No. 19-168

IN THE

Supreme Court of the United States

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

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

Brief *Amicus Curiae* of Gun Owners of America, Inc., Gun Owners Foundation, The Heller Foundation, Tennessee Firearms Association, Conservative Legal Defense and Education Fund, California Constitutional Rights Foundation, Policy Analysis Center, and Restoring Liberty Action Committee in Support of Petitioners

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INTEREST OF THE *AMICI CURIAE*[1]

Gun Owners of America, Inc. and Tennessee Firearms Association are nonprofit social welfare organizations, exempt from federal income tax under Internal Revenue Code ("IRC") section 501(c)(4). Gun Owners Foundation, The Heller Foundation, Conservative Legal Defense and Education Fund, California Constitutional Rights Foundation, and Policy Analysis Center are nonprofit educational and legal organizations, exempt from federal income tax under IRC section 501(c)(3). Restoring Liberty Action Committee is an educational organization.

Amici organizations were established, *inter alia*, for the purpose of participating in the public policy process, including conducting research, and informing and educating the public on the proper construction of state and federal constitutions, as well as statutes related to the rights of citizens, and questions related to human and civil rights secured by law.

Some of these *amici* also filed an *amicus* brief in this case in the Supreme Court of Connecticut: Brief *Amicus Curiae* of Gun Owners of America, Inc., *et al.,* in Support of Defendants-Appellees (May 30, 2017).

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[1] It is hereby certified that counsel for the parties have consented to the filing of this brief; that counsel of record for all parties received notice of the intention to file this brief at least 10 days prior to its filing; that no counsel for a party authored this brief in whole or in part; and that no person other than these *amici curiae*, their members, or their counsel made a monetary contribution to its preparation or submission.

STATEMENT OF THE CASE

A. Protection of Lawful Commerce in Arms Act.

On October 26, 2005, Congress enacted the Protection of Lawful Commerce in Arms Act ("PLCAA"), with a long title that made its purpose crystal clear:

> **An Act [t]o prohibit civil liability actions** from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages, injunctive or other relief resulting from the misuse of their products by others.[2]

The bill was adopted on a bi-partisan basis by a 65-31 margin in the Senate and a 283-144 vote in the House. Signed into law by President George W. Bush, the Act specified that it would have two effects: (i) mandating that courts order the dismissal of all pending "qualified civil liability actions," and (ii) prohibiting the commencement in any Federal or State court, of any new such actions. *See* 15 U.S.C. § 7902.

In a lengthy provision, Congress defined what it meant by a "qualified civil liability action" (15 U.S.C. § 7903(5)(A)) followed by definitions of eight court or administrative actions not included (15 U.S.C.

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[2] 119 Stat. 2095 (2005) (emphasis added).

§ 7903(5)(A)(i)-(vi)). A "qualified civil liability action" is:

> a civil action or proceeding or an administrative proceeding brought by any person against a manufacturer or seller of a [firearm[3]], injunctive or declaratory relief, abatement, restitution, fines, or penalties, or other relief, resulting from the criminal or unlawful misuse of a [firearm] by the person or a third party. [15 U.S.C. § 7903(5)(A).]

"[B]ut," § 7903(5)(A) "shall not include" any of the eight actions or proceedings described in subsections (i) - (vi). Of these subsections, only one is directly involved in this case, known as the "predicate exception," which reads as follows:

> (iii) an action in which a manufacturer or seller of a qualified product knowingly violated a State or Federal statute applicable to the sale or marketing of the product, and the violation was a proximate cause of the harm for which relief is sought, including—
>
> (I) any case in which the manufacturer or seller knowingly made any false entry in, or failed to make appropriate entry in, any record required to be kept under Federal or State law with respect to the qualified product, or aided, abetted, or

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[3] Although the act applies to firearms and ammunition, references here will be made to firearms only.

> conspired with any person in making any false or fictitious oral or written statement with respect to any fact material to the lawfulness of the sale or other disposition of a qualified product; or
> (II) any case in which the manufacturer or seller aided, abetted, or conspired with any other person to sell or otherwise dispose of a qualified product, knowing, or having reasonable cause to believe, that the actual buyer of the qualified product was prohibited from possessing or receiving a firearm or ammunition under subsection (g) or (n) of section 922 of title 18.... [15 U.S.C. § 7903(5)(A)(iii).]

