Nos. 105789 and 105851 (consolidated)

IN THE
SUPREME COURT OF ILLINOIS

HECTOR ADAMES, JR., and ROSALIA DIAZ, as Co-Special Administrators of the Estate of JOSHUA ADAMES, Deceased,

Plaintiffs-Appellees,

vs.

MICHAEL F. SHEAHAN, in his official capacity as Cook County Sheriff, and BERETTA U.S.A. CORP.,

Defendants-Appellants.

On Appeal from the Appellate Court of Illinois,
First Judicial District, No. 1-05-3911. There Heard on Appeal
from the Circuit Court of Cook County, Illinois,
County Department, Law Division, No. 01 L 05894.
The Honorable **Carol Pearce McCarthy**, Judge Presiding.

BRIEF OF AMICI CURIAE LEGAL COMMUNITY AGAINST VIOLENCE, BRADY CENTER TO PREVENT GUN VIOLENCE, COALITION TO STOP GUN VIOLENCE, AND VIOLENCE POLICY CENTER IN SUPPORT OF PLAINTIFFS

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INTRODUCTION

Gun violence plagues Illinois and the rest of the United States. From 1999 to 2005 in Illinois, 8,018 residents died from gunshot wounds. Illinois Campaign to Prevent Gun Violence, Facts (available at http://www.icpgv.org/icpgv_facts.html#_ftn1). In 2005, guns were used to kill 30,694 Americans and send another 69,825 into hospital emergency rooms. *Id.*; *see also* Legal Community Against Violence, *2008 California Report: Recent Developments in Federal, State and Local Gun Laws* at 1. Guns are second only to motor vehicles as a cause of injury-related deaths in the United States. *Id.*

Amici file this brief in support of Plaintiffs to explain why the plain language of the Protection of Lawful Commerce in Arms Act, 15 U.S.C. §§ 7901-7903 & 18 U.S.C. §§ 922, 924 (the "PLCAA" or "Act") – standing alone and considered in light of the legislative history – does not apply to Plaintiffs' claims. Even if the statute does apply, it plainly does not displace Plaintiffs' strict liability "failure to warn" claim. We also address the difficult constitutional issues that arise if the Court rejects Plaintiffs' natural and eminently reasonable interpretation of the statute and finds their claims displaced by the Act.

ARGUMENT

I. THE PLCAA DOES NOT BAR PLAINTIFFS' ACTION.

A. The PLCAA does not apply to Plaintiffs' claims in the first instance because there has been no threshold determination that the accidental discharge of Beretta's handgun amounted to an "unlawful misuse" by Billy.

[Answer to Beretta Add'l br. at 11-17]

The PLCAA forbids the bringing of a "qualified civil liability action" in any state or federal court. 15 U.S.C. § 7902(a). It further commands that any such action "shall be immediately dismissed by the court in which the action was brought or is currently pending." *Id.* § 7902(b). Subject to certain exceptions discussed below, the Act defines a "qualified civil liability action" as "a civil action . . . against a manufacturer or seller of [firearms and ammunition] . . . for damages . . . or other relief, resulting from the criminal or unlawful misuse of a [firearm]." 15 U.S.C. § 7903(5)(A).

Defendant Beretta U.S.A. Corporation ("Beretta") argues that the PLCAA mandates immediate dismissal of this case because Billy Swan's accidental shooting of Joshua Adames was an "unlawful misuse" of the Beretta handgun. Beretta Additional Appellant Brief at 14-17 (citing 15 U.S.C. *Id.* 7903(9) ("The term 'unlawful misuse' means conduct that violates a statute, ordinance, or regulation as it relates to the use of a [firearm]."). Beretta argues that Billy's possession of the handgun violated federal and state law (18 U.S.C. § 922(x)(2); 430 ILS 65/2(a)(1) & (2); and 430 ILS 65/4(a)(2)(i)), and that the discharge of the weapon violated a city ordinance (Chicago Municipal Code § 8-24-010). Beretta add'l br. at 14-17. These arguments are without merit.

