *La Union*, 29 F.4th at 306. And a "unique" intervenor that "engineered the drive that led to a city charter amendment" was allowed to intervene to defend that amendment. *Am. Traffic Sols.*, 668 F.3d at 294. Here, by contrast, Tzedek DC and NMCLP are complete outsiders. They are not regulated by or the direct beneficiaries of the Rule. Although they work with individuals who have medical debt, their interest in the rule is definitionally incidental—the Rule's effect on medical debt holders will have downstream effects on how they operate. This is insufficient for mandatory intervention.

B. Putative Intervenors have failed to show that the CFPB inadequately protects any interests they may have.

Putative Intervenors also have not made the necessary "strong[] showing" that the CFPB is inadequate to protect their interests. *Hopwood v. Texas*, 21 F.3d 603, 605 (5th Cir. 1994) (per curiam). The Putative Intervenors share one basic aim: they do not want the Rule to be enjoined. They insist the CFPB is incapable of advancing that interest. Mot. 13. But "where the party whose representation is said to be inadequate is a governmental agency," it is "presumed" that the government will adequately represent the interests of the public, and an "applicant for intervention must demonstrate that its interest is *in fact* different from that of the state and that the interest will not be represented by the state." *Hopwood*, 21 F.3d at 605 (emphasis added) (quotation omitted).

Putative Intervenors repeatedly assert that the CFPB's representation is inadequate if it "might" fail to protect their interests. Mot. 13–15. But that undersells their burden. It is generally true that a third party can intervene if the representation of existing parties "may be" inadequate. *See, e.g.*, *Sierra Club*, 18 F.3d at 1207; *Brumfield*, 749 F.3d at 346. But where the government litigates on "matters of sovereign interest … in its capacity as a sovereign," the government is presumed to be an adequate representative unless the intervenor can make a "heightened showing" to the contrary. *Edwards v. City of Houston*, 78 F.3d 983, 1005 (5th Cir. 1996) (en banc); *accord* Wright & Miller, *supra*, § 1909 ("The rare cases in which a member of the public is allowed to intervene in an action in which … [a] governmental agency[] represents the public interest are cases in which *a very strong showing* of inadequate representation has been made." (emphasis added)). When the presumption applies, a putative intervenor must demonstrate that its interests diverge from the government's not just in theory, but "*in fact*." *Texas*, 805 F.3d at 662 (emphasis added) (quotation omitted); *La Union*, 29 F.4th at 308 (same). That presumption applies here where the CFPB is defending the public interest and its nationally applicable Rule.

To rebut the presumption, Putative Intervenors offer only speculation. They incorrectly assert that the CFPB has "reversed course" in its defense of the Rule. Mot. 2. Far from it; the Bureau has not changed its ultimate position with respect to Plaintiffs' request for a preliminary injunction. The Bureau's merits position in this case continues to be that the Rule is lawful. *See* ECF 16. It agreed to a 90-day preliminary injunction and stay of the litigation, but only as a stopgap measure to give the new leadership an opportunity to assess the merits of this case. *See* ECF 23. Plaintiffs readily acknowledge that the Bureau is undergoing substantial political change. But so far it has not changed its litigation position in this case. Indeed, although the President has directed agencies to consider rescinding or modifying not-yet-effective rules which are unlawful or conflict with the administration's policy goals, the CFPB has not extended the effective date of the Rule or taken public steps to modify or rescind the Rule. In short, the CFPB's current substantive legal position in this case aligns with Putative Intervenors' position. It agreed to a litigation pause to reevaluate its position, but it has not done more.

Thus, Putative Intervenors' assertion that the CFPB is inadequate to protect their interests is plainly premature. If the Bureau continues to defend the lawfulness of the Rule, the Putative Intervenors' interest will be represented. Indeed, Putative Intervenors stated that before the change in administrations, they "reasonably relied on the government's continued defense of the Rule." Mot. 5 (quotation and brackets omitted). This is tantamount to a concession that if the government continues to defend the Rule, there is no need for the Putative Intervenors to intervene. The chance that the Bureau might take a different position is not sufficient to overcome the presumption of adequacy. *La Union*, 29 F.4th at 308 ("The … presumption … can be overcome by showing that the intervenor's 'interest is *in fact* different from that of the' governmental party." (quoting *Texas*, 805 F.3d at 662) (emphasis added)). The fact that the CFPB could adjust its position in any number

of ways only underscores the insufficiency of Putative Intervenors' showing. It is impossible to say whether the Bureau's interests are aligned with those of Putative Intervenors without knowing what position the new leadership will take.

