No. 19-168

IN THE

Supreme Court of the United States

REMINGTON ARMS CO., LLC, *et al.*,
Petitioners,
v.
DONNA L. SOTO, ADMINISTRATRIX OF THE ESTATE OF VICTORIA L. SOTO, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of Connecticut

BRIEF OF TWENTY-TWO MEMBERS OF THE UNITED STATES HOUSE OF REPRESENTATIVES AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

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QUESTION PRESENTED

Whether the Connecticut Supreme Court's interpretation of the Protection of Lawful Commerce in Arms Act of 2005's ("PLCAA") "predicate exception" as encompassing all federal and state statutes that are "capable of being applied" to the sale or marketing of firearms, conflicts with the Ninth and Second Circuits' decisions in *Ileto v. Glock, Inc.*, 565 F.3d 1126 (9th Cir. 2009), and *City of New York v. Beretta U.S.A. Corp.*, 524 F.3d 384 (2nd Cir. 2008), respectively, and renders the purpose and protections of the PLCAA virtually meaningless?

TABLE OF CONTENTS

TABLE OF CONTENTS—Continued

TABLE OF AUTHORITIES

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

INTRODUCTION AND STATEMENT OF INTEREST OF *AMICI CURIAE*[1]

Amici curiae are a group of twenty-two members of the United States House of Representatives who have a strong interest in ensuring the Protection of Lawful Commerce in Arms Act of 2005 ("PLCAA") is interpreted and applied consistent with Congress's stated purpose, and that the narrow exceptions to the PLCAA are not applied in a way that frustrates congressional intent and renders the PLCAA's protections meaningless. A complete list of *amici* is provided in the Appendix to this brief. Among them are:

- James D. Jordan, *Ranking Member of the House Committee on Oversight and Government Reform, 116th Congress*;
- F. James Sensenbrenner, Jr., *Former Chair of the House Committee on the Judiciary, 109th Congress*; and
- Gregory P. Walden, *Former Chair of the House Committee on Energy and Commerce, 115th Congress; Ranking Member of the House Committee on Energy and Commerce, 116th Congress*.

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[1] In accordance with Supreme Court Rule 37.6, *amici curiae* state that no party's counsel authored this brief in whole or in part, no party or party's counsel contributed money that was intended to fund preparing or submitting this brief, and no person other than *amici curiae* and their counsel contributed money that was intended to fund preparing or submitting this brief. In accordance with Supreme Court Rule 37.2(a), counsel of record received timely notice of *amici curiae's* intent to file this brief, and counsel for all parties has consented to *amici curiae* filing this brief.

Amici are intimately familiar with Congress's intent in crafting the so-called "predicate exception" to the PLCAA, and are uniquely situated to provide insight into the purpose of the PLCAA and Congress's stated purpose to "prohibit causes of action against [firearms] manufacturers . . . for the harm solely caused by the criminal or unlawful misuse of firearm products . . . by others . . . ." 15 U.S.C. § 7901(b)(1).

The Connecticut Supreme Court, at the urging of Respondents, however, interpreted the PLCAA's so-called "predicate exception" in a way that swallows the rule. Under Respondents' reading, the predicate exception permits a lawsuit to proceed against a firearms manufacturer so long as the lawsuit alleges a violation of a state or federal statute "capable of being applied to the sale and marketing of firearms." *Soto v. Bushmaster Firearms Int'l, LLC*, 202 A.3d 262, 302 (Conn. 2019).

This reading runs directly counter to Congress's intent to protect firearms manufacturers from "[l]awsuits . . . [concerning] firearms that operate as designed and intended, which seek money damages and other relief for the harm caused by the misuse of firearms by third parties, including criminals." 15 U.S.C. § 7901(a)(3). It also runs directly counter to the broader purpose and structure and to the lengthy legislative process that produced the PLCAA as it stands today.

This Court should grant the petition for a writ of certiorari because the Connecticut Supreme Court has decided this important federal question in a way that directly conflicts with the Second and Ninth Circuits' decisions in *City of New York v. Beretta U.S.A. Corp.* and *Ileto v. Glock, Inc*. As such, that ruling threatens to create precisely the type of patchwork of liability standards Congress passed the PLCAA to avoid.

