No. 25-1026

In the Supreme Court of the United States

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

Petitioners,

v.

LETITIA JAMES, IN HER OFFICIAL CAPACITY AS NEW YORK ATTORNEY GENERAL,

Respondent.

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

BRIEF OF AMERICAN FREE ENTERPRISE CHAMBER OF COMMERCE AS *AMICUS CURIAE* IN SUPPORT OF THE PETITION FOR WRIT OF CERTIORARI

WILLIAM P. BARR
PATRICK F. PHILBIN
Counsel of Record
CHASE T. HARRINGTON
T. ZACH HORTON
TORRIDON LAW PLLC
801 Seventeenth Street N.W.
Suite 1100
Washington, DC 20006
(202) 249-6900
pphilbin@torridonlaw.com

March 30, 2026

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Cases—continued

Statutes

Other Authorities

Other Authorities—continued

INTEREST OF *AMICUS CURIAE*

Formed in 2021, the American Free Enterprise Chamber of Commerce ("AmFree") is a 501(c)(6) membership association that represents hard-working entrepreneurs and businesses across all 50 states and all sectors, including retail, manufacturing, financial services, healthcare, energy, and transportation.[1] AmFree's members are vitally interested in maintaining the free, fair, and open markets that have enabled prosperity more effectively than any other economic system. AmFree submits this brief because the decision below will encourage states to pass laws subjecting well-established industries to crippling liability "for the harm solely caused by the criminal or unlawful misuse" of their products. 15 U.S.C. § 7901(b)(1). Indeed, Congress enacted the Protection of Lawful Commerce in Arms Act, not only to provide a nationwide shield for the firearms industry from litigation based on the downstream criminal or unlawful misuse of firearms, but also because condoning that abuse of the legal system against one industry "invites the disassembly and destabilization of other industries and economic sectors lawfully competing in the free enterprise system of the United States." 15 U.S.C. § 7901(a)(6). AmFree therefore has a strong interest in ensuring that the statutory safeguards that Congress enacted are faithfully enforced and that American businesses are not threatened with bankrupting legal bills and civil judgments based on the criminal acts of others.

---

[1] No counsel for any party authored this brief in any part, and no person or entity other than *amicus* made a monetary contribution to fund its preparation or submission. All parties received notice of *amicus*'s intent to file this brief at least ten days before its due date. See Sup. Ct. R. 37.2.

INTRODUCTION & SUMMARY OF ARGUMENT

This case arises from a broad effort by anti-gun states to sabotage the Protection of Lawful Commerce in Arms Act (PLCAA or Act), 15 U.S.C. §§ 7901–7903, using state law. The PLCAA shields gun and ammunition manufacturers and sellers from lawsuits based on downstream criminal or unlawful misuse of their products. In an avowed effort to nullify the PLCAA, New York and other states are passing laws that would subject the firearms industry—including thousands of small businesses—to ruinous tort liability and legal fees for the criminal acts of third parties. Unless this Court acts to vindicate the supremacy of federal law, the PLCAA's protections will be rendered meaningless, and the lawful firearms industry—and the constitutional right to bear arms that it supports—will suffer irreparable harm.

Congress enacted the PLCAA "to halt a flurry of lawsuits attempting to make gun manufacturers pay for the downstream harms resulting from misuse of their products." *Smith & Wesson Brands, Inc.* v. *Estados Unidos Mexicanos*, 605 U.S. 280, 298 (2025). The Act broadly requires courts to "immediately dismiss[ ]" a "civil action" against a "manufacturer or seller" of guns or ammunition for "damages * * * resulting from the criminal or unlawful misuse" of firearms by third parties. 15 U.S.C. §§ 7902, 7903(5)(A). This sweeping immunity is subject to a few narrow exceptions that allow suits for breach of contract, product defects, or knowingly dealing firearms with reason to believe that they will be used to commit certain federal crimes. See *id.* § 7903(5)(A)(iv), (v); *id.* § 7903(5)(A)(i) (incorporating 18 U.S.C. § 924(h)).

