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Retreat, Regroup, Reload: Gunning for the States' Public Nuisance Firearms Laws

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Introduction

On June 15, 2026, the Supreme Court denied certiorari in *National Shooting Sports Foundation, Inc. v. James*.[1] In what

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1. 144 F.4th 98 (2d Cir. 2025), *cert. denied*, 146 S. Ct. 2724 (2026). The Court's denial of certiorari was unanimous with no Justices filing any explanatory opinion. *James*, 146 S. Ct. at 2724. Paul Clement and Erin Murphy of Clement & Murphy filed the certiorari petition on behalf of the NSSF. Petition for Writ of Certiorari, *James*, 146 S. Ct. 2724 (No. 25-1026). The NRA, twenty-four state attorneys general, and more than seventy Republican members of Congress supported the NSSF's petition. *See* Brief for the NRA et al.

might be charitably characterized as the shot not heard round the world, the significance of the Court's denial reverberated loudly in the gun universe.[2] The appeal of the National Shooting Sports Foundation (NSSF) challenged a Second Circuit decision that upheld the New York firearms public nuisance statute, which allows plaintiffs to sue gun manufacturers, wholesalers, and dealers for endangering people's safety through the sale of firearms and ammunition.[3] The law permits the state and local municipalities to sue firearms defendants who fail to implement reasonable controls and procedures to prevent their guns from being used illegally.[4] The Second Circuit upheld the New York statute under the predicate statute exception to the 2005 Protection of Lawful Commerce in Arms Act (PLCAA), which generally shields the firearms industry from almost all civil liability for the consequences of gun violence.[5]

The news of the Court's unwillingness to hear the appeal inspired predictable responses. The NSSF expressed disappointment that the Court declined to consider the constitutionality of

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as *Amici Curiae* in Support of Petitioners, *James*, 146 S. Ct. 2724 (No. 25-1026); Brief of *Amici Curiae* State of Montana and 23 Other States in Support of Petitioners, *James*, 146 S. Ct. 2724 (No. 25-1026); Brief for U.S. Senator Ted Cruz et al. as *Amici Curiae* Supporting Petitioners, James, 146 S. Ct. 2724 (No. 25-1026).

2. *See* Emily Field & Mike Curley, *High Court Turns Down NY Gun Law Challenge,* LAW360 (June 15, 2026), https://www.law360.com/articles/2486100/high-court-turns-down-ny-gun-law-challenge [https://perma.cc/3328-DLYZ]; Jordan Fischer, *Justices Won't Hear Gun Industry Challenge to NY Liability Law*, BLOOMBERG LAW (June 15, 2026), https://news.bloomberglaw.com/us-law-week/justices-wont-hear-gun-industry-challenge-to-ny-liability-law/ [https://perma.cc/8U9J-NFHN]; Jonathan Stempel, *US Supreme Court Rebuffs Challenge to New York Law Allowing Lawsuits Against Gun Industry,* REUTERS (June 15, 2026), https://www.reuters.com/world/us-supreme-court-rebuffs-challenge-new-york-law-allowing-suits-against-gun-2026-06-15/ [https://perma.cc/JMT7-QT62].

3. *James*, 144 F.4th at 103–05 (upholding N.Y. GEN. BUS. LAW §§ 898-a to -e (2021)).

4. GEN. BUS. §§ 898-a, -d.

5. *James*, 144 F.4th at 103; *see also* Protection of Lawful Commerce in Arms Act, Pub. L. No. 109-92, 119 Stat. 2095 (2005) (codified at 15 U.S.C. §§ 7901–7903).

the New York law,[6] a decision that conceivably would have implications for the ten other states that enacted similar public nuisance firearms statutes.[7] Since 2021, the NSSF has been aggressively challenging these state public nuisance firearms statutes in the lower courts.[8] While the Court's certiorari denial was a setback for gun lobbyists, gun safety advocacy groups expressed satisfaction that the Court declined to "take up this meritless challenge to New York's vital mandate that gun companies implement reasonable business controls to prevent gun violence across our state."[9] The certiorari denial inspired speculation concerning the wider impact of the Court's refusal to hear this gun appeal, predicated on a theory of federal supremacy preemption.[10]

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6. Stempel, *supra* note 2 (reporting on the statement of NSSF spokesperson Mark Oliva).

7. *See infra* subpart I(B) (describing the other states' laws).

8. *See infra* Part II (describing this litigation).

9. Press Release, *United States Supreme Court Denies Cert in* NSSF v. James*, Everytown Law Responds*, EVERYTOWN LAW (June 15, 2026), https://everytownlaw.org/press/united-states-supreme-court-denies-cert-in-nssf-v-james-everytown-law-responds/ [https://perma.cc/Y365-S5WT].

10. Attorneys at the law firm Boies Schiller Flexner ventured that the Second Circuit holding in *NSSF v. James*—which remains good law as a consequence of the certiorari denial—has "broader implications beyond New York." Alison Anderson & Anoush Baghdassarian, *The Supreme Court's Cert. Denial in* NSSF v. James *Paves the Way for More States to Use Public Nuisance Laws Against Unlawful Gun Markets*, BOIES SCHILLER FLEXNER (June 29, 2026), https://perspectives.bsfllp.com/post/102n7aj/the-supreme-courts-cert-denial-in-nssf-v-james-paves-the-way-for-more-states-to-use-public-nuisance-laws-against-unlawful-gun-market/ [https://perma.cc/3YST-ZNJZ]. They noted that several states have enacted analogous statutes specifically designed to come within PLCAA's predicate statute exception, based on the New York model. *Id*. Thus, the Boies attorneys counseled that "[s]tates should take note. They do not need to accept the false choice between doing nothing and running headlong into federal preemption." *Id*. The authors concluded:

> The Supreme Court's denial of certiorari should therefore be read as a practical signal, even if not a precedential endorsement: carefully drafted state legislation in this area is not dead on arrival. Legislatures confronting unlawful gun markets should continue to create and refine public nuisance laws that require reasonable controls, deter unlawful distribution practices, and open a path to civil accountability where industry actors knowingly contribute to public harm.

Id.

It is usually problematic to speculate what the Supreme Court means when it denies certiorari; clearly the Court may decline to grant an appeal for many reasons.[11] In 1950, Justice Felix Frankfurter commented on the significance, or lack thereof, of the Court's certiorari denials, noting an array of possible reasons.[12] He observed that a certiorari denial simply meant that fewer than four Justices felt the appeal met the Court's discretionary review criteria.[13] A denial did not express any opinions relating to the merits of the lower court's decision.[14] The Court may deny review because the lower court's decision lacked finality, the appeal was untimely, the decision was supported by independent state law, the trial court record was too unclear, or there was no clear split or conflict among lower courts.[15]

As Justice Frankfurter pointed out, we cannot know why the Court declined to hear the NSSF's appeal concerning the New York statute's constitutionality. But the Court's certiorari denial is significant because the NSSF and its gun lobby allies strategically chose to structure their facial constitutional challenge based solely on a PLCAA Supremacy Clause preemption argument. The question, then, is whether the NSSF's supremacy argument is now a dead letter, or just a setback awaiting resuscitation when a lower court actually applies a state's accountability statute. Moreover, the Court's unwillingness to take up the NSSF's preemption argument left the NSSF with an array of constitutional challenges to other states' firearms public nuisance laws.

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While the NSSF's recent failed attempt to obtain Supreme Court review is significant in itself, this misadventure is part of a

11. *See generally* Peter Linzer, *The Meaning of Certiorari Denials*, 79 COLUM. L. REV. 1227 (1979).

12. Maryland v. Baltimore Radio Show, Inc., 338 U.S. 912, 917–19 (1950) (opinion of Frankfurter, J.); Darr v. Burford, 339 U.S. 200, 226 (1950) (Frankfurter, J., dissenting) ("The denial means that this Court has refused to take the case. It means nothing else.").

13. *Burford*, 339 U.S. at 226.

14. *Id*.

15. *Baltimore Radio Show*, 338 U.S. at 917–18.

more compelling litigation narrative. The NSSF has doggedly pursued eight state AGs across at least ten federal courts in the past five years to undo state firearms accountability statutes.[16] And it has lost every case.[17] This is a striking narrative of repeated litigation failure accompanied by retreating, regrouping, and reloading its attacks. As such, the NSSF's somewhat unorthodox strategy bears scrutiny as an object lesson for litigators ultimately seeking favorable Supreme Court review.

The NSSF is now the dominant voice in firearms litigation, supplanting the National Rifle Association.[18] Formed in 1961,[19] the NSSF is a firearms industry trade association with thousands of members.[20] Its website indicates that it leads the way in lobbying for the firearms industry "before all branches of government," "keeping guns out of the wrong hands, encouraging enjoyment of recreational shooting and hunting," promoting safe and responsible use of firearms, and "helping people better understand the industry's lawful products."[21]

Since 2021, the NSSF has proven to be an aggressive, resilient litigator and has fought against several new state gun accountability laws. The June 2026 certiorari denial is by no means the end of the NSSF's battles; it will likely continue to litigate with renewed energy, eventually to prompt the Court to strike down these laws.[22] Although the NSSF's primary PLCAA

16. *See infra* Part II.

