[PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
AUGUST 19, 2008
THOMAS K. KAHN
CLERK

No. 07-12235

D. C. Docket No. 06-00220-CV-OC-10-GRJ

MARIA D. GARCIA,
as surviving Spouse, as Administrator and
Personal Representative of the Estate of
Jose Garcia, and on behalf of her minor children
Gabriela Garcia and Luis Garcia,

Plaintiff-Cross-Defendant-Appellant,

SANTOS RUIZ,
individually, and as administrator and personal
representative of the Estate of Nelson Ruiz, and
on behalf of and as legal guardian of the minor
Nelson Xavier Ruiz, et al.,

Plaintiffs,

versus

VANGUARD CAR RENTAL USA, INC.,
a Delaware corporation,
NATIONAL RENTAL (US), INC.,
a Delaware corporation, f.k.a. National
Car Rental,
ALAMO FINANCING, L.P.,
a foreign limited partnership,
ALAMO RENT-A-CAR (CANADA) INC.,
a Florida corporation, et. al.,

Defendants-Cross-Plaintiffs-Appellees,

VANGUARD RENTAL (BELGIUM), INC.,
a Florida corporation, et. al.,

Defendants-Appellees,

UNITED STATES OF AMERICA,

Intervenor,

GREGORY DAVIS, et al.,

Defendants.

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Appeal from the United States District Court
for the Middle District of Florida

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(August 19, 2008)

Before EDMONDSON, Chief Judge, KRAVITCH and ALARCÓN,[*] Circuit Judges.

KRAVITCH, Circuit Judge:

These consolidated declaratory judgment and wrongful death actions require us to interpret the Graves Amendment, 49 U.S.C. § 30106, a federal tort reform statute which purports to shield rental car companies from certain vicarious liability suits. We conclude that the tort claims at issue are within the

[*] Honorable Arthur L. Alarcón, United States Circuit Judge for the Ninth Circuit, sitting by designation.

Amendment's preemption clause and not within its savings clause. We further conclude the statute is within Congress's Article I powers. Accordingly, we affirm the grant of summary judgment in favor of the rental car companies.

I.

The pertinent facts are undisputed. The appellee rental car companies[1] leased a car to Gregory Davis on February 2, 2005. They were not negligent or otherwise at fault in so doing. Davis rented the car in Orlando, Florida and drove it north towards Georgia. The record does not establish whether Davis embarked on his trip intending for it to be an interstate journey. On the trip, Davis was involved in a three-car accident in Marion County, Florida, for which he was allegedly at fault. The collision caused the deaths of Jose Garcia, appellant's decedent, and Nelson Ruiz, whose estate was a party in the district court but has not appealed. Israel Lopez was also severely injured, but fortunately was not killed.

Anticipating a suit alleging vicarious liability for Davis' negligence, Vanguard filed a declaratory judgment action in the district court against Lopez and the estates and surviving spouses of Garcia and Ruiz. Jurisdiction was based on diversity. The Vanguard companies sought a declaration that the Graves Amendment preempted any claims against them for wrongful death or bodily

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[1] The appellees, referred to as Vanguard hereafter, own interests in the rental car at issue.

injury caused by their lessee Davis. The estates and surviving spouses of Garcia and Ruiz then filed separate wrongful death actions in Florida state court. The state court actions were removed and consolidated with the declaratory judgment action, and the district court dismissed several corporate parties it found were fraudulently joined to defeat diversity jurisdiction. On cross-motions for summary judgment, the district court issued a thorough and well-written opinion holding that the Graves Amendment validly preempted all the tort claims, and thus, it granted summary judgment for the rental car companies in all three cases. This appeal ensued.

II.

We must first determine whether the Graves Amendment, by its terms, preempts these wrongful death actions. Of course, a valid federal statute preempts any state law with which it actually conflicts. See, e.g., Foley v. Luster, 249 F.3d 1281, 1286 (11th Cir. 2001).

