No. 132414

IN THE
SUPREME COURT OF ILLINOIS

KEELY ROBERTS, individually and as parent and next friend of C.R. and L.R., and JASON ROBERTS, individually and as parent and next friend of C.R. and L.R.,	On Petition for Leave to Appeal from the Appellate Court of Illinois, Second District, in Action No. 2-25-0274
Plaintiffs-Respondents,	There heard from the Circuit Court of Lake County, Illinois, County Department, Law Division;
v.	
Smith & Wesson Brands, Inc., Smith & Wesson Sales Company, and Smith & Wesson, Inc.,	No. 22 LA 00000487
Defendants-Petitioners,	Consolidated with Case Nos. 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
and	
Budsgunshop.com, LLC, Red Dot Arms, Inc., Robert Crimo, Jr., and Robert Crimo, III,	
Defendants.	The Honorable Judge Jorge L. Ortiz, Judge Presiding.

ANSWER TO PETITION FOR LEAVE TO APPEAL

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INTRODUCTION

On July 4, 2022, a 21-year-old with an assault weapon climbed to the roof of a building in downtown Highland Park, assumed a sniper position, and opened fire on the town's Independence Day parade, killing 7 people and shooting 48 others. The fact that the shooter used a Smith & Wesson Military and Police ("M&P") assault weapon to carry out this massacre was not happenstance. Rather, it was a foreseeable consequence of Smith & Wesson's extensive, years-long marketing campaigns, which have targeted people just like the shooter—young men obsessed with violence and first-person-shooter video games—and have encouraged the M&P assault weapon's militaristic use by civilians, including the mass shooters in Aurora, Colorado, San Bernardino, California, and Parkland, Florida. A.39-40 ¶¶ 6-9, A.60 ¶ 79, A.68 ¶ 102. Here, the shooter was directly exposed to and influenced by such deceptive and unfair marketing, including on the website where he purchased the weapon. *See* A.41 ¶ 10, A.63 ¶ 85, A.69 ¶ 108, A.73 ¶¶ 125-26, A.76 ¶ 140. In short, Smith & Wesson sold the shooter—a self-styled "Master Gunnery Sergeant"—a perverse militaristic fantasy that he acted out when he forever scarred an entire community. A.38-39 ¶¶ 3, 6. Plaintiffs-Respondents here include families of the 7 murdered victims and 69 others who suffered physical and emotional injuries that day.

Smith & Wesson has repeatedly sought to thwart Plaintiffs' efforts to seek justice. The initial lawsuits in these consolidated cases were filed in 2022 and were delayed for almost two years by Smith & Wesson's frivolous removal to federal court.[1] When the cases

[1] Once the removal issues reached the Seventh Circuit, the panel issued an opinion just four days after oral argument upholding the district court's remand decision and instructed the district court to "consider whether Smith & Wesson must reimburse the plaintiffs' costs and fees occasioned by the unjustified removal and appeal." *Roberts v. Smith & Wesson Brands, Inc.*, 98 F.4th 810, 816 (7th Cir. 2024). The district court did so, finding that attorney's fees and costs were justified because Smith & Wesson lacked "an objectively

returned to Lake County, Smith & Wesson filed motions to dismiss which were denied in large part on April 1, 2025. Discovery in the almost three-year-old cases began in June 2025 and is currently ongoing. Yet, Smith & Wesson seeks to delay these cases still further through this unwarranted interlocutory appeal, which began with its attempt to certify fourteen questions through the limited process under Illinois Supreme Court Rule 308. The circuit court declined to certify the majority of these questions. A.2678. Nonetheless, Smith & Wesson asked the appellate court to review an array of both certified and non-certified questions, A.2694-95, which the court correctly declined to do, A.1. Now, in search of a third bite at the apple, Smith & Wesson recycles old arguments and relies on familiar tactics of misusing applicable caselaw, mischaracterizing the record below, and ignoring a mountain of authority that directly supports Plaintiffs' claims. The Court should reject those efforts and deny the petition, letting the litigation proceed before the circuit court.

ARGUMENT

Review is unwarranted under Illinois Supreme Court Rule 315 or Rule 383 on any of the issues raised by Smith & Wesson. To start, the Rule 315 factors counsel against review. Most basically, Smith & Wesson asks for review of an interlocutory order, which "is not favored." *Rozsavolgyi v. City of Aurora*, 2017 IL 121048, ¶ 34 (quoting Ill. S. Ct. R. 318(b)). Further, there is no conflict with this Court or the appellate court's decisions, and there is no need for this Court to exercise its "supervisory authority." *See* Ill. S. Ct. R. 315(a). For similar reasons, this Court should not enter a supervisory order under Rule 383.

