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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

YISROEL GOLDSTEIN, *et al.*,

Plaintiffs,

vs.

JOHN T. EARNEST, *et al.*,

Defendants.

Case No.: 37-2020-00016638-CU-PO-CTL

Judge: Hon. Kenneth J. Medel
Dept.: C-66

**BRIEF OF UNITED STATES IN SUPPORT
OF THE CONSTITUTIONALITY OF THE
PROTECTION OF LAWFUL COMMERCE
IN ARMS ACT**

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INTRODUCTION

Pursuant to California Code of Civil Procedure section 387(d) and Sections 517 and 2403(a) of Title 28 of the United States Code, the United States of America has intervened in this case to present argument on the constitutional challenges to the Protection of Lawful Commerce in Arms Act (“PLCAA” or “Act”), 15 U.S.C. §§ 7901–03, raised in Plaintiffs’ Opposition to Defendant San Diego Guns’ Demurrer to Plaintiffs’ First Amended Complaint (“Pls.’ S.D. Opp.”) and Plaintiffs’ Opposition to Defendant Smith & Wesson’s Demurrer to Plaintiffs’ First Amended Complaint (“Pls.’ S.W. Opp.”).¹

Congress enacted PLCAA to “generally preempt[] claims against manufacturers and sellers of firearms and ammunition resulting from the criminal use of those products.” *Ileto v. Glock, Inc.*, 565 F.3d 1126, 1131 (9th Cir. 2009). The Act stands on firm constitutional ground: Essentially “[e]very federal and state appellate court to address the constitutionality of the PLCAA has found it [to be] constitutional.”² *Phillips v. Lucky Gunner, LLC*, 84 F. Supp. 3d 1216, 1222 (D. Colo. 2015) (collecting cases). Indeed, in prior litigation challenging PLCAA’s constitutionality, courts have rejected virtually identical arguments to those advanced by Plaintiffs here. *See, e.g., Ileto*, 565 F.3d at 1138–42 (holding PLCAA to be a valid exercise of Commerce Clause authority and rejecting due-process and equal-protection challenges); *City of N.Y. v. Beretta*, 524 F.3d 384, 392 (2d Cir. 2008) (rejecting Commerce Clause and Tenth Amendment challenges); *Travieso v. Glock Inc.*, No. CV-20-0523, 2021 WL 913746, at *11–13 (D. Ariz. Mar. 10, 2021) (holding PLCAA to be a valid exercise of Commerce Clause authority and rejecting Tenth Amendment, due-process, and equal-protection challenges); *Prescott v. Slide*

¹ The United States takes no position on whether PLCAA bars any claims asserted in the Plaintiffs’ First Amended Complaint.

² The sole exception of which the United States is aware is a withdrawn opinion by an intermediate appellate court in Pennsylvania, in which the court departed from a wide body of case law by concluding that PLCAA was not a valid exercise of Congress’s power under the Commerce Clause and that the Act violated the Tenth Amendment. *See Gustafson v. Springfield, Inc.*, No. 207 WDA 2019, slip op. at 55–56 (Penn. Super. Ct. 2020), *reh’g en banc granted and opinion withdrawn* (Dec. 3, 2020)).

1 *Fire Sols., LP*, 410 F. Supp. 3d 1123, 1146 (D. Nev. 2019) (rejecting due-process, equal-
2 protection, and Tenth Amendment challenges); *Delana v. CED Sales, Inc.*, 486 S.W.3d 316, 324
3 (Mo. 2016) (rejecting due-process and Tenth Amendment challenges); *Estate of Kim ex rel.*
4 *Alexander v. Coxe (Coxe)*, 295 P.3d 380, 390–91 (Alaska 2013) (rejecting due-process, equal-
5 protection, and Tenth Amendment challenges); *Gilland v. Sportsmen’s Outpost, Inc.*, No.
6 X04CV095032765S, 2011 WL 2479693, at *18–20 (Conn. Super. Ct. May 26, 2011)
7 (unpublished) (rejecting due-process and equal-protection challenges); *Adames v. Sheahan*, 909
8 N.E.2d 742, 764–65 (Ill. 2009) (rejecting Tenth Amendment challenge); *Dist. of Col. v. Beretta*,
9 940 A.2d 163, 172–82 (D.C. 2008) (rejecting due-process challenge).

10 Despite the weight of precedent to the contrary, Plaintiffs nevertheless contend that either
11 PLCAA is unconstitutional or certain provisions of the Act should be construed narrowly in light
12 of federalism principles to avoid barring any of Plaintiffs’ claims—an argument that has likewise
13 been squarely rejected. *See Travieso*, 2021 WL 913746, at *4–5; *Delana*, 486 S.W. 3d at 323;
14 *Prescott*, 410 F. Supp. 3d at 1132 n.3; *see also Iletto*, 565 F.3d at 1143 (refusing to invoke the
15 doctrine of constitutional avoidance in construing PLCAA). But Plaintiffs’ constitutional
16 arguments fail for the following reasons:

17
18 **First**, PLCAA does not exceed Congress’s legislative authority. The Supreme Court has
19 held that the Commerce Clause authorizes Congress to restrict litigation if Congress “could
20 reasonably believe” that the restrictions would promote interstate commerce. *Pierce Cty. v.*
21 *Guillen*, 537 U.S. 129, 147 (2003). “Congress carefully constrained [PLCAA’s] reach to the
22 confines of the Commerce Clause” by specifically limiting the preemptive scope of the Act to
23 interstate or foreign commerce. *Iletto*, 565 F.3d at 1140; *see also* 15 U.S.C. § 7903(2) (“The term
24 ‘manufacturer’ means . . . a person who is engaged in the business of manufacturing the product
25 in interstate or foreign commerce[.]”); *id.* § 7903(4) (“The term ‘qualified product’ means a
26 firearm . . . that has been shipped or transported in interstate or foreign commerce.”); *id.*
27 § 7903(6) (defining “[t]he term ‘seller’” with reference to a three part, disjunctive definition, all
28 three parts of which refer to interstate or foreign commerce). And “[t]here is nothing irrational

1 or arbitrary about Congress' choice here: It saw fit to 'adjust the incidents of our economic lives'
2 by preempting certain categories of cases brought against federally licensed manufacturers and
3 sellers of firearms," while leaving others to proceed. *Ileto*, 565 F.3d at 1140–41 (citation
4 omitted).

5 **Second**, PLCAA does not violate the Tenth Amendment or otherwise interfere with the
6 sovereign rights of the State of California. The Act, as a constitutional exercise of Congress's
7 enumerated authorities, merely preempts certain inconsistent state laws under the Supremacy
8 Clause, consistent with constitutional principles of federalism. *See, e.g., City of N.Y.*, 524 F.3d at
9 397; *Travieso*, 2021 WL 913746, at *12–13; *Delana*, 486 S.W. 3d at 322-23; *Coxe*, 295 P.3d at
10 388-89; *Adames*, 909 N.E.2d at 764-65. Indeed, the underlying premise of Plaintiffs' Tenth
11 Amendment claim is incorrect: PLCAA does not create a wholesale difference in treatment
12 between common law and statutory claims, as Plaintiffs suggest. Rather, PLCAA bars some
13 categories of statutory claims and maintains some categories of judicially-created claims. *See* 15
14 U.S.C. § 7903(5)(A)(ii), (iv), (v).