Another exception allows a lawsuit to move forward if a manufacturer or seller "knowingly violated a State or Federal statute applicable to the sale or marketing of

[firearms or ammunition], and the violation was a proximate cause of the [plaintiff's] harm." *Id.* at § 7903(5)(A)(iii). This is "usually called the predicate exception," because liability depends on proving a knowing violation of an underlying—or "predicate"—statute. *Smith & Wesson*, 605 U.S. at 286; see also *City of New York* v. *Beretta U.S.A. Corp.*, 524 F.3d 384, 390 (2d Cir. 2008).

In a transparent effort to render the PLCAA a dead letter, New York passed General Business Law §§ 898-a *et seq.* to shoehorn into the predicate exception the same tort theories for liability of gun manufacturers and sellers that Congress enacted the PLCAA to foreclose. As Governor Andrew Cuomo explained in his signing statement, the law's express purpose was to "reinstate * * * public nuisance liability for gun manufacturers" and "right the wrong" that New York believed Congress committed in enacting the PLCAA.[2] Section 898 authorizes common-law-style claims against members of the firearms industry based on the downstream criminal or unlawful misuse of firearms by others and thus runs headlong into the core prohibition of the PLCAA. Yet because § 898 tacked on the words "gun industry member" to New York's general nuisance law, the Second Circuit held that § 898 fell within the PLCAA's narrow carveout for civil suits predicated on knowing violations of statutes regulating the sale and marketing of firearms. Concurring, Judge Jacobs candidly recognized that § 898 is "nothing short of an attempt to end-run PLCAA." App.40.

---

[2] 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), tinyurl.com/CuomoRtWrng.

The Second Circuit's ruling warrants this Court's review for two reasons.

First, the decision below squarely conflicts with decisions of the Ninth Circuit and the D.C. Court of Appeals concerning the scope of the PLCAA's predicate exception. The Ninth Circuit held in *Ileto* v. *Glock, Inc.* that the exception is properly limited to statutes imposing concrete, ascertainable duties—such as recordkeeping requirements or prohibitions on straw purchases—closely tied to the sale and distribution of firearms. Likewise, the D.C. Court of Appeals in *District of Columbia* v. *Beretta U.S.A. Corp.* held that the predicate exception applies only to statutes containing concrete prohibitions or standards. The decision below conflicts with *Ileto* and *Beretta*. The Second Circuit held that § 898 qualifies as a predicate statute even though it merely codifies a broad, common-law-style public nuisance theory and imposes no specific rules of conduct.

Second, the decision below transforms the PLCAA's narrow predicate exception into a broad loophole that would permit states to revive precisely the sort of suits Congress deemed an abuse of the legal system. That interpretation not only distorts the PLCAA's text but also defeats Congress's central objective in passing the statute. Congress enacted the PLCAA to bar lawsuits against firearms manufacturers and sellers for harms caused by third-party criminal or unlawful misuse. By allowing jurisdictions to repackage general public-nuisance theories as firearm-specific statutes exempt from the PLCAA's bar, the decision below reopens the door to the very litigation that Congress sought to foreclose—and it exposes thousands of small-to-medium-size businesses in the firearms industry to devastating liability. Effectively eliminating the PLCAA thus threatens the stability of the

firearms market and, with it, Americans' ability to acquire arms for lawful purposes. This Court's review is warranted to restore the PLCAA's intended scope and prevent the erosion of Second Amendment rights.

REASONS FOR GRANTING THE WRIT

By holding that the PLCAA did not preempt New York's gun-related public nuisance statute, the Second Circuit created a circuit split on the question whether the predicate exception under the PLCAA encompasses any state statute that expressly applies to the firearms industry. Additionally, the decision below renders the PLCAA a dead letter in the Second Circuit and will invite copycat legislation against the firearms industry, jeopardizing Second Amendment rights. This Court should grant the petition to halt state efforts to nullify federal law.

I. The Second Circuit's Holding That a Gun-Related Public Nuisance Statute Falls Under the Predicate Exception Creates a Circuit Split.

The Second Circuit split with the Ninth Circuit and D.C. Court of Appeals in holding that a common-law-style nuisance cause of action can fit under the PLCAA's predicate exception so long as a state merely codifies it in a gun-related statute.

Congress's first purpose in enacting the PLCAA was "[t]o *prohibit* causes of action against [firearm industry members] for the harm solely caused by the criminal or unlawful misuse of firearm[s] * * * by others when the product functioned as designed and intended." *Id.* § 7901(b)(1) (emphasis added). Under the Act, a civil action "may not be brought" against a firearms "manufacturer or seller" seeking "damages * * * resulting from the criminal or unlawful misuse of" a firearm, 15 U.S.C.

