



No. 2-25-0274

IN THE
APPELLATE COURT OF ILLINOIS
SECOND JUDICIAL DISTRICT

<p>KEELY ROBERTS, individually and as parent and next friends of C.R. and L.R., and JASON ROBERTS, individually and as parent and next friend of C.R. and L.R.,</p> <p style="text-align: center;">Plaintiffs-Appellees,</p> <p style="text-align: center;">v.</p> <p>SMITH & WESSON BRANDS, INC., et al.,</p> <p style="text-align: center;">Defendants-Appellants,</p> <p>and</p> <p>Budsgunshop.com, LLC; Red Dot Arms, Inc.; Robert Crimo, Jr.; and Robert Crimo, III,</p> <p style="text-align: center;">Defendants.</p>	<p>) Appeal from the Circuit Court of Lake) County, Illinois</p> <p>) No. 22 LA 00000487;) Consolidated for Pretrial Purposes) with Case Nos.</p> <p>) 22 LA 00000488, 22 LA 00000489,) 22 LA 00000490, 22 LA 00000491,) 22 LA 00000492, 22 LA 00000493,) 22 LA 00000494, 22 LA 00000495,) 22 LA 00000496, 22 LA 00000497,) 22 LA 00000532, 24 LA 00000201,) 24 LA 00000203, 24 LA 00000206,) 24 LA 00000466, 24 LA 00000471,) 24 LA 00000474, 24 LA 00000475,) 24 LA 00000476, 24 LA 00000477,) 24 LA 00000478, 24 LA 00000479,) 24 LA 00000480, 24 LA 00000481.</p> <p>) The Honorable JORGE L. ORTIZ,) Judge Presiding.</p>
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INTEREST OF AMICUS CURIAE

In 2023, the State of Illinois amended the Illinois Consumer Fraud and Deceptive Business Practices Act (“Consumer Fraud Act”), 815 ILCS 505/1 *et seq.*, by enacting the Firearm Industry Responsibility Act (“FIRA”), 815 ILCS 505/2DDDD. The proper interpretation and validity of FIRA is implicated by several of the certified questions at issue in this interlocutory appeal, AT Br. 10-11, and the Attorney General has an interest in the proper resolution of those questions.

At the threshold, as chief legal officer of the State, the Attorney General has an interest in the proper interpretation and validity of state statutes, including FIRA. In this capacity, the Attorney General has addressed challenges to FIRA in other litigation, including in *National Shooting Sports Foundation v. Raoul*, No. 3:23-cv-2791 (S.D. Ill). In that case, a facial challenge to FIRA, the Attorney General argued that the statute is not preempted by federal law and comports with the United States Constitution’s First and Second Amendments, Due Process Clause, and dormant Commerce Clause.

Furthermore, the Attorney General’s subject-matter expertise and institutional knowledge is relevant here. The Attorney General enforces the Consumer Fraud Act, including FIRA. *See* 815 ILCS 505/3-7. Through this enforcement power, the Attorney General is responsible for protecting Illinois residents and businesses from fraud, deception, and unfair business

practices. The Attorney General also has an interest in preserving all lawful tools to deter and remediate the effects of gun violence in Illinois, including by preserving statutory remedies for misconduct by firearm industry members that causes or contributes to such violence.

In sum, the Attorney General has a significant interest in the proper resolution of this appeal and can assist this Court by presenting information and insights not presented by the parties to this case who do not have the same institutional knowledge and experience.

INTRODUCTION

In 2022, a lone shooter armed with a Smith & Wesson Military and Police assault rifle opened fire on an Independence Day parade in Highland Park, Illinois, killing seven people and injuring dozens of others. C2-3.¹ Shortly thereafter, many victims brought (now-consolidated) actions alleging that Smith & Wesson employed unfair and deceptive marketing practices to advertise its assault rifles to adolescents and young adults like the Highland Park shooter. C2593. The claims in each action vary slightly, but, as relevant here, generally include statutory claims under the Consumer Fraud Act, including claims under FIRA, and the Illinois Uniform Deceptive Trade Practices Act. *Id.*

Defendants moved to dismiss the actions on numerous grounds, including that FIRA is preempted by the Protection of Lawful Commerce in Arms Act, 15 U.S.C. 7901, *et seq.* (“PLCAA”); that PLCAA bars the specific claims raised in the consolidated cases; that FIRA is unconstitutional as applied to the facts of these cases; that plaintiffs lacked standing; and that plaintiffs failed sufficiently to allege proximate causation. C2593, 2599, 2604, 2616. The circuit court largely denied the motions but certified six questions for interlocutory appeal. C2691-93. To aid the court in resolving those questions, this amicus brief focuses on the proper interpretation of

¹ This brief cites the supporting record submitted with defendants’ Rule 308 application as “C__,” defendants’ opening brief as “AT Br. __,” and the amicus briefs as “Mont. Br. __” and “NASGW Br. __.”

FIRA, including the legislative purpose underlying its enactment, and its validity under PLCAA.

As made clear in its text and legislative history, the General Assembly enacted FIRA to serve the narrow but important purpose of deterring firearm industry members from engaging in irresponsible and unlawful practices that actively contribute to gun violence in Illinois by holding those industry members who engage in such tactics accountable for their actions. In doing so, the General Assembly acted well within its sovereign authority and, as relevant here, did not run afoul of PLCAA.

Defendants and their amici make several arguments to the contrary, but these flow from their mistaken view that FIRA merely codified the preexisting common law and, if applied as intended, would penalize firearm dealers and manufacturers for criminal acts committed by third parties misusing firearms. *See, e.g.*, AT Br. 27-28, 32; Mont. Br. 18; NASGW Br. 4, 15. But as detailed below, FIRA expressly applies to the sale and marketing of firearms by industry members (not the misuse of firearms by third parties), and imposes liability on firearm industry members only for their own unlawful conduct. For these reasons, and those outlined by plaintiffs, this court should reject defendants' position that PLCAA preempts FIRA.

