No. 25-1026

In the Supreme Court of the United States

NATIONAL SHOOTING SPORTS FOUNDATION, INC., ET AL.,
Petitioners,

v.

LETITIA JAMES, ATTORNEY GENERAL OF NEW YORK.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Second Circuit

BRIEF FOR U.S. SENATOR TED CRUZ, U.S. REPRESENTATIVE RUSSELL FRY, AND 75 OTHER MEMBERS OF CONGRESS AS *AMICI CURIAE* SUPPORTING PETITIONERS

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MARCH 30, 2026

QUESTION PRESENTED

Whether the predicate exception of the Protection of Lawful Commerce in Arms Act, 15 U.S.C. §§7901-7903, allows parties to bring the same common-law-style suits against firearms industry members that Congress enacted the PLCAA to prohibit, so long as states codify those general common-law principles in a statute that applies to commerce in arms.

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INTRODUCTION AND INTEREST OF *AMICI CURIAE*[1]

The Second Amendment to the United States Constitution ensures law-abiding and peaceable American citizens the right to keep and bear arms. But no one besides accomplished gunsmiths could exercise that right if a citizen could not lawfully purchase a firearm because the firearm industry had become insolvent. Congress passed the Protection of Lawful Commerce in Arms Act (PLCAA), Pub. L. No. 109-92, §§2-4, 119 Stat. 2095, 2095-2099 (2005) (codified at 15 U.S.C. §§7901-7903), to prevent that outcome by placing firearm manufacturers on equal footing with other American manufacturers. Under the Act, so long as a firearm is properly made and properly transferred into commercial channels, a manufacturer is generally not liable if a criminal later misuses that firearm in the commission of a crime. In particular, the PLCAA forecloses the imposition of liability under flexible and indistinct common-law standards that provide firearm manufacturers with no notice of the precise conduct that is required or to be avoided. Indeed, that was the statute's core purpose.

The State of New York is unhappy with any impediments to its ability to bankrupt lawful arms manufacturers based on the actions of New York criminals whom the State is unable or unwilling to

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[1] This brief was not authored in whole or in part by counsel for any party, and no person or entity other than *amici curiae* or their counsel has made a monetary contribution toward the brief's preparation or submission. Counsel of record for all parties received timely notice of *amici*'s intent to file this brief.

control. In the State's view—adopted by the Second Circuit—the PLCAA is a paper tiger that any state legislature may tame by simply codifying vague and unpredictable common-law standards and explicitly applying the new code provisions only to the firearms industry.

The State and the court below are too clever by half. This case presents an issue of exceptional importance with regard to the states' ability to circumvent the preemptive force of federal legislation. The PLCAA is not a mere Kabuki feint designed to encourage its own circumvention. Rather, the Act was designed to, and does, preempt efforts to impose hazy common-law liability standards whether or not codified by a state legislature to target the firearms industry. This Court should intervene now before the Second Circuit's decision, directly or through its influence, further undermines the Second Amendment and congressional will.

Amici are U.S. Senator Ted Cruz, the Chairman of the Subcommittee on Federal Courts, Oversight, Agency Action and Federal Rights of the Senate Committee on the Judiciary; 21 additional U.S. Senators; U.S. Representative Russell Fry, Member of the House Judiciary Committee; and 54 additional members of the U.S. House of Representatives. Members of Congress swear an oath to uphold the U.S. Constitution, with its foundational principle of limited government and its guarantees of fundamental individual rights. One of the most important of these rights is the Second Amendment's guarantee of the right to keep and bear arms. That constitutional right implements the historic right of armed defense of self,

family, state, and nation, as well as the right to use arms for other lawful purposes. Equally important is *amici*'s duty to ensure that lawfully enacted federal statutes—especially statutes designed to ease citizens' ability to exercise their constitutional rights—are not flouted by resistant states and misguided lower courts. Federalism requires restraint not only on federal intrusion into areas properly allocated to the States, but on states' interference with Congress's exercise of its federal prerogatives. *Amici* accordingly have a substantial interest in the correct interpretation and application of the PLCAA's broad preemptive scope.

