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CASE #: 25-2-30548-1 SEA

STATE OF WASHINGTON  
KING COUNTY SUPERIOR COURT

ESTATE OF OLIVER OLEN, aka  
ALICE OLEN, ADAM OLEN, and  
AMY OLEN,

Plaintiffs,

v.

PRECISE SHOOTER, LLC, and  
SERGEY SOLYANIK,

Defendants.

NO. 25-2-30548-1 SEA

AMICUS CURIAE BRIEF OF THE  
ATTORNEY GENERAL OF  
WASHINGTON

I. INTRODUCTION

The Attorney General of Washington submits this amicus brief to defend the constitutionality of the Firearms Industry Responsibility Act (FIRA), enacted by the Legislature to tackle the gun violence crisis by deterring illegal and irresponsible behavior by bad actors in the firearm industry. Nothing in the Constitution or federal law prevents Washington from protecting its residents by enacting these basic standards of conduct. In this case—one of the first, if not the first, brought under FIRA—plaintiffs allege that eighteen-year-old Alice Olen’s mother called the defendant gun seller to tell them that Alice was suicidal and to beg them not to transfer a firearm to her. The gun seller allegedly responded that there was nothing they could do and transferred the firearm to Alice that same day. Alice immediately used the firearm to die by suicide. Plaintiffs allege the seller’s conduct violated FIRA’s requirement that firearm sellers

1 enforce procedures and safeguards to prevent the sale or distribution of a firearm to a person  
2 whom the seller has “reasonable cause to believe is at substantial risk of using [the] firearm . . .  
3 to harm themselves[.]” RCW 7.48.330(1)(f)(i).

4 In a motion to dismiss, Defendants claim that FIRA is preempted by the Protection of  
5 Lawful Commerce in Arms Act (PLCAA), is unconstitutionally vague, and violates the Second  
6 Amendment. Notably, the Second Circuit recently rejected PLCAA and vagueness challenges to  
7 a substantially similar New York law, in a directly on-point holding that Defendants fail to  
8 acknowledge, let alone address. *Nat’l Shooting Sports Found., Inc. v. James*, 144 F.4th 98 (2d  
9 Cir. 2025), *petition for cert. filed*, No. 25-1026 (U.S. Feb. 26, 2026). As to PLCAA, FIRA falls  
10 into the heartland of statutes directly regulating the sale and marketing of firearms for which  
11 PLCAA explicitly permits civil actions to proceed. As to vagueness, FIRA’s requirement that  
12 sellers implement reasonable controls to prevent transfer of a firearm to a suicidal person is  
13 nowhere close to unconstitutionally vague. Far from it: the mainstream firearms industry  
14 instructs retailers that when they have reason to believe a customer is suicidal, the *bare minimum*  
15 they must do is deny sale or transfer. Finally, Defendants’ afterthought of a claim under the  
16 Second Amendment is unsupported and ignores contrary *en banc* Ninth Circuit precedent that  
17 there is no constitutionally protected right to sell firearms.

18 This Court should reject Defendants’ constitutional challenges to FIRA.

## 19 II. IDENTITY AND INTEREST OF AMICUS CURIAE

20 Amicus Curiae Nicholas W. Brown is the Attorney General of Washington. Defendants’  
21 motion to dismiss necessarily requires consideration of the constitutionality of a Washington  
22 state statute. The statute in question, FIRA, was legislation requested by the Attorney General’s  
23 Office<sup>1</sup> and authorizes the Attorney General to enforce its provisions by commencing civil  
24 proceedings for violations. RCW 7.48.330(10). As Washington’s chief law enforcement officer,

25 <sup>1</sup> Wash. State Off. of the Att’y Gen., *AG Ferguson, Gov. Inslee bill to hold the gun industry responsible*  
26 *passes Senate* (Mar. 2, 2023), <https://www.atg.wa.gov/news/news-releases/ag-ferguson-gov-inslee-bill-hold-gun-industry-responsible-passes-senate>.

1 the Attorney General has a clear and obvious interest in the validity of state laws, particularly  
2 those that provide for enforcement by the Attorney General to protect the health and safety of  
3 Washingtonians.

### 4 **III. ISSUE ADDRESSED BY AMICUS**

5 Whether the Firearms Industry Responsibility Act, RCW 7.48.330, comports with the  
6 Due Process Clause, the federal Protection of Lawful Commerce in Arms Act, and the Second  
7 Amendment?