SUMMARY OF THE ARGUMENT

1. In enacting the PLCAA, Congress made its intent clear: uniform preemption of state and federal lawsuits against gun manufacturers based on the criminal misuse of firearms by third parties, subject to certain very limited exceptions. *See* 15 U.S.C. § 7901(b)(1); 15 U.S.C. § 7903(5)(A)(i)–(vi). Among those limited exceptions is the "predicate exception," which carves out lawsuits where a firearms manufacturer or seller is alleged to have "knowingly violated a State or Federal statute applicable to the sale or marketing" of firearms. *Id.* § 7903(5)(A)(iii).

But the Connecticut Supreme Court's interpretation of the PLCAA's predicate exception as encompassing all lawsuits based on federal or state statutes "capable of being applied" to the sale or marketing of firearms destroys the uniformity and predictability Congress sought to ensure because it is in direct conflict with the Second and Ninth Circuits' interpretations of the PLCAA in *City of New York* and *Ileto*. If permitted to stand, the Connecticut Supreme Court's recent ruling threatens to use the exception to undo the rule.

2. The Connecticut Supreme Court's interpretation of the predicate exception as encompassing all lawsuits based on federal or state statutes "capable of being applied" to the sale or marketing of firearms is in direct conflict with the text and development of the PLCAA.

This Court should grant the petition for a writ of certiorari because the PLCAA includes express examples of the types of claims contemplated by the predicate exception: claims brought under statutes that expressly regulate the firearms industry. These were not mere throw-away examples, but were specifically added to

the third and final version of the PLCAA to give form and meaning to the broader predicate exception, in accordance with the judicial canons of *eiusdem generis* and *noscitur a sociis*.

Not only that, but Congress added a clear rule of construction to the third and final version of the PLCAA, clarifying that exceptions such as the predicated exception "shall be construed so as not to be in conflict" with the rest of the PLCAA. 15 U.S.C. § 7903(5)(C). Yet that is precisely what the Connecticut Supreme Court has done. Given that two-thirds of all states have adopted the common law by statute, the Connecticut Supreme Court's interpretation of the PLCAA has no limiting principle, but instead threatens to cripple the entire PLCAA. "The predicate exception cannot possibly encompass *every* statute that might be 'capable of being applied' to the sale or manufacture of firearms; if it did, the exception would swallow the rule, and no civil lawsuits would ever be subject to dismissal under the PLCAA." *Ileto*, 565 F.3d at 1155 (Berzon, J., concurring in part and dissenting in part).

ARGUMENT

In enacting the Protection of Lawful Commerce in Arms Act of 2005 ("PLCAA"), Pub. L. No. 109-92, 119 Stat. 2095 (2005), codified at 15 U.S.C. §§ 7901, *et seq.* (2012), Congress expressly recognized that lawsuits seeking to hold manufacturers and sellers of firearms liable for the criminal conduct of third-parties were not only "without foundation in hundreds of years of the common law and jurisprudence of the United States," 15 U.S.C. § 7901(a)(7), but also improperly sought "to use the judicial branch to circumvent the Legislative branch of government to regulate interstate and foreign commerce through judgments and judicial decrees"

that "weaken[ ] and undermin[e] important principles of federalism, State sovereignty and comity between the sister States." *Id.* § 7901(a)(8).

As such, in order "[t]o prevent the use of such lawsuits to impose unreasonable burdens on interstate and foreign commerce," *id.* § 7901(b)(4), and "to create national uniformity," *Ileto*, 565 F.3d at 1136, Congress passed the PLCAA. It did so with the stated purpose of "prohibit[ing] causes of action against manufacturers . . . of firearms . . . for the harm solely caused by the criminal or unlawful misuse of firearm products . . . when the products functioned as designed and intended." 15 U.S.C. § 7901(b)(1). To accomplish that purpose, the PLCAA provides firearms manufacturers (among others) broad immunity from suit, with only certain limited exceptions. *See id.* §§ 7902, 7903(5). Those exceptions include lawsuits for negligent entrustment, *id.* at § 7903(5)(A)(ii), breach of contract, *id.* at § 7903(5)(A)(iv), product defects, *id.* at § 7903(5)(A)(v), and, among others, the so-called "predicate exception" that has become the focus of this action. *Id.* § 7903(5)(A)(iii). The predicate exception, in its full form, provides that the PLCAA does not bar:

> (iii) [a]n 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, including—
>
> > (I) any case in which the manufacturer or seller knowingly made any false entry in, or failed to make appropriate entry in, any record required to be kept under Federal or State law with respect to the qualified product, or aided, abetted, or conspired

> with any person in making any false or fictitious oral or written statement with respect to any fact material to the lawfulness of the sale or other disposition of a qualified product; or
>
> (II) any case in which the manufacturer or seller aided, abetted, or conspired with any other person to sell or otherwise dispose of a qualified product, knowing, or having reasonable cause to believe, that the actual buyer of the qualified product was prohibited from possessing or receiving a firearm or ammunition under subsection (g) or (n) of section 922 of title 18.

Id. § 7903(5)(A). This exception has come to be known as the "predicate exception" because liability requires a knowing violation of a "predicate statute." *City of New York*, 524 F.3d at 390.

These exceptions were meant to provide clear and reasonable, but narrow, limitations on the PLCAA's general immunity provisions. They were not designed to be read in conflict with the PLCAA's general purpose and structure—and they certainly were not designed to become a backdoor for indirectly accomplishing the very things the PLCAA was designed to forbid. Unfortunately, in the fourteen years since its passage, courts have struggled to determine the proper scope of the predicate exception.[2]

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[2] *See* Sarah Herman Peck, Cong. Research Serv., LSB10292, *When Can the Firearm Industry Be Sued?* 4 (2019) ("[C]ourts have not coalesced around a single interpretation of the predicate exception.").

That is why this Court should grant the petition for a writ of certiorari in this action. By interpreting the predicate exception to permit causes of action to proceed under every state or federal statute "capable of being applied" to the sale or marketing of firearms, *see Soto*, 202 A.3d at 302, the Connecticut Supreme Court has permitted the narrow exception to swallow Congress's rule. Such an interpretation of the PLCAA runs afoul of the statute's text and its legislative history, provides no logical or textual limitations, and is in direct conflict with both the Second and Ninth Circuits' interpretations.

I. The "capable of being applied" test that the Connecticut Supreme Court adopted conflicts with the tests that the Second and Ninth Circuits adopted, and creates a patchwork of inconsistent interpretations of a federal statute that this Court should resolve.

In *City of New York v. Beretta U.S.A. Corp*, New York City sued firearms manufacturers and suppliers under a New York nuisance statute, claiming that those manufacturers and suppliers "market[ed] guns to legitimate buyers with the knowledge that those guns will be diverted through various mechanisms into illegal markets" and that they "fail[ed] to take reasonable steps to inhibit the flow of firearms into illegal markets." 524 F.3d at 389. The firearms manufacturers and suppliers moved to dismiss based on the PLCAA's broad grant of immunity. But the district court denied those motions, finding that New York's nuisance statute fit within the predicate exception because it was a statute that was "capable of being applied" to gun manufacturers and suppliers. *City of*

New York v. Beretta U.S.A. Corp., 401 F. Supp. 2d 244, 261 (E.D.N.Y. 2005).

On appeal, the Second Circuit rejected the district court's interpretation of the term "applicable," holding that such an interpretation "leads to a far too-broad reading of the predicate exception." *City of New York*, 524 F.3d at 403. According to the court, "[s]uch a result would allow the predicate exception to swallow the statute, which was intended to shield the firearms industry from vicarious liability for harm caused by firearms that were lawfully distributed into primary markets." *Id.*

However, the court stopped short of holding that statutes of general applicability could *never* qualify as predicate statutes under the PLCAA. Instead, the court held that the predicate exception "does encompass statutes (a) that expressly regulate firearms, or (b) that courts have applied to the sale and marketing of firearms; and does encompass statutes that do not expressly regulate firearms but that clearly can be said to implicate the purchase and sale of firearms." *Id.* at 404. Because, according to the Second Circuit, New York's nuisance law was "a statute of general applicability that has never been applied to firearms suppliers for conduct like that complained of by the City," the predicate exception did not apply. *Id.* at 399, 404.