STATUTORY BACKGROUND

The Consumer Fraud Act was “enacted in 1961 as a regulatory and remedial statute for the purpose of protecting consumers and others against

fraud, unfair methods of competition, and unfair or deceptive acts or practices in the conduct of any form of trade or commerce.” *Price v. Philip Morris, Inc.*, 219 Ill.2d 182, 233-34 (Ill. 2005). Section 2 of the Act broadly declares that unfair methods of competition and unfair or deceptive practices or acts are unlawful in Illinois. 815 ILCS 505/2. Contrary to defendants’ contentions otherwise, *e.g.*, AT Br. 27, 32, the Act is not duplicative of common-law causes of action; rather, it “expands consumers’ rights beyond those of the common law and provides broader protection,” *Ash v. PSP Distribution, LLC*, 2023 IL App (1st) 220151, ¶ 24; *see also, e.g., Letoski v. Coca-Cola Co.*, 753 F. Supp. 3d 650, 664 (N.D. Ill. 2024) (“The Illinois Consumer Fraud Act affords broader protection to consumers than the causes of action available under common-law fraud.”).

Section 2 may be enforced by the Attorney General and State’s Attorneys, 815 ILCS 505/3-7, as well as by private plaintiffs, *id.* § 505/10a. Where, as here, private plaintiffs bring a claim for deception, they must allege: (1) a deceptive act by the defendant, (2) that the defendant intended for the plaintiff to rely on the deception, (3) that the deception occurred during a course of conduct involving trade or commerce, and (4) that the deception proximately caused actual damage. *Robinson v. Toyota Motor Credit Corp.*, 201 Ill.2d 403, 417 (Ill. 2002). There is substantial case law (in both state and federal court) fleshing out the contours of each of these

elements, and the Consumer Fraud Act has been upheld by the Illinois Supreme Court in the face of vagueness and other constitutional challenges.²

Section 2 has been amended many times to identify examples of the Consumer Fraud Act's applicability and, in some instances, to provide additional protections from unfair and deceptive practices. Indeed, sections 2A through 2HHHH provide a nonexhaustive list of examples of unfair or deceptive practices in particular contexts. *E.g.*, 815 ILCS 505/2AA (immigration assistance); *id.* § 505/2KK (animal cremation); *id.* § 505/2LL (halal food disclosures).

In 2023, the General Assembly amended the Consumer Fraud Act by enacting FIRA, which is a new section that makes express how the Act applies in the context of the sale and marketing of firearms. *See id.* § 505/2DDDD. FIRA includes four enumerated paragraphs, each of which penalizes a different prohibited business practice related to “the sale, manufacturing, importing, or marketing of a firearm-related product.” *Id.* § 505/2DDDD(b)(1)-(4). These prohibitions apply only to a firearm industry member's own conduct; they do not impose liability on firearm industry members based on third-party conduct. *See id.* § 505/2DDDD(b); *infra* pp. 23-25. And contrary to defendants' suggestion otherwise, AT Br. 28, FIRA is not

² *See, e.g., Scott v. Ass'n for Childbirth at Home, Int'l*, 88 Ill.2d 279, 289-90 (Ill. 1981) (concluding that terms in the Consumer Fraud Act, including “deception,” “false pretense,” “misrepresentation,” and “fraud,” “are words commonly used and understood by the general public and by businessmen”).

entirely duplicative of existing law, 815 ILCS 505/2DDDD(c) (stating that subsections (2), (3), and (4), but not subsection (1), are declarations of existing law and apply to “all actions commenced or pending on or after the effective date” of FIRA).

Indeed, the first prohibited practice, set forth in subsection (b)(1), provides for liability under circumstances not previously contemplated by the Consumer Fraud Act. *See id.* § 505/2DDDD(c). This subsection prohibits firearm industry members from knowingly creating dangerous conditions through conduct that is “unlawful in itself” or “unreasonable under all circumstances, including failing to establish or utilize reasonable controls.” *Id.* § 505/2DDDD(b)(1). FIRA defines “reasonable controls” as precautions including implementing reasonable procedures, safeguards, and business practices designed to prevent sales to straw purchasers and the loss or theft of firearm-related products, as well as compliance with all applicable laws. *Id.* § 505/2DDDD(b)(1)(A)-(C).

Subsections (b)(2) and (b)(3) restrict speech promoting conduct that is unlawful under other statutory provisions. *Id.* § 505/2DDDD(b)(2)-(3); *see also Florida Bar v. Went For It, Inc.*, 515 U.S. 618, 623-24 (1995) (“[T]he government may freely regulate commercial speech that concerns unlawful activity.”). Specifically, subsection (b)(2) prohibits firearm industry members from advertising firearm-related products in a way that would encourage individuals to engage in unlawful paramilitary activity in Illinois. 815 ILCS

§ 505/2DDDD(b)(2); *see also* 20 ILCS 1805/94-95 (prohibiting “any body of men or women, other than the regularly organized militia of this State,” the U.S. armed forces, and veterans’ organizations, “to associate themselves together as a military company or organization, to drill or parade with arms in this State”); Ill. Const., art. XII, § 2 (“The military shall be in strict subordination to the civil power.”). Subsection (b)(3) regulates advertising that encourages individuals under the age of 18 to “unlawfully purchase or possess or use a firearm-related product in Illinois.” 815 ILCS

§ 505/2DDDD(b)(3).³ Under federal law, it is generally unlawful to sell firearms and ammunition to minors and for minors to possess handguns. *See* 18 U.S.C. § 922(b)(1), (c)(1); 18 U.S.C. § 922(x)(1), (x)(2), (5). And Illinois law further prohibits many individuals under the age of 21 from carrying firearms, and from purchasing or possessing firearms and ammunition. *See* 720 ILCS 5/24-1(a)(4)(iv), (a)(10)(iv); 430 ILCS 66/25(1); 430 ILCS 65/2-4.⁴

Finally, subsection (b)(4) clarifies that firearm industry members may not otherwise engage in acts that are unfair or deceptive under the Consumer Fraud Act. *See* 815 ILCS 505/2DDDD(b)(4). This subsection thus removes

³ FIRA is thus distinct from the California law that was invalidated in *Junior Sports Mags. Inc. v. Bonta*, 80 F.4th 1109 (9th Cir. 2023), which restricted speech related to lawful activity. *Contra* AT Br. 35.

