

SOUTHERN DISTRICT CIVIL PRACTICE ROUNDUP

Expert Analysis

Substantial Federal Questions Keep State Law Claims in Federal Court

In recognition of a century-old practice, the U.S. Supreme Court in *Grable & Sons Metal Products v. Darue Engineering & Manufacturing*, 545 U.S. 308 (2005), applied the “substantial federal question doctrine” to uphold the removal to federal court of a case that absent application of the doctrine would not have been subject to removal. As the Supreme Court explained, the doctrine “captures the commonsense notion that a federal court ought to be able to hear claims recognized under state law that nonetheless turn on substantial questions of federal law.” The Supreme Court has since made clear, however, that the doctrine should be applied sparingly, and should lead to federal jurisdiction only over a “special and small category” of cases. See *Empire Healthchoice Assurance v. McVeigh*, 547 U.S. 677, 699 (2006).

In *New York v. Arm or Ally*, 2022 WL 17496413 (S.D.N.Y. Dec. 8, 2022), Southern



By
Edward M. Spiro



And
Christopher B. Harwood

District Judge Jesse M. Furman recently applied the substantial federal question doctrine to retain federal jurisdiction

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over a lawsuit by the state of New York, in which the state asserted a variety of state-law claims (but no federal claims) against 10 defendants (the defendants) based on their alleged manufacture or sale of “unfinished” firearm frames and receivers. A “frame” is the core part of

a handgun pistol, and a “receiver” is the core part of a rifle, shotgun or other long gun. According to the state’s complaint, the process of converting the unfinished frames and receivers sold by the defendants into functional firearms is “ridiculously easy.” Such frames and receivers are commonly known as “ghost guns” because they are not stamped with serial numbers or otherwise registered and, therefore, are untraceable when recovered by law enforcement in connection with a crime.

‘New York v. Arm or Ally’

In its complaint, the state alleged that the defendants violated various state laws by purposefully marketing their unfinished firearm frames and receivers in ways that circumvent federal law governing firearm manufacturers and dealers. Among other things, the defendants allegedly do not stamp their products with serial numbers, conduct background checks in connection with sales of their products, become registered Federal Firearms Licensees, or keep records of all sales. The state sued the defendants in New York Supreme Court in June 2022, pleading 11 causes of action,

EDWARD M. SPIRO and CHRISTOPHER B. HARWOOD are principals of Morvillo Abramowitz Grand Iason & Anello P.C. Mr. Spiro is the co-author of “Civil Practice in the Southern District of New York,” 2d Ed. (Thomson Reuters 2022), and Mr. Harwood is the former Co-Chief of the Civil Frauds Unit at the U.S. Attorney’s Office for the Southern District of New York.

each of which asserted claims arising only under New York state law.

The defendants timely removed the case to federal court, invoking federal-question jurisdiction based on the substantial federal question doctrine. The defendants asserted a number of arguments in support of the application of the doctrine, including that the state's Fourth Cause of Action—in which the state claimed that the defendants' violated New York General Business Law Section 898-b (Section 898-b) by failing to “establish and utilize reasonable controls and procedures to prevent [their] qualified products from being possessed, used, marketed or sold unlawfully in New York state”—implicates substantial questions of federal law because Section 898-b section defines a “qualified product” by reference to federal law (specifically, 15 U.S.C. Section 7903(4)), and the cited federal law defines the term to include “a firearm” or “a component part of a firearm.”

Relevant Law and Legal Principles

In resolving the defendants' motion to remand, Furman first examined the statutes and principles governing removal, including the “artful pleading rule,” which prevents a plaintiff from “avoiding removal by declining to plead ‘necessary federal questions.’” See *Arm or Ally*, 2022 WL 17496413, at *4 (citations omitted). Furman observed that one application of the artful pleading rule is the substantial federal question doctrine.

After identifying *Grable* as “the leading modern case” on the doctrine, Furman explained that *Grable* created a four-factor test to determine whether jurisdiction is proper. Under that test, the substan-

tial federal question doctrine applies to confer federal jurisdiction when a federal issue is: “necessarily raised” by a state-law claim, “actually disputed” by the parties, a “substantial” question of federal law, and “capable of resolution in federal court without disrupting the federal-state balance approved by Congress.” Furman emphasized that the doctrine applies to only a “special and small category” of cases and should be applied sparingly. Indeed, the mere presence of a federal

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issue, interest, or defense is insufficient to support application of the doctrine. Rather, all four of the test's requirements must be met.

