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., DBA SPRINGFIELD ARMORY, *et al.*,

Respondent.

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

REPLY BRIEF OF PETITIONERS

JONATHAN E. LOWY
YAACOV (JAKE) MEISELES
EMILY RACHEL ZOFFER
GLOBAL ACTION ON GUNVIOLENCE
805 15th Street, NW, Suite 601
Washington, DC 20005

GARY F. LYNCH
KELLY K. IVERSON
CARLSON LYNCH LLP
1133 Penn Avenue 5th Floor
Pittsburgh, Pennsylvania 15222

ROBERT S. PECK
Counsel of Record
CENTER FOR CONSTITUTIONAL LITIGATION, PC
1901 Connecticut Avenue, N.W., Suite 1101
Washington, DC 20009
(202) 944-2874
robert.peck@cclfirm.com

Counsel for Petitioners

131735

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

TABLE OF CONTENTS

Page

TABLE OF CONTENTS i

TABLE OF CITED AUTHORITIES ii

REPLY BRIEF 1

I. THE PETITION PRESENTS AN UNADDRESSED ISSUE OF SURPASSING IMPORTANCE, WHICH THIS COURT SHOULD RESOLVE CONSISTENT WITH THE FEDERALISM PRINCIPLES REINVIGORATED BY *MURPHY V. NCAA* 4

II. THE PETITION ALSO PRESENTS AN IMPORTANT ISSUE CONCERNING THE SCOPE OF CONGRESS'S COMMERCE CLAUSE AUTHORITY TO REGULATE A STATE'S SOVEREIGN GOVERNING CHOICES 8

CONCLUSION 12

TABLE OF CITED AUTHORITIES

Page

CASES

Chickasaw Nation v. United States,
534 U.S. 84 (2001) 7

City of New York v. Beretta USA, Corp.,
524 F.3d 384 (2d Cir. 2008), *cert. denied*,
556 U.S. 1104 (2009) 7

Consol. Rail Corp. v. Gottshall,
512 U.S. 532 (1994) 8

Coyle v. Smith,
221 U.S. 559 (1911) 7

Duke Power Co. v. Carolina Envtl. Study Grp.,
438 U.S. 59 (1978) 11

El Chico Corp. v. Poole,
732 S.W.2d 306 (Tex. 1987) 10

Garcia v. San Antonio Metro. Transit Auth.,
469 U.S. 528 (1985) 6

Gregory v. Ashcroft,
501 U.S. 452 (1991) 1, 6

Highland Farms Dairy, Inc. v. Agnew,
300 U.S. 608 (1937) 3

Cited Authorities

Page

Hines v. Davidowitz,
312 U.S. 52 (1941) 2

Hodel v. Virginia Surface Min. & Reclamation Ass'n, Inc.,
452 U.S. 264 (1981) 5

Hughes v. Talen Energy Mktg., LLC,
578 U.S. 150 (2016) 2

Kallman v. Aronchick,
981 F. Supp. 2d 372 (E.D. Pa. 2013) 11

Medtronic, Inc. v. Lohr,
518 U.S. 470 (1996) 2

Minn. v. Clover Leaf Creamery Co.,
449 U.S. 456 (1981) 10

Murphy v. Nat'l Collegiate Athletic Ass'n,
584 U.S. 453 (2018) 2, 4, 5

Nat'l Fed'n of Indep. Bus. v. Sebelius,
567 U.S. 519 (2012) 3, 8, 10

New York v. United States,
505 U.S. 144 (1992) 5

Printz v. United States,
521 U.S. 898 (1997) 5

Cited Authorities

Page

Rodriguez v. Fed. Deposit Ins. Corp.,
589 U.S. 132 (2020) 7-8

Schmidt v. Boardman Co.,
608 Pa. 327, 11 A.3d 924 (2011) 11

Smith & Wesson Brands, Inc. v.
Estados Unidos Mexicanos,
605 U.S. 280 (2025) 3

STATUTES

6 U.S.C. § 442 11

6 U.S.C. § 443 11

15 U.S.C. § 7901(a)(7) 4

15 U.S.C. § 7903 7

42 U.S.C. § 247d-6d 11

42 U.S.C. § 2210 11

49 U.S.C. § 40101, Amendment Notes 11

Age Discrimination in Employment Act of
1967 (ADEA), 81 Stat. 602, *as amended*,
29 U.S.C. §§ 621–634 6