⁴ To the extent that individuals under the age of 21 in Illinois may lawfully possess firearms and ammunition, FIRA exempts speech encouraging such conduct. *See* 815 ILCS 505/2DDDD(b)(3)(B).

any doubt that Section 2 of the Consumer Fraud Act, as well as any future amendments to it, applies to the sale and marketing of firearms.

ARGUMENT

I. The General Assembly enacted FIRA to advance the State's interests in protecting public health and safety.

The General Assembly enacted FIRA to address certain well-documented practices by firearm industry members that have been shown to contribute to gun violence, including certain firearm manufacturers' use of false, misleading, or predatory marketing schemes to target vulnerable youth and members of paramilitary organizations, as well as some firearm dealers' failure to take reasonable precautions to prevent firearms from entering the illegal market, where they are likely to be sold for use in criminal acts.

To begin, legislators expressed concern about advertisements for firearms that feature or target children, including advertisements with cartoon characters marketing the "JR-15," a smaller version of the AR-15 that is intended for children, as well as advertisements featuring a toddler holding an assault weapon.⁵ Legislators also described marketing practices that "glorif[y] illegal and violent use" of firearms, such as advertising that "promotes criminal paramilitary activity."⁶ And legislators noted the lack of

⁵ See 103rd Gen. Assembly, 53rd Leg. Day 49 (Ill. 2023) (statement of Sen. Don Harmon), <https://bit.ly/4erVXYK>.

⁶ Press Release, Gong-Gershowitz Bill Holding Gun Manufacturers Accountable Signed into Law, Ill. State Rep. Jennifer Gong-Gershowitz (Aug. 12, 2023), <https://bit.ly/4xp2nQJ>.

guardrails necessary to prevent illegal firearms sales, observing that the “gun industry has avoided the kind of accountability that has created safer, more responsible practices in other industries.”⁷

The General Assembly’s determination that FIRA will help to prevent gun violence by subjecting gun industry members to liability for their irresponsible and dangerous sales and marketing practices is well supported by empirical evidence. Studies have shown that minors are particularly susceptible to advertising, which makes it more likely that young people will engage with any given advertised product than will adults.⁸ For example, research shows a correlation between advertising for cigarettes, alcohol, or unhealthy foods and increased consumption of those products by children and adolescents.⁹ In fact, one study concluded that adolescents were so susceptible to cigarette advertising that the link between advertising

⁷ Press Release, Gun Manufacturer Liability Bill Introduced, Ill. State Rep. Jennifer Gong-Gershowitz (May 10, 2023), <https://bit.ly/4vDL9xo>.

⁸ See, e.g., Cornelia Pechmann et al., *Impulsive and Self-Conscious: Adolescents’ Vulnerability to Advertising and Promotion*, 24 J. Pub. Policy & Mktg. 202, 202 (2005); Matthew A. Lapierre et al., *The Effect of Advertising on Children and Adolescents*, 140 PEDIATRICS S152, S153 (2017) (presenting research showing alcohol advertising increases the likelihood that adolescents will start to use alcohol); see also, e.g., *Disc. Tobacco City & Lottery v. United States*, 674 F.3d 509, 539-40 (6th Cir. 2012) (“Though Plaintiffs would have us believe that there is no causal connection between product advertising and the consumer behavior of children, such a claim stretches the bounds of credulity.”).

⁹ See Deborah Roedder John et al., *Understanding the Past and Preparing for Tomorrow: Children and Adolescent Consumer Behavior Insights from Research in Our Field*, 9 J. Ass’n for Consumer Rsch. 107, 108-10 (2024).

expenditures and market share for cigarette brands was three times larger for adolescents than for adults.¹⁰ Research into the effectiveness of advertising for products such as nicotine vape devices, video games, and gambling confirms that young people are especially vulnerable consumers. For example, one study showed that advertising on X for gambling attracts more engagement from children and young adults than from older adults.¹¹

The firearm industry has implicitly acknowledged the connection between advertising and youth engagement by extensively engaging in marketing to young people.¹² Some firearm manufacturers, for example, have promoted “assault weapons for offensive, military style missions” and touted them as “the ultimate combat weapons system,” appealing to young people who play popular first-person shooter video games that feature such weapons.¹³ Others have used advertising showing children handling firearms or released military-style weapons that are specifically marketed to

¹⁰ See *id.* at 109 (citing Richard W. Pollay et al., *The Last Straw? Cigarette Advertising and Realized Market Shares Among Youth and Adults, 1979-1993*, 60 *J. Mktg.* 1 (1996)).

¹¹ See *id.* at 112-13 (citing Raffaello Rossi & Agnes Nairn, *Priming Young Minds: The Appeal of Gambling Advertising to Children and Young People*, 9 *J. Ass’n for Consumer Rsch.* 187 (2024)).

¹² See, e.g., Violence Policy Ctr., “*Start Them Young*” *How the Firearms Industry and Gun Lobby Are Targeting Your Children* 34-35 (Feb. 2016), <https://bit.ly/4uxKIUm> (quoting NSSF advice on using social media to communicate with youth and how to market to youth under 12).

