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 IN OPPOSITION

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QUESTION PRESENTED

Respondents, who are plaintiffs below, allege that petitioners violated the Connecticut Unfair Trade Practices Act (CUTPA) when they knowingly marketed and promoted the Bushmaster XM15-E2S rifle for use in assaults against human beings. Respondents allege that the illegal marketing proximately caused their injuries, which arise from the terror, pain and suffering, and death of the victims of the Sandy Hook Elementary School shooting.

The Protection of Lawful Commerce in Arms Act preempts certain civil actions against manufacturers and sellers of firearms and ammunition. But it expressly does not prohibit "action[s] in which a manufacturer or seller of a [firearm] knowingly violated a State or Federal statute applicable to the sale or marketing of the product." 15 U.S.C. 7903(5)(A)(iii).

The question presented is whether the Connecticut Supreme Court erred in determining that respondents' claims under CUTPA constitute, within the meaning of Section 7903(5)(A)(iii), a violation of "a State * * * statute applicable to the sale or marketing" of the XM15-E2S.

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INTRODUCTION

Respondents are administrators of the estates—in many cases the parents—of children and teachers slaughtered at Sandy Hook Elementary School in 2014. The Sandy Hook victims were slain in a commando-style assault on the school. Their killer's weapon of choice was a Bushmaster XM15-E2S rifle, manufactured and marketed by petitioners. The XM15-E2S was designed for military combat, specifically to inflict maximum lethal harm on the enemy. Petitioners' marketing emphasized precisely those characteristics of the firearm. In words and images, petitioners touted the XM15-E2S as a combat-tested weapon that would bestow the power to "perform under pressure" and "single-handedly" conquer "forces of opposition."

Following the massacre at Sandy Hook, respondents sued petitioners in Connecticut state court under the Connecticut Unfair Trade Practices Act (CUTPA). As narrowed by the Connecticut Supreme Court, the gravamen of their claim is that petitioners chose to market the assaultive qualities, military uses, and lethality of the XM15-E2S, and that this advertising focus inspired the killer's actions and encouraged him to choose a weapon that would maximize the mayhem he could inflict.

Petitioners filed a motion to strike on the ground that respondents' claims were preempted by the Protection of Lawful Commerce in Arms Act (PLCAA), 15 U.S.C. 7902(a), which generally preempts state claims against firearms manufacturers based on alleged misuse of a firearm by third parties. In rejecting that threshold motion, the Connecticut Supreme Court held that respondents had adequately pled a claim falling within the PLCAA's express statutory exemption, which covers "action[s] 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." 15 U.S.C. 7903(5)(A)(iii). The court did not, however, decide the ultimate question of the PLCAA's applicability, which will depend on whether respondents prove that petitioners knowingly violated CUTPA and whether the challenged conduct proximately caused the harms respondents allege. The case has been remanded for discovery and further proceedings.

The Connecticut Supreme Court's interlocutory decision is not within this Court's certiorari jurisdiction under 28 U.S.C. 1257(a). Nor does it present a question worthy of this Court's review. Petitioners' claim of a conflict with federal court of appeals decisions is contrived. The Connecticut Supreme Court's carefully reasoned decision is faithful to the text, structure, and purposes of the PLCAA. And petitioners' assertion that the decision will unleash a flood of litigation is groundless hyperbole. Certiorari should be denied.

STATEMENT OF THE CASE

1. On December 14, 2012, Adam Lanza used a Bushmaster XM15-E2S rifle to shoot his way into Sandy Hook Elementary School in Connecticut and take the lives of 20 young children and six adults.[1] Pet. App. 1a. Upon entering the school, the shooter first deployed the XM15-E2S to kill two school staff members and wound two others. *Id.* at 10a. He next

[1] This case has not progressed beyond the stage of a "motion to strike," which is the equivalent of a motion to dismiss under Connecticut practice. Accordingly, this brief sets forth the facts as alleged in respondents' first amended complaint. Pet. App. 8a; see First Amended Complaint (Compl.), *Soto* v. *Bushmaster Firearms Int'l* (Conn. Super. Ct. Oct. 29, 2015) (No. FBT-CV-15-6048103-S), 2015 WL 13824211.

entered a first-grade classroom, where he fatally shot 15 children and two adults. He then moved to another first-grade classroom, where he fatally shot five children and two adults. *Ibid.* In the second classroom, nine children were able to escape only when he paused to reload. *Ibid.* The assault took less than five minutes. Pet. App. 1a.

2. The Protection of Lawful Commerce in Arms Act bars certain suits against gun manufacturers and sellers. The PLCAA provides that "[a] qualified civil liability action may not be brought in any Federal or State court," 15 U.S.C. 7902(a), and defines a "qualified civil liability action" as "a civil action * * * 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). The XM15-E2S is a "qualified product" within the meaning of the PLCAA. Pet. App. 115a n.6.

But the PLCAA does not shield all conduct of gun manufacturers and sellers. As relevant here, Section 7903(5)(A)(iii) excludes from the scope of a preempted "qualified civil liability action" any "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). That provision has been referred to as the "predicate exception" because it

allows lawsuits that are predicated on violations of other statutes.[2]

3. In 2014, respondents filed suit in Connecticut state court against petitioners, the makers and marketers of the XM15-E2S used at Sandy Hook Elementary School.

Respondents' complaint alleges that petitioners violated the Connecticut Unfair Trade Practices Act, which confers a right of action for personal-injury damages on any person harmed by "unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce." Conn. Gen. Stats. § 42-110b(a); see Pet. App. 62a. The complaint alleges that petitioners' unlawful marketing of the XM15-E2S contributed to the deaths of the Sandy Hook victims by inspiring the shooter's conduct and by causing him to select a particularly deadly weapon for his attack. Compl. ¶¶ 174-175, 219.[3]

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[2] Section 7903(5)(A)(iii) lists two examples—introduced by the word "including"—of statutes that satisfy the predicate exception. 15 U.S.C. 7903(5)(A)(iii). The first example is "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 in making a false statement "with respect to any fact material to the lawfulness of the sale or other disposition of a qualified product." 15 U.S.C. 7903(5)(A)(iii)(I). The second example is "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)(II).

