

**IN THE DISTRICT COURT OF APPEAL
FOURTH DISTRICT OF THE STATE OF FLORIDA**

DANIEL VARONE and MELISSA
VARONE, as Co-Personal
Representatives of the Estate of S.V.,
deceased, and DANIEL VARONE,
DAVID VARONE, and SANDRA
VARONE, as Co-Personal
Representatives of the Estate of
LITHA G. VARONE,

Appellants,

Case No. 4D2024-1428
L.T. Case 502022-CA-010290

v.

PUBLIX SUPER MARKETS, INC.,

Appellee.

_____ /

**THE FLORIDA JUSTICE REFORM INSTITUTE'S
MOTION FOR LEAVE TO FILE AMICUS BRIEF IN SUPPORT OF
APPELLEE PUBLIX SUPER MARKETS, INC.**

The Florida Justice Reform Institute (“the Institute” or “FJRI”) moves under Florida Rules of Appellate Procedure 9.300 and 9.370 for leave to appear as amicus curiae and further respectfully requests that the Court accept as filed the attached amicus curiae brief in support of Appellee Publix Super Markets, Inc. (“Publix”).

1. ***The Movant’s Interest.*** The Institute is Florida’s leading organization of concerned citizens, business owners and leaders, and

lawyers who are working towards the common goals of promoting predictability and personal responsibility in Florida's civil justice system and promoting fair and equitable legal practices. Many of the Institute's members are retail businesses that invite the public to their locations to do business. Thus, the Institute has an interest in maintaining sensible parameters regarding retail businesses' liability for the criminal acts of unrelated third parties.

2. ***The Particular Issue to Be Addressed and How the Movant Can Assist the Court in Disposition of the Case.*** No one disputes that the underlying facts giving rise to this appeal are horrific. Appellants' family members were the victims of a sudden and senseless act of gun violence. But Appellants ask the Court to impose a duty on all retail businesses to protect their patrons against a third party's criminal act based on a nationwide rise in gun violence—***not*** based on any prior, similar incidents of gun violence at the location in question. The Institute can explain why adopting Appellants' arguments would dramatically expand the scope of potential liability for retail businesses, resulting in unintended consequences for businesses and consumers alike.

3. ***Whether the Parties Consent to the Filing of the Amicus Brief.*** The Institute conferred with counsel for Publix on April 28 and May 5, 2025, and Publix consents to the filing of the Institute’s amicus brief. The Institute conferred with Appellants’ counsel by email on April 29 and 30, and May 5, 2025, and Appellants have asked the Institute to report Appellants’ position as follows:

Appellants do not oppose the relief request in the motion. However, Appellants do not believe amicus briefs are necessary unless the Court decides to accept this case for en banc review. If FJRI’s motion is granted, Appellants anticipate that other amicus or amici will file motions seeking leave, out of time, to file amicus briefs responding to the points raised in FJRI’s amicus brief. Appellants’ counsel has notified Appellee’s counsel to expect such motions.

WHEREFORE, proposed amicus curiae Florida Justice Reform Institute respectfully requests that this Court grant leave to file the Institute’s amicus brief in support of Publix, attached as **Exhibit 1**.

Respectfully submitted on May 5, 2025.

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EXHIBIT 1

IN THE DISTRICT COURT OF APPEAL

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Appellee.

**AMICUS BRIEF OF FLORIDA JUSTICE REFORM INSTITUTE
IN SUPPORT OF APPELLEE PUBLIX SUPER MARKETS, INC.**

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STATEMENT OF IDENTITY AND INTEREST OF AMICUS CURIAE

The Institute is Florida's leading organization of concerned citizens, business owners and leaders, and lawyers who are working towards the common goals of promoting predictability in Florida's civil justice system and fair and equitable legal practices. The Institute's members include retail businesses in Florida whose business models necessarily involve opening their locations to members of the public, and whose businesses depend upon longstanding limits on the scope of their liability for harm caused by third-party criminals.

The Institute represents these members before the Florida Legislature and Florida's courts. In 2023, the Institute advocated for the passage of HB 837, which, among other things, incorporated comparative fault principles into negligent security actions and instituted important protections for multifamily residential property owners who install reasonable security measures. *See* Ch. 2023-15, §§ 7-8, at 13-15, Laws of Fla. The Institute also frequently appears as amicus curiae on legal issues of importance to its membership. Here, the Institute's members have a particular interest in the standard of care owed to business invitees with respect to protection

from criminal conduct by third parties. Appellants' preferred interpretation of the law would dramatically expand the scope of potential liability, resulting in unintended consequences for businesses and consumers alike.

Thus, the Institute submits this amicus brief in support of Appellee Publix Super Markets, Inc. ("Publix") to address why the Court should reject the expansive duty that Appellants invite this Court to adopt. Such an expansive duty would turn every retail business in Florida into their patrons' insurer, strictly liable for the intentional misconduct of unaffiliated third parties based on universal rather than particular risks of crime.

