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,
Respondent.

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

BRIEF OF THE NATIONAL RIFLE ASSOCIATION OF AMERICA, SECOND AMENDMENT FOUNDATION, AMERICAN SUPPRESSOR ASSOCIATION, AND INDEPENDENCE INSTITUTE AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

DAVID B. KOPEL
INDEPENDENCE INSTITUTE
727 E. 16th Ave.
Denver, CO 80203
(303) 279-6536
david@i2i.org

JOSEPH G.S. GREENLEE
Counsel of Record
NRA – INSTITUTE FOR LEGISLATIVE ACTION
11250 Waples Mill Rd.
Fairfax, VA 22030
(703) 267-1161
jgreenlee@nrahq.org

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INTEREST OF *AMICI CURIAE*[1]

The National Rifle Association of America (NRA) is America's oldest civil rights organization and foremost defender of Second Amendment rights. It was founded in 1871 by Union veterans—a general and a colonel—who, based on their Civil War experiences, sought to promote firearms marksmanship and expertise amongst the citizenry. Today, the NRA is America's leading provider of firearms marksmanship and safety training for both civilians and law enforcement. The NRA has approximately four million members, and its programs reach millions more.

The Second Amendment Foundation (SAF) is a nonprofit membership organization founded in 1974 with over 720,000 members and supporters in every state of the Union. Its purposes include education, research, publishing, and legal action focusing on the constitutional right to keep and bear arms.

The American Suppressor Association (ASA) is a 501(c)(6) nonprofit dedicated to advancing pro-suppressor reform nationwide. Founded in 2011, ASA has lobbied for suppressor rights in dozens of states, was instrumental in legalizing suppressors in Iowa, Minnesota, Vermont, and Guam, and helped legalize suppressors for hunting in 19 states. It also played a pivotal role in eliminating the transfer tax on suppressors, short-barreled firearms, and NFA-

[1] Counsel for all parties received timely notice of *Amici*'s intent to file this brief. No counsel for any party authored this brief in any part. Only *Amici* funded its preparation and submission.

defined "any other weapons" in the One Big Beautiful Bill Act.

Founded in 1985 on the eternal truths of the Declaration of Independence, the Independence Institute is a 501(c)(3) public policy research organization based in Denver, Colorado. The briefs and scholarship of Research Director David Kopel have been cited in seven opinions of this Court, including *Bruen*, *McDonald* (under the name of lead *amicus* Int'l Law Enforcement Educators & Trainers Association (ILEETA)), and *Heller* (same). Kopel has also been cited in 140 opinions of lower courts.

Amici are interested in this case because the decision below will enable abusive litigation that devastates the firearms industry—and consequently the right to keep and bear arms.

SUMMARY OF ARGUMENT

Suppressing commerce in arms has long been a means of disarming Americans. The Founding generation resisted such efforts through revolution; Congress responded to the modern equivalent by enacting the Protection of Lawful Commerce in Arms Act (PLCAA).

In the years preceding the Revolutionary War, the British attempted to prevent Americans from acquiring arms by restricting their manufacture, sale, and importation. Colonists correctly understood these measures as a deliberate effort to render them defenseless and subject to arbitrary power, and resisted them accordingly.

In recent decades, that strategy reemerged in a different form. Unable to secure desired legislative restrictions, anti-gun lobbies and governments brought coordinated lawsuits designed to impose crippling liability on firearms manufacturers and sellers for the criminal acts of third parties. These suits did not seek to remedy traditional legal wrongs, but rather to regulate and ultimately eliminate the firearms industry through costly litigation.

Congress enacted PLCAA to halt these schemes. The statute reflects Congress's considered judgment that federal legislation was required to protect lawful commerce, the firearms industry, constitutional rights, the separation of powers, and national security from abusive litigation.

The decision below disregards that judgment and allows states to nullify PLCAA by repackaging prohibited claims under novel state-law theories—

permitting precisely the end-run around federal law that Congress sought to foreclose. By allowing claims styled as "public nuisance" to proceed—despite targeting lawful commerce and seeking to impose liability for third-party misuse—it invites a revival of the very litigation campaign PLCAA was enacted to preclude.

This case warrants immediate review. The issue presented has already been addressed by Congress and will not benefit from further percolation. Delay would invite a proliferation of suits capable of inflicting irreparable harm on a lawful industry and the constitutional rights it supports. The petition should be granted.

ARGUMENT

Efforts to disarm the American people have often focused not on confiscating weapons already in private hands, but on suppressing the commerce that makes firearms available in the first place.

On the eve of the American Revolution, the British government sought to prevent Americans from purchasing and importing arms and ammunition. Colonists correctly understood these measures as a plan to render them defenseless and subject to arbitrary power. They resisted accordingly and ensured that their new government could not disarm them through similar means.