The following is the full list of U.S. Senators and U.S. Representatives who have joined this brief as *Amici Curiae*:

United States Senate

Ted Cruz

Jim Banks
John Barrasso
Ted Budd
Shelley Capito
Bill Cassidy
John Cornyn
Kevin Cramer
Mike Crapo
Steve Daines
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Chuck Grassley
John Hoeven
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United States House of Representatives

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Addison McDowell
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Barry Moore
Blake Moore
Riley Moore
Troy Nehls
Ralph Norman
Scott Perry
Mike D. Rogers
John Rose
John H. Rutherford
Derek Schmidt
Pete Sessions
Adrian Smith
Marlin Stutzman
Claudia Tenney
Glenn "GT" Thompson
William Timmons
Ann Wagner
Randy Weber
Joe Wilson
Ryan Zinke

SUMMARY OF ARGUMENT

Once again, this Court is called upon to review a decision threatening the scope of the Second Amendment right to bear arms. And once again, the decision warranting review undermines—here, effectively nullifies—a federal statute that preserves the ability to exercise those rights: the Protection of Lawful Commerce in Arms Act, 15 U.S.C. §§7901-7903.

The Court once again should answer that call, as it did most recently in *Smith & Wesson Brands, Inc.* v. *Estados Unidos Mexicanos*, 605 U.S. 280 (2025). The direct affront to congressional prerogatives and constitutional rights underscores the exceptional importance of the question presented here. This Court should grant certiorari and reverse the decision of the court of appeals.

Over the past two decades, this Court has restored and reaffirmed the Second Amendment's core guarantee that Americans have a fundamental right to defend themselves—first in the home (*District of Columbia* v. *Heller*, 554 U.S. 577 (2008)), then against state infringement (*McDonald* v. *Chicago*, 561 U.S. 742 (2010)), and finally in public (*New York State Rifle & Pistol Ass'n, Inc.* v. *Bruen*, 597 U.S. 1 (2022)). The Court then recognized the central role of the PLCAA in preserving the practical exercise of those rights by preventing "lawsuits attempting to make gun manufacturers pay for the downstream harms resulting from misuse of their products." *Smith & Wesson*, 605 U.S. at 298.

The State of New York did not get the message. In a statute designed to nullify the PLCAA, New York imposes liability on the same persons protected by the PLCAA for the same conduct protected by the PLCAA. That law—N.Y. Gen. Bus. L. §898 (Pet.App.80-82) (Section 898)—makes conduct by "gun industry member[s]" that is "unreasonable under all the circumstances" a public nuisance, and requires the same "gun industry members" to "establish and utilize" undefined "reasonable controls and procedures to prevent" firearms or ammunition "from being possessed, used, marketed or sold unlawfully." *Id.* §§898-b, 898-c (Pet.App.81-82). According to the Second Circuit, this *post hoc* imposition of unknowable standards of conduct—the same standards that the same court found preempted when contained in a general nuisance statute and applied to firearms manufacturers, see *City of New York* v. *Beretta U.S.A. Corp.*, 524 F.3d 384 (2d Cir. 2008)—is permissible because the New York legislature incorporated those unknowable standards in a statute applicable only to "gun industry members." See N.Y. Gen. Bus. L. §898-b (Pet.App.81).

That cannot be right, and it isn't. In the PLCAA, Congress expressly recognized that the Second Amendment preserves an individual right. Congress enacted the PLCAA because the right to bear arms is practically worthless if the firearms industry goes out of business, as it would if it could be sued for the damages caused by criminal use of their products.

The text of the PLCAA makes Congress' purpose plain. Enacted findings declare that lawful firearm businesses "are not, and should not[] be[,] liable for the

harm caused by those who criminally or unlawfully misuse" firearms and ammunition." 15 U.S.C. §7901(a)(5). Moreover, Congress' express purpose was "[t]o *prohibit* causes of action against manufacturers, distributors, dealers, and importers of firearms or ammunition" predicated on such theories, in order "[t]o preserve a citizen's access to a supply of firearms and ammunition for all lawful purposes." *Id.* §7901(b)(1), (2) (emphasis added).

The PLCAA's provision prohibiting any "qualified civil liability action," 15 U.S.C. §7902(a), and the definition of "qualified civil liability action," *id.* §7903(5)(A), must be viewed in light of the rest of the statute. There is no dispute that the prohibition covers an action brought under Section 898 unless it falls within the enumerated exception for "an action in which a manufacturer or seller of a qualified product knowingly violated a State or Federal statute applicable to the sale or marketing of the product, and the violation was a proximate cause of the harm for which relief is sought." *Id.* §7903(5)(A)(iii). As this Court observed, this "predicate exception" encompasses only "knowing violations of gun laws," *Smith & Wesson*, 605 U.S. at 288, and provides as examples of those laws certain recordkeeping requirements and the prohibitions on sales to so-called "straw" buyers who provide arms to persons who cannot lawfully possess them. See 15 U.S.C. §7903(5)(A)(iii)(I)-(II).