These suits were brought against Vanguard, which concededly was not culpable in renting a car to Davis, because of the so-called dangerous instrumentality doctrine. Through that doctrine, Florida common law "imposes strict vicarious liability upon the owner of a motor vehicle who voluntarily entrusts that motor vehicle to an individual whose negligent operation causes damage to

another." Aurbach v. Gallina, 753 So. 2d 60, 62 (Fla. 2000) (citing Southern Cotton Oil Co. v. Anderson, 86 So. 2d 629, 637 (Fla. 1920)). The doctrine applies to commercial motor vehicle lessors such as Vanguard.

In 1999, the Florida legislature imposed statutory caps on the amount of vicarious liability rental car companies could face under the dangerous instrumentality doctrine. As pertinent here, the statute provides that

> The lessor, under an agreement to rent or lease a motor vehicle for a period of less than 1 year, shall be deemed the owner of the vehicle for the purpose of determining liability for the operation of the vehicle or the acts of the operator in connection therewith only up to $100,000 per person and up to $300,000 per incident for bodily injury and up to $50,000 for property damage. If the lessee or operator of the vehicle is uninsured or has any insurance with limits less than $500,000 combined property damage and bodily injury liability, the lessor shall be liable for up to an additional $500,000 in economic damages only arising out of the use of the motor vehicle.

Fla. Stat. § 324.021(9)(b)(2). Thus, the statute explicitly countenances the type of lawsuits at issue here – those imposing strict liability against a rental car company for the negligent acts of its lessee – while imposing a damages cap on them. It also reduces the rental company's liability exposure if a lessee is insured for $500,000 or more.

The Graves Amendment takes aim at precisely these types of lawsuits. The Amendment has two operative provisions, a preemption clause and a savings clause. The preemption clause provides as follows:

> An owner of a motor vehicle that rents or leases the vehicle to a person (or an affiliate of the owner) shall not be liable under the law of any State or political subdivision thereof by reason of being the owner of the vehicle (or an affiliate of the owner) for harm to persons or property that results or arises out of the use, operation, or possession of the vehicle during the period of the rental or lease, if (1) the owner (or an affiliate of the owner) is engaged in the trade or business of renting or leasing motor vehicles, and (2) there is no negligence or criminal wrongdoing on the part of the owner (or an affiliate of the owner).

49 U.S.C. § 30106(a). The instant wrongful death claims are clearly within the scope of this provision. Vanguard and its affiliates are in the rental car business. Vanguard owned the rental car driven by Davis and leased it to him, and the accident occurred during the lease period. Plaintiffs seek to recover solely under a vicarious liability theory: Vanguard is allegedly liable "by reason of being the owner of the vehicle" negligently driven by Davis, not because of any negligent entrustment or other wrongdoing of its own. Thus, assuming for now that the statute is constitutional, these wrongful death suits are preempted by § 30106(a) unless they are within the statute's savings clause. It provides that

> Nothing in this section supersedes the law of any state or political subdivision thereof –
> (1) imposing financial responsibility or insurance standards on the owner of a motor vehicle for the privilege of registering and operating a motor vehicle; or
> (2) imposing liability on business entities engaged in the trade or business of renting or leasing motor vehicles for failure to meet the financial responsibility or liability insurance requirements under state law.

49 U.S.C. § 30106(b). Appellants contend their suits are within the savings clause because Florida's imposition of vicarious liability on rental car companies for the negligence of their lessees is a financial responsibility law. To evaluate this argument, we must review the pertinent law of statutory interpretation.

The Graves Amendment does not define the term "financial responsibility." When statutory terms are undefined, we typically infer that Congress intended them to have their common and ordinary meaning, unless it is apparent from context that the disputed term is a term of art. Konikov v. Orange Cty, Fla., 410 F.3d 1317, 1329 (11th Cir. 2005) (citation omitted). When Congress employs a term of art, it presumptively adopts the meaning and "cluster of ideas" that the term has accumulated over time. Medical Transport Mgmt. Corp v. Comm'r, Internal Revenue Service, 506 F.3d 1364, 1368-69 (11th Cir. 2007) (citations omitted). In construing an ambiguous statute, we also employ canons of construction which embody sound generalizations about Congressional intent. One such canon is *noscitur a sociis*, which is the commonsense principle that statutory terms, ambiguous when considered alone, should be given related meaning when grouped together. See, e.g, S.D. Warren Co. v. Maine Bd. Of Env. Protection, 547 U.S. 370, 378 (2006) (citations omitted). By construing proximate statutory terms in light of one another, courts avoid giving "unintended breadth to