15
16 **Third**, Plaintiffs cannot succeed on their due-process claim because: (1) they have "no
17 property, no vested interest" in common-law tort claims that had yet to accrue or be litigated at
18 the time of PLCAA's enactment, *see Duke Power Co. v. Carolina Envt'l Study Grp.*, 438 U.S.
19 59, 88 n.32 (1978) (internal quotation marks and citation omitted); *see id.* ("[S]tatutes limiting
20 liability are relatively commonplace and have consistently been enforced by the courts."); and
21 (2) even if Plaintiffs had such a property interest, they have not been deprived of all remedies.
22 *See Ileto*, 565 F.3d at 1140–44 (rejecting due-process challenge because, *inter alia*, "Congress
23 has left in place a number of substitute remedies"); *accord Dist. of Col.*, 940 A.2d at 177 n.8.

24 **Fourth**, Plaintiffs' Fifth Amendment equal-protection argument fails because, as they
25 acknowledge, the easily-satisfied rational-basis standard applies to this claim, and "Congress
26 rationally could find that, by insulating the firearms industry from a specified set of lawsuits,"
27 interstate commerce would be protected. *Ileto*, 565 F.3d at 1140–41; *see also City of N.Y. v.*
28 *Beretta U.S.A. Corp.* ("*N.Y. v. Beretta*"), 401 F. Supp. 2d 244, 295 (E.D.N.Y. 2005) (determining

1 that Congress had a rational basis to find that “nationwide commerce in firearms was particularly
2 imperiled by the threat” of the lawsuits restricted by the Act in rejecting equal-protection
3 challenge to PLCAA, while finding that an exception to PLCAA applied to allow the suit), *rev’d*
4 *on other grounds*, *City of N.Y.*, 524 F.3d at 384 (equal protection not addressed). Congress also
5 could rationally find that state legislative processes would provide a forum in which the interests
6 of other states, interstate commerce as a whole, or the effects of tort liability on the rights of
7 Americans to keep and bear arms would more likely be considered.

8 ***Fifth***, and finally, PLCAA need not be construed narrowly, as Plaintiffs contend.
9 Plaintiffs’ arguments that a narrow construction is required are grounded in a doctrine of
10 constitutional avoidance, which authorizes a court to choose among competing interpretations of
11 a genuinely ambiguous statute only to escape an interpretation that creates “serious constitutional
12 problems.” *Edward J. DeBartolo Corp. v. Fla. Gulf Coast Bldg. & Constr. Trades Council*, 485
13 U.S. 568, 577 (1988). As explained above, there are no serious constitutional concerns here.
14 Moreover, because PLCAA’s purposes include *protecting* federalism and comity among states,
15 and protecting individual constitutional rights from animus at the state and municipal level,
16 PLCAA should be interpreted in a manner that advances, not frustrates, its purposes.

17
18 In short, PLCAA is constitutional. Plaintiffs’ arguments to the contrary should therefore
19 be rejected.

20 STATUTORY BACKGROUND

21 PLCAA preempts certain tort actions that threaten to interfere with interstate and foreign
22 commerce in firearms and to disrupt Americans’ ability to exercise the individual right to keep
23 and bear arms recognized in the Second Amendment to the United States Constitution. *See* 15
24 U.S.C. § 7901. The Act provides that “[a] qualified civil liability action” against the
25 manufacturers or sellers of firearms “may not be brought in any Federal or State court.” *Id.*
26 § 7902. A “qualified civil liability action” is defined to include any “civil action or proceeding . . .
27 against a manufacturer or seller of a qualified product . . . for damages, punitive damages,
28 injunctive or declaratory relief . . . or other relief resulting from the criminal or unlawful misuse

1 of a qualified product by the person or a third party.” *Id.* § 7903(5)(A). The Act’s general bar on
2 qualified civil liability actions applies only to suits concerning firearms that have “been shipped
3 or transported in interstate or foreign commerce,” *id.* § 7903(4), and it protects only
4 manufacturers and sellers who engage in “interstate or foreign commerce,” *id.* § 7903(2), (6).

5 PLCAA contains various exceptions that permit the filing of certain classes of actions
6 that would otherwise be preempted.³ *See id.* § 7903(5)(A)(i)-(vi). These include claims for
7 negligent entrustment and negligence per se, *id.* § 7903(5)(A)(ii), claims for breach of contract
8 or warranty, *id.* § 7903(5)(A)(iv), claims based on defective products when “not caused by a
9 volitional act that constituted a criminal offense,” *id.* § 7903(5)(A)(v), and claims based on
10 knowing violations of statutes “applicable to the sale or marketing of the product,” where “the
11 violation was a proximate cause of the harm for which relief is sought,” *id.* § 7903(5)(A)(iii).

12 Congress enacted PLCAA for three primary reasons, each of which are set forth in the
13 statutory text. First, Congress acted to ensure that “[b]usinesses in the United States that are
14 engaged in interstate and foreign commerce through the lawful design, manufacture, marketing,
15 distribution, importation, or sale to the public of firearms . . . in interstate commerce” will not be
16 held “liable for the harm caused by those who criminally or unlawfully misuse firearm products.”
17 *Id.* § 7901(a)(5). Second, Congress acted to protect the constitutional “rights of individuals . . .
18 to keep and bear arms,” as recognized by the Second Amendment, against the “diminution of
19 [this] basic constitutional right and civil liberty” by “[t]he possibility of imposing liability” in
20 qualified civil liability actions. *Id.* § 7901(a)(1)–(2), (a)(6); *see also id.* § 7901(b)(2) (explaining
21 PLCAA’s purpose to “preserve a citizen’s access to a supply of firearms and ammunition for all
22 lawful purposes, including hunting [and] self-defense”). And third, Congress acted to protect: (i)
23 “the rights, privileges, and immunities guaranteed” by the Fourteenth Amendment; and (ii)
24 “interstate and foreign commerce . . . [and] important principles of federalism, State sovereignty,
25
26

27 ³ In addition to these enumerated exceptions, PLCAA does not prohibit suits against
28 individual users of firearms for the injuries they may cause. *See* 15 U.S.C. § 7902 (preempting
only civil actions brought against firearm manufacturers and dealers).

1 and comity between the sister States,” from “liability actions commenced or contemplated” by,
2 *inter alia*, “States, municipalities, and private interest groups and others” through an “expansion
3 of the common law.” *Id.* § 7901(a)(7), (a)(8).

4 ARGUMENT

5 I. PLCAA is a valid exercise of Congress’s power under the Commerce Clause, the 6 Supremacy Clause, and Other Enumerated Authority.

7 As courts have repeatedly recognized, PLCAA is a valid and straightforward exercise of
8 congressional authority under the Commerce Clause and the Supremacy Clause. *See* U.S. Const.
9 art. I, § 8; *id.* art. VI, cl. 2. The Constitution grants Congress the authority “[t]o regulate
10 commerce . . . among the several states.” *Id.* art. I, § 8. That enumeration entails “the power to
11 regulate activities that substantially affect interstate commerce,” as PLCAA does. *See Gonzales*
12 *v. Raich*, 545 U.S. 1, 17 (2005). And where Congress has rationally determined that “economic
13 activity substantially affects interstate commerce,” the Supreme Court has made clear that
14 “legislation regulating that activity will be sustained.” *United States v. Lopez*, 514 U.S. 549, 560
15 (1995); *see also Gonzales*, 545 U.S. at 22 (“In assessing the scope of Congress’ authority under
16 the Commerce Clause, . . . [a court] need not determine whether . . . activities, taken in the
17 aggregate, substantially affect interstate commerce in fact, but only whether a ‘rational basis’
18 exists for so concluding.”).