17. *See infra* Part II.

18. *See* Matt Valentine, *The Gun Lobbying Group You Don't Hear About*, THE ATLANTIC (Sep. 12, 2013), https://www.theatlantic.com/national/archive/2013/09/the-gun-lobbying-group-you-dont-hear-about/279616/ [https://perma.cc/5TW5-QTA9].

19. *About the Firearms Industry's Trade Association*, NSSF, https://www.nssf.org/about-us/ [https://perma.cc/Q6DA-Y3Y2].

20. *NSSF Membership*, NSSF, https://www.nssf.org/membership/ [https://perma.cc/49UM-EWTK].

21. NSSF, https://www.nssf.org [https://perma.cc/XKJ2-S2TE].

22. *See* Tobi Raji, *The Brewing Gun-Control Fight That Could Be Headed to the Supreme Court*, WASH. POST (Feb. 21, 2023), https://www.washingtonpost.com/politics/2023/02/21/gun-manufacturer-shooting-lawsuits-supreme-court/ [https://perma.cc/29RC-NTLX] (describing legal experts' view

preemption theory may be in doubt, the NSSF and gun industry nonetheless have an additional impressive constitutional arsenal to target these laws.

I. The Firearms Public Nuisance Laws

A. New York

The New York firearms public nuisance law is the progenitor of ten other states' similar statutes. The New York statute has been the NSSF's primary target, taking the battle to the Supreme Court,[23] and ending in the June 2026 stalemate.[24] The New York statute is worth examining as the model for the other states' laws, and as an illustration of how they are vulnerable to challenges by groups like the NSSF.

New York was the first state to enact a firearms accountability statute in 2021.[25] Generally, the New York statute allows civil lawsuits when a gun manufacturer knowingly takes steps to violate the underlying public nuisance statute.[26] The State, localities, and crime victims can file suit against gun manufacturers and distributors if the defendants' conduct contributes to a public nuisance by failing to take adequate action to ensure their products are not used in any unlawful activity.[27]

The New York statute plainly states that a violation of the law that results in harm to the public "shall hereby be declared to be a public nuisance," regardless of "whether the gun industry member acted for the purpose of causing harm."[28] The statute

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that the NSSF's tactics appear designed to maximize its chances of getting the issue before the Supreme Court).

23. *See* Petition for Writ of Certiorari, *NSSF v. James*, 146 S. Ct. 2724 (2026) (No. 25-1026).

24. *See James*, 146 S. Ct. at 2724 (denying certiorari).

25. *See* Keshia Clukey, *New York Enacts First-in-U.S. Law to Limit Gun-Liability Shield*, BLOOMBERG LAW (July 6, 2021), https://news.bloomberglaw.com/us-law-week/new-york-enacts-first-in-u-s-law-to-limit-gun-liability-shield [https://perma.cc/T3JW-AN23].

26. N.Y. GEN. BUS. LAW §§ 898-a to -e (McKinney 2021).

27. *Id.*

28. *Id.* § 898-c.

states that "[n]o gun industry member," by unlawful or unreasonable conduct, "shall knowingly or recklessly create, maintain or contribute to a condition . . . that endangers the health or safety of the public through the sale, manufacturing, importing, distribution, or marketing" of a firearms product.[29] The statute requires all industry members who "manufacture, market, import, distribute, or [sell]" firearms to establish "reasonable controls and procedures" to prevent their guns from being "possessed, used, marketed, or sold" illegally in New York.[30] A manufacturer's conduct is deemed a public nuisance if it fails to institute reasonable controls and endangers the public.[31]

The law permits the state attorney general on behalf of the people, or city corporation counsel on behalf of municipal governments, to sue gun industry members for failing to institute or failing to exercise reasonable controls.[32] These officials may institute actions in New York state or federal district court to enjoin or restrain violations and to obtain restitution and damages.[33] The law also provides a private right of action for "[a]ny person, firm, corporation or association . . . damaged as a result of a gun industry member's acts or omissions" to seek damages or to enforce the statute in state or federal district court.[34]

The legislative findings accompanying the statute's enactment state that "illegal use of firearms not only constitutes a public nuisance" in the penal law but "contribute[s] to the public health crisis of gun violence in the state."[35] It noted that "[i]llegal firearm violence has disproportionately affected" minority communities "despite stringent state and local laws against the illegal possession of firearms."[36] It continued, "[G]iven the ease at which legal firearms flow into the illegal market, and given the

29. *Id*. § 898-b(1).
30. *Id.* § 898-b(2).
31. *See id.* §§ 898-b(2), c(1).
32. *Id*. § 898-d.
33. *Id*.
34. *Id.* § 898-e.
35. 2021 N.Y. Laws ch. 237, § 1.
36. *Id*.

specific harm illegal firearm violence causes certain New Yorkers, those responsible for the illegal or unreasonable sale, manufacture, distribution, importing or marketing of firearms may be held liable for the public nuisance caused by such activities."[37] The failure of the firearms industry to "implement reasonable safety measures" warranted liability for the "many New Yorkers, including many children," who are killed unintentionally due to these failures.[38]

B. The Ten Followers [39]

Since 2021, eleven states, including New York, have enacted firearms accountability laws intended to bring these statutes within PLCAA's predicate statute exception.[40] To circumvent PLCAA's near-blanket immunity to the firearms industry, the legislatures crafted these statutes to conform with PLCAA's exemption for state claims based on an applicable predicate statute.[41] The theory underlying these specific, targeted statutes is that state public officials or private citizens desiring to sue gun defendants now have the ability to rely directly on a predicate state statute that creates liability for marketing, sale, and distribution of firearms constituting a public nuisance.[42] This theory became the centerpiece of the NSSF's February 20, 2026 certiorari petition challenging the New York public nuisance statute.[43]

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37. *Id.*

38. *Id.*

39. This section is adapted from LINDA S. MULLENIX, OUTGUNNED NO MORE: THE NEW ERA OF FIREARMS INDUSTRY ACCOUNTABILITY, chs. 7–8 (2025).

40. *See infra* notes 41–51 and accompanying text.

41. *See* Timothy D. Lytton, *An End Run Around the Gun Industry Liability Shield*, THE REGUL. REV. (July 26, 2021), https://www.theregreview.org/2021/07/26/lytton-end-run-around-gun-industry-liability-shield/ [https://perma.cc/9VWY-M2S3]; Clukey, *supra* note 25.

42. *See* Gregory Heinen, *How New Public Nuisance Claims Are Targeting Gun Cos.*, LAW360 (Sep. 16, 2022), https://www.law360.com/articles/1530943/ [https://perma.cc/4H8V-7T4P].

43. Petition for Writ of Certiorari, *supra* note 23, at 2–3.

Following New York's innovative lead in 2021–2022, New Jersey, Delaware, and California enacted firearms statutes that made gun-related litigation an actionable public nuisance claim under state law.[44] By 2024, other states—including Colorado, Hawaii, Maryland, Illinois, and Washington—had enacted firearms accountability and public nuisance statutes patterned on the New York, New Jersey, California, and Delaware statutes.[45] In 2025, Connecticut became the tenth state to enact a copycat law,[46] and in 2026, Virginia followed.[47]

The states' public nuisance statutes are similarly based on creating a means for gun violence victims to seek redress through civil litigation and to circumvent PLCAA's blanket immunity for the firearms industry. The statutes are based on the legislative purpose of protecting public health, safety, and welfare.[48] Additionally, the language of the statutes conforms to PLCAA's language allowing suits against defendants who "knowingly violated a statute applicable to the sale or marketing of a firearm or other qualified product."[49] The statutes impose specific obligations on firearms industry members concerning the marketing and sale of firearms.[50] All specifically vest the state attorneys

44. MULLENIX, *supra* note 39, at 127.

45. *See Gun Industry Accountability*, GIFFORDS LAW CTR. TO PREVENT GUN VIOLENCE, https://giffords.org/lawcenter/gun-laws/policy-areas/other-laws-policies/gun-industry-immunity/ [https://perma.cc/H2NN-ZFL3].

46. Conn. Pub. Act No. 25-43 (Reg. Sess. 2025); *see also Gun Industry Immunity in Connecticut*, GIFFORDS LAW CTR. TO PREVENT GUN VIOLENCE (May 4, 2026), https://giffords.org/lawcenter/state-laws/gun-industry-immunity-in-connecticut [https://perma.cc/CF8G-FBED].

47. *See* 2026 Va. Acts chs. 529–530; *Gun Industry Immunity in Virginia*, GIFFORDS LAW CTR. TO PREVENT GUN VIOLENCE (May 5, 2026), https://giffords.org/lawcenter/state-laws/gun-industry-immunity-in-virginia/ [https://perma.cc/53DH-ZU7J].