the acts of Congress." Gustafson v. Alloyd Co. Inc., 513 U.S. 561, 575 (1995) (quoting Jarecki v. G.D. Searle & Co., 367 U.S. 303, 307 (1961)). Another pertinent canon is the presumption against surplusage: we strive to give effect to every word and provision in a statute when possible. Lowery v. Alabama Power Co., 483 F.3d 1184, 1204 (11th Cir. 2007) (citations omitted). In addition to canons of construction, we may turn to legislative history as an interpretive aid. We may consult legislative history to elucidate a statute's ambiguous or vague terms, but legislative history cannot be used to contradict unambiguous statutory text or to read an ambiguity into a statute which is otherwise clear on its face. Id. at 1205 (citations omitted). Moreover, when we consult legislative history, we do so with due regard for its well-known limitations and dangers. See Exxon Mobil Corp v. Allapattah Svcs., Inc., 545 U.S. 546, 568-70 (2005) (discussing potential pitfalls in employing legislative history).

With these interpretive principles in mind, we conclude that Congress used the term "financial responsibility law" to denote state laws which impose insurance-like requirements on owners or operators of motor vehicles, but permit them to carry, in lieu of liability insurance per se, its financial equivalent, such as a bond or self-insurance.[2] First, statutory context and the *noscitur a sociis* canon

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[2] Such duties may arise as a condition of licensing or registration, or, as in Florida, after a motorist has been involved in an accident. See Fla. Stat. § 324.011; see also Lynch-Davidson

suggest as much. Both provisions of the savings clause strongly imply that financial responsibility is closely linked to insurance requirements: the savings clause exempts from preemption laws "imposing financial responsibility or insurance standards," § 30106(b)(1), or laws penalizing the "failure to meet the financial responsibility or liability insurance requirements under state law." § 30106(b)(2). This pairing of terms strongly suggests that "financial responsibility" refers to insurance-like requirements.

Second, the most common legal usage of the term "financial responsibility" is to refer to state laws which require either liability insurance or a functionally equivalent financial arrangement. Florida law is representative in providing that the owner of a motor vehicle "may prove his or her financial responsibility" by furnishing proof of liability insurance, posting a bond, furnishing a certificate showing a deposit of cash or securities, or furnishing a certificate of self-insurance. Fla. Stat. § 324.031. These other financial arrangements, like insurance, provide "proof of ability to respond in damages on account of crashes arising out the use of a motor vehicle," which is Florida law's definition of "proof of financial responsibility." See Fla. Stat. § 324.021(7). Appellant provides no reason for us to believe Florida law is exceptional in so defining financial responsibility. Likewise,

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Motors v. Griffin, 182 So.2d 7, 8 (Fla. 1966).

Black's Law Dictionary defines financial responsibility only to include requirements that motorists have proof of "insurance or other financial accountability." See Black's Law Dictionary at 663 (8th ed. 2004). Again, we see the ubiquitous association of "financial responsibility" with insurance requirements. An insurance treatise relied upon by appellants suggests a similar meaning to Black's, but also notes that "financial responsibility" laws may be used to refer to statutes which suspend a motorist's license or vehicle registration if they fail to satisfy a judgment resulting from an accident. 15 Russ & Segalla, *Couch on Insurance*, §§ 109:34, 109:45-46. Appellants seize on this definition and urge that Florida's vicarious liability regime is therefore part of a financial responsibility scheme: it gives rise to judgments against lessors, which they must pay on pain of cancelled registration. See Fla. Stat § 324.121 (suspension of license or registration upon notice of an unsatisfied judgment). Therefore, appellants argue, vicarious liability is part of the financial responsibility laws.