Modern litigation campaigns targeting firearms manufacturers and dealers employ a similar strategy—to choke off the lawful market in arms to diminish firearms ownership. Congress enacted the Protection of Lawful Commerce in Arms Act ("PLCAA") to halt those schemes. But New York's law invites a revival of the very litigation campaign PLCAA was enacted to preclude.

I. British efforts to suppress arms commerce precipitated the Revolutionary War.

Arms commerce in America was a protected right from the beginning. Binding his "Heirs and Successors," King James I in 1606 granted the "Southern Colony" (today's Virginia and the entire South) the perpetual right to import from Great Britain, "the Goods, Chattels, Armour, Munition, and Furniture, needful to be used by them, for their said

Apparel, Food, Defence or otherwise." 7 FEDERAL AND STATE CONSTITUTIONS, COLONIAL CHARTERS, AND OTHER ORGANIC LAWS OF THE STATES, TERRITORIES, AND COLONIES 3787–88 (Francis Thorpe ed., 1909).[2] The 1620 Charter of New England (originally the entire North) similarly guaranteed the right "att all and every time and times hereafter, out of our Realmes or Dominions whatsoever, to take, load, carry, and transports in … Shipping, Armour, Weapons, Ordinances, Munition, Powder, Shott, Victuals … and all other Things necessary for the said Plantation, and for their Use and Defense, and for Trade with the People there." 3 *id.* at 1834–35.

Over the next 150 years, Americans freely engaged in arms commerce. *See, e.g.*, Joseph Greenlee, *The American Tradition of Self-Made Arms*, 54 ST. MARY'S L.J. 35, 45–48 (2023). "Gunsmiths were found nearly everywhere: in port towns along the coast, in settled inland areas, and … on the frontier." Harold Gill, THE GUNSMITH IN COLONIAL VIRGINIA 1 (1974). This tradition came to an abrupt halt, however, when the British attempted to disarm America by forbidding arms commerce, which led to the Revolutionary War.

A. Great Britain prevented domestic arms commerce.

In 1774, Massachusetts royal governor Thomas Gage attempted to disarm the colonists by blocking gunpowder commerce. In colonial towns, large quantities of gunpowder were stored in central

[2] "Armour" included all equipment for fighting, including firearms. *District of Columbia v. Heller*, 554 U.S. 570, 581 (2008).

"powder houses" or "magazines." Unlike modern smokeless gunpowder, the black powder of the 18th century was volatile, so merchants' and government reserves were often stored in reinforced brick buildings. Boston merchant John Andrews wrote on July 22 that "the Governor has order'd the Keeper of the Province's Magazine not to deliver a kernel of powder (without his express order) of either public or private property[.]" John Andrews, LETTERS OF JOHN ANDREWS, ESQ., OF BOSTON, 1772–1776, at 19 (Winthrop Sargent ed., 1866) (July 22, 1774). On September 2, Andrews reported, "A Guard of Soldiers is set upon the Powder house at the back of ye. Common, so that people are debar'd from selling their own property." *Id.* at 39. Andrews noted, "it's now five or six weeks since the Governor has allow'd any [powder] to be taken out of the magazine here, whereby for some weeks there has not been a pound to be sold or bought in town." *Id.* at 52.

Even more provocatively, on September 1, 1774, Gage "sent a Party of Two hundred men" to the Charlestown powder house. John Rowe, LETTERS AND DIARY OF JOHN ROWE 283–84 (Anne Cunningham ed., 1903). They seized "two hundred and fifty half barrels of powder, the whole store there." Unsigned report, Sept. 5, 1774, *in* 1 AMERICAN ARCHIVES 762 (4th Ser., Peter Force ed., 1837).

Rumors that the British had shot colonists while confiscating the gunpowder set off the "Powder Alarm" throughout New England. The colonists "began to collect in large bodies, with their arms, provisions, and ammunition, determining by some means to give a check to a power which so openly

threatened their destruction, and in such a clandestine manner rob them of the means of their defence." *Id.* Andrews reported that "at least a hundred thousand men were equipt with arms, and moving towards us from different parts of the country." Andrews, LETTERS, at 52. A patriot in Litchfield, Connecticut, wrote:

> all along were armed men rushing forward, some on foot, some on horseback; at every house women and children making cartridges, running bullets, making wallets, baking biscuit, crying and bemoaning, and at the same time animating their husbands and sons to fight for their liberties tho not knowing whether they should ever see them again.

Charles Clark, *The 18th Century Diary of Ezra Stiles*, 208 N. AM. REV. 410, 419 (Sept. 1918). Once word spread that the British had not shot anyone, the assembled militias dispersed and returned to their homes.

In November, General Gage wrote his superior in London, explaining his "order to the Storekeeper not to deliver out any Powder from the Magazine, where the Merchants deposite it, which I judged a very necessary and prudent measure in the present circumstances, as well as removing the Ammunition from the Provincial Arsenal at Cambridge." Letter from Thomas Gage to Earl of Dartmouth (Nov. 2, 1774), *in* 1 AMERICAN ARCHIVES, at 951.

