No. 25-120

In the Supreme Court of the United States

MARK GUSTAFSON, INDIVIDUALLY AND AS ADMINISTRATOR AND PERSONAL REPRESENTATIVE OF THE ESTATE OF JAMES ROBERT ("J.R.") GUSTAFSON, ET AL., PETITIONERS

v.

SPRINGFIELD, INC., D/B/A SPRINGFIELD ARMORY, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE PENNSYLVANIA SUPREME COURT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTIONS PRESENTED

The Protection of Lawful Commerce in Arms Act (PLCAA), Pub. L. No. 109-92, 119 Stat. 2095 (15 U.S.C. 7901-7903), is a federal statute that limits the extent to which firearms manufacturers and distributors may be held liable for the actions of third parties involving the criminal or unlawful misuse of a firearm that has been shipped or transported in interstate or foreign commerce. The questions presented are:

1. Whether Congress violated the Tenth Amendment by preempting certain tort suits predicated upon common-law torts while allowing other suits involving knowing violations of state statutes applicable to the sale or marketing of firearms to proceed; and

2. Whether the PLCAA is a permissible exercise of Congress's Commerce Clause power pursuant to Article I, Section 8 of the United States Constitution.

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OPINIONS BELOW

The Pennsylvania Supreme Court's decision (Pet. App. 1a) is reported at 333 A.3d 651. The Pennsylvania Superior Court issued two decisions, one (Pet. App. 63a) reported at 282 A.3d 739. The other (Pet. App. 184a) was withdrawn and set for reargument. The Pennsylvania Common Pleas Court decision (Pet. App. 253a) is available at 2019 WL 11000305.

JURISDICTION

The judgment of the Supreme Court of Pennsylvania (Pet. App. 1a-62a) was entered on March 31, 2025. On June 16, 2025, Justice Alito extended the time within which to file a petition for a writ of certiorari to and including July 29, 2025, and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1257(a).

STATEMENT

1. Congress enacted the Protection of Lawful Commerce in Arms Act (PLCAA), Pub. L. No. 109-92, 119 Stat. 2095 (15 U.S.C. 7901 *et seq.*), in 2006, when States' tort law concerning firearms was in flux. Before the PLCAA's enactment, neighboring jurisdictions adopted competing legislation. Some States restricted lawsuits against firearms manufacturers, see, *e.g.*, Va. Code Ann. § 15.2-915.1 (2000) (repealed 2020); others imposed absolute liability on manufacturers for any injuries caused by certain weapons, see, *e.g.*, D.C. Code § 7-2551.02 (LexisNexis 1993) (amended 2020).

In enacting the PLCAA, Congress determined that plaintiffs could thus bring lawsuits against "manufacturers, distributors, dealers, and importers of firearms that operate as designed and intended," seeking relief from those companies for harm caused by the "misuse of firearms by third parties, including criminals." 15 U.S.C. 7901(a)(3); see *Smith & Wesson Brands, Inc.* v. *Estados Unidos Mexicanos*, 605 U.S. 280, 286 (2025). The possibility of such tort suits, Congress found, "erodes public confidence in our Nation's laws, threatens the diminution of a basic constitutional right and civil liberty[] * * * and constitutes an unreasonable burden on interstate and foreign commerce of the United States." 15 U.S.C. 7901(a)(6); see H.R. Rep. No. 124, 109th Cong., 1st Sess. 21-22 (2005) (House Report) (further criticizing these suits as "efforts at extraterritorial regulation").

To address these concerns, the PLCAA generally preempts tort actions brought "by any person against a manufacturer or seller" of firearms for injuries "resulting from the criminal or unlawful misuse of [a firearm] by the person or a third party." 15 U.S.C. 7903(5)(A).

The statute applies only to suits concerning firearms that have "been shipped or transported in interstate or foreign commerce," 15 U.S.C. 7903(4), and protects only manufacturers and sellers engaged in "interstate or foreign commerce," 15 U.S.C. 7903(2) and (6).