The Ninth Circuit interpreted the predicate exception even more narrowly, holding that the word "applicable" only includes "statutes that regulate manufacturing, importing, selling, marketing, and using firearms or that regulate the firearm industry." *Ileto*, 565 F.3d at 1136. In *Ileto*, the plaintiffs were victims of an attack perpetrated by a gunman armed with at least seven firearms, all of which he illegally possessed.

Id. at 1130. The plaintiffs sued the manufacturers, marketers, importers, distributors, and sellers of the firearms that the assailant used under California's common law tort statutes, alleging that they had "intentionally produce[d], market[d], distribute[d], and [sold] more firearms than the legitimate market demands in order to take advantage of re-sales to distributors that they know or should know will, in turn, sell to illegal buyers." *Id.* The district court dismissed the action against the manufacturer and the seller of the firearms under the PLCAA. *Id.*

On appeal, the plaintiffs pointed out that California had codified its general tort law and argued that their allegations of knowing violations of those statutes satisfied the requirements of the PLCAA's predicate exception. *Id.* at 1132–33. The Ninth Circuit disagreed. While the court noted that "the term 'applicable' has a spectrum of meanings," in order "[t]o determine Congress' intended meaning in the PLCAA," the court found it necessary to "examine 'the specific context in which [the term "applicable"] is used[ ] and the broader context of the statute as a whole.'" *Id.* at 1134 (quoting *Robinson v. Shell Oil Co.*, 519 U.S. 337, 341 (1997)). Relying on the illustrative predicate statutes listed in the PLCAA, *see* 15 U.S.C. § 7903(5)(A)(iii), as well as Congress's stated findings and purpose, the court of appeals held that the predicate exception only applied to "statutes that regulate manufacturing, importing, selling, marketing, and using firearms or that regulate the firearms industry." *Ileto*, 565 F.3d at 1136. In doing so, the court rejected plaintiffs' "all-encompassing" definition of "applicable" as meaning "capable of being applied." *Id.* at 1133, 1134.

The Connecticut Supreme Court, however, rejected both of these more narrow interpretations, adopting

the definition of "applicable" specifically rejected in *City of New York* and *Ileto*—"capable of being applied." *See Soto*, 202 A.3d at 302. According to the Connecticut Supreme Court, "[i]f Congress had intended to limit the scope of the predicate exception to violations of statutes that are *directly*, *expressly*, or *exclusively* applicable to firearms, . . . it easily could have used such language." *Id.*

The Connecticut Supreme Court's interpretation is squarely at odds with the interpretation of at least two federal courts of appeals. That split in authority leaves firearms manufacturers subject to wildly divergent standards of liability depending on the jurisdiction in which they find themselves—destroying the "national uniformity" Congress sought to achieve with a single federal statute in the PLCAA. *Ileto*, 565 F.3d at 1136. This Court should grant certiorari to resolve this split among the circuits and the states and to give effect to Congress's intent.

II. The text and development of the PLCAA's predicate exception demonstrate that Congress intended for it to apply narrowly, and Congress meant what it said when it enacted the PLCAA.

As Congress found when it enacted the PLCAA, lawsuits against manufacturers, distributors, dealers, and importers of firearms that seek to impose liability for "harm caused by the misuse of firearms by third parties, including criminals," 15 U.S.C. § 7901(a)(3), "attempt to use the judicial branch to circumvent the Legislative branch of government to regulate interstate and foreign commerce through judgments and judicial decrees thereby threatening the Separation of Powers doctrine," *id.* § 7901(a)(8). In order to preserve that separation of powers and to prevent regulation by judicial