[3] The complaint also alleges other claims, not at issue here, that the Connecticut Supreme Court rejected as a matter of state law: (1) that petitioners negligently entrusted the XM15-E2S rifle to

As the complaint explains, petitioners chose to market the XM15-E2S as a highly lethal weapon designed for purposes that are illegal—namely, killing other human beings. For example, petitioners published promotional materials that promised "military-proven performance" for a "mission-adaptable" shooter in need of the "ultimate combat weapons system." Compl. ¶¶ 79, 81, 82. One Bushmaster product catalogue showed soldiers moving on patrol through the jungle, armed with Bushmaster rifles, and stated that "[w]hen you need to perform under pressure, Bushmaster delivers." *Id.* ¶ 80. Despite evidence that rifles like the XM15-E2S have become the weapon of choice for mass shooters, *id.* ¶ 165, petitioners' advertising continued to exploit the fantasy of an all-conquering lone gunman, proclaiming: "Forces of opposition, bow down. You are single-handedly outnumbered." *Id.* ¶ 83. Petitioners reinforced those messages by specifying in advertisements that high-capacity 30-round magazines are "standard" equipment on the XM15-E2S; by contrast, petitioners' hunting and competition rifles are sold with 5- or 10-round magazines. *Id.* ¶¶ 87-92.

The complaint alleges that petitioners' illegal marketing motivated the shooter's attack and caused him to choose the XM15-E2S rather than another weapon to carry it out. Compl. ¶¶ 189-190. The shooter was obsessed with the military and had expressed a desire to join the elite Army Rangers unit. *Id.* ¶¶ 183-184. But when he turned eighteen, he did not enlist; rather, he acquired the XM15-E2S, which his mother had purchased for him. *Id.* ¶ 185. On the day of the Sandy

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civilian consumers, and (2) that petitioners engaged in an unfair trade practice through the sale of military-style assault weapons to the civilian market. See Pet. App. 11a-12a, 14a-24a, 43a-47a.

Hook Elementary School attack, he handpicked the XM15-E2S from a home arsenal that included assorted other firearms and swords. *Id.* ¶ 188. The complaint alleges that he chose the XM15-E2S "for its military and assaultive qualities, * * * in particular its efficiency in inflicting mass casualties," and "because of its marketed association with the military." *Id.* ¶¶ 189-190.

4. a. The Connecticut trial court determined that the PLCAA does not bar respondents' CUTPA claims. See Pet. App. 201a. In reaching that conclusion, the court relied on the Second Circuit's interpretation of the predicate exception in *City of New York* v. *Beretta USA Corp.*, 524 F.3d 384 (2d Cir. 2008). See Pet. App. 199a-200a. Because CUTPA had been applied to the sale or marketing of firearms in the past, it could fall within the predicate exception under the Second Circuit's analysis, which the Connecticut court adopted. *Id.* at 201a. The court concluded, however, that respondents lacked standing to bring CUTPA claims under state law because they had not alleged "at least some business relationship with the defendant[s]." *Id.* at 202a.

b. The Connecticut Supreme Court reversed as to state-law standing but agreed with the lower court's ruling that this action is not categorically barred under the PLCAA. The court ruled that respondents had standing to bring their particular CUTPA claims because of the direct relationship between the alleged wrongdoing and respondents' injuries. Pet. App. 40a ("If the defendants' marketing materials did in fact inspire or intensify the massacre, then there are no more direct victims than these plaintiffs."). The court was clear that its decision in that regard was limited to the facts before it: "We need not decide today whether there are other contexts or situations in which parties

who do not share a consumer, commercial, or competitor relationship with an alleged wrongdoer may be barred, for prudential or policy reasons, from bringing a CUTPA action." *Id.* at 37a. The court also ruled that respondents' CUTPA claims surmounted a variety of other state-law hurdles, including the applicable statute of limitations. *Id.* at 27a-58a.

After examining CUTPA in detail and confirming that respondents' claims could proceed under state law, the Connecticut Supreme Court turned to the PLCAA's predicate exception. On that issue, the court agreed with the trial court that the instant suit alleges a violation of "a State or Federal statute applicable to the sale or marketing of the [qualified] product." 15 U.S.C. 7903(5)(A)(iii); see Pet. App. 59a.

First, looking to the statutory text, the Connecticut Supreme Court rejected petitioners' interpretation of "applicable," under which the predicate exception would cover only actions alleging violations of firearm-specific statutes. Pet. App. 63a. The court explained that if Congress "had intended to limit the scope of the predicate exception to violations of statutes that are *directly*, *expressly*, or *exclusively* applicable to firearms," then Congress "easily could have used such language, as it has on other occasions." *Ibid.* The court noted that CUTPA and other unfair trade practices laws had long been used to govern firearms sales and marketing—that is, those statutes had been "applied" to firearm sales and marketing in the past. See *id.* at 70a-72a. The court reasoned that Congress was "presumed to be aware that the wrongful marketing of dangerous items such as firearms for unsafe or illegal purposes traditionally has been and continues to be regulated primarily" through laws like CUTPA "rather than by firearms specific statutes." *Id.* at 74a.

Second, the court reviewed Congress's statement of findings and purposes and the legislative history of the PLCAA. The court explained that the PLCAA was designed to protect the ability "of firearms sellers to market their wares legally and responsibly," Pet. App. 75a, and to curtail "the rising number of instances in which municipalities and 'anti-gun activists' filed 'junk' or 'frivolous' lawsuits targeting the entire firearms industry," *id.* at 94a. But the court found support in the legislative history for Congress's intent to allow a defendant to "be held liable for violating a statute during the production, distribution, or sale of firearms." Pet. App. 95a (citing floor statements); see *id.* at 106a ("Congress did not intend to immunize firearms suppliers who engage in truly unethical and irresponsible marketing practices promoting criminal conduct."). And the court drew a stark contrast between the "novel" and "frivolous" suits that the PLCAA was designed to prevent and respondents' suit, in which "the private victims of one specific incident of gun violence seek compensation from the producers and distributors of a single firearm on the basis of alleged misconduct in the specific marketing of that firearm." *Id.* at 94a-95a. Throughout its opinion, the court emphasized that its conclusion regarding the predicate exception extended *only* to the particular CUTPA allegations stated in petitioners' complaint. See, *e.g.*, Pet. App. 81a ("[W]e are confident that this sort of specific, narrowly framed wrongful marketing claim alleges precisely the sort of illegal conduct that Congress did not intend to immunize.").

Three dissenting justices found respondents' reading of the statutory text "reasonable" and turned to legislative history as an aid in interpreting the predicate exception. Pet. App. 133a. The dissent acknowledged that the legislative history is "extensive" and "mixed," but ultimately concluded that "the legislative

debate * * * supports an interpretation of predicate statutes as those specifically regulating the sale or marketing of firearms," of which CUTPA was not one. *Id.* at 136a.