In most of the history of our nation, civil liability for damages caused by the "criminal misuse" of firearms was generally governed by common law tort rules of individual fault and proximate causation. *See* A. McClurg, "The Second Amendment Right to be Negligent," 68 FLA. L. REV. 1, 3-5 (2016). Although ordinary firearm tort liability is judged by the "highest degree" of care, it was not subject to strict liability (*id.* at 21-25), which was applicable only to those things and activities that met the common law definition of "abnormally dangerous." *See* W. Prosser, Law of Torts at 505-16 (West, 4th ed.: 1971). However, in the years leading up to the opening decade of the 21st century, Congress became concerned that the time-honored principle of individual responsibility was being eroded

to the point where legitimate firearm manufacturers, distributors, and dealers were increasingly pressured to assume the financial burden of the misuse of firearms under ever-expanding notions of enterprise liability threatening their liberties. *See id.* at 494. Thus, § 7901(a)(7) declared:

> The liability actions commenced or contemplated by the Federal Government, States, municipalities, and private interest groups and others are based on theories without foundation in hundreds of years of the common law jurisprudence of the United States and do not represent a bona fide expansion of the common law. The possible sustaining of these actions by a maverick judicial officer or petit jury would expand civil liability in a manner never contemplated by the framers of the Constitution, by Congress, or by the legislatures of the several States. [15 U.S.C. § 7901(a)(7).]

Foremost among the liberties threatened was the Second Amendment right to keep and bear arms. *See* 15 U.S.C. § 7901(a)(1) and (2). Hence, one of the purposes of PLCAA is to "preserve a citizen's access to a supply of firearms and ammunition for all lawful purposes, including ... self-defense." 15 U.S.C. § 7901(b)(2). Remarkably, Congress made these findings in October 2005. It was not until June 26, 2008 — 32 months later — that this Court caught up with Congress, affirming that the Second Amendment is, indeed, an individual right. *See* District of Columbia v. Heller, 554 U.S. 570 (2008). And it took

an additional two years for this Court to rule that one's Second Amendment rights were secured by the Fourteenth Amendment from abridgement by the States. McDonald v. City of Chicago, 561 U.S. 742 (2010).

B. Events Leading to this Lawsuit.

On the morning of December 14, 2012, Adam Lanza forced his way into Sandy Hook Elementary School carrying a Bushmaster semiautomatic rifle which he criminally and unlawfully misused by shooting and killing 20 children and six staff members. Soto v. Bushmaster Firearms Int'l, L.L.C., 371 Conn. 53, 202 A.3d 262, 272 (2019). As the court below acknowledged, "Lanza was directly and primarily responsible for this appalling series of crimes." *Id.* But, the court continued, "the plaintiffs ... contend that the defendants also bear some of the blame." *Id.* In response, the court concluded that all the plaintiffs' claims are precluded either by state law or by the PLCAA, except for "one narrow legal theory." *Id.*

The plaintiffs had brought a claim under the Connecticut Unfair Trade Practices Act ("CUTPA"), alleging that Bushmaster Firearms International, L.L.C. and Remington had engaged in "unethical, oppressive, immoral and unscrupulous" conduct by marketing an AR-15 type rifle as "'the ultimate combat weapons system,'" selling it with a 30-round "standard" magazine, etc. CUTPA imposes broad civil liability under an essentially meaningless standard of fairness. The trial court dismissed this claim as well, noting that the relatives of the Sandy Hook shooting

victims had no "commercial relationship" with Remington. Soto at 284.

On appeal, the Connecticut Supreme Court, in a narrow 4-3 decision over a "vigorous dissent," created an unprecedented expansion of the CUTPA statute, claiming that no commercial relationship was necessary in order to allege unfair trade practices in Connecticut. The Court admitted that it would be a "Herculean task" to link the alleged deceptive marketing to the school shooting, but allowed the claim to proceed. *See* Soto at 290.