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reasonable basis to remove the cases to federal court." *Roberts v. Smith & Wesson Brands, Inc.*, No. 1:22-cv-06169, slip op. at 2 (N.D. Ill. Mar. 21, 2025).

In particular, and as explained more below, Smith & Wesson's petition raises three sets of issues, but none merit review—particularly at this early stage. First, Smith & Wesson argues that Plaintiffs failed to plead proximate cause and that the circuit court misapplied Illinois precedent on that issue. In so arguing, Smith & Wesson misrepresents Plaintiffs' complaint, claiming incorrectly that Plaintiffs fail to allege that the shooter saw a single advertisement, and attempts to avoid liability for the foreseeable impact of its illegal marketing.

Second, Smith & Wesson claims that Plaintiffs—who are the innocent victims of Smith & Wesson's marketing—lack standing to bring their unfairness claim under the Illinois Consumer Fraud and Deceptive Business Practices Act ("CFA"), 815 ILCS 505/2 *et seq.*, as amended by the Firearm Industry Responsibility Act ("FIRA"), 815 ILCS 505/2DDDD, because they themselves did not directly see or rely on Smith & Wesson's marketing. This contention is inconsistent with Illinois caselaw and the legislature's enactment of FIRA, which specifically confirms that victims of gun violence in Illinois have an avenue for relief under the CFA. Further, this standing argument impacts only one of Plaintiffs' claims. Thus, a ruling for Smith & Wesson on this issue would have no impact on most of the claims in this case and the litigation would proceed.

Third, Smith & Wesson argues that it is entitled to dismissal under the Protection of Lawful Commerce in Arms Act ("PLCAA"), 15 U.S.C. § 7901 *et seq.*, that PLCAA preempts FIRA, and that FIRA is unconstitutional. But the caselaw is clear that PLCAA permits Plaintiffs' suit and that PLCAA does not preempt FIRA. Meanwhile, Smith & Wesson's constitutional arguments border on frivolous. Although Smith & Wesson

attempts to complicate these issues to make them seem fit for interlocutory review, there are in fact clear answers to each.

In short, there is no need for this Court's "authoritative" intervention on these issues and their "resolution [can be] entrust[ed]" to the lower courts, *Johnson v. Ames*, 2016 IL 121563, ¶ 25 (Thomas, J., specially concurring), where the litigation should proceed.

I. This Court Should Deny Review on the Proximate Cause and Standing Issues.

A. The circuit court's proximate cause and standing rulings do not present an exceptional circumstance warranting supervisory review.

The circuit court specifically declined to certify questions under Rule 308 regarding its rulings that Plaintiffs adequately plead proximate cause and that Plaintiffs have standing to bring an unfairness claim under the CFA. A.2678. Absent such certification from the circuit court, these rulings are "neither final nor appealable," and thus this Court would need to exercise its supervisory authority under Rule 315 to grant review. *Carmichael v. Union Pac. R.R. Co.*, 2019 IL 123853, ¶ 37. That authority, however, is "reserved for exceptional circumstances" and should not be used to "circumvent[] the normal appellate process." *Id.*

There is no such rare circumstance here. The proximate cause inquiry includes fact-dependent questions and the standing question is relevant to only one of Plaintiffs' several claims, *cf. Carle Found. v. Cunningham Twp.*, 2017 IL 120427, ¶ 34 (declining to exercise supervisory authority for "piecemeal litigation"). Accordingly, the appropriate course is for Smith & Wesson to wait until there is a final, appealable judgment.