¹³ *Soto v. Bushmaster Firearms Int’l, LLC*, 202 A.3d 262, 277 (Conn. 2019); see Mark Follman, *How the Gun Industry Targets Kids Using TikTok, Instagram, and Video Games*, *Mother Jones* (Oct. 24, 2023), <https://bit.ly/4uDQHqH>.

children.¹⁴ Firearm industry members also have used digital platforms particularly appealing to minors.¹⁵ Indeed, in a recent experiment where researchers set up a test YouTube account to resemble a 14-year-old boy's account, that account received over 1,300 firearm-related video recommendations in a one-month period, many of which were targeted advertising.¹⁶ These have been connected to the mass shooters (all under the age of 21) who killed children in Parkland, Florida; Sandy Hook, Connecticut; and Uvalde, Texas, to name a few.¹⁷

Some members of the firearm industry also target their advertising toward members of paramilitary groups, implicitly encouraging the unlawful use of firearms and related products. For instance, Palmetto State Amory, a firearms dealer, sold products with imagery associated with the “boogaloo,” which is “slang for a war to topple the federal government, something adherents prepare for, and in some cases seek to accelerate.”¹⁸ Boogaloo

¹⁴ Mary Papenfuss, *Gun-maker Posted Chilling Ad of Child Cradling Firearm Before Uvalde Tragedy*, Huffington Post (May 27, 2022), bit.ly/3vpRj7f; AFP, *US Gunmaker Unveils Semi-automatic Rifle Marketed to Kids*, Barron's (Feb. 18, 2022), bit.ly/3WzmJnx.

¹⁵ *YouTube Leads Young Gamers to Videos of Guns, School Shootings*, Tech Transparency Project (May 16, 2023), <https://bit.ly/4e6ionl>; see Daniel Hipp et al., *Putting Parents Back in Charge of Firearm Safety*, Child. & Screens: Inst. Digit. Media & Child Dev. (Feb. 2026), <https://bit.ly/4xuGks8>.

¹⁶ Hipp et al., *supra* note 15, at 6.

¹⁷ See *YouTube Leads Young Gamers to Videos of Guns*, *supra* note 15; Follman, *supra* note 13.

¹⁸ Ian Karbal, *Gunmaker Marketed Anti-Government Boogaloo Products. Then It Lobbied Congress.*, The Trace (Mar. 15, 2021), <https://bit.ly/4fBNZOO>.

extremists participated in the January 6 insurrection, the attempted kidnapping of Michigan Governor Gretchen Whitmer, and other acts of domestic terrorism.¹⁹ In another example, Spike’s Tactical, an assault weapons manufacturer, used an advertisement “featuring armed civilians staring down a mob of individuals in balaclavas.”²⁰ This advertisement “features the tagline ‘Not Today Antifa’ and lists a number of locations where far-right activists clashed with leftist demonstrators,” including the 2017 confrontation in Charlottesville, Virginia.²¹

Empirical evidence likewise confirms the General Assembly’s determination that FIRA will help to stem the flow of illegal firearms into Illinois communities. Studies have shown that a large number of firearms in the illegal market, where they are more likely to be sold for use in crimes, originate from a small number of firearm industry members. In fact, one report determined that nearly a quarter of all firearms recovered at crime scenes in Chicago between 2013 and 2016 were purchased from just 10 dealers, with two accounting for over 10 percent of all crime guns recovered during that period.²² Similarly, a study showed that 12 percent of gun dealers were responsible for selling 86 percent of the firearms recovered from

¹⁹ *Id.*

²⁰ *Paranoia and Profit: Armed Extremism and the Gun Industry’s Role in Fostering It*, Everytown for Gun Safety (Dec. 7, 2024), <https://bit.ly/4gg7xID>.

²¹ *Id.*

²² City of Chicago, *Gun Trace Report 2017*, at 4 (Oct. 2017), bit.ly/3ItoLS2.

the scenes of firearm-related offenses in California between 1996 and 2000.²³ And the Bureau of Alcohol, Tobacco, Firearms and Explosives reported that 14 percent of federally licensed gun dealers sold all of the firearms recovered at the scene of gun crimes nationwide in 1998.²⁴

Studies have likewise shown that by taking reasonable precautions, firearm dealers can decrease the likelihood that illegal firearms will enter the market. Most dealers are confronted at one time or another with individuals whom they believe may be a straw purchaser (that is, someone purchasing on behalf of another person).²⁵ In 2011, for example, two-thirds of surveyed firearm dealers acknowledged that they had been approached by possible straw purchasers.²⁶ While most dealers take steps to avoid selling firearms in these circumstances, one in five said that they *would* sell a firearm to an individual whom they suspected was purchasing it on behalf of someone else,

²³ Christopher S. Koper, *Crime Gun Risk Factors: Buyer, Seller, Firearm, and Transaction Characteristics Associated with Gun Trafficking and Criminal Gun Use*, at 12 (2007), bit.ly/3G6uMkO.

²⁴ *Id.*

²⁵ *E.g.*, Philip J. Cook et al., *Some Sources of Crime Guns in Chicago: Dirty Dealers, Straw Purchasers, and Illegal Traffickers*, 104 J. Crim. L. & Criminology 717, 723 (2015); Rachana Bhowmik, *Aiming for Accountability: How City Lawsuits Can Help Reform an Irresponsible Gun Industry*, 11 J.L. & Pol'y 67, 108-09 (2002).

²⁶ Jeff Wagner, *How Is a Gun Retailer Supposed to Stop Straw Purchases?*, CBS News (Oct. 17, 2022), bit.ly/3IIT0ue; Garen J. Wintemute, *Frequency of and Responses to Illegal Activity Related to Commerce in Firearms: Findings from the Firearms Licensee Survey*, 19 Inj. Prevention 412, 413 (2013).

including someone who may not legally be allowed to buy it.²⁷ A consequence of this conduct is that a large number of firearms enter the illegal market; indeed, by some estimates, nearly half of all guns that are trafficked on the secondary market began as straw purchases.²⁸ Many of those trafficked guns are subsequently used in connection with crimes, with one analysis suggesting that nearly 90 percent of crime guns recovered in Illinois between 2017 and 2021 were likely illegally trafficked.²⁹ But studies also show that when firearm dealers are held accountable for their sales to straw purchasers, there is a significant decrease in the flow of firearms into the illegal market.³⁰

Theft from firearm dealers is another way in which firearms “are diverted from the lawful market and into illegal gun trafficking networks,” where they are “almost assuredly destined for criminal use,” and, in addition, where the use of reasonable controls can help to stem the flow of illegal guns

²⁷ Garen J. Wintemute, *Firearm Retailers’ Willingness to Participate in an Illegal Gun Purchase*, 87 J. Urban Health 865, 870 (2010), bit.ly/3QCeSUn.