48. *See, e.g.*, COLO. REV. STAT. ANN. § 6-27-102(1)(a)–(c) (West 2023); S.B. 5078, 68th Leg., Reg. Sess. § 1 (Wash. 2023).

49. *Gun Industry Accountability*, *supra* note 45; *see also* Heidi Li Feldman, *What It Takes to Write Statutes That Hold the Firearms Industry Accountable to Civil Justice,* 133 YALE L.J. FORUM 717, 718–19 (2024).

50. *See, e.g.*, N.J. STAT. ANN. § 2C:58-35(a)(1)–(2) (West 2022); DEL. CODE ANN. tit. 10, § 3930(c) (West 2022); CAL. CIV. CODE § 3273.51(c) (West 2026); COLO. REV. STAT. ANN. § 6-27-102(1)(a)–(e) (West 2023); HAW. REV.

general, political subdivisions, or private citizens with authority to sue for violation of the law.[51]

II. The NSSF Litigation Scorecard

In reaction to the burgeoning state initiatives to create firearms accountability laws, the NSSF and its allies have challenged the statutes' constitutionality in eight of the eleven states that have enacted new laws.[52] To date, there have been no challenges to the Colorado, Connecticut, or Virginia statutes, although the NSSF has threatened some.[53] In these efforts, the NSSF has pursued a noteworthy strategy: rather than waiting for a state to sue

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STAT. ANN. § 134-102(b) (West 2023); 815 ILL. COMP. STAT. ANN. § 505/2DDDD(b) (West 2024); S.B. 5078, 68th Leg., Reg. Sess. §§ 2(1)(f), 2(4), 2(5), 2(6)(b) (Wash. 2023); MD. CODE ANN., CTS. & JUD. PROC. § 3-2502 (West 2024).

51. *Gun Industry Accountability*, *supra* note 45; *see also* N.J. STAT. ANN. § 2C:58-35(a)(3)(b) (West 2022); CAL. CIV. CODE § 3273.52(b)–(c) (West 2023); COLO. REV. STAT. ANN. § 6-27-105(2) (West 2024); HAW. REV. STAT. ANN. § 134-103(b)–(c) (West 2023); 815 ILL. COMP. STAT. ANN. § 505/7(a) (West 2022); S.B. 5078, 68th Leg., Reg. Sess. § 2(10) (Wash. 2023); WASH. REV. CODE ANN. § 7.48.330(10) (West 2023); MD. CODE ANN., CTS. & JUD. PROC. § 3-2503(a)(1) (West 2024).

Although the state statutes are largely derivative of New York's law, the states' enactments differ in several ways. While most of the state statutes are based on public nuisance theory, the Colorado statute is based on consumer protection policy. COLO. REV. STAT. ANN. § 6-27-104(2) (West 2023). Some statutes that address the firearms industry obligations are based on neither public nuisance nor consumer protection. *See* HAW. REV. STAT. ANN. § 134-102(d) (West 2023); CAL. CIV. CODE § 3273.52(c)(2) (West 2026). The California and Hawaii statutes indicate that firearms sales and marketing cannot be abnormally dangerous or threaten public health. CAL. CIV. CODE § 3273.51(c) (West 2026); HAW. REV. STAT. ANN. § 134-102(b)(2) (West 2023).

52. *See infra* subparts II(A)–(F) (discussing NSSF litigation in New York, Delaware, California, Hawaii, Illinois, and Washington); *infra* Part III (discussing NSSF litigation in Maryland); *infra* notes 68–69 and accompanying text (discussing NSSF litigation in New Jersey).

53. *See, e.g.*, Larry Keane, *Virginia AG Creates Firearm Industry Enforcement Unit Under New Liability Law*, NSSF (Sep. 24, 2026), https://www.nssf.org/articles/virginia-ag-creates-firearm-industry-enforcement-unit-under-new-liability-law/ [https://perma.cc/ZU5K-NDK7] ("NSSF will not hesitate to sue [Virginia Attorney General] Jones should he enforce the law in a manner that violates the constitution or is preempted by the PLCAA.")

a firearms industry defendant, the NSSF has preemptively sued state AGs, seeking a judicial declaration of the state statutes' facial unconstitutionality and requesting injunctive relief from enforcement.[54] These preemptive lawsuits have raised questions of the NSSF's standing to sue, as well as prudential jurisdictional issues concerning the ripeness and advisory nature of such litigation.[55]

In addition, in its series of preemptive lawsuits, the NSSF has advanced the same boilerplate arguments, contending that the relevant state statute violates: (1) First Amendment commercial speech protections concerning marketing of legal products; (2) Second Amendment guarantees in contravention of the Supreme Court's 2022 *Bruen* standards; (3) Commerce Clause and dormant Commerce Clause by impermissibly regulating interstate and intrastate commerce; (4) Tenth Amendment principles of state sovereignty through extraterritorial regulation; (5) Fourteenth Amendment due process rights, chiefly under the void-for-vagueness doctrine; (6) PLCAA federal preemption provisions; and (7) the separation of powers doctrine.[56]

Notably, in crafting its 2026 challenge to the Second Circuit's validation of the New York statute's constitutionality, the NSSF had an array of constitutional challenges available to attack the law that had been developed over several cases.[57] Instead, the NSSF strategically elected to advance a narrow PLCAA statutory construction argument concerning the definition of what constitutes a predicate statute, and it distinguished those statutes that

54. Feldman, *supra* note 49, at 730.

55. *See infra* notes 68–69, 90–92, 99, 107–111, 119–121 and accompanying text.

56. *See infra* notes 65, 70, 87–89, 95, 105–106, 113, 118 and accompanying text.

57. *See* Petition for Writ of Certiorari at 13–14, NSSF v. James, 146 S. Ct. 2724 (2026) (No. 25-1026) (describing NSSF's challenges to § 898 based on PLCAA preemption, vagueness, and the Commerce Clause).

impose only broad, sweeping duties of care on firearms industry participants.[58]

Courts have concluded that in the absence of an "as-applied" challenge to actual enforcement of a state accountability statute, the NSSF's facial challenges are premature and the NSSF lacks Article III standing.[59] They have dismissed the NSSF lawsuits without prejudice, leaving open the possibility that the NSSF will continue to challenge these state statutes on the merits when a state AG, government official, or private citizen sues to enforce the new laws.[60]

In turn, state AGs have been aggressively and successfully defending their statutes through dismissals on Article III standing and ripeness grounds, while deflecting the NSSF's array of constitutional arguments.[61] Although almost none of the judicial decisions have addressed the merits of the NSSF's constitutional claims, the NSSF's litigation has served to educate state AGs on the details of the NSSF's arguments. Both sides of the docket, then, are well prepared for future appellate clashes over these statutes.

State AGs and municipal officers who desire to protect the health, welfare, and safety of their communities may hope that judicial validation of these statutes will provide access to justice and an inroad to holding firearms industry members accountable. If the New York Second Circuit precedent prevails, and other federal appellate courts agree, then one may expect a cascade of

58. Feldman, *supra* note 49, at 729–30. The NSSF would require a higher degree of concreteness for a statute to come within PLCAA's predicate statute exception. Feldman, *id.* at 731.

59. *See infra* notes 68–69, 90–92, 99, 107–111, 119–121.

60. *See, e.g.*, NSSF v. Ferguson, 722 F. Supp. 3d 1150, 1161 (E.D. Wash. 2024).

61. Sonia Moghe, *Gun Industry Stakeholders Sue NY Attorney General over State Public Nuisance Gun Law*, CNN (Dec. 16, 2021), https://www.cnn.com/2021/12/16/us/gun-industry-stakeholders-sue-ny-attorney-general?cid-ios_app [https://perma.cc/W6MW-9MXQ] (quoting AG James indicating that she would aggressively defend the New York law and not back down). "Once again, the gun lobby is trying to exert total control over this country and thwart common-sense efforts to protect lives." *Id.*

public nuisance firearms statutes enacted in states seeking to pursue litigation against firearm defendants.

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In litigation across eight jurisdictions, the NSSF has compiled an impressive record of failure. To date, the NSSF has been unsuccessful in every jurisdiction where it has challenged the new firearms public nuisance statutes: the Second and Third Circuits; district courts in New York, Delaware, California, Hawaii, and Washington.[62] An NSSF challenge has been languishing in the District Court for the Southern District of Illinois since 2023.[63] NSSF litigation is pending in Maryland, which offers perhaps the most promising avenue for the NSSF to return to the Supreme Court.[64]

A. New York

The NSSF's New York litigation was its initial salvo against a state firearms public nuisance law. In December 2021, following the June passage of the New York statute, the NSSF and fourteen industry members sued state Attorney General James alleging that sections 898-a through 898-e of the New York General Business Law were unconstitutional and seeking a preliminary and permanent injunction prohibiting the statute's enforcement.[65] The NSSF advanced three arguments: (1) PLCAA preempted the statute, (2) the statute violated the dormant Commerce Clause, and (3) the statute was void for vagueness.[66] In May 2022, the Northern District of New York upheld the statute's constitutionality, rejecting all three arguments.[67]

62. *See infra* subparts II(A)–(D) and II(F).

