

2022 PA Super 140

MARK AND LEAH GUSTAFSON,	:	IN THE SUPERIOR COURT OF
INDIVIDUALLY AND AS	:	PENNSYLVANIA
ADMINISTRATORS AND PERSONAL	:	
REPRESENTATIVES OF THE ESTATE	:	
OF JAMES ROBERT ("J.R.")	:	
GUSTAFSON,	:	
	:	
Appellants	:	No. 207 WDA 2019
	:	
v.	:	
	:	
SPRINGFIELD, INC. D/B/A	:	
SPRINGFIELD ARMORY AND SALOOM	:	
DEPARTMENT STORE AND SALOOM	:	
DEPT. STORE, LLC D/B/A SALOOM	:	
DEPARTMENT STORE THE UNITED	:	
STATES OF AMERICA,	:	
	:	
Intervenor	:	

Appeal from the Order Entered January 15, 2019
 In the Court of Common Pleas of Westmoreland County Civil Division at
 No(s): 1126 of 2018

BEFORE: PANELLA, P.J., BENDER, P.J.E., BOWES, J., LAZARUS, J.,
 OLSON, J., DUBOW, J., KUNSELMAN, J., MURRAY, J., and McCAFFERY, J.

OPINION IN SUPPORT OF PER CURIAM ORDER TO REVERSE BY DUBOW, J.:

FILED: AUGUST 12, 2022

I agree with a majority of this Court that we should reverse the trial court's order sustaining Appellees' Preliminary Objections. I, however, write separately because I respectfully disagree with the reasoning set forth in the

Judge Kunselman's Opinion in Support of *Per Curiam* Order to Reverse. ("Judge Kunselman Opinion").

As an initial matter, I respectfully disagree with the conclusion of the Judge Kunselman Opinion that the Protection of Lawful Commerce in Arms Act, 15 U.S.C.A. §7901 *et seq.* ("PLCAA") is unconstitutional. Rather, I find PLCAA to be constitutional for the reasons discussed in the Dissenting Opinion of the Honorable Judith F. Olson.¹

I, however, would reverse the trial court's order sustaining Appellees' Preliminary Objections because I interpret PLCAA as precluding Appellees from asserting the immunity in this case for the reasons set forth in Sections I.A, I.B, and I.C of President Judge Emeritus Bender's Opinion in Support of *Per Curiam* Order to Reverse.

¹ I also respectfully disagree with the section of the Judge Kunselman Opinion that finds that PLCAA grants immunity to Appellees in this case.