SUMMARY OF ARGUMENT

The unspeakable act of random violence at the heart of this case defies all understanding. But whether Publix bears liability for breaching a duty to protect Appellants' family members depends upon whether that act of violence was reasonably foreseeable. The trial court correctly determined that it was not.

Appellants claim that Publix had a duty to do more to protect against this senseless act of violence. In support, they point to empirical, nationwide data regarding a rise in gun violence rather

than specific facts showing that Publix could have reasonably predicted this murder at a Publix location in Royal Palm Beach, Florida, that took the lives of Appellants' two family members. But evidence of a generalized risk of gun violence is not enough.

Long-settled rules of tort law make clear that businesses are generally not liable for the intentional criminal acts of unrelated third parties. As courts have recognized, prevention of and protection from crime is a job for law enforcement, not private businesses. It is only when a specific act of violence is reasonably foreseeable—based on information specific to that premises, not general, nationwide data—that a business should be held liable for a third party's criminal acts.

The end result of adopting Appellants' position would be that, in order to avoid liability, every retail business must institute some type of gun violence countermeasures like an armed guard, no matter how big or small the business is or how likely or unlikely a shooting would be at the business's location. Aside from the costs of expansive liability, implementing such measures will undoubtedly be expensive, and increased operational costs will likely be passed onto consumers through higher prices—at a time when those prices are already skyrocketing. Many smaller businesses may not be able to

shoulder the burden of such additional costs. In sum, adopting Appellants' position of treating businesses as strict-liability insurers against gun violence would disrupt business operations and harm smaller retailers, leading to higher consumer prices and potentially exacerbating existing problems in numerous industries, including the grocery store industry.

For all these reasons, the Court should affirm the trial court's grant of summary judgment to Publix and decline Appellants' invitation to expand the duty of care owed by retail businesses to invitees based on a general, nationwide or even regional risk of gun violence.

ARGUMENT

I. A BUSINESS'S DUTY TO REASONABLY FORESEE A THIRD PARTY'S CRIMINAL ACT MUST BE BASED ON SPECIFIC RISKS, NOT UNIVERSAL RISKS OF CRIME FOUND EVERYWHERE.

The duty of care that a business owes to its invitees is an exception to the common law rule that no duty is owed to protect others from the criminal acts of third parties. *See, e.g., Knight v. Merhige*, 133 So. 3d 1140, 1145 (Fla. 4th DCA 2014). "The touchstone of a business owner's duty to protect its invitees" from

third parties “is foreseeability”—i.e., could the business owner reasonably foresee and protect against the harm that befell an invitee. *See Orlando v. FEI Hollywood, Inc.*, 898 So. 2d 167, 168–69 (Fla. 4th DCA 2005). Absent a requirement of reasonable foreseeability, a business’s duty to protect its invitees against harms caused by third parties would be virtually unlimited. As numerous courts have recognized, “the business could become the guarantor of the invitee’s safety from all third party conduct on the business premises. That is too expansive a duty.” *See, e.g., Nivens v. 7-11 Hoagy’s Corner*, 943 P.2d 286, 292 (Wash. 1997); *see also, e.g., Fairley Constr. Servs., Inc. v. Savage*, 265 So. 3d 203, 208–09 (Miss. Ct. App. 2019) (“The general rule is that a property owner is not the insurer of an invitee’s safety.”); *Nero v. Kansas State Univ.*, 861 P.2d 768, 780 (Kan. 1993) (“We emphasize that a university is not an insurer of the safety of its students.”).

The issue in this appeal is whether the horrific act that took the lives of Appellants’ family members was reasonably foreseeable. In order to find that a third person’s criminal acts were foreseeable—and thus triggered a duty of care owed by the defendant—this Court has sensibly required evidence that the defendant “had actual or

constructive knowledge of prior, similar criminal acts committed upon invitees.” See *Relyea v. State*, 385 So. 2d 1378, 1383 (Fla. 4th DCA 1980), *disapproved on other grounds*, *Avallone v. Bd. of Cnty. Comm’rs of Citrus Cnty.*, 493 So. 2d 1002, 1005 (Fla. 1986). But Appellants ask this Court to abandon this sensible construction of foreseeability and instead find that all retail businesses in Florida have a duty to protect against gun violence, no matter how remote that risk is for a particular business.

Such a broad rule effectively holding businesses liable for third-party criminal acts because gun violence is a problem everywhere would require businesses to act as guarantors of their patrons’ safety. As one court recognized:

Because criminal activity is irrational and unpredictable, it is in this sense invariably foreseeable everywhere. However, even police, who are specially trained and equipped to anticipate and deal with crime, are unfortunately unable universally to prevent it. This is a testament to the arbitrary nature of crime. Given these realities, it is unjustifiable to make merchants, who not only have much less experience than the police in dealing with criminal activity but are also without a community deputation to do so, effectively vicariously liable for the criminal acts of third parties.