### 8 **IV. BACKGROUND**

9 The Washington Legislature passed FIRA in 2023 to put common sense firearms safety  
10 precautions into law, and to “ensure that . . . members of the public in Washington who are  
11 harmed by a firearm industry member’s violation of law may bring legal action to seek  
12 appropriate justice and fair remedies for those harms in court.” Laws of 2023, ch. 163, § 1. As  
13 relevant here, the law requires firearm industry members, including retailers, to implement  
14 reasonable controls to prevent loss, theft, and sales to straw purchasers, traffickers, persons  
15 legally prohibited from firearm possession, and “a person who the firearm industry member has  
16 reasonable cause to believe is at substantial risk of using a firearm industry product to harm  
17 themselves or unlawfully harm another[.]” RCW 7.48.330(1)(a), (1)(f)(i), (4). A violation is a  
18 public nuisance and permits injured parties or the Attorney General to hold firearms industry  
19 members accountable for knowing violations that proximately cause harm. RCW 7.48.330(3),  
20 (7), (9), (10), (12).

21 This case was brought by Adam and Amy Olen and the estate of their daughter, Alice,  
22 against Precise Shooter LLC and its owner Sergey Solyanik. The Olen’s allege that Alice’s  
23 parents believed that Alice was suicidal. Pls.’ First Am. Compl. (FAC) ¶¶ 4.09-4.10. During this  
24 time, they discovered that Alice had bought a firearm from Precise Shooter but had not taken  
25 possession of it yet. *Id.* ¶ 4.11. Alice’s mother called Precise Shooter to tell them that due to  
26 Alice’s mental health situation, releasing the gun to Alice would place her life in danger and that

1 the store should not give Alice the gun. *Id.* ¶¶ 4.14-4.19. Precise Shooter’s staff told Alice’s  
2 mother that there was nothing they could do and that they would give the firearm to Alice upon  
3 Alice’s request. *Id.* ¶¶ 4.18, 4.20. Later that day, Precise Shooter transferred the gun and  
4 ammunition to Alice, and Alice immediately used the firearm to die by suicide. *Id.* ¶¶ 4.27-4.28,  
5 4.32-4.38. The Olens’ claims include a public nuisance claim under FIRA. *Id.* ¶¶ 5.9-5.13.

6 Defendants have moved to dismiss, arguing, as relevant here, that Plaintiffs’ FIRA claim  
7 must be dismissed because FIRA is void for vagueness, is preempted by PLCAA, and violates  
8 the Second Amendment. *See generally* Defs.’ Mot. to Dismiss Pls.’ First Am. Compl. (Mot.).

## 9 V. ARGUMENT

### 10 A. FIRA is Not Void for Vagueness

11 Defendants have not met their burden of proving vagueness beyond a reasonable doubt.  
12 *See Haley v. Med. Disciplinary Bd.*, 117 Wn.2d 720, 739, 818 P.2d 1062 (1991). As an initial  
13 matter, a less stringent vagueness test applies because FIRA creates civil rather than criminal  
14 penalties; does not threaten constitutionally protected rights (as discussed below, § V(C), FIRA  
15 does not implicate the Second Amendment); and is an economic regulation. *Vill. of Hoffman*  
16 *Ests. v. Flipside*, 455 U.S. 489, 498-99 (1982)).

17 Economic regulations are subject to a more permissive test for a variety of reasons,  
18 including that their “subject matter is often more narrow” and that businesses “face economic  
19 demands to plan behavior carefully” and can be “expected to consult relevant legislation in  
20 advance of action.” *Id.* at 498.

21 FIRA’s reasonable controls requirement is sufficiently clear for the same reasons the  
22 Second Circuit upheld a void-for-vagueness challenge to a very similar New York law. *James*,  
23 144 F.4th at 117-18 (upholding N.Y. Gen. Bus. Law § 898-b). Defendants claim they cannot  
24 know what “reasonable controls” requires, but FIRA specifically defines the term as “reasonable  
25 procedures, safeguards, and business practices, including but not limited to screening, security,  
26 and inventory practices, that are designed and implemented to”—as relevant here—prevent sale

1 or distribution to “a person who the firearm industry member has reasonable cause to believe is  
2 at substantial risk of using a firearm industry product to harm themselves or unlawfully harm  
3 another[.]” RCW 7.48.330(1)(f)(i). As the Second Circuit held, this language is “sufficiently  
4 clear” to the point that “‘no doubt would be felt by the normal reader’” as to its meaning. *James*,  
5 144 F.4th at 118 (quoting *United States v. Powell*, 423 U.S. 87, 93 (1975)); *see also id.*  
6 (“reasonableness is a well-established legal standard that is employed in a wide range of statutes  
7 consistent with the requirements of the Due Process Clause”).