B. The circuit court's rulings on proximate cause accord with Illinois precedent.

There is also no need to review the circuit court's proximate cause rulings because, contrary to Smith & Wesson's arguments, *see* Pet. 9-10, they are consistent with Illinois pleading requirements and this Court's precedent. The circuit court concluded that, at this threshold stage of the litigation, Plaintiffs' allegations established proximate cause sufficient to defeat a motion to dismiss under Illinois Code of Civil Procedure Section 2-615. A.9-14. The weakness of Smith & Wesson's contrary argument is highlighted by its false assertion that Plaintiffs do not "allege that the Shooter saw any particular Smith & Wesson advertisement" and or "plead facts explaining how such an advertisement" caused the shooting. Pet. 10. A simple review of the complaint shows that this is not true:[2] Plaintiffs alleged that Smith & Wesson targeted young, disaffected men like the shooter through deceptive and unfair marketing; the shooter was directly exposed to and influenced by this marketing, including a video on the website where he purchased the weapon; and the shooter selected an M&P assault weapon to carry out his heinous act in significant part due to this marketing. *See* A.41 ¶ 10, A.63 ¶ 85, A.69 ¶ 108, A.73 ¶¶ 125-26; A.76 ¶ 140. The circuit court discussed these allegations at length and held that it was fair to infer that "the shooter saw one or more of Smith & Wesson's advertisements and was motivated or inspired by it." A.10-11.[3]

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[2] Complaint citations refer to paragraphs of the First Amended Complaint filed in *Roberts v. Smith & Wesson Brands, Inc.*, No. 22-LA-00000487, on July 2, 2024, which can be found at A.37-107 and is sufficiently representative of all Plaintiffs' allegations (contained in 25 separate complaints) for purposes of this analysis.

[3] The circuit court also distinguished the detailed allegations here from those in the out-of-state cases that Smith & Wesson cites. A.11-12. It instead found Plaintiffs' allegations similar to those in *Soto v. Bushmaster*, 331 Conn. 53, 98 (2019), where a court found that

Further, Smith & Wesson's argument that Plaintiffs cannot plead legal cause because of a "lengthy chain" of intervening third-party acts fundamentally misunderstands this Court's precedent. *See* Pet. 9-10 (citing *Young v. Bryco Arms*, 213 Ill. 2d 433 (2004) and *City of Chicago v. Beretta*, 213 Ill. 2d 351 (2004)). Setting aside Smith & Wesson's mischaracterization of Plaintiffs' allegations,[4] it ignores that legal cause "involves an assessment of foreseeability, in which we ask whether the injury is of a type that a reasonable person would see as a likely result of his conduct." *Young*, 213 Ill. 2d at 446-47. This standard applies when third-party acts contribute to the causes of an event. *Id.* at 453; *City of Chicago*, 213 Ill. 2d at 407-08. Thus, *Young* asked whether a public nuisance in Chicago was the "foreseeable" result of firearm industry members' manufacturing and sales activities, even in light of intervening third-party criminal acts. 213 Ill. 2d at 516; *see City of Chicago*, 213 Ill. 2d at 408 (undertaking similar analysis). Smith & Wesson, however, claims that the intervening events here defeat legal causation without discussing whether these events or the mass shooting were foreseeable. *See* Pet. 9. It is thus Smith & Wesson's understanding of legal cause—not the circuit court's—that would "upend" this Court's precedent by bypassing the required foreseeability analysis. *Cf.* Pet. 10.

Indeed, the circuit court correctly applied that standard to the facts here, distinguishing them from those in *Young*. A.11-14. There, this Court's "ultimate" conclusion finding no legal cause was a "public policy determination" based on its

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the victims of the Sandy Hook massacre had adequately alleged that gun industry members' advertising proximately caused the attack. *Id.*

[4] Plaintiffs have previously explained why there is no such artificially long "chain" of intervening events, including because some occurred before the shooter purchased his weapon, the remaining events were foreseeable, and Smith & Wesson's marketing influenced the shooter until the moment of the shooting. *See* A.2015 & n.17.

overriding concern that it "ha[d] no indication from the legislature that it would be inclined to impose public nuisance liability" for the defendants' lawful business activities. *Young*, 213 Ill. 2d at 455. By contrast, here, the General Assembly enacted FIRA, which prohibits gun companies from engaging in any marketing that appears to encourage civilians to use firearms for unlawful paramilitary or military-related purposes or otherwise engaging in unfair or deceptive conduct. 815 ILCS 505/2DDDD(b)(2), (4). In doing so, the General Assembly determined that "public policy favors holding gun companies accountable for engaging in unfair and deceptive marketing that lead[s] to gun violence." A.2013 (circuit court motion-to-dismiss order). Further, in *Young*, this Court concluded that the defendants' conduct "merely create[d] a condition that made the eventual harm possible" because it was "unreasonable to expect defendants to foresee that the *aggregate* effect of the *lawful* manufacture and sale of firearms" would be the public nuisance in Chicago. 213 Ill. 2d at 517. But here, Plaintiffs challenge specific, illegal conduct by Smith & Wesson that foreseeably led to the shooting: "unfair and deceptive marketing . . . that reasonably appeared to support, recommend, and encourage civilians to act out their militaristic fantasies." A.73 ¶ 125; *see* A.12. The circuit court thus correctly applied the legal standard in *Young*.