Remington argued that the PLCAA "predicate statute" exemption only applies to laws that specifically regulate the firearms industry, such as straw purchases, licensing, record keeping, etc. In fact, both the Second and Ninth Circuits have ruled that this is the case. *See* City of New York v. Berreta USA Corp., 524 F.3d 384 (2d Cir. 2008); *see also* Ileto v. Glock, Inc., 565 F.3d 1126 (9th Cir. 2009).

The Connecticut Supreme Court, however, disagreed, expanding the PLCAA exemption to any statute that is "capable of being applied" to firearm sales or marketing. As Remington pointed out, this would swallow the rule and permit all sorts of absurd lawsuits (like this one) that were precisely what Congress was trying to prevent.

SUMMARY OF ARGUMENT

This case involves a flagrantly erroneous state court interpretation of an important federal statute

which protects the People's exercise of the constitutionally enumerated right to keep and bear arms. The Connecticut Supreme Court took it upon itself to interpret an exception to the PLCAA so broadly as to negate the very protection that Congress enacted the statute to provide. Thus, the correct interpretation of the PLCAA's so-called "predicate exception" constitutes an important question of federal law that has not been, but should be, settled by this Court.

To reach its decision, the Connecticut court ignored the whole text canon, which calls on the judicial interpreter to consider the entire text of a statute to ascertain the meaning of the words employed by the drafters. Instead of examining the PLCAA's detailed findings and purposes of the law as a whole to ascertain the meaning of "applicable" as used in the statutory text, the court bypassed the statutory context in search of the broader definition preferred by the lexicographer to the narrower means chosen by Congress in pursuit of an exception of the PLCAA's general rule protecting lawful commerce in firearms and ammunition. And the court misapplied the three canons of construction that it did address.

If allowed to stand uncorrected, even if not followed by any other state or federal courts, and even if not eventually successful in trial court, this one decision will open the door to harassing and abusive litigation against firearms manufacturers and dealers in Connecticut. Such litigation will accomplish the anti-gun agenda of gun control and gun confiscation organizations which have been unsuccessful in having

Congress repeal PLCCA. Left uncorrected, this one errant decision will impair significantly the finances of companies in the firearms business and infringe the exercise of the Second Amendment's inherent right of all Americans to keep and bear arms.

ARGUMENT

I. THE CONNECTICUT SUPREME COURT'S INTERPRETATION OF THE PREDICATE EXCEPTION TO THE PROTECTION OF LAWFUL COMMERCE IN ARMS ACT VIOLATED THE WHOLE TEXT CANON.

PLCAA, enacted in 2005, anticipated and addressed problems that have occurred since then in states like Connecticut which have exhibited various degrees of hostility to the exercise of Second Amendment rights. The PLCAA incorporated an exception protecting a narrow class of statutes from the general rule protecting lawful commerce in arms stated in 15 U.S.C. § 7903(5)(A) — but the Connecticut Supreme Court, in a divided opinion, has used that exception to swallow up the rule.

A proper understanding of the PLCAA requires a correct understanding of eight separate findings and seven statements of purposes of the PLCAA, which are spelled out in great detail in 15 U.S.C. § 7901(a) and (b). Of these 15 provisions, the majority mentioned only three, while the dissent at least listed all of them. *Compare* Soto at 302-03 *with* Soto at 308-311.

According to the title-and-headings canon of interpretation, all 15 of these findings and purposes "'can aid in resolving an ambiguity in the legislation's text,'" but "'they cannot undo or limit that which the text makes plain.'" A. Scalia & B. Garner, Reading Law at 221 (West: 2012). Yet, with respect to the three provisions stating that the PLCAA was designed to protect the Second Amendment right to keep and bear arms, the majority picked a fight, questioning whether the Amendment extends "to the types of quasi-military, semiautomatic assault rifles at issue in the present case." Soto at 310. This is a misuse of the title-and-headings canon, and should be rejected. *See* Argument III, *infra*.