5. The proceedings below tested only the sufficiency of the pleadings, and, as to the PLCAA, narrowly addressed the meaning of "applicable to the sale or marketing of firearms" in the predicate exception. Accordingly, the Connecticut Supreme Court remanded the case for further proceedings, remarking that it "d[id] not know whether the plaintiffs will be able to prove th[eir] allegations to a jury." Pet. App. 81a. Under Connecticut procedure, petitioners retain the right to move for summary judgment. See Conn. R. Super. Ct. § 17-44. The issues to be decided in such a motion, or at trial, may include the meaning of other aspects of the PLCAA as well as the sufficiency of respondents' CUTPA evidence.

ARGUMENT

I. This Court Lacks Jurisdiction.

A. This Court has jurisdiction to review only "[f]inal judgments or decrees rendered by the highest court of a State." 28 U.S.C. 1257(a). Under that rule, "[t]o be reviewable * * * a state-court judgment must be * * * final as an effective determination of the litigation and not of merely interlocutory or intermediate steps therein." *Jefferson* v. *City of Tarrant*, 522 U.S. 75, 81 (1997).

The Connecticut Supreme Court's interlocutory decision remanding the case for further proceedings is not "final" under Section 1257(a). That court reviewed a ruling on petitioners' motion to strike, affirmed the trial court's judgment in part and reversed it in part, and "remanded for further proceedings according to law." Pet. App. 106a-107a. Although those "further

proceedings" may eventually lead to a final judgment reviewable in this Court, the decision below is not a final judgment because it neither finally accepts nor finally rejects petitioners' PLCAA defense. This Court has never understood Section 1257(a) to authorize review of such intermediate rulings, and this is surely not the case in which to rewrite the rules governing the Court's jurisdiction.

B. Petitioners acknowledge the interlocutory posture of the case but nonetheless urge this Court to go out of its way to grant review. See Pet. 30-33. In general, Section 1257 "preclude[s] reviewability * * * where anything further remains to be determined by a State court," no matter "how dissociated" from the federal issue presented to this Court. *Radio Station WOW, Inc.* v. *Johnson*, 326 U.S. 120, 124 (1945). The Court has treated interlocutory state-court decisions as final for jurisdictional purposes only in exceptional circumstances that are not remotely presented here.

The four exceptions to the usual rule that this Court cannot review a state high court's decision remanding for further proceedings are described in *Cox Broadcasting Corp.* v. *Cohn*, 420 U.S. 469 (1975). Petitioners do not contend that the first three *Cox* exceptions apply. See Pet. 30-33. Nor does the fourth. That exception is implicated only "where [1] the federal issue has been finally decided in the state courts [2] with further proceedings pending in which the party seeking review * * * might prevail on the merits on nonfederal grounds, thus rendering unnecessary review of the federal issue by this Court, * * * [3] reversal of the state court on the federal issue would be preclusive of any further litigation," and [4] "a refusal immediately to review the state court decision might seriously erode federal policy." *Cox*, 420 U.S. at 482-483. The

decision below fails at least the first and fourth prongs of that exception.

1. First, inasmuch as the decision below and the petition address only a *single word* of the PLCAA—"applicable" in 15 U.S.C. 7903(5)(A)(iii)—"the federal issue" of petitioners' asserted PLCAA defense has not "been finally decided." *Cox*, 420 U.S. at 482-483. Petitioners describe "the federal issue [as] whether CUTPA qualifies as a 'statute applicable * * * ' under the PLCAA." Pet. 31. But that narrow framing invites the piecemeal review that Section 1257(a) and *Cox* forbid. If construing one word affecting only one element of a federal defense conferred jurisdiction by "finally decid[ing]" a federal issue, *Cox*, 420 U.S. 482, then the fourth *Cox* exception would swallow the rule Congress established in Section 1257(a). It is not enough that adopting petitioners' position on the interpretation of "applicable," which is only part of the federal issue, would resolve the case in their favor. That merely shows that "reversal * * * would be preclusive of any further litigation." *Id.* at 482-483. As *Cox* explains, that question is distinct from whether "the federal issue has been finally decided." *Ibid.*

The "federal issue" in this case thus cannot be understood as anything more narrow than petitioners' PLCAA defense as a whole. Yet petitioners ask for this Court's premature intervention while keeping their PLCAA options open on remand. For example, petitioners repeatedly describe the predicate exception as hinging *both* on whether the "State * * * statute" is "applicable" to their conduct *and* on whether they "knowingly violated" that statute. *E.g.*, Pet. i, 2, 7, 8 (quoting 15 U.S.C. 7903(5)(A)(iii)). But in the proceedings below, petitioners neither raised nor forswore an argument that their marketing did not "knowingly violate[]" CUTPA; they have not yet even answered the

complaint, including its allegation that their conduct "constituted a knowing violation," *e.g.*, Compl. ¶ 226. Indeed, petitioners' own account of Judge Berzon's separate opinion in *Ileto*, see Pet. 20, shows that some jurists believe the proper interpretation of "applicable" (a question raised here) is conceptually intertwined with the existence of a "knowing[] violat[ion]" (a question not litigated below).

Similarly, petitioners did not litigate below the PLCAA's requirement that the predicate violation be "a proximate cause of the harm for which relief is sought." 15 U.S.C. 7903(5)(A)(iii). But they (and their amici) now suggest that they would *prevail* on that ground, should "prov[ing] the causal link between the allegedly wrongful advertising and the harms suffered * * * 'prove to be a Herculean task.'" Pet. 31 (quoting Pet. App. 38a); see Nat'l Shooting Sports Found. Amicus Br. 16.[4]

The lack of a final decision on a federal issue, or the existence of outstanding federal issues intertwined with the question presented, has previously led this Court to dismiss certiorari as improvidently granted in cases arising from state courts. See, *e.g.*, *Flynt* v. *Ohio*, 451 U.S. 619, 621 (1981) (dismissing certiorari for lack of jurisdiction because, *inter alia*, "it appears that other federal issues will be involved in the trial court"); *Nike, Inc.* v. *Kasky*, 539 U.S. 654, 660 (2003) (Stevens, J., joined by Ginsburg, J., concurring in dismissal of certiorari). In the absence of a final decision here on

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[4] Moreover, some of petitioners' amici assert that the First Amendment bars respondents' claims. See Professors of Second Amendment Law Amicus Br. 25. But the Connecticut Supreme Court has had no opportunity to address any First Amendment defense, because petitioners did not raise one—although they have not disclaimed that line of argument either.

petitioners' federal issue, this Court should deny review.

