No. 08-545

In the Supreme Court of the United States

BRYANT LAWSON, ET AL., PETITIONERS

v.

BERETTA U.S.A. CORPORATION, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

BRIEF FOR THE FEDERAL RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Whether the Protection of Lawful Commerce in Arms Act, 15 U.S.C. 7903(5)(A)(iii), violates the Fifth Amendment by requiring the dismissal of certain pending suits against firearm manufacturers and distributors.

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OPINIONS BELOW

The opinion of the District of Columbia Court of Appeals (Pet. App. 1a-36a) is reported at 940 A.2d 163. The opinion of the Superior Court of the District of Columbia (Pet. App. 37a-81a) is unreported but is available at 2006 WL 1892023.

JURISDICTION

The judgment of the District of Columbia Court of Appeals was entered on January 10, 2008. A petition for rehearing was denied on June 9, 2008 (Pet. App. 255a-256a). On September 2, 2008, the Chief Justice extended the time within which to file a petition for a writ of certiorari to and including October 23, 2008, and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1257(a).

STATEMENT

1. In January 2000, the District of Columbia and an individual harmed by gun violence brought the present action against the major manufacturers, importers, and distributors of handguns in the United States. Pet. App. 84a, 137a-139a. As relevant here, petitioners alleged that respondents were liable under the District of Columbia's Assault Weapon Manufacturing Strict Liability Act of 1990 (SLA), D.C. Code §§ 7-2551.01 *et seq.* (2008), which imposes strict liability on "[a]ny manufacturer, importer, or dealer of an assault weapon or machine gun * * * for all direct and consequential damages that arise from bodily injury or death * * * [that] proximately results from the discharge of the assault weapon or machine gun in the District of Columbia." D.C. Code § 7-2551.02 (2008).

2. On October 26, 2005, while petitioners' action was pending, the Protection of Lawful Commerce in Arms Act (PLCAA), 15 U.S.C. 7901 *et seq.*, was enacted into law. Congress enacted the PLCAA after finding that suits against firearm manufacturers and distributors for the unlawful acts of third parties threatened to place "an unreasonable burden on interstate and foreign commerce of the United States." 15 U.S.C. 7901(a)(6). The Act provides that any "qualified civil liability action that is pending" on the date of its enactment "shall be immediately dismissed by the court in which the action was brought or is currently pending." 15 U.S.C. 7902(b). The Act defines a "qualified civil liability action" as "a civil action * * * brought by any person against a manufacturer or seller of a [firearm distributed in interstate or foreign commerce] * * * for damages, punitive damages, injunctive or declaratory relief, abatement, * * * or other relief, resulting from the criminal or unlawful

misuse of [such firearm] by the person or a third party." 15 U.S.C. 7903(5)(A).

Respondents moved to dismiss petitioners' complaint pursuant to the PLCAA. Petitioners argued that their action fell within the PLCAA's "predicate exception," Pet. App. 6a, because it alleged that a "manufacturer or seller of [firearms transported in interstate or foreign commerce] knowingly violated a State or Federal statute applicable to the sale or marketing of [such firearms], and the violation was a proximate cause of the harm for which relief is sought." 15 U.S.C. 7903(5)(A)(iii). In the alternative, petitioners challenged the PLCAA's constitutionality on several grounds. The United States therefore intervened to defend the PLCAA"s constitutionality, without taking any position on whether the Act applies to the present action.

3. On May 22, 2006, the District of Columbia Superior Court granted respondents' motion to dismiss. Pet. App. 38a-81a. The court held that petitioners' action does not fall within the PLCAA's predicate exception, because that exception is "limited to state statutes regulating the manner in which firearms are sold or marketed, and not statutes that are merely capable of being applied to the result of the sale or marketing of firearms." *Id.* at 59a. The court then rejected petitioners' various constitutional challenges. *Id.* at 60a-81a.