A. The Whole Text Canon Applied.

As Scalia and Garner have observed:

> [p]erhaps no interpretive fault is more common than the failure to follow the **whole-text** canon, which calls the judicial interpreter to consider the **entire** text, in view of its structure and of the physical and logical relation of its many parts." [Reading Law at 167 (emphasis added).]

Beginning with its title, the purpose of the law is unmistakable: the protection of lawful commerce in arms. More specifically, the expressed purpose of PLCAA is to prohibit lawsuits against manufacturers, distributors, dealers, importers of firearms or ammunition, and even their trade associations, for harm solely caused by the criminal or unlawful misuse

of firearms or ammunition products by others when the product functioned as designed and intended. 15 U.S.C. § 7901(b)(1). Completely missing from the majority analysis is any reference to this statement of purpose. Yet, the general rule of the combined §§ 7902(a) and 7903(1) mirrors the stated purpose — to protect the commerce in firearms and ammunition "when the product functioned as designed and intended." *Id.*

Instead of acknowledging this protective purpose of PLCAA, the court majority below seized on Finding number 4, likening PLCAA to the Gun Control Act of 1968, the National Firearms Act, and the Arms Export Control Act of 1968, and by analogy, compared these laws of a "heavily regulated" industry to diminish PLCAA's broad protective purpose. Soto at 309. The majority then compounds its erroneous comparison, attributing to Congress the unexpressed intent that nothing in PLCAA "abrogate[d] the well established duty of firearms sellers to market their wares legally and responsibly, even though no federal laws specifically govern the marketing of firearms." *Id.* This is sheer nonsense and tendentiousness, in light of the fact that the Gun Control Act of 1968 provided that "[n]o person shall engage in business as a firearms or ammunition importer, manufacturer, or dealer until he has filed an application with, and received a license to do so from the [federal government]." *See* 18 U.S.C. § 923. Instead of honoring the whole text canon, the majority selected Finding number 4 only to defend a conclusion that it had already made (Soto at 308-11) that:

> the findings make clear that Congress sought to preclude **only novel civil actions** that are "based on theories without foundation in hundreds of years of the common law and jurisprudence ... and do not represent a bona fide expansion of the common law." [Soto at 309 (emphasis added).]

On the contrary, PLCAA's first Statement of Purpose is a broadly fixed rule prohibiting all suits other than those specifically excepted — not just "novel civil litigations." *See* 15 U.S.C. §§ 7901(b)(1) and 7903(5)(A). But even if the predicate exception only barred "novel civil litigation," plaintiffs' theory of liability, found to be actionable by the Connecticut court, certainly qualifies as novel. Although the court acknowledged that the shooter Lanza "was directly and primarily responsible," the "defendants also bear **some** of the blame" (Soto at 272 (emphasis added)). The court twisted advertisements, which accurately described the attributes of the lawful rifle, to be unlawfully "promot[ing] ... civilians to use to carry out offensive, military style combat missions..." (*id.*), including by "teenaged boys" (*id.* at 277, n.17) even though the weapon at issue was purchased by a woman, the shooter's mother, years before. Then, even in the absence of an allegation that the shooter or his mother ever saw defendants' ad (as the complaint did not specify when the ads appeared, *id.* at 294-95), causation was assumed because the shooter "selected" the rifle "from among an arsenal that included" a shotgun because of his dreams of being an Army ranger. *Id.* at 278. This concocted theory of liability, without any actual fault or causation, is classic

"enterprise liability" — which PLCAA was designed to bar. Moreover, even if the plaintiffs are ultimately unsuccessful in winning their case — which the court termed "a Herculean task" (*id*. at 290) — the anti-gun agenda of groups urging on such litigation would have succeeded by imposing unsustainable discovery and litigation expenses on the firearms industry. *See* Petition for Certiorari at 6, 33.