19 Congress explained that it enacted PLCAA because it concluded, in relevant part, that
20 lawsuits “commenced against manufacturers, distributors, [and] dealers . . . of firearms that
21 operate as designed and intended, which seek money damages and other relief for the harm
22 caused by the misuse of firearms by third parties[,] . . . constitute[] an unreasonable burden on
23 interstate and foreign commerce of the United States.” 15 U.S.C. § 7901(a)(3), (6). In light of
24 Congress’s findings, the Ninth Circuit “ha[d] no trouble concluding that Congress rationally
25 could find that, by insulating the firearms industry from a specified set of lawsuits, interstate and
26 foreign commerce of firearms would be affected.” *Ileto*, 565 F.3d at 1140–41. Similarly, the
27 Second Circuit concluded that Congress could not have “exceeded its authority” in enacting
28

1 PLCCA “where there can be no question of the interstate character of the industry in question
2 and where Congress rationally perceived a substantial effect on the industry of the litigation that
3 the Act seeks to curtail.” *City of N.Y.*, 524 F.3d at 395.

4 In preempting qualified civil liability actions to protect this commercial activity,
5 Congress took care to ensure that the required “nexus to interstate commerce” was present in the
6 text of the statute. *See Lopez*, 514 U.S. at 562. PLCAA prohibits only lawsuits brought against
7 entities who manufacture or sell firearms “in interstate or foreign commerce,” 15 U.S.C.
8 § 7903(2), (6), and bars only those suits concerning firearms “that [have] been shipped or
9 transported in interstate or foreign commerce,” *id.* § 7903(4). These statutory provisions therefore
10 ensure that Congress does not regulate “‘truly local’ matters,” *City of N.Y.*, 524 F.3d at 394
11 (quoting *United States v. Morrison*, 529 U.S. 598, 618 (2000)), and thus “carefully constrain[]
12 the Act’s reach to the confines of the Commerce Clause,” *Ileto*, 565 F.3d at 1140.

13 Furthermore, while state tort law issues are generally left to the states, Congress can, by
14 operation of the Supremacy Clause, preempt state tort law if the state law imposes a burden on
15 interstate commerce and Congress clearly manifests an intent to preempt it. *See* U.S. Const. art.
16 VI, cl. 2 (“[T]he Laws of the United States . . . shall be the [S]upreme Law of the Land; and the
17 Judges in every State shall be bound thereby”); *see also, e.g., Wyeth v. Levine*, 555 U.S.
18 555, 565 (2009); *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 571–72 (1996); *Medtronic, Inc. v.*
19 *Lohr*, 518 U.S. 470 (1996). PLCAA expresses this clear intention for “qualified civil liability
20 actions.” *See Ileto*, 565 F.3d at 1135 (noting that “Congress clearly intended to preempt common-
21 law claims, such as general tort theories of liability”); 15 U.S.C. § 7901(b)(1) (describing the
22 statute’s purpose “[t]o prohibit” victims of gun violence from bringing “causes of actions against
23 manufacturers, distributors, [and] dealers . . . of firearms”); *id.* § 7902(a) (“A qualified civil
24 liability action may not be brought in any Federal or State court.”).

25 The Supreme Court noted in *BMW* that “one State’s power to impose burdens on the
26 interstate market . . . is not only subordinate to the [F]ederal power over interstate commerce, but
27 is also constrained by the need to respect the interests of other States” 517 U.S. at 571. This
28

1 accords precisely with Congress’s determinations in PLCAA that qualified civil liability actions
2 “constitute[] an unreasonable burden on interstate and foreign commerce” and “undermin[e]
3 important principles of . . . State sovereignty and comity between the sister States.” 15 U.S.C.
4 § 7901(a)(6), (8). In addition, Congress has explained that the purpose of PLCAA is to address
5 states’ “efforts at extraterritorial regulation [that] aim to reduce interstate commerce.” H. R. Rep.
6 No. 109-124 at 22 (2005). Thus, Congress is acting where interests in protecting national markets
7 are at the peak: where one state seeks to apply its laws to a manufacturer of goods from another
8 state in derogation of principles of unfettered interstate commerce, federalism, and comity. For
9 these reasons, PLCAA is an appropriate limitation on state tort power that effectuates the
10 Constitution’s “special concern both with the maintenance of a national economic union
11 unfettered by State-imposed limitations on interstate [and international] commerce and with the
12 autonomy of the individual States within their respective spheres.” *See BMW*, 517 U.S. at 571–
13 72 (internal quotation marks and citation omitted).

14
15 As noted above, courts have relied on (i) Congress’s findings in PLCAA regarding the
16 effect of firearms liability on interstate and foreign commerce, (ii) the interstate nexus in the
17 statutory text confining PLCAA’s scope within the ambit of the Commerce Clause, and (iii) the
18 well-establish law outlined above, to hold that Congress lawfully acted within its authority in
19 preempting qualified civil liability actions through PLCAA. *See Ileto*, 565 F.3d at 1141–42; *City*
20 *of N.Y.*, 524 F.3d at 394–95; *Travieso*, 2021 WL 913746, at *12; *Adames*, 909 N.E.2d at 764–
21 65. This Court should reach the same result.

22 Against the weight of these precedents, however, Plaintiffs contend that *Murphy v.*
23 *NCAA*, 138 S. Ct. 1461 (2018), somehow undermines their validity. Pls.’ S.D. Opp. at 19.
24 Plaintiffs rest this argument on *Murphy*’s recitation of the principle that “every form of
25 preemption is based on a federal law that regulates the conduct of private actors, not the States.”
26 138 S. Ct. at 1481; *accord New York v. United States*, 505 U.S. 144, 166 (1992) (“[The]
27 Constitution . . . confers upon Congress the power to regulate individuals, not States.”). But as
28 the Ninth Circuit has explained, “the only function of PLCAA is to preempt certain claims,”

1 namely, those brought by *private* litigants in federal or state court. *Ileto*, 565 F.3d at 1138; *see*
2 *also Murphy*, 138 S. Ct. at 1479–80 (explaining that, under the Supremacy Clause, federal law
3 “simply provides ‘a rule of decision’ . . . in case of a conflict with state law” (quoting *Armstrong*
4 *v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 324 (2015))).

5 To the extent Plaintiffs suggest that PLCAA’s preemption of qualified civil liability
6 actions is the equivalent of “regulat[ing] . . . the States,” *see Murphy*, 138 S. Ct. at 1481, this
7 contention is mistaken. It is axiomatic that Congress’s Commerce Clause authority includes the
8 power to preempt state tort laws. *See, e.g., Riegel v. Medtronic*, 552 U.S. 312, 323–24 (2008).
9 Liability rules—like those contained in PLCAA—are a form of economic regulation. *See id.* at
10 323–25 (recognizing that “[s]tate tort law,” including “common-law duties,” imposes regulatory
11 standards on manufacturers); *Kurns v. A.W. Chesterton*, 620 F.3d 392, 398 (3d Cir. 2010) (“the
12 purpose of” tort suits against companies, such as “state product liability suits against
13 manufacturers . . . is, in part, to persuade [manufacturers] to comply with a standard of care
14 established by the state”). Indeed, Congress made clear that it intended to exercise its Commerce
15 Clause authority in PLCAA based on the economic nature of tort-liability actions, finding that
16 qualified civil liability actions “seek money damages,” threaten to “destabiliz[e] . . . industries
17 and economic sectors,” and “unreasonabl[y] burden . . . interstate and foreign commerce of the
18 United States.” 15 U.S.C. § 7901(a)(3), (6); *see, e.g.,* 151 Cong. Rec. S9059, 9107 (daily ed.
19 July 27, 2005) (statement of Sen. Baucus) (“[T]he time, expense, and effort that goes into
20 defending these nuisance suits is a significant drain on the firearms industry, costing jobs and
21 millions of dollars, increasing business operating costs . . . and threatening to put dealers and
22 manufacturers out of business.”). The adjustment of the rules of liability under PLCAA is thus a
23 type of regulation of economic activity within the core of Congress’s Commerce Clause power.
24 *See Morrison*, 529 U.S. at 613 (reaffirming longstanding authority for “Commerce Clause
25 regulation of intrastate activity . . . where that activity is economic in nature”).
26