4. On January 10, 2008, the District of Columbia Court of Appeals unanimously affirmed. Pet. App. 1a-36a. First, the court held that petitioners' action does not fall within the PLCAA's predicate exception, because the SLA "imposes no duty on firearms manufacturers or sellers to operate in any particular manner or according to any standards of care or reasonableness." *Id.* at 11a. The SLA is therefore different from the

types of statutes Congress specifically exempted. *Id.* at 12a. The court further reasoned that allowing strict-liability actions under the SLA would be inconsistent with Congress's requirement that the statutory violation proximately cause the harm, *ibid.* (citing 15 U.S.C. 7903(5)(A)(iii)), and its stated intention to prohibit causes of action against firearm manufacturers and distributors based on the criminal or unlawful misuse of firearms by third parties, *id.* at 13a (citing 15 U.S.C. 7901(b)(1)).

Second, the court rejected petitioners' various constitutional challenges. Pet. App. 14a-36a. As relevant here, the court held that the PLCAA does not violate the substantive component of the Due Process Clause of the Fifth Amendment, because "[a]ctions such as the [petitioners'] that are still pending and have not been reduced to judgment raise no concern with applying a 'new provision [that] attaches new legal consequences to events completed before its enactment.'" *Id.* at 26a (quoting *Landgraf* v. *USI Film Prods.*, 511 U.S. 244, 270 (1994)) (brackets in original; emphasis omitted).

ARGUMENT

The unanimous decision of the District of Columbia Court of Appeals upholding the constitutionality of the PLCAA is correct and does not conflict with any decision of this Court or of any court of appeals. Further review is therefore not warranted.

1. The court of appeals concluded that the PLCAA does not violate the substantive component of the Due Process Clause of the Fifth Amendment, because petitioners' cause of action had not been reduced to a final judgment. Pet. App. 23a. That decision is not in conflict with any decision of any lower court. Indeed, lower

courts have repeatedly rejected claims that the modification or abrogation of a pending state law cause of action by a federal statute violates federal due process.[1] *Id.* at 24a-25a. In any event, no lower court has held that the PLCAA is unconstitutional under the Fifth Amendment.

Petitioners discuss (Pet. 10-11) the concerns with retroactive legislation. But that is why this Court has imposed "a requirement that Congress first make its intention clear" in order to "ensure that Congress itself has determined that the benefits of retroactivity outweigh the potential for disruption or unfairness." *Landgraf* v. *USI Film Prods.*, 511 U.S. 244, 268 (1994). Petitioners do not attempt to argue that Congress failed to make its intention clear in the PLCAA: the Act expressly applies to any "qualified civil liability action that is pending" on the date of its enactment. 15 U.S.C. 7902(b). Nor do petitioners argue that Congress lacked a rational basis for applying the PLCAA to both pending and future suits. And it is in any event clear that the PLCAA's application to pending suits is "justified by a rational legislative purpose." *PBGC* v. *R.A. Gray & Co.*, 467 U.S. 717, 730 (1984). As the District of Columbia Court of Appeals explained, "Congress was especially

[1] The only other court of appeals to consider a similar question has concluded that the PLCAA does not violate principles of separation of powers, because "the Act permissibly sets forth a new rule of law that is applicable both to pending actions and to future actions." See *City of N.Y.* v. *Beretta U.S.A. Corp.*, 524 F.3d 384, 395 (2d Cir.), petition for cert. pending, No. 08-530 (filed Oct. 20, 2008). Petitioners in *City of New York* contend that the PLCAA is unconstitutional only under the Tenth Amendment, not the Fifth Amendment. Pet. 9-19, *City of N.Y.* v. *Beretta U.S.A. Corp.*, No. 08-530 (filed Oct. 20, 2008). Moreover, they have not sought review of the Second Circuit's separation-of-powers analysis.

concerned with '[l]awsuits [that] have been commenced' seeking 'money damages and other relief' against manufacturers and sellers of firearms for harms caused by the misuse of their products by others, including criminals, 15 U.S.C. § 7901(a)(3), and with the threat to interstate commerce of thus 'imposing liability on an entire industry for harm . . . solely caused by others.' *Id.* § 7901(a)(6)." Pet. App. 20a (brackets in original; emphasis omitted); see *Ileto* v. *Glock, Inc.*, 421 F. Supp. 2d 1274, 1302 (C.D. Cal. 2006) ("Although one may disagree with Congress' predictions [about the effect of unchecked lawsuits], one cannot credibly argue that the Act's retroactive provision does not further a legitimate legislative purpose."); *City of N.Y.* v. *Beretta U.S.A. Corp.*, 401 F. Supp. 2d 244, 287 (E.D.N.Y. 2005) ("[T]here is a rational basis for Congress' determination that the Act was necessary to protect [the firearms] industry."), aff'd in part and rev'd in part, 524 F.3d 384 (2d Cir.), petition for cert. pending, No. 08-530 (filed Oct. 20, 2008).