Furthermore, PLCAA is not limited to a single purpose. Rather, its objects are multifaceted: first, to preserve a citizen's access to a supply of firearms necessary to secure the Second Amendment's individual right to keep and bear arms for self-defense and other lawful purposes (15 U.S.C. § 7901(a)(1) and (2) and (b)(2)); second, to guarantee a citizen's rights, privileges, and immunities, as applied to the States, under the Fourteenth Amendment to the United States Constitution, pursuant to section 5 of that Amendment (§ 7901(a)(7) and § 7901(b)(3)); third, to encourage sovereignty and comity among the several states (§ 7901(b)(6) and (7)); fourth, to prevent the impositions of unreasonable financial burdens upon interstate and foreign commerce among the States, threatening the nation's free enterprise system (§ 7901(a)(6) and (b)(4)); fifth, to reject the concept of enterprise liability by reaffirming the ancient common law rules of individual fault and proximate cause as the *sine qua non* of legal liability (§ 7901(a)(6) and (7)); sixth, to restore the balance of power among the three branches of government in both the state and federal systems, limiting the power of the judiciary (§ 7901(a)(8)); and seventh, to protect the firearms community's right to assemble peaceably, speak freely,

and to petition for redress of grievances even though it is heavily regulated by federal, state, and local laws (§ 7901(a)(4) and (b)(5)).

To achieve these several objects, Congress required the immediate dismissal of any pending or future "qualified civil liability action ... in any Federal or State court." *See* 15 U.S.C. § 7902(a) and (b). In turn, PLCAA defined the term "qualified civil liability action" as follows:

> a civil action or proceeding or an administrative proceeding brought by any person against a manufacturer or seller of a qualified product, or a trade association, for damages, punitive damages, injunctive or declaratory relief, abatement, restitution, fines, or penalties, or other relief, resulting from the criminal or unlawful misuse of a qualified product by the person or a third party.... [15 U.S.C. § 7903(5)(A).]

Then, the PLCAA spells out some exceptions to this general rule, including the one at issue in this case. It reads:

> an action in which a manufacturer or seller of a qualified product knowingly violated a State or Federal statute **applicable** to the sale or marketing of the product, and the violation was a proximate cause of the harm for which relief is sought.... [15 U.S.C. § 7903(5)(A)(iii) (emphasis added).]

According to the court below, the ordinary meaning of the word "applicable" is "capable of being applied." Soto at 302. Thus, the majority concluded that the exception applied to a statute that was not firearm specific, but was broad enough to include the CUTPA claim. The majority persisted, even though acknowledging that there was a secondary, narrower meaning, "'fit, suitable, or right to be applied: appropriate.'" *Id.* Instead of acceding to the narrower meaning, the justices noted that "[i]f Congress had intended to limit the scope of the predicate exception to violations of statutes that are *directly*, *expressly*, or *exclusively* applicable to firearms, however, it easily could have used such language." Soto at 302. But that is no answer to the question of what the majority did do — and only the narrower definition of applicability makes any sense in light of the broad and various purposes expressed in the PLCAA text.

B. The Whole Text Canon Neglected.

In their haste to settle on the meaning of an allegedly "ambiguous" word in an exception to the general rule embodied in the PLCAA, the court below went straight to the dictionary to find the meaning of "applicable." Had the Court honored the whole text canon, it would have realized that the meaning of the word "applicable" as it appears in § 7903(5)(A)(iii) "'is to be looked for, not in any single section, but in all the parts together and in their relation to the end in view.'" Reading Law at 168 (quoting Justice Benjamin Cardozo).

While the majority purported to examine the meaning of "applicable" within a "broader statutory framework" (Soto at 303), they limited their inquiry to the "predicate" exception in which the word itself appears. *Id.* at 303-06. When they reached beyond the stated exceptions to the Statement of Findings and Purposes, the justices isolated one finding — that "firearms ... are heavily regulated" — as if that finding was the "end in view" or purpose of the overall Act. *Id.* at 309-10. To be sure, the majority opinion also acknowledged the fact that two of the findings reference the Second Amendment, but they belittle those findings by gratuitously asserting that it is questionable whether the Amendment extends protection "to the types of quasi-military, semiautomatic assault rifles at issue in the present case." *Id.* at 310. Having allowed the Assault Weapons Ban to expire on September 13, 2004, the year before PLCAA was enacted, there is no doubt that the PLCAA protects commerce in such weapons, having designated firearms generally to be "qualified products." *See* 15 U.S.C. § 7903(4). But the majority of the state justices below was not really interested in the statutorily itemized findings and purposes, as they might apply to the meaning of "applicable" in relation to the carved-out exception for violations of certain state or federal laws. Yet, "[c]ontext is a primary determinant of meaning [and] [t]he entirety of [119 Stat. 2095] thus provides the context for each of its parts." Reading Law at 167.