As the Appellate Court correctly held, Plaintiff produced evidence in the trial court that Billy's actions were accidental, not unlawful. *Adames v. Sheahan,* 378 Ill.App.3d 502, 534 (2007); *see also, e.g.,* R. C6020 (25). As the Appellate Court also held, "[w]hether Billy's actions were criminal or unlawful is a question of fact for the finder of fact based on all of the evidence." Beretta fails to directly address this holding.

Beretta argues that the accidental discharge also constituted a "criminal misuse" because Billy subsequently was found delinquent in juvenile court proceedings, based on a finding that Billy committed involuntary manslaughter and reckless discharge of a firearm. Beretta add'l br. at 17 n.1, 22-24. But as the Appellate Court aptly noted, delinquency proceedings are civil in nature, not criminal. Minors have no right to a jury trial in such proceedings, as they are intended to correct and rehabilitate. 378 Ill.App.3d at 518; *see People v. Taylor,* 221 Ill.2d 157, 168 (2006). Here, the state did not believe the case warranted moving for permission to prosecute Billy under the criminal laws, so there is no finding that an actual "crime" occurred. 378 Ill.App.3d at 518.

Moreover, the record of the delinquency proceeding was never before the trial judge and is not part of the record on appeal. *Id.* at 514, 534. The only thing before the trial court was an unpublished order entered pursuant to Supreme Court Rule 23, which has no precedential value and cannot be used to establish any alleged wrongdoing by Billy. *Id.* at 514; *see Price v. Hickory Point Bank & Trust,* 362 Ill.App.3d 1211, 1221 (2006). Thus, there has been no determination in this case whether the discharge was accidental or the result of recklessness by Billy, or that Billy "unlawfully" or "criminally" "misused" the handgun. In the absence of a binding adjudication of these

matters, the Appellate Court correctly held that they are "question[s] of fact for the finder of fact based on all of the evidence." *See id.* at 519, 534. There is nothing in the Act's text or legislative history to suggest that Congress intended anything different.

B. Even if Beretta could get past the threshold question, it cannot show that Plaintiffs' "failure to warn" claim falls outside section 7903(5)(A)(v).

[Answer to Beretta Add'l br. at 17-21; 22-27]

The statutory definition of "qualified civil liability action" expressly states in relevant part that it does not include "an action for death, physical injuries or property damage resulting directly from a defect in design or manufacture of the product, when used as intended or in a reasonably foreseeable manner." 15 U.S.C. § 7903(5)(A)(v). Beretta argues that Plaintiffs' failure to warn claim is not a "defect in design" claim or a "defect in manufacture" claim and, therefore, does not fall within the "product defect" exclusion set forth in section 7903(5)(A)(v). Beretta add'l br. at 17-21.

According to Beretta, section 7903(5)(A)(v) does not mention claims based on "failure to warn," which is a "separate and distinct theor[y] of liability from design defect and manufacturing defect claims." Beretta add'l br. at 19. In support, Beretta cites certain decisions of this Court discussing "failure to warn," "design defect" and "manufacturing defect" claims, as well as the Restatement (Third) of Torts: Product Liability – all of which Beretta contends make clear that product liability claims fall into these "three distinct categories." *Id.* This argument is mistaken.

On its face, the language of the statute – "an action for death, physical injuries or property damage resulting directly from a defect in design or manufacture of the product" – appears to contemplate actions generally for product defects that directly

relate to the design or manufacture of the product. Plaintiff's strict liability "failure to warn" claim plainly falls within this language because it asserts that the product was defective due to Beretta's failure to adequately warn of a danger in the gun's design – *i.e.*, that the chamber may be loaded and that the gun still can be fired even when the ammunition-holding magazine is disconnected. Plaintiffs specifically claim, among other things, that the design of the "chamber-loaded" indicator was defective because it failed to adequately warn of this danger. Virtually all strict liability "failure to warn" claims assert a defect based on the unobvious dangerous propensities inherent in the product's design. *E.g., Sollami v. Eaton,* 201 Ill.2d 1, 7 (2002).