fiat, Congress mandated that, subject to limited exceptions, such lawsuits "may not be brought in any Federal or State court," *id.* § 7902(a), and any such lawsuit "pending on [the date of enactment of the PLCAA] shall be immediately dismissed," *id.* § 7902(b). "Where congressional intent is discernible . . . [courts] must give effect to that intent." *Sinclair Ref. Co. v. Atkinson*, 370 U.S. 195, 215, *overruled on other grounds in part by Boys Markets, Inc. v. Retail Clerks Union, Local 770*, 398 U.S. 235 (1970). And "[a]bsent persuasive indications to the contrary, [courts must] presume Congress says what it means and means what it says." *Simmons v. Himmelreich*, 136 S. Ct. 1843, 1848 (2016).

But the Connecticut Supreme Court did just the opposite. It interpreted the predicate exception in such a way as to completely undermine Congress's stated purpose—"[t]o prohibit causes of action against manufacturers . . . of firearms . . . for the harm solely caused by the criminal or unlawful misuse of firearm products . . . by others . . . ." 15 U.S.C. § 7901(b)(1). Both the text and legislative development of the predicate exception, however, demonstrate that the Connecticut Supreme Court misinterpreted this exception.

The PLCAA faced a lengthy legislative journey before finally becoming law. Introduced in the 107th Congress as House Bill 2037 and Senate Bill 2268, the PLCAA never received a vote on the floor of either chamber of Congress on its initial introduction. It was then re-introduced in the 108th Congress as House Bill 1036 and Senate Bill 1805, where it passed the House of Representatives, but ultimately failed on the floor of the Senate. It was not until the 109th Congress that Senate Bill 397 became Pub. L. No. 109-92. Each step of the way, the text of the PLCAA, generally—and

the predicate exception, specifically—required changes before reaching its current and final form. Those changes demonstrate that Congress intended for the predicate exception to be narrowly interpreted to apply only to those state and federal statutes that *specifically* regulate firearms.

A. The text of the predicate exception demonstrates that Congress intended for it to apply only to those state and federal statutes that specifically regulate firearms.

First, the text of the PLCAA demonstrates that Congress intended for the predicate exception to apply only to state and federal statutes that specifically regulate the firearm industry. In the final form of the PLCAA, Congress provided two clear examples of the types of actions contemplated by the predicate exception: (1) causes of action based upon a firearm manufacturer's or seller's knowing entry of false information (or failure to enter information) related to the sale or marketing of a firearm that is required to be recorded by state of federal statute, *see*, *e.g.*, 18 U.S.C. § 922(m); and (2) causes of action based upon a firearm manufacturer's or seller's sale or conspiracy to sell or otherwise transfer a firearm where it knows or has reason to believe that the purchaser is barred from owning a firearm, *see*, *e.g.*, *id.* § 922(g) & (n). *See* 15 U.S.C. § 7903(5)(A)(iii)(I) & (II). Congress included these specific exceptions as examples of the types of "State or Federal statute applicable to the sale or marketing of [firearms]," *id.* § 7903(5)(A)(iii), that are covered by predicate exception.

Although it was neither practical nor possible for Congress to delineate every state or federal law that might fall under the predicate exception, the specific

inclusion of §§ 7903(5)(a)(iii)(I) and (II) provides ample guidance as to Congress's intent and the PLCAA's meaning. Specifically, under the canon of *eiusdem generis*—which this Court has summarized as the proposition that "where general words follow specific words in a statutory enumeration, the general words are construed to embrace only objects similar in nature to those objects enumerated by the specific preceding words," *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105, 114–15 (2001) (internal citations omitted)—Congress made clear that it intended for the predicate exception to include only those state and federal statutes that were "similar in nature" to those specifically listed.[3] These explicit examples were not throwaway lines, *see Yates v. United States*, 574 U.S. 528, 135 S. Ct. 1074, 1086–87 (2015), but were instead designed to give form and meaning to the broader predicate exception. Both examples refer to regulations that specifically regulate the sale and marketing of firearms. These are the types of claims that remain viable under the PLCAA—not tenuous and remote theories of liability based on "marketing products that carry a risk of criminal misuse" and a third-party's criminal acts that are at least *five* transactions removed from the firearms manufacturer. H.R. Rep. No. 109-124, at 7 (2005) (also noting that "[a] gun manufacturer who produces and markets a weapon that performs as intended and designed is not liable, since members of the general public can presumably recognize the dangers involved in using firearms and