§§ 7902(a), 7903(5)(A).[3] The Act explicitly does not apply to certain civil suits brought by the Attorney General or arising from:

- A breach of contract or warranty;
- A conviction under 18 U.S.C. § 924(h) (providing firearms to aid felony, terrorism, or drug trafficking);
- Negligent entrustment (*e.g.*, selling to an incompetent or underage buyer) or negligence per se; or
- A defect in design or manufacture of the product that causes death, physical injury, or property damage (except when caused by a criminal act).

Id. § 7903(5)(A)(i)–(ii), (iv)–(vi).

The PLCAA also allows a suit to proceed if it arises from a statute that spells out specific duties or rules that firearms manufacturers and sellers can identify and obey. *Id.* § 7903(5)(A)(iii). This exception provides that a firearms manufacturer or seller may be held liable for "knowingly violat[ing] a State or Federal statute applicable to the sale or marketing of [a firearms] product" if "the violation was a proximate cause of the harm for which relief is sought." *Id.*

The Ninth Circuit held that the predicate exception cannot be stretched to cover statutory causes of action that merely codify "general tort theories of liability." *Ileto* v. *Glock, Inc.*, 565 F.3d 1126, 1135–36 (9th Cir. 2009) (*Ileto II*). *Ileto II* considered California's public-nuisance statute, which the Ninth Circuit had already held—earlier in the same case, before the PLCAA was enacted—

[3] The PLCAA also shields manufacturers or sellers of ammunition or "component part[s] of a firearm." *Id.* § 7903(4).

applied to the firearms industry. See *Ileto* v. *Glock, Inc.*, 349 F.3d 1191, 1203–15 (9th Cir. 2003) (*Ileto I*). To determine the scope of the predicate exception, the court relied on the illustrative examples that Congress explicitly "includ[ed]," 15 U.S.C. § 7903(5)(A)(iii), within the scope of the predicate exception:

- *Recordkeeping Statutes*. These statutes prohibit a "manufacturer or seller [from] knowingly ma[king] any false entry in, or fail[ing] to make appropriate entry in, any record required to be kept under Federal or State law." *Id.* § 7903(5)(A)(iii)(I).
- *Straw-Purchaser Statutes*. These statutes prohibit facilitating so-called 'straw' purchases, whereby an intermediary, who is legally able to purchase firearms, does so for an "actual buyer" who is "prohibited from possessing or receiving a firearm." *Id.* § 7903(5)(A)(iii)(II).

These two examples are alike in one critical way: Both describe statutes that impose *concrete rules* that firearms manufacturers and sellers can readily ascertain ex ante and obey.[4] The Ninth Circuit determined that both examples have "a direct connection with sales or manufacturing." *Ileto II*, 565 F.3d at 1134. The court concluded that "Congress had in mind only these types of statutes—statutes that regulate manufacturing, importing, selling,

---

[4] See, *e.g.*, N.Y. Penal Law § 400.00(12) ("[A]ny person licensed as gunsmith or dealer in firearms shall keep a record book approved as to form * * * by the superintendent of state police. In the record book shall be entered at the time of every transaction involving a firearm the date, name, age, occupation and residence of any person from whom a firearm is received or to whom a firearm is delivered, and the calibre [sic], make, model, manufacturer's name and serial number, or if none, any other distinguishing number or identification mark on such firearm.").

marketing, and using firearms or that regulate the firearms industry." *Id.* at 1136.

In marked contrast, the Second Circuit held that the predicate exception encompasses statutes broadly imposing liability on gun manufacturers "for downstream harms caused by their products." App.17. The court rejected the view that statutes qualifying under the predicate exception "must expressly regulate firearms with the same specificity" as the illustrative examples, App.18, holding instead that § 898 passes muster because it "expressly regulates firearms." App.18. The Second Circuit thus held that New York is free to resurrect the same tort theories that Congress declared "an abuse of the legal system," 15 U.S.C. § 7901(a)(6), as long as it passes a statute specifically targeting the same common law theory at gun manufacturers. That cannot be right.