The absence of the words "failure to warn" from section 7903(5)(A)(v) does not indicate, as Beretta argues, that the provision was artfully crafted to include only claims pleaded in strict liability for "design defect" and "manufacturing defect" and to exclude "failure to warn" product defect claims. Certainly Carlton Chen, Colt Manufacturing's General Counsel, rejected any such interpretation. Appearing before the House Judiciary Committee in support of an early bill containing the identical "resulting directly from a defect in the design or manufacture of the product" language, Mr. Chen testified that "failure to warn" claims could indeed proceed. "[W]e as a manufacturer would be liable, under traditional product liability theory, meaning that if the gun were defectively designed or manufactured, or there was a failure to warn, we would still be on the hook." *Protection of Lawful Commerce in Arms Act: Hearing on H.R. 1036 before the Subcomm. on Commercial and Administrative Law of the Comm. of the Judiciary* at 48 (Apr. 2, 2003) (Carlton Chen testimony); *see also Protection of Lawful Commerce in Arms Act*, H.R. Rep. No. 108-59, 108th Cong., 1st Sess. at 3 (2003).

Moreover, as this Court explained in *Blue v. Environmental Eng'g, Inc.*, 215 Ill.2d 78, 95-97 (2005), "failure to warn" defect claims also sound in negligence, not just strict liability. "[T]o establish a negligence claim for a defective design of a product, a plaintiff must prove that either (1) the defendant deviated from the standard of care that other manufacturers in the industry followed at the time the product was designed, or (2) that the defendant knew or should have known, in the exercise of ordinary care, that the product was unreasonably dangerous and defendant failed to warn of its dangerous propensity." *Id.* at 96 (emphasis added) (citing *Carrizales v. Rheem Manufacturing Co.*, 226 Ill.App.3d 20, 36 (1991) and *Baltus v. Weaver Division of Kidde & Co.*, 199 Ill.App.3d 821, 830 (1990)). This species of "failure to warn" claim unquestionably is captured by the PLCAA's "defect in design or manufacture of the product" language under Beretta's rationale, because it is outwardly denominated a type of "design defect" claim. Yet the notion that the statutory language somehow evidences a Congressional intent to capture only negligence-based "failure to warn" product defect cases but to exclude strict liability "failure to warn" defect cases is not tenable. Plaintiffs' "failure to warn" claim obviously falls within the "defect in design or manufacture" language because it alleges the gun was defective due to Beretta's failure to warn of the danger in the gun's design.

C. There has been no determination whether the discharge of Beretta's handgun was caused by a volitional act that constituted a criminal offense or by an accident.

[Answer to Beretta Add'l br. at 21-27]

Beretta asks this Court to determine that Billy's pulling of the trigger amounted to a "volitional" discharge of the gun that "constituted a criminal offense" under section 7903(5)(A)(v) of the Act. Beretta Add'l Br. at 21-27. But as established above, only those tried as adults can be convicted of "criminal offenses" or "crimes." The state never prosecuted Billy as an adult, so there has been no determination in this case that a "crime" or "criminal offense" occurred when the gun accidentally discharged. Nor are the juvenile court proceedings in the record in this matter. Accordingly, on this ground alone the Court should reject Beretta's request.

Moreover, even if the Court were to reach these issues, the exception relied upon by Beretta only applies when "the discharge of the product was caused by a volitional act that constituted a criminal offense." 15 U.S.C. § 7903(5)(A)(v). It is undisputed that Billy did not choose or decide to discharge the weapon. In fact, he thought the gun was unloaded and that it would not discharge. *E.g.*, R. C6020 (25). The statute plainly requires the discharge to be caused by "a volitional act." Beretta itself argues that "volitional" means "a conscious choice or decision." Because the evidence is that Billy did not consciously choose or decide to discharge the weapon when he acted, the Court should reject Beretta's argument that the discharge of the weapon was caused by a volitional act.