This argument is unpersuasive because it runs afoul of the presumption against surplusage. If we construe the Graves Amendment's savings clause as appellants wish, it would render the preemption clause a nullity. Every vicarious liability suit would be rescued because it could result in a judgment in favor of an accident victim, even though the judgment is premised on the very vicarious

liability the Amendment seeks to eliminate. The exception would swallow the rule. We will not choose such an interpretation when another one is feasible. Appellants protest that their reading would not render the preemption clause superfluous because regimes like Fla. Stat. § 324.021(9)(b)(1)-(2), which cap the amount of vicarious liability damages, would be preserved, while uncapped damages would be preempted. In support, they cite statements from the Amendment's legislative history, where its sponsors express concern with "unlimited" vicarious liability. See 151 Cong. Rec. H1034-01 at 1201 (Statement of Rep. Boucher); id. at 1202 (Statement of Rep. Graves). Yet read in context, the statements expressing concern with unlimited vicarious liability do not manifest any approval, explicit or implicit, of limited vicarious liability. More importantly, we see no textual support in the Graves Amendment itself for such a distinction. The distinction Congress drew is between liability based on the companies' own negligence and that of their lessees, not between limited and unlimited vicarious liability.

Appellants also argue that we should construe Florida's vicarious liability regime as a financial responsibility law to serve statutory and public policy goals. They urge that Fla. Stat. § 324.021(9)(b)(2) is a financial responsibility law because it induces car rental companies to ensure that their lessees are adequately

insured, thereby serving the purpose of the financial responsibility laws, ensuring compensation for accident victims. The Florida statute achieves this purpose by reducing the companies' liability exposure if their lessees meet the statutory minimum requirements for liability insurance or other financial responsibility. But not every inducement to lease only to the insured thereby becomes a financial responsibility law. As explained above, financial responsibility laws are legal requirements, not mere financial inducements imposed by law. Moreover, the inducement appellants rely upon is again premised upon the very vicarious liability the Graves Amendment seeks to eliminate. This argument, too, fails to convince us that imposition of vicarious liability is within the Amendment's savings clause.

In sum, neither the common law imposition of vicarious liability on rental car companies, nor the Florida legislature's endorsement of and limitations on such vicarious liability, constitutes a "financial responsibility" requirement. To the contrary, the import of the Graves Amendment is clear. States may require insurance or its equivalent as a condition of licensing or registration, or may impose such a requirement after an accident or unpaid judgment. 49 U.S.C. § 30106(b)(1). They may suspend the license and registration of, or otherwise penalize, a car owner who fails to meet the requirement, or who fails to pay a judgment resulting from a collision. 49 U.S.C. § 30106(b)(2). They simply may

not impose such judgments against rental car companies based on the negligence of their lessees. 49 U.S.C. § 30106(a).

III.

Because the Graves Amendment purports to preempt this lawsuit, we must next determine its constitutionality. Appellants contend the statute cannot be applied to preempt their suits because it is outside Congress's commerce powers.

The commerce power – that is, the combination of the Commerce Clause per se and the Necessary and Proper Clause – encompasses authority to regulate three categories of activities. The first is the use of the "channels" of interstate commerce, the "interstate transportation routes through which persons and goods move." See, e.g, United States v. Ballinger, 395 F.3d 1218, 1225 (11th Cir. 2005) (en banc) (citations omitted). It is clear that the Amendment does not directly regulate the channels of commerce nor their use. Neither the rental car market, nor the imposition of vicarious liability on rental car firms, are in any respect a regulation of roads as such. Nor is the Graves Amendment an effort to protect roads from harm, nor to prevent them from being used for harmful purposes. See id. at 1226.

Second, Congress may regulate the so-called "instrumentalities" of commerce. This category includes at a minimum "persons and things themselves

moving in interstate commerce." Ballinger, 395 F.3d at 1226. And Ballinger arguably suggests, without explicitly stating, that persons and things moving in interstate commerce is the full extent of the instrumentalities category. But there is also some authority for the proposition that methods of interstate transportation and communication are per se instrumentalities of commerce, regardless of whether the car (or the like) at issue in a particular case has crossed state boundaries or is otherwise engaged in interstate commerce.[3] If cars are per se instrumentalities of commerce, even when not employed in interstate commerce, this is an easy case. Congress may protect instrumentalities of commerce from purely intrastate threats and burdens, United States v. Lopez, 514 U.S. 549, 558 (1995), and there is no authority prohibiting preemption of burdensome state laws as a means of doing so.