Putative Intervenors suggest that they have already been harmed by the ninety-day preliminary injunction. Mot. 12. But that was a lawful exercise of this Court's authority under the APA to extend the effective date of a challenged rule. 5 U.S.C. § 705. And the injunction merely extends the Rule's effective date for three months to give the Bureau's new leadership time to form its own opinion about the merits of the case. To the extent Putative Intervenors disagree with that interim relief, the ship has already sailed. Their intervention will do nothing to change that injunction. *See* Mot. at 6 ("Proposed Intervenors do not seek to modify any deadlines.").

Finally, Putative Intervenors make much of the fact that the new presidential administration is "hostil[e]" to the CFPB. Mot. 14. Whatever the accuracy of that characterization, it has no bearing on Putative Intervenors' ability to intervene as of right. The CFPB still exists. So does the Rule. The Rule is still poised to take effect on June 15, 2025. *See* 90 Fed. Reg. at 3276; ECF 24. The CFPB has opposed Plaintiffs' request for an injunction that lasts the length of this litigation. ECF 16. It has not indicated it will take a different position in this case or that it will take any relevant action with respect to the Rule. Putative Intervenors fear that the CFPB "might" do something differently, Mot. 15, but in this case, "might" is not enough. The CFPB is presumed to be an adequate representative of the public interest until proven otherwise, and the Putative Intervenors have not shown that their interests are different from the CFPB's "in fact."

II. Putative Intervenors have not met the requirements for permissive intervention.

For similar reasons, Putative Intervenors have not satisfied the requirements for permissive intervention. They do not share a legal claim or defense with the CFPB. And permitting intervention will add little value to the litigation while risking prejudice to Plaintiffs.

A. Putative Intervenors lack a common "claim or defense" with the CFPB.

First, Putative Intervenors do not have a "claim or defense that shares with the main action a common question of law or fact." Fed. R. Civ. P. 24(b)(1)(B). A "claim or defense" means "the kinds of claims or defenses that can be raised in courts of law as part of an actual or impending law suit." *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 623 n.18 (1997) (quoting *Diamond v. Charles*, 476 U.S. 54, 76 (1986) (O'Connor, J., concurring)). But Putative Intervenors identify no claim against Plaintiffs or the government defendants. Nor do Plaintiffs' claims against the CFPB implicate any defense that Putative Intervenors might have in a lawsuit against Plaintiffs.

Putative Intervenors instead offer the bare desire to offer *arguments* in favor of the Rule. But the fact that a third party can raise additional arguments in favor of a defendant's position is not a basis to allow that third party to become a party themselves. *Cf. Diamond*, 476 U.S. at 71 (holding a citizen lacks standing to "step[] in" and "maintain the litigation abandoned by the State"). There is already a role in litigation for parties with a practical interest in the outcome of a case and additional arguments for the court's consideration: amicus curiae. Putative Intervenors are free to seek leave to file an amicus brief. But no judgment in this case could implicate any "claim" or "defense" of Putative Intervenors, let alone a claim or defense based on a common question of law or fact. That threshold failure is reason enough to deny permissive intervention.

B. In the alternative, the Court should exercise its discretion to deny permissive intervention.

In addition, prudential considerations weigh against intervention here. Even assuming a third party identifies a claim or defense that shares a common question of law or fact with the main action, courts consider several factors when determining whether to grant permissive intervention, including (1) "whether the intervenors' interests are adequately represented," *NOPSI*, 732 F.2d at 472 (quotation omitted); (2) "whether they will significantly contribute to full development of the

underlying factual issues in the suit," *id.* (quotation omitted); and (3) "whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights," Fed. R. Civ. P. 24(b)(3). Putative Intervenors have not shown that their interests are inadequately represented for the reasons above, but they also have not identified any new facts or arguments they would add to the CFPB's defense of the Rule. Worse, their involvement risks prejudicing Plaintiffs' own rights.