II. THE PLCAA IS UNCONSTITUTIONAL

[Answer to Beretta Add'l br. at 11-30]

Plaintiffs' construction of the PLCAA's "product defect" provision not only is the more reasonable and the fairer reading of the statute as compared to Beretta's, it is the one mandated by the canon of constitutional avoidance. Under that canon, a court faced with two plausible statutory constructions must reject the reading that raises constitutional doubt. *Clark v. Martinez,* 543 U.S. 371, 380-81 (2005); *Edward J. DeBartolo Corp. v. Florida Gulf Coast Bldg. & Constr. Trades Council,* 485 U.S. 568, 575 (1988); *N.L.R.B. v. Catholic Bishop of Chicago,* 440 U.S. 490, 507 (1979). Under Plaintiffs' eminently reasonable reading, the statute does not require the dismissal of their pending tort claims. Under Beretta's reading, the statute as applied to Plaintiffs' claims in this case does require dismissal, and in doing so raises "difficult and sensitive questions" of constitutional law. *N.L.R.B. v. Catholic Bishop of Chicago,* 440 U.S. at 507.

Because the Court can easily construe the statute so as not to raise these difficult issues, it should adopt Plaintiffs' construction. But if it does not, it must as established below find the PLCAA unconstitutional as applied in this case.

A. The PLCAA violates the separation of powers doctrine by deciding the outcome of certain actions based not on a principle of law but on the defendants' membership in a particular class.

[Answer to Beretta Add'l br. at 11-30]

The separation of powers doctrine recognizes that the Constitution allocates three separate spheres of responsibility to three independent, co-equal branches of government. Article III vests exclusive power to decide individual cases and controversies in the judicial branch. *Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211, 220 (1995). The Framers deliberately withheld authority from Congress to decide individual cases because they "lived among the ruins of a system of intermingled legislative and judicial powers . . . which . . . had produced factional strife and partisan oppression." *Plaut*, 514 U.S. at 220. The Framers believed that "a legislature should not be able unilaterally to impose a substantial deprivation to one person." *Id.* at 242 (Breyer, J., concurring).

The PLCAA legislates the outcome of statutorily specified state law actions (*i.e.*, the negligence and other actions that meet the definition of a "qualified civil liability action" in 7903(5)) based not on a change in the legal standards but on the defendants' identity (firearms manufacturers and others specified in section 7903). It also commands courts to dismiss pending cases. The PLCAA thus violates the separation of powers doctrine.

It has long been established that a Congressional act "prescrib[ing] the rule of decision of a cause in a particular way" exceeds "the limit which separates the legislative from judicial power" and thus is unconstitutional. *United States v. Klein*,

80 U.S. 128, 146, 147 (1871). At issue in *Klein* was the validity of an 1870 federal statute that decided the outcome of cases brought under the Abandoned and Captured Property Act of 1863. Under that Act, the federal government was authorized to confiscate the property of insurrectionists in the Confederacy and those who aided them. But the Act also provided a mechanism for redress in court upon proof of loyalty to the Union. In December 1863, President Lincoln issued a proclamation, as authorized by an earlier statute, declaring a full pardon to all who swore an oath of allegiance to the Constitution. The Supreme Court ruled in 1869 that such a presidential pardon constituted proof of loyalty for purposes of the Act, thereby allowing pardoned insurrectionists to obtain statutory compensation for their confiscated property. *United States v. Padelford,* 76 U.S. 531 (1869). A year after *Padelford* was decided, *Klein* came to the Court as an appeal from a Court of Claims decision in favor of the estate of a Confederate sympathizer relying on the 1863 presidential proclamation. The government based its appeal to the Supreme Court on the ground that Congress in 1867 had repealed the act that authorized the proclamation.