27 Further, the Supreme Court has long recognized that Congress’s Commerce Clause
28 authority includes the ability to regulate both substantive and procedural elements of liability in

1 state proceedings when justified by findings of an effect on interstate commerce. In *Pierce*
2 *County*, for example, the Supreme Court rejected a Commerce Clause challenge to a restriction
3 on the use of certain types of evidence in federal or state courts. *See* 537 U.S. at 134.⁴ In that
4 case, the Court overruled a decision by a state supreme court holding that this evidentiary rule,
5 when applied to state-court litigation, lacked a nexus to interstate commerce. *See Guillen v.*
6 *Pierce Cty.*, 144 Wash. 2d. 696, 742 (2001). In reversing, the Court explained that the evidentiary
7 rules fell within Congress’s Commerce Clause power “to assist state and local governments in
8 reducing hazardous conditions” that, in turn, would affect “the Nation’s channels of commerce.”
9 *Id.* at 147. In enacting PLCAA, Congress identified a far more direct effect on interstate
10 commerce: The risk that litigation will disrupt an economically important industry essential to
11 providing Americans with the means to enjoy a core individual right. And nothing in *Murphy*
12 indicates that the Supreme Court intended to overrule *Pierce County*, *BMW*, and other precedents
13 affirming Congress’s authority to enact legislation to limit tort liability. *See Am. Trucking Ass’n*
14 *v. Smith*, 496 U.S. 167, 190 (1990) (explaining that there is no “*sub silentio* overrul[ing]” of prior
15 Supreme Court precedent); *Hohn v. United States*, 524 U.S. 236, 252–53, (1998) (“Our decisions
16 remain binding precedent until we see fit to reconsider them, regardless of whether subsequent
17 cases have raised doubts about their continuing vitality.”).

18
19 It is also worth noting that Plaintiffs do not challenge Congress’s authority to enact
20 PLCAA to “guarantee a citizen’s rights, privileges, and immunities, as applied to the States,
21 under the Fourteenth Amendment to the United States Constitution, pursuant to section 5 of that
22 Amendment.” *See* 15 U.S.C. § 7901(b)(3). As the Supreme Court has explained, Congress is
23 entitled to enforce constitutional rights against the States and to use “preventive rules . . . [as]

24
25 ⁴ Specifically, the provision at issue barred from evidence “reports, surveys, schedules,
26 lists, or data compiled for the purpose of identifying[,] evaluating, or planning the safety
27 enhancement of potential accident sites, hazardous roadway conditions, or railway-highway
28 crossings, pursuant to [federal statutes] or for the purpose of developing any highway safety
construction improvement project which may be implemented utilizing Federal-aid highway
funds,” in any “action for damages arising from any occurrence at a location mentioned or
addressed in such reports, surveys, schedules, lists, or data.” *Pierce Cty.*, 537 U.S. at 134
(quoting Surface Transportation and Uniform Relocation Assistance Act of 1987, § 132, 101
Stat. 170).

1 appropriate remedial measures,” where there is “a congruence between the means used and the
2 ends to be achieved.” *City of Boerne v. Flores*, 521 U.S. 507, 530 (1997). Here, Congress’s stated
3 purpose of protecting the right of the people to keep and bear arms that is recognized in the
4 Second Amendment, *see* 15 U.S.C. § 7901(a)(1), is logical and congruent to the operative
5 provisions of the Act. The legislative history of PLCAA documents the manner in which state
6 and local government entities had improperly wielded common-law litigation to interfere with
7 the exercise of the right to keep and bear arms. *See* H.R. Rep. 108-59 at 10-12, 56-57.⁵ And by
8 restricting only qualified civil liability actions, *see Nev. Dep’t of Hum. Res. v. Hibbs*, 538 U.S.
9 721, 738–39 (2003) (“find[ing] significant the . . . limitations that Congress placed on the scope”
10 of remedial legislation), Congress targeted PLCAA proportionally and congruently to the threat
11 it identified: that judicial decisions could “impos[e] liability on an entire industry for harm that
12 is solely caused by others,” 15 U.S.C. §§ 7901(a)(6), (7), thereby curtailing the right to acquire
13 firearms through purchase or manufacture “necessary to the realization of the core right to
14 possess a firearm for self-defense,” *Teixeira v. Cty. of Alameda*, 873 F.3d 670, 676 (9th Cir.
15 2017) (collecting cases); *see also Dist. of Col. v. Heller*, 554 U.S. 570, 617–18 (2008) (“to bear
16 arms implies something more than the mere keeping”); *Jackson v. City & Cty. of S.F.*, 746 F.3d
17 953, 967 (9th Cir. 2014); *Ezell v. City of Chi.*, 651 F.3d 684, 704 (7th Cir. 2011).

19 ⁵ *See also, e.g.*, 151 Cong. Rec. at S9074 (Statement of Sen. Frist) (“Since 1997, more
20 than 30 cities and counties have sued firearms companies in an attempt to force them to change
21 the way they make and sell guns . . . manufacturers have already spent more than \$200 million
22 in legal fees to defend themselves . . . If the gun industry is forced into bankruptcy, the right to
23 keep and bear arms will be a right in name only. Even if some gunmakers are able to hold on, the
24 prices for firearms . . . will go sky-high.”); *Id.* at S9062 (Statement of Sen. Coburn) (July 27,
25 2005) (describing the purpose of the bill as “in support of . . . the second amendment and the
26 right to carry arms and against the attack on that right by [] frivolous lawsuits . . . attack[ing] the
27 arms industry financially Since 1988, individuals and municipalities have filed dozens of
28 novel lawsuits against members of the firearms industry . . . intended to drive the gun industry
out of business by holding manufacturers and dealers liable for the intentional and criminal act
of third parties over whom they have absolutely no control”); H.R. Rep. No. 109-124 at 11 n.48
(2005) (enumerating 18 different lawsuits filed in the late 1990s and early 2000s); Br. of Amicus
Curiae Profs. Of Second Amendment Law, *et al., Remington Arms Co., LLC v. Soto*, No. 19-168,
2019 WL 4256978 (Sept. 4, 2019). These and other examples in the legislative history belie the
statement in *N.Y. v. Beretta* that Congress had identified no “history or pattern of constitutional
violations to remedy” in support of its legislative finding that qualified civil liability actions
“threaten[ed] the diminution” of the right to keep and bear arms, constituting a violation of the
Second and Fourteenth Amendments. *See* 401 F. Supp. 2d at 297.

1 **II. PLCAA does not violate the Tenth Amendment.**

2 The Tenth Amendment provides that “[t]he powers not delegated to the United States by
3 the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to
4 the people.” U.S. Const. amend. X. The Supreme Court has explained that the Tenth Amendment
5 limits “the circumstances under which Congress may use the States as implements of regulation.”
6 *New York*, 505 U.S. at 161. The federal statute at issue in *New York* unconstitutionally
7 “‘commandeer[ed]’ state governments” by forcing them to enact regulation according to
8 Congress’s instructions. 505 U.S. at 175. In *Printz v. United States*, 521 U.S. 898, 935 (1997),
9 the federal statute comparably “conscript[ed]” local law enforcement officials by requiring them
10 to perform background checks in connection with firearms sales.