[3] The related canon of *noscitur a sociis*—which this Court has summarized as the proposition that "a word may be known by the company it keeps," and has noted "is often wisely applied . . . 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)—would have similar effect in this action.

assume the responsibility for their own actions.");[4] *see also id.* at 8 (noting that the PLCAA is designed to bar negligence claims in marketing) & 10 (noting that one of the purposes of the PLCAA was to ensure the application of the remoteness doctrine to lawsuits involving firearms manufacturers); *Soto*, 202 A.3d at 276.

B. The development of the predicate exception demonstrates that Congress intended for it to apply only to those state and federal statutes that specifically regulate firearms.

Second, the development of the PLCAA's final text demonstrates that Congress intended for the predicate exception to apply only to state and federal statutes that specifically regulate the firearm industry. When the PLCAA was first introduced during the 107th Congress, for instance, it did not include a predicate exception or any similar provision. *See* H.R. 2037, 107th Cong. (2001); S. 2268, 107th Cong. (2002). Additionally,

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[4] Indeed, the whole purpose of the PLCAA was to enshrine this very same (and basic) principle of American law. As stated by Oliver Wendell Holmes,

> [I]f notice so determined is the general grounds [upon which liability may rest], why is not a man who sells fire-arms answerable for assaults committed with pistols bought of him, since he must be taken to know the probability that sooner or later, someone will buy a pistol of him for some unlawful end? . . . The principle seems to be pretty well established, in this country at least, that every one has a right to rely upon his fellow-men acting lawfully . . . .

H.R. Rep. No. 109-124, at 9 (2005) (quoting Oliver Wendell Holmes, *Privilege, Malice, and Intent*, 1894 HARV. L. REV. 1, 10 (1894)) (alterations in original).

when the PLCAA was re-introduced during the 108th Congress, it contained the primary text of the "predicate exception," but did not include either of the specific examples now codified at 15 U.S.C. §§ 7903(5)(A)(iii)(I) and (II). *See* H.R. 1036, 108th Cong. (2003); S. 1805, 108th Cong. (2003).

In each of these iterations, the PLCAA's purposes—including barring lawsuits against firearms manufacturers based on remote theories of liability for "marketing products that carry a risk of criminal misuse," H.R. Rep. No. 107-727, at 6 (2002)[5]—remained the same. In order to clarify the predicate exception's relation to the broader PLCAA and these purposes, however, Congress made two final changes. Specifically, when the PLCAA was re-introduced during the 109th Congress in what would become its final form, it included the two specific exceptions now codified at 15 U.S.C. §§ 7903(5)(a)(iii)(I) and (II), exemplifying the type of causes of action covered by the predicate exception. *See* S. 397, 109th Cong. (2005). Congress also added a "Rule of Construction" to the PLCAA, providing that the enumerated exceptions "shall be construed so as not to be in conflict" with the rest of the PLCAA. 15 U.S.C. § 7903(5)(C). In other words, Congress *expressly* provided that the statute's exceptions cannot be interpreted to swallow the rule.

Yet, this is precisely what the Connecticut Supreme Court did: interpret the term "applicable" in the predicate exception in such a way as to completely undermine

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[5] *See also* H.R. Rep. No. 109-124, at 7 (2005) (largely mirroring the House Committee on the Judiciary's Report on the PLCAA from the 107th Congress, three years earlier); *id.* at 8 (noting that the PLCAA is designed to bar negligence claims in marketing) & 10 (noting that the PLCAA was intended to protect firearms manufacturers from remote theories of liability).

Congress's stated purpose. Indeed, as Judge Berzon opined in her concurrence in *Ileto*, "the predicate exception cannot possibly encompass *every* statute that might be 'capable of being applied' to the sale or manufacture of firearms; if it did, the exception would swallow the rule, and no civil lawsuits would ever be subject to dismissal under the PLCAA." *Ileto*, 565 F.3d at 1155 (Berzon, J., concurring in part and dissenting in part).