While *Klein* was pending before the Court in 1870, Congress responded to *Padelford* with a new law that (i) made such a pardon conclusive proof of taking part in and giving aid and comfort "to the late rebellion" under the Abandoned and Captured Property Act, and (ii) that "on proof of such pardon and acceptance, which proof may be heard summarily on motion or otherwise, the jurisdiction of the court in the case shall cease, and the court shall forthwith dismiss the suit." *Klein,* 80 U.S. at 134. Rather than dismiss the case, the Supreme Court struck down the 1870 statute as violating the separation of powers, because the law withdrew jurisdiction and thereby

eliminated the claim "solely on the application of a rule of decision, in causes pending, prescribed by Congress." *Id.* at 146. As the Court explained: "The court is required to ascertain the existence of certain facts and thereupon declare that its jurisdiction on appeal has ceased, by dismissing the bill. What is this but to prescribe a rule for the decision of a cause in a particular way?" *Id.* The difference between *Klein* and a prior case, the Court held, was that the 1870 legislation created "no new circumstances" for the Court to apply. *Id.*

Recent cases affirm *Klein's* continuing vitality. In *Plaut*, for example, the Court struck down a section of the Securities Exchange Act of 1934 insofar as it required courts to reopen certain private civil actions that had been brought under the Act. The Constitution "gives the Federal Judiciary the power, not merely to rule on cases, but to *decide* them," the Court held. *Plaut,* 514 U.S. 218-19. The challenged section of the Act was unconstitutional because it retroactively commanded federal courts to reopen final judgments, thereby invading the judiciary's ability to enter final judgments and conclusively resolve cases. *Id.* In discussing the separation of powers doctrine, the Court cited *Klein* for its holding that a statute may not constitutionally "'prescribe rules of decision to the Judicial Department of the government in cases pending before it,'" *id.* at 218, and distinguished *Klein* from cases where "Congress 'amends applicable law.'" *Id.* (quoting *Robertson v. Seattle Audubon Soc.,* 503 U.S. 429, 441 (1992)). In 2000, the Court again reaffirmed the *Klein* principle. *See Miller v. French,* 530 U.S. 327, 348-49 (2000) (discussing *Klein* and its holding that a statute is unconstitutional when it purports to "'prescribe rules of decision to the Judicial Department of the government in cases pending before it'").

The critical distinction is whether the statute legislates the outcome and commands dismissal, or effects a change in the legal principles that apply going forward. In the *Robertson* case, for example, Congress responded to pending environmental litigation over logging in spotted owl habitat with a legislative amendment that established a comprehensive set of rules to govern timber harvesting within the habitat. The amendment expired automatically at the end of the fiscal year of its enactment. The court held that the key section enacted "changes in law, not findings or results under old law. Before subsection (b)(6)(A) was enacted, the original claims would fail only if the challenged harvesting violated none of five old provisions. Under subsection (b)(6)(A), by contrast, those same claims would fail if the harvesting violated neither of two new provisions. Its operation, we think, modified the old provisions." *Robertson,* 503 U.S. at 438. The Court held that the amendment replaced the legal standards without directing particular applications under either the old standards or the new standards. *Id.* at 438-39. The same cannot be said about the PLCAA.

The similarities between this case and *Klein* are striking. Like the statute at issue in *Klein,* the Protection of Lawful Commerce in Arms Act decides the outcome of certain cases based on a party's membership in a specified class, without amending the underlying rule of law. Under the PLCAA, the cases being decided are state law actions specified in section 7903(5), which include nuisance actions challenging defendants' sales and marketing practices when guns are criminally or unlawfully misused, and product defect actions involving firearms discharged during the commission of a criminal offense. In *Klein,* the cases decided by the enactment were

those for compensation under a different law, the Abandoned and Captured Property Act. Under the PLCAA, membership in the defendant class – firearms and ammunition manufacturers and sellers, and trade associations under section 7903 – is what determines the outcome. In *Klein,* it was membership in the plaintiff class – pardoned insurrectionists – that determined the outcome. In neither case was the law amended.