8 The analysis is even clearer here because the only relevant inquiry is whether FIRA is  
9 vague as applied to Defendants’ alleged actions. Outside the First Amendment context, a  
10 vagueness challenge “must be considered in light of the facts of the specific case before the  
11 court.” *Am. Legion Post #149 v. Wash. State Dep’t of Health*, 164 Wn.2d 570, 612, 192 P.3d  
12 306 (2008) (citing *Vill. of Hoffman Ests.*, 455 U.S. at 495 n.7). A statute must be “tested for  
13 unconstitutional vagueness by inspecting the actual conduct of the party who challenges the  
14 ordinance and not by examining hypothetical situations at the periphery of the [statute’s] scope.”  
15 *Id.* (brackets in original) (quoting *City of Spokane v. Douglass*, 115 Wn.2d 171, 181-82, 795  
16 P.2d 693 (1990)); *accord. Haley*, 117 Wn.2d at 739.

17 There is little doubt as to the meaning of “reasonable controls” here: a retailer must deny  
18 sale or transfer of a firearm to a person the retailer has reasonable cause to believe is at substantial  
19 risk of suicide. RCW 7.48.330(1)(f)(i). This is the *bare minimum* required by responsible  
20 members of the gun industry even when the seller does not have the type of specific warning of  
21 an individual’s suicidality that Defendants had here. For civil statutes regulating a particular  
22 industry, “the common knowledge and understanding of members of the particular profession to  
23 which a statute applies may also provide the needed specificity to withstand a vagueness  
24 challenge”—even where, *unlike* here, the language “fails to provide an objective standard by  
25 which conduct can be judged.” *Haley*, 117 Wn.2d at 742-33 (upholding statute prohibiting  
26 “moral turpitude” in medical profession, where court “interpret[ed] the statute as prohibiting

1 conduct indicating unfitness to practice the profession” given statute’s purpose of “protect[ing]  
2 the public and the profession’s standing in the eyes of the public”). And the challenged language  
3 must be “afforded a sensible, meaningful, and practical interpretation.” *State v. Evergreen*  
4 *Freedom Found.*, 192 Wn.2d 782, 797, 432 P.3d 805 (2019).

5 Firearms industry members fully understand the concept of “reasonable controls” in this  
6 context, having long touted efforts to prohibit gun sales to suicidal persons, understanding that  
7 for retailers, “just by taking a step of denying sale . . . to someone who’s in that emotional, mental  
8 health crisis, you really can save a life.”<sup>2</sup> NSSF’s retailer guidelines make clear that when a  
9 retailer has any reason to believe a person may be suicidal, intoxicated, or suffering a mental  
10 health crisis, the ***bare minimum*** is to deny sale or transfer:

11 • “If you’re concerned about someone and you’re not sure what to do, you know,  
12 the bare minimum would be to deny sale or rental of a firearm. So let’s say you’re not  
13 sure, the person’s acting a bit off, you should always take that step of denying sale or  
14 rental. It’s very hard to know when someone is in a crisis. And we know that some people  
15 mask their distress. But . . . the bare minimum would be to deny sale or access to a  
16 firearm.”<sup>3</sup>

17 • “If you’re working in a . . . retail environment and you notice that . . . the exchange  
18 is just a little bit different, similar to how you would decline sale or decline rental if  
19 someone were intoxicated, or you had a sense this purchase wasn’t going for the right  
20 reasons, you want to pay attention, and at the minimum, really just decline sale or rental,  
21 to put some time and space between that person and a firearm, particularly if they might  
22 be experiencing some mental health distress.”<sup>4</sup>

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25 <sup>2</sup> *Suicide Prevention for Owners*, NSSF, [https://bluesky\\_portal\\_prod.s3.amazonaws.com/external/1248/st](https://bluesky_portal_prod.s3.amazonaws.com/external/1248/story.html)  
26 [ory.html](https://bluesky_portal_prod.s3.amazonaws.com/external/1248/story.html) (last visited Feb. 25, 2026) (Slides—Conclusion—You May Save A Life).

<sup>3</sup> *Id.* (Slides—Suicide Prevention—Minimum Actions To Take).

<sup>4</sup> *Id.* (Slides—Suicide Prevention—What To Look For).

1 • “The most important thing . . . would be to share the resources but more  
2 importantly, to decline or delay sale or rental of a firearm to this person. . . . [T]hese  
3 crises often pass for people, and it often occurs in a moment where they’re not thinking  
4 clearly, which increases the likelihood of . . . them ending their life using a firearm . . .  
5 so it’s really important that, if you do nothing else, that you help put time and space  
6 between their suicidal feelings and the urge to end their life, and their firearm, by  
7 declining sale or declining a rental.”<sup>5</sup>