B. Great Britain banned the import of arms.

King George's government already favored the same policy. On October 19, 1774, King George issued an order-in-council prohibiting the importation of arms and ammunition into America. 5 ACTS OF THE PRIVY COUNCIL OF ENGLAND, COLONIAL SERIES, A.D. 1766–1783, at 401 (James Munro & Almeric Fitzroy eds., 1912). Secretary of State Lord Dartmouth sent a letter that day "to the Governors in America," announcing "His Majesty's Command that [the governors] do take the most effectual measures for arresting, detaining and securing any Gunpowder, or any sort of arms or ammunition, which may be attempted to be imported into the Province under your Government." Letter from Earl of Dartmouth to the Governors in America (Oct. 19, 1774), *in* 8 DOCUMENTS RELATIVE TO THE COLONIAL HISTORY OF THE STATE OF NEW YORK 509 (1857). The embargo proclamation was initially for six months, but was "repeatedly renewed, remaining in effect until the Anglo-American peace treaty in 1783." David Kopel, *How the British Gun Control Program Precipitated the American Revolution*, 6 CHARLESTON L. REV. 283, 297 (2012).

The king's "proclamation, it is said, was occasioned by intelligence received from Sheffield and Birmingham of amazing quantities of fire arms, &c. being nearly ready to be sent to America." CONNECTICUT JOURNAL, Dec. 28, 1774, at 1.

The embargo was swiftly enforced. In October 1774, an armed British cutter near Amsterdam blockaded a Rhode Island vessel that "had been sent expressly to load different sorts of firearms, and had

already taken on board forty small pieces of cannon." Daniel Miller, SIR JOSEPH YORKE AND ANGLO-DUTCH RELATIONS 1774–1780, at 39 (1970). Then, "Two vessels, laden with gun-powder and other military utensils, bound for the other side of the Atlantick, were stopped at Gravesend … by the out clearers, in consequence of the King's proclamation." PA. GAZETTE, Dec. 21, 1774, at 2.

The British deployed "several capital ships of war, and six cutters" in the Atlantic "to obstruct the American trade, and prevent all European goods from going there, particularly arms and ammunition." 1 Frank Moore, DIARY OF THE AMERICAN REVOLUTION 61 (1860) (entry of Apr. 4, 1775). A December 26, 1774, letter from Bristol, England, observed "several frigates to be fitted out immediately to sail for America, to be stationed there in order to cruise along the coasts, to prevent any ammunition or arms being sent to the Americans by any foreign power." Stephen Halbrook, THE FOUNDERS' SECOND AMENDMENT: ORIGINS OF THE RIGHT TO KEEP AND BEAR ARMS 64 (2008); *see also* PROVIDENCE GAZETTE, Jan. 14, 1775, *reprinted in* 1 NAVAL DOCUMENTS OF THE AMERICAN REVOLUTION 62 (William Bell Clark ed., 1964) ("Orders have been given for the seizing every Ship, of what Nation soever, employed in conveying Arms or Ammunition to the Americans.").

Additionally, "[s]tocks of powder and arms in the possession of merchants were forcibly purchased by the Crown." David Hackett Fischer, PAUL REVERE'S RIDE 50 (1994).

C. Americans viewed arms commerce restrictions as an effort to enslave them.

Defying a ban on public meetings, residents of Suffolk County (including Boston) convened in September 1774 and adopted the Suffolk Resolves. The Resolves expressed that General Gage's "hostile intention" was demonstrated when "in a very extraordinary manner" he confiscated the Charlestown powder, and forbade "the keeper of the magazine at Boston to deliver out to the owners the powder which they had lodged in said magazine." THE JOURNALS OF EACH PROVINCIAL CONGRESS OF MASSACHUSETTS IN 1774 AND 1775 AND OF THE COMMITTEE OF SAFETY 603 (William Lincoln ed., 1838).

The Suffolk Resolves "were sent express to [the Continental] Congress by Paul Revere," and the Congress unanimously denounced "these wicked ministerial measures." 1 JOURNALS OF THE CONTINENTAL CONGRESS 39 & 39 n.1 (1904). The Suffolk Resolves were reprinted verbatim in the Journals of the Continental Congress, and the Congress had the Resolves disseminated in newspapers throughout America. *Id.* at 40. The Massachusetts Provincial Congress—also meeting in defiance of Gage—twice condemned him for "unlawfully seizing and retaining large quantities of ammunition." JOURNALS OF EACH PROVINCIAL CONGRESS, at 31 (Oct. 25, 1774), 47 (Oct. 29, 1774).

"A Watchman," writing in the *New Hampshire Gazette*, called the arms embargo a violation of the right to self-defense. A Watchman, *To the Inhabitants of British America* (Dec. 24, 1774), *in* 1 AMERICAN

ARCHIVES, at 1063–65. He asserted, "when we are by an arbitrary decree prohibited the having Arms and Ammunition by importation … the law of self-preservation" includes "a right to seize upon those within our power, in order to defend the liberties which God and nature have given to us." *Id.* at 1065. A Watchman reminded readers that the Carthaginians' "surrender of Arms" to the Romans "proved the destruction of that City." *Id.* at 1064.

