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Pennsylvania Court Shoots Down Federal Tort Law as Beyond Congress's Commerce-Clause Power

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In *Gustafson v. Springfield, Inc.*, 2020 WL 5755493 (Pa. Super. Ct. Sept. 28, 2020), the Superior Court of Pennsylvania, a mid-level appellate court, held that Congress lacked the authority under its constitutional power to regulate interstate commerce to adopt the Protection of Lawful Commerce in Arms Act of 2005 (PLCAA), 15 U.S.C. §§ 7901–7903. The court invalidated the entirety of this 15-year-old federal tort law as violating the Tenth Amendment's reservation of non-delegated powers to the States. This decision breaks with longstanding precedents of courts throughout the United States that have upheld the constitutionality of federal tort laws, including the PLCAA, as a valid exercise of Congress's authority.

The PLCAA establishes a qualified civil immunity for federally licensed manufacturers, sellers, and distributors of firearms or ammunition, as well as trade associations, "resulting from the criminal or unlawful misuse" of a firearm or ammunition. 15 U.S.C. § 7903(5)(A). As the court in *Gustafson* acknowledged, Congress adopted the PLCAA in response to a wave of lawsuits against the firearms industry seeking to hold manufacturers and sellers of legal, non-defective products liable for criminal acts or other harms perpetrated by third parties. *See* 2020 WL 5755493, at *5. Congress recognized that these unsound lawsuits sought to use massive tort liability exposure to either bankrupt or effectively regulate the firearms industry—a heavily regulated industry whose products enjoy special protection under the Second Amendment. Accordingly, Congress exercised its Commerce Clause power to protect a threatened industry engaged in commerce nationwide.

***Gustafson* Misinterprets Congress's Commerce Clause Authority and Tort Law**. The crux of the court's ruling in *Gustafson* is that the PLCAA offends the Commerce Clause and the Tenth Amendment by granting the firearms industry "total immunity from common-law liability," which "improperly regulates the States' abilities to apply their respective common laws." *Id.* at *9, *10. There are several fatal flaws in that analysis with respect to both constitutional law and tort law.

First, the framers of the Constitution understood the Commerce Clause to ensure "unrestrained intercourse between the States" so that all citizens would have access to markets in other states. Federalist No. 11; *see also* U.S. Const. Art. I, § 8. The framers further recognized the purpose of the Commerce Clause to allow Congress to break down state-imposed barriers to the free flow of goods and services nationwide, and the need to enforce that congressional authority directly through the courts. *See* Federalist No. 16; *see also* Paul Taylor, *The Federalist Papers, The Commerce Clause, And Federal Tort Reform*, 45 Suffolk U. L. Rev. 357 (2012) (discussing original intent of Commerce Clause and its support for federal tort law).

The PLCAA does just that: it facilitates the trade in firearms nationwide, without interference by barriers created by state tort law. As the U.S. Court of Appeals for the Second Circuit explained in upholding the PLCAA's constitutionality under Commerce Clause and Tenth Amendment challenges, "there can be no question of the interstate character of the industry in question and where Congress rationally perceived a substantial effect on the industry of the litigation that the Act seeks to curtail." *City of New York v. Beretta U.S.A. Corp.*, 524 F.3d 384, 395 (2d Cir. 2008), *cert. denied*, 556 U.S. 1104 (2009).

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Second, as a matter of tort law, the *Gustafson* court incorrectly concluded that the PLCAA provides "total immunity" to the firearms industry. To the contrary, the Act provides six exceptions to its grant of qualified civil immunity, such as actions involving a manufacturing or design defect (*e.g.* firearm explodes in user's hand), breach of contract or warranty, or knowing violation of a statute directed at a firearm or ammunition product's sale or marketing (*e.g.* Gun Control Act). *See* 15 U.S.C. § 7903(5).