²⁸ Wintemute, *Frequency of and Responses to Illegal Activity Related to Commerce in Firearms*, *supra* note 26 at 6.

²⁹ See *Gun Trafficking and Crime Guns in Illinois*, Everytown for Gun Safety (Mar. 20, 2026), <https://bit.ly/4fXMNpf>.

³⁰ See, e.g., Daniel W. Webster et al., *Effects of Undercover Police Stings of Gun Dealers on the Supply of New Guns to Criminals*, 12 Inj. Prevention 225, 225-30 (2006); Daniel W. Webster et al., *Effects of a Gun Dealer’s Change in Sales Practices on the Supply of Guns to Criminals*, 83 J. Urban Health 778, 778-87 (2006).

into communities.³¹ According to ATF data, between 2010 and 2015, nearly 10,000 firearms “that were recovered by police in connection with a crime and traced by ATF had been reported stolen or lost from gun stores.”³² When this occurs, investigators are deprived of critical information that could be relevant to solving crimes, such as information about the initial purchaser of the firearm.³³ As experts have explained, the most effective way to mitigate this problem is to implement anti-theft measures, like installing alarm systems and video cameras and storing firearms in a secure manner.³⁴

All told, the General Assembly’s decision to enact FIRA serves the State’s interest in preventing gun violence by addressing well-documented practices by firearm industry members that have been shown to contribute to this problem.

³¹ Ctr. for Am. Progress, *Stolen Guns in America* (July 25, 2017), <http://bit.ly/40pa9ci> (quoting U.S. Bureau of Alcohol, Tobacco, Firearms, and Explosives, *Congressional Budget Submissions: Fiscal Year 2018*, at 12 (2017)).

³² *Id.* (citing ATF Theft and Loss Reports from 2010 to 2015); *see also* U.S. Dep’t of Just., Off. of the Inspector Gen., *Review of ATF’s Federal Firearms Licensee Inspection Program*, at 2 (Apr. 2013), <https://bit.ly/4owqiK0> (discussing magnitude of stolen firearms).

³³ *Stolen Guns in America*, *supra* note 31.

³⁴ *Id.* (citing U.S. Bureau of Alcohol, Tobacco, Firearms, and Explosives, *ATF Safety and Security Information for Federal Firearms Licensees* (2010); U.S. Bureau of Alcohol, Tobacco, Firearms, and Explosives, *Loss Prevention for Firearms Retailers* (2016); John Bocker, *Security Basics: How to Criminal-Proof a Gun Store or Shooting Range*, Nat’l Shooting Sports Found. (June 6, 2017)).

II. FIRA is a permissible exercise of state sovereign authority.

Defendants and their amici primarily argue that Illinois has exceeded its authority by improperly legislating in an area preempted by PLCAA. AT Br. 22-34; Mont Br. 7-18; NASGW Br. 12-25. Indeed, in addition to seeking dismissal of plaintiffs' claims on that basis, defendants have presented certified questions that ask this court to conclude that FIRA, in its entirety, is preempted. AT Br. 10-11, 23. There are at least two problems with this approach.

To start, it stems from an incorrect premise: PLCAA provides an affirmative defense to individual lawsuits, not a vehicle to invalidate a state statute. And even if it were appropriate to review the validity of FIRA in such a broad manner, it is not preempted. On the contrary, PLCAA's plain text and legislative history make clear that Congress intended for States to continue to enact laws like FIRA, which regulate the marketing and sale of firearms and allow civil enforcement actions and liability where firearm manufacturers and sellers violate state regulations through their own conduct.

A. These consolidated cases do not provide an appropriate vehicle to challenge the FIRA on preemption grounds.

At the threshold, PLCAA does not provide a vehicle to declare the entirety of a state statute to be preempted by federal law, as defendants suggest. AT Br. 10, 27-34. Instead, PLCAA provides an affirmative defense: it instructs courts to "immediately dismiss[]" civil actions that fall within

PLCAA’s prohibitions. 15 U.S.C. § 7902(b); *see also Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos*, 605 U.S. 280, 285 (2025) (stating that PLCAA “bars certain lawsuits against manufacturers and sellers of firearms”). In fact, Congress expressly disclaimed the notion that PLCAA could be used as a sword to invalidate state statutes by stating that “no provision of this chapter shall be construed to create a public or private cause of action or remedy.” 15 U.S.C. § 7903(5)(C).

Consistent with PLCAA’s design, courts typically address PLCAA preemption as an affirmative defense, on a case-by-case basis. *See Nat’l Shooting Sports Found. v. James*, 144 F.4th 98, 112-13 (2025) (rejecting plaintiffs’ pre-enforcement facial challenge to New York law on PLCAA preemption grounds and noting “the benefit of particular instances of enforcement”); *see id.* at 121 (Jacobs, J., concurring) (“PLCAA invites *as-applied* challenges. . . . [U]nless a cause of action cannot be pleaded consistently with PLCAA, preemption is best considered as applied to individual cases.” (emphasis in original)).³⁵ In fact, the Supreme Court

³⁵ In adjudicating this defense, courts have reached different outcomes based on the individual facts of each case. *Compare, e.g., Wiley Wiley, Co-Trustees for Wiley v. Fleet Farm LLC*, 799 F. Supp. 3d 860, 887 (D. Minn. 2025) (denying motion to dismiss on PLCAA grounds where plaintiffs’ negligence claim satisfied PLCAA’s predicate exception); *Salazar v. Century Arms, Inc.*, 794 F. Supp. 3d 241, 267 (D. Vt. 2024) (finding PLCAA does not bar plaintiff’s claims where plaintiff’s aiding-and-abetting claim satisfied PLCAA’s predicate exception); *Minnesota v. Fleet Farm LLC*, 679 F. Supp. 3d 825, 841-42 (D. Minn. 2023) (denying motion to dismiss on PLCAA grounds where plaintiff’s tort claims satisfy predicate exception); *Prescott v. Slide Fire Sols.*, 410 F. Supp. 3d 1123, 1139-40 (D. Nev. 2019) (denying motion to dismiss on

recently proceeded this way in *Smith & Wesson Brands*, when it determined that Mexico’s complaint could not “survive[] PLCAA” because it had failed to “plausibly allege[] conduct falling within the statute’s predicate exception.” 605 U.S. at 291.