8 And NSSF recognizes, as a matter of common sense, that a family member’s call to a  
9 retailer warning of a customer’s suicidal crisis is a classic example of a serious warning sign  
10 warranting denial of sale or transfer (“So you learn that someone is coming to buy a firearm with  
11 that [suicide] as their intention. You know, you might get a call from a family member, for  
12 example, that warns . . . .”)<sup>6</sup>; *id.* (example of ex-girlfriend of gun range customer knowing  
13 customer was suicidal and calling range staff to alert them).<sup>7</sup>

14 FIRA merely codifies baseline industry standards, while discouraging bad actors who do  
15 not exercise such controls. The Olens allege that Alice’s parents called Precise Shooter to tell  
16 them that Alice was at serious risk of using the firearm to harm herself and to beg them not to  
17 transfer the firearm to Alice because they feared for their daughter’s life. Precise Shooter’s  
18 alleged response that there was “nothing they could do” is directly contrary to the bare minimum  
19 practices adopted by responsible firearms industry members, and “reasonable controls” in this  
20 context does not approach the standard for a statute to be invalidated as unconstitutionally vague.  
21 *See James*, 144 F.4th at 118.

22  
23  
24  
25 <sup>5</sup> *Id.* (Slides—Suicide Prevention—Steps To A Brave Conversation).

26 <sup>6</sup> *Id.* (Slides—Understanding Suicide—Demeanor and Behavior).

<sup>7</sup> *Id.* (Slides—Understanding Suicide—Examples).

1 **B. FIRA is Not Preempted by PLCAA**

2 Defendants assert that FIRA is preempted by PLCAA and therefore cannot form the basis  
3 of any civil action. However, unlike other federal statutes that preempt contrary state *laws*,<sup>8</sup>  
4 PLCAA only preempts “a qualified *civil liability action*[,]” defined as an “action or proceeding  
5 or an administrative proceeding” against gun industry members for harms “resulting from the  
6 criminal or unlawful misuse” of a firearm. 15 U.S.C. § 7902(a) (emphasis added); § 7903(5)(A).  
7 As this text makes clear, PLCAA preempts only specific “civil actions,” not statutes. Defendants  
8 do not cite a single example of a court determining that a statute is itself preempted by PLCAA,  
9 as opposed to evaluating lawsuits on a case-by-case basis. There is no basis to invalidate a state  
10 statute as preempted by PLCAA, and this court should not be the first to do so. *See James*, 144  
11 F.4th at 121 (“Congress drafted PLCAA to bar only individual ‘qualified civil liability *actions*’”  
12 and “[w]e must assume this difference in terms is material”; therefore, “preemption is best  
13 considered as applied to individual cases[.]” (Jacobs, J., concurring)).

14 Defendants argue that Plaintiffs’ FIRA claim is preempted for reasons that simply  
15 reiterate their facial challenge and suggest that any action under FIRA is barred. Their arguments  
16 fail, as the Second Circuit held in rejecting the same arguments and upholding New York’s  
17 substantially similar statute as consistent with PLCAA. *Id.* at 108-13. PLCAA’s “predicate  
18 exception” permits “an action in which a manufacturer or seller of a qualified product knowingly  
19 violated a State or Federal statute applicable to the sale or marketing of the product.” 15 U.S.C.  
20 § 7903(5)(A)(iii). This straightforward text encompasses the Olens’ claim brought under FIRA.

21 First, Defendants’ assertion that the term “applicable to” means the state statute must  
22 “impose specific obligations or prohibitions directly on firearm industry members” (Mot. at 14)  
23 finds no support in PLCAA. To begin, FIRA *does* impose specific obligations directly on firearm  
24 industry members: to enact and enforce reasonable controls to prevent, as relevant here, the sale

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26 <sup>8</sup> *See, e.g.*, 15 U.S.C. § 1334 (preempting laws requiring “additional or different statements” on cigarette packaging); 8 U.S.C. § 1324a(h)(2) (preempting laws sanctioning employment of undocumented immigrants).

1 and transfer to a person the industry member has “reasonable cause to believe is at substantial  
2 risk of using a firearm industry product to harm themselves or unlawfully harm another[.]”  
3 RCW 7.48.330(1)(f)(i). Defendants’ claim that FIRA “contains no concrete definitions” or  
4 “provide specific requirements for a[] seller to comply with” (Mot. at 14) ignores this language.

5 But more fundamentally, Defendants have simply invented this definition of “applicable  
6 to.” As the Second Circuit held, “PLCAA’s text does not support” the argument that a predicate  
7 statute must “impose concrete obligations or prohibitions[.]” *James*, 144 F.4th at 110-11. Those  
8 words appear nowhere in the predicate exception or elsewhere in PLCAA. Nor do Defendants  
9 identify any definition or usage of “applicable to” that means to “impose specific obligations or  
10 prohibitions.” *See Conn. Nat’l Bank v. Germain*, 503 U.S. 249, 253-54 (1992) (“a legislature  
11 says in a statute what it means and means in a statute what it says”).