63. *See infra* subpart II(E).

64. *See infra* Part III.

65. Complaint for Declaratory Judgment and Injunctive Relief at 2, NSSF v. James, No. 1:21-cv-01348-MAD-CFH (N.D.N.Y. Dec. 16, 2021).

66. NSSF v. James, 604 F. Supp. 3d 48, 56 (N.D.N.Y. 2022), aff'd, 144 F.4th 98 (2d Cir. 2025).

67. *Id.* at 60–61, 63–65, 69.

In June 2022, the NSSF appealed the New York district court's decision.[68] While the appeal was pending, the New Jersey federal district court declared the New Jersey public nuisance statute unconstitutional, which the Third Circuit vacated on August 17, 2023.[69] The Third Circuit concluded that the NSSF's challenge was a premature pre-enforcement action.[70] In its briefing to the Second Circuit, the NSSF rehearsed the same challenges that failed in the New York district court and that the Third Circuit had not addressed in NSSF's challenge to the New Jersey statute.[71] In July 2025, the Second Circuit affirmed the district court's judgment, holding that the statute fell within PLCAA's predicate statute exception, did not violate interstate commerce, and was not void for vagueness.[72]

In its 2026 certiorari petition appealing the Second Circuit decision, the NSSF leaned heavily into the Court's 2025 PLCAA decision, *Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos*.[73] Notwithstanding the numerous constitutional challenges the NSSF repeatedly rehearsed across its many lawsuits to the firearms accountability statutes, the NSSF instead chose to focus laser-like on the unconstitutionality of the New York statute as a violation of federal supremacy. Thus, the NSSF distilled its appeal to this single question: "Whether the PLCAA's predicate exception allows parties to bring the same common-law-style suits against firearms industry members that Congress enacted the PLCAA to prohibit, so long as states codify those general

68. Notice of Appeal, NSSF v. James, No. 1:21-cv-1348 (N.D.N.Y. June 24, 2022).

69. NSSF v. Att'y Gen. of N.J., 80 F.4th 215, 223 (3d Cir. 2023).

70. *Id.*

71. *See* Brief for Plaintiffs-Appellants at 30–32, NSSF v. James, 144 F.4th 98 (2d Cir. Oct. 7, 2022) (No. 22-1374).

72. NSSF v. James, 144 F.4th 98, 103 (2d Cir. 2025).

73. Petition for Writ of Certiorari at 8, 30–33, NSSF v. James, 146 S. Ct. 2724 (2026) (No. 25-1026) (citing Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos, 145 S. Ct. 1556 (2025)).

common-law principles in a statute that applies to commerce in arms."[74]

The NSSF contended that Congress, in enacting PLCAA, intended "to stamp out state and local government efforts to use novel applications of nuisance and negligence torts to make law-abiding members of the firearms industry liable for injuries caused by criminals who misuse their lawful products."[75] Thus, in 2021, New York enacted a firearms public nuisance statute to accomplish what PLCAA prohibited in an effort to "right the wrong" that New York believed Congress committed when it enacted PLCAA.[76] This "undisguised state effort to 'reinstate' what federal law expressly forbids" was "a blatant assault on the Supremacy Clause," but the Second Circuit left the statute intact.[77]

The NSSF argued that Congress, in enacting PLCAA, did not promulgate a "self-defeating law or incentivize states to codify generally applicable torts" so as to fall within the predicate statute exception.[78] Quoting *Smith & Wesson*, the NSSF pointed out that "if [the New York statute] fell within the predicate exception, then that exception 'would swallow most of the rule.'"[79] Thus, "[t]his Court has already expressed 'doubt Congress intended to draft such a capacious way out of PLCAA'—and 'in fact it did not.'"[80] Again quoting *Smith & Wesson*, the NSSF contended that the Court had recognized "'PLCAA's core purpose' . . . to foreclose" lawsuits that intended to make firearms

74. Petition for Writ of Certiorari at i, *James*, 146 S. Ct. 2724 (No. 25-1026).

75. *Id.* at 1.

76. *Id.*

77. *Id.* at 2.

78. *Id.*

79. *Id.* (quoting Smith & Wesson Brands v. Estados Unidos Mexicanos, 145 S. Ct. 1556, 1570 (2025)).

80. *Id.* (quoting *Smith & Wesson*, 145 S. Ct. at 1570). "Simply put, nothing in the PLCAA compels the nonsensical conclusion that the predicate exception empowers states to sneak in through the back door the very claims that Congress tossed out the front." *Id.* at 17.

defendants "'pay for the downstream harms resulting from misuse of their products.'"[81]

According to the NSSF, PLCAA's predicate statute exception only exempts from liability industry actions based on statutes that "impose concrete obligations" that industry members can "knowingly violate," and not on the codification of general common law duties that eliminate, for example, proximate cause.[82] Hyperbolically, the NSSF contended that the Second Circuit's decision upholding the New York statute "blows a gaping hole in a statute that Congress enacted for the express purpose of protecting the firearms industry from exactly the kinds of lawsuits New York seeks to usher back in."[83] The NSSF further sounded an apocalyptical note concerning the danger in upholding the Second Circuit's decision, posed by the similar firearms accountability laws in several other states.[84]

We cannot know why the Court denied the NSSF's certiorari petition. This denial simply means that the Second Circuit's decision remains good circuit law. The Second Circuit opinion has not—contrary to the NSSF's assertion—created a circuit split.[85] Because the Court said nothing in its certiorari denial, the

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81. *Id.* at 22 (quoting *Smith & Wesson*, 145 S. Ct. at 1569).

82. *Id.* at 3.

83. *Id.* at 16.

84. The petition warns:

> Indeed, while New York may have been the first state to brazenly defy the PLCAA, it is certainly not the last: Several other states (including others in the Second Circuit) have already enacted copycat laws, which state attorneys general and municipalities are already using to relegate industry members to exactly the kind of state-court trench warfare that Congress already found poses a grave threat to an industry that is essential to the exercise of Second Amendment rights. The Court should put a stop to this now and ensure that the second war of attrition against the firearms industry does not meet with more success than the first.

Id. at 18.

85. *See id.* at 18–22. This concocted effort to create a circuit conflict is disingenuous; it relies on judicial interpretations involving state laws that predate the New York public nuisance statute. Currently there is no conflict among federal courts that have considered the eight states' firearms accountability statutes.

PLCAA supremacy argument may remain a viable theory that the NSSF or other industry actors may invoke in other appellate litigation.

B. Delaware

On November 16, 2022, the NSSF sued the Delaware state Attorney General Jennings in federal district court seeking an injunction against enforcement of the Delaware public nuisance statute.[86] For the first time, the NSSF argued that because the statute was enacted after the Court's 2022 decision in *Bruen*, the *Bruen* decision should have prompted legislatures that enacted firearm public nuisance statutes to reconsider those laws to make them more protective of the Second Amendment right to keep and bear arms.[87] The complaint alleged an expanded list of constitutional arguments, challenging the statute (1) under the First, Second, and Fourteenth Amendments,[88] (2) as a violation of the Commerce Clause,[89] and (3) under PLCAA preemption.[90]

On September 8, 2023, the Delaware federal district court issued a brief memorandum order holding that the NSSF lacked Article III standing to pursue a pre-enforcement challenge of the Delaware statute and dismissed the case.[91] The court indicated that standing is determined with reference to the lawsuit's filing date, and Delaware had not issued any subpoena to the plaintiff.[92]

86. Complaint at 31, NSSF v. Jennings, No. 1:22-cv-01499 (D. Del. Nov. 16, 2022). *See* Brendan Pierson, *N.J., Delaware Sued Over Public Nuisance Laws Targeting Gun Companies,* REUTERS (Nov. 17, 2022), https://www.reuters.com/legal/government/new-jersey-sued-over-public-nuisance-law-targeting-gun-companies-2022-11-17/ [https://perma.cc/XDV4-Y4YC].

87. Complaint at 9, *Jennings*, No. 1:22-cv-01499. *See also* N.Y. State Rifle & Pistol Ass'n v. Bruen, 142 S. Ct. 2111 (2022).

88. Complaint *passim*, *Jennings*, No. 1:22-cv-01499.

89. *Id.* at 18–20.

90. *Id.* at 13–18.

91. NSSF v. Jennings, 2023 WL 5835812 at *2 (D. Del. Sep. 8, 2023); *see also* Diana Novak Jones, *Gun Industry Challenge to Delaware 'Public Nuisance' Law Dismissed*, REUTERS (Sep. 11, 2023), https://www.reuters.com/legal/government/gun-industry-challenge-delaware-public-nuisance-law-dismissed-2023-09-11/ [https://perma.cc/GVH9-3GP4].