This is all the more true considering that no fewer than *thirty-three* states have statutorily enacted the common law, and eleven others have done so via their state constitutions, under which plain, vanilla common law negligence suits could be brought against firearms manufacturers:[6]

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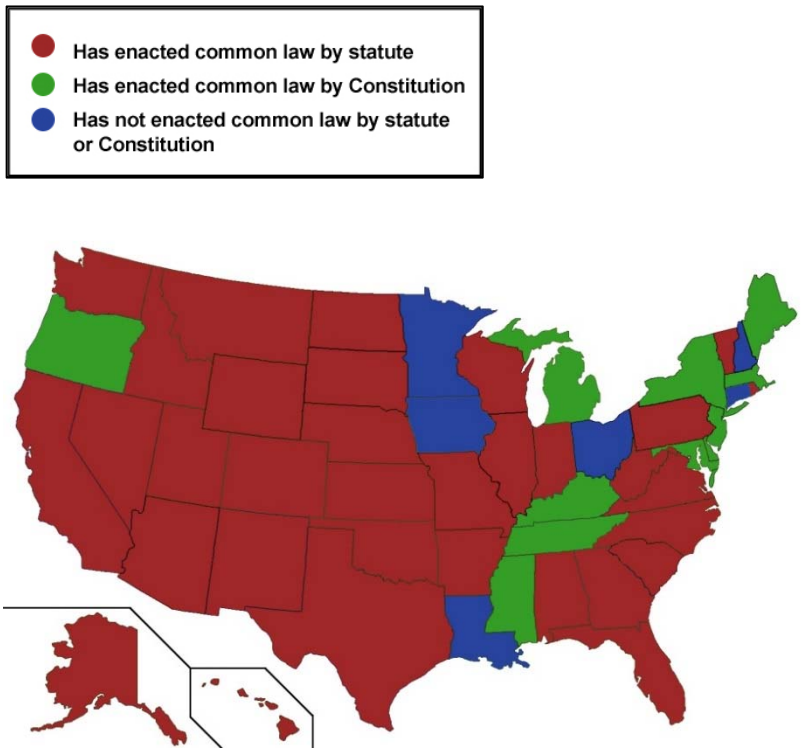
[6] *See* ALA. CODE § 1-3-1; ALASKA STAT. § 01.10.010; ARIZ. REV. STAT. ANN. § 1-201; ARK. CODE ANN. § 1-2-119; CAL. CIV. CODE § 22.2 and CAL. CIV. CODE § 5; COLO. REV. STAT. § 2-4-211; CONN. CODE EVID. SEC. 1-2(b); D.C. CODE § 45-401(a); FLA. STAT. § 2.01 and FLA. STAT. § 775.01; HAW. REV. STAT. § 1-1; IDAHO CODE § 73-116; 5 ILL. COMP. STAT. 50/1; IND. CODE § 1-1-2-1; KAN. STAT. ANN. § 77-109; KY. REV. STAT. ANN. § 447.040; MO. REV. STAT. § 1.010; MONT. CODE ANN. § 1-1-109 and MONT. CODE ANN. § 1-1-108; NEB. REV. STAT. § 49-101; NEV. REV. STAT. § 1.030; N.M. STAT. ANN. § 38-1-3; N.C. GEN. STAT. § 4-1; N.D. CENT. CODE § 1-01-03; OKLA. STAT. TIT. 12, § 2; 1 PA. CONS. STAT. § 1503; 43 R.I. GEN. LAWS § 43-3-1; S.C. CODE ANN. § 14-1-50; S.D. CODIFIED LAWS § 1-1-24; TEX. CIV. PRAC. & REM. CODE ANN. § 5.001; UTAH CODE ANN. § 68-3-1; VT. STAT. ANN. TIT. 1, § 271; VA. CODE ANN. § 1-200; WASH. REV. CODE § 4.04.010; W. VA. CODE § 2-1-1; WYO. STAT. ANN. § 8-1-101. *See also* DEL. CONST. SCHED. § 18 and *Steele v. State*, 151 A.2d 127, 130 (Del. 1959); GA. CONST. ART. XI, § 1, ¶ II and *Grimmett v. Barnwell*, 192 S.E. 191, 194 (Ga. 1937); KY. CONST. § 233; ME. CONST. ART. X, § 3 and *Davis v. Scavone*, 100 A.2d 425, 427–28 (Me. 1953); MASS. CONST. PT. 2, C. 6, ART. VI and *Commonwealth v. Rowe*, 153 N.E. 537, 540 (Mass. 1926); MD. CONST. DECL. OF RIGHTS ART. 5; MICH. CONST. ART. 3,