Page

OTHER AUTHORITIES

Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts (2012) 7

John C.P. Goldberg, *Ten Half-Truths About Tort Law*, 42 Val. U.L. Rev. 1221 (2008) 10

The Federalist No. 39 (C. Rossiter ed. 1961) (J. Madison) 5

REPLY BRIEF

This case raises a critically important issue about the extent to which the Constitution protects state authority to make state law. The determination of which branch of government exercises specific forms of government authority reflects how "a State defines itself as a sovereign" and is a "decision of the most fundamental sort for a sovereign entity." *Gregory v. Ashcroft*, 501 U.S. 452, 460 (1991). The Protection of Commerce in Arms Act (PLCAA) impermissibly encroaches on this state sovereign authority. Despite its title, PLCAA does not regulate commerce; but instead regulates which branch of state government may impose liability for gun manufacturers' and dealers' injury-inducing business activities. If judicial decision-making in accordance with a State's common law determines that liability exists, PLCAA precludes courts from enforcing state liability law against protected gun companies but only if the liability derives from the common law. If, however, the state legislature enacts a statute to the same effect, PLCAA no longer applies, and courts may enforce liability law – where the facts and theories are identical to the prohibited common law action – but only the branch of government that established the liability law differs. Thus, PLCAA's only effect in the States is to regulate how it makes its laws.

The United States concedes that PLCAA operates this way: "Congress merely limited which exercises of state authority may take effect." U.S. BIO 10. To the United States, that decision does not offend federalism nor take it outside the Commerce Power because PLCAA does not "commandeer" the State by compelling an exercise of state power. *Id*. However, this Court has

rejected that narrow reading of federalism and the Tenth Amendment in *Murphy v. Nat'l Collegiate Athletic Ass'n*, 584 U.S. 453 (2018). A "classic exercise of the Supremacy Clause," which the United States equates to PLCAA's effect, *id.*, may preempt state law entirely, *see Hines v. Davidowitz*, 312 U.S. 52 (1941) (Alien Registration Law), or may permit state restrictions equal to, or substantially identical to, requirements imposed under federal law. *See Medtronic, Inc. v. Lohr*, 518 U.S. 470 (1996) (Medical Device Amendments of 1976). However, in no classic exercise of the authority deemed the supreme law of the land has Congress limited state regulatory authority by excluding a *branch of state government* from exercising authority Congress still permitted a state to require. And the United States supplies no example of a similar statute in American history. That is because "federal law preempts contrary state law," *Hughes v. Talen Energy Mktg., LLC*, 578 U.S. 150, 162 (2016), rather than only that of a disfavored branch of state government.

To date, the only court that has fully confronted and analyzed that issue, the Pennsylvania Superior Court, twice struck down the Protection of Commerce in Arms Act (PLCAA), as unconstitutional. Pet.App.184a, 252a; *id.* at 106a-107a. The Pennsylvania Supreme Court, which, following a path blazed by the Second Circuit prior to this Court's decision in *Murphy*, reversed, adopting a myopic focus to validate PLCAA. It simply determined that guns are products sold through interstate commerce and that federalism only protects States from having its political branches commandeered in the service of a congressional objective. But PLCAA does not regulate commerce; it imposes no standards at all on the firearms industry. It only "regulates" how a state articulates the liability it

imposes by deselecting courts and permitting legislatures to enact laws to the same effect that courts might. As Chief Justice Roberts explained, Congress' Commerce Clause authority extends only to commercial activity. *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 550 (2012) (opinion of Roberts, C.J.) ("The power to regulate commerce presupposes the existence of commercial activity to be regulated.") (emphasis omitted). How States choose to divide up lawmaking responsibility among its branches is not commercial activity. And PLCAA offends the Constitution's protection of state sovereignty because the distribution of power within state government is a question for the State. *Highland Farms Dairy, Inc. v. Agnew*, 300 U.S. 608, 612 (1937).

The consistent misapprehension of PLCAA in the courts and the template it creates for federal intrusion into the very organization of government in our sovereign States renders the Petition's Questions Presented to be of extraordinary national importance about the structure of our constitutional system, state sovereignty, and the pretextual congressional invocation of the Commerce Power to overcome the allocation of governmental power in the States.

How PLCAA functions is of immense importance. Just last term, this Court held that PLCAA barred a case brought by a key United States neighbor and trading partner. *Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos*, 605 U.S. 280, 299 (2025). Though the issue of PLCAA's constitutionality was not raised, the issues raised there demonstrate the significance of the Pennsylvania Supreme Court's incorrect holding. The Court should grant the petition.