This conclusion is further bolstered by the fact that PLCAA was not enacted to invalidate state statutes. Instead, as even defendants’ amici acknowledge, Congress enacted PLCAA in response to a perceived “expansion of the common law” that threatened to impose novel forms of civil liability on firearm manufacturers and sellers for harms “solely caused by others.” 15 U.S.C. §§ 7901(a)(6)-(7); *see also, e.g.*, Mont. Br. 10-12 (describing lawsuits based on common-law torts that led to the enactment of PLCAA); *id.* at 11 (recounting statement by Bridgeport mayor that “he was creating law with litigation because other views prevailed in the legislature and kept his preferred laws from being passed”); NASGW Br. 5-6 (collecting examples of

PLCAA grounds where plaintiffs’ allegations about bump stock manufacturer’s marketing misrepresentations satisfied PLCAA’s predicate exception); *Corporan v. Wal-Mart Stores East*, No. 16-cv-2305, 2016 WL 3881341, at *3-4 (D. Kan. July 18, 2016) (concluding that, with anticipated factual amendments, plaintiff’s complaint would sufficiently allege the elements of PLCAA’s predicate exception), *with Williams v. Sig Sauer, Inc.*, 799 F. Supp. 3d 470, 491 (E.D.N.C. 2025) (concluding that PLCAA barred plaintiff’s design defect claims where plaintiff failed to satisfy elements of PLCAA exemption due to plaintiff’s volitional violation of concealed carry statute); *Travieso v. Glock Inc.*, 526 F. Supp. 3d 533, 546-58 (D. Ariz. 2021) (finding PLCAA barred plaintiff’s product liability claims where plaintiff’s own unlawful misuse of firearms was sole proximate cause of injury).

lawsuits that “succeeded in stretching the common law far beyond its traditional limits”).

To address that specific concern, PLCAA provides that a “qualified civil liability action” may not be brought in court, 15 U.S.C. § 7902(a), and defines that term to include enumerated civil actions, *id.* § 7903(5)(A). It does not prohibit state legislatures from enacting new legislation, nor does it expressly anticipate challenges to state statutes, as has been the case in other instances where state laws have been facially invalidated on preemption grounds. *See, e.g., League of Women Voters of Ind. v. Sullivan*, 5 F.4th 714, 723 (7th Cir. 2021) (federal election law facially preempted state election law based on federal law’s direct instruction to States and as authorized by Congress’s constitutional power to make or alter state election regulations).

Finally, even if PLCAA contemplated the facial invalidation of a state statute, such sweeping relief would be a poor fit here because these consolidated cases do not implicate a fully representative range of the actions that may be brought under FIRA. Rather, they are limited to the context of private causes of action (as opposed to law enforcement actions) and invoke only two of FIRA’s four enumerated subsections and one fact pattern. And far from being barred by PLCAA, many circumstances that could implicate FIRA are, in fact, expressly permitted by PLCAA. *Cf. United States v. Salerno*, 481 U.S. 739, 745 (1987) (“A facial challenge to a legislative Act is, of course, the most difficult challenge to mount successfully, since the

challenger must establish that no set of circumstances exists under which the Act would be valid.”).

For instance, FIRA regulates industry members that are excluded from PLCAA’s definitions: while FIRA’s definition of a “firearm industry member” includes members that are not licensed, *see* 815 ILCS 505/2DDDD(a), PLCAA provides a defense only to federally licensed manufacturers, importers, and dealers, *see* 15 U.S.C. §§ 7903(2), (6). In other words, PLCAA provides no defense to a category of defendants that are subject to liability under FIRA. Likewise, FIRA regulates conduct that falls outside PLCAA’s scope. For example, FIRA applies to the sale and marketing of firearms accessories, while PLCAA’s definition of “qualified products” does not include such accessories. *See* 15 U.S.C. § 7903(4). Again, because the scope of the two statutes does not align, defendants cannot show that all actions under FIRA would be barred by PLCAA.

In short, there is no basis for this Court to adjudicate a facial challenge to FIRA (or any other state statute for that matter) in the context of this appeal.

B. In any event, FIRA is not preempted by PLCAA.

If this court were to address the broad question presented by defendants, it should conclude that FIRA is not preempted by PLCAA because PLCAA’s text and legislative history make clear that Congress intended to allow States to continue to enact laws like FIRA, which serve the

narrow but important purpose of holding firearm industry members responsible for their own wrongdoing.

1. PLCAA was designed to apply narrowly.

It is axiomatic that States have inherent police powers, including “broad regulatory authority to protect the health and safety of [their] citizens.” *Maine v. Taylor*, 477 U.S. 131, 151 (1986). States likewise may exercise their “traditional authority to provide tort remedies . . . as they see fit.” *CTS Corp. v. Waldburger*, 573 U.S. 1, 19 (2014) (internal quotations omitted). But in enacting PLCAA, Congress limited that longstanding authority by restricting the availability of tort remedies in certain enumerated civil actions. 15 U.S.C. §§ 7901, 7903.