But the implications of this argument give us reason to doubt its premise. If cars are always instrumentalities of commerce, as suggested by Bishop, Congress would have plenary power not only over the commercial rental car market, but

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[3] See, e.g., United States v. Pipkins, 378 F.3d 1281, 1295 (11th Cir. 2004) (suggesting pagers, telephones, and the Internet are per se instrumentalities of commerce, regardless of whether any interstate communications or routing occur), vacated and remanded on other grounds, 544 U.S. 902 (2005), opinion reinstated on remand 412 F.3d 1251 (11th Cir. 2005). See also United States v. Bishop, 66 F.3d 569, 589-90 (3rd Cir. 1995) (Congress may criminalize intrastate carjackings because cars are per se instrumentalities of commerce); United States v. Oliver, 60 F.3d 547, 550 (9th Cir. 1995) (same). See also United States v. Williams, 51 F.3d 1004 (11th Cir. 1995), abrogated in part on other grounds, Jones v. United States, 526 U.S. 227 (1999) and United States v. Hutchinson, 75 F.3d 626 (11th Cir. 1996) (both summarily concluding that federal carjacking statute is constitutional notwithstanding Lopez).

over many aspects of automobile use. See, e.g., United States v. Hornaday, 392 F.3d 1306, 1311 (11th Cir. 2004) (Commerce Clause power is plenary within its scope). Further, because such power would derive from the Commerce Clause per se, Congress could exercise even broader power to make laws necessary and proper to effectuate its plenary power over automobiles including, presumably, regulation of such quintessentially state law matters as traffic rules and licensing drivers, under the banner of protecting the instrumentalities of commerce. We have our doubts about an interpretation which produces these results, which makes us suspect the premise that all methods of transportation and communication are per se instrumentalities of commerce even when they are not used in interstate commerce. Moreover, there is sensible authority that channels and instrumentalities of commerce refer only to "the ingredients of interstate commerce itself." Gonzalez v. Raich, 545 U.S. 1, 34 (2005) (Scalia, J., concurring in the judgment) (citing Gibbons v. Ogden, 22 U.S. (9 Wheat.) 1, 189-90 (1824)); see also Bishop, 66 F.3d at 597-600 (Becker, J., dissenting) (automobiles can be used as instrumentalities of commerce, but are not per se instrumentalities subject to plenary federal regulation).

Congress has very broad power to regulate wholly intrastate uses of the means of interstate transportation and communication. But it appears more likely

that such authority derives not from their status as instrumentalities, but from the Necessary and Proper Clause.[4] The distinction is not academic; although we ultimately would reach the same result under Lopez prongs two or three, the reasons for the outcome would differ markedly. Should we recognize rental cars as per se instrumentalities of commerce, as appellees and the United States' *amicus* brief would have us do, our analysis ends with the recognition that Congress may protect instrumentalities of commerce from intrastate threats and burdens. In contrast, if rental cars are not per se instrumentalities of commerce, and the statute does not restrict its application to suits involving rental cars that are instrumentalities, *i.e.* "in commerce," then we must analyze the statute as regulating an activity "affecting commerce," and as we shall see, the precedent grows thinner. Given the dubious implications of construing all automobiles as per se instrumentalities of commerce, we will pass over that question; the more prudent course is for us to decide the Graves Amendment's constitutionality under the third Commerce Clause prong.

The final and most hotly contested facet of the commerce power is the

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[4] Compare Bishop and Pipkins, supra, with Heart of Atlanta Motel Inc. v. United States, 379 U.S. 241, 271 (1964) (Black, J., concurring) (power to regulate intrastate use of instrumentalities because such uses burden commerce derives from Necessary and Proper Clause), and Raich, 545 U.S. at 34 (Scalia, J., concurring in the judgment) (power to regulate activities that are not actually in interstate commerce must derive from Necessary and Proper Clause).