92. *Jennings*, 2023 WL 5835812 at *2.

The court indicated that the NSSF had offered no evidence that there was a substantial threat of private-party enforcement when it filed suit.[93] The Delaware court did not address the merits of the NSSF's contentions asserted in its complaint. In holding that the NSSF lacked standing to pursue a pre-enforcement challenge to Delaware's public nuisance statute, Delaware followed the Third Circuit precedent.[94]

C. California

Continuing its march across the gun litigation landscape, in May 2023 the NSSF filed a preemptive lawsuit in federal court against private or public enforcement of California's statute.[95] The NSSF rehearsed the same litany of constitutional challenges in its earlier litigation.[96] In February 2024, the district court granted the NSSF's request for a preliminary injunction against enforcement only of the statute's "abnormally dangerous" provision.[97] The court opined that the provision was likely unconstitutional under the Dormant Commerce Clause because it attempted to regulate manufacturing occurring wholly outside California,

93. *Id.*

94. *See, e.g.*, Constitution Party of Pa. v. Aichele, 757 F.3d 347, 360–61 (3d Cir. 2014).

95. Complaint for Declaratory, Injunctive, or Other Relief at 2–6, NSSF v. Bonta, No. 23-cv-945 (S.D. Cal. May 23, 2023); *see also NSSF Challenges California's Law Encouraging Frivolous Firearm Industry Lawsuits*, NSSF (May 23, 2023), www.nssf.org/articles/nssf-challenges-californias-law-encouraging-frivolous-firearm-industry-lawsuits/ [https://perma.cc/FY9J-5WDV]; *NSSF Files Motion to Enjoin Unconstitutional California Firearm Industry Liability Law*, NSSF (June 14, 2023), www.nssf.org/articles/nssf-files-motion-to-enjoin-unconstitutional-california-firearm-industry-liability-law/ [https://perma.cc/4DBB-FZRS].

96. Complaint for Declaratory, Injunctive, or Other Relief at 2–6, *Bonta*, No. 23-cv-945. These included PLCAA preemption, violations of the Commerce Clause, the dormant Commerce Clause, the First Amendment, and the Second Amendment under *Bruen*.

97. NSSF v. Bonta, 718 F. Supp. 3d 1244, 1251–52, 1257–58 (S.D. Cal. 2024); *see also* Jake Fogleman, *Federal Judge Blocks California Law Allowing Suits Against Out-of-State Gunmakers,* THE RELOAD (Feb. 22, 2024), https://thereload.com/federal-judge-blocks-california-law-allowing-suits-against-out-of-state-gunmakers/ [https://perma.cc/HM7S-E32V].

and the NSSF was likely to succeed on this claim.[98] However, the court denied the NSSF's request for injunctive relief concerning all other challenges to the statute.[99] The court ruled that the NSSF lacked standing to challenge the law's other sections because the NSSF could not prove that any firearms business had yet violated the California statute.[100]

While the case was pending, California amended its statute and repealed a specific category that provided the NSSF with standing to challenge the California statute.[101] On March 31, 2026, on cross-motions for summary judgment, the district court ruled that because of the legislative change, the remaining lawsuit was moot.[102] The court dismissed the NSSF's action for lack of Article III jurisdiction, lifted the former preliminary injunction, and expressly stated that it did not reach the parties' other arguments.[103] However, the court did not retreat from its earlier ruling concerning the statute's "abnormally dangerous firearms" provision.[104] As of October 2026, neither the State nor the NSSF has appealed the final order to the Ninth Circuit.

D. Hawaii

Less than two weeks after the Hawaii statute took effect in July 2023, the NSSF filed a pre-enforcement injunctive action in federal court.[105] As in all its other pre-enforcement actions, the

98. *Bonta*, 718 F. Supp. 3d at 1255–56.

99. *Id.* at 1257–58.

100. *Id.* at 1249–54.

101. NSSF v. Bonta, No. 23-cv-0945, 2026 WL 886298 at *1 (S.D. Cal. Mar. 31, 2026). The California legislature repealed the youth-targeted category in the 2023 version of Cal. Civ. Code § 3273.51(c)(2)(C), which classified firearms that were designed, sold, or marketed to minors as abnormally dangerous. The legislature amended the statute by striking "minors" from that provision, which eliminated the NSSF's basis for its standing.

102. *Id.* at *1, *6. The district judge commented: "The Court previously ruled that this provision is likely unconstitutional. . . . These constitutional concerns persist, but this lawsuit cannot." *Id.* at *1.

103. *Id.* at *2, *5–6.

104. *Id.* at *1.

105. Complaint at 5, NSSF v. Lopez, 730 F. Supp. 3d 1073 (D. Haw. 2024) (No. 23-00287); *see also* Larry Keane, *Everytown Comes Out from Behind the*

NSSF sought a declaration that the Hawaii statute was facially and as-applied unconstitutional, and an injunction preventing the attorney general from enforcing the law.[106] The NSSF also recast its Commerce Clause argument more broadly as an attack against the illegitimate extraterritorial reach of states into sister states' affairs, citing Tenth Amendment state sovereignty concerns.[107]

On April 19, 2024, the Hawaii federal court denied the NSSF's motion for a preliminary injunction.[108] Once again the court determined that the NSSF lacked standing to pursue a pre-enforcement action against the statute and declined to address the merits of the NSSF's five arguments directed at the statute's constitutionality.[109] The NSSF had failed to satisfy the standing injury requirement, which, in the context of a pre-enforcement action, required a showing of potential harm sufficiently imminent to qualify as an injury-in-fact.[110] The NSSF needed to show that its members intended to engage in conduct that the statute

Curtain, NSSF NEWS (Sep. 8, 2023), www.nssf.org/articles/everytown-comes-out-from-behind-the-curtain/ [https://perma.cc/3AT5-A2MT] (describing the lawsuit); Brendan Pierson, *Hawaii Law Allowing Suits Against Gun Industry Challenged by Gun Rights Group*, REUTERS (July 13, 2023), https://www.reuters.com/legal/government/hawaii-law-allowing-suits-against-gun-industry-challenged-by-gun-rights-group-2023-07-13/ [https://perma.cc/MJL4-P2AJ] (same); Dan Zimmerman, *NSSF Sues to Block Hawaii's 'Nuisance' Law Targeting Gun Makers and Sellers,* TRUTH ABOUT GUNS (July 13, 2023), www.thetruthaboutguns.com/539957-2/ [https://perma.cc/5U3C-C2JZ] (describing Hawaii's anti-firearm legislative strategy).

106. Complaint at 5, *Lopez*, 730 F. Supp. 3d 1073 (No. 23-00287). The NSSF advanced the same boilerplate arguments it alleged in its other state pre-enforcement actions: (1) violation of the Second Amendment, (2) PLCAA preemption of the Hawaii statute, (3) regulation of out-of-state conduct in violation of the Dormant Commerce Clause, (4) violation of First Amendment protected speech, and (5) violation of the Fourteenth Amendment's Due Process Clause by reason of void for vagueness. *Id.* at 2–4, 12–14, 22–27, 38–39, 47, 51. In asserting its Second Amendment argument, the NSSF again cited to the Court's recent *Bruen* decision for the proposition that the Hawaiian legislators ought to have reexamined the Hawaii statute in light of the Court's new Second Amendment standards in that decision. *Id.* at 12–13.

107. *Id.* at 34, 37–39, 42.

108. NSSF v. Lopez, 730 F. Supp. 3d 1073, 1076 (D. Haw. 2024).

109. *Id.* at 1076, 1090–91.

110. *Id.* at 1080.

arguably affected, that the statute arguably proscribed members' future conduct, and that there was a credible threat of enforcement under the statute.[111] The court held that the NSSF failed to carry its burden on these elements.[112]

E. Illinois

On August 14, 2023, two days after Governor Pritzker signed the Illinois bill, the NSSF filed a pre-enforcement action in federal court, seeking a declaration that PLCAA preempted the state law and that the statute was unconstitutional.[113] There can be little doubt that the NSSF had its complaint ready to file so quickly because the Illinois complaint largely copied the same arguments the NSSF advanced against the other states' firearms accountability laws.[114] This case remains languishing on the Southern District of Illinois docket and has not yet been decided.

F. Washington

In April 2023, the NSSF sued the Washington state AG in federal court, challenging the Washington law.[115] The NSSF

111. *Id.*

112. *Id.* at 1076.

113. Complaint at 3, NSSF v. Raoul, No. 3:23-cv-02791 (S.D. Ill. Aug. 14, 2023); Rich Miller, *Two Days After It Was Signed into Law, Group Files Federal Lawsuit Against State's Firearm Industry Responsibility Act*, CAPITOLFAX.COM (Aug. 14, 2023), https://capitolfax.com/2023/08/14/two-days-after-it-was-signed-into-law-group-files-lawsuit-against-states-firearm-industry-responsibility-act/ [https://perma.cc/T3U9-XMTM].