Importantly, the Second Circuit's decision acknowledged and implicitly rejected the Ninth Circuit's holding in *Ileto II* "that predicate statutes generally must pertain *specifically* to sales and manufacturing activities." App.18 n.4 (emphasis added). The Second Circuit rejected that approach because the illustrative examples provided in the PLCAA were "not exhaustive." App.21. That misses the point: Congress used these examples to show that the kinds of statutes covered by the predicate exception impose specific duties on firearms manufacturers.

The Second Circuit's decision also collides head-on with the D.C. Court of Appeals' interpretation of the predicate exception. See *District of Columbia* v. *Beretta U.S.A. Corp.*, 940 A.2d 163 (D.C. 2008). In *Beretta*, the court held that a D.C. law imposing strict liability on manufacturers and dealers of assault weapons for all damages related to their discharge did not qualify as a predicate

statute even though "by its express terms [it] applie[d] to the sale or marketing of a class of firearms." *Id.* at 169 (quotations omitted). The court held that the predicate exception requires allegations that the statute was "violat[ed]," and so it "would seem to require the law in question to contain a prohibition against, or standards of, conduct that are being violated." *Id.* at 170; cf. *Smith & Wesson*, 605 U.S. at 300 (Thomas, J., concurring) ("In future cases, courts should more fully examine the meaning of 'violation' under the PLCAA.").

Like the D.C. statute analyzed in *Beretta*, § 898 lacks any concrete prohibition or standards of conduct that can be known ex ante and "violated." The Second Circuit did not grapple with this reasoning and instead emphasized that § 898 applies explicitly to firearms. As *Beretta* explained, that is not enough.

The Court should grant the writ to review the clear split in authority between the decision below and the decisions of the Ninth Circuit and the D.C. Court of Appeals.

II. The Second Circuit's Decision Enables Anti-Gun States to Gut the PLCAA.

The Second Circuit's decision opens the door to unabashed nullification of the PLCAA by states that disagree with Congress's judgment. In upholding § 898 as a valid predicate statute, the violation of which could give rise to a civil action permitted under the PLCAA, the Second Circuit allows a narrow statutory exception to swallow the rule. This makes nonsense of the PLCAA's text; it undermines Congress's express purposes; and it threatens Americans' ability to exercise their Second Amendment rights. This Court should take the case to reverse.

A. The Second Circuit Decision Converts the PLCAA's Textually Narrow Predicate Exception into a Broad Loophole.

Copying and pasting the state's general public-nuisance law and directing it expressly at the firearms industry, the New York legislature sought to eviscerate federal law.[5] New York's then-Governor Andrew Cuomo signed the law expressly to "reinstate" the public-nuisance liability that the PLCAA extinguished.[6] But New York cannot repeal federal law, and the PLCAA does not contain a ready-made mechanism for its own nullification.

The Second Circuit blessed New York's evasive legislative maneuver. It held that New York's law satisfied the PLCAA's predicate exception merely because it "expressly regulates firearms." App.18–19. Even though New York's law only reimposed a common-law "reasonable[ness]" standard, see N.Y. Gen. Bus. Law § 898-b—and did *not* impose any concrete obligations like the predicate exception's illustrative examples—the Second Circuit

---

[5] Compare N.Y. Penal Law § 240.45 (general public nuisance law), with N.Y. Gen. Bus. Law § 898-b (firearms-industry-specific public nuisance law).

[6] See Cuomo, *supra* note 2, at 35:01–36:50, 37:41–37:49 (promising to "right the wrong" by undoing the PLCAA); *see also* Press Release, N.Y. State Off. of the Att'y Gen., *Attorney General James' Statement on New Law That Allows NYS to Hold Gun Manufacturers Responsible for Gun Violence* (July 6, 2021), tinyurl.com/LetJamesPR (describing the PLCAA as "federal overreach" and explaining that New York's law was "an important step to right that wrong"); App.40 ("This law is nothing short of an attempt to end-run PLCAA."); cf. Linda Mullenix, *Trigger Warnings: The Coming Revolution in Firearms Industry Accountability*, TEX. L. MAG. (May 2, 2025), tinyurl.com/Prof-Mullenix (extolling New York's law as "a carefully crafted workaround of the federal [PLCAA]" and "an innovative attempt to end the firearms industry's sweeping immunity from suit").

concluded that it was sufficient that New York's law explicitly applied to "gun industry members." See App.18; see also N.Y. Gen. Bus. Law § 898-b (operative text applies to "gun industry member[s]").