The PLCAA does not prohibit suits against individual firearms users for any injuries they cause. The PLCAA also contains various exceptions that allow certain tort actions that would otherwise be preempted. Of particular relevance here, one exception allows suits alleging knowing violations of "a State or Federal statute applicable to the sale or marketing of the product," so long as that violation was a proximate cause of the harm for which relief is sought. 15 U.S.C. 7903(5)(A)(iii); see *Smith & Wesson Brands*, 605 U.S. at 286. This exception is often called the "predicate exception" because a plaintiff must allege a knowing violation of a "predicate statute," *i.e.*, a statute applicable to the sale or marketing of firearms. *Ileto* v. *Glock, Inc.*, 565 F.3d 1126, 1132 (9th Cir. 2009), cert. denied, 560 U.S. 924 (2010).

2. This case arises from the fatal shooting of James Robert (J.R.) Gustafson by a 14-year-old boy. Pet. App. 2a. In 2016, while both J.R. and the boy were visiting a friend's home in Westmoreland County, Pennsylvania, the boy discovered a handgun and, believing the gun to be unloaded, pointed it at J.R. and pulled the trigger. *Id.* at 8a. The handgun contained a live round, which struck and killed J.R. *Ibid.* The boy subsequently pled guilty to involuntary manslaughter in juvenile court. *Ibid.*

Petitioners are J.R.'s parents. Pet. App. 8a. In 2018, they commenced this action against Springfield, Inc., which manufactured the firearm, and Saloom Department Store, which sold the handgun at retail. *Ibid.*

Petitioners' complaint alleged common-law claims that the handgun was defectively designed, negligently designed and sold, and lacked appropriate marketing and warnings. *Id.* at 8a-9a. Respondents filed a demurrer seeking dismissal of the complaint, contending that the PLCAA barred each of these causes of action. *Id.* at 254a; see Pa. R. Civ. P. 1028(a)(4). Petitioners responded that the PLCAA did not preempt their suit and that, if it did, the PLCAA was unconstitutional. Pet. App. 255a. The United States intervened for the limited purpose of defending the PLCAA's constitutionality. *Ibid.*

3. The trial court sustained defendants' demurrer and dismissed the case. Pet. App. 273a. The court held that the PLCAA preempts this suit, *id.* at 263a, and rejected petitioners' constitutional objections, *id.* at 264a-273a. The court explained that the PLCAA falls within Congress's Commerce Clause authority and does not violate the Tenth Amendment and principles of federalism; it also rejected petitioners' substantive due process and equal-protection challenges. *Ibid.*

A panel of the Superior Court agreed that the PLCAA, if valid, would bar petitioners' suit but reversed the trial court on Commerce Clause and Tenth Amendment grounds. Pet. App. 208a-209a, 244a, 248a. The panel held that because "there was no *existing* commercial activity between [petitioners] and the gun industry at the time of J.R.'s death for Congress to regulate," the PLCAA falls outside the scope of Congress's Commerce Clause authority. *Id.* at 227a. The panel further declared that the PLCAA violates the Tenth Amendment by interfering with state common law. *Id.* at 246a-248a.

The Superior Court later withdrew the panel opinion, granted the application for reargument en banc,

and issued a per curiam order reversing the trial court's order dismissing the case. See Pet. App. 64a-183a.

The nine Superior Court judges issued five separate opinions, with no single opinion garnering a majority. See *Commonwealth* v. *Grove*, 170 A.3d 1127, 1137-38 (Pa. Super. Ct. 2017) (noting that when no en banc opinion garners a majority vote, there is an absence of en banc resolution of the legal issues). Judge Kunselman filed an opinion, Pet. App. 66a, joined by two judges, in support of the per curiam order. The opinion concluded that while the PLCAA applies to bar petitioners' suit, the statute violates the Tenth Amendment and Commerce Clause. *Id.* at 106a.