To start, Putative Intervenors have not demonstrated how they would develop facts or legal arguments that would aid this Court's resolution of the main claim. Indeed, because this is a challenge to the lawfulness of a final agency rule, the administrative record is closed.[2] *Fort Bend County v. U.S. Army Corps of Eng'rs*, 59 F.4th 180, 196 (5th Cir. 2023). And on the merits, the entirety of Putative Intervenors' proposed value-add is a "unique perspective" and "experience about the true impacts of the Rule." Mot. 15. It is not clear, however, what intervenors' experience has to do with the Rule's conformity with FCRA. Again, if Putative Intervenors want to emphasize the significance or impact of the case, then they can file an amicus brief. But Putative Intervenors' concern for the outcome in this case is not a basis for party status.

Neither is it compelling that Putative Intervenors seek to mount a more "robust" defense of the Rule. Mot. 15. As discussed above, Putative Intervenors have not demonstrated that the CFPB will not adequately defend the Rule. The CFPB has not amended or withdrawn its opposition to Plaintiffs' motion for preliminary injunction—the opposition that Putative Intervenors thought, until February 5, was sufficient to protect their interests. *See* Mot. 5. The CFPB has agreed only to a temporary litigation pause while new leadership considers the issues in this case. *See* ECF 23. The most Putative Intervenors can say is the CFPB might *possibly* take a

[2] Plaintiffs do not allege that this is a rare case where the administrative record must be supplemented due to agency misconduct. *See Malone Mortg. Co. Am., Ltd. v. Martinez*, 2003 WL 23272381, at *3 (N.D. Tex. Jan. 6, 2003).

different position in the future. But permissive intervention should not be grounded on an outsider's view that they could litigate the case better than a named defendant in a hypothetical world in which the named defendant fails to protect its own interests.

Not only is there no cognizable benefit to including Putative Intervenors in this case, injecting additional parties into the case risks prejudice to Plaintiffs' interests. Additional answers, pleadings, and arguments will introduce complexities that could protract briefing schedules and delay an opinion from this Court, notwithstanding Putative Intervenors' pledge to "not seek to modify any deadlines." Mot. 6. Yet Plaintiffs lack certainty about the ultimate status of the Rule. If these proceedings stretch beyond the May 12 preliminary injunction hearing and approach the Rule's June 15 compliance date, Plaintiffs will be forced to undergo expensive steps to comply with the Rule, costs which they cannot recover if the Rule is ultimately found unlawful. Because Putative Intervenors would add little to the case, there is no need to risk exacerbating the irreparable harm that Plaintiffs have already suffered.

CONCLUSION

Because the Putative Intervenor associations cannot demonstrate a legally protectable interest in this proceeding, this Court should deny their motion to intervene as of right. This Court should deny intervention to all four Putative Intervenors for the independent reason that they have failed to show that the CFPB "in fact" has different interests and will not adequately represent their interests.[3]

[3] Plaintiffs would not oppose if Putative Intervenors sought leave to file an amicus brief, so long as it was filed before the May 12, 2025, preliminary injunction hearing.

Dated: March 10, 2025

Respectfully Submitted,

By: /s/ *Alex More*
Alex More
TX Bar No. 24065789
Andrea C. Reed
TX Bar No. 24121791
CARRINGTON, COLEMAN, SLOMAN & BLUMENTHAL, L.L.P.
901 Main Street
Suite 5500
Dallas, TX 75202
Tel: (214) 855-3053
amore@ccsb.com

Eric Blankenstein (admitted *pro hac vice*)
DC Bar No. 997865
LAW OFFICES OF ERIC BLANKENSTEIN PLLC
1701 Pennsylvania Ave., NW, #200
Washington, DC 20006
eric@blankensteinlegal.com

Ryan T. Scarborough (admitted *pro hac vice*)
DC Bar. No. 466956
Jesse T. Smallwood (admitted *pro hac vice*)
DC Bar No. 495961
William R. Murray, Jr. (admitted *pro hac vice*)
DC Bar No. 384797
Christopher J. Baldacci (admitted *pro hac vice*)
DC Bar No. 90007281
WILLIAMS & CONNOLLY LLP
680 Maine Ave., SW
Washington, DC 20024
Tel: (202) 434-5000
rscarborough@wc.com
jsmallwood@wc.com
bmurray@wc.com
cbaldacci@wc.com

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this Memorandum in Opposition to Putative Defendant-Intervenors' Motion to Intervene was filed electronically through the Court's ECF system. *See* Fed. R. Civ. P. 5(b)(2)(E).

/s/ Alex More