C. The circuit court's determination that Plaintiffs have standing to bring their CFA unfairness claim is consistent with this Court's precedent.

Smith & Wesson is also wrong that Illinois precedent forecloses Plaintiffs from bringing their unfairness claims under Section 10a of the CFA—which provides that "[a]ny person who suffers actual damages as a result of a violation of this Act committed by any other person may bring an action against such person," 815 ILCS 505/10a(a). Smith &

Wesson argues that Plaintiffs lack standing because they did not rely on its marketing, pointing to *Tri-Plex Tech. Servs., Ltd. v. Jon-Don, LLC*, 2024 IL 129183. Pet. 11-12. There, this Court held that a business plaintiff bringing a *deception* claim under the CFA could not rely on the "consumer nexus" test to meet the requirements of proximate cause. 2024 IL 129183, ¶ 29.[5] But that decision has nothing to do with this case. To start, *Tri-Plex* said nothing about an *unfairness* claim under the CFA, the elements of which require only that the defendant's business practices either (1) offend public policy; (2) are immoral unethical, oppressive, or unscrupulous; or (3) cause substantial injury to consumers. *See Robinson v. Toyota Motor Credit Corp.*, 201 Ill. 2d 403, 417-18 (2002). Injury to consumers can be a factor in liability, but it does not need to be. *Id*. Smith & Wesson's citation to *Sheffler v. Commonwealth Edison Co.*, is beside the point. There, the Court held that the plaintiff could not bring a deception or unfairness claim because the defendant's conduct did not offend public policy and the defendant had explicitly told the plaintiff that "her presence on the life support registry did not give her priority in restoration services." 2011 IL 110166, ¶¶ 63-64, 67.

But even more fundamentally, even if reliance were an element of an unfairness claim, *Tri-Plex* does not control here. Plaintiffs allege that Smith & Wesson's marketing targeted and reached the shooter, the shooter was influenced by the marketing, and this influence was a significant factor in him shooting Plaintiffs and their loved ones. *See* A.41 ¶ 10, A.63 ¶ 85, A.69 ¶ 108, A.73 ¶¶ 125-26, A.76 ¶ 140. This Court has repeatedly recognized potential CFA liability where the defendant's business practices influence a

[5] The appellate court in *Tri-Plex* described this as a standing analysis, as Smith & Wesson does here, but this Court explained that the proper question was whether the plaintiff had pled proximate cause. *See* 2024 IL 129183, ¶ 30.

consumer, and that consumer's reliance on the marketing harms others. *See, e.g.*, *Shannon v. Boise Cascade Grp.*, 208 Ill. 2d 517, 526 (2004) (observing that if defendant's product literature about home siding had deceived a particular builder, resulting in the installation of defective siding in a home, and that deception ultimately harmed the third party who moved into the home, the resident could bring a claim under Section 10a of the CFA); *DeBouse v. Bayer*, 235 Ill. 2d 544, 555, 559-60 (2009) (holding that the CFA recognizes liability under the theory of "indirect deception" but concluding that patient using medication had only alleged "general deception" of the medical community, without any demonstrated connection to her, because she failed to allege that her particular doctor was deceived).

Accordingly, the determination that Plaintiffs have standing under Section 10a(a) of the CFA is fully consistent with this Court's precedent. By contrast, Smith & Wesson's position would mean that only those who rely on its unfair marketing promoting unlawful uses of its firearms—*i.e.*, those who purchase weapons and use them to commit gun violence—could sue under FIRA (which amended the CFA). That would subvert the purpose of FIRA, which was designed to "ensure that families devastated by gun violence have a path forward to justice in Illinois civil courts." 103rd Gen. Assemb., 43rd Leg. Day 102 (Ill. 2023).