But Section 898 does not predicate liability on the violation of a firearm-specific "gun law." Instead, it codifies gauzy common-law nuisance and negligence standards of "reasonable" conduct and applies those

standards to the firearms industry. That is not the type of "gun law" that falls within the exception, which is limited to knowing violations, a concept that is meaningless when applied to a standard of *post hoc* reasonableness.

Even if merely restricting a codified common-law action to firearms manufacturers or sellers plausibly could come within the predicate exception, however, Section 898 nonetheless is preempted because it "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Arizona* v. *United States*, 567 U.S. 387, 399-400 (2012) (quoting *Hines* v. *Davidowitz*, 312 U.S. 52, 67 (1941)). Unlike many obstacle preemption cases, here there is no question that Congress expressly intended to preempt a broad range of state laws, and Congress also enacted the purposes its statute was intended to serve.

The decision below, in addition to creating the circuit splits identified in the petition (at 18-22), has exceptionally important consequences that warrant this Court's immediate intervention, for two reasons. First, it threatens the exercise of the very Second Amendment rights this Court has been solicitous to protect. Second, it provides a roadmap to improperly interpret narrow exceptions within federal statutes as unwitting poison pills that permit hostile state and local legislatures to nullify federal law.

ARGUMENT

Any fair construction of the PLCAA's predicate exception must take into account the findings and purposes included in the statute. In the PLCAA, Congress made its purposes explicit and gave statutory force to its underlying findings. The statute should be construed to accomplish its stated goals, not to contain the key to its destruction by any State that disagrees.

A. Congress Has Recognized That The Rights Protected By The Second Amendment Are Fundamental To Ordered Liberty.

Congress set out the constitutional motivation for the PLCAA, declaring that "[t]he Second Amendment to the United States Constitution protects the rights of individuals, including those who are not members of a militia or engaged in military service or training, to keep and bear arms." 15 U.S.C. §7901(a)(2). That clear understanding preceded by three years this Court's recognition of the same principle in *Heller*.

But it is now beyond dispute that "the right to keep and bear arms is fundamental to *our* scheme of ordered liberty." *McDonald*, 561 U.S. at 767. This Court has made "clear that this right is 'deeply rooted in this Nation's history and tradition.'" *Id.* at 768 (quoting *Washington* v. *Glucksberg*, 521 U.S. 702, 721 (1997)). Indeed, the right to bear arms antedates the Constitution, see *Heller*, 554 U.S. at 603: Blackstone regarded it as "one of the fundamental rights of Englishmen," *id.* at 594 (citing 1 William Blackstone, Commentaries 136, 139-140 (1765)).

"The right to keep and bear arms was considered no less fundamental by those who drafted and ratified the Bill of Rights." *McDonald*, 561 U.S. at 768-769 (citing, *inter alia*, Stephen Halbrook, *The Founders' Second Amendment* 171-278 (2008); Joyce Lee Malcolm, *To Keep and Bear Arms: The Origins of an Anglo-American Right* 155-164 (1994)). And that regard continued in the Early Republic. Justice Story characterized the right "as the palladium of the liberties of a republic; since it offers a strong moral check against the usurpation and arbitrary power of rulers." 3 Joseph Story, Commentaries on the Constitution of the United States §1890 (1833). Another leading expositor of the Constitution during the Early Republic, St. George Tucker, used nearly identical terms, explaining that the right to keep and bear arms is "the true palladium of liberty," and that "[t]he right of self-defence is the first law of nature." St. George Tucker, *View of the Constitution of the United States*, in 1 Blackstone's Commentaries: With Notes of Reference, to the Constitution and Laws, of the Federal Government of the United States; and of the Commonwealth of Virginia app. at 300 (1803).

When the Second Amendment was ratified in 1791, individual self-defense was "the *central component*" of the underlying right to keep and bear arms. *Heller*, 554 U.S. at 599. Decades later, "it is clear that the Framers and ratifiers of the Fourteenth Amendment counted the right to keep and bear arms among those fundamental rights necessary to our system of ordered liberty." *McDonald*, 561 U.S. at 778.