After a British seizure of imported arms in New York, a handbill "secretly conveyed into almost every house in town" asked, "when Slavery is clanking her infernal chains, … will you supinely fold your arms, and calmly see your weapons of defence torn from you?" 1 AMERICAN ARCHIVES, at 1071.

South Carolina's legislature, now operating independently of British control as the General Committee, declared: "by the late prohibition of exporting arms and ammunition from England, it too clearly appears a design of disarming the people of America, in order the more speedily to dragoon and enslave them." 1 John Drayton, MEMOIRS OF THE AMERICAN REVOLUTION 166 (1821).

D. Americans used force to thwart the restrictions.

Americans emptied their own powder houses before the British could. For example, Abigail Adams wrote on September 17, 1774, that about 200 patriots had seized gunpowder from the powder house in Braintree, Massachusetts, "in consequence of the powders being taken from Charlstown." THE BOOK OF ABIGAIL & JOHN: SELECTED LETTERS OF THE ADAMS

FAMILY 1762–1784, at 72 (L.H. Butterfield et al. eds., 2002). Knowing Mrs. Adams to be a patriot, the men offered her gunpowder on their way past the Adams farm. *Id.*

Americans also recaptured arms the British had confiscated. After learning that a New Hampshire fort contained seized arms, around 400 patriots "attacked, overpowered, wounded and confined the captain, and thence took away all the King's powder." Letter from Gov. Wentworth to Gov. Gage (Dec. 14, 1774), *in* 18 PARLIAMENTARY HISTORY OF ENGLAND, FROM THE EARLIEST PERIOD TO THE YEAR 1803, at 146–47 (1813). The patriots captured "upwards of 100 barrels of powder, 1500 stand of small arms, and several pieces of light cannon." Letter from Hugh Percy to Grey Cooper, *in* LETTERS OF HUGH EARL PERCY FROM BOSTON AND NEW YORK, 1774–1776, at 46 (Charles Bolton ed., 1902).

New Hampshire's royal governor, John Wentworth, understood that "this mischief originates from the … order … prohibiting the exportation of military stores from Great Britain." Letter from Wentworth to Gage, at 146. He bemoaned "the imbecility of this government to carry into execution his Majesty's order in council, for seizing and detaining arms and ammunition imported into this province, without some strong ship in this harbour." *Id.* at 145.

Similarly, "[i]n May, 1775, the 'Liberty Boys' in Savannah, Georgia, seized 600 pounds [of gunpowder] stored in the magazine of that town, and, July 10, one of the king's ships was boarded and something like 12,700 pounds were carried away." O.W. Stephenson,

The Supply of Gunpowder in 1776, 30 AM. HIST. REV. 271, 272 (1925).

E. Americans smuggled arms imports.

The Continental Congress established secret committees and agents to procure arms from overseas. Miller, YORKE AND ANGLO-DUTCH RELATIONS, at 42–43. Benjamin Franklin masterminded smuggling arms from the Spanish, French, and Dutch. Robert Richmond, POWDER ALARM 95 (1971). The Continental Congress's agents "made contracts which totaled about $2,000,000.00." Miller, YORKE AND ANGLO-DUTCH RELATIONS, at 43. "From May to June alone, in 1775, the Pennsylvania Committee spent £20,300 (plus £4,000 for freight) to procure arms, ammunition, and medicine from Europe[.]" David Salay, *The Production of Gunpowder in Pennsylvania During the American Revolution*, 99 PENN. MAG. HIST. & BIOGRAPHY 422, 423 (Oct. 1975).

The *Virginia Gazette* in April 1775 published a report from London that "six large ships sailed lately, three from Holland, and the rest from France, with arms, ammunition, and other implements of war, for our colonies, and more are absolutely preparing for the same place." VA. GAZETTE, Apr. 22, 1775, at 1. In May 1776, "eighteen Dutch ships … left Amsterdam … with powder and ammunition for America," in addition to "powder shipments disguised as tea chests, rice barrels, *et cetera*." Miller, YORKE AND ANGLO-DUTCH RELATIONS, at 41. The French covertly increased gunpowder exports to America in the face of the British blockade. *See* Stephenson, *The Supply of Gunpowder*, at 279–80.