II. This Court Should Deny Review Regarding PLCAA.

The federal Protection of *Lawful* Commerce in Arms Act protects firearm manufacturers, like Smith & Wesson, from certain lawsuits if the firearm manufacturer acted legally. 15 U.S.C. §§ 7902(a), 7903(5)(A) (requiring dismissal of "qualified civil liability action[s]"); *see Adames v. Sheahan*, 233 Ill. 2d 276, 308 (2009). But PLCAA

permits claims, like Plaintiffs', that are premised on *unlawful* conduct by a gun industry actor. The "predicate exception," at issue here, permits "an action in which a manufacturer or seller of a [firearm] knowingly violated a State or Federal statute applicable to the sale or marketing of" firearms, where "the violation was a proximate cause of the harm." 15 U.S.C. § 7903(5)(A)(iii). For a claim to proceed under the predicate exception, "[the] plaintiff not only must present a cognizable claim, he or she also must allege a knowing violation of a 'predicate statute.'" *Ileto v. Glock*, Inc., 565 F.3d 1126, 1132 (9th Cir. 2009) (citations omitted); *see also Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos*, 605 U.S. 280, 285 (2025) (plaintiff relying on predicate exception must demonstrate that defendant "participated in the unlawful sale or marketing of firearms"). This exception permits both statutory and common-law claims grounded in the predicate violation to proceed. *See, e.g.*, *Salter v. Meta Platforms, Inc.*, 240 N.Y.S.3d 610, 619-21 (App. Div. 2025).

Here, Smith & Wesson seeks review concerning whether Illinois's consumer protection statutes are "applicable to" the sale or marketing of firearms within the meaning of the predicate exception. The Rule 315 factors do not favor review, however, because (1) there is no conflict in or with appellate authority; (2) there is nothing warranting the Court's exercise of supervisory authority; and, as explained, (3) the circuit court's motion-to-dismiss order is interlocutory, so reviewing it at this stage of the litigation is disfavored. Ill. Sup. Ct. R. 315(a). The circuit court simply certified questions on this topic because an Illinois reviewing court had not directly addressed them. A.2679. But the appellate court correctly denied leave to appeal because, as explained below and more fully before that court, A.2734-42, A.2743-52, caselaw from around the country supports the circuit court's

denial of Smith & Wesson's motion to dismiss. There is no reason to interrupt the litigation before the circuit court—and delay justice for the victims here—by taking up an interlocutory appeal involving questions that the circuit court clearly got right.

A. The CFA, the DTPA, and FIRA satisfy PLCAA because they are "applicable to" the sale or marketing of firearms.

PLCAA's predicate exception encompasses violations of the CFA, the Illinois Deceptive Trade Practices Act, 815 ILCS 510/2 ("DTPA"), and FIRA because they are laws "applicable to the sale or marketing" of firearms. 15 U.S.C. § 7903(5)(A)(iii). Courts have repeatedly held that general consumer protection statutes that regulate the purchase or sale of goods (including firearms) satisfy the predicate exception.[6] That is so because the predicate exception "encompass[es] statutes that do not expressly regulate firearms but that clearly can be said to implicate the purchase and sale of firearms." *City of New York v. Beretta U.S.A. Corp.*, 524 F.3d 384, 404 (2d Cir. 2008); *see also Ileto*, 565 F.3d at 1136-37 (observing that PLCAA's legislative history indicated that manufacturers "would be liable only for statutory violations concerning firearm regulations or *sales and marketing regulations*" (emphasis added)); *Soto v. Bushmaster Firearms Int'l, LLC*, 202 A.3d 262, 302, 325 (Conn. 2019) (concluding that state consumer protection statute satisfied predicate exception based on PLCAA's plain text, statutory framework, legislative history, and other canons of interpretation). The CFA and the DTPA clearly satisfy that standard.

[6] *See, e.g.*, *Salter*, 240 N.Y.S.3d at 618 (holding that New York's consumer protection statutes "involve the general marketing and sale of products in New York and, as a result, bring plaintiffs' actions within the ambit of the predicate exception"); *Doyle v. Combined Sys., Inc.*, No. 3:22-cv-01536, 2023 WL 5945857, at *10-11 (N.D. Tex. Sept. 11, 2023) (same for Texas Deceptive Trade Practices Act); *Goldstein v. Earnest*, No. 37-2020-00016638, 2021 WL 12321922, at *5 (Cal. Super. Ct. July 2, 2021) (same for California Unfair Competition Law); *Prescott v. Slide Fire Sols., LP*, 410 F. Supp. 3d 1123, 1138-39 (D. Nev. 2019) (same for Nevada Deceptive Trade Practices Act).

Despite Smith & Wesson's contrary suggestion, *see* Pet. 14, the CFA and DTPA look nothing like the statutes that were held not to satisfy the predicate exception in *City of New York* and *Ileto*, which involved a public nuisance statute and the codification of common-law torts respectively. Neither of those cases suggested that statutes regulating the commercial sale or marketing of goods, such as the CFA and DTPA, cannot satisfy the predicate exception. Therefore, there is no relevant split in authority warranting interlocutory review.