The PLCAA should be construed in light of its grounding in the Second Amendment, which "elevates

above all other interests the right of law-abiding, responsible citizens to use arms" for lawful purposes. *Heller*, 554 U.S. at 635. "It is this balance—struck by the traditions of the American people—that demands [this Court's] unqualified deference." *Bruen*, 597 U.S. at 26. And that balance is what the PLCAA protects.

B. The PLCAA Is A Necessary Shield To Protect The Exercise Of Second Amendment Rights.

1. The PLCAA Recognizes that the Second Amendment Is Meaningless if Citizens Cannot Obtain Firearms.

Congress recognized that the PLCAA is necessary to protect Second Amendment rights, see 15 U.S.C. §§7901(a)(1)-(2), (6)-(7); 7901(b)(3), by "preserv[ing] a citizen's access to a supply of firearms and ammunition for all lawful purposes." *Id.* §7901(b)(2). The right to bear arms is unusual in that it can be effectively exercised by the vast majority of citizens who lack gunsmithing skills only if those citizens are able to purchase firearms manufactured by others, such as the petitioners here, without extraordinary effort. One cannot exercise the right to keep and bear arms without a means to acquire them, and firearms cannot be acquired if no one can make and sell them.

The Second Amendment is practically meaningless if citizens cannot lawfully obtain firearms. And firearms will become nearly impossible to procure if companies who currently manufacture them are forced out of business. Congress enacted PLCAA precisely to prevent that from happening, yet that is the result Section 898 is intended to achieve.

The Second Amendment encompasses the right to "supply" that the PLCAA protects. 15 U.S.C. §7901(b)(2). "The right to keep arms, necessarily involves the right to purchase them ***, and to purchase and provide ammunition suitable for such arms[.]" *Teixeira* v. *County of Alameda*, 873 F.3d 670, 678 (9th Cir. 2017) (en banc) (quoting *Andrews* v. *State*, 50 Tenn. 165, 178 (1871)), *abrogated in part on other grounds by Bruen*, 597 U.S. at 17; see also *Miller* v. *State*, 54 Ala. 155, 157, 158 (1875) ("constitutional right to bear arms" encompasses "[t]he right *** to obtain *** [a] pistol for defense").

This follows from the axiom that "[c]onstitutional rights *** implicitly protect those closely related acts necessary to their exercise." *Luis* v. *United States*, 578 U.S. 5, 26 (2016) (Thomas, J., concurring in judgment). As a prominent early American jurist explained, where a legal instrument "confers a right, it confers all the necessary means by which such right can be established and made effectual." *Davenport* v. *Tilton*, 51 Mass. 320, 328-329 (1845) (Shaw, C.J.). "Making a constitutional right too expensive to exercise infringes the right just as much as criminal prohibition." Stephen P. Halbrook, *The Right to Bear Arms in Texas: The Intent of the Framers of the Bills of Rights*, 41 Baylor L. Rev. 629, 683 (1989). Thus, "[a] ban on gun sales, or a heavy tax on such sales, would be unconstitutional *** because it would make it much harder for would-be gun owners to get guns." Eugene Volokh, *Implementing the Right to Keep and Bear Arms for Self-Defense: An Analytical Framework and A Research Agenda*, 56 UCLA L. Rev. 1443, 1545 (2009) (footnote omitted).

The constitutional significance of this case is not diminished merely because Section 898 targets firearms suppliers rather than individual citizens. This Court illustrated the point in holding unconstitutional a statute targeting bookstores as a violation of the "constitutionally protected freedoms" of speech and press, noting that "a retail bookseller plays a most significant role in the process of the distribution of books." *Smith* v. *California*, 361 U.S. 147, 150 (1959). By targeting the petitioners here—vital participants in the commerce in lawful arms—New York's Section 898 threatens to frustrate their customers' exercise of constitutional rights. Thus, Second Amendment concerns should guide interpretation of the PLCAA.

2. The PLCAA's Express Purpose Is to Prevent Imposition of Liability on Firearms Manufacturers for Third Party Misuse of Firearms Under Malleable Standards of Conduct that Provide No Warning.