Under the Connecticut Supreme Court's standard, then, even common law claims for simple negligence or nuisance against firearms manufacturers could survive in at least two-thirds of all states—claims that Congress unquestionably intended for the PLCAA to preempt. *See*, *e.g.*, *Soto*, 202 A.3d at 311–12; H.R. Rep. No. 109-124, at 23.

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§ 7; *Congdon v. Congdon*, 200 N.W. 76, 82 (Minn. 1924); MISS. CONST. § 147; N.J. CONST. ART. XI, § 1, ¶ 3 and *State v. Smith*, 26 A.2d 38, 41 (N.J. 1981); N.Y. CONST. ART. I, § 14; OR. CONST. ART. XVIII, § 7 and *U.S. Fid. & Guar. Co. v. Bramwell*, 217 P. 332, 333–34(Or. 1923); TENN. CONST. ART. XI, § 1 and *State v. Alley*, 594 S.W.2d 381, 382 (Tenn. 1980); W. VA. CONST. ART. VIII, § 13; WIS. CONST. ART. XIV, § 13.

Indeed, the Connecticut Supreme Court's "standard" has no clear limits at all. Faced with precisely this problem, the Connecticut Supreme Court tacitly admits on the one hand that "the predicate exception cannot be so expansive as to fully encompass laws such as public nuisance laws insofar as those laws reasonably might be implicated in any civil action arising from gun violence," *see Soto*, 202 A.3d at 311, yet provides no explanation for how its interpretation of the predicate exception can square with the PLCAA's stated purposes and structure. Although the Connecticut Supreme Court may be confident that "wrongful marketing allegations may proceed without crippling the PLCAA," *id.* at 312, it is difficult to credit that confidence given that virtually *all* laws can be characterized as federal or state statutes "capable of being applied" to the sale or marketing of firearms.

As such, if the Connecticut Supreme Court's interpretation of the predicate exception goes uncorrected, then Congress's expressed fears will be realized—despite the clear dictates of the text and development of the PLCAA. This Court should not allow state and federal courts to ignore obvious congressional intent by substituting their own policy views for those of Congress under the guise of statutory construction. For that reason, this Court should grant certiorari to address those important issues and give full effect to Congress's intent in enacting the PLCAA.

CONCLUSION

This Court should grant Petitioners' petition for a writ of certiorari because, by interpreting the predicate exception to permit causes of action to proceed under every state or federal statute "capable of being applied" to the sale or marketing of firearms, *see Soto*, 202 A.3d at 302, the Connecticut Supreme Court has

permitted the exception to swallow the rule, in direct conflict with the Second and Ninth Circuits' decisions in *City of New York* and *Ileto*. Such an interpretation of the PLCAA runs afoul of the PLCAA's text, of the PLCAA's legislative development, has no logical or textual boundary, and threatens to create precisely the type of patchwork of legal standards Congress passed the PLCAA to avoid.

Respectfully submitted,

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September 4, 2019

APPENDIX

APPENDIX

The Members of the U.S. House of Representatives who have signed on to this brief as *amici curiae* are:

Kelly M. Armstrong

James R. Baird

Andrew S. Biggs

Eric Alan "Rick" Crawford

Jeffrey D. Duncan

Thomas Earl Emmer, Jr.

Matthew L. Gaetz, II

Robert B. Gibbs

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