2. A second and independent jurisdictional impediment is that cases within the fourth *Cox* exception have "involved identifiable federal statutory or constitutional policies which would have been undermined by the continuation of the litigation in the state courts." *Flynt*, 451 U.S. at 622. But no such policy is threatened here. As limited by the decision below, this case does not implicate anyone's lawful access to firearms or anyone's right to market firearms for lawful purposes. Rather, it seeks redress for the devastating harm to the victims at Sandy Hook caused by petitioners' choice to market the XM15-E2S for the unlawful purpose of turning it on other human beings.

Even if the PLCAA reflected a policy of foreclosing damages liability for unlawful marketing of that sort, and even if the Connecticut Supreme Court's decision barring most causes of action and allowing one to proceed were incorrect, petitioners could raise their claim of error after a final judgment. In the meantime, petitioners "can make no claim of serious erosion of federal policy that is not common to all run-of-the-mine decisions," *Florida* v. *Thomas*, 532 U.S. 774, 780 (2001), that address which causes of action are and are not foreclosed by federal law. See *Flynt*, 451 U.S. at 622 (rejecting interpretation of fourth *Cox* exception under which "[a]ny federal issue finally decided on an interlocutory appeal in the state courts would qualify for immediate review").

Petitioners make no effort to align this case with the few cases in which this Court has found the fourth *Cox* exception satisfied. As in *Cox* itself, that exception typically has been used to resolve claims of First

Amendment protection.[5] But despite petitioners' references in this Court to First Amendment interests, petitioners presented no such argument below. The exception also has applied where the very pendency of the action in the particular state court (rather than some other forum) threatened a federal policy.[6] But petitioners do not (and cannot) argue that the PLCAA's language—a "qualified civil liability action may not be brought," 15 U.S.C. 7902(a)—deprives state courts of jurisdiction or requires venue in some other forum. Cf. *Reed Elsevier, Inc.* v. *Muchnick*, 559 U.S. 154, 157 (2010) (holding non-jurisdictional a Copyright Act provision mandating that "no civil action * * * shall be instituted"). And in the rare case in which this Court reviewed an ordinary preemption defense under the fourth *Cox* exception, *Goodyear Atomic Corp.* v. *Miller*, 486 U.S. 174 (1988), the Court took pains to explain that the issues in dispute affected "the only nuclear facility producing nuclear fuel for the Navy's nuclear fleet" and had "important implications" for other "federally owned nuclear production facilities." *Id.* at 179-180. The litigation here presents no remotely similar national security concerns.

Petitioners suggest that this case requires abandoning the usual jurisdictional rules because the PLCAA provides them "immunity from suit." Pet. 33;

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[5] See *Fort Wayne Books, Inc.* v. *Indiana*, 489 U.S. 46, 56 (1989) (fourth *Cox* exception "was held to be inapplicable" in case involving equal protection claim); see also, *e.g.*, *Miami Herald Publ'g Company* v. *Tornillo*, 418 U.S. 241 (1974).

[6] See, *e.g.*, *Southland Corp.* v. *Keating*, 465 U.S. 1 (1984); *Belknap, Inc.* v. *Hale*, 463 U.S. 491, 497 n.5 (1983); *Local No. 438 Construction & Gen. Laborers' Union* v. *Curry*, 371 U.S. 542 (1963); *Shaffer* v. *Heitner*, 433 U.S. 186 (1977); *Mercantile Nat'l Bank at Dallas* v. *Langdeau*, 371 U.S. 555 (1963).

but see Pet. 16 (claiming only "immunity from liability"). That is incorrect. Although some decisions (including the decision below) casually refer to the PLCAA as conferring "immunity," that statute does not give petitioners a formal "immunity from suit rather than a mere defense to liability." *Mitchell* v. *Forsyth*, 472 U.S. 511, 526 (1985) (emphasis omitted). "[V]irtually every right that could be enforced appropriately by pretrial dismissal might loosely be described as conferring a 'right not to stand trial.'" *Digital Equip. Corp.* v. *Desktop Direct, Inc.*, 511 U.S. 863, 873 (1994) (citation omitted). Courts thus "view claims of a 'right not to be tried' with skepticism, if not a jaundiced eye," *ibid.*, taking care to preserve the "crucial distinction between a right not to be tried and a right whose remedy requires the dismissal of charges," *Midland Asphalt Corp.* v. *United States*, 489 U.S. 794, 801 (1989).

Congress enacted the PLCAA "[t]o *prohibit causes of action*." 15 U.S.C. 7901(b)(1) (emphasis added). That is the language of a rule against liability, not a rule against standing trial. See *Midland Asphalt*, 489 U.S. at 801 (in context of collateral-order doctrine, observing that a true "right not to be tried * * * rests upon an explicit statutory or constitutional guarantee that trial will not occur"). Defendants protest that "[t]he burdens of discovery alone would be severe." Pet. 33. But the same could be said by any defendant disappointed that its dispositive motion was denied: "[it] is always true * * * that there is value * * * in triumphing before trial, rather than after it." *Lauro Lines s.r.l.* v. *Chasser*, 490 U.S. 495, 499 (1989) (citation and internal quotation marks omitted).

In short, petitioners will have a future opportunity to request review in this Court. Granting review now

would cast aside all the norms of restraint and selectivity that have marked this Court's Section 1257(a) jurisprudence.

II. The Decision Below Does Not Warrant This Court's Review.

The Connecticut statute at issue in this case forbids marketing products in a way that promotes their criminal misuse. See Pet. App. 2a (CUTPA "does not permit advertisements that promote or encourage violent, criminal behavior"). Respondents allege that petitioners knowingly violated that statute. And the Connecticut Supreme Court ruled that the statute is, under the specific facts here, "applicable" to the marketing of the XM15-E2S used in the Sandy Hook mass shooting, within the meaning of the PLCAA's predicate exception. That narrow ruling is in line with every other court to have addressed the PLCAA, and it is correct on the merits. Accordingly, even if this Court had jurisdiction to decide this case, review would be unwarranted.