The PLCAA's defenders are unable to articulate the new legal standard the statute supposedly enacts, which they must if the law is to survive constitutional scrutiny. In *New York v. Beretta,* 524 F.3d 384, 395-96 (2d Cir. 2008), the Court of Appeals held that the PLCAA "sets forth a new rule of law," but then never identified the legal principle or "rule of law" that the statute supposedly enacts. The court merely stated that "the definition of qualified civil liability action permissibly sets forth a new legal standard to be applied to all action." *Id.* at 395. But where in the definition is the principle of law? There is no change in state law, other than a grant of immunity from civil liability to a tiny class of defendants. That is not legal principle; it is special interest legislation at its worst.

The PLCAA, as did the statute at issue in *Klein,* requires dismissal of pending actions with very little if any judicial fact finding. *See* 15 U.S.C. § 7802(b) (requiring pending actions to "be immediately dismissed by the court"). The Act's sponsors and supporters in Congress argued that "[d]ismissals should be immediate – not after trial. Courts should dismiss on their own motion, instead of forcing defendants to incur the additional costs and delay of filing motions and arguing." 151 Cong. Rec. S9394 (daily ed. July 29, 2005) (Sen. Craig); *see also id.* at E2162 (daily ed. Oct. 25, 2005 (Rep. Stearns) ("The bill was drafted to require courts where these cases are pending or filed

to dismiss them on their own motions, what lawyers call *sua sponte*. One of the primary purposes of this legislation is to not force defendants to incur the additional costs and delay of filing motions and arguing, and certainly not to go through costly trials and appeals of cases that the bill requires to be dismissed forthwith."). The proponents were thus even more aggressive than the Congress that passed the Abandoned and Captured Property Act in *Klein,* which at least provided that the court could determine the "proof" question "on motion or otherwise."

The PLCAA, again like the *Klein* statute before it, is the product of great congressional antipathy to judges and the judicial branch. For example, the Act expressly provides that it was enacted to prevent "maverick judicial officers" from "sustaining" actions challenging the sales and marketing practices, among other things, of gun manufacturers and sellers. 15 U.S.C. § 7901(a)(7). The Act also states that it is needed to counter "[t]he possibility of imposing liability on an entire industry for harm that is solely caused by others," which is "an abuse of the legal system." *Id.* § 7901(a)(6). The legislative history is replete with similar expressions of hostility to judges. *E.g., Hearing on H.R. 800, supra,* at 2 (Rep. Cannon) (attacking a federal court for "permitting a frivolous lawsuit against a gun manufacturer"); *id.* at 6 (Rep. Chabot) (attacking "activist courts" that "legislate from the bench"). In *Klein,* Congress was incensed with the courts' adjudication of the pardon issue. Members, "holding a copy of the *Padelford* decision before the Senate, offered a stinging denunciation of the Supreme Court and proposed curative legislation." Gordon G. Young, *Congressional Regulation of Federal Courts' Jurisdiction and Processes: United States v. Klein Revisited,* 1981 Wis. L. Rev. 1189, 1200-09 (1981).

Because the PLCAA enacts a rule of decision commanding federal courts to dispositively rule in favor of specified defendants in each case, it violates the separation of powers doctrine and must be stricken.

B. The PLCAA violates the Tenth Amendment by doing to state courts what Congress may not do to federal courts.

[Answer to Beretta Add'l br. at 11-30]

Through the Tenth Amendment, the Constitution allocates power between the federal government and the states by reserving to the states the powers not delegated to the federal government. U.S. Const. amend. X. This system of "dual sovereignty," *Gregory v. Ashcroft,* 501 U.S. 452, 457 (1991), "contemplates that a State's government will represent and remain accountable to its own citizens." *Printz v. United States,* 521 U.S. 898, 920 (1997). Speaking of both the Tenth Amendment and the separation of powers doctrine, the Supreme Court has made clear that the Constitution "divides power among sovereigns and among branches of government precisely so that we may resist the temptation to concentrate power in one location as an expedient solution to the crisis of the day." *Printz,* 521 U.S. at 933 (striking down provision of the Brady Handgun Violence Prevention Act requiring states to perform background checks).