12 And Defendants’ contention that the two illustrative examples in the predicate exception  
13 impose standalone limits is wrong. *James*, 144 F.4th at 111 (“the predicate exception’s scope is  
14 *not* limited to causes of action brought under statutes similar to the enumerated examples in”  
15 that exception). PLCAA introduces these examples via the word “including.” 15 U.S.C.  
16 § 7903(5)(A)(iii) (emphasis added). Nothing suggests that Congress intended those examples to  
17 impose silent outer limits on the exception. *See James*, 144 F.4th at 111 (term “includes”  
18 indicates examples are “illustrative, not exhaustive” and is “typically interpreted as ‘a term of  
19 enlargement, and not of limitation” (first quoting *Christopher v. SmithKline Beecham Corp.*, 576  
20 U.S. 142, 162 (2012); then quoting *Burgess v. United States*, 553 U.S. 124, 131 n.3 (2008)).  
21 Congress could have easily added the words proposed by Defendants if it intended to limit the  
22 predicate exception in this way. No rule of construction allows Defendants to add them in  
23 Congress’s stead.

24 Defendants’ reliance on *City of New York v. Beretta U.S.A. Corp.*, 524 F.3d 384 (2d  
25 Cir. 2008), and *Ileto v. Glock, Inc.*, 565 F.3d 1126 (9th Cir. 2009), for this point is bizarre. Not  
26 only does *Beretta* not support Defendants’ position, *Beretta* “repeatedly *refuted*” it and “*rejected*

1 the idea that the predicate exception’s enumerated examples are exhaustive.” *James*, 144 F.4th  
2 at 110-11 (emphases added) (citing *Beretta*, 524 F.3d at 400). *Beretta* held that “PLCAA’s  
3 predicate exception encompassed statutes that expressly regulated firearms, statutes that courts  
4 have applied to the sale and marketing of firearms, and statutes that do not expressly regulate  
5 firearms but that clearly can be said to implicate the sale and purchase of firearms.” *Id.* at 110  
6 (citing *Beretta*, 524 F.3d at 404). Because New York’s FIRA equivalent “expressly regulates  
7 firearms, it falls within those bounds.” *Id.* The same is true here.

8 *Ileto* supports the same conclusion; *Ileto* made clear its holding did not extend to statutes  
9 like FIRA that regulate the firearms industry as opposed to codifying general common law. *Ileto*,  
10 565 F.3d at 1136 (predicate exception intended to include “statutes that regulate manufacturing,  
11 importing, selling, marketing, and using firearms or that regulate the firearms industry”); *James*,  
12 144 F.4th at 110 n.4 (*Ileto* “held that predicate statutes generally must pertain specifically to  
13 sales and manufacturing activities and often will target the firearm industry specifically, although  
14 they need not pertain exclusively to the firearms industry”).

15 Second, Defendants misstate PLCAA’s purpose. One of PLCAA’s purposes is to prohibit  
16 claims against gun industry members for harm “solely caused by the criminal or unlawful misuse  
17 of firearm products” by others. 15 U.S.C. § 7901(b)(1) (emphasis added); accord. 15 U.S.C.  
18 § 7901(a)(6) (disfavoring lawsuits “imposing liability on an entire industry for harm that is solely  
19 caused by others” (emphasis added)). Defendants’ apparent belief that PLCAA prohibits holding  
20 industry members accountable for any harm involving others’ unlawful acts (Mot. at 18) is belied  
21 by PLCAA’s text and PLCAA’s exemptions. For example, PLCAA allows claims for negligent  
22 entrustment, which explicitly predicates an individual’s liability on the risk of harm caused by  
23 third parties. 15 U.S.C. § 7903(5)(A)(ii), (5)(B) (defining “negligent entrustment” as “supplying  
24 of a qualified product by a seller for use by another person when the seller knows, or reasonably  
25 should know, the person to whom the product is supplied is likely to, and does, use the product  
26 in a manner involving unreasonable risk of physical injury to the person or others”; see also

1 15 U.S.C. § 7903(5)(A)(iii)(II) (example predicate statute allowing cause of action for harms  
2 caused by dealer selling gun to straw purchaser).