The question before Judge Furman, therefore, was whether any of the defendants' arguments for invoking the substantial federal question doctrine passed the *Grable* test. Furman began with the defendants' argument based on the state's Fourth Cause of Action—that the exercise of federal jurisdiction is proper because the Fourth Cause of Action requires the state to prove that the defendants' products are “firearms” or “component parts” thereof under federal law. After pointing out that “a single claim over which federal-question

jurisdiction exists is sufficient to allow removal,” Furman concluded that (i) the argument provided a sufficient basis for applying the substantial federal question doctrine and exercising federal jurisdiction over all of the state's state-law claims, and (ii) his analysis could therefore “stop there.”

Application of Legal Principles to ‘Arm or Ally’

Considering the above-referenced legal principles, Furman applied the *Grable* test and explained why each factor supported the exercise of federal jurisdiction. He began with the two factors that the parties did not seriously dispute (the “necessarily raised” and “substantial” factors), and concluded with the other two factors, which he characterized as “closer calls” (the “actually disputed” and “federal-state balance” factors).

First, Furman agreed with the defendants that the state's Fourth Cause of Action “necessarily raise[d]” a federal question because Section 898-b applies to “gun industry members” who sell a “qualified product,” and the term “qualified product” is defined in Section 898-b by express reference to a federal statute (i.e., 15 U.S.C. Section 7903(4)), which, in turn, defines the term as a “firearm” or “component parts” thereof. For the state to prevail on its claim that the defendants violated Section 898-b, the State must prove that the defendants' products constitute either a “firearm” or “component parts” thereof within the meaning of federal law, which Furman found necessarily raised a federal question.

Second, Furman reasoned that the issues raised under federal law—name-

ly, the need to apply the federal definitions of “firearm” and “component parts,” as well as the need to decide whether the defendants’ unfinished frames and receivers fall within the scope of these terms— “plainly” constitute “substantial issues” because the terms are central to the federal Gun Control Act, which Congress enacted in response to a lack of federal controls over firearms moving in or otherwise affecting interstate commerce. Furman observed that his finding of substantiality is supported by the fact that the federal Bureau of Alcohol, Tobacco, Firearms and Explosives has issued regulations defining the terms “frame” and “receiver,” including recent revisions to those regulations to clarify that the term “firearm” includes parts or components thereof. Additionally, Furman noted that any doubt with respect to the substantiality factor was resolved by the United States’ recent filing of a Statement of Interest in a related action affirming that it shares the State’s “serious concerns about the proliferation of untraceable firearms easily assembled from firearm parts kits and unfinished frames and receivers.”

Third, after characterizing the “actually disputed” factor as a “somewhat closer question,” Furman concluded that the factor also favored the exercise of federal jurisdiction. This factor presented a closer question because (i) on the merits, the defendants intend to argue that the State’s claims are preempted by federal law (specifically, the Protection of Lawful Commerce in Arms Act), the defendants’ preemption argument “presumes that [the defendants’] products fit th[e federal law]

definition” of “firearms” and “component parts,” and therefore for purposes of the preemption argument, both the defendants and the state will be taking the position that the defendants’ products constitute “firearms” and “component parts.” Furman emphasized, however, that the defendants also intend to argue, in the alternative, that their products do not fit the definition of “firearms” or “component parts.” Because Rule 8(d)(3) of the Federal Rules of Civil Procedure permits a party to state “as many separate claims or defenses as it has, regardless of consistency,” Furman reasoned that the defendants are permitted to raise both arguments and therefore whether the defendants’ products fit the federal law definition of “firearms” or “component parts” is “actually disputed.”

Finally, Furman turned to the “federal-state balance” factor, stating that it presented the “strongest argument” for remand, “because ‘the presumption against federal jurisdiction is especially strong’ where, as here, a state is ‘seeking to vindicate quasi-sovereign interests in enforcing state laws and protecting its own citizens.’” Nevertheless, Furman concluded that exercising federal jurisdiction over the state-law claims would not upend the balance approved by Congress for two reasons: the state made the decision to incorporate a federal definition into the State statute at issue, which opened the state up to the risk that suits under the law could be removed to federal court; and the issues in the case implicate the “strong federal interest” in “the regulation of firearms generally” and “whether the products at

issue qualify as ‘firearms’ or ‘component parts’ thereof specifically.”

Furman also noted that despite the state’s arguments to the contrary, the focus of the state’s complaint is on federal law; although the state brought only state-law claims, its pleading repeatedly alleges that the defendants violated federal firearm laws, details how federal law operates to protect the public from gun violence, and contains detailed legal analysis of why the defendants products are “firearms” within the meaning of federal law. Furman therefore concluded that exercising federal jurisdiction over this case would be “consistent with, and not disruptive to,” the carefully considered balance of federal and state judicial responsibilities.

Conclusion

Although the substantial federal question doctrine is intended to render only a small category of cases subject to removal, Furman’s application of the doctrine in this case—based largely on the state’s incorporation of a federal definition into a state law—may lead to an increase in the doctrine’s application, at least insofar as other cases address issues akin to gun violence, i.e., issues that have received significant federal attention.