No. 25-1026

In the
Supreme Court of the United States

NATIONAL SHOOTING SPORTS FOUNDATION, INC., BERETTA U.S.A. CORP., DAVIDSON'S, INC., GLOCK INC., CENTRAL TEXAS GUN WORKS, HORNADY MANUFACTURING COMPANY, LIPSEY'S LLC, OSAGE COUNTY GUNS LLC, RSR GROUP, INC., SHEDHORN SPORTS, INC., SIG SAUER, INC., SMITH & WESSON INC., SPORTS SOUTH LLC, SPRAGUE'S SPORTS INC., STURM, RUGER & COMPANY, INC.,

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

REPLY BRIEF FOR PETITIONERS

PAUL D. CLEMENT
ERIN E. MURPHY
Counsel of Record
MATTHEW D. ROWEN
NICHOLAS A. AQUART
CLEMENT & MURPHY, PLLC
706 Duke Street
Alexandria, VA 22314
(202) 742-8900
erin.murphy@clementmurphy.com
Counsel for Petitioners

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REPLY BRIEF

New York does not deny that it enacted §898 to "right the wrong" it believes Congress committed when it passed the PLCAA. *See* Pet.1 (quoting Governor Cuomo). New York does not dispute that, under the decision below, states can revive the exact same claims Congress enacted the PLCAA to foreclose simply by passing a statute that authorizes such liability against members of the firearm industry. New York does not contest that the question presented is important and recurring. And New York does not even try to refute that the decision below renders the PLCAA—a statute enacted for the express purpose of ending state and local efforts to impose crushing tort liability on members of a lawful industry vital to the exercise of a fundamental right—"trivially easy for States to … wholly defeat." *Kindred Nursing Ctrs. Ltd. P'ship v. Clark*, 581 U.S. 246, 255 (2017).

Rather than meaningfully address any of those problems with its statute or the decision below blessing it, New York surmises that maybe (but only maybe) they are not *quite* as offensive to federal supremacy as they appear, and maybe (but only maybe) there are *some* circumstances in which §898 would be preempted. That attempt at minimization is makeweight. Indeed, for all its talk about facial challenges, New York cannot escape the reality that, under the decision below, all a state needs to do to evade the PLCAA is codify a general tort duty in a statute that applies to the one and only industry the PLCAA protects. The decision below green-lights nullification of federal law and creates a circuit split. This Court should grant review.

I. The Decision Below Creates A Circuit Split.

Under the PLCAA, "a civil liability action" generally "may not be brought" "against a manufacturer or seller of [firearms and related products]" if it seeks "damages … or other relief, resulting from" "a third party['s]" "unlawful misuse of [such a] product." 15 U.S.C. §§7902(a), 7903(5)(A). Under the Act's so-called predicate exception, such suits may be brought if (but only if) they allege that the industry member "knowingly violated a State or Federal statute applicable to the sale or marketing of [a firearm or related product], and the violation was a proximate cause of the harm for which relief is sought." *Id.* §7903(5)(A)(iii). In *Ileto v. Glock*, the Ninth Circuit held that that narrow exception does not permit states to circumvent the PLCAA's core command simply by codifying "general tort theories of liability" (such as negligence and public nuisance) in statutes that apply to members of the firearms industry. 565 F.3d 1126, 1135-36 (9th Cir. 2009). Here, by contrast, the Second Circuit held that the predicate exception allows exactly that, empowering states to revive the same abusive tort theories that Congress enacted the PLCAA to stamp out through the simple expedient of codifying them in statutes that apply to commerce in arms. Pet.App.20; *see* Pet.18-22; AFE.Br.5-8.

The state tries to distinguish *Ileto*, arguing that the decision below is limited to statutes that "regulat[e] firearms exclusively (or at least explicitly)," which the statutes in *Ileto* did not. BIO.11. That is doubly wrong. First, the Second Circuit held that the predicate exception covers

"statutes (1) that expressly regulate firearms, (2) that courts have applied to the sale and marketing of firearms, and (3) that clearly can be said to implicate the sale and purchase of firearms." Pet.App.20. That reaches far more than just statutes that "exclusively" or "explicitly" regulate firearms—and it would easily reach the statutes in *Ileto*. To be sure, those statutes applied "generally," not to firearms in particular. BIO.13; *see also* BIO.11-12. But the Ninth Circuit had already held by the time of *Ileto* that they "applied to the sale and marketing of firearms," *see* Pet.19, so they fall within (at least) the second prong of the Second Circuit's test.