The whole point of the PLCAA was to preserve citizens' ability to exercise Second Amendment rights by insulating firearms manufacturers from ruinous liability for third parties' unlawful acts unless the manufacturer "knowingly violated" a precise, concrete, established, firearms-specific duty. 15 U.S.C. §7903(5)(A)(iii). The Act was intended to foreclose vague and malleable *post hoc* standards of conduct like Section 898's versions of "reasonableness."

a. Congress' findings set out the PLCAA's factual premises and guiding principles. Congress began by

recognizing the importance of the individual rights guaranteed by the Second Amendment, while noting that "[t]he manufacture, importation, possession, sale, and use of firearms and ammunition in the United States are heavily regulated by Federal, State, and local laws," citing three federal firearms statutes. 15 U.S.C. §7901(a)(1), (2), (4).

In contrast, Congress found, firearms manufacturers and sellers "are not, and should not[] be[,] liable for the harm caused by those who criminally or unlawfully misuse firearm products or ammunition products that function as designed and intended." *Id.* §7901(a)(5). That statement of nonliability is the animating principle of the PLCAA.

In particular, Congress found that such liability rested on "theories without foundation in hundreds of years of the common law and jurisprudence of the United States [that] do not represent a bona fide expansion of the common law." *Id.* §7901(a)(7). Rather, expanding liability in accord with those theories—like the reasonableness-based theories codified in Section 898—"would constitute a deprivation of the rights, privileges, and immunities guaranteed to a citizen of the United States under the Fourteenth Amendment." *Ibid.*

And Congress decried the "possibility of imposing liability on an entire industry for harm that is solely caused by others," noting that such lawsuits constitute "an abuse of the legal system [that] erodes public confidence in our Nation's laws [and] threatens the diminution of a basic constitutional right and civil liberty." *Id.* §7901(a)(6).

b. Congress enacted the PLCAA's purposes into the statute itself. The Act's primary purpose is

> To *prohibit* causes of action against manufacturers, distributors, dealers, and importers of firearms or ammunition products, and their trade associations, for the harm solely caused by the criminal or unlawful misuse of firearm products or ammunition products by others when the product functioned as designed and intended.

15 U.S.C. §7901(b)(1) (emphasis added). A related purpose is "[t]o *prevent* the use of such lawsuits to impose unreasonable burdens on interstate and foreign commerce." *Id.* §7901(b)(4) (emphasis added).

Congress intended the PLCAA "[t]o preserve a citizen's access to a supply of firearms and ammunition for all lawful purposes." *Id.* §7901(b)(2). And this extended to protection against incursions on the right to bear arms by the States, as another purpose is "[t]o guarantee a citizen's rights, privileges, and immunities, as applied to the States, under [section 5 of the] Fourteenth Amendment[.]" *Id.* §7901(b)(3).

c. The PLCAA's legislative history confirms congressional intent to preserve Second Amendment rights by ensuring that firearms manufacturers were not bankrupted by litigation holding them responsible for third parties' misuse of their products. One of the bill's authors, Congressman Stearns, called the PLCAA's protection against suits like those Section 898 authorizes an "obvious idea," explaining,

> After all, would we hold a car company responsible if a driver gets drunk or reckless and hits somebody with a vehicle? Of course not. This is the United States of America where we are responsible for our own actions; but yet these frivolous lawsuits against a vital, legitimate and perfectly lawful industry have continued unabated for the last several years in the simple hope of bankrupting this industry.

151 Cong. Rec. H8987, H8998 (daily ed. Oct. 20, 2005) (statement of Rep. Stearns). Addressing the costs of the type of litigation that Section 898 enables, House Judiciary Committee Chairman Sensenbrenner noted that "[t]he legal fees alone are enough to bankrupt the industry." *Id.* at H8993 (statement of Rep. Sensenbrenner quoting a *Washington Post* article). Then-Congressman Pence agreed, explaining, "By passing this bill, Congress will prevent one or a few State courts from bankrupting the national firearms industry with baseless lawsuits." *Id.* at H8999 (statement of Rep. Pence).

President George W. Bush expressed the same understanding as he prepared to sign the PLCAA into law:

> Our laws should punish criminals who use guns to commit crimes, not law-abiding manufacturers of lawful products.

Presidential Statement on House of Representatives Passage of the Proposed "Protection of Lawful Commerce in Arms Act," 41 Weekly Comp. Pres. Doc. 1566 (Oct. 20, 2005).

C. Review Is Warranted Because The Second Circuit's Decision Renders The PLCAA Meaningless And Thwarts The Will Of Congress.