114. The complaint rehearsed the same core allegations: (1) that the First Amendment prohibited states from punishing truthful speech about lawful products, (2) that the Illinois law violated constitutional restrictions on extra-territorial regulation, (3) that the statute violated Fourteenth Amendment due process, and (4) that PLCAA preemption applied to override the Illinois state law. The NSSF also continued to press its argument that after the Supreme Court's *Bruen* decision, the Illinois statute violated the Second Amendment and that the Illinois legislature should have reconsidered the statute in light of *Bruen's* commandments. Complaint at 2, 8, 11, 41, 52, *Raoul*, No. 3:23-cv-02791.

115. Complaint at 1, NSSF v. Ferguson, No. 2:23-cv-00113 (E.D. Wash. Apr. 25, 2023).

immediately attacked the public nuisance basis for the statute.[116] Thus, the NSSF contended that this new Washington "public nuisance" statute was specifically designed to evade Congress's judgment in PLCAA and the Constitution.[117] For the firearms industry, the statute marked a sweeping departure from traditional public nuisance law. Under the statute, a firearms industry member could be liable for lawful conduct in the manufacturing, sale, distribution, importing, or marketing of firearms if a judge or jury found the conduct contributed to a public nuisance.[118] Moreover, the public nuisance statute removed the traditional elements of tort law that ensured that judges or juries would not impose liability on actors for lawful conduct.[119]

On March 8, 2024, the federal district court dismissed the NSSF's complaint.[120] Once again, a federal district court dismissed the action for a lack of subject matter jurisdiction: the plaintiff's lack of standing and failure to plead specific acts to support standing.[121] In its complaint, the NSSF failed to specify facts discussing its members' work, showing that its members might be at risk of violating the law.[122] In dismissing the lawsuit,

116. *Id*. at 1–2.

117. *Id.* at 1.

118. *Id.* at 2.

119. *Id*. In addition to attacking Washington's creation of a firearm public nuisance claim, the NSSF's complaint set forth its same litany of constitutional objections based on violations of the First, Second, and Fourteenth Amendments, the dormant Commerce Clause, and federal preemption under PLCAA. The NSSF again renewed its objection that those states that had enacted firearm accountability statutes after the Supreme Court's *Bruen* decision in 2022 were obligated to reconsider those statutes in light of the Supreme Court's Second Amendment standards articulated in that decision. *Id.* at 5, 9–10.

120. NSSF v. Ferguson, 722 F. Supp. 3d 1150, 1161 (E.D. Wash. 2024). *See* Michaela Bourgeois, *Federal Judge Dismisses Case Against Washington Law on Gun Industry Accountability,* KOIN (Mar. 8, 2024), www.koin.com/news/washington/federal-judge-dismisses-case-against-washington-law-on-gun-industry-accountability/ [https://perma.cc/E3UL-TTUG]; Ehren Wynder, *Federal Judge Upholds Washington State Gun Industry Accountability Law*, UPI (Mar. 9, 2024), www.upi.com/Top_News/US/2024/03/09/judge-dismiss-challenge-washington-gun-law/2041710007305/ [https://perma.cc/4CJ8-3GWS].

121. *Ferguson*, 722 F. Supp. 3d at 1157, 1161.

122. *Id.* at 1157–59.

the court declined to rule on the AG's motion to dismiss for failure to state a claim or on the merits of any of the NSSF's constitutional or PLCAA objections.[123]

III. Lock and Reload: The Maryland Litigation

The NSSF's litigation record through 2026 documents the federal courts' repeated rejection of the NSSF's strategy of proactively challenging the statutes' facial constitutionality and preemption, with the courts repetitively counseling that the NSSF's challenges to state firearms accountability laws must await an actual "as applied" enforcement action against a gun defendant. While the Supreme Court's June 15, 2026, certiorari denial might seem like a dead end for the NSSF's quest for Supreme Court review of the accountability statutes, percolating Fourth Circuit appellate litigation presents a possible avenue for a return to the Court.

Litigation over Maryland's statute offers, to date, perhaps the most promising avenue for an attack against the state accountability laws. In Maryland, the state AG used the new statute to bring a state court action against Glock, a member of the NSSF. The NSSF then filed a federal suit challenging the law's constitutionality. Both cases are ongoing. This somewhat byzantine path may nonetheless afford the NSSF the proper litigation vehicle to bring PLCAA and constitutional challenges back to the Court. The Maryland litigation is also significant because it is the first state court merits ruling that has allowed an accountability lawsuit to proceed past the pleading stage, despite Glock's PLCAA preemption defense.

On May 16, 2024, Maryland Governor Wes Moore signed the Gun Industry Accountability Act, effective June 1, 2024.[124]

123. *Id.* at 1158, 1161.

124. 2024 Md. Laws Ch. 714 (H.B. 947). The firearms accountability bill was part of a three-bill package dealing with industry accountability and gun control measures. *Victory for Gun Safety: Governor Wes Moore Signs Three Pieces of Lifesaving Gun Safety Legislation Into Law*, EVERYTOWN FOR GUN SAFETY (May 16, 2024), https://www.everytown.org/press/victory-for-gun-safety-governor-wes-moore-signs-three-pieces-of-lifesaving-gun-safety-legislation-into-law-moms-demand-action-students-demand-action-respond/

Maryland became the ninth state to follow New York's lead in enacting a public nuisance statute to enable victims of gun violence to hold industry actors accountable.[125] Copying the same language and standards from other states' accountability statutes, the Maryland bill prohibits a firearm industry member from "knowingly creat[ing], maintain[ing], or contribut[ing] harm to the public through the sale, manufacture, distribution, importation, or marketing of a firearm-related product by engaging in conduct that is unlawful or unreasonable under the totality of the circumstances."[126]

The statute requires a firearms industry member to "establish and implement reasonable controls regarding the sale, manufacture, distribution, importation, marketing, possession, and use of" their products.[127] Reasonable controls include policies to "prevent the sale and distribution of a product to a straw purchaser, a firearm trafficker," or a "person whom the firearm industry member has reasonable cause to believe intends to use the firearm-related product to commit a crime or to cause harm."[128]

[https://perma.cc/8LTX-TRE7]; *Maryland Governor Wes Moore Signs Package of Gun Violence Prevention Bills*, BRADY UNITED (May 16, 2024), www.bradyunited.org/about-us/press/wes-moore-gun-violence-laws [https://perma.cc/V958-JDHV]. Senate Bill 475 created a Center for Firearms Prevention and Intervention, and House Bill 810 expanded the definition of a rapid-fire trigger activator to include Glock switches. *Victory for Gun Safety*, *supra*.

125. The bill's chief sponsor, state Senator Jeff Waldsteicher, commented: "Our long-term goal is accountability, we know that accountability in our courts works." Jeff Morgan, *Maryland to Expand Lawsuits Against Members of the Firearm Industry*, WMAR-2 NEWS (May 28, 2024), https://www.wmar2news.com/infocus/maryland-to-expand-lawsuits-against-members-of-the-firearm-industry [https://perma.cc/TSA6-JB59]. Like other states, Maryland sought to avoid the restrictions of the PLCAA. *See id*. (quoting an expert from the Johns Hopkins Center for Gun Violence Solution as stating that the PLCAA "has significantly stifled the ability of states to sue the firearms industry for dangerous business practices essentially").

126. MD. CODE ANN., CTS. & JUD. PROC. § 3-2502(a) (West 2024).

127. *Id.* § 3-2502(b).

128. *Id*. § 3-2501(f).

The statute establishes that a violation of these provisions is a public nuisance.[129]

The bill authorizes the state Attorney General, a county attorney, or the Baltimore City Solicitor to bring an action for violations of the statute.[130] The legislation permits these officers to seek injunctive relief, restitution, compensatory and punitive damages, reasonable attorneys' fees and costs, and "any other appropriate relief."[131] A party bringing an action under the statute "is not required to prove that the firearm industry member acted with intent to violate the statute."[132]

* * *

Unlike in other states, the litigation arising out of Maryland's new law included both an enforcement action in state court—brought against an NSSF member organization—and a facial challenge in federal court—brought by NSSF itself. Interestingly, it is actually the former that may furnish the NSSF with the procedural posture necessary to pursue a challenge on the merits.

On February 12, 2025, the state AG, Mayor of Baltimore, and the City of Baltimore brought a civil enforcement action in state court against an NSSF member, Glock, Inc., and its parent

129. *Id.* § 3-2502(c).