11 Plaintiffs maintain that PLCAA violates the Tenth Amendment because it “infringe[s] on
12 states’ sovereign [lawmaking] authority” “by dictating which branch of state government the
13 states must use to establish liability standards.” Pls.’ S.D. Opp. at 18. Although Plaintiffs do not
14 articulate the statutory basis for this contention, it is presumably directed at Congress’s choice to
15 include an exception in PLCAA for certain statutory claims but not equivalent common-law
16 claims. *See* 15 U.S.C. § 7903(5)(A)(iii).⁶ In *City of New York*, the Second Circuit rejected this
17 exact argument, *see* 524 F.3d at 396–97, as have multiple other courts, *see Travieso*, 2021 WL
18 913746, at *12–13; *Delana*, 486 S.W. 3d at 323–24; *Coxe*, 295 P.3d at 388–92; *Adames*, 909
19 N.E.2d 764–65. As the Second Circuit explained, “the critical inquiry with respect to the Tenth
20 Amendment is whether the PLCAA commandeers the states,” *City of N.Y.*, 524 F.3d at 396, and
21 PLCAA “does not commandeer any branch of state government because it imposes no
22 affirmative duty of any kind on any of them,” *id.* at 397 (internal quotation marks and citation
23 omitted); *see also Connecticut v. Physicians Health Servs., Inc.*, 287 F.3d 110, 122 (2d Cir. 2002)

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26 ⁶ In *Ileto*, the Ninth Circuit explained this “predicate exception” in detail, noting that, to
27 invoke the exception, a plaintiff must, *inter alia*, “allege a knowing violation of a ‘predicate
28 statute,’” *i.e.*, “a State or Federal statute applicable to the sale or marketing of the product.” 565
F.3d 1132–33. The specifics of the “predicate exception” have no bearing on the error underlying
Plaintiffs’ contention, however.

1 (“Federal statutes validly enacted under one of Congress’s enumerated powers—here, the
2 Commerce Clause—cannot violate the Tenth Amendment unless they commandeer the states’
3 executive officials or legislative processes” (citation omitted)); *Delana*, 486 S.W. 3d at 323 (same
4 reasoning with respect to PLCAA); *Adames*, 909 N.E.2d at 764–65 (adopting the Second
5 Circuit’s reasoning in *City of New York*). Because it “is within Congress’s enumerated powers
6 and does not commandeer state actors, the PLCAA does not violate the protections of the Tenth
7 Amendment.” *Coxe*, 295 P.3d at 389; *accord Travieso*, 2021 WL 913746, at *12.

8 Again, Plaintiffs’ argument appears to suggest that Congress’s enactment of PLCAA
9 nevertheless violated the Tenth Amendment because, rather than preempt certain claims all
10 together, it included an exception to PLCAA’s statutory preemption for certain types of statutory
11 claims. This limitation on the scope of federal preemption does not implicate the Tenth
12 Amendment in any sense. *See City of Spokane v. Fannie Mae*, 775 F.3d 1113, 1117 (9th Cir.
13 2014) (“nothing in the text or structure of the Constitution” precludes “federal preemption . . .
14 when Congress properly exercises its enumerated powers”).

15 As an initial matter, there is little logic to Plaintiffs’ suggestion that the Tenth Amendment
16 is offended because Congress chose to partially preempt state law (by providing an exception)
17 rather than choosing to fully preempt state law. As explained above, Congress can, by operation
18 of the Supremacy Clause, preempt state tort law if the state law imposes a burden on interstate
19 commerce and Congress clearly manifests an intent to preempt it. *See supra* 7–10. If, as here,
20 Congress chooses to limit the scope of preemption within a given state by exempting a certain
21 category of claims, that hardly causes *greater* interference with state prerogatives.

22 Second, Plaintiffs’ claim is notably deficient in legal support. Plaintiffs point to no
23 authority invalidating a federal statute on the grounds they urge.⁷ The state court decision in *In*
24

25
26 ⁷ Indeed, the withdrawn opinion in *Gustafson*, *see supra* n.2, is the only source of
27 “authority” Plaintiffs cite that supports their Tenth Amendment challenge. *See* Pls.’ S.D. Opp. at
28 18. There, the court found that PLCAA violates the Tenth Amendment because “PLCAA is tort
reform” rather than industry regulation. Slip op. at 57. But it is well-established that Congress
may expressly preempt state tort laws to limit liability and promote federal interests. *See Garcia*
v. Vanguard Car Rental, Inc., 540 F.3d 1242, 1252–53 (11th Cir. 2008) (rejecting challenge to

1 *re Vargas*, 10 N.Y.S.3d 579 (N.Y. App. Div. 2015), certainly does not indicate a constitutional
2 flaw in PLCAA. *See Travieso*, 2021 WL 913746, at *13 (rejecting this precise argument). There,
3 a statute prohibited states from issuing professional licenses to undocumented immigrants absent
4 a new state enactment authorizing the license grant, *see* 8 U.S.C. § 1621, but New York law
5 provided that only the judiciary could wield the “sovereign authority” of the State. *Vargas*, 10
6 N.Y.S.3d at 582. Here, Plaintiffs point to nothing in the law of California preventing the
7 legislature from enacting tort laws, and Plaintiffs do not argue that PLCAA prevents the state
8 government from taking such action, or any other action. Instead, PLCAA is a routine enactment
9 by Congress that, *inter alia*, “adjust[s]. . . the burdens and benefits of economic life,” *Ileto*, 565
10 F.3d at 1138–39, 1141, and it does not commandeer state officials. PLCAA therefore does not
11 violate the Tenth Amendment.⁸ *See City of Portland v. United States*, 969 F.3d 1020, 1049 (9th
12 Cir. 2020) (“If a power is delegated to Congress in the Constitution, the Tenth Amendment
13 expressly disclaims any reservation of that power to the States.”) (quoting *New York*, 505 U.S.
14 at 156)).

15
16 Third, PLCAA does not effect a wholesale shift of power between the state judiciary and
17 legislature, as Plaintiffs seem to imply. As noted above, the exceptions to PLCAA preserve
18 claims that may be validly created by either the legislature or the judiciary, including negligent
19 entrustment, negligence per se, breach of contract or warranty, and defective design or
20 manufacture. 15 U.S.C. § 7903(5)(A)(ii), (iv), (v). The standards for all of these could come from
21 either statutory or common law. It is simply not the case that PLCAA “dictat[es] which branch

22 federal preemption of state tort liability for car-rental agencies); *Hammond v. United States*, 786
23 F.2d 8, 15 (1st Cir. 1986) (preemption of tort remedies under Atomic Weapons Testing Liability
24 Act did not violate Tenth Amendment); *Sparks v. Wyeth Labs.*, 431 F. Supp. 411, 419 (W.D. Ok.
1977) (preemption of tort remedies under Swine Flu Act did not violate Tenth Amendment).