This Court's review is needed because the Second Circuit decision thwarts the will of Congress expressed in the PLCAA, and provides a roadmap to other states and localities that wish to impose the very liability that the PLCAA "prohibit[s]." 15 U.S.C. §7901(b)(1). As the petition points out (at 18-22), the decision below conflicts with holdings of the Ninth Circuit and the District of Columbia Court of Appeals. And as we explain, the importance of the issue presented—the conflict between federal legislation designed to protect a constitutional right, and state legislation designed to make the right's exercise practically impossible—underscores the urgent need for this Court's prompt review. The template provided by the decision below should be eliminated before it spreads to other states and other courts.

1. The New York Statute Squarely Aims to Flout the Second Amendment and Congressional Intent.

Section 898 was intentionally designed to nullify the PLCAA and gradually (or not so gradually) bankrupt every manufacturer or seller of firearms in New York State. As the petition points out (at 10-11), upon signing Section 898, Governor Cuomo announced that the new law would "right the wrong" supposedly embodied by the PLCAA, by "reinstat[ing] the public nuisance liability for gun manufacturers." Gov. Andrew M. Cuomo, *Governor Cuomo Signs First-in-*

the-Nation Gun Violence Disaster Emergency to Build a Safer New York, at 35:00-38:15, YouTube (July 6, 2021). And the substance of Section 898 largely reproduced the text of the very New York general nuisance statute, N.Y. Penal L. §240.45, that had been held preempted by the PLCAA in *City of New York* v. *Beretta*. See Pet.11-12 (comparing the two statutory texts). Just as this Court observed in another context, the intentional "mulcting in damages of [Petitioners] will be solely *** to punish [them] for" manufacturing lawful weapons of the sort protected by the Second Amendment. *Barrows* v. *Jackson*, 346 U.S. 249, 258 (1953). That is not permissible under the Second Amendment or the PLCAA.

2. The PLCAA Expressly Preempts Section 898.

When interpreting a statute, this Court begins with the statute's text. *Jimenez* v. *Quarterman*, 555 U.S. 113, 118 (2009). As part of that task, this Court looks to "the specific context in which that language is used, and the broader context of the statute as a whole." *Robinson* v. *Shell Oil Co.*, 519 U.S. 337, 341 (1997). In particular, "[t]he maxim noscitur a sociis, that a word is known by the company it keeps, while not an inescapable rule, is often wisely applied where a word is capable of many meanings in order to avoid the giving of unintended breadth to the Acts of Congress." *Jarecki* v. *G.D. Searle & Co.*, 367 U.S. 303, 307 (1961); see also, *e.g.*, *McDonnell* v. *United States*, 579 U.S. 550, 569 (2016). The statute, of course, must be construed in light of its structure and purpose, *e.g.*, *Abramski* v. *United States*, 573 U.S. 169, 179 (2014),

especially when that purpose was enacted into law (as it was here).

The court of appeals believed that the narrow predicate exception to PLCAA's protections applies here. But it does not.

a. As this Court observed, the predicate exception reaches only "knowing violations of gun laws." *Smith & Wesson*, 605 U.S. at 288. And the statute gives detailed examples of the types of laws that come within the exception: false entries in "any record required to be kept under Federal or State law" for the relevant firearm or ammunition, 15 U.S.C. §7903(5)(A)(iii)(I); false statements "with respect to any fact material to the lawfulness of the sale or other disposition," *ibid.*; or involvement in the disposition of a firearm or ammunition to someone the manufacturer or seller "kn[ew], or ha[d] reasonable cause to believe" was prohibited from possessing the sold product under federal law, *id.* §7903(5)(A)(iii)(II). Those examples indicate that the laws that fall within the exception set out concrete, specific duties related to firearms.

In contrast, Section 898 duplicates the common-law public nuisance standard and recites a negligence standard in a provision limited to "gun industry members." But Section 898—which hinges liability on conduct that is "unreasonable under all the circumstances," §898-b(1) (Pet.App.81) or not "reasonable," §898-b(2) (Pet.App.81)—shares none of the characteristics of the examples enumerated in 15 U.S.C. §7903(5)(A)(iii), and defining characteristics with the actions the PLCAA states it was designed to prohibit. Not just the "basic theory," but the putative

predicate firearms statute itself seeks to impose no more than a "reasonable care" standard that, this Court has recognized, "runs straight into PLCAA's general prohibition." *Smith & Wesson*, 605 U.S. at 287.