President Judge Emeritus Bender filed another opinion in support of the per curiam order. Pet. App. 106a-117a. That opinion reasoned that the PLCAA as a statutory matter does not bar petitioners' claims; it further concluded that if the law did bar their claims, it would be unconstitutional. *Id.* at 117a. Judge Dubow filed another opinion in support of the per curiam order, *id.* at 117a-118a, agreeing with President Judge Emeritus Bender's statutory interpretation that the PLCAA does not preclude petitioners' suit, but opining that the statute would be constitutional if it did cover this suit.

Judge Olson filed an opinion dissenting from the per curiam order. Pet. App. 119a. That opinion reasoned that the PLCAA applies to bar petitioners' claims and is a constitutional exercise of Congress's Commerce Clause authority. See *id.* at 119a-120a. Two judges joined this opinion; Judge Murray concurred. *Id.* at 149a-150a. Judge Murray also filed a separate opinion dissenting from the per curiam order, *id.* at 150a-183a, likewise reasoning that the PLCAA bars petitioners' claims and concluding the statute is constitutional.

4. The Pennsylvania Supreme Court granted review as to 1) whether petitioners' suit is a qualified civil liability action prohibited by the PLCAA; 2) whether the suit falls within the PLCAA's product defect exception and is not preempted on that basis; and 3) whether, if the PLCAA does bar petitioners' suit, the PLCAA is unconstitutional.[1]

The Pennsylvania Supreme Court held that the suit is a qualified civil liability action under the PLCAA because it arose from the "criminal or unlawful misuse" of a qualified firearm, even though the firearm was used by a juvenile who was not criminally convicted. Pet. App. 30a-31a (quoting 15 U.S.C. 7903(5)(A)). The court further held that the suit does not fall within the PLCAA's product liability exception. *Id.* at 37a-38a.

As to the PLCAA's constitutionality, the Pennsylvania Supreme Court rejected petitioners' Commerce Clause and Tenth Amendment challenges. As to the Commerce Clause, the court joined with "numerous other courts [to] have addressed the question" and held that "Congress's Commerce Clause powers permitted it to enact PLCAA." Pet. App. 44a. The court reasoned that Congress found that "lawsuits had been filed against firearms companies operating in interstate and international commerce" and had intended that "firearms companies engaged in interstate and international commerce should not be held liable for * * * harm [caused by third parties]." *Id.* at 44a-45a.

The Pennsylvania Supreme Court emphasized that, unlike the Affordable Care Act, the PLCAA contains threshold interstate-commerce requirements that cabin

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[1] The Pennsylvania Supreme Court did not grant review of petitioners' substantive due process or equal protection arguments, Pet. App. 10a n.3; those constitutional questions are not presented here.

its reach—namely, that the product has moved in interstate commerce and that the seller or manufacturer has participated in interstate commerce. Pet. App. 48a-49a.

As to the Tenth Amendment, the Pennsylvania Supreme Court rejected petitioners' contention that the PLCAA unconstitutionally commandeered the States by requiring state-court judges to dismiss "cases that are fully supported by state law." Pet. App. 53a. The court again joined "[n]umerous courts" and held that the statute "does not command state executive officers to implement federal regulations nor does it direct state legislatures to pass any legislation;" it "merely directs that qualified civil liability actions may not be brought in federal or state court." *Id.* at 52a-53a. To "the extent the PLCAA requires state judges to dismiss civil actions that could otherwise proceed under state law, that requirement does not violate the anticommandeering doctrine, but is rather a product of the Supremacy Clause." *Id.* at 54a.

The Pennsylvania Supreme Court also rejected petitioners' argument that the statute's "predicate exception," which allows suits to go forward where the plaintiff alleges a knowing violation of state or federal statutes, impermissibly favors state legislative enactments over state common law. Pet. App. 55a. The court reasoned that "the PLCAA does not bar states from enacting any law," and state legislatures and courts remain free to enact new statutes and recognize new causes of action. *Id.* at 56a. And even assuming, as petitioners urged, that Congress may not dictate to States which branch of state government shall enact certain laws, the court explained that the PLCAA does not do so. *Id.* at 61a.