I. THE PETITION PRESENTS AN UNADDRESSED ISSUE OF SURPASSING IMPORTANCE, WHICH THIS COURT SHOULD RESOLVE CONSISTENT WITH THE FEDERALISM PRINCIPLES REINVIGORATED BY *MURPHY V. NCAA*.

In the decision below, the Pennsylvania Supreme Court ignored the obvious thrust of the challenged statute when it opined that "nothing in the PLCAA dictates to the states which branch of government they can use to enact any laws." Pet. App. 61a. Indeed, the Court recognized that PLCAA's predicate exception "excludes certain statutory based claims from that general bar." *Id.* In other words, PLCAA voids enforcement of common law claims while allowing otherwise-identical statutory-based claims. That is PLCAA's core unconstitutional flaw.

Neither the United States nor Springfield counter the Gustafsons' description of the law as blocking identical state law requirements only if those requirements are the product of judicial decision, rather than the creation of a legislative enactment. Nor did Congress hide that its focus was to mandate disfavoring of the judicial branch; it blamed "maverick judicial officer[s] and petit jur[ies]" using state common law to "expand civil liability in a manner never contemplated by the framers of the Constitution, by Congress, or by the legislatures of the several States." Pet.App.277a-278a (§ 7901(a)(7). In withdrawing PLCAA's proffered immunity when the legislature imposes the same liability that PLCAA withholds from judicial cognizance, Congress dictates what branch of government can legitimately declare the pertinent liability law of the State. Thus, the "predicate exception" oversteps congressional authority and invades state sovereignty.

The United States denies that PLCAA invades state sovereignty through its cognizance of state legislative authority and its prohibition on common-law lawmaking by the courts, even when those common-law precedents are features of longstanding state law. Instead, the United States insists that the Tenth Amendment's protection of state sovereignty merely protects States from commandeering state government by forcing them to enact regulations according to Congress's instructions. U.S. BIO 8 (citing *New York v. United States*, 505 U.S. 144, 175 (1992)).

But this Court in *Murphy* found it "happenstance that the laws challenged in *New York* and *Printz* commanded 'affirmative' action as opposed to imposing a prohibition." *Murphy*, 584 U.S. at 475. "The basic principle—that Congress cannot issue direct orders to state legislatures—applies in either event." *Id.*

Indeed, such a limited view of state sovereignty has never reflected the full scope of the Tenth Amendment. If the United States was correct, and if the other courts that have uniformly adopted that view without further analysis were also correct, then this Court's explanation of state sovereignty in numerous cases cannot stand. *See, e.g., Hodel v. Virginia Surface Min. & Reclamation Ass'n, Inc.*, 452 U.S. 264, 286-87 (1981) ("'there are attributes of sovereignty attaching to every state government which may not be impaired by Congress.'") (citation omitted); *Printz v. United States*, 521 U.S. 898, 912 (1997) (the States retain "'a residuary and inviolable sovereignty'") ((quoting The Federalist No. 39, at 245 (C. Rossiter ed. 1961) (J. Madison)).

In *Gregory*, this Court rejected state judges' argument that the federal Age Discrimination in Employment Act of 1967 (ADEA), 81 Stat. 602, *as amended*, 29 U.S.C. §§ 621–634, overrode a Missouri constitutional provision that required most categories of judges to retire at age seventy. This Court explained, "[a]s every schoolchild learns," the constitutional design recognizes that "States possess sovereignty concurrent with that of the Federal Government." *Id.* at 457. Determining who may serve in public office is how "a State defines itself as a sovereign." *Id.* at 460. Just as "Congressional interference with this decision of the people of Missouri, defining their constitutional officers, would upset the usual constitutional balance of federal and state powers," *id.*, a federal law that only preempts declarations of state law because it comes from a disfavored branch of government strikes at that constitutionally prescribed balance. The power to declare which branch or branches may authoritatively declare state law is a "power reserved to the States under the Tenth Amendment." *Id.* at 463.