The Second Circuit's conclusion converts a narrow textual exception in the PLCAA into a gaping loophole. Statutes like § 898 are brazen attempts to bring back the pre-PLCAA world. Instead of delineating duties and prohibitions that the regulated industry can read and follow, laws like New York's merely codify evolving, common-law notions of "reasonableness" inherent in public-nuisance torts. See *Ileto II*, 565 F.3d at 1136 ("[A]lthough California has codified its common law [of negligence and nuisance], the evolution of those statutes is nevertheless subject to the same 'judicial evolution' as ordinary common-law claims in jurisdictions that have not codified common law. That 'judicial evolution' was precisely the target of the PLCAA.").[7]

The Second Circuit got it wrong twice over. *First*, the predicate exception applies only to state statutes that, like the explicit statutory examples, specify concrete requirements that firearms manufacturers and sellers can ascertain from the law itself and obey. See 15 U.S.C. § 7903(5)(A)(iii)(I)–(II). Section 898, by contrast, re-establishes the threat of liability based on unknown standards open to development by judges. It enables a single case, decided by a single judge and a single jury, to deliver a knockout blow to a firearms manufacturer or seller with

---

[7] See *Kilmer* v. *99 John's Mkt. Place Inc.*, 81 Misc. 3d 171, 175 (N.Y. Sup. Ct. 2023) ("Under New York law, a public nuisance is an *unreasonable* interference with a right common to the general public." (emphasis added)); RESTATEMENT (SECOND) OF TORTS § 821B(1) (same).

crippling liability based on standards that are unknowable *ex ante*. Congress enacted the PLCAA to eliminate precisely that threat.

Second, and relatedly, the predicate exception does not create a back door for reimposing indefinite common-law theories of liability in the guise of legislation. When Congress meant to exempt common-law causes of action from PLCAA immunity, it did so explicitly. See *id.* § 7903(5)(A)(ii) (negligent entrustment or negligence per se), (iv) (breach of contract or warranty), (v) (product liability for design or manufacturing defects). Thus, Congress "consciously considered how to treat tort claims" and chose to exempt *only* negligent entrustment and negligence per se claims. *Ileto II*, 565 F.3d at 1135 n.6; cf. *Russello* v. *United States*, 464 U.S. 16, 23 (1983) ("Where * * * Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." (brackets and quotation marks omitted)). Conspicuously absent from Congress's specific list of exceptions is the common-law tort of public nuisance. The Second Circuit's anomalous position, then, is that the exception for predicate *statutes* is actually a backdoor for resurrecting liability under common-law causes of action like nuisance that Congress clearly chose to exclude.

B. The Second Circuit's Decision Ignores Congress's Codified Findings and Purposes in Enacting the PLCAA.

In addition to misreading the text, the Second Circuit paid little heed to Congress's express findings and purposes in enacting the PLCAA. Its decision, accordingly, thwarts Congress's chief objective in passing the law and

will inevitably lead to a patchwork of exceptions to PLCAA immunity as anti-gun states follow New York's lead.

In enacting the PLCAA, Congress stated that "[b]usinesses * * * that are engaged in * * * the lawful design, manufacture, marketing, distribution, importation, or sale to the public of firearms * * * are not, *and should not*, be liable for the harm caused by those who criminally or unlawfully misuse firearm[s]." 15 U.S.C. § 7901(a)(5) (emphasis added). "The possibility of imposing liability on an entire industry for harm that is solely caused by others is an abuse of the legal system," and indeed, allowing such liability would "invite[] the disassembly and destabilization of other industries and economic sectors lawfully competing in the free enterprise system of the United States." *Id.* § 7901(a)(6).

The decision below stymies Congress's chief purpose. New York passed a law codifying an ill-defined public-nuisance "theor[y] without foundation in hundreds of years of the common law," *id.* § 7901(a)(7), apparently on the view that lawfully operated firearms businesses *should* "be liable for the harm caused by those who criminally or unlawfully misuse [properly functioning] firearm[s]," *id.* § 7901(a)(5). In approving § 898 as a predicate statute exempt from PLCAA preemption, the Second Circuit allowed New York to eviscerate a federal law.