When Congress intrudes on state authority in this way, courts facing questions about the scope of the preempted causes of action must apply a “presumption against the pre-emption of state police power regulations,” *Cipollone v. Liggett Grp., Inc.*, 505 U.S. 504, 518 (1992), only to be overcome if “the clear and manifest purpose of Congress” was to supersede the historic police powers of the States, *Wyeth v. Levine*, 555 U.S. 555, 565 (2009); *see also Gregory v. Ashcroft*, 501 U.S. 452, 460 (1991) (where intrusion on state authority occurs, “it is incumbent upon the federal courts to be certain of Congress’ intent before finding that federal law overrides” the balance of federal and state powers); *Patriotic Veterans, Inc. v. Indiana*, 736 F.3d 1041, 1046 (7th Cir. 2013) (“[G]iven the historic police powers of the states, a court

must assume that Congress did not intend to supersede those powers unless the language of the statute expresses a clear and manifest purpose otherwise.”). And here, PLCAA’s text does not clearly show that Congress intended to curb the States’ authority to enact laws like FIRA. On the contrary, PLCAA’s text shows that Congress intended that States retain the authority to enact laws that, like FIRA, hold firearm industry members accountable for their own wrongdoing.

Indeed, while PLCAA prohibits civil actions against certain firearm industry members for “harm *solely* caused by the criminal or unlawful misuse of [the members’] firearms,” Congress did not clearly state that it intended to provide immunity from all lawsuits brought under state law. 15 U.S.C. § 7901(b)(1) (emphasis added). Rather, Congress emphasized in its statement of findings and purpose that “[t]he possibility of imposing liability on an entire industry for harm that is *solely* caused by others is an abuse of the legal system” and would, among other things, “erode[] public confidence in our Nation’s laws.” *Id.* § 7901(a)(6) (emphasis added).

The repeated use of the word “solely” indicates that Congress sought to protect firearms manufacturers and sellers from civil liability under circumstances where the harm was entirely the result of unlawful conduct by third parties. But there is no indication that Congress intended to foreclose remedies, such as those created by FIRA, against manufacturers and sellers for their own conduct. *See, e.g., Soto v. Bushmaster Firearms Int’l, LLC*, 202

A.3d 262, 309 (Conn. 2019) (“At no time and in no way does the congressional statement [of facts and purposes] indicate that firearm sellers should evade liability for the injuries that result if they promote the illegal use of their products.”).

And even if PLCAA’s text were not clear, its legislative history confirms that Congress did not intend to preempt state authority to hold firearm industry members accountable for their own actions. Two of PLCAA’s sponsors, Senator Larry Craig of Idaho and Senator Jeff Sessions of Alabama, underscored this point repeatedly when explaining the scope of PLCAA. Senator Craig emphasized that PLCAA “is not a gun industry immunity bill” and “does not prevent [gun manufacturers and sellers] from being sued for their own misconduct.” 151 Cong. Rec. S9061, 9088 (July 27, 2005); *see also, e.g., id.* at S9089 (“If a gun dealer or manufacturer violates the law, this bill is not going to protect them from a lawsuit brought against them for harm resulting from that misconduct.”). Instead, PLCAA “only stops one extremely narrow category of lawsuits”: those that “attempt to force the gun industry to pay for the crimes of third parties over whom they have no control.” *Id.* at S9088; *see also id.* (stating that PLCAA’s drafters “tried to make that limitation as clear as we possibly can”).

Senator Sessions similarly characterized PLCAA’s preemption as “incredibly narrow,” 151 Cong. Rec. S8911 (July 26, 2005), and made clear that “[p]laintiffs are not prevented from having a day in court,” *id.* On the

contrary, they “can go to court if the gun dealers do not follow the law, if they negligently sell the gun, if they produce a product that is improper or they sell to someone they know should not be sold to or did not follow steps to determine whether the individual was [eligible] to bu[y] a gun.” *Id.* In short, Senator Sessions noted, “[m]anufacturers and sellers are still responsible for their own negligent or criminal conduct.” *Id.*

2. The predicate exception applies here.

In line with these goals, Congress carved out six exceptions to PLCAA immunity. 15 U.S.C. § 7903(5)(A). Of particular relevance here, Congress explicitly exempted actions in which a manufacturer or seller of firearms “knowingly violated a State or Federal statute applicable to the sale or marketing of the product.” *Id.* § 7903(5)(A)(iii).³⁶ This exception has “come to be known as the ‘predicate exception,’ because a plaintiff . . . must allege a knowing violation of a ‘predicate statute.’” *Ileto v. Glock, Inc.*, 565 F.3d 1126, 1132 (9th Cir. 2009).

The operative phrase in the predicate exception is whether the statute at issue is one that is “applicable to” the sale or marketing of firearms. *City of New York v. Beretta U.S.A. Corp.*, 524 F.3d 384, 399-401, 404 (2d Cir.

³⁶ Although the parties have focused on the third category (the predicate exception) for purposes of this case, actions including FIRA claims — particularly those brought under subsections (b)(1) and (b)(4) — could fall into the first, second, third, and fifth exceptions, depending on the conduct alleged. In addition to the reasons identified above, *see supra* Section II.A., the possibility that other PLCAA exceptions might apply provides yet another reason why this interlocutory appeal should not be resolved on broad terms.

2008). As even defendants admit, *see, e.g.*, AT Br. 29, while courts have reached different conclusions as to the precise contours of that language, there is consensus that at the very least, it encompasses statutes that expressly regulate the firearm industry, *Beretta*, 524 F.3d at 402; *see also, e.g., Iletto*, 565 F.3d at 1136-38 (concluding that PLCAA preempts “general tort law claims” but would not preempt sales and marketing statutes that apply to the “firearms industry specifically”).

FIRA is plainly a state statute “applicable to the sale or marketing” of firearms. 15 U.S.C. § 7903(5)(A)(iii). That FIRA applies to the sales and marketing of firearms is obvious from its text: FIRA adds a section to the Consumer Fraud Act titled “sale and marketing of firearms” and discusses the sale and marketing of firearms throughout its body. *See* 815 ILCS 505/2DDDD. In fact, even defendants recognize that “FIRA targets those who market firearms.” AT Br. 34; *id.* at 35 (FIRA “resembles another firearm-related marketing law”).