The authority is even stronger for FIRA, which declares explicitly what was already true: Section 2 of the CFA applies to the firearm industry, and firearm industry members may not engage in marketing that promotes unlawful military activities by civilians. 815 ILCS 505/2DDDD(b)(2), (4); *see also id.* 505/2DDDD(c) (explaining that subsections (b)(2) and (b)(4) "are declarative of existing law and shall not be construed as new enactments"). In other words, FIRA expressly regulates the sale and marketing of firearms. Unsurprisingly, courts are unanimous that laws expressly regulating the sale or marketing of firearms qualify as predicate statutes.[7] Smith & Wesson has not—because it cannot—cited any contrary authority. Instead, Smith & Wesson misuses the sparse caselaw that it does cite. *See* Pet. 14 (citing *Delana v. CED Sales, Inc.*, 486 S.W.3d 316, 321-22 (Mo.

[7] *See, e.g.*, *Nat'l Shooting Sports Found., Inc. v. James*, 144 F.4th 98, 110 (2d Cir. 2025) (holding that New York's law that "expressly regulates firearms" is a predicate statute); *City of New York*, 524 F.3d at 404 (identifying statutes that "expressly regulate firearms" as predicate statutes); *Brady v. Walmart Inc.*, No. 8:21-cv-01412, 2024 WL 5075200, at *4 (D. Md. Dec. 11, 2024) (denying interlocutory review for lack of "substantial ground for difference of opinion" about whether a statute that "expressly regulates firearms" satisfied the predicate exception); *Stanisic v. Sturm, Ruger & Co.*, No. X10-UWY-CV-23-6072789-S, 2025 WL 3212692, at *21-22 (Conn. Super. Ct. Nov. 12, 2025) (concluding that two federal statutes expressly regulating firearms qualify as predicate statutes, consistent with decisions from "[c]ourts across the nation").

2016), and *In re Est. of Kim ex rel. Alexander v. Coxe*, 295 P.3d 380, 386 (Alaska 2013)). Those cases, however, merely stand for the unremarkable proposition that PLCAA bars negligence claims that fail to satisfy any of PLCAA's exceptions. *See Delana*, 486 S.W.3d at 321; *Est. of Kim*, 295 P.3d at 386. Because Plaintiffs plead knowing violations of predicate statutes, those cases do not apply.

Further, Smith & Wesson's claim that this case is "strikingly similar," Pet. 13, to *Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos*, 605 U.S. 280 (2025), is easily dispatched. There, the plaintiffs sued several gun manufacturers for contributing systemically to the general gun violence epidemic in Mexico. *Id.* at 287. In contrast, Plaintiffs here allege specific misconduct by one manufacturer, Smith & Wesson, which proximately caused an identified mass shooting in Highland Park. The allegations here look nothing the *Estados Unidos Mexicanos* complaint, and there is no doubt that Plaintiffs' claims can proceed "without crippling PLCAA," because they "allege only that one specific [firearm manufacturer] advertised" certain of its assault weapons illegally, *Soto*, 202 A.3d at 312. Further, the U.S. Supreme Court's unanimous opinion reaffirmed that PLCAA's predicate exception "opens a path to making a gun manufacturer civilly liable for the way a third party has used the weapon it made." *Estados Unidos Mexicanos*, 605 U.S. at 286. Nothing in *Estados Unidos Mexicanos* suggests that this case warrants interlocutory review.

B. PLCAA does not preempt FIRA, whose relevant provisions merely declared the meaning of existing law.

Smith & Wesson's arguments about the interaction between FIRA and PLCAA can likewise be rejected based on the clear weight of authority. First, Smith & Wesson's assertion that PLCAA preempts FIRA is without merit. *See* A.2741-42. "[A] presumption

exists in every preemption case that Congress did not intend to supplant state law." *Bishop v. Burgard*, 198 Ill. 2d 495, 501 (2002). "Even when a federal statute . . . contains an express preemption provision, the starting point for our analysis is the presumption that 'the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress.'" *Weiland v. Telectronics Pacing Sys., Inc*., 188 Ill. 2d 415, 417 (1999) (citation omitted).