ARGUMENT

This case does not warrant further review. The decision of the Pennsylvania Supreme Court is correct and does not conflict with any decision by this Court or any other state or federal appellate court. Every state and federal appellate court to consider the constitutionality of the PLCAA has correctly upheld the statute.[2] As those cases make clear, petitioners err in contending that the PLCAA violates the Tenth Amendment. Nor is the PLCAA an unconstitutional exercise of Congress's Commerce Clause power. The decision below adheres to this Court's federalism and Commerce Clause precedents. The petition should be denied.

1. The Pennsylvania Supreme Court correctly held that the PLCAA comports with the Tenth Amendment, which provides: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." U.S. Const. Amend. X. Where, as here, Congress acts pursuant to a valid exercise of an enumerated power, a Tenth Amendment violation arises only if Congress has "'commandeer[ed]' state governments" by forcing them to enact regulation according to Congress's instructions. *New York* v. *United States*, 505 U.S. 144, 175 (1992); accord *Printz* v. *United States*, 521 U.S. 898, 935 (1997). As the Pennsylvania Supreme

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[2] See *Ileto* v. *Glock*, 565 F.3d 1126 (9th Cir. 2009), cert. denied, 560 U.S. 924 (2010); *City of New York* v. *Beretta U.S.A. Corp.*, 524 F.3d 384 (2d Cir. 2008), cert. denied, 556 U.S. 1104 (2009); *Delana* v. *CED Sales, Inc.*, 486 S.W.3d 316 (Mo. 2016); *Estate of Kim ex rel. Alexander* v. *Coxe*, 295 P.3d 380 (Alaska 2013); *Adames* v. *Sheahan*, 909 N.E.2d 742 (Ill.), cert. denied, 558 U.S. 1100 (2009); *District of Columbia* v. *Beretta U.S.A. Corp.*, 940 A.2d 163 (D.C. 2008), cert. denied, 556 U.S. 1104 (2009).

Court observed, this Court's decision in *Murphy* v. *NCAA*, 584 U.S. 453 (2018), reaffirmed those principles by holding that Congress may not bar state governments from enacting state law or compel them to enact state law. Pet. App. 56a; contra Pet. 26.

Thus, "the critical inquiry with respect to the Tenth Amendment is whether the PLCAA commandeers the states." *City of New York* v. *Beretta U.S.A. Corp.*, 524 F.3d 384, 396 (2d Cir. 2008), cert. denied, 556 U.S. 1104 (2009). As the Pennsylvania Supreme Court held below, the PLCAA does no such thing. The statute preempts certain claims while imposing "no affirmative duty of any kind" on "any branch of state government." *Id.* at 397 (citation omitted). State governments remain free to recognize whatever common-law obligations they wish; the PLCAA simply preempts those obligations under the Supremacy Clause. For these reasons, every state and federal appellate court to consider the issue—the Second Circuit, the Alaska Supreme Court, the Illinois Supreme Court, and the Missouri Supreme Court—has held that the PLCAA does not commandeer state powers. See *ibid.*; *Delana* v. *CED Sales, Inc.*, 486 S.W.3d 316 (Mo. 2016); *Estate of Kim ex rel. Alexander* v. *Coxe*, 295 P.3d 380 (Alaska 2013); *Adames* v. *Sheahan*, 909 N.E.2d 742 (Ill.), cert. denied, 558 U.S. 1100 (2009).

Petitioners have not argued that the PLCAA violates the Tenth Amendment by preempting state tort remedies generally. For good reason: this Court's precedents recognize that an express preemption provision "might appear to operate directly on the States, but it is a mistake to be confused by the way in which a preemption provision is phrased." *Murphy*, 584 U.S. at 478.