More to the point, as petitioners explained—and New York does not dispute—the fact that those statutes were generally applicable "had nothing to do with the Ninth Circuit's reasoning." Pet.21. The reason the Ninth Circuit held that California's nuisance and negligence statutes could not serve as predicate statutes was because it correctly recognized that it would defy "the text and purpose of the PLCAA" to hold that suits based on "general tort theories of liability" could evade the PLCAA's general bar on qualified civil liability actions just because those theories were codified in state statutes. *Ileto*, 565 F.3d at 1135-36. As the court explained, "although California has codified its common law, the evolution of those statutes is nevertheless subject to the same 'judicial evolution' as ordinary common-law claims." *Id.* at 1136. And "[t]hat 'judicial evolution' was precisely the target of the PLCAA." *Id.* (citing 15 U.S.C. §7901(a)(7)). Yet that same "judicial evolution" is precisely what the decision below allows states to usher back in.

New York fares no better with its effort to distinguish *District of Columbia v. Beretta U.S.A. Corp.*, 940 A.2d 163 (D.C. 2008). New York does not and cannot deny that the D.C. statute in that case "'appli[ed] to the sale or marketing of' a class of firearms" expressly and exclusively. *Id.* at 169. It instead tries to dismiss the D.C. case on the ground that it involved a "strict liability statute." BIO.13. But that distinction does not detract from the basic point: Like the Ninth Circuit in *Ileto*, the D.C. Court of Appeals held that it would flout "the purposes underlying the PLCAA" to read the predicate exception to allow claims premised on any and all statutes that apply to commerce in arms. 940 A.2d at 171. Yet that is precisely what the Second Circuit did here.

II. The Decision Below Defies Text, Context, And Common Sense, And It Green-Lights State Efforts To Nullify Federal Law.

In addition to breaking with decisions from other courts, the decision below makes it trivially easy for states to evade the PLCAA. New York does not seriously argue otherwise; nor could it when the Governor admitted that was the goal when he signed §898. Pet.30. Instead, the state tries to change the subject—or, at the very least, to buy its statute more time to be deployed in its avowed crusade to "right the wrong" that it believes the PLCAA represents.

The state leads off by invoking the presumption against preemption, in service of arguing that the predicate exception must be read capaciously (and the PLCAA's core command read narrowly) in the name of federalism. BIO.18. But far from aiding the state's

cause, that is a tell that something is seriously wrong with its position. After all, this Court "do[es] not invoke any presumption against pre-emption" when "the statute 'contains an express pre-emption clause.'" *Puerto Rico v. Franklin Cal. Tax-free Tr.*, 579 U.S. 115, 125 (2016) (quoting *Chamber of Com. v. Whiting*, 563 U.S. 582, 594 (2011)). And 15 U.S.C. §7902 does nothing *other* than expressly preempt state causes of action. It is little wonder, then, that court after court has rejected the notion that "the PLCAA's preemption clause" should be read narrowly and its exceptions read broadly. *Gustafson v. Springfield, Inc.*, 333 A.3d 651, 664 (Pa.), *cert. denied*, 146 S.Ct. 994 (2025); *accord, e.g.*, *Delana v. CED Sales, Inc.*, 486 S.W.3d 316, 323 (Mo. 2016) (en banc). New York's defense of the decision below thus walks directly into another split. That is not an auspicious start.