A. No Division of Authority Exists.

Petitioners repeatedly assert that the Connecticut Supreme Court "held that the PLCAA's predicate exception encompasses all general statutes merely capable of being applied to firearms sales or marketing." Pet. i; see, *e.g.*, *id.* at 16, 20. But the court below held no such thing. It announced a narrow ruling that the PLCAA's predicate exception encompasses one specific state statute in "the particular circumstances of the case at issue." Pet. App. 80a n.57. That fact-bound ruling is entirely in line with the decisions of other courts that have addressed how the predicate exception applies to different civil actions involving different statutes. Those other courts would conclude, like the court below, that respondents' CUTPA claims fall

within the scope of the "applicable" requirement in the predicate exception.

1. In *City of New York* v. *Beretta USA Corp.*, 524 F.3d 384 (2d Cir. 2008), the City brought suit alleging that manufacturers and wholesale sellers of firearms created a public nuisance through distribution practices that those entities knew ultimately would place the firearms in illegal markets. The Second Circuit concluded that the predicate exception could encompass statutes (1) "that expressly regulate firearms," (2) "that courts have applied to the sale and marketing of firearms," or (3) "that do not expressly regulate firearms but that clearly can be said to implicate the purchase and sale of firearms." *Id.* at 404. Because the public nuisance statute under which the City asserted a claim fit into none of those categories, the court found that the PLCAA barred the City's suit. See, *e.g.*, *id.* at 399 ("It is not disputed that [the public nuisance statute] is a statute of general applicability that has never been applied to firearms suppliers for conduct like that complained of by the City.").

Because Connecticut state courts assign "particularly persuasive weight in the interpretation of federal statutes" to decisions of the Second Circuit, Pet. App. 68a-69a (citation omitted), the court below devoted significant attention to ensuring that its decision was consistent with *City of New York*, see *id.* at 68a-74a. As the Connecticut court explained, the Federal Trade Commission Act (FTC Act)—"a lodestar" for interpreting CUTPA—and state analogues "prohibit[ing] the wrongful marketing of dangerous consumer products such as firearms" are "precisely the types of statutes that implicate and have been applied to the sale and marketing of firearms." *Id.* at 55a, 70a. And CUTPA itself has been applied in existing state-court decisions to the sale of firearms. See *id.* at 70a-73a. Thus, the

court concluded, although CUTPA does not expressly regulate firearms, it does "fall[] squarely into" the second *and* third categories of covered statutes identified by the Second Circuit. *Id.* at 69a. Accordingly, although the public nuisance claim at issue in *City of New York* did not survive the Second Circuit's interpretation of the PLCAA, the CUTPA claims at issue here did.

Petitioners do not even attempt to argue that this case would have come out differently in the Second Circuit.[7] Instead, they contend that the Connecticut Supreme Court interpreted "applicable" to mean "capable of being applied"—an interpretation *City of New York* said would be "far too broad." *City of New York*, 524 F.3d at 403 (hyphen omitted). That is a misreading of the decision below. The Connecticut Supreme Court observed that as between two dictionary definitions of "applicable"—"capable of being applied" and "*exclusively* relevant to"—neither was unreasonable, but the former was more reasonable. See Pet. App. 62a-63a. But that was just the beginning of the Connecticut court's analysis. It went on to consider "the broader statutory framework, the congressional statement of findings and purposes, * * * [the] argument that treating CUTPA as a predicate statute would lead to absurd results," and "various extrinsic sources of congressional intent." *Id.* at 61a. In *none* of those places did the Connecticut Supreme Court hold—or even suggest—that the predicate exception is broad enough to encompass *any* "general statute[] merely capable of being applied to firearms sales or marketing." Pet. i. To the contrary, the court explained that it was

[7] In fact, the dissent below recognized that *its* reasoning—not the majority's—had "decline[d] to follow the analysis of the Second Circuit[]." Pet. App. 122a.

adopting a narrower interpretation. See Pet. App. 80a. Far from creating any conflict, that approach is fully consistent with the approach taken by the Second Circuit. Compare Pet. App. 62a-63a, with *City of New York*, 524 F.3d at 401.

2. The Ninth Circuit's decision in *Ileto* v. *Glock, Inc.*, 565 F.3d 1126 (9th Cir. 2009), is also fully consistent with the decision below. Like the plaintiffs in *City of New York*, the *Ileto* plaintiffs argued that various entities involved in selling and marketing firearms had distributed those products with reckless disregard for the risk that the firearms "would be obtained by illegal purchasers for criminal purposes." *Id.* at 1130. The *Ileto* plaintiffs contended that "applicable" in the predicate exception covers suits brought under any statute "capable of being applied" to firearm marketing or sale. *Id.* at 1133. The defendants, by contrast, argued that "applicable" means "applicable specifically," such that the PLCAA allows a suit to proceed only if "a plaintiff allege[s] a knowing violation of a statute that pertained *exclusively* to the sale or marketing of firearms." *Id.* at 1134.

The Ninth Circuit rejected both sides' arguments. See 565 F.3d at 1134 (explaining that "Plaintiffs' asserted meaning of 'applicable' appears too broad" and "Defendants' proposed restrictive meaning appears too narrow"). The court of appeals read the statutory examples in Section 7903(5)(A)(iii) to indicate that the predicate exception includes statutes that have "a direct connection with sales or manufacturing" but that such statutes need "not pertain exclusively to the firearms industry." *Ibid.* And the court understood the PLCAA's purpose and legislative history to bolster the conclusion that the "applicable" language covers (1) statutes that regulate firearms, and (2) statutes that regulate sales and marketing. See *id.* at 1136, 1137.

What the predicate exception does not cover, the Ninth Circuit concluded, are "general tort theories of liability." 565 F.3d at 1136. The *Ileto* plaintiffs had brought claims for alleged violations of negligence and public nuisance statutes—statutes that neither pertain directly to firearms nor regulate sales and marketing. See *id.* at 1132-1133. Accordingly, the Ninth Circuit ruled, the suit did not fall within the scope of the predicate exception. In so holding, the court declined to "express any view on the scope of the predicate exception with respect to any other statute." *Id.* at 1138 n.9.

Had the Ninth Circuit been considering the claims in this case, it would have agreed with the court below that respondents alleged a violation of "a State * * * statute applicable to the sale or marketing" of the firearm at issue. 15 U.S.C. 7903(5)(A)(iii). CUTPA does not exclusively regulate firearms. But it surely has "a direct connection" with marketing, *Ileto*, 565 F.3d at 1134, because it "specifically regulates commercial sales activities," Pet. App. 74a n.53; see *ibid.* (reasoning that "CUTPA also might well qualify as a predicate statute under the standard articulated" in *Ileto*).