25 ⁸ *Erie R. Co. v. Tompkins*, 304 U.S. 64 (1938), cited by Plaintiffs, *see* Pls.’ S.D. Opp. at
26 18–19, has no application here. That case, which stands for the proposition that “[t]here is no
27 federal general common law,” does not bar *preemption* of state tort law. *Erie*, 304 U.S. at 78.
28 And the language that Plaintiffs cite does not apply where “matters [are] governed by the Federal
Constitution or by acts of Congress,” as is the case here. *Id.*; *see also Lehman Brothers v. Schein*,
416 U.S. 386, 389 (1974) (explaining that, under *Erie*, a state is free to make its own common
law, “providing there is no overriding federal rule which pre-empt[s] state law” through federal
regulation of “the stream of commerce”).

1 of state government the states must use to establish liability standards.” *See* Pls.’ S.D. Opp. at
2 18. For these reasons, too, PLCAA does not offend the Tenth Amendment.

3 **III. PLCAA does not violate the Fifth Amendment.**

4 Plaintiffs also contend that PLCAA violates the Fifth Amendment’s due-process and
5 equal-protection components. Identical claims have been rightly rejected by numerous courts for
6 the reasons set forth below.

7 **A. PLCAA does not violate due process.**

8 To successfully advance a due-process claim, a plaintiff must demonstrate both a
9 “depriv[ation] of life, liberty, or property” and that the deprivation was “without due process of
10 law.” U.S. Const. amend V; *see also Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 428 (1982)
11 (“[W]e are faced with what has become a familiar two-part inquiry: we must determine whether
12 [the plaintiff] was deprived of a protected interest, and, if so, what process was his due.”).
13 Plaintiffs’ claim that PLCAA violates due process by “eliminat[ing] any remedy,” Pls.’ S.D. Opp.
14 at 19, is factually incorrect, and at any rate, this claim establishes neither a deprivation of property
15 nor a lack of process.

16 As an initial matter, it is simply not the case that PLCAA “eliminate[s] any remedy” for
17 Plaintiffs’ injuries. *See id.* Indeed, Plaintiffs have sued several individuals—including “the self-
18 admitted perpetrator” of the shooting and both of his parents—whose alleged negligence,
19 Plaintiffs claim, caused their injuries. Pls.’ First Am. Compl. ¶¶ 31, 261–67. Additionally,
20 Plaintiffs have alleged claims of negligence against two state agencies. *Id.* ¶ 271–76. Plaintiffs
21 may also sue the manufacturers, distributors, and sellers of the firearm used in the shooting under
22 any claim that falls within the text of the Act’s exceptions. *See* 15 U.S.C. § 7903(5)(A)(i)–(vi).
23 For these reasons, the Ninth Circuit correctly held in *Ileto* that “PLCAA does not completely
24 abolish Plaintiffs’ ability to seek redress.”⁹ 565 F.3d at 1143; *accord Travieso*, 2021 WL 913746,
25

26
27 ⁹ In *Ileto*, the Ninth Circuit held that plaintiffs could “proceed on their claims” against
28 only a single defendant and, in response to the dissent, explained that this possibility sufficiently
ensured that the “ability to seek redress ha[d] been limited, but not abolished.” 565 F.3d at 1143;
see id. at 1144 (noting that the relevant analysis is whether the *statute* “contains . . . exceptions”

1 at *11; *Dist. of Col.*, 940 A.2d at 177 n.8; *Coxe*, 295 P.3d at 390–91; *Delana*, 486 S.W.3d at 324;
2 *Gilland*, 2011 WL 2479693, at *18–20.

3 Second, it is black-letter law that there is no constitutional property right in common-law
4 tort claims that have yet to accrue or be litigated, and thus, when Congress enacted PLCAA in
5 2005, it deprived Plaintiffs of no protected property interest. The Constitution “does not forbid
6 the creation of new rights, or the abolition of old ones recognized by the common law, to attain
7 a permissible legislative object.” *Silver v. Silver*, 280 U.S. 117, 122 (1929). Accordingly, “[n]o
8 person has a vested interest in any rule of law, entitling him to insist that it shall remain
9 unchanged for his benefit.” *N.Y. Cent. R.R. Co. v. White*, 243 U.S. 188, 198 (1917); *accord Duke*
10 *Power Co.*, 438 U.S. at 88 n.32 (1978). For this reason, the Ninth Circuit in *Ileto* held that “a
11 party’s property right in any cause of action does not vest until a final unreviewable judgment is
12 obtained.” 565 F.3d 1141. Numerous other courts of appeals have likewise concluded that there
13 are no protected property interests in pre-judgment tort claims, even those already pending. *See*,
14 *e.g.*, *Scarlett v. Air Methods Corp.*, 922 F.3d 1053, 1069 (10th Cir. 2019); *Schmidt v. Ramsey*,
15 860 F.3d 1038, 1046 (8th Cir. 2017); *In re TMI*, 89 F.3d 1106, 1113 (3d Cir. 1996); *Ducharme*
16 *v. Merrill-National Labs.*, 574 F.2d 1307, 1309–10 (5th Cir. 1978); *Carr v. United States*, 422
17 F.2d 1007, 1010–11 (4th Cir. 1970). Because Plaintiffs have no property right in their tort claims,
18 their due-process challenge must fail.¹⁰

19
20 Even if Plaintiffs could establish that a property right exists in a cause of action that had
21 been abolished prior to the occurrence of an alleged tort, their contention that the Due Process
22 Clause required Congress to provide “reasonably adequate alternative remed[ies]” in lieu of the
23
24 and whether, at the statutory level, “Congress has left in place . . . substitute remedies”).

25 ¹⁰ This action is therefore distinguishable from *City of Gary v. Smith & Wesson Corp.*,
26 No. 45D05-005-CT-00243 (Ind. Super. Ct. Oct. 23, 2006), *aff’d on other grounds*, 875 N.E.2d
27 422 (Ind. Ct. App. 2007), the only case Plaintiffs cite as having “held that PLCAA is
28 unconstitutional as a result of due process concerns.” Pls.’ S.D. Opp. at 20. In *City of Gary*, the
plaintiffs had filed their lawsuit prior to the enactment of PLCAA, and thus the Act deprived
them of a *pending* cause of action. *See City of Gary*, 875 N.E.2d at 424. The Court of Appeals of
Indiana ultimately held that PLCAA did not bar the suit, without reaching the constitutional issue.
Id. at 434–45.

1 “state tort claims” PLCAA preempted is meritless.¹¹ See Pls.’ S.D. Opp. at 20. The Constitution
2 imposes no such requirement. See, e.g., *Martinez v. California*, 444 U.S. 277, 280 (1980)
3 (upholding statute barring tort suits over “[a]ny injury resulting from determining whether to
4 parole or release a prisoner”); *Silver*, 280 U.S. at 121–22; *Schmidt*, 860 F.3d at 1048–49; *Patchak*
5 *v. Zinke*, 138 S. Ct. 897, 905 (2018) (upholding against separation-of-powers challenge statute
6 that provided that all actions relating to a single piece of property “shall be promptly dismissed”).
7 Those cases are indistinguishable from this one. And in any event, as explained above, PLCAA
8 does not completely abolish Plaintiffs’ ability to seek redress” through other tort claims. *Ileto*,
9 565 F.3d at 1143.