Other anti-gun states are following suit. Already, many have enacted copycat laws that codify the common law and attempt to leverage the predicate exception to remove PLCAA immunity. See, *e.g.*, Del. Code Ann. tit. 10, § 3930(b)–(d) (2022) (copycat statute mirroring New

York's); Wash. Rev. Code Ann. § 7.48.330 (2023) (same).[8] Such "new-wave statutes" are emerging in the absence of "an authoritative Supreme Court ruling" on the proper interpretation of the PLCAA's predicate exception. Heidi Li Feldman, *What It Takes to Write Statutes that Hold the Firearms Industry Accountable to Civil Justice*, 133 YALE L.J. FORUM 717, 727 (2024). Without this Court's intervention, and encouraged by the Second Circuit's erroneous ruling, anti-gun states will continue to enable "the use of [public nuisance] lawsuits to impose unreasonable burdens on [lawful] interstate * * * commerce" in firearms—contrary to yet another of Congress's express purposes in enacting the PLCAA. 15 U.S.C. § 7901(b)(4); see *id.* § 7901(a)(6).

C. The Second Circuit's Decision Imperils Americans' Second Amendment Rights.

In enacting the PLCAA, Congress was concerned about more than protecting the firearms industry from potentially crushing liability. Congress's ultimate concern was protecting Americans' Second Amendment right to keep and bear arms—a right that is meaningful only in so far as arms are available for Americans to keep and bear. See *id.* § 7901(a)(1)–(2), (b)(2) (underscoring the Second Amendment and explaining that that the second purpose of the PLCAA is "[t]o preserve a citizen's access

---

[8] See also Robert S. Peck, et al., *Civil Litigation as a Tool in a Public Health Approach to Gun Violence: Gun Litigation Report*, Civ. Just. Rsch. Initiative, UC Berkeley Sch. of L. (Aug. 2023), tinyurl.com/CivJusRsch ("To get around PLCAA's constraints, other states can similarly amend their negligence or public nuisance statutes to include specific language targeting the firearms industry. Doing this could allow lawsuits to qualify for PLCAA's predicate exception and help plaintiffs avoid the obstacles seen in cases such as *Ileto* v. *Glock* and *City of New York* v. *Beretta* * * * .").

to a supply of firearms and ammunition for all lawful purposes"). In re-opening the door to potentially bankrupting public-nuisance lawsuits, the Second Circuit's decision threatens the financial viability of many participants in the firearms industry, and thus endangers Americans' ability to acquire arms to exercise their Second Amendment rights.

The firearms industry is made up of thousands of small-to-medium-size businesses. See Bureau of Alcohol, Tobacco, Firearms & Explosives, U.S. Dep't of Justice, *Firearms Commerce in the United States: Annual Statistical Update 2024*, at 15–16 (2024), tinyurl.com/ATF-2024 (tallying 132,383 licensed firearms importers, manufacturers, and dealers across the country).[9] These small-scale gunmakers and retailers often operate on thin margins and typically lack the resources to withstand prolonged litigation, let alone a substantial judgment.[10] Allowing states to nullify the PLCAA would open the floodgates to lawsuits advancing tort theories based on criminal or unlawful acts of others, forcing these businesses to defend against costly and uncertain claims.

Even if larger members of the firearms industry stand their ground and prevail most of the time, their victories nonetheless would be Pyrrhic. The sheer expense of

---

[9] See also, *e.g.*, Jürgen Brauer, *The U.S. Firearms Industry: Production and Supply*, Small Arms Survey Working Paper No. 14, at 27 (2013), tinyurl.com/4vp5kjpw (noting that "most market entrants [in the firearms industry] are small-scale firms").

[10] Nor can these businesses easily insure against that risk. See, *e.g.*, Tom Baker & Thomas O. Farrish, Liability Insurance & the Regulation of Firearms, in SUING THE GUN INDUSTRY: A BATTLE AT THE CROSSROADS OF GUN CONTROL AND MASS TORTS 302 (Timothy D. Lytton, ed. 2005) ("[I]t is becoming increasingly difficult for a gun retailer to get general liability insurance.").