Moreover, the predicate exception is limited to cases where the defendant "knowingly violated" a statute "applicable to the sale or marketing" of a firearm or ammunition. 15 U.S.C. §7903(5)(A)(iii). It is impossible to know in advance, however, what conduct will violate an unknown and unknowable common-law standard like Section 898's standards of reasonableness. In sharp contrast to the federal statutes identified in the exception, standards of "reasonable" conduct are necessarily *post hoc*, and necessarily depend on the judgment—or whim—of a judge or jury after the fact. Reasonableness is a standard of simple negligence, and "knowing negligence" makes no sense.

This Court has recognized the PLCAA's "core purpose": "Congress enacted the statute to halt a flurry of lawsuits attempting to make gun manufacturers pay for the downstream harms resulting from misuse of their products." *Smith & Wesson*, 605 U.S. at 298. But a "flurry of lawsuits" inevitably would ensue if the Court declines to grant review and reverse the decision of the court of appeals in this case. Every state and locality that is hostile to the Second Amendment—and there are many—can and will enact statutes and ordinances just like Section 898, codifying broad and unpredictable common-law reasonableness standards of liability in statutes restricted to participants in the firearm industry. Many already have. See p. 25 below. Indeed,

this could be as simple as duplicating an existing codification of nuisance law in a new statute restricted to "gun industry members"—which is largely what New York did here.

An exception to a statutory command "cannot in reason be construed as allowing a common law right, the continued existence of which would be absolutely inconsistent with the provisions of the act." *AT&T Mobility LLC* v. *Concepcion*, 563 U.S. 333, 343 (2011) (cleaned up). Simply put, "the act cannot be held to destroy itself." *Ibid.*

b. The legislative history confirms the narrow scope of the predicate exception. For example, Senator Craig explained the exception in these terms:

> [I]f in any way they violate State or Federal law or alter or fail to keep records that are appropriate as it relates to their inventories, they are in violation of law. *** If they have violated existing law, they violated the law, and I am referring to the Federal firearms laws that govern a licensed firearm dealer and that govern our manufacturers today.

151 Cong. Rec. S9087, S9089 (daily ed. July 27, 2005, bk. II) (statement of Sen. Craig). And Senator Sessions elucidated the problem the PLCAA addressed in these terms:

> You followed the complex Federal regulations that have a huge host of requirements. You followed the State legislature's requirements, often very complex, also, to the T, and it comes in the hand of a criminal, and they use it for a

> crime. Now the manufacturer and the seller are liable.

151 Cong. Rec. S8897, S8911 (daily ed. July 26, 2005) (statement of Sen. Sessions).

The PLCAA's opponents recognized that the predicate exception "does not protect cases against negligent gun sellers or manufacturers" outside the separate enumerated exceptions for negligent entrustment and negligence *per se*. H.R. Rep. No. 109-124, at 145 (2005) (dissenting views). And they recognized (and complained) that "the types of cases that would be barred" by the PLCAA include those for "public nuisance." *Id.* at 146.

But that is exactly the type of case authorized by Section 898's reasonableness standards, which impose negligence liability on firearm manufacturers and sellers with respect to their sales and distribution practices. Congress defeated proposed amendments to the PLCAA that would have permitted actions for general negligence. See, *e.g.*, 151 Cong. Rec. S9323, S9386-S9387 (daily ed. July 29, 2005) (statement of Sen. Reed) (proposing amendment that would have imposed liability for general negligence); H.R. Rep. No. 109-124, at 115-119 (2005) (general negligence amendment proposed and defeated in House). The successful opponents contended that such an amendment "guts the bill" and "does exactly the opposite of what the bill is intended to do." 151 Cong. Rec. S9387 (daily ed. July 29, 2005) (statement of Sen. Hutchison).

c. Construing the predicate exception to encompass any statute that (1) codifies a common-law

standard like reasonableness, but also (2) specifically targets firearms manufacturers and sellers "would swallow most of the rule." *Smith & Wesson*, 605 U.S. at 299. The Court rejected such a self-defeating construction in *Smith & Wesson*. And it should grant review to forestall the spread of the equally self-defeating construction adopted below.

3. Section 898 Is Preempted Because It Presents an Obstacle to the Accomplishment of the Purposes of the PLCAA.

As explained above, the express, enacted purposes of the PLCAA require construing the predicate exception to exclude Section 898's codifications of malleable common-law standards. Even if Section 898 could somehow escape express preemption—and it can't—the New York statute would be impliedly preempted because it "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Arizona*, 567 U.S. at 399-400 (quoting *Hines*, 312 U.S. at 67).