F. Americans encouraged domestic arms manufacture and commerce.

Besides stepping up imports, Americans encouraged domestic production and commerce in arms and ammunition. Paul Revere, in August 1774, "engraved a plate diagramming how to refine saltpeter, an essential component in the making of gunpowder," and had his instructions published in the *Royal American Magazine*. Halbrook, FOUNDERS' SECOND AMENDMENT, at 33. "Saltpeter recipes … appeared in American newspapers and pamphlets[.]" Rick Atkinson, THE BRITISH ARE COMING 127–28 (2019). Pennsylvania's Committee of Safety initiated a program to "instruct the inhabitants of the different Counties in the manufactory of Salt Petre"; the Committee's handbills were "printed & distributed in the English & German Languages, setting forth the process for extracting and refining Salt Petre." Report of the Pennsylvania Committee of Safety (Jan. 3, 1776), *in* 10 MINUTES OF THE PROVINCIAL CONGRESS OF PENNSYLVANIA, FROM THE ORGANIZATION TO THE TERMINATION OF THE PROPRIETARY GOVERNMENT 443 (1852). "A number of [Pennsylvania] counties responded by establishing model works and providing demonstrations." Salay, *The Production of Gunpowder*, at 427. And on March 14, 1776, New York's Provincial Congress printed 3,000 copies of Henry Wisner's forty-page *Essays Upon the Making of Salt-Petre and GunPowder*. NEW YORK IN THE REVOLUTION AS COLONY AND STATE SUPPLEMENT 58 (Frederic Mather ed., 1901); *see also* CATALOGUE OF MANUSCRIPTS AND RELICS IN WASHINGTON'S HEAD-QUARTERS, NEWBURGH, N.Y. 55 (E.M. Ruttenber ed.,

1890) (listing "Essays upon the making of Salt-Petre and Gun-Powder Published by order of the Committee of Safety of the Colony of New York" among the literature present in Washington's headquarters). "Printing presses throughout the colonies worked overtime, making and distributing broadsides and pamphlets with explicit instructions for manufacturing gunpowder and locating and preparing the ingredients." M.L. Brown, FIREARMS IN COLONIAL AMERICA 301 (1980).

The patriot governments likewise encouraged domestic production and sale of firearms. Connecticut's General Assembly, Maryland's Council of Safety, Massachusetts's House of Representatives, Massachusetts's Provincial Congress, New Hampshire's House of Representatives, New York's Provincial Congress, North Carolina's Provincial Congress, Pennsylvania's Committee of Safety, and South Carolina's Provincial Congress all solicited arms manufactured and sold by private citizens throughout the war, guaranteeing money and often militia exemptions for anyone willing to provide them arms. Greenlee, *American Tradition of Self-Made Arms*, at 54–61. As British Lieutenant Frederick MacKenzie recorded in his diary: "Arms of all kinds are so much sought after by the Country people, that they use every means of procuring them." Frederick MacKenzie, A BRITISH FUSILIER IN REVOLUTIONARY BOSTON: DIARY OF LIEUTENANT FREDERICK MACKENZIE, at 39–40 (Allen French ed., 1926).

Of the roughly 300,000 long guns used by American line troops in the Revolutionary War, America's gunsmiths manufactured over 80,000,

often by repairing and combining mixed parts from damaged firearms. *See* George Neumann, *American Made Muskets in the Revolutionary War*, AM. RIFLEMAN, Mar. 29, 2010.[3]

The Revolutionary War had almost begun with the erroneous September 1774 Powder Alarm reports that Governor Gage's redcoats had shot people when seizing gunpowder. And the "War almost began in Virginia in April 1775 when Governor Dunmore ordered the Royal Marines to remove the colony gunpowder supply from the magazine" in Williamsburg. Brown, FIREARMS IN COLONIAL AMERICA, at 298. Upon learning of the nonviolent seizure, the Virginia militia assembled to fight, but Governor Dunmore "placated the irate populace by making immediate restitution for the powder." *Id.*

The War did begin on April 19, 1775, at Lexington and Concord, Massachusetts, when Governor Gage, ruling Boston under martial law, dispatched his army to Concord to "seize and destroy all artillery, ammunition, provisions, tents, small arms, and all military stores whatever." Letter from Gov. Gage to Lieut. Col. Smith (Apr. 18, 1775), *in* Arthur Tourtellot, LEXINGTON AND CONCORD: THE BEGINNING OF THE WAR OF THE AMERICAN REVOLUTION 103 (1959). This time, the Americans were forewarned and forearmed.

At the Lexington Green and the Concord Bridge, the British demonstrated that they were willing to

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[3] https://www.americanrifleman.org/content/american-made-muskets-in-the-revolutionary-war/ (last visited Mar. 25, 2026).

kill Americans to take their arms. Coercive disarmament initiated the war. *See* Kopel, *How the British Gun Control Program Precipitated the American Revolution*, at 308–12.

During the War, both sides agreed that the suppression of arms commerce and the disarmament of the Americans was the *sine qua non* of what the Americans called the British plan to "enslave" them. *See* Greenlee, *American Tradition of Self-Made Arms*, at 48–62.