130. *Id.* § 3-2503(a)(1). Maryland Attorney General Brown lobbied for the statute's enactment. *See Maryland AG to Push for Law Holding Gun Manufacturers and Distributors Accountable*, WBAL NEWSRADIO (Jan. 15, 2024), https://www.wbal.com/maryland-ag-to-push-for-law-holding-gun-manufacturers-and-distributors-accountable [https://perma.cc/J2NX-CNZT]. After the bill's signing, he indicated that he did not plan to immediately seek judicial enforcement. He stated: "Just like all the other authorities I have . . . when we see harm done to the public, it's our responsibility to investigate and bring whatever appropriate enforcement actions there are . . . . This is [an] additional tool that we have to hold firearm industry participants accountable for their conduct." William J. Ford, *Civil Liability for Gun Industry Among State Laws Going into Effect June 1,* MARYLAND MATTERS (May 31, 2024), https://marylandmatters.org/2024/05/31/civil-liability-for-gun-industry-among-state-laws-going-into-effect-june-1/ [https://perma.cc/8PCG-PC2X].

131. CTS. & JUD. PROC. § 3-2503(a)(2).

132. *Id.* § 3-2503(a)(3).

company.[133] The lawsuit contended that modification of Glock pistols with after-market machinegun conversion devices created a public nuisance under the Maryland statute.[134] Glock moved to dismiss this state court action, asserting that PLCAA preempted the state statute, which also violated the First, Second, and Fourteenth Amendments and the Commerce Clause.[135]

Two months later, on April 3, 2025, the NSSF filed a federal court preemptive action challenging the Maryland statute, seeking to invalidate the law before courts enforced it against its members.[136] The lawsuit sought a declaratory judgment that Maryland's Gun Industry Accountability Act was invalid under federal law and the Constitution, and a permanent injunction prohibiting the Maryland AG and state officials from enforcing the law.[137]

The federal complaint followed the NSSF's template for attacking the public nuisance statutes, arguing that PLCAA preempted Maryland law because the statute imposes liability on firearms defendants that Congress intended to prohibit in PLCAA and that the statute violated the Commerce Clause because it regulated conduct occurring outside Maryland.[138] In addition, the NSSF contended that the statute's terms, including "reasonable control" and "public nuisance," were void for vagueness because

133. Complaint, Mayor of Balt. v. Glock, Inc., No. C-24-CV-25-001450 (Md. Cir. Ct.—Balt. City Mar. 23, 2026).

134. *Id.* at 44–47; *see also* Jonathan Stempel, *Maryland, Baltimore Sue Glock over Easily Converted Guns, Cite Violence Threat*, REUTERS (Feb. 12, 2025), https://www.reuters.com/legal/maryland-baltimore-sue-glock-over-easily-converted-guns-cite-violence-threat-2025-02-12/ [https://perma.cc/UP6W-3DQ4].

135. Defendants' Motion to Dismiss at 1–2, *Glock*, No. C-24-CV-25-001450; Defendants' Memorandum of Law in Support of Their Motion to Dismiss at 19–20, 31–32, 35, 42, 44–45, *Glock*, No. C-24-CV-25-001450.

136. Complaint at 1–2, 35, NSSF v. Brown, No. 1:25-cv-0115, 2025 WL 2967355 (D. Md. Oct. 21, 2025), *appeal docketed*, No. 25-2404 (4th Cir. Nov. 21, 2025).

137. *Id.* at 35.

138. *Id.* at 17–25.

they failed to provide gun manufacturers fair notice of what conduct the statute required.[139]

On October 21, 2025, the district court issued a memorandum opinion declining its jurisdiction under the *Younger*[140] abstention doctrine.[141] The court explained that federal *Younger* principles require federal courts to abstain from exercising their jurisdiction in deference to "ongoing state quasi-criminal proceedings which implicate important state interests and provide an adequate opportunity to raise constitutional challenges."[142] Although the court declined its jurisdiction, it nonetheless opined that Glock, as an NSSF member, had standing to bring the NSSF's claims and therefore the NSSF could invoke representational or associational standing.[143] In addition, the court opined that the NSSF satisfied the causation and redressability requirements for standing because the Maryland AG, through its lawsuit against Glock, "caused the impending threat of harm" and that the NSSF's requested injunctive relief "would alleviate the threatened harm."[144]

The NSSF was not a party to the state court case brought against Glock. But the federal court noted that Glock's state court motion to dismiss raised substantially the same PLCAA and constitutional arguments the NSSF asserted in its federal suit.[145] Thus, *Younger* abstention applied to the NSSF's claims, even though it was not a party to the state action, because the federal

139. *Id.* at 31–34.

140. Younger v. Harris, 401 U.S. 37 (1971).

141. *Brown*, 2025 WL 2967355 at *1.

142. *Id.* at *1 (citing *Younger*, 401 U.S. 37).

143. *Id.* at *3.

144. *Id.* at *5.

145. *Id.* at *7. The court explained,

> The fact that NSSF is not a party to the state *Glock* suit is not determinative. The Supreme Court has recognized circumstances where 'legally distinct parties are so closely related that they should all be subject to the *Younger* considerations which govern any one of them,' even if the federal plaintiff is not a party to the state proceedings.

Id. (quoting Doran v. Salem Inn, Inc., 422 U.S. 922, 928 (1975)).

suit would interfere with the state court prosecution, the NSSF had a substantial stake in the state court proceedings, and the interests of the NSSF and Glock were intertwined.[146]

The NSSF appealed the district court's *Younger* decision to the Fourth Circuit.[147] The NSSF argued that the court misapplied *Younger* abstention; it contended that the trade association's facial challenge to the Maryland law should not be halted in federal court in deference to the pending Maryland state court proceeding simply because one NSSF member—Glock—was involved in that independent state action.[148] The state responded that the Maryland state court was completely competent to litigate the NSSF's claims within the Glock enforcement action.[149] In September 2026, the Fourth Circuit calendared the case for oral argument in early December.

Meanwhile, as a consequence of the district court's decision, the Maryland state case has proceeded. On March 23, 2026, the court denied Glock's motion to dismiss the lawsuit.[150] In so doing, the court held that the plaintiffs had sufficiently alleged claims under the Maryland gun accountability statute, that at the pleading stage the claims satisfied the PLCAA predicate statute exception, and therefore that the PLCAA did not bar the action.[151] The court permitted discovery to proceed.[152] Glock subsequently

146. *Id*.

147. Notice of Appeal at 1, *Brown*, 2025 WL 2967355 (No. 1:25-cv-0115); *NSSF Appeals to Fourth Circuit to Block Maryland Anti-PLCAA Law*, NSSF (Nov. 20, 2025), https://www.nssf.org/articles/nssf-appeals-to-fourth-circuit-to-block-maryland-anti-plcaa-law/ [https://perma.cc/35AV-QRSS].

148. Appellant's Opening Brief at 25, 28, 32, 34–35, NSSF v. Brown, No. 25-2404 (4th Cir. Nov. 21, 2025).

149. Brief of Appellee at 18–19, 26–27, *Brown*, No. 25-2404 (4th Cir. Nov. 21, 2025).

150. Mayor of Balt. v. Glock, Inc., No. C-24-CV-25-001450, slip op. at 1 (Md. Cir. Ct.—Balt. City Mar. 23, 2026).

151. *Id*. at 13–14, 16.

152. *Id.* at 8–9.

did not pursue an interlocutory appeal of the Maryland state court's decision to allow the litigation to proceed.[153]

IV. Lock and Reload: Leaning into PLCAA After *Smith & Wesson Brands, Inc.*[154]

In late 2024, the Supreme Court granted certiorari in a case involving PLCAA's predicate statute exception,[155] which could have had significant implications for states' new accountability statutes. If the Court adopted an expansive view of PLCAA (and a narrow view of its predicate statute exception), it could have fortified the gun industry's immunity shield. The case—*Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos*—involved litigation brought by Mexico against gun manufacturers, alleging injuries rooted in the violence caused by illegal gun trafficking.[156] Ultimately, the Court ruled unanimously in favor of the gun industry defendants—but on narrow grounds, limited to whether Mexico had adequately pled a violation of the predicate statute itself.[157]

In August 2021, Mexico sued seven firearms manufacturers and one distributor in Massachusetts federal court, asserting nine claims and estimating "many billions of dollars" in harm.[158]

153. As of October 2026, the lawsuit remains pending in the Baltimore City Circuit Court, with the docket reflecting active discovery maneuvering, including at least one appeal of a discovery order.

154. This discussion is adapted from Linda S. Mullenix, *The Predicate Statute Exception Survives the Supreme Court: Firearms Industry Liability in the Aftermath of* Smith & Wesson, 68 WM. & MARY L. REV. (forthcoming 2027), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=6314060 [https://perma.cc/MC43-J5YM].

155. *See* Petition for Writ of Certiorari at 20–25, Smith & Wesson Brands v. Estados Unidos Mexicanos, 145 S. Ct. 1556 (2025) (No. 23-1141) (raising the issue of what "proximate cause" is required to satisfy PLCAA's predicate statute exception).

156. Complaint at 1, Estados Unidos Mexicanos v. Smith & Wesson Brands, Inc., 633 F. Supp. 3d 425 (D. Mass. 2022) (No. 1:21-cv-11269).