Things do not improve from there. The state has virtually nothing to say about the PLCAA's text, let alone how §898 could be reconciled with the predicate exception's careful illustration of the narrow types of laws Congress had in mind. *See* Pet.24-27. It instead makes the claim that §898 comfortably comports "with Congress's express findings and statement of purposes." BIO.18. That is fanciful. Congress did not mince words: In its view, the principal problem with the novel "theories" underlying pre-PLCAA suits—i.e., the theories §898 reinstates—was not that they were premised on the common law rather than a statute codifying it, but that using litigation to make heavily regulated industry participants pay for the harms caused by unrelated third parties is "an abuse of the legal system." 15 U.S.C. §7901(a)(6)-(7). That is why Congress went out of its way to state in the enacted

text that the principal "purpose[]" of the PLCAA is "[t]o prohibit causes of action against [firearms industry members] for the harm solely caused by the … unlawful misuse of firearm[s and related] products … by others when the product functioned as designed and intended." *Id.* §7901(b)(1). Congress did that, moreover, against a backdrop in which such abusive litigation had been brought both under the common law and pursuant to state statutes codifying—as *Ileto* illustrates. *See* Pet.20. Yet that is exactly what §898 authorizes.

The state tries to dodge that conclusion, insisting that §898 permits liability based only on "gun industry members' own conduct." BIO.19. But that is exactly the argument that plaintiffs made in all the litigation that Congress enacted the PLCAA to stamp out. States and municipalities were (at least for the most part) not trying to hold industry members strictly liable for any and all harms attributable to firearms. They were trying to concoct novel theories under which industry members' entirely lawful conduct could nonetheless be declared a public nuisance or the like—e.g., because the industry member purportedly sold too many firearms, or manufactured firearms that criminals prefer, or failed to prevent third parties from reselling their products to fourth-party criminals. *See* Montana.Br.6-8; Pet.6.

That is precisely what New York seeks to do through §898, forcing industry members to pay (millions and millions of dollars) to redress harms caused by unrelated third parties' "misuse of their products" anytime a court decides after the fact that an industry member lacked sufficiently "reasonable"

"'controls and procedures'" "to prevent misuse" of its products by third parties. BIO.19-20 (quoting N.Y. Gen. Bus. Law §898-b(2)). In doing so, §898 authorizes exactly what the PLCAA exists to prohibit: "civil action[s] … against a manufacturer or seller of a [firearm] product" seeking "damages, … abatement, … or other relief, resulting from the … unlawful misuse of a [firearm] product by … a third party." 15 U.S.C. §7903(5)(A). Judge Jacobs thus hit the nail squarely on the head: Section 898 "is nothing short of an attempt to end-run PLCAA"—an end-run that is now perfectly valid under "[Second] Circuit precedent." Pet.App.36, 40 (Jacobs, J., concurring).

The state next argues that the fact that §898 does not "expressly incorporate[] the predicate exception's *mens rea* and causation requirements" does not itself suffice to render it preempted. BIO.19. That misses the point. The lack of those requirements in §898 is symptomatic of the larger problem. The predicate exception requires proof of knowing violations and proximate cause for a reason: to ensure that states cannot subject firearms industry members to crippling liability just by convincing a court that they could have done something more to counteract the scourge of criminal activity with guns. That is why, under the PLCAA as properly construed, "[a] predicate statute … must bear upon firearms more specifically than by mere reference, must give notice of its requirements sufficient to allow compliance with confidence." Pet.App.40 (Jacobs, J., concurring). The general common-law duties of care that §898 codifies are fundamentally inconsistent with that command. Indeed, that is the point: The admitted goal of §898 is to "reinstate the public nuisance liability for gun

manufacturers" that the PLCAA forbids states from imposing. Pet.30 (quoting Governor Cuomo).

With nowhere else to turn, New York puts all its eggs in the "facial challenge" basket, suggesting that the decision below is not quite as problematic as it appears because it leaves open the possibility that some applications of §898 may be "unconstitutional." *See* BIO.2, 17, 19. But the decision below takes off the table the single most important cross-cutting issue—i.e., whether §898 itself qualifies as a predicate statute. The core problem with §898 is that it expressly authorizes the imposition of liability on a firearm industry member to abate "a condition in New York state that endangers the safety or health of the public"—e.g., the generalized ills resulting from violence committed with firearms—even if the industry member did not do anything "unlawful in itself." N.Y. Gen. Bus. Law §898-b(1). In other words, it permits liability even when industry members have complied with every single statutory and regulatory obligation or prohibition on the federal, state, and local books. *That* is what makes it so antithetical to the PLCAA—yet the Second Circuit nonetheless held that it qualifies as a predicate statute under the PLCAA, full stop. The state thus elides the fact that it actually *secured* what is effectively a facial ruling (and a wrong one, at that) on the single most critical question that §898 raises.