C. The Whole Text Canon's Treatment in the Dissent.

In contrast to the majority's approach, the dissent below began with a recitation of all of the statute's findings and purposes, yet did not search out meaning from that text in a robust manner, only disagreeing "with the majority's suggestion that we should read the arms act narrowly and its predicate exception more broadly." Soto at 335 (Robinson, J., dissenting). Instead, the dissent applied the general rule that "'when a statute sets forth exceptions to a general rule [that] we ... construe the exceptions narrowly to preserve the primary operation of the [provision].'" *Id.* Additionally, the dissent invoked the principles of *noscitor a sociis* and avoiding legislative superfluity to "avoid ascribing to one word a meaning so broad that it is inconsistent with its accompanying words, thus giving unintended breadth" (*id.* at 336):

> The very specific examples of firearms laws that Congress provides in the predicate exception strongly suggest that it intended only those statutes that are specific to the firearms trade to be considered "applicable to the sale or marketing of the product...." [*Id.* at 337.]

II. THE CONNECTICUT SUPREME COURT MISAPPLIED THE CANONS OF CONSTRUCTION THAT IT ADDRESSED.

From an examination of the text of the predicate exception, the Connecticut Supreme Court concluded

that there were two "plausible" interpretations of the word "applicable," and that it believed the plaintiff's broad and general interpretation to be "better" and "more reasonable."[4] Soto at 302. Finding textual ambiguity, the court applied three canons of statutory construction, concluding that each supported the view that it had already favored as being "better." Soto at 312-18.

A. Clear Statement Principle.

The court first addressed the Clear Statement Principle, a rule of construction often applied to ensure that Congress really intended to preempt a state law. The court summarized that rule, which it termed a "requirement," as follows: "a federal law is not to be construed to have superseded the historic police powers of the states[5] unless that was the clearly expressed and manifest purpose of Congress." Soto at 312.

The court never discussed that the "clearly expressed and manifest purpose of Congress" in enacting the PLCAA was to preempt state (and

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[4] The dissent explained that "the more technical definition of 'applicable' in Black's Law Dictionary as it relates to laws or regulations" (citations omitted) defined "'applicable' in references to 'a rule, regulation, law, etc.' as ... 'having direct relevance,'" which was the view the defendants urged. Soto at 330 (Robinson, J., dissenting).

[5] Without discussion, the court assumed that a lawsuit brought by a private party based on advertisements constituted an exercise of a "historic police power of a state."

federal) litigation (regardless of whether the plaintiff was a government or a private litigant) against those engaged in any aspect of the firearms business, as expressed in the first congressional purpose to prohibit certain causes of action against firearm businesses. 15 U.S.C. § 7901(b)(1).

Solely because the PLCAA's text did not specifically mention the "advertising" of firearms, the court declared that the police power of the state had not been overcome by the PLCAA's federal preemption scheme. Soto at 313. Actually, PLCAA never made any attempt to list the types of commercial activities engaged in during the manufacture, distribution, retail sale, and importation of firearms for which lawsuits could not be brought, but that did not mean that Congress did not intend to bar litigation based on engaging in such unitemized activities.[6]

B. Doctrine of *Ejusdem Generis.*

PLCAA's "predicate exemption" provided that a business would not be protected if it "knowingly violated a State or Federal statute applicable to the sale or marketing of the product ... including" two subsections identifying more than two federal statutes — all of which were directly applicable to firearms:

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[6] To bolster its argument, the court postulated "advertising that encourages consumers to engage in egregious criminal conduct...." (Soto at 313), an act which likely would be a crime that would not be preempted by PLCAA.