Far from preempting statutes like FIRA, "the existence of the predicate exception evidences Congress's intent to preserve at least some causes of action flowing from knowing violations of state and federal laws applicable to the sale or marketing of firearms." *Nat'l Shooting Sports Found.*, 144 F.4th at 110 (holding that PLCAA does not preempt New York's firearm industry accountability law); *see Est. of Kim*, 295 P.3d at 389 ("PLCAA *allows* Alaska's legislature to create liability for harms proximately caused by knowing violations of statutes regulating firearm sales and marketing."). Further, Congress explicitly noted that a purpose of PLCAA is to "preserve and protect . . . important principles of federalism, State sovereignty and comity between sister States." 15 U.S.C. § 7901(b)(6). In passing PLCAA, Congress therefore intended to preserve the ability of state legislatures to enact public safety and consumer protection laws that apply to the firearms industry, which is exactly what Illinois did.

Second, that FIRA was enacted after the conduct at issue occurred does not prevent Plaintiffs from alleging a knowing violation of FIRA (and thus satisfying PLCAA's predicate exception). The relevant provisions were "declarative of existing law" and are not "new enactments." 815 ILCS 505/2DDDD(c). *See* A.2750-51. Thus, the duties that FIRA describes already existed in 2020, when the shooter purchased his Smith & Wesson

assault weapon, and in 2022, when he committed the Highland Park shooting, even though FIRA was passed later. Illinois courts have repeatedly held that statutes providing for their declarative impact do not change existing law.[8] Further, unless a statute states otherwise, "the term 'knowingly' merely requires proof of knowledge of the facts that constitute the offense," not knowledge that the conduct was illegal. *Bryan v. United States*, 524 U.S. 184, 193 (1998). Thus, all PLCAA requires is knowledge of the facts that constitute the predicate violation (here, the contents of Smith & Wesson's marketing that made it unfair or deceptive), not knowledge of the conduct's illegality or the specific law that it violates.[9]

Nothing in Rule 315 supports this Court taking up an appeal of an interlocutory order where the circuit court so plainly reached the correct result and the appellate court already denied review.

III. Smith & Wesson's As-Applied Constitutional Challenge to FIRA Is Premature and Barred by Controlling Precedent.

Smith & Wesson's recycled arguments about FIRA's constitutionality do not warrant review. First, Smith & Wesson concedes that it brings an as-applied constitutional challenge, Pet. 17, which is "dependent on the particular circumstances and facts of the individual [party]." *Kopf v. Kelly*, 2024 IL 127464, ¶ 23 (citation omitted). Accordingly,

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[8] *See, e.g.*, *Wells Fargo Bank, N.A. v. Maka*, 2017 IL App (1st) 153010, ¶¶ 18, 23 (amendment that was "declarative of existing law" "must be accepted as a legislative declaration of the meaning of the original [statute]"); *Harris Bank St. Charles v. Weber*, 298 Ill. App. 3d 1072, 1080 (2d Dist. 1998) (same where amendment was "intended as a clarification of existing law and not as a new enactment"); *Bloink v. Olson*, 265 Ill. App. 3d 711, 715-16 (2d Dist. 1994) (same where statute was "a declaration of existing law" (emphasis omitted)).

[9] Smith & Wesson's slapdash argument that Plaintiffs fail to allege a knowing violation of FIRA, Pet. 16-17, is a fact-bound argument that the circuit court did not certify and that is unfit for interlocutory review. In any event, Smith & Wesson is wrong; Plaintiffs amply alleged knowing violations of FIRA that proximately caused the Highland Park shooting. *See* A.2024.

"it is paramount that the record be sufficiently developed in terms of those facts and circumstances for purposes of appellate review," including an "evidentiary hearing" and "findings of fact." *Id.* (citation omitted). Without such a record, "any finding that a statute is unconstitutional 'as applied' is premature." *Id.* (citation omitted). Smith & Wesson seeks review of an interlocutory order on a motion to dismiss issued before discovery and before the circuit court has made any factual findings. The premature timing of Smith & Wesson's as-applied constitutional challenge is reason enough to deny review.

Even setting aside that dispositive procedural infirmity, the merits of Smith & Wesson's constitutional arguments regarding Section (b)(2) of FIRA do not warrant interlocutory review. Plaintiffs explained at length why FIRA is constitutional before the appellate court. A.2743-50. In short, Section (b)(2) of FIRA regulates only commercial speech that promotes unlawful activity and therefore is not protected by the First Amendment. *See Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n of New York*, 447 U.S. 557, 566 (1980); *Scott v. Ass'n for Childbirth at Home, Int'l*, 88 Ill. 2d 279, 286-87 (1981) (rejecting First Amendment challenge to CFA because "it prohibits only such speech as . . . is by definition outside the ambit of first amendment protection"). Additionally, even if FIRA implicated protected speech, it would not be subject to heightened scrutiny. Commercial speech enjoys only limited First Amendment protection, *Scott*, 88 Ill. 2d at 287, and the fact that FIRA applies specifically to the firearm industry does not constitute viewpoint discrimination, *see Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525, 553-55 (2001) (applying intermediate scrutiny to cigarette regulations).