Petitioners' contrary contention ignores the Ninth Circuit's reasoning. Petitioners argue that the Ninth Circuit's decision states that the predicate exception covers only "firearm-specific laws and regulations." Pet. 21 (quoting *Ileto*, 565 F.3d at 1155, 1159 (Berzon, J., concurring in part and dissenting in part)). Tellingly, that characterization comes not from the decision itself, but instead from Judge Berzon's separate opinion "discussing [the] majority." Pet. 21. The *actual* opinion rejects a "firearm-specific" reading of the predicate exception, see, *e.g.*, *Ileto*, 565 F.3d at 1134,

instead adopting an interpretation that is fully consistent with the Connecticut Supreme Court's understanding of the statute.

3. In a final effort to manufacture a split, petitioners contend that an intermediate appellate court in Indiana has deepened "confusion" over the PLCAA's predicate exception. Pet. 20. That court reasoned that "applicable" generally means "capable of being applied" and that its use in the PLCAA is not ambiguous. *Smith & Wesson Corp.* v. *City of Gary*, 875 N.E.2d 422, 431 (Ind. Ct. App. 2007). The court went on to conclude that "[e]ven assuming" a plaintiff had to allege a "violation of a statute facially applicable to the sale or marketing of a firearm," the plaintiff before it had done so by alleging violations of Indiana statutes "dealing with the sale of handguns." See *id.* at 432 (citing Ind. Code §§ 35-47-2.5-1 to -15; additional citation omitted). *City of Gary*'s analysis regarding the scope of "applicable" is, accordingly, dictum.[8]

City of Gary highlights what a poor vehicle this case is for addressing the scope of the predicate exception. Petitioners do not argue that the Indiana Court of Appeals would have resolved this case in their favor. Nor could they—the Indiana court appears to have taken a broader view of the PLCAA's predicate exception than did the court below. Instead, petitioners assert that *City of Gary* is in conflict with the Second and

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[8] Petitioners assert that even if *City of Gary*'s reading of "applicable" is "arguably dicta," the "court has since reaffirmed its broad reading." Pet. 20 (citing *City of Gary* v. *Smith & Wesson Corp.*, No. 18A-CT-181, 2019 WL 2222985, at *13 (Ind. Ct. App. May 23, 2019)). But the later decision on which petitioners rely arose in the same litigation as did *City of Gary*, and the court simply restated its prior conclusions. See *ibid.* Moreover, the court did so under the law-of-the-case doctrine and offered no new analysis. See *ibid.*

Ninth Circuits' decisions. To the extent those decisions could be said to differ, that may simply be because each court was addressing a different state statute with different characteristics. More importantly, regardless of whether a conflict in fact exists between two federal circuits and dictum of an intermediate state court, this case does not implicate that conflict. As explained, all three courts would reach the same conclusion as to respondents' claims under CUTPA that the Connecticut Supreme Court did here. This Court's review of a case that turns on an analysis as to which all courts have found common ground is unwarranted.

B. The Connecticut Supreme Court Reached the Correct Result.

This Court's review is also unwarranted because the Connecticut Supreme Court reached the correct conclusion: the "applicable" language in the PLCAA's predicate exception is satisfied by respondents' suit seeking relief from businesses that marketed the XM15-E2S in violation of CUTPA.

1. The PLCAA does not bar "an action in which" a firearms manufacturer or seller "knowingly violated a State or Federal statute applicable to the sale or marketing of the [firearm]." 15 U.S.C. 7903(5)(A)(iii). There is no dispute that petitioners have alleged a violation of a state statute. See Pet. App. 2a. The argument pressed and passed upon below is only whether that particular statute is "applicable to the sale or marketing of the [firearm]."

The most natural reading of "applicable" in the PLCAA clearly encompasses CUTPA in the circumstances of this case. As this Court has explained, "'[a]pplicable' means 'capable of being applied: having

relevance' or 'fit, suitable, or right to be applied: appropriate.'" *Ransom* v. *FIA Card Servs., N.A.*, 562 U.S. 61, 69 (2011) (quoting *Webster's Third New International Dictionary* 105 (2002)); see *ibid.* (citing additional dictionaries that define "applicable" as "relevant or appropriate" and "[c]apable of being applied" or "[f]it or suitable for its purpose, appropriate"). Petitioners do not dispute that CUTPA is "capable of being applied" to the marketing of a firearm. And there can be no dispute that CUTPA has "relevance" to and is "fit * * * to be applied" to the "marketing of the [XM15-E2S]," given that the Connecticut Supreme Court concluded that respondents had "pleaded legally cognizable" claims that petitioners' marketing ran afoul of CUTPA. Pet. App. 59a.

Petitioners insist that, in the PLCAA, "applicable" means *specifically* or *exclusively* concerning. See Pet. 23; *id.* at i (contending that statutory examples "specifically regulate the firearms industry").[9] But if Congress had intended to cover only statutes that are "specifically" or "exclusively" applicable, it could easily have added such an adverb, as it has done in other statutes. See Pet. App. 63a & n.41 (identifying statutes that use "directly applicable," "expressly applicable," and "specifically and exclusively applicable").[10]

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[9] Petitioners also argue that "applicable" should be read to mean "having *direct relevance*." Pet. 23 (quoting *Black's Law Dictionary* 120 (10th ed.)). But that definition is consistent with the Connecticut Supreme Court's decision. Connecticut gun sellers must look to CUTPA to determine how they can lawfully advertise their products in the State—that is, CUTPA provides a code of conduct that has "direct relevance" to how petitioners could lawfully market the XM15-E2S.

[10] Amici (but not petitioners) contend that the predicate exception should be read narrowly to avoid concerns under the First and Second Amendments. See Nat'l Shooting Sports Found. Br. 14.