This Court in *Gregory* believed itself "constrained" in recognizing the offense to federalism by application of the ADEA to state judges by this Court's much-criticized decision in *Garcia v. San Antonio Metro. Transit Auth.*, 469 U.S. 528 (1985), which held that the protection of federalism against an excess exercise of the Commerce Power was a matter to be resolved in the political process through a State's representatives in Congress. *Id.* at 464. Instead, it framed its result as the absence of a "clear statement" that Congress sought to override State authority through the ADEA. *Id.*

The adoption of that conceit should not deter this Court from vindicating a more robust vision of federalism

that prevents an extraordinary congressional intrusion into the States' traditional prerogatives and general authority to organize its government and laws in order to meet a post-hoc congressional preference. PLCAA's offense resembles what this Court said Congress could not do by forbidding Oklahoma from changing the location of its capital as a condition of joining the Union, because the State's retained sovereignty put in the hands of "her own people the proper location of the local seat of government." *Coyle v. Smith*, 221 U.S. 559, 579 (1911).

The United States claims that "PLCAA [does not] prohibit state courts from altering or creating common law" because "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." U.S. BIO 11 (quoting *City of New York v. Beretta USA, Corp.*, 524 F.3d 384, 396 (2d Cir. 2008), *cert. denied*, 556 U.S. 1104 (2009); alteration in U.S. brief). That assertion constitutes an act of misdirection. PLCAA's predicate exception exempts statutory provisions from the immunity it imparts, while prohibiting courts from accomplishing the same thing through its common-law authority. 15 U.S.C. § 7903(5)(A)(iii)(I)-(II). The United States improperly conflates statutory construction with common-law lawmaking. Construing a statute constitutes an attempt to discern legislative intent and implement the design as reflected in the law's text. *Chickasaw Nation v. United States*, 534 U.S. 84, 94 (2001). The fact that statutes are in writing means that their meaning is fixed, stable, and constant. *See* Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts 86 (2012).

On the other hand, the common law comprises judicial lawmaking, *see Rodriguez v. Fed. Deposit Ins. Corp.*, 589

U.S. 132, 136 (2020), expressed in a body of unwritten legal rules based on precedent and ever-changing circumstances that result in case-by-case refinement. *See Consol. Rail Corp. v. Gottshall*, 512 U.S. 532, 563 (1994) (Souter, J., concurring).

Preempting state law on the basis of which branch of government creates the state law is not an exercise in ordinary preemption and not a function of the Supremacy Clause. PLCAA does not preempt state tort law. If it did, a state legislature could not override that preemption. Instead, PLCAA's "preemptive" effect" only curtails a State's authority to articulate its law through its courts and not just its legislature.

II. THE PETITION ALSO PRESENTS AN IMPORTANT ISSUE CONCERNING THE SCOPE OF CONGRESS'S COMMERCE CLAUSE AUTHORITY TO REGULATE A STATE'S SOVEREIGN GOVERNING CHOICES.

Neither Respondent makes any effort to address Petitioners' primary Commerce Clause argument––that PLCAA regulates only non-commercial activities; it is expressly directed only to prohibit persons from filing certain lawsuits originating from the common law while excluding those lawsuits arising from legislation, and commanding courts to dismiss such lawsuits. As Chief Justice Roberts explained in *Sebelius*, such non-commercial activity is not a proper subject of Congress' Commerce Clause authority. 567 U.S. at 550 (opinion of Roberts, C.J.) ("The power to regulate commerce presupposes the existence of commercial activity to be regulated.") (emphasis omitted).

Instead, the Government constructs a series of straw men.[1] Of course "burdens on the firearms industry" can effect interstate commerce. U.S. BIO 14. Nor do the Gustafsons dispute that Congress included in PLCAA an element requiring a nexus to interstate commerce. *Id.* 14-15. Likewise, the Gustafsons do not argue with the point that "Congress can preempt state statutes under its Commerce Clause powers." *Id.* at 15-16.

Respondents, however, make almost no effort to address that PLCAA does not actually regulate the "burdens on the firearms industry" that lawsuits against it pose. *Id.* at 14. Consider a situation in which two identically injured plaintiffs in two different States sue the same firearms manufacturer alleging the same unlawful conduct. If Plaintiff A sues in a State where the conduct violates standards imposed only by decisional case law, under PLCAA the suit will be dismissed and, indeed, there will be no burden on the firearms industry. But if Plaintiff B sues in a State where the legislature has enacted a law making the conduct illegal, then PLCAA imposes no limitation on liability and, thus, the burden on the firearms industry.