Further, FIRA is not unconstitutionally vague under the Due Process Clause of the Fourteenth Amendment. Section (b)(2) specifically articulates what conduct is prohibited

and includes definitions of that conduct. It also relies on the concept of reasonableness, which "is a well-established legal standard that is employed in a wide range of statutes consistent with the requirements of the Due Process Clause." *Nat'l Shooting Sports Found.*, 144 F.4th at 118; *cf. Scott*, 88 Ill. 2d at 288-91 (holding that the CFA's prohibition of "unfair" conduct was not void for vagueness). Smith & Wesson's professed confusion about this provision's meaning ignores that "common sense cannot and should not be suspended" when assessing vagueness. *City of Chicago v. Pooh Bah Enters., Inc.*, 224 Ill. 2d 390, 444 (2006).

Finally, Smith & Wesson's Second Amendment argument is baseless. *See* Pet. 20-21. Smith & Wesson suggests that it has a Second Amendment right to market its firearms however it chooses because individuals will otherwise be unable to acquire and possess firearms. *See id.* Unsurprisingly, Smith & Wesson has not cited any case adopting that position. Even assuming that such a right to market firearms exists—which it does not[10]—nothing in FIRA prohibits Smith & Wesson from lawfully marketing its firearms. FIRA merely bars advertising firearms in a way that promotes certain illegal conduct or constitutes an unfair or deceptive trade practice. 815 ILCS 505/2DDDD(b)(2), (4). FIRA

[10] The marketing and selling of firearms are not covered by the "Second Amendment's plain text," the "central component" of which is "individual self-defense." *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1, 24, 29 (2022) (citation and emphasis omitted). Indeed, "laws imposing conditions and qualifications on the commercial sale of arms" are "presumptively lawful regulatory measures." *District of Columbia v. Heller*, 554 U.S. 570, 626-27 & n.26 (2008). Courts have continued to hold the same after *Bruen*. *See, e.g.*, *McRorey v. Garland*, 99 F.4th 831, 836 (5th Cir. 2024) (noting that "conditions and qualifications on the commercial sale of arms" are "presumptively lawful"). FIRA does not come close to "banning outright the sale or transfer of common-use weapons" or "eliminating the ability of law-abiding, responsible citizens to acquire firearms," *Gazzola v. Hochul*, 88 F.4th 186, 195-96 (2d Cir. 2023), *cert. denied*, 144 S. Ct. 2659 (2024), and it therefore does not infringe the Second Amendment's individual right to keep and bear arms.

leaves Smith & Wesson free to market its weapons in countless ways that do not violate Illinois law. It does not infringe the Second Amendment.

IV. This Court Should Not Grant Supervisory Relief Under Rule 383.

For similar reasons, Smith & Wesson should also not be afforded supervisory relief under Rule 383, which is "disfavored." *People ex rel. Birkett v. Bakalis*, 196 Ill. 2d 510, 513 (2001). The "normal appellate process" has already "afford[ed] adequate relief," *id.*—the parties briefed these issues at length before the appellate court, which denied interlocutory review, A.1. And Smith & Wesson has not shown that this Court's supervision—*i.e.*, directing the appellate court to accept the Rule 308 appeal—is "necessary to keep an inferior tribunal from acting beyond the scope of its authority." *Birkett*, 196 Ill. 2d at 513. Instead, Smith & Wesson has—repeatedly and for years—sought to delay justice for the victims of the Highland Park shooting and their families, and it should not be permitted to do so again.

CONCLUSION

For these reasons, this Court should deny Smith & Wesson's petition for leave to appeal.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify under penalties provided by law pursuant to section 1-109 of the Illinois Code of Civil Procedure (735 ILCS 5/1-109) that I caused copies of the foregoing **Answer to Petition for Leave to Appeal** to be served electronically via Odyssey eFileIL upon counsel of record for Smith & Wesson Defendants, as listed below.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, I certify that the statements set forth in this instrument are true and correct.

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