Instead, petitioners focus on the PLCAA's so-called "predicate exception," which allows some lawsuits to proceed against firearms manufacturers and retailers for certain knowing violations of "a State or Federal statute applicable to the sale or marketing of the product" when that statutory violation was a proximate cause of the harm for which relief is sought. 15 U.S.C. 7903(5)(A)(iii). Petitioners contend (Pet. 13) that by exempting certain suits for knowing violations of state statutes but not exempting suits involving common-law liability standards, the PLCAA "infringe[s] upon the sovereign authority of states to make and enforce law through the branch of government they choose." But Congress's choice to cabin the scope of the federal preemption provision does not compel the States to exercise their authority in any particular way. Congress merely limited which exercises of state authority may take effect. Preempting state suits—whether in toto or in part—is a classic exercise of the Supremacy Clause, not impermissible commandeering.

Further, it is particularly illogical to contend that a *limit* on the PLCAA's preemptive reach creates a commandeering problem. The PLCAA is broadly preemptive, and the predicate exception provides states an option to impose liability that would otherwise be preempted—offering States more flexibility to craft the laws they choose. That a State must pass legislation to exercise that flexibility does not constitute a commandeering problem.

Petitioners further err in characterizing the PLCAA as requiring States "only to make law through the branch of government Congress chooses." Pet. 4. State courts can recognize any common-law causes of action they wish; the PLCAA simply preempts some claims

from going forward if they are brought against firearms manufacturers where there was some intervening criminal action. As the Pennsylvania Supreme Court explained, "States remain free to enact any law they wish through any branch of government they wish without any restriction from the PLCAA." Pet. App. 61a.

Nor does the PLCAA prohibit state courts from altering or creating common law or from interpreting state statutes. As the Second Circuit held, the PLCAA does not "foreclos[e] the possibility" that state-court interpretations of state legislation may bear on whether a state law falls within the PLCAA's exception. *Beretta U.S.A. Corp.*, 524 F.3d at 396. At bottom, the PLCAA reflects the uncontroversial premise that state courts, like federal courts, must recognize the supremacy of federal law and dismiss preempted claims. See, *e.g.*, *Miller* v. *French*, 530 U.S. 327, 349 (2000). That obligation does not constitute commandeering. *Haaland* v. *Brackeen*, 599 U.S. 255, 286-287 (2023).

Petitioners' high-level contention (Pet. 23) that the PLCAA violates "bedrock principles of federalism" protected by the Tenth Amendment does not further their position. That argument appears to rehash petitioners' position that preempting some claims but not others invades the States' traditional authority as sovereigns. Regardless, this Court has rejected the argument that the Tenth Amendment's general principles of federalism place some areas of state authority beyond the reach of a validly enacted Act of Congress. See, *e.g.*, *Haaland*, 599 U.S. at 277 (explaining that "when Congress validly legislates pursuant to its Article I powers," the Constitution provides no "firewall" around areas traditionally regulated by the States); see also *Garcia* v. *San Antonio Metro. Transit Auth.*, 469 U.S. 528,

550 (1985) (courts "have no license to employ freestanding conceptions of state sovereignty when measuring congressional authority under the Commerce Clause").

This Court's decision in *Gregory* v. *Ashcroft*, 501 U.S. 452 (1991) does not change the calculus, despite petitioners' assertions (Pet. 25-26). In *Gregory*, the Court interpreted an age-discrimination statute not to apply to state judges, recognizing that Congress must be "unmistakably clear" if it intends to interfere with States' fundamental sovereign choices. 501 U.S. at 460-461. But at the same time, it explained that in reviewing a constitutional challenge to Congress's exercise of Commerce Clause authority, courts "are constrained in [their] ability to consider the limits that the state-federal balance places on Congress's powers." *Id.* at 464. Even assuming that a State's ability to develop common law liability standards goes to the core of state sovereignty—which, as explained, is inconsistent with this Court's preemption precedents—the Pennsylvania Supreme Court was right not to invalidate the PLCAA based on general principles of federalism.