As explained above, the express purpose of the PLCAA is to prevent lawsuits, like this one, that apply nebulous common-law standards of conduct *post hoc* (as opposed to regulatory provisions that set out exactly what firearms industry members must do to comply). Just as the Constitution elevates the right of armed self-defense over the risks that some will misuse the arms the right protects, the PLCAA places the right of reasonable access to arms over any State's preference for extended and attenuated theories of liability that would make firearms manufacturers and

sellers pay for crimes committed with their lawful, and lawfully sold, products. Nothing in the predicate exception "suggests an intent to preserve state-law rules that stand as an obstacle to the accomplishment of the [PLCAA's] objectives." *Concepcion*, 563 U.S. at 343.

Under our federalism, and the Supremacy Clause, New York's policy views must yield to those Congress made. This Court should grant review to give effect to that constitutional balance.

D. The Exceptional Importance Of The Question Presented Underscores The Need For This Court's Review.

Congress enacted the PLCAA because it recognized the exceptional importance of protecting citizens' access to firearms, and the consequent importance of preventing States and courts from bankrupting the firearms industry by adopting and enforcing vague and sweeping theories of liability. But the decision below strains to permit what the PLCAA was designed to prohibit: "causes of action" against the firearms industry "for the harm solely caused by the criminal or unlawful misuse of firearm products or ammunition products by others when the product functioned as designed and intended." 15 U.S.C. §7901(b)(1). It does so by ignoring the examples Congress provided to narrow the predicate exception, and allows an action to go forward based on a reasonableness standard of conduct that no one could "knowingly violate[ ]" (as the exception requires), *id.* §7903(5)(A)(iii), because the precise conduct needed to

comply is not spelled out anywhere, but can be determined only after the fact.

The present case is exceptionally important because, in the Second Circuit—and soon, quite possibly, elsewhere—the PLCAA becomes a dead letter whenever a legislative body follows the two simple steps approved below. Every common-law theory attacked in the legislative history—any of the "theories without foundation in hundreds of years of the common law and jurisprudence of the United States," 15 U.S.C. §7901(a)(7)—can be revived by the simple expedient of (1) codifying the foundationless common-law theory (2) in a statute targeting the firearms industry. Nine other states have already followed New York's lead. See Pet.30-31 (citing Cal. Civ. Code §3273.51; Colo. Rev. Stat. §§6-27-104, -105; 10 Del. Code §3930; Haw. Rev. Stat. §§134-102, -103; 815 Ill. Comp. Stat. 505/2DDDD; N.J. Stat. Ann. §2C:58-35; Md. Code Ann., Cts. & Jud. Proc. §§3-2502, -2503; Wash. Rev. Code §7.48.330; 2025 Conn. Pub. Act. No. 25-43). And others may soon follow. See Pet.31 (citing H.B. 21, 2026 Gen. Assemb., Reg. Sess. (Va. 2026), https://perma.cc/QU5H-HWB4; H.B. 2672, 194 Gen. Ct., Reg. Sess. (Mass. 2025)).

If the Second Circuit's reasoning is applied to those statutes, the predicate exception will encompass multiple theories holding firearms makers and sellers "liable for the harm caused by those who criminally or unlawfully misuse firearm products or ammunition products that function as designed and intended," 15 U.S.C. §7901(a)(5), despite Congress' contrary finding.

That result will "impos[e] liability on an entire industry for harm that is solely caused by others," the exact "abuse of the legal system" and "diminution of a basic constitutional right and civil liberty" that the PLCAA condemns. *Id.* §7901(a)(6). The consequent "expansion of liability w[ill] constitute a deprivation of the rights, privileges, and immunities guaranteed to a citizen of the United States under the Fourteenth Amendment to the United States Constitution." *Id.* §7901(a)(7).

The importance of the question presented reaches beyond the PLCAA, however, because the decision below approaches the statute as a puzzle to be solved in order to deprive the law of practical effect. Thus, the Second Circuit treated the narrow exceptions to the PLCAA as if they necessarily contain the seeds of statute's destruction. But that statutory construction defies the will of Congress, the exact opposite of what statutory interpretation should do. If it remains in place, the Second Circuit's decision will encourage additional judicial efforts to nullify the products of the democratic process.

The Court should not acquiesce in that deleterious result. This Court's review is urgently needed.

CONCLUSION

For the foregoing reasons, as well as those stated in the petition, the petition for a writ of certiorari should be granted.

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