Petitioners' reliance on the examples given in the predicate exception of statutes "applicable to the sale or marketing of the [firearm]," 15 U.S.C. 7903(5)(A)(iii), is similarly misplaced. First, petitioners are wrong that the examples cover only statutes that "specifically regulate the firearms industry." Pet. i. The PLCAA provides that it does not bar suits involving (1) knowing violations of federal or state record-keeping requirements, or (2) sales to individuals prohibited from possessing firearms under 18 U.S.C. 922(g) or (n). See 15 U.S.C. 7903(5)(A)(iii)(I) & (II). Suits in the latter category likely involve laws that "specifically regulate firearms," namely 18 U.S.C. 922(g) and (n). But a number of state record-keeping requirements define categories of covered items that include firearms even though they do not expressly or specifically identify firearms as within their coverage. See, *e.g.*, Colo. Rev. Stat. Ann. § 29-11.9-103 (requiring pawnbroker to record, *inter alia*, customer and product identification information and to make that information available to local law enforcement); Ohio Rev. Code Ann. § 4737.01 (establishing recordkeeping requirements for sellers of secondhand articles). Those statutes certainly *can* be applied to the sale of a firearm. But they specifically target weapons recordkeeping in the same way that CUTPA specifically targets consumer marketing; they are no more "specific regulations" of firearms than is CUTPA.

Second, there is no basis for reading the examples, which are introduced by the word "including," as

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The canon of constitutional avoidance is inapplicable here, because no such concerns exist and the statutory language is not "genuinely susceptible to two constructions." *Almendarez-Torres* v. *United States*, 523 U.S. 224, 238 (1998).

marking the outer boundary of the predicate exception. Where Congress "[f]ollow[s] the general term with specifics," that drafting choice "can serve the function of making doubly sure that the broad (and intended-to-be-broad) general term is taken to include the specifics." Antonin Scalia & Bryan A. Garner, *Reading Law* 204 (2012). And where Congress "introduce[s] the specifics with a term such as *including* or even *including without limitation*," the statute "suggest[s] or even specifically provide[s] this belt-and-suspenders function" rather than a limiting function. *Ibid.*; see *Phelps Dodge Corp.* v. *NLRB*, 313 U.S. 177, 188-189 (1941). Accordingly, it is not the case—as petitioners assert—that "the enumeration of specifics becomes superfluous" if the PLCAA's general predicate exception "is given its broadest application." *Reading Law*, *supra*, at 204. "Congress may have simply intended to remove any doubt that" the delineated statutes "were included" in the general exception. *Ali* v. *Fed. Bureau of Prisons*, 552 U.S. 214, 226-227 (2008).[11]

2. Allowing this suit to proceed also best effectuates Congress's expressed purpose in enacting the PLCAA. Congress worried that liability actions "based on theories without foundation in hundreds of years of the common law and jurisprudence" could "expand civil liability" in unforeseeable ways. 15 U.S.C. 7901(a)(7). It sought to protect businesses engaged in

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[11] Indeed, the Connecticut Supreme Court provided a specific reason, having nothing to with limiting the predicate exception, why Congress might have inserted the examples: to clarify that the PLCAA would not bar an action by victims of the 2002 D.C. snipers against the gun dealer who supplied the snipers with firearms, thereby overcoming potential political resistance to the PLCAA's passage. See Pet. App. 87a-88a & nn.66-67. Petitioners do not mention that reason, much less persuasively respond to it.

the "*lawful* design, manufacture, marketing, distribution, importation, or sale" of firearms and to shield them from liability "for harm that is *solely* caused by * * * others." 15 U.S.C. 7901(a)(5), (b)(1) (emphasis added). But respondents' allegations are that petitioners themselves acted *unlawfully* in marketing the XM15-E2S used in the Sandy Hook shooting—that is, that their marketing practices directly violated standards of conduct codified by the Connecticut legislature—and that the wrongful marketing proximately caused the shooting. And, as the Connecticut Supreme Court extensively chronicled, suits of a similar character brought under CUTPA and other wrongful marketing statutes have a pedigree at both the state and federal levels. See Pet. App. 70a-74a.

Petitioners incorrectly assert that permitting suit here is inconsistent with Congress's "concern[] with vague standards subject to 'judicial evolution.'" Pet. 26 (quoting *Ileto*, 565 F.3d at 1136). Even assuming that the PLCAA should be read "to foreclose novel legal theories," the FTC Act and state analogues like CUTPA "have long been used to regulate * * * the sale and marketing of firearms." Pet. App. 97a-98a. "[T]he plaintiffs' theory of liability" thus "is not novel." *Id.* at 98a.

Even more to the point, petitioners' preferred reading of the statute cannot be reconciled with its text. Petitioners are correct that Congress was concerned with liability premised on vague or novel "theories without foundation" in the law. 15 U.S.C. 7901(a)(7); see Pet. 26, 29. Congress could have addressed that concern by preempting causes of action that are novel or that had not been previously applied to firearms. But Congress did not take that path. Instead, it codified its concern by requiring a predicate *statute*. Re-

quiring a statutory violation prevents "a maverick judicial officer" from crafting her own newly developed theory of liability. 15 U.S.C. 7901(a)(7). And it means, as petitioners agree, that firearms are "regulated only through the democratic process." Pet. 2.[12]

3. The PLCAA's legislative history further confirms that conclusion. As the Connecticut Supreme Court explained based on extensive analysis of that history, "[a] common theme" of Congress's deliberations was that firearms sellers should be no more liable for the misuse of their products than are other producers of "ubiquitous but potentially dangerous" products. Pet. App. 96a. The PLCAA's author stated, for example, that if a firearms seller who did everything right could be held accountable when the gun it sold was later used criminally, then "automobile manufacturers will have to take the blame for the death of a bystander who gets in the way of the drunk driver." 151 Cong. Rec. 18,085 (2005). But, as the court below concluded, nothing in the legislative history supports the view that an automobile manufacturer should be

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[12] The Brief for Amici States contends that the Connecticut Supreme Court's decision will force States to revisit legislative decisions about firearms policy made since the PLCAA was enacted. See States' Amicus Br. 7. Not so; as explained above, the Connecticut Supreme Court's approach straightforwardly applies the text of the PLCAA and is consistent with prior case law doing the same. If anything, the decision below supports the federalism balance struck by the PLCAA, in which States control the function of their own legislation under the PLCAA. If the Connecticut legislature were dissatisfied with the application of the PLCAA to CUTPA by the court below, it would be free to change its law to apply to a narrower swath of industries, conduct, or potential plaintiffs. Likewise, if other State legislatures anticipate that their laws will affect firearms in an undesirable manner under the predicate exception, they too are free to modify their own statutes.

shielded from liability for "advertis[ing] that the safety features of its vehicles made them ideally suited for drunk driving." Pet. App. 96a. "That is, in essence, what the plaintiffs have alleged in the present case." *Id.* at 96a-97a.