To the Americans, being "enslaved" included being under the absolute will of another, as they would be if they could not defend themselves. Instead of saying "enslave," the British called their objective "due subordination," but it meant the same thing. It depended on terminating arms commerce in the colonies. A 1777 British plan for what to do with America after winning the war urged:

> The Militia Laws should be repealed and none suffered to be re-enacted, [and] the Arms of all the People should be taken away … nor should any Foundery or manufactuary of Arms, Gunpowder, or Warlike Stores, be ever suffered in America, nor should any Gunpowder, Lead, Arms or Ordnance be imported into it without Licence.

William Knox, *Considerations on the Great Question, What Is Fit to be Done with America* (1777), *in* 1 SOURCES OF AMERICAN INDEPENDENCE: MANUSCRIPTS FROM THE COLLECTIONS OF THE WILLIAM L. CLEMENTS LIBRARY 176 (Howard Peckham ed., 1978).

The Bill of Rights protects against abuses that the Founders never suffered and could not foresee, such as warrantless thermal imaging of homes. *See*, *e.g.*, *Kyllo v. United* States, 533 U.S. 27 (2001). The Bill of Rights also protects against the abuses the Founders *did* suffer—including obstructions to firearms commerce. As Thomas Jefferson, when serving as America's first Secretary of State, wrote to the British Ambassador: "Our citizens have always been free to make, vend, and export arms. It is the constant occupation and livelihood of some of them." Letter from Thomas Jefferson to George Hammond (May 15, 1793), *in* 7 THE WRITINGS OF THOMAS JEFFERSON 326 (Paul Ford ed., 1904).

The Founding generation thus understood that suppressing arms commerce was a means of disarmament. That same strategy has reemerged in modern form—not through royal decrees, but through coordinated litigation designed to achieve indirectly restrictions on firearms possession that could not be imposed directly.

II. Abusive litigation targeting arms commerce precipitated PLCAA.

The strategy of suppressing arms commerce as a means of disarmament did not end with the Revolutionary War. In the late twentieth century, it reemerged through coordinated litigation campaigns designed to seize control of—and ultimately eliminate—the firearms industry. Congress enacted PLCAA to prohibit such an effort.

A. Coordinated, meritless litigation against firearms manufacturers threatened to bankrupt the industry.

Frustrated by insufficient progress in legislatures, gun control advocates in the 1980s brought product liability suits against firearms manufacturers and retailers. *See* David Kopel & Richard Gardiner, *The Sullivan Principles: Protecting the Second Amendment from Civil Abuse*, 19 SETON HALL LEGIS. J. 737, 750 n.43 (1995) (listing 26 cases from 1983 to 1990, plus one from 1973). The cases involved many novel theories. For example, guns well-suited for self-defense were said to be "defective" because criminals also used them. The mere manufacture of a handgun was alleged to be "ultrahazardous activity" like blasting with dynamite. As one court observed, "the plaintiff's attorneys simply want[ed] to eliminate handguns." *Patterson v. Rohm Gesellschaft*, 608 F. Supp. 1206, 1212 (N.D. Tex. 1985). Although plaintiffs prevailed only once,[4] every case generated attorney fees and a threat of financial doom for the manufacturers and retailers.

In the 1990s, suits against firearms businesses were based on even more inventive grounds: public nuisance, recovery of government medical expenses for crime victims, unfair trade practices, deceptive advertising, and so on. Starting in 1998, a coordinated series of such lawsuits was filed by dozens of local governments. Secretary of Housing and Urban

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[4] *Kelley v. R.G. Indus., Inc.*, 304 Md. 124 (1985). The novel legal theory was later overturned by statute. 1988 Md. Laws 3489–90.

Development Andrew Cuomo organized federally funded housing authorities to bring additional suits. *The HUD Gun Suit*, WASH. POST, Dec. 17, 1999. Filed in as many jurisdictions as possible and designed to resist consolidation, these suits were organized to destroy, even if they could never win a verdict. Secretary Cuomo thus threatened manufacturers with "death by a thousand cuts." Walter Olson, *Plaintiffs Lawyers Take Aim at Democracy*, WALL ST. J., Mar. 21, 2000.

The lawsuits aimed to bankrupt firearms manufacturers. Bridgeport, Connecticut, mayor Joseph Ganim described his lawsuit as "creating law with litigation." Fred Musante, *After Tobacco, Handgun Lawsuits*, N.Y. TIMES, Jan. 31, 1999.[5] "The Bridgeport suit named 12 American firearms manufacturers, three handgun trade associations, and a dozen southwestern Connecticut gun dealers, and asked for damages in excess of $100 million." *Id.* (quotation marks omitted).

"If twenty cities" bring such suits, a reporter noted, "defending against them, according to some estimates, could cost the gun manufacturers as much as a million dollars a day." Peter Boyer, *Big Guns*, NEW YORKER, May 17, 1999.[6] Plaintiffs' attorney John Coale thus aimed for "critical mass … where the costs alone of defending these suits are going to eat up the gun companies." Fox Butterfield, *Lawsuits Lead Gun*

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[5] https://www.nytimes.com/1999/01/31/nyregion/after-tobacco-handgun-lawsuits.html.