3         Indeed, the Supreme Court has made clear that “the predicate violation opens a path to  
4 making a gun manufacturer civilly liable for the way a third party has used the weapon it made,”  
5 where that manufacturer has knowingly committed a predicate offense. *Smith & Wesson Brands,*  
6 *Inc. v. Estados Unidos Mexicanos*, 605 U.S. 280, 286 (2025). In other words, when a plaintiff  
7 can show that a firearm industry member’s predicate statute violation proximately caused harm,  
8 “then a suit can proceed, even though it arises from a third party’s later misuse of a gun.” *Id.*  
9 Moreover, Defendants ignore PLCAA’s stated purpose to “preserve and protect . . . important  
10 principles of federalism[ and] State sovereignty” by discouraging liability expanded by  
11 “maverick judicial officer[s]” beyond that contemplated by the Constitution, by Congress, “*or*  
12 *by the legislatures of the several States*,” circumventing “the Legislative branch.” 15 U.S.C. §  
13 7901(a)(7), (8) (emphasis added); *id.* § (b)(6). These provisions evince a purpose to foreclose  
14 some common-law tort claims untethered to legislation, while preserving state legislative  
15 authority to directly regulate the gun industry. In sum, “PLCAA’s text and history . . . do not  
16 clearly establish that the statute’s aim was to prevent state legislatures from creating avenues to  
17 hold gun manufacturers liable for downstream harms caused by their products.” *James*, 144 F.4th  
18 at 109-10.

19         Third, Defendants wrongly argue that FIRA conflicts with PLCAA’s knowledge and  
20 proximate cause requirements. To start, only an “action” must meet those requirements, not the  
21 underlying statute itself. 15 U.S.C. § 7903(5)(A)(iii) (allowing “an action” where gun industry  
22 member “knowingly violated a State or Federal statute” and “the violation was a proximate cause  
23 of the harm for which relief is sought”). The Second Circuit therefore upheld New York’s FIRA  
24 equivalent against a facial challenge, even though that law—*unlike* FIRA—does not contain a  
25 proximate cause requirement and permits “reckless” as well as “knowing” violations (N.Y. Gen.  
26 Bus. Law § 898-b(1)), because litigants can plead and prove knowledge and proximate cause.

1 *James*, 144 F.4th at 112-13. As the court there noted, “[i]t is plainly possible to bring an action  
2 under Section 898 that would fulfill the “knowing” and “proximate cause” requirements of the  
3 predicate exception.” *James*, 144 F.4th at 112 n. 7.

4 Defendants’ argument is thus doubly wrong, because Washington’s law, unlike New  
5 York’s, *does* require both a knowing violation and proximate cause, and because the Olens’  
6 claim here pleads both.

7 As to a knowing violation, FIRA includes a knowledge requirement (RCW 7.48.330(3)),  
8 and the Olens allege that Defendants violated FIRA by knowingly failing to enforce reasonable  
9 controls, specifically by providing the firearm to a person they knew was at substantial risk of  
10 suicide. FAC ¶¶ 4.40-4.43, 4.57-4.59, 5.12. Defendants claim there is “no evidence of a  
11 ‘knowing’ violation of any law” (Mot. at 16), but this is absurd. FIRA requires that gun retailers  
12 enforce procedures and safeguards that prevent “the sale or distribution of a firearm . . . to . . . a  
13 person who the firearm industry member has reasonable cause to believe is at substantial risk of  
14 using a firearm industry product to harm themselves[,]” and the Olens allege that Defendants  
15 knowingly failed to do just that. RCW 7.48.330(1)(f)(i). Defendants do not explain how this is  
16 any different from the violations contemplated by PLCAA’s own example predicate statutes. To  
17 the contrary, Defendants acknowledge that “a knowing violation of the obligation not to facilitate  
18 a straw purchase,” as set forth in PLCAA’s first example predicate statute, would be perfectly  
19 acceptable under PLCAA. Mot. at 15 (citing 15 U.S.C. § 7903(5)(A)(iii)(I)). So too would a  
20 knowing violation of the other example predicate statute, proscribing sales to someone the dealer  
21 has “reasonable cause to believe” is a prohibited purchaser. 15 U.S.C. § 7903(5)(A)(iii)(II). A  
22 knowing violation of FIRA’s obligation here is no different.

23 As to proximate cause, Defendants simply ignore that FIRA contains a proximate cause  
24 requirement (RCW 7.48.330(9)), and the Olens allege that Defendants’ acts and omissions were  
25 a proximate and but-for cause of Alice’s access to a firearm and ammunition, of her death, and  
26 of Plaintiffs’ damages. *Id.* ¶¶ 4.45-4.47, 4.50, 5.4, 5.8, 5.13. Causation is generally a fact

1 question, unsuited for disposition on summary judgment, let alone by a CR 12(b)(6) motion.  
2 *Ayers v. Johnson & Johnson Baby Prods. Co.*, 117 Wn.2d 747, 818 P.2d 1337 (1991). Yet  
3 Defendants claim there can be no proximate cause as a matter of law because Alice died by  
4 suicide. Mot. at 7-9, 16.