If the Tenth Amendment and the principle of state sovereignty mean anything, they mean that Congress may not foist upon state courts what Congress is forbidden from foisting upon federal courts. Throughout the history of the republic, "the several States have exercised their police powers to protect the health and safety of their citizens. Because these are 'primarily, and historically . . . matters of local concern,' the 'States traditionally have had great latitude under their police powers to legislate as to

the protection of the lives, limbs, health, comfort, and quiet of all persons.'" *Medtronic, Inc. v. Lohr,* 518 U.S. 470, 475 (1996) (citation omitted). In recent decades, the federal government has "played an increasingly significant role in the protection of the health of our people." *Id.* But when Congress legislates in an area "traditionally occupied" by the states, such as tort law, there is a "'presumption against'" displacement of "'state police power regulations.'" *Id.* Indeed, given the "historic primacy of state regulation of matters of health and safety" and the status as "individual sovereigns" that the states enjoy in our system of government, the Court has "long presumed that Congress does not cavalierly pre-empt state law causes of action," particularly when it comes to state tort law remedies. *Id. See generally Buckman v. Plaintiffs' Legal Comm.,* 531 U.S. 341 (2001); *Geier v. American Honda Motor Co.,* 529 U.S. 861 (2000); *Cipollone v. Liggett Group, Inc.,* 505 U.S. 504 (1992).

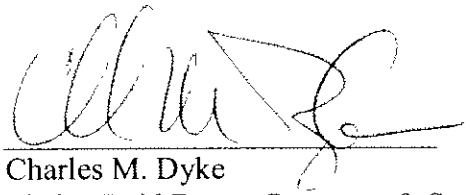
The PLCAA by its plain terms imposes the same burden on state courts that it imposes on federal courts. Congress no more can legislate rules of decision for state courts, which are the judicial branch of their sovereign governments, and command them to dismiss pending state law actions than it can do the same to the federal judiciary. *Cf. Printz,* 521 U.S. at 921 ("'Just as the separation and independence of the coordinate branches of the Federal Government serve to prevent the accumulation of excessive power in any one branch, a healthy balance of power between the States and the Federal Government will reduce the risk of tyranny or abuse from either front.'"). The PLCAA thus violates both the separation of powers doctrine and the Tenth Amendment as applied to state courts.

CONCLUSION

For all of the reasons set forth above and in the brief of Plaintiffs, *amici* respectfully request that this Court find that the PLCAA does not apply to Plaintiffs' claims in the first instance, but that if it does, it does not displace Plaintiffs' state law tort claims.

Respectfully submitted,

AMICI CURIAE LEGAL COMMUNITY AGAINST VIOLENCE, BRADY CENTER TO PREVENT GUN VIOLENCE, COALITION TO STOP GUN VIOLENCE, AND VIOLENCE POLICY CENTER

By: 

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Defendants-Appellants.

SUPREME COURT RULE 341(c) CERTIFICATE OF COMPLIANCE

Pursuant to Supreme Court Rule 341(c), I certify that this Brief of Amici Curiae conforms to the requirements of Supreme Court Rules 341(a) and 341(b). The length of this Brief of Amici Curiae is 17 pages.

Respectfully submitted,

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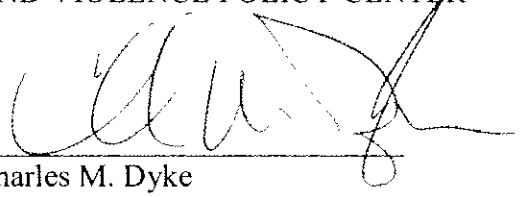
By: 

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