[6] https://www.newyorker.com/magazine/1999/05/17/big-guns.

Maker To File for Bankruptcy, N.Y. TIMES, June 24, 1999.[7] The plaintiffs did not need to win their cases to accomplish their goals, because as Coale boasted, "the legal fees alone are enough to bankrupt the industry[.]" Sharon Walsh, *Gun Industry Views Pact as Threat to Its Unity*, WASH. POST, Mar. 18, 2000.[8]

Some manufacturers indeed went bankrupt, including Sundance Industries, Lorcin Engineering, and Davis Industries. Paul Barrett, *Lawsuits Trigger Gun Firms' Bankruptcy*, WALL ST. J., Sept. 13, 1999. Davis Industries was "one of the 10 largest makers of handguns." Butterfield, *supra*.

The most venerable manufacturers were driven to the brink. Colt's Manufacturing Company stopped producing handguns for the public. Facing "28 lawsuits from cities and counties hoping to punish gun makers…. the company could no longer get loans to finance manufacturing because the lawsuits 'could be worth zero, or a trillion dollars.'" Mike Allen, *Colt's to Curtail Sale of Handguns*, N.Y. TIMES, Oct. 11, 1999.[9]

Then-owned by a British conglomerate, Smith & Wesson (S&W) was ordered to accept Cuomo's demands in exchange for immunity from some of the

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[7] https://www.nytimes.com/1999/06/24/us/lawsuits-lead-gun-maker-to-file-for-bankruptcy.html#:~:text="If%20New%20York%20comes%20into,other%20cities%20that%20have%20sued.

[8] https://www.washingtonpost.com/archive/politics/2000/03/18/gun-industry-views-pact-as-threat-to-its-unity/b18b920f-afdf-44d1-a252-68b12863a032/.

[9] https://www.nytimes.com/1999/10/11/nyregion/colt-s-to-curtail-sale-of-handguns.html.

litigation. *See Agreement Between Smith & Wesson and the Departments of the Treasury and Housing and Urban Development, Local Governments and States*, U.S. DEPARTMENT OF HOUSING AND DEVELOPMENT, archived Dec. 13, 2009 (summary).[10] S&W was ordered to "not sell large capacity magazines or semiautomatic assault weapons," restrict "[m]ultiple handgun sales," add "[s]econd 'hidden' serial numbers" on handguns, impose extra restrictions to prevent "straw purchasers," and develop "Smart Gun" technology. *Id.* Additionally, the company's practices would be perpetually controlled by a five-member Oversight Commission. *Id.* The cities, counties, and states that joined the litigation would select three members, while those that had declined to sue were excluded. The ATF would select one member, leaving gun manufacturers with only one member of their own. *Id.*; Walter Olson, THE RULE OF LAWYERS 125–26 (2003). In effect, corporate control would be removed from the stockholders and given to the new gun control committee.

"Smith & Wesson made it clear … that the company was driven to the agreement by the lawsuits. The settlement would ensure 'the viability of Smith & Wesson as an ongoing business entity in the face of the crippling cost of litigation,' the company said in a statement." Jonathan Weisman, *Gun maker, U.S. reach agreement*, BALT. SUN, Mar. 18, 2000.

"[T]he litigants vowed to press on until all the manufacturers joined"—indeed, "to get more aggressive." *Id.* Alex Panelas, mayor of Miami-Dade

[10] https://archives.hud.gov/news/2000/gunagree.html.

County, Florida, warned that the S&W deal would be "'a floor, not a ceiling' for any other gun maker that wants to sign on." *Id.*

No other company joined. Glock came closest. As it wavered, New York Attorney General Eliot Spitzer warned a Glock executive: "if you do not sign, your bankruptcy lawyers will be knocking at your door." 146 CONG. REC. No. 45, H2017 (Apr. 11, 2000). Spitzer and Connecticut Attorney General Richard Blumenthal announced they would sue other manufacturers for shunning S&W—for instance, by no longer sharing joint legal defense with S&W. Walter Olson, THE RULE OF LAWYERS 127 (2003). This would have been "the first antitrust action in history aimed at punishing smaller companies for not cooperating with the largest company in the market in an agreement restraining trade." *Id.* Blumenthal had no evidence of illegal behavior; "the point was sheer intimidation." *Id.*

Ultimately, the S&W consent decree never went into force. But the lawsuits against the companies continued. Although most cases were eventually dismissed, litigation costs mounted ever higher.

B. Congress passed PLCAA to halt the abusive lawsuits.

Representative Cliff Stearns (R-Fla.) denounced "the government lawyers and private lawyers conspiring, conspiring to coerce private industry into adopting public policy changes through the threat of abusive litigation. The option? Adopt our proposals or you will go bankrupt." 146 CONG. REC., at H2017. Stearns thus cosponsored PLCAA to protect the

firearms industry from abusive litigation. Pub. L. No. 109-92, 119 Stat. 2095 (2005) (codified at 15 U.S.C. §§7901–03).