Petitioners (at 14) also invoke *Erie Railroad Co.* v. *Tompkins*, 304 U.S. 64 (1938), but that decision is irrelevant here. *Erie* stands for the proposition that "[t]here is no federal general common law." *Id.* at 78. The language petitioners cite (Pet. 14)—that the law of the State governs whether that law is "declared by [the] Legislature in a statute or by [the] highest court"—does not suggest that the PLCAA intrudes on state lawmaking authority. *Ibid.* (citation omitted). As the preceding sentence in *Erie* makes clear, state law is to be applied *except* where "matters [are] governed by the Federal Constitution or by acts of Congress." 304 U.S. at 78. Nothing in *Erie* suggests that Congress is not

"permitted under the Constitution" to preempt state tort litigation against manufacturers and sellers who participate in interstate commerce involving products that move in interstate commerce. Pet. App. 103a. Rather, under *Erie*, a State is free to make its own common law, "provid[ed] there is no overriding federal rule which pre-empts state law by reason of federal curbs on trading in the stream of commerce." *Lehman Bros.* v. *Schein*, 416 U.S. 386, 389 (1974).

2. The Pennsylvania Supreme Court also correctly held that the PLCAA is a straightforward exercise of Congress's authority "[t]o regulate Commerce with foreign Nations, and among the several States." U.S. Const. Art. I, § 8, Cl. 3. No further review is warranted on this ground either. This Court's precedents recognize that if Congress acts to regulate "economic activity" that "substantially affects interstate commerce," then "legislation regulating that activity will be sustained." *United States* v. *Lopez*, 514 U.S. 549, 560 (1995). The PLCAA does just that—it regulates interstate commerce in part by preempting state liability that would have significant extraterritorial effects.

Under this Court's precedents, the PLCAA regulates economic activity that substantially affects interstate and foreign commerce. Congress determined in enacting the statute that the proliferation of suits against gun manufacturers and sellers "constitutes an unreasonable burden on interstate and foreign commerce." 15 U.S.C. 7901(a)(6); see *Coxe*, 295 P.3d at 392 ("Congress found certain types of tort suits threatened constitutional rights, destabilized industry, and burdened interstate commerce." (citing 15 U.S.C. 7901(a)(6) and (7))); accord *Beretta U.S.A. Corp.*, 524 F.3d at 394 ("Congress explicitly found that the third-

party suits that the [PLCAA] bars are a direct threat to the firearms industry, whose interstate character is not questioned.").

As the Pennsylvania Supreme Court explained, "it cannot be disputed * * * that the firearms industry has faced, and will likely continue to face, litigation over its products," which "'seek money damages and other relief.'" Pet. App. 46a (quoting 15 U.S.C. 7901(a)(3)) (emphasis omitted). Standards of conduct imposed through that litigation allowed States to regulate out-of-state manufacturers and sellers, so long as the firearms they produced or sold might one day end up in that State. That litigation thus imposed substantial burdens on the firearms industry—burdens that could impair the entire interstate market. To avoid those interstate consequences, Congress enacted the PLCAA to combat States' "efforts at extraterritorial regulation [that] aim to reduce interstate commerce." House Report 22; see *BMW of N. Am., Inc.* v. *Gore*, 517 U.S. 559, 571 (1996) ("[O]ne State's power to impose burdens on the interstate market * * * is not only subordinate to the federal power over interstate commerce, but is also constrained by the need to respect the interests of other States") (citation omitted). The PLCAA therefore restricted (via preemption and otherwise) certain types of liability that Congress determined could significantly interfere with interstate commerce and might impermissibly regulate extraterritorially.

Congress also ensured that the required "nexus to interstate commerce" was present. *Lopez*, 514 U.S. at 562. "[T]he PLCAA only reaches suits that 'have an explicit connection with or effect on interstate [or foreign] commerce.'" *Beretta U.S.A. Corp.*, 524 F.3d at 394 (quoting *Lopez*, 514 U.S. at 562). The statute's bar on