At bottom, the notion that the Protection of Lawful Commerce in Arms Act allows states to impose bankruptcy-inducing liability for lawful commerce in arms "sounds absurd, because it is." *Sekhar v. United States*, 570 U.S. 729, 738 (2013). Congress did not

enact a self-defeating statute. This Court should grant certiorari and make that clear.

III. The Question Presented Is Exceptionally Important, And Time Is Of The Essence.

New York does not deny the importance of the issue this case presents. Nor could it. At its core, the question presented is whether states are free to thumb their noses at Congress just because they do not like its handiwork. It is unfortunate that this Court needs to step in to answer that question, but that does not make the need for course correction any less acute.

The state's vehicle objections do not move the needle. New York does not deny that the decision below resolved a pure question of law—whether statutes that merely codify general tort theories qualify as predicate statutes for purposes of 15 U.S.C. §7903(5)(A)(iii) if they apply to commerce in arms. And, despite its best efforts, New York cannot obscure the fact that the Second Circuit answered that purely legal question in a way that conflicts with decisions of other courts and Congress' codified findings and purposes. So New York returns to its favorite refrain, asserting that this is an unsuitable vehicle because the Second Circuit treated petitioners' challenge as "facial" only. BIO.14-16. But as just explained, the problem with §898 *is* facial: The statute on its face does not qualify as a predicate statute, so it can serve as one in any of applications. Moreover, New York does not dispute that the facial-challenge issue "matters only to what relief would be appropriate if this Court were to" accept petitioners' reading of the

PLCAA's predicate exception and remand. Pet.34.[1] It thus is no obstacle to resolving that statutory interpretation question.

As a last-ditch effort, New York makes a plea for patience, arguing that the Court should wait for a case in which a state or local government has succeeded in making a member of the firearms industry pay to redress the cost of unrelated criminals' misconduct even if the industry member did nothing unlawful in itself. BIO.16-17. But as this Court recently recognized, the PLCAA confers a substantive "immunity" from "qualified civil liability actions" altogether. *Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos*, 605 U.S. 280, 299 (2025). The whole point of §898 is to vitiate that immunity. Asking this Court to allow New York (and the 10 other states that have also reinstated the same abusive tort theories Congress enacted the PLCAA to prohibit) to vitiate that immunity over and over and over again until a party has the tenacity to litigate one of these cases to (an inevitably massive) final judgment is thus an explicit request to allow states to openly defy federal supremacy. There is no reason to allow this germ to fester anew. Quite the opposite; "delay would defeat the [PLCAA's] purpose." NRA.Br.27-28.

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[1] For example, if the state wants to preserve the ability to try to use §898 as a cause of action in cases where it alleges that the defendant knowingly violated something *other than* §898 (i.e., it identifies some other statute to serve as the predicate), perhaps the district court could carve out those cases. But whether that kind of carve-out would be appropriate has no bearing on whether §898 *itself* can serve as a predicate statute.

And that is not the worst of it. One does not need a crystal ball to know how this story will unfold absent this Court's intervention. All one needs is a page of history. 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*, 605 U.S. at 298. It acted swiftly and decisively because "it only takes one lawsuit in one State to bankrupt the entire industry." 151 Cong. Rec. 18059 (2005) (statement of Sen. Coburn). And not just any industry—an industry that is necessary to exercise of the fundamental "right of the people to keep and bear Arms." *See* U.S. Const. amend. II. Denying review here would send a clear signal that it once again open season on the Second Amendment.

This Court need not take petitioners' (or Judge Jacobs', or industry groups') word for it. Take it from scores of Congressmen and Congresswomen: "[T]he 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].'" Cruz.Br.17 (alteration in original) (quoting 15 U.S.C. §7901(b)(1)). That is not a state of affairs this Court should tolerate.

CONCLUSION

The Court should grant certiorari.

Respectfully submitted,

PAUL D. CLEMENT
ERIN E. MURPHY
Counsel of Record
MATTHEW D. ROWEN
NICHOLAS A. AQUART
CLEMENT & MURPHY, PLLC
706 Duke Street
Alexandria, VA 22314
(202) 742-8900
erin.murphy@clementmurphy.com
Counsel for Petitioners

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