According to another PLCAA cosponsor, Senator Max Baucus (D-Mont.), PLCAA was "intended to protect law-abiding members of the firearms industry" from suits "that are only intended to regulate the industry or harass the industry or put it out of business." 151 CONG. REC. No. 104, S9107 (July 27, 2005). Senator Thomas Coburn (R-Okla.) called PLCAA necessary "to put a stop to the unmeritorious litigation that threatens to bankrupt a vital industry in this country." *Id.* at S9059. The suits, he recognized, were designed "to constrict the right to bear arms and attack the Bill of Rights and attack the Constitution." *Id.*

Senator Jeff Sessions (R-Ala.) acknowledged that "the ultimate goal of these suits" was "the elimination of th[e] arms industry," and noted that by the time PLCAA was enacted in 2005, "33 State legislatures have acted to block similar lawsuits.... However, it only takes one lawsuit in one State to bankrupt the entire industry, making all those State laws inconsequential. That is why it is essential that we pass Federal legislation." *Id.* at S9063.

The attempt to bankrupt the gun industry via litigation had—and continues to have—national security implications. The Department of Defense "strongly support[ed]" PLCAA to "safeguard our national security by limiting unnecessary lawsuits against an industry that plays a critical role in meeting the procurement needs of our men and

women in uniform." 151 CONG. REC., at S9395 (July 29, 2005).

The bipartisan, filibuster-proof majority that enacted PLCAA found that imposing liability on the firearms industry for third-party crimes violates the Second Amendment and "the rights, privileges, and immunities guaranteed" by the Fourteenth Amendment. 15 U.S.C. §7901(a)(6), (7).

PLCAA also protects the legislative branch, because "The liability actions … attempt to use the judicial branch to circumvent the Legislative branch of government … thereby threatening the Separation of Powers doctrine." *Id.* §7901(a)(8). "Put differently, PLCAA reflects Congress's view that the democratic process, not litigation, should set the terms of gun control." *Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos*, 605 U.S. 280, 301 (2025) (Jackson, J., concurring); *see also* Glenn Reynolds, *Permissible Negligence and Campaigns to Suppress Rights*, 68 FLA. L. REV. FORUM 51, 57 (2016).

In sum, Congress determined that federal legislation was required to protect lawful commerce, the firearms industry, constitutional rights, the separation of powers, and national security. The decision below disregards that determination and allows states to nullify Congress's judgment by repackaging prohibited claims under novel state-law theories.

III. The question presented is ripe and will not benefit from further percolation.

This case warrants review. The issue is not new. Congress already addressed it by enacting 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.*, 605 U.S. at 298; *see also* 15 U.S.C. §7901(a)(5), (b)(1). Repackaging barred claims as "public nuisance" does not alter their substance. It runs afoul of Congress's intent to preclude attempts to evade the statute through novel labels and invites the very end-run around federal law that Congress acted to prevent. *See id.* §7903(5)(A) (defining and prohibiting "qualified civil liability actions"). Congress "did not" draft PLCAA in "such a capacious way" as to allow the predicate exception to "swallow most of the rule." *Smith & Wesson Brands, Inc.*, 605 U.S. at 299.

It would be perilous to await further developments in the lower courts. Allowing a proliferation of the very lawsuits that PLCAA forbids would result in "an abuse of the legal system," "erode[] the public confidence in our Nation's laws," "threaten[] the diminution of [the Second Amendment]," and "constitute[] an unreasonable burden on interstate and foreign commerce." 15 U.S.C. §7901(a)(6). Such lawsuits are already being filed in New York, *see* Pet. Cert. 32–33, and ten other states have already enacted similar laws to enable such suits, *id.* at 4. Because "it only takes one lawsuit in one State to bankrupt the entire industry," 151

CONG. REC., at S9063 (Sen. Sessions, July 27, 2005), delay would defeat the statute's purpose.

PLCAA preserves traditional causes of action for wrongdoing. 15 U.S.C. §7903(5)(A). But it forbids the use of tort law to suppress lawful commerce. That limitation reflects a basic principle: tort law redresses legally cognizable injury caused by wrongful conduct; it does not serve as a vehicle for eliminating disfavored but lawful activity.

In short, the decision below permits the very litigation campaign Congress enacted PLCAA to stop. The question presented is settled by statute, the conflict is immediate, and the consequences of delay are substantial. This Court should grant certiorari and reaffirm that states may not evade federal law by relabeling prohibited claims.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

JOSEPH G.S. GREENLEE
Counsel of Record
NRA – INSTITUTE FOR
LEGISLATIVE ACTION
11250 Waples Mill Rd.
Fairfax, VA 22030
(703) 267-1161
jgreenlee@nrahq.org

DAVID B. KOPEL
INDEPENDENCE INSTITUTE
727 E. 16th Ave.
Denver, CO 80203
(303) 279-6536
david@i2i.org

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