> (I) any case in which the manufacturer or seller knowingly made any **false entry** in, or **failed to make appropriate entry** in, any record required to be kept under Federal or State law with respect to the qualified product, **or** aided, abetted, or conspired with any person in making any **false** or fictitious oral or written **statement** with respect to any fact material to the **lawfulness of the sale** or other disposition of a qualified product; or
> (II) any case in which the manufacturer or seller aided, abetted, or conspired with any other person to sell or otherwise dispose of a qualified product, knowing, or having reasonable cause to believe, that the **actual buyer** of the qualified product was **prohibited** from possessing or receiving a firearm or ammunition under subsection (g) or (n) of section 922 of title 18.... [15 U.S.C. § 7903(5)(A)(iii) (emphasis added).]

The defendants argued that "the general category encompasses only things similar in nature to the specific examples that follow." Soto at 314. With a waive of its collective hand, the court dismissed this highly important point, speculating that these illustrative provisions were inserted merely to gain support for the bill — or at least lessen opposition to the bill, and therefore tell us nothing about what Congress intended, rendering the canon "not applicable" (Soto at 317) to the predicate exception.

To reach its conclusion, the court cited no judicial authorities — not one. Indeed, these *amici* are not

familiar with any prior judicial decision explaining a "log rolling" exception to the doctrine of *ejusdem generis*. Actually, if the truth were known, most everything in the bill was put there in order to gain support for the bill, or lessen opposition to the bill. That is the legislative process.

Additionally, when Congress made its finding that those businesses dealing in firearms "are heavily regulated by Federal, State, and local laws," that observation was followed by an itemization of such laws and all were firearms laws: "the Gun Control Act of 1968, the National Firearms Act, and the Arms Export Control Act." 15 U.S.C. § 7901(a)(4). Here too, none of the laws "applicable to" firearms were laws of general application.

Lastly, the majority never even tried to respond to the dissenter's powerful argument against their view: "Had Congress intended the predicate exception to broadly encompass *any* statute capable of application to the manufacture or sale of anything, the inclusion of those firearms-specific examples would be superfluous." Soto at 337 (Robinson, J., dissenting).

C. Statutory Exceptions to Be Construed Narrowly.

The third doctrine was defendants' contention that "statutory exceptions ... must be construed narrowly to preserve the primary purpose of PLCAA." Soto at 317. Here, the court was at its most creative in the one paragraph it devoted to the issue — again without any reliance on judicial authority. The court imputed to

defendants an argument that the primary purpose of PLCAA was "to shield firearms sellers from liability for wrongful or illegal conduct." *Id*. The court then contends "[i]f Congress had intended to supersede state actions of this sort, it was required to make that purpose clear." *Id.*

The entire discussion of statutory construction here is what are the types of "State or Federal statute applicable to the sale or marketing of the product" that actions may be brought if there is a "knowing violation." The Connecticut court seems to blithely assume that any suit against a gun dealer is filed for a good reason. It is exactly that thinking that led to the enactment of PLCAA in the first place.

The dissent rejected the majority opinion's perverse inversion of PLCAA:

> With respect to the canons of statutory construction, I first observe that the predicate exception is exactly that — an *exception* to the arms act. It is well settled that, "when a statute sets forth exceptions to a general rule, we generally construe the exceptions narrowly in order to preserve the primary operation of the [provision]...." I disagree with the majority's suggestion that we should read the arms act narrowly and its predicate exception more broadly. [Soto at 335 (Robinson, J., dissenting).][7]

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[7] The dissent included a curious comment that "the distastefulness of a federal law does not diminish its preemptive

In truth, the majority opinion was even more fundamentally flawed than the dissent indicated. The defendants correctly contended that the majority's analysis led to an "absurd result." Soto at 311. As Judge Berzon clearly explained in one of the cases rejecting the theory underlying Connecticut court's upside-down approach:

> the predicate exception cannot possibly encompass *every* statute that might be "capable of being applied" to the sale or manufacture of firearms; if it did, the exception would swallow the rule, and no civil lawsuits would ever be subject to dismissal ... under [PLCAA]. [Soto at 334 n.11, quoting Ileto v. Glock, Inc. 565 F.3d 1126, 1155 (9th Cir. 2009) (Berzon, J., concurring in part and dissenting in part).]