Notwithstanding these admissions, defendants assert that FIRA cannot fall within the predicate exception because FIRA “simply repackages generalized common law based reasonableness concepts that Congress preempted.” *Id.* at 32. This argument is incorrect on all fronts. At the threshold, defendants misdescribe FIRA, which does not simply mirror the common law. As explained, *supra* p. 5, not only does the Consumer Fraud Act provide protections to consumers beyond those developed in the common

law, but FIRA created new restrictions on firearm industry members that were not in the Consumer Fraud Act.

Similarly, it is untrue that FIRA operates through “broad” or “generalized” concepts, as defendants argue, AT Br. 27-28; rather, as explained, *supra* pp. 6-8, FIRA contains many specific restrictions. For example, FIRA expressly prohibits advertisements that encourage individuals to engage in unlawful paramilitary activity or minors to unlawfully purchase or possess firearms. 815 ILCS 505/2DDDD(b)(2)-(3). The parameters of what constitutes unlawful conduct in these contexts is clearly described in state and federal law, and these restrictions do not extend into lawful conduct. *See supra* pp. 6-8. FIRA also requires firearm industry members to establish and utilize “reasonable controls,” which it defines to include procedures and practices that are designed to prevent the sale of firearm-related products to straw purchasers, prevent the loss or theft of such products, and comply with all local, state, and federal laws. 815 ILCS 505/2DDDD(b)(1). Here, too, there is no ambiguity as to what is expected under FIRA, nor do defendants identify any potential problems associated with complying with FIRA with any level of specificity.

Furthermore, defendants’ argument incorrectly presumes that the predicate exception requires state statutes to provide a detailed list of duties without relying on concepts like reasonableness. *See, e.g.,* AT Br. 24 (predicate exception “requires knowing violations of discrete, identifiable

statutes that directly regulate firearms transactions”). This is not the case. PLCAA itself embraces reasonableness; its text uses the term “reasonable” or “reasonably” in three different exceptions — including the predicate exception. 15 U.S.C. §§ 7903(5)(A)(iii)(II), (5)(A)(v), (5)(B). And the predicate exception contains no language imposing the limitations that defendants seek. Instead, as explained, the exception may be invoked where the defendant has violated a state statute “applicable to the sale or marketing of a qualified product.” *Id.* § 7903(5)(A).

Nevertheless, defendants and their amici maintain that the predicate exception’s illustrative examples show that such a concreteness requirement exists, and that FIRA is comparatively too generalized to be a predicate statute. AT Br. 30; Mont. Br. 16; NASGW Br. 9-10, 17-18. On the contrary, these examples demonstrate how FIRA’s regulation of the sale and marketing of firearm products is consistent with PLCAA. The predicate exception explains it covers actions “including” (1) lawsuits to enforce a state or federal recordkeeping law or (2) lawsuits to enforce a statute prohibiting firearm suppliers from aiding, abetting, or conspiring in straw purchases of their products. 15 U.S.C. § 7903(5)(A)(iii). Both examples are premised on a statute rather than common law, enforce regulations specific to the firearm industry, and arise from industry-member conduct, rather than third-party conduct. *Id.* As explained, *see supra* pp. 6-8, many actions premised on FIRA will share these characteristics.

Defendants next assert that FIRA cannot serve as a predicate statute because it is “inherently indeterminate and retrospective.” AT Br. 33. The majority of this argument is directed at the claims in this case (given that FIRA’s enactment post-dated the Highland Park mass shooting) and thus cannot serve as a basis to conclude that FIRA itself is preempted by PLCAA. But defendants also assert that the structure and wording of FIRA is retrospective because FIRA “makes a violation unknowable until after the fact, when a judge or jury has decided what advertisements may have reasonably appeared to support or encourage certain conduct.” *Id.* Accordingly, defendants argue, FIRA cannot “support a ‘knowing’ violation” as is required under the predicate exception. *Id.*

This position, however, is merely a repackaged version of their incorrect view that FIRA’s generalized standards are not sufficiently concrete to satisfy PLCAA. *See, e.g.,* NASGW Br. 19 (making the unknowability argument in the concreteness context). Furthermore, the notion that the terms in the Consumer Fraud Act cannot possibly be understood by market participants was rejected decades ago by the Illinois Supreme Court. *Scott*, 88 Ill.2d at 289-90. And by enacting FIRA, the General Assembly provided additional detail regarding the application of the Consumer Fraud Act to the sale and marketing of firearms, making such arguments even less persuasive.

Finally, defendants gesture at the argument that FIRA imposes liability for third-party conduct but point to no specific bases for reaching such a conclusion. *E.g.*, AT Br. 33 (stating in passing that FIRA imposes third-party liability). Nor could they. As explained, *see supra* pp. 6-8, FIRA imposes liability only for firearm industry members' own conduct. And if a plaintiff were to bring suit attempting to hold a dealer or manufacturer liable solely for third-party conduct, then that action would properly be dismissed for failure to allege a claim under FIRA and, alternatively, as barred by PLCAA.

All told, FIRA, which creates a cause of action directed at the harmful conduct of firearm industry members (and not harms caused solely by third parties), fits squarely within PLCAA's predicate exception.

CONCLUSION

This court should resolve the certified questions in favor of plaintiffs-appellees.

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h) statement of points and authorities, the Rule 314(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a) is 31 pages.

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CERTIFICATE OF FILING AND SERVICE

I certify that on June 18, 2026, I electronically filed the foregoing **Brief of Amicus Curiae State of Illinois** with the Clerk of the Court for the Illinois Appellate Court, Second Judicial District, by using the Odyssey eFileIL system.

I further certify that the other participants in this action, named below, are registered service contacts on the Odyssey eFileIL system, and thus will be served via the Odyssey eFileIL system.

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Under penalties as provided by law pursuant to section 1-109 of the Illinois Code of Civil Procedure, I certify that the statements set forth in this instrument are true and correct to the best of my knowledge, information, and belief.

/s/ Sarah A. Hunger
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