157. *Smith & Wesson*, 145 S. Ct. at 1562, 1565.

158. Complaint at 125–34, *Smith & Wesson*, F. Supp. 3d 425 (No. 1:21-cv-11269); *see also* Dave Graham & Laura Gottesdiener, *Mexico Sues U.S. Gun Makers, Eyes $10 Billion in Damages*, REUTERS (Aug. 4, 2021),

Mexico sought compensation for government expenses incurred in responding to gun violence, together with injunctive relief directed at distribution practices, firearm safety mechanisms, and unlawful trafficking.[159] Its negligence and public nuisance theories alleged that defendants knowingly facilitated illegal gun trafficking, including by continuing to supply dealers engaged in straw sales.[160] Mexico argued that PLCAA did not apply to injuries outside the United States[161] and, alternatively, that statutory exceptions permitted its claims.[162]

On September 30, 2022, the district court dismissed the lawsuit.[163] Although the court held that Mexico had standing, it held that PLCAA barred the litigation and none of PLCAA's exceptions applied.[164] The court interpreted the predicate statute exception as encompassing statutory rather than common-law claims and rejected the negligence per se and design-defect exceptions.[165] Intervening criminal conduct, the court determined, was the sole proximate cause of the injuries underlying Mexico's design-defect claims.[166]

On January 22, 2024, the First Circuit reversed and remanded.[167] Although agreeing that PLCAA applied to Mexico's extraterritorial injuries, the court held that the predicate statute exception embraced common-law claims supported by a statutory violation proximately causing the harm.[168] Mexico

https://www.reuters.com/world/americas/mexico-sues-several-weapons-manufacturers-us-court-2021-08-04 [https://perma.cc/YT8M-4R8W].

159. *Id.*

160. *Id*. at 125–27.

161. *Id*. at 7.

162. Plaintiff's Memorandum of Law in Opposition to Defendants' Joint Motion to Dismiss at 2–4, *Smith & Wesson*, 633 F. Supp. 3d 425 (No. 1:21-cv-11269).

163. *Smith & Wesson*, 633 F. Supp. 3d at 432.

164. *Id.* at 432, 438.

165. *Id*. at 447.

166. *Id.* at 450.

167. Estados Unidos Mexicanos v. Smith & Wesson Brands, Inc., 91 F.4th 511, 515 (1st Cir. 2024).

168. *Id*.

adequately alleged that defendants aided and abetted unlawful trafficking and that this conduct foreseeably required governmental expenditures.[169] Rejecting the defendants' attenuated causal account, the court recognized that supplying an illegal gun market could directly harm a government, independently of injuries to its residents.[170] Whether Mexico could substantiate its allegations remained for later proceedings.[171]

Smith & Wesson appealed, and the Supreme Court granted certiorari on October 4, 2024.[172] Supreme Court review raised apprehension among gun safety advocates that an expansive decision would further solidify the industry's immunity.[173] However, on June 5, 2025, Justice Elena Kagan's unanimous opinion reversed and remanded on a narrower ground.[174] Adopting Mexico's framing of the appeal as a pleading problem, the Court asked whether the complaint alleged sufficient facts supporting a plausible aiding-and-abetting claim.[175] Its extended discussion of aiding-and-abetting jurisprudence concluded that Mexico had not met that threshold, therefore avoiding an expansive exegesis of PLCAA.[176]

Significantly, the Court left unresolved the meaning of proximate cause under PLCAA's predicate statute exception,[177]

169. *Id*. at 529, 534–35.

170. *Id*. at 536.

171. *Id*. at 538.

172. *Order List: 603 U.S.*, U.S. SUP. CT. (Oct. 4, 2024), https://www.supremecourt.gov/orders/courtorders/100424zr_o7jp.pdf [https://perma.cc/LE5V-BCYB].

173. *See, e.g.*, John Fritze, *Supreme Court Poised to Block Mexico from Suing American Gunmakers Over Cartel Violence*, WRAL NEWS (Mar. 4, 2025), https://www.wral.com/archive/21891329/ [https://perma.cc/9ZXB-ZQGE].

174. Smith & Wesson Brands v. Estados Unidos Mexicanos, 145 S. Ct. 1556, 1561–62 (2025).

175. *Id.* at 1562.

176. *Id.* at 1565–69.

177. *Id.* at 1565.

notwithstanding the parties' extensive briefing on the issue.[178] Having found Mexico's aiding-and-abetting allegations insufficient, the Court had no occasion to elaborate on the causal showing necessary to bring a claim within the exception. It nonetheless acknowledged that the exception permits suits against manufacturers that aid and abet firearms violations and thereby proximately cause a plaintiff's harm.[179] Finally, the Court acknowledged that Congress expressly preserved the predicate statute exception, allowing some otherwise barred lawsuits to proceed.[180]

The decision likewise did not address the NSSF's challenges to the new state firearms accountability statutes. It said nothing about the predicate statute exception as applied to public nuisance, marketing, or deceptive trade practices underlying those laws. Nor did it resolve federal preemption, Commerce Clause and dormant Commerce Clause objections, Fourteenth Amendment void-for-vagueness claims, or First and Second Amendment challenges. These issues remain unexamined.

Mexico staked its predicate statute claim on the federal aiding and abetting statute; to the extent future litigants seek to do the same, the Court's aiding-and-abetting analysis provides them a roadmap for pleading those claims. Moreover, the decision says nothing about whether claims resting on different federal or state laws, including the states' new firearms accountability statutes, may qualify.

The Court's decision in *Smith & Wesson* was a victory for the gun industry, but a narrow one. Although the gun industry succeeded in defeating Mexico's massive litigation, the Court's reasoning applies narrowly to Mexico's pleadings and will not foreclose future suits that adequately plead their claims.

178. *See* Brief for Petitioners at 17–30, *Smith & Wesson*, 145 S. Ct. 1556 (No. 23-1141); Brief for Respondent at 33–51, *Smith & Wesson*, 145 S. Ct. 1556 (No. 23-1141).

179. *Smith & Wesson*, 145 S. Ct. at 1562–63.

180. *Id.* at 1570.

V. Some Concluding Thoughts on Litigation Strategy

A survey of the NSSF's and gun industry's attack on the new state firearms accountability laws presents an object lesson in litigation strategy. Within days of New York's passage of its firearms public nuisance statute, the NSSF immediately ran into court with its "facially unconstitutional" challenge. The NSSF decided not to sit around until the New York state AG or other state officials actually sued under their statutes. Over the ensuing five years, the NSSF spurned waiting for an "as applied" lawsuit to provide the vehicle for its PLCAA and constitutional challenges.

Short of being a fly on the wall during the attorneys' strategic conferences, one can only speculate the reasoning behind this choice. The NSSF has always been playing the long game. It is reasonable to assume that the NSSF's ultimate goal has been to eventually obtain an appellate decision to serve as the vehicle for Court review. Thus, the advantage of an immediate judicial determination that the New York statute was unconstitutional would have armed the NSSF and its allies with a precedent that could be argued across the other jurisdictions with like statutes. With this immediate strike strategy, the NSSF also decided to "flood the federal court zone" with boilerplate, copycat litigation. With its flurry of lawsuits, the NSSF could have hoped to gin up a conflict among the circuits, providing access to the Court's conflicts jurisdiction. An additional advantage of the facial strike strategy was that it avoided the costs of protracted litigation through state court proceedings in cases where state officials actually sued under their laws.

The NSSF has been relentless in pursuit of this strategy. The manifest downside to this approach is that it has been an abject failure. Notwithstanding repeated lectures from federal court judges on basic constitutional law—that the NSSF lacked Article III standing and federal courts do not hear unripe cases or issue advisory opinions—the NSSF has nonetheless returned time and again making the same facial preemptive strikes. This same strategy also may have doomed the NSSF's initial foray into Supreme Court review, where the NSSF conceded that the Second Circuit

"got wrapped around the axle on whether petitioners brought facial or as-applied claims," and dismissed this distinction as unworthy of the Court's attention.[181] But perhaps the greatest drawback of the NSSF's preemptive litigation strategy is that, through its successive filings, the NSSF has done an excellent job of educating state attorneys general of every nuance of PLCAA argumentation, as well as every conceivable constitutional challenge to the accountability statutes. Indeed, the NSSF's Second Circuit certiorari petition exhaustively lays out the gun industry's defense of PLCAA immunity.

This opera is definitely not over, and the NSSF is unyielding, so clearly litigation against the eleven states' firearms accountability statutes will continue. The Maryland litigation now has provided an interesting and entertaining detour into the *Younger* abstention doctrine, but whether this Fourth Circuit appeal will provide the platform for a Court review of the Maryland statute seems dubious. Indeed, if the NSSF and its allies eventually accomplish a Court review, ironically this may be the result of an underlying "as-applied" judgment from the Maryland state court.

181. Petition for Writ of Certiorari, *supra* note 23, at 34.