10 **B. PLCAA does not violate equal protection.**

11 PLCAA cannot meaningfully be said to discriminate among classes of victims. Plaintiffs
12 assert that the availability of different causes of action to plaintiffs in different states violates
13 equal-protection principles. Pls.’ S.D. Opp. at 21. But PLCAA merely preempts certain state law
14 causes of action, and the so-called “classes” identified by Plaintiffs are not cognizable under
15 equal protection. See *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 60 (1973) (Stewart,
16 J., concurring) (explaining that “the basic concern” of equal protection is with legislation
17 “creat[ing] discrete and objectively identifiable classes”); see also *Boardman v. Inslee*, 978 F.3d
18 1092, 1117 (9th Cir. 2020) (“Our first step [in addressing an equal-protection claim] is to identify
19 the [government’s] classification of groups.”); cf. *Hill v. Overton Cty.*, 205 F.3d 1340 at *1
20 (Table) (6th Cir. 2000) (“difference[s] in statutes of limitation do[] not implicate . . . equal
21 protection”). Plaintiffs have therefore not identified a classification drawn by the statute that can
22 be the subject of an equal-protection challenge. See *Boardman*, 978 F.3d at 1117 (“To prevail on
23 their equal-protection claim, [the plaintiffs] must first show that a class that is similarly situated
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26 ¹¹ Plaintiffs’ arguments on this score misapprehend the holding in *Duke Power Co.* See
27 Pls.’ S.D. Opp. at 20. As the Eighth Circuit has explained, “*Duke Power [Co.]* did not uphold
28 the challenged act on the basis of a substitute remedy; it merely refused to strike the act for
lacking one, because it did not lack one.” *Schmidt*, 860 F.3d at 1049 (8th Cir. 2017); accord *Ileto*,
565 F.3d at 1144.

1 has been treated disparately.” (alterations adopted and internal quotation marks and citations
2 omitted)); *Wright v. Incline Vill. Gen. Improvement Dist.*, 665 F.3d 1128, 1140 (9th Cir. 2011)
3 (holding that an “equal protection claim fail[ed] *ab initio*” because it did not identify disparately
4 treated classes of individuals that were “alike in *all* relevant respects” (emphasis added)).

5 Further, even if an equal-protection challenge of this sort is cognizable, Plaintiffs’ claim
6 would be subject to rational-basis review (as Plaintiffs acknowledge, Pls.’ S.D. Opp. at 21). *See*
7 *Ileto*, 565 F.3d 1141 (there is no “suspect classification common to those adversely affected by
8 the PLCAA”); *see also Minn. State Bd. For Comm. Colls. v. Knight*, 465 U.S. 271, 291 (1984)
9 (“There being no . . . reason to invoke heightened scrutiny, the challenged [government] action
10 need only” satisfy rational-basis review “to be valid under the Equal Protection Clause.” (internal
11 quotation marks and citation omitted)). Plaintiffs cannot show that PLCAA fails to “survive the
12 exceedingly low level of judicial scrutiny mandated by the rational basis test,” *see Aleman v.*
13 *Glickman*, 217 F.3d 1191, 1201 (9th Cir. 2000), because, to do so, Plaintiffs must demonstrate
14 that there is no “rational relationship between the disparity of treatment and some legitimate
15 governmental purpose,” *Heller v. Doe ex rel. Doe*, 509 U.S. 312, 320 (1993). Under rational-
16 basis review, “[a] statute is presumed constitutional, and ‘the burden is on the one attacking the
17 legislative arrangement to negative every conceivable basis which might support it,’ whether or
18 not the basis has a foundation in the record.” *See id.* at 320–21 (quoting *Lehnhausen v. Lake*
19 *Shore Auto Parts Co.*, 410 U.S. 356, 364 (1973)). “Given the standard of review, it should come
20 as no surprise that [courts] hardly ever strike[] down a policy as illegitimate under rational basis
21 scrutiny.” *Trump v. Hawaii*, 138 S. Ct. 2392, 2420 (2018).

22 As a general rule, equal-protection principles do not require a legislature to treat all types
23 of tort lawsuits identically when it acts to foreclose or limit tort liability. *See, e.g., Miller v. United*
24 *States*, 73 F.3d 878 (9th Cir. 1995); *Collins v. Schweitzer*, 21 F.3d 1491 (9th Cir. 1994). Here,
25 “Congress rationally could find that, by insulating the firearms industry from a specified set of
26 lawsuits,” interstate commerce would be protected. *Ileto*, 565 F.3d at 1140–41; *see also N.Y. v.*
27 *Beretta*, 401 F. Supp. 2d at 295. Congress also rationally concluded that the unpredictability of
28

1 common law tort actions could pose a greater threat to the firearms industry than would defined
2 legislative enactments that are necessarily passed by democratically accountable actors. *See* 15
3 U.S.C. § 7901(a)(7) (expressing specific concern about the “expansion of liability” by a “judicial
4 officer or petit jury”); *see also Martin v. Harrington & Richardson*, 743 F.2d 1200, 1204 (7th
5 Cir. 1984) (judicially-created “liability for the sale of handguns . . . would in practice drive
6 manufacturers out of business [and] produce a handgun ban by judicial fiat in the face” of
7 constitutional and statutory protections of the right to keep and bear arms and associated rights).
8 And Congress could rationally conclude that broad public interests, including the interests of
9 federalism, comity among States, interstate commerce, and individual constitutional rights would
10 be more likely to receive due consideration in a public legislative forum. *See Ziglar v. Abbasi*,
11 137 S. Ct. 1843, 1857 (2017). Any of these conclusions is all that is required under rational-basis
12 review.¹² *See, e.g., Ileto v. Glock, Inc.*, 421 F. Supp. 2d 1274, 1301 (C.D. Cal. 2006) (PLCAA
13 advances a rational basis of “prevent[ing] a perceived undue burden on interstate commerce
14 caused by what Congress has determined to be ‘predatory’ lawsuits against the firearms
15 industry”); *see also Coxe*, 295 P.3d at 391–92; *Gilland*, 2011 WL 2479693, at *20–22.

17 **IV. Federalism principles do not require that PLCAA be read narrowly.**

18 Plaintiffs argue that principles of constitutional avoidance mandate the adoption of their
19 particular, narrow interpretation of PLCAA. Pls.’ S.W. Opp. at 18. Their interpretation may be
20 correct, but if so, it is not for constitutional reasons. Constitutional avoidance requires “serious
21 constitutional problems” of the sort not present here. *DeBartolo*, 485 U.S. 575, 587. Further,
22 because core purposes of the statute are to *protect* federalism and constitutional rights, the statute
23 should not be construed narrowly when doing so would frustrate those purposes. Finally,
24 Plaintiffs’ argument fails on its own terms because PLCAA makes explicit its intent to preempt
25 state tort law.

27 ¹² Indeed, it is *more* than is required under rational-basis review, because “a legislature
28 that creates [non-suspect] categories need not actually articulate at any time the purpose or
rationale supporting its classification.” *Heller*, 509 U.S. at 320.

1 **A. There is no serious constitutional question presented here.**

2 As the Ninth Circuit explained in *Ileto*, courts “may invoke the doctrine” of constitutional
3 avoidance “only [upon] ‘grave doubts’ about the constitutionality of [a] statute.” 565 F.3d at
4 1143 (quoting *Almendarez-Torres v. United States*, 523 U.S. 224, 237–38 (1998)). This requires
5 more than the “mere mention” of a constitutional problem, *Nat’l Mining Ass’n v. Kempthorne*,
6 512 F.3d 702, 711 (D.C. Cir. 2008), but “a *serious likelihood* that the statute will be held
7 unconstitutional,” *Ileto*, 565 F.3d at 1143 (internal quotation marks omitted). Here, as explained
8 above, there are no serious constitutional problems with PLCAA, so avoidance principles do not
9 apply. *See Ileto*, 565 F.3d at 1144 (“declin[ing] to apply the doctrine of constitutional
10 avoidance”).