The PLCAA places rational limitations on tort lawsuits so that manufacturers and sellers are not held liable for "harm caused by those who criminally or unlawfully misuse firearm products or ammunition products that function as designed and intended." 15 U.S.C. § 7901(5). In this regard, the PLCAA codifies the basic tort law principle that there is no liability for making a product, whether a firearm, knife or other instrument, that could be improperly used or misused as a deadly weapon. Rather, the person who pulls the trigger, not the manufacturer or seller of the firearm, bears responsibility for a shooting injury or death.

***Gustafson* Represents an Affront to Legitimate Efforts by Congress to Enact Tort Law**. By declaring the entire PLCAA unconstitutional, the Superior Court of Pennsylvania put itself at odds with the vast majority of state and federal courts around the United States that have consistently upheld the constitutionality of federal tort laws for more than a century. *See* Victor E. Schwartz *et al.*, *Federalism and Federal Liability Reform: The United States Constitution Supports Reform*, 36 HARV. J. ON LEG. 269 (1999) (discussing federal tort laws duly adopted pursuant to the Commerce Clause dating back to 1908). Plaintiffs have challenged the constitutionality of the PLCAA on numerous occasions, but the *Gustafson* court is the first and only appellate court to find the Act unconstitutional.

The *Gustafson* court's effort to ground its decision in federalism principles also appears designed to sow doubt about the legitimacy of other federal tort laws. As the court explained, "[a]ny impact that litigation might have upon interstate commerce, constitutionally speaking, is too remote to displace State sovereignty over the local torts and the local crimes at issue in those lawsuits." *Gustafson*, 2020 WL 5755493, at *24. Such a limited view of Congress's Commerce Clause authority threatens nullification of almost any federal tort-related enactment.

Congress has adopted numerous laws to protect entities against potentially ruinous tort liability. For example, Congress adopted the General Aviation Revitalization Act of 1994 to provide an 18-year statute of repose that generally bars product liability claims against general aviation aircraft manufacturers in response to litigation that threatened the industry's viability. Congress similarly adopted the Biomaterials Access Assurance Act of 1998 to protect suppliers of chemical components and raw materials used in medical devices against litigation that threatened the continued availability of such materials. Further, Congress adopted the Volunteer Protection Act of 1997 and Teacher Protection Act of 2005 to provide qualified civil immunity for volunteers and teachers.

Of particular significance in light of the COVID-19 pandemic, Congress adopted the Public Readiness and Emergency Preparedness (PREP) Act of 2005 to protect vaccine manufacturers from liability exposure in the event of a declared public health emergency. Yet, under the reasoning of *Gustafson*, each of these federal tort laws adopted pursuant to Congress's Commerce Clause power would be in jeopardy.

Such a result would be inapposite to the many judicial decisions upholding these and other federal tort laws, as well as decisions by courts upholding the PLCAA's constitutionality with respect to other legal challenges. *See, e.g., Ileto v. Glock, Inc.*, 565 F.3d 1126, 1139 (9th Cir. 2009), *cert. denied*, 560 U.S. 924 (2010) ("Like all appellate courts that have assessed the constitutionality of the PLCAA . . . we hold that the Act is constitutional on its face and as applied."); *Estate of Charlot v. Bushmaster Firearms, Inc.*, 628 F. Supp. 2d 174, 182-85 (D.D.C. 2009) (rejecting separation of powers challenge to PLCAA). Even the Congressional Research Service, which usually takes positions on legal questions only when the answer is clear, has stated it "concludes that enactment of tort reform legislation generally would appear to be within Congress's power to regulate commerce, and would not appear to violate principles of due process or federalism." Henry Cohen & Vanessa K. Burrows, Cong. Research Serv., *Federal Tort Reform Legislation: Constitutionality and Summaries of Selected Statutes* 1 (2008).

To be sure, Congress does not have unlimited power to enact federal tort law. Purely local, intrastate matters are the province of the states. However, where the imposition of massive tort liability threatens the viability of a national industry—as has been the case with respect to industries such as the general aviation industry, biomaterials industry, and firearms industry (among others)—Congress can and should assert its constitutional power to protect industry from the uncertainties and potential unfairness of state tort law.

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