constant litigation would inflict significant financial harm, and litigation risk would likely drive up general liability insurance. Cf. Carl Stier, *A New Theory of Gun Control: A Federal Regulatory Blueprint to Hold America's Firearms Industry Accountable for Mass Shootings*, 114 J. Crim. L. & Criminology 339, 363 (2024) ("If Congress fully repeals PLCAA—shifting liability to manufacturers for even a single gun-related incident—premiums on existing insurance * * * would likely rise * * * ."). Congress anticipated precisely this outcome, recognizing that the burden of defending against meritless but expensive suits could be used as a tool to bankrupt lawful businesses. See 146 Cong. Rec. H2017 (daily ed. Apr. 11, 2000) (statement of Rep. Cliff Stearns), tinyurl.com/StearnsStmt (quoting plaintiffs' lawyer John Coale as stating, "the legal fees alone are enough to bankrupt your industry," and recounting a former New York Attorney General's warning to a gunmaker that "your bankruptcy lawyers will be knocking at your door"). The cumulative effect of such litigation would not only devastate the firearms industry, but also functionally erode Americans' ability to exercise their Second Amendment rights.

As the Founders knew all too well, restricting the supply of arms threatens the ability to keep and bear them. "In light of the British embargo on the sale of arms in 1774 to prevent the Colonists from resisting the tyranny of King George III, it is understandable that the Framers would want to protect not only the right to bear arms, but correspondingly, the right to sell and acquire them." *Teixeira* v. *Cnty. of Alameda*, 873 F.3d 670, 693–94 (9th Cir. 2017) (Tallman, J., dissenting in part), abrogated on other grounds by *New York State Rifle & Pistol Ass'n*,

Inc. v. *Bruen*, 597 U.S. 1, 17 (2022).[11] Indeed, "the core Second Amendment right to keep and bear arms for self-defense 'wouldn't mean much' without the ability to acquire arms." *Id.* at 677 (majority opinion); see *id.* at 682 ("Commerce in firearms is a necessary prerequisite to keeping and possessing arms for self-defense."); cf. *Luis* v. *United States*, 578 U.S. 5, 26 (2016) (Thomas, J., concurring in the judgment) ("The right to keep and bear arms * * * implies a corresponding right to obtain the bullets necessary to use them and to acquire and maintain proficiency in their use. Without protection for these closely related rights, the Second Amendment would be toothless." (citations omitted)).[12]

With the PLCAA, Congress sought to protect the Second Amendment's "necessary prerequisite"—"[c]ommerce in firearms"—by shielding gunmakers and sellers from cataclysmic liability that could put them out of business if they were held to account for criminals' misuse of their products. *Teixeira*, 873 F.3d at 682. The decision below threatens to undo Congress's handiwork. By stretching the predicate exception beyond the breaking point, New York licenses plaintiffs' lawyers to raid the

---

[11] See 5 Acts of the Privy Council (Colonial) 401 (Oct. 19, 1774) (reporting the "[o]rder prohibiting the export of arms or ammunition"); see generally David B. Kopel, *How the British Gun Control Program Precipitated the American Revolution*, 6 CHARLESTON L. REV. 283, 297–98 (2012).

[12] See also *Ortega* v. *Grisham*, 148 F.4th 1134, 1143 (10th Cir. 2025) (Tymkovich, J.) ("As paper or a computer is a necessary predicate to the right to print, or the ability to own property is a necessary predicate of the right to just compensation for a taking—acquiring, purchasing, and possessing firearms is a necessary predicate to keeping and bearing them."); *Reese* v. *Bureau of Alcohol, Tobacco, Firearms, & Explosives*, 127 F.4th 583, 590 (5th Cir. 2025) (Jones, J.) (similar).

firearms industry, potentially putting companies out of business and thereby constricting law-abiding Americans' access to firearms available for purchase at reasonable prices. The Second Circuit sanctioned New York's attack on Congress's authority and Americans' means of exercising their Second Amendment rights, and its decision cries out for correction.

CONCLUSION

The Court should grant the petition for a writ of certiorari and reverse the decision below.

Respectfully submitted.

WILLIAM P. BARR
PATRICK F. PHILBIN
Counsel of Record
CHASE T. HARRINGTON
T. ZACHARY HORTON
TORRIDON LAW PLLC
801 Seventeenth Street N.W.
Suite 1100
Washington, DC 20006
(202) 249-6900
pphilbin@torridonlaw.com

Counsel for American Free Enterprise Chamber of Commerce