11 Plaintiffs’ authorities—*Gregory v. Ashcroft*, 501 U.S. 452 (1991), and *Bond v. United*
12 *States*, 572 U.S. 844 (2014)—apply variations of the general constitutional-avoidance principle.
13 In those cases, the Supreme Court explained that statutes should be narrowly construed if
14 necessary to avoid “upset[ting] the usual constitutional balance of federal and state powers,”
15 thereby creating “a potential constitutional problem.” *Gregory*, 501 U.S. at 460, 464; *accord*
16 *Bond*, 572 U.S. at 858, 860. In *Gregory*, the Court expressed concern that interpreting federal
17 law to invalidate a mandatory retirement age for state judges would undermine the “authority of
18 a State’s people to determine their government officials’ qualifications,” an authority “reserved
19 to the States under the Tenth Amendment” that the Court suggested “may be inviolate.” 501 U.S.
20 at 463–64. In *Bond*, the constitutional risk existed because an expansive reading of the federal
21 criminal statute would have permitted federal prosecution of “purely local crimes,” a “dramatic[]
22 intru[sion]” on “state criminal jurisdiction.” *Id.* at 860, 863 (quoting *United States v. Bass*, 404
23 U.S. 336, 350 (1971)). The unremarkable preemption of state tort law in PLCAA raises no similar
24 constitutional concern or federalism issue. *See Prescott*, 410 F. Supp. 3d at 1132 n.3 (rejecting
25 argument that federalism principles stated in *Gregory* and *Bond* require “a narrower construction
26 of the PLCAA”); *accord Travieso*, 2021 WL 913746, at *4–5; *Delana*, 486 S.W. 3d 322-23; *see*
27 *Ileto*, 565 F.3d at 1135–46; *Riegel*, 552 U.S. at 326 (rejecting dissent and finding no serious
28

1 constitutional issue raised by preemption of tort laws where “the statute itself speaks clearly to
2 the point”).

3 **B. A narrowing construction is not appropriate because PLCAA’s core**
4 **purposes include protecting principles of federalism and individual**
5 **constitutional rights.**

6 Plaintiffs’ contention that the Court should deviate from the plain text of PLCAA in
7 service of “federalism” rings hollow because Congress enacted PLCAA, in part, to *protect*
8 federalism by precluding individual states from regulating commerce to the detriment of the
9 sovereignty of other states, principles of federalism, and the Full Faith and Credit Clause. *See* 15
10 U.S.C. §§ 7901(b)(6),(7); H.R. Rep. No. 109-124 at 21–22 (2005) (documenting individual state
11 and municipal “efforts at extraterritorial regulation”).¹³ In PLCAA, Congress recognized that this
12 state-law backdrop presented a serious risk that the liability regimes of some states would thwart
13 the commercial interests of other sovereign states and their protections for their citizens’ rights
14 to keep and bear arms. Where Congress acts to prevent States from transgressing on the system
15 of constitutional federalism by “project[ing] . . . one [S]tate regulatory regime into the jurisdiction
16 of another,” such actions specifically advance the federal-state balance that “the Commerce
17 Clause protects.” *Healy v. Beer Inst.*, 491 U.S. 324, 336–37 (1989); *see also BMW*, 517 U.S. at
18 572 (discussing tort liability and “principles of state sovereignty”).

19 Similarly, when Congress legislates to remedy the violation of constitutional rights,
20 courts apply a presumption that the statute should be “broadly interpret[ed]” to effectuate its
21 purpose, *Kang v. U. Lim Am. Inc.*, 296 F.3d 810, 816 (9th Cir. 2002), and greater deference to
22 Congress’s actions is warranted than where Congress acts to “restrict or deny” such rights,
23 *Katzenbach v. Morgan*, 384 U.S. 641, 657 (1966). At a minimum, such statutes are to be
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25 ¹³ This is well illustrated by the competing legislative measures adopted by neighboring
26 jurisdictions during the years preceding enactment of PLCAA. For example, Virginia restricted
27 municipal lawsuits against firearms manufacturers and others to ensure, *inter alia*, that the
28 industry would remain capable of supporting the right to keep and bear arms. *See* Va. Code Ann.
§ 15.2-915.1 (2006). Meanwhile, at least one neighboring jurisdiction, the District of Columbia,
imposed absolute liability on the makers of firearms for any injuries caused by some models of
weapons. *See* D.C. Code Ann. §§ 7-2551.01 (2006).

1 interpreted according to their text, history, structure, and purpose, with reference to the findings
2 and congressional determinations underpinning the statute. *See, e.g., Nev. Dep’t of Hum. Res.*,
3 538 U.S. at 738 (relying on statutory text and congressional determinations to affirm
4 constitutionality of Family and Medical Leave Act); *Tennessee v. Lane*, 541 U.S. 509, 526-27
5 (relying on examples identified by Congress in upholding ADA).

6 Furthermore, as explained above, *see supra* 10–11, a major purpose of PLCAA is to
7 protect the right to keep and bear arms recognized in the Second Amendment. *See* 15 U.S.C.
8 § 7901(a)(1), (2), (b)(2). Because Congress reasonably acted to protect the right to keep and bear
9 arms in light of the efforts by states, municipalities, and other litigants to interfere with that right
10 by imposing liability on firearms retailers and manufacturers, the Constitution does not require
11 interpreting PLCAA narrowly when doing so would frustrate the statutory purpose of protecting
12 the right. *See CFTC v. Schor*, 478 U.S. 833, 841 (1986) (constitutional avoidance “does not give
13 a court the prerogative to ignore the legislative will”); *Niece v. Fitzner*, 941 F. Supp. 1497, 1505
14 (E.D. Mich. 1996) (“[C]anon of statutory construction that remedial legislation should be
15 construed broadly to effectuate its purposes . . . is also applied to civil rights statutes[.]”).

16
17 **C. Congress has plainly stated its intent to preempt state tort law.**

18 In any event, PLCAA clearly indicates Congress’s express intent to “prohibit causes of
19 action” brought under state tort law. 15 U.S.C. § 7901(b)(1); *see id.* § 7902(a) (providing that
20 covered tort actions “may not be brought in any Federal or State court”). The Ninth Circuit
21 recognized this in *Ileto*, holding that “congressional intent [to preempt state tort claims] is clear
22 from the text and purpose of the statute.” 565 F.3d at 1142–43; *see also id.* at 1135–36; *accord*
23 *Travieso*, 2021 WL 913746, at *5. Here, unlike in *Bond*, *see* 572 U.S. at 859–60, 863, it is well-
24 established that Congress may preempt state tort causes of action, *see supra* 7–10, and there is
25 therefore no reason to search for an ambiguity from which to override the statutory text.
26 Likewise, Congress left no ambiguity in its statements of findings and purposes, where it
27 established that PLCAA limits liability from “the harm caused by those who criminally or
28 unlawfully misuse firearm products . . . that function as designed and intended.” 15 U.S.C.

1 § 7901(a)(5). Thus, “[b]ecause Congress has expressly and unambiguously exercised its
2 constitutionally delegated authority to preempt state law negligence actions against
3 [manufacturers and] sellers of firearms, there is no need to employ a narrow construction to avoid
4 federalism issues.” *Delana*, 486 S.W.3d at 323; *accord Travieso*, 2021 WL 913746, at *4–5;
5 *Prescott*, 410 F. Supp. 3d at 1132 n.3 (“reject[ing] . . . argument in favor of a narrower
6 construction of the PLCAA”).

7 CONCLUSION

8 For the foregoing reasons, the Constitution does not require the Court to invalidate
9 PLCAA or to deviate from the text of PLCAA in construing the Act’s terms.

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Respectfully Submitted,

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