5 Defendants' cited cases, however, all analyze common law negligence claims and do not  
6 apply to a statutory cause of action under FIRA. *Scott v. Amazon.com, Inc.*, 33 Wn. App. 2d 44,  
7 67-71, 559 P.3d 528 (2024) (discussing *Arsnow v. Red Top Cab Co.*, 159 Wn. 137, 160, 292 P.  
8 436 (1930), *rev'd*, No. 103730-0, 2026 WL 468578 (Wash. Feb. 19, 2026) and *Orcutt v. Spokane*  
9 *County*, 58 Wn.2d 846, 850, 364 P.2d 1102 (1961)). "Proximate-cause analysis is controlled by  
10 the nature of the statutory cause of action." *Lexmark Int'l, Inc. v. Static Control Components,*  
11 *Inc.*, 572 U.S. 118, 133 (2014). FIRA defines proximate cause as requiring the harm to be "a  
12 reasonably foreseeable effect of the conduct," RCW 7.48.330(9), which falls well within  
13 traditional conceptions of proximate cause. *See, e.g., CSX Transp., Inc. v. McBride*, 564 U.S.  
14 685, 701 (2011). Indeed, in this context courts agree that proximate cause exists where, as the  
15 Olens allege here, a firearms seller is provided with "reason to believe that the purchaser might  
16 be suicidal," i.e. reason to "anticipate or foresee that the purchaser would use the firearm to  
17 commit suicide." *Rains v. Bend of the River*, 124 S.W.3d 580, 594-95 (Tenn. Ct. App. 2003)  
18 (collecting cases applying the same test). Nothing in PLCAA's text calls this traditional  
19 definition of proximate cause into question.

20 And even as to common law negligence, Washington law has changed significantly. On  
21 February 19, 2026, the Washington Supreme Court reversed *Scott* and held that proximate cause  
22 *can* exist where the decedent's suicide risk was known to the tortfeasor, which "'creates a duty  
23 to safeguard the plaintiff from the foreseeable consequences of its existence.'" *Scott v.*  
24 *Amazon.com, Inc.*, No. 103730-9, 2026 WL 468578, at \*5 (Wash. Feb. 19, 2026) (quoting *Hunt*  
25 *v. King County*, 4 Wn. App. 14, 24, 481 P.2d 593 (1971)). This is in line with Washington's  
26 general common law rule that "'only intervening acts which are *not* reasonably foreseeable are

1 deemed superseding causes.’” *Albertson v. State*, 191 Wn. App. 284, 297, 361 P.3d 808 (2015)  
2 (quoting *Riojas v. Grant Cnty. Pub. Util. Dist.*, 117 Wn. App. 694, 697, 72 P.3d 1093 (2003)).  
3 Here, Plaintiffs allege that Defendants knew of Alice’s suicide risk prior to transferring the gun  
4 to her, so even under common law principles, “the act of suicide, as a matter of law, is not a  
5 superseding cause that precludes” Plaintiffs’ claims. *Scott*, 2026 WL 468578, at \*5.<sup>9</sup>

6 Whether the Olens can ultimately prove a FIRA violation and proximate cause is beyond  
7 the scope of this amicus brief, but PLCAA does not foreclose their opportunity to do so.

### 8 **C. FIRA Does Not Implicate, Let Alone Violate, the Second Amendment**

9 Defendants’ Second Amendment challenge to FIRA fails as a matter of law because it  
10 relies on a claimed right to *sell* firearms. *See* Mot. at 20-21. Yet as the Ninth Circuit’s en banc  
11 decision in *Teixeira v. County of Alameda* held, “the Second Amendment does not independently  
12 protect a proprietor’s right to sell firearms.” 873 F.3d 670, 690 (9th Cir. 2017). Defendants quote  
13 from *Teixeira* (Mot. at 20) but ignore its holding and reasoning, which the Ninth Circuit  
14 has explicitly reaffirmed post-*Bruen*<sup>10</sup> and which has been broadly adopted by other circuits.  
15 *United States v. Vlha*, 142 F.4th 1194, 1198 (9th Cir. 2025), *cert. denied*, No. 25-5867, 2025  
16 WL 3198670 (U.S. Nov. 17, 2025); *Gazzola v. Hochul*, 88 F.4th 186, 196-97 (2d Cir. 2023);  
17 *McRorey v. Garland*, 99 F.4th 831, 839 (5th Cir. 2024); *Rocky Mountain Gun Owners v. Polis*,  
18 121 F.4th 96, 120 (10th Cir. 2024); *see also Drummond v. Robinson Twp.*, 9 F.4th 217, 230 (3d  
19 Cir. 2021) (“We know of no court, modern or otherwise, to hold that the Second Amendment  
20 secures a standalone right to *sell* guns[.]”); *District of Columbia v. Heller*, 554 U.S. 570, 626-27  
21 (2008) (nothing “should be taken to cast doubt on . . . laws imposing conditions and  
22

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23 <sup>9</sup> Although the *Scott* plaintiffs alleged a Washington Product Liability Act claim, that statute does not  
24 define proximate cause, so common law principles apply. *Scott*, 2026 WL 468578, at \*2-4. Here, as discussed  
25 above, FIRA does define proximate cause.