authority to regulate purely intrastate activities when they "substantially affect" or have a "substantial relation to" interstate commerce. Ballinger, 395 F.3d at 1226 (citations omitted). "When economic activity substantially affects interstate commerce, legislation regulating that activity will be sustained." Raich v. Gonzales, 545 U.S. at 25 (citing United States v. Morrison, 529 U.S. 598, 610 (2000)). One implication of this principle is that where Congress comprehensively regulates the national market for a particular good or activity, courts may not pronounce particular intrastate instances of the regulated conduct to have a de minimis effect on the market and therefore to be outside the commerce power. Id. at 17-19 (citing, inter alia, Wickard v. Filburn, 317 U.S. 111 (1942)). This approach to the third prong of commerce jurisprudence, embodied most dramatically by Raich and Wickard, is commonly described as "aggregation": when the aggregate effects of an economic activity substantially affect interstate commerce, Congress may regulate both interstate and intrastate instances of that activity, the latter being necessary and proper to effective regulation of the former.

Yet the Supreme Court has made clear that aggregation analysis is not always appropriate. In the seminal cases of United States v. Morrison, 529 U.S. 598 (2000) and United States v. Lopez, 514 U.S. 549 (1995), the Supreme Court refused to validate the Violence Against Women Act and the Gun-Free School

Zones Act, respectively, because of the purported aggregate effects of gender-motivated violence and school violence on interstate commerce. Rather, in considering the permissibility of those statutes under the commerce power, the Court focused on four "significant considerations": (i) whether the activity regulated was economic in nature, (ii) whether the statute contained jurisdictionally limiting language, (iii) whether Congress made findings concerning the effect of the regulated activity on commerce, and (iv) whether the connection between the regulated activity and an effect on commerce is attenuated. Morrison, 529 U.S. at 609-617 (citations omitted). The upshot of Morrison and Lopez is that Congress may not "regulate noneconomic, violent criminal conduct based solely on that conduct's aggregate effect on interstate commerce." Id. at 617. In practice, review under the "significant considerations" of Lopez and Morrison is significantly less deferential than under aggregation analysis. Under the latter, Congress need only have a rational basis for concluding that the regulated activities, in the aggregate, substantially affect interstate commerce. Raich, 545 U.S. at 22 (citations omitted).

Appellants argue that the test elaborated in Morrison and Lopez, rather than that in Raich, should be applied when, as here, we analyze a single subject statute rather than a comprehensive regulatory regime. They rely chiefly on United States v. Maxwell, 446 F.3d 1210, 1214 (11th Cir. 2006), where we stated that the salient

difference between Lopez and Raich was "the comprehensiveness of the economic component of the regulation." (We also noted the possibility for analytic confusion after Morrison and Raich. Id. at 1216 n.6) Appellants urge that analysis under the Morrison/Lopez factors is appropriate because the Graves Amendment, like the statute at issue in those cases, is a "brief, single-subject statute," with no statutory element requiring proof that particular instances of vicarious liability "have any connection to past interstate activity or a predictable impact on future commercial activity." See Raich, 545 U.S. at 23.

Despite its brevity, we believe the Graves Amendment is properly analyzed under the aggregation doctrine of Raich, rather than the considerations elaborated in Morrison and Lopez. Raich makes clear that when a statute regulates economic or commercial activity, Lopez and Morrison are inapposite. Instead, when an economic activity has a substantial effect on interstate commerce, regulation of that activity must be sustained. Raich, 545 U.S. at 25. There is no question that the commercial leasing of cars is, in the aggregate, an economic activity with substantial effects on interstate commerce. This is true both because of the size and national scope of the industry, and because rental cars are frequently (though perhaps not uniformly) employed as instrumentalities of interstate commerce.