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effect...." Soto at 328 (Robinson, J., dissenting). It was not clear if the dissenters viewed the PLCAA to be distasteful, which would make it a gratuitous anti-gun observation, or if the dissenters believed the majority justices viewed the law as distasteful, which led them to eviscerate the statute through a strained interpretation.

III. PLCAA WAS ENACTED TO PROTECT THE SECOND AMENDMENT RIGHTS OF AMERICAN CITIZENS, WHICH RIGHTS WERE IGNORED BY THE CONNECTICUT SUPREME COURT.

The first two findings set out in PLCAA revealed a primary desire by Congress to protect the People's exercise of their constitutional rights:

> (1) The **Second Amendment** to the United States Constitution **provides that the right** of the people to keep and bear arms shall not be infringed.
> (2) The **Second Amendment** to the United States Constitution **protects the rights** of individuals, including those who are **not members of a militia or engaged in military service or training**, to keep and bear arms. [15 U.S.C. § 7901 (a)(1) and (a)(2). (emphasis added).]

From those two findings, there is ample reason to conclude that Congress enacted the PLCAA to **protect** the pre-existing and inalienable "right of the people to keep and bear arms" **provided** for in the Second Amendment — but that appears not to be the view of the court below. Although the Second Amendment played almost no part in the court's consideration, the four justices gratuitously declared that "it is not at all clear, however, that the second amendment's protections even extend to" AR-15 type rifles, speculating that they may be "dangerous and unusual" and "military style" weapons. Soto at 310.

The Connecticut court assumed that only members of the military could possess AR-15 type rifles — the most popular rifle in America. *See* Petition for Certiorari at 9. The court wholly ignored the PLCAA's express protection of "the rights of ... those who are **not** members of a militia or engaged in military service or training."[8]

The Connecticut court falsely assumed the legitimacy of plaintiffs' contention that there were only a few legitimate purposes to own firearms — "self-defense, hunting, target practice, collection, or other legitimate civilian firearm uses." Soto at 284. Completely absent from the court's Second Amendment analysis is any recognition of the ultimate purpose stated in its preamble, that the Amendment is "necessary to the security of a free State...." The framers well knew that threats to a "free State" could come externally or internally, and to guard against both, the People needed the firepower to resist oppression from any source.[9] In fact, a better case can be made that the Second Amendment protects

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[8] Indeed, if the approach of the Connecticut judges in the majority had been followed in 1776, the colonists would have been prevented from owning the most modern and effective firearms available, which would have changed history by preventing those experienced marksmen from joining forces to throw off British rule. *See generally* Brief *Amicus Curiae* of Gun Owners of America, Inc., *et al,*, Hollis v. Lynch (Fifth Circuit, Nov. 2, 2015).

[9] The framers knew that throughout history, the greatest threats to the individual have come not from foreign adversaries, but from their own governments *See generally*, R.J. Rummel, Death By Government (Routledge: 1997).

military-style arms than it supports firearms for hunting. *See* U.S. v. Miller, 307 U.S. 174, 178 (1939).

The Connecticut court did not stop to consider that imposing crushing financial defense costs on the firearms industry would not just impact adversely the sales of AR-15 type rifles — but would also render them unable to manufacture any firearms at all.[10] A Second Amendment right to arms without protection of the sources of those arms is a meaningless right.

By its expansive interpretation of the predicate exception and its cramped interpretation of the ban on lawsuits, the Connecticut court construed the PLCAA in a way that not only ignored and undermined Congress' strongly stated goal of protecting the People's Second Amendment rights, but has re-exposed the firearms industry to the sort of financial ruinous litigation that could negate the exercise of Second Amendment rights.

CONCLUSION

For the reasons stated above, the Petition for a Writ of Certiorari should be granted.

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[10] The financial health of firearms manufacturers continues to be tenuous. *See* J. Spector, "Remington Arms, the upstate New York gunmaker, to partially shut down plant this summer," *Democrat & Chronicle* (May 30, 2019).

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