This example demonstrates that PLCAA does not regulate commercial activity; what PLCAA regulates is how States establish and impose liability. If Plaintiff A's State decides that it wants its citizens to have the same redress as citizens of plaintiff B's State, it cannot rely on judicially created common law; its legislature must enact legislation to this effect. But the internal

1. Springfield's Commerce Clause argument is limited to asserting that there is no split on this issue. Springfield BIO 3-4.

assignment of lawmaking authority within a State is not only an exclusive matter of state authority[2]; it is also not the stuff of commercial activity and does not fall within the federal Commerce Clause authority, even assuming *arguendo* that the litigation that is restricted may burden interstate commerce.

Like Respondents, the courts that have rejected Commerce Clause challenges to PLCAA have relied on the undisputed fact that the lawsuits covered by PLCAA substantially affect interstate commerce even though PLCAA only regulates the origin of the authority to bring that lawsuit. Neither Respondents nor those courts have grappled with Congress' decision in PLCAA to address its concerns by regulating noncommercial activity. *Sebelius*, 567 U.S. at 550 (opinion of Roberts, C.J.) ("The power to regulate commerce presupposes the existence of commercial activity to be regulated.")

2. As explained *supra*, it is blackletter law that "the States are free to allocate the lawmaking function to whatever branch of state government they may choose," *Minn. v. Clover Leaf Creamery Co.*, 449 U.S. 456, 461 n.6 (1981) (internal citations omitted), and in most states "courts still bear primary responsibility for developing and applying tort law, and they tend to do so using the techniques and norms associated with the idea of common law reasoning." John C.P. Goldberg, *Ten Half-Truths About Tort Law*, 42 Val. U.L. Rev. 1221, 1270 (2008); *see also El Chico Corp. v. Poole*, 732 S.W.2d 306, 314 (Tex. 1987) ("The creation of new concepts of duty in tort is historically the province of the judiciary."). PLCAA regulates the states and turns them all into civil law jurisdictions like Louisiana (and Puerto Rico); if any of the other 49 states want to recognize ordinary tort liability against the firearms industry, PLCAA requires their legislatures––as opposed to their judiciaries––to act and requires the state and federal judiciaries to dismiss suits in which state courts have allowed that liability.

(emphasis omitted). Rather than attempt to regulate commercial activity, Congress chose to regulate State lawmaking authority. But the parties affected by PLCAA are not engaged in commercial activity that is the proper subject of Congress's Commerce Clause authority. Not the parents of J.R. Gustafson, who simply seek legal redress for wrongdoers responsible for the death of their son. Not the Pennsylvania legislature, which has relied on the common law, rather than statutory law, to set standards for product liability. *See Schmidt v. Boardman Co.*, 608 Pa. 327, 352, 11 A.3d 924, 939 (2011) (Pennsylvania "law of 'strict' products liability is infused with negligence concepts."); *see also Kallman v. Aronchick*, 981 F. Supp. 2d 372, 378 (E.D. Pa. 2013).

In this respect, PLCAA is wholly different from other federal laws restricting litigation. Congress could have regulated commerce and provided a lifeline to the firearms industry by enacting legislation to reduce the burden on interstate commerce posed by *all* litigation against the firearms industry. For example, Congress could have set a damages cap, *see, e.g.*, 42 U.S.C. § 2210; *cf. Duke Power Co. v. Carolina Envtl. Study Grp.*, 438 U.S. 59, 67 (1978); it could have decided that the federal government should shoulder liability against the gun industry, *see, e.g.*, 42 U.S.C. § 247d-6d; it could have limited the types of damages allowed, *see, e.g.*, 6 U.S.C. §§ 442(b), 443(c), and/or it could have established a statute of repose, *see, e.g.*, *see* 49 U.S.C. § 40101, Amendment Notes. Instead, Congress chose another path––a path not authorized by the Commerce Clause––by enacting a law that merely sets forth which branch of State government must impose liability on the firearms industry rather than a law regulating commercial activity and the burdens liability for the firearms industry imposes on interstate commerce.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Jonathan E. Lowy
Yaacov (Jake) Meiseles
Emily Rachel Zoffer
Global Action
on GunViolence
805 15th Street, NW,
Suite 601
Washington, DC 20005

Robert S. Peck
Counsel of Record
Center for Constitutional
Litigation, PC
1901 Connecticut Avenue, N.W.,
Suite 1101
Washington, DC 20009
(202) 944-2874
robert.peck@cclfirm.com

Gary F. Lynch
Kelly K. Iverson
Carlson Lynch LLP
1133 Penn Avenue 5th Floor
Pittsburgh, Pennsylvania 15222

Counsel for Petitioners

November 24, 2025