tort lawsuits applies only to suits against manufacturers and sellers who manufacture or sell firearms "in interstate or foreign commerce." 15 U.S.C. 7903(2) and (6). Similarly, the statute preempts only those suits concerning firearms "that ha[ve] been shipped or transported in interstate or foreign commerce." 15 U.S.C. 7903(4). Those restrictions prevent regulation of "truly local" commerce that is beyond the federal government's ambit. *Lopez*, 514 U.S. at 568; see *Ileto* v. *Glock, Inc.*, 565 F.3d 1126, 1140 (9th Cir. 2009) ("Congress carefully constrained the Act's reach to the confines of the Commerce Clause"), cert. denied, 560 U.S. 924 (2010). These restrictions also differentiate the PLCAA from cases like *Lopez*, *supra*, or *United States* v. *Morrison*, 529 U.S. 598 (2000), because affirming the PLCAA's constitutionality does not depend on open-ended concepts like the "costs of crime" or "national productivity," Pet. 38. And they diverge from the individual mandate at issue in *NFIB*, which required individuals who did not participate in the insurance market to either purchase insurance or pay a tax. See *National Fed'n of Indep. Bus.* v. *Sebelius*, 567 U.S. 519, 539 (2012). The PLCAA does not regulate economic inactivity or "non-commercial activities," Pet. 34; rather, it ensures that manufacturers and distributors' interstate commercial activity is protected from liability Congress has deemed unduly burdensome.

Petitioners suggest that the PLCAA does not regulate interstate commerce, but instead "attempt[s] to regulate * * * the adjudication of certain lawsuits," Pet. 33, or "the exercise of the States' own lawmaking powers," Pet. 35. But the PLCAA clearly governs private conduct related to interstate commerce through its preemption of select suits, "brought *by any person*

against a manufacturer or seller of a qualified product," that fall within its scope. 15 U.S.C. 7903(5)(A) (emphasis added). It is axiomatic that Congress can preempt state statutes under its Commerce Clause powers. See, *e.g.*, *Hughes* v. *Talen Energy Mktg., LLC*, 578 U.S. 150, 166 (2016); *Mutual Pharm. Co.* v. *Bartlett*, 570 U.S. 472, 480 (2013). Likewise, Congress can use those powers to preempt state tort laws, see *Riegel* v. *Medtronic, Inc.*, 552 U.S. 312, 323 (2008), and laws governing the use of evidence in state and federal courts, *Pierce County* v. *Guillen*, 537 U.S. 129, 146 (2003). The PLCAA's application in an adjudicative context does not undermine its connection to the Commerce Clause. Rather, as the Second Circuit recognized, "the PLCAA only reaches suits that 'have an explicit connection with or effect on interstate commerce.'" *Beretta U.S.A. Corp.*, 524 F.3d at 394 (quoting *Lopez*, 514 U.S. at 562).

3. Even setting the merits aside, further review is unwarranted because this case does not satisfy this Court's traditional criteria for review. Far from giving rise to a split of authority or pressing issue of national concern, petitioners appear to recognize (Pet. 30-31) that every court to consider the PLCAA's constitutionality has upheld the statute.

Petitioners instead invoke (Pet. 31) "a continuing circuit split on broader federalism issues." But that asserted split involves statutory-interpretation questions regarding the validity of particular conditions imposed on federal grant funding for state and local criminal justice programs. See *State* v. *Department of Justice*, 951 F.3d 84, 103-104 (2d Cir. 2020) (acknowledging disagreement with other courts of appeals limited to that issue), cert. dismissed, 141 S. Ct. 1291 (2021). Those issues are confined to the Spending Clause context, see

id. at 111-116, and have no bearing on the validity of the PLCAA. On the PLCAA's constitutionality, every court of appeals and state supreme court presented with the question has agreed. See *Ileto* v. *Glock*, *supra*; *City of New York* v. *Beretta U.S.A. Corp.*, *supra*; *Delana* v. *CED Sales, Inc.*, *supra*; *Estate of Kim ex rel. Alexander* v. *Coxe*, *supra*; *Adames* v. *Sheahan*, *supra*; *District of Columbia* v. *Beretta U.S.A. Corp.*, 940 A.2d 163 (D.C. 2008), cert. denied, 556 U.S. 1104 (2009). Those decisions correctly upheld the statute, and the Pennsylvania Supreme Court's decision below rightly continues that unbroken trend.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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