Petitioners attempt to muster a legislative consensus against lawsuits alleging unfair advertising against gun sellers by pointing to instances in which legislative materials make reference to such suits. See Pet. 27. But petitioners fail to mention that, for the most part, the congressional record focuses on aspects of those cases that have nothing to do with the fact that they involved advertising claims. See H.R. Rep. No. 109-124, at 6 n.1 (2005) (noting courts rejected liability for injuries caused only by criminal misuse of products); *id.* at 11 n.48 (illustrating concern about municipalities bringing broad suits against firearms manufacturers). Even if one were to look to the House Report rather than the statutory text to determine the scope of the PLCAA's predicate exception, nothing in the Report suggests that suits alleging violations of state statutes regulating advertising would be barred under the PLCAA.

The evidence of congressional intent that petitioners describe as "[m]ost telling[]" is one Senator's passing reference in a floor statement to a lawsuit by the city of Bridgeport. Pet. 28 (citing 151 Cong. Rec. 17,371; *Ganim* v. *Smith & Wesson Corp.*, 780 A.2d 98, 112 (Conn. 2001)). That case, however, bore no resemblance at all to this one, see Pet. App. 38a-39a: Bridgeport sued dozens of firearm trade associations and businesses, and asserted nine claims alleging generalized harm, two of which were brought under CUTPA. The floor statement cites the trial court's decision dismissing that suit as support for the Senator's broad disdain for overreaching litigation. The statement

makes no reference to the allegations in the suit generally, the propriety of the advertising claims specifically, or CUTPA in any capacity. See 151 Cong. Rec. 17,371 (2005). And, in any event, "floor statements by individual legislators rank among the least illuminating forms of legislative history." *NLRB* v. *SW Gen., Inc.*, 137 S. Ct. 929, 943 (2017). In sum, the legislative history, like the statute's text and stated purpose, supports the conclusion that the PLCAA does not bar this suit.

C. The Interlocutory Decision Below Will Not Have The Broad Effects That Petitioners Claim.

Petitioners and their amici assert that this Court's immediate review is necessary to avoid "a flood of lawsuits across the country" (Pet. 28) that will wreak ruin on the entire firearms industry. Those assertions about the consequences of the decision below are hyperbolic in the extreme.

By its plain terms, the PLCAA does not foreclose any and all liability for the firearms industry. Rather, in creating a predicate *exception* to preemption, Congress contemplated that a very limited set of suits could proceed against manufacturers and sellers. The Connecticut Supreme Court responsibly followed the line that Congress itself drew—and so there is no reason for concern that any litigation will proceed that Congress chose to bar.

Indeed, the decision below is quite narrow. The Connecticut Supreme Court declined to adopt a rule under which even every *CUTPA* claim would satisfy the predicate exception. See Pet. App. 74a & n.53, 80a n.57. Instead, the court confined its ruling to the claims before it, which "allege only that one specific family of firearms sellers advertised one particular

line of assault weapons in a uniquely unscrupulous manner, promoting their suitability for illegal, offensive assaults"—exactly "th[e] sort of specific, narrowly framed wrongful marketing claim * * * that Congress did not intend to immunize." Pet. App. 81a.

Because the decision was limited to the facts presented, the Connecticut Supreme Court had no need to endorse other formal limitations on the predicate exception—but it nonetheless suggested several. The court contrasted this suit, arising from "one specific incident of gun violence," with the legislative focus on barring suits "targeting the entire firearms industry." Pet. App. 93a-95a. The court recognized that legislative concern over suits based in "unprecedented *tort* theories" is not implicated by a suit that "is not novel" and does not "sound in tort." Pet. App. 97a-98a. The court observed that most state-law predecessors to the PLCAA "bar[red] only actions * * * brought by municipalities and other public entities." Pet. App. 99a n.80. And the court noted the history of suits addressing the wrongful marketing of dangerous consumer products under federal and state analogues to CUTPA. See Pet. App. 70a-74a. It thus blinks reality to read the decision as opening the door to lawsuits based on "a multitude of distinct legal theories effectively indistinguishable from pre-PLCAA lawsuits." Pet. 28 (citations and internal quotation marks omitted).

Petitioners are also wrong to suggest that the decision below will expose gun manufacturers and sellers to "claims under broad unfair trade practices laws existing in all 50 states." Pet. 26. In fact, most other States' consumer protection laws would not permit suit by a victim of gun violence. See Brief for Amicus Curiae Law Center to Prevent Gun Violence Supporting Plaintiff-Appellants and Urging Reversal 3-4, *Soto* v. *Bushmaster Firearms Int'l*, 202 A.3d 262 (Conn.

2019) (Nos. 19832, 19833), *available at* 2017 WL 6033390, at *4. Even if such a suit were possible, claims brought under other state laws also would have to surmount a host of potential state-law impediments (as did the claims below, see, *e.g.*, Pet. App. 197a), including statutes of limitations, exclusivity provisions, and statutory carve-outs (such as CUTPA's exemption provision, see Pet. App. 215a). And, as the present case illustrates, the PLCAA itself puts yet other barriers in the way of such suits, including the requirement under the predicate exception that a statutory violation be knowing and that such a violation be "a proximate cause of the harm for which relief is sought." 15 U.S.C. 7903(5)(A)(iii).

Accordingly, petitioners' claims of industry-ending liability are baseless. Petitioners and their amici cite no case that has actually culminated in a final judgment of liability against firearms sellers or manufacturers; in fact, amici note that in other cases, the PLCAA has ended litigation that was barred by its terms. See Nat'l Shooting Sports Found. Amicus Br. 11. The Connecticut Supreme Court correctly held that respondents' suit falls within the plain terms of the "applicable" language in the predicate exception. But the suit thus far has only survived an initial motion to strike. That preliminary posture indicates not only that the Court lacks jurisdiction, see pp. 9-16, *supra*, but also that numerous additional steps remain before any final judgment against petitioners can be had. In any event, a judgment against petitioners in this case would do no more than afford redress for the specific unlawful marketing conduct alleged to have given rise to the tragic deaths at Sandy Hook Elementary School.

None of petitioners' arguments comes close to demonstrating that this Court should address the

scope of the predicate exception in a case that fails the standards this Court applies in deciding whether to grant certiorari—one that has a fatal jurisdictional flaw under Section 1257, that implicates no actual conflict of authority, and that does not remotely resemble the overreaching lawsuits that the PLCAA was in fact designed to bar. The petition should be denied.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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