26 <sup>10</sup> *Teixeira* mentioned the means-end balancing used by circuit courts rejected by *Bruen*, but did not reach  
that analysis, instead examining the Second Amendment’s text and history to determine that the regulated conduct  
(a right to sell firearms) did not fall within the amendment’s protective scope—an analysis that *Bruen* deemed to be  
consistent with precedent. *N.Y. State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1, 19 (2022). Thus, the Ninth  
Circuit and other courts reaffirmed that holding post-*Bruen*.

1 qualifications on the commercial sale of arms[ ]”); *McDonald v. City of Chicago*, 561 U.S. 742,  
2 786 (2010) (same). Defendants cite no case holding otherwise.

3 Under this consensus, the Second Amendment does not protect “an individual’s right to  
4 sell a firearm unconnected to the rights of citizens to ‘keep and bear’ arms.” *Teixeira*, 873 F.3d  
5 at 686-87. A seller therefore cannot show the Second Amendment is implicated in the first place  
6 unless they demonstrate that the challenged restriction “meaningfully constrains” would-be  
7 purchasers’ core right of possession. *Vlha*, 142 F.4th at 1198. For example, the *Teixeira* seller’s  
8 challenge failed because they did not allege that a county ordinance restricting where gun stores  
9 could open prevented residents from acquiring firearms elsewhere. *Id.* at 1198-99 (citing  
10 *Teixeira*, 873 F.3d at 680-81). Similarly, the *Vlha* seller’s challenge to federal gun manufacturer  
11 licensing requirements failed because there are over 3,500 licensed firearms manufacturers and  
12 millions of firearms manufactured in the United States every year, so the license requirement is  
13 not meaningfully constraining would-be purchasers from obtaining firearms. *Id.* at 1199-1200.  
14 Defendants similarly do not claim that FIRA meaningfully prevents Washingtons from acquiring  
15 firearms, nor would such a claim be remotely true, given there are more than 1,200 licensed  
16 firearm retailers in Washington, and more than 250,000 firearms are estimated to have been sold  
17 in Washington in 2025.<sup>11</sup>

18 Because Defendants have not claimed any meaningful restraint on Washingtonians’  
19 ability to acquire firearms, they cannot challenge FIRA under the Second Amendment based on  
20 their claim that FIRA puts “a seller . . . potentially at risk for violating this statute any time it  
21 sells or transfers a firearm.” Mot. at 20-21 (emphasis added). Moreover, this outlandish assertion  
22 cannot be squared with FIRA’s limited scope. Defendants point to no lawsuit since FIRA’s 2023  
23 enactment that even arguably threatens legal and responsible firearms commerce. Nor do they  
24

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25 <sup>11</sup> U.S. Bureau of Alcohol, Tobacco, Firearms, and Explosives, Federal Firearms Listings (Jan. 2026—  
26 Washington), <https://www.atf.gov/firearms/tools-and-services-firearms-industry/federal-firearms-listings> (last  
visited Feb. 27, 2026); The Trace, Gun Violence Data Hub, Firearm Sales (updated Feb. 4, 2026),  
<https://datahub.thetrace.org/dataset/gun-sales/>.

1 point to such consequences from earlier-enacted laws in other states. *See, e.g.*, N.Y. Gen. Bus.  
2 Law § 898-b; 10 Del. Code Ann. § 3930. Indeed, this appears to be one of the first lawsuits, if  
3 not the first ever, brought under Washington’s FIRA, and it rests on the allegation that  
4 Defendants transferred a firearm to Alice Olen knowing she was at significant risk of suicide.  
5 This case does not remotely threaten retailers’ ability to legally and responsibly sell firearms,  
6 much less Washingtonians’ Second Amendment right to bear arms.

7 **VI. CONCLUSION**

8 This Court should reject Defendants’ constitutional challenge to Washington’s Firearms  
9 Industry Responsibility Act, RCW 7.48.330.

10 RESPECTFULLY SUBMITTED this 4th day of March 2026.

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1 **CERTIFICATE OF SERVICE**

2 I certify, under penalty of perjury under the laws of the state of Washington, that on this  
3 date I caused the be served a true and correct copy of the foregoing document via electronic mail  
4 in accordance with the Court’s electronic service protocol, on the following parties:

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17 DATED this 4th day of March 2026, at Olympia, Washington.

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