Petitioners do argue (Pet. 13-15) that Congress lacked a rational basis for distinguishing between causes of action arising under state statutes and those arising under state common law. But the court of appeals did not address whether the PLCAA's predicate exception applies only to "statutory-based actions" and not "common-law actions." Pet. 13-14. It had no reason to address that issue, because petitioners' only current cause of action is based on a statute, the District of Columbia's SLA. Pet. 6. Petitioners' other claims, based on negligence and public nuisance, are no longer at issue. They were previously dismissed by the court of appeals, and this Court denied review. Pet. App. 82a-133a, cert. denied, 546 U.S. 928 (2005).

2. Petitioners contend that Congress is required to provide a "substitute remedy" when it "abolishe[s] a common-law cause of action." Pet. 15-16. Again, that contention does not apply, because petitioners are not pressing a common law cause of action in this case. But in fact the PLCAA's exceptions, including its predicate exception, do allow various causes of action against firearm manufacturers and distributors. For that reason, as the court of appeals recognized, there is no need to consider whether petitioners have been deprived of all potential remedies in violation of substantive due process. Pet. App. 20a, 26a.

Nor would petitioners' proposed substitution requirement be consistent with modern preemption doctrine. Congress could not effectively preempt state law causes of action if it were forced to leave alternative remedies in their stead. In *Duke Power Co.* v. *Carolina Environmental Study Group, Inc.*, 438 U.S. 59 (1978), this Court expressed doubt that the Due Process Clause "requires that a legislatively enacted compensation scheme either duplicate the recovery at common law or provide a reasonable substitute remedy." *Id.* at 88. If that proposition was doubtful in a case in which the federal statute (the Price-Anderson Act, 42 U.S.C. 2210 (1976)) was designed to establish a federal cause of action, it is even more doubtful in this case, in which the federal statute (the PLCAA) is designed to preempt state causes of action.[2] Moreover, as the court of ap-

[2] Petitioners assert (Pet. 17) that two of this Court's decisions, *New York Central Railroad* v. *White*, 243 U.S. 188 (1917), and *Truax* v. *Corrigan*, 257 U.S. 312 (1921), support their proposed substitution requirement. Neither is apposite. *White* upheld the state statute without deciding whether alternative remedies were necessary, 243 U.S. at 201, and *Truax* invalidated a state statute on the ground that it was "a pure-

peals observed, "federal appellate courts have repeatedly rejected claims, similar to [petitioners'] here, that federal statutes modifying or abrogating pending state tort law actions violate due process rights by depriving litigants of their right to proceed." Pet. App. 24a-25a. In any event, there is no reason to resolve that question here, where the court of appeals' decision neither addresses it nor is in conflict with any decision of this Court or of any federal court of appeals.

3. Finally, petitioners assert (Pet. 19) that their cause of action is a species of property protected by the Due Process Clause of the Fourteenth Amendment even prior to final judgment. However, Congress's decision to preempt petitioners' cause of action was not "without due process" because "the legislative determination provides all the process that is due." *Logan* v. *Zimmerman Brush Co.*, 455 U.S. 422, 432-433 (1982). So long as Congress is clear, it may "attach[] new legal consequences to events completed before its enactment," *Landgraf*, 511 U.S. at 270, and bar pending actions as a rational way "to give comprehensive effect to a new law [that it] consider[ed] salutary," *id.* at 268. That is what Congress did here in the PLCAA, and the decision below upholding the constitutionality of Congress's action does not warrant further review.

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ly arbitrary or capricious exercise of [the State's] power," 257 U.S. at 329. As discussed earlier, the PLCAA has a rational legislative purpose. See pp. 5-6, *supra.* Petitioners also cite (Pet. 17-18) a handful of state *court* decisions interpreting state constitutions. None of those decisions purports to interpret the Due Process Clause of the Fifth Amendment.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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