Appellants protest that the Graves Amendment does not regulate the rental

car market at all, but state tort law. This is a distinction without a difference, as the state tort law preempted by the statute regulates the rental car market; in other words, the effect of the statute is to deregulate the rental car market. And it has long been understood that the commerce power includes not only the ability to regulate interstate markets, but the ability to facilitate interstate commerce by removing intrastate burdens and obstructions to it. See, e.g., NLRB v. Jones & Laughlin Steel Corp., 301 U.S. 1, 31-32 (1937). On this theory, the Graves Amendment protects the rental car market by deregulating it, eliminating state-imposed laws and lawsuits Congress reasonably believed to be a burden on an economic activity with substantial effects on commerce. Such a theory is relatively novel, but only because statutes like the Graves Amendment are novel. Many federal statutes expressly or impliedly preempt state tort law as an incident to federal regulation. But we are aware of only one other statute with the sole effect and purpose of preempting state-law claims because Congress believed them to be a burden on an interstate market. That is the Protection of Lawful Commerce in Arms Act, 15 U.S.C. §§ 7901-7903, which preempts certain tort suits against gun manufacturers. Despite the novelty of laws like the Graves Amendment and PLCAA, there is no reason in principle why state laws or lawsuits cannot

themselves constitute a burden on interstate commerce.[5] Indeed, the PLCAA recently survived a Commerce Clause challenge for essentially the reasons explained above: the interstate character of the firearms industry, coupled with the perceived threat to that industry posed by state lawsuits, justified use of the commerce power to preempt the burdensome suits. City of New York v. Beretta USA Corp., 524 F.3d 384 (2nd Cir. 2008). The two cases are not identical because unlike the Graves Amendment, the PLCAA limits its preemptive effect to suits involving guns in interstate commerce. Id. at 394. But we do not think that distinction matters. Congress may foster and protect the entire market for rental cars because, in the aggregate, that market substantially affects interstate commerce. So long as the underlying economic activity the federal statute aims to protect is within the commerce power, we will not second guess Congress's decision that preemption is an appropriate means to achieve proper ends. Rather, Congress may choose any "means reasonably adapted to the attainment of the suited end, even though they involved control of intrastate activities." United States v. Darby, 312 U.S. 100, 121 (1941). For regulation (or deregulation) of

[5] For example, the entire premise of dormant Commerce Clause jurisprudence is that state laws favoring in-state economic interests over those of out-of-state competitors can burden interstate commerce. See, e.g, Dept. of Revenue of Kentucky v. Davis, __U.S. __, 128 S.Ct. 1801, 1808 (2008) (citations omitted). We do not suggest that vicarious liability against rental car companies is a form of in-state protectionism; we merely note that state laws, no less than private practices, may burden interstate commerce.

intrastate activities to survive review under aggregation analysis, Congress need only have a rational basis for concluding that the intrastate activity would undermine the lawful Commerce Clause goals of a federal statute if left untouched. See Raich, 545 U.S. at 19.

These principles indicate that the Graves Amendment is valid. It is plain that the rental car market has a substantial effect on interstate commerce. It is also apparent that Congress rationally could have perceived strict vicarious liability for the acts of lessees as a burden on that market.[6] The reason it could have done so is that the costs of strict vicarious liability against rental car companies are borne by someone, most likely the customers, owners, and creditors of rental car companies. If *any* costs are passed on to customers, rental cars – a product which substantially affects commerce and which is frequently an instrumentality of commerce – become more expensive, and interstate commerce is thereby inhibited. Moreover, if significant costs from vicarious liability are passed on to the owners of rental car firms, it is possible that such liability contributes to driving less-competitive firms out of the marketplace, or inhibits their entry into it, potentially reducing options

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[6] Statements in the Graves Amendment's legislative history suggest that its proponents indeed perceived vicarious liability as a burden on consumers, and as reducing the number of firms able to compete in the rental car market. See 151 Cong. Rec. H1034-01 at *H1200 (Statement of Rep. Graves) (stating that vicarious liability costs consumers $100 million annually and drives small firms out of business); see also 151 Cong. Rec. S5433-03 (Statement of Sen. Santorum) (similar). We would reach the same result in the absence of such statements.

for consumers. We do not know with any certainty the incidence or effect of these costs, and we do not have to know. It is enough that Congress rationally could have perceived a connection between permissible ends, namely increasing competition and lowering prices in the rental car market, and the means it chose to effectuate them, preempting vicarious liability suits.

In sum, the Graves Amendment preempts the tort claims on appeal, and is within the boundaries of Congressional power in so doing. Accordingly, the claims cannot proceed. The district court's judgment is

AFFIRMED.