MacDonald v. PKT, Inc., 628 N.W.2d 33, 39 (Mich. 2001); *see also*, e.g., *McKown v. Simon Prop. Grp., Inc.*, 344 P.3d 661, 669 (Wash.

2015) (rejecting an expansive foreseeability standard and explaining that “a totality of the circumstances test would improperly shift the duty to protect the public against crime from the government to private businesses”).

Thus, this Court should maintain reasonable limits on liability in these circumstances, including by maintaining a requirement that, in order to establish a duty of care on the part of a business for a third party’s criminal act, the act must have been reasonably foreseeable based on **specific** risk indicators—not a general, universal risk like the nationwide rise in gun violence. Otherwise, there is no true limit on liability, as crime, including gun violence, is always possible and thus, arguably, foreseeable.

Appellants are forced to advocate for their expansive view of foreseeability given the facts of this case. The Publix store at which this terrible act occurred is not in a crime-ridden area, and Mr. Wall’s act was committed suddenly and without warning. The Village of Royal Palm Beach, found within the affluent Palm Beach County, is an upper-middle-class suburb that boasts a median household

income higher than the median household income for the state.¹ Appellants do not point to any local incidents that would have put Publix on notice that Mr. Wall or someone like him would do what he did. Indeed, the worst crime to have been committed at this Publix store before Mr. Wall’s horrific act was apparently shoplifting. See Ans. Br. at 8. Instead, Appellants point to Publix’s proactive efforts to address the still highly unlikely event that a shooting would take place by providing active shooter training and “empirical data showing a rise in gun violence in grocery stores” across the Southeast and the nation. See Initial Br. at 8–14. One of the few actual incidents that Appellants cite in support of finding that Publix should have foreseen this event—an incident in which a man was found to have brought numerous guns into an Atlanta Publix store—did not actually end in gun violence and may not have even involved a crime

¹ Compare U.S. Census Bureau, Quick Facts, Median Households Income, Royal Palm Beach Village, Florida, <https://www.census.gov/quickfacts/fact/table/royalpalmbeachvillageflorida/PST045223> (last visited May 5, 2025), with U.S. Census Bureau, Quick Facts, Median Households Income, Florida, <https://www.census.gov/quickfacts/fact/table/FL/INC110223> (last visited May 5, 2025).

given Georgia’s open carry laws.²

This Court should not accept Appellants’ invitation to hold all retail businesses—no matter the business’s size or level of sophistication—to a standard whereby they must foresee and guard against a universal risk of gun violence, absent site-specific factors that would truly make a third party’s criminal act at that business reasonably foreseeable.

II. IMPOSING A DUTY OF CARE ON BUSINESSES TO PROTECT AGAINST GENERAL RISKS OF GUN VIOLENCE WOULD HAVE BROAD CONSEQUENCES AND WOULD NOT NECESSARILY PREVENT GUN VIOLENCE.

Appellants are quite clear that they view the duty of Publix and every other retail business in the state as requiring installation of security guards and live, monitored security cameras, notwithstanding whether or not a business has a history of similar crimes at its location that might actually foretell the risk of gun violence occurring there. See Initial Br. at 1, 4–6. Requiring Publix and other retail businesses “to provide armed, visible security guards to protect invitees from criminal acts in a place of business open to

² See Richard Fausset, *A Heavily Armed Man Caused Panic at a Supermarket. But Did He Break the Law?*, N.Y. Times (Jan. 2, 2023), <https://www.nytimes.com/2023/01/02/us/atlanta-gun-laws.html>.

the general public would require” them “to provide a safer environment . . . than [their] invitees would encounter in the community at large.” *MacDonald*, 628 N.W.2d at 40. As the trial court appropriately recognized, such a duty would be unduly expansive and unwarranted. *See* Ans. Br. at 17–18, 51 (citing R. 2485).

It is not hard to imagine that such expansive liability will increase liability insurance and litigation costs for all Florida businesses. That is all in addition to the operational costs associated with implementing the security measures that Appellants allege Publix—and every other Florida retail business—should employ in order to protect their invitees against gun violence. Expecting every retail business in Florida, no matter their individual circumstances, to foresee and thus guard against the unlikely event of a shooting by employing an armed guard and installing live, monitored security cameras would be unquestionably expensive³ and have significant

³ As just one example, the investment necessary to install metal detectors and security guards in a hospital’s emergency department would be approximately \$400,000—a cost that would likely be devastating to a Mom-and-Pop store. *See* Jonathan Garcia, *Improving Safety in the Emergency Department: Utilizing Metal Detectors to Mitigate Weapon Possession*, MSN Capstone Projects 2, 8 (2023), https://scholarworks.uttyler.edu/cgi/viewcontent.cgi?article=1315&context=nursing_msn. Even metal detectors have their detractors

negative consequences, particularly for grocery stores. Grocery stores already operate on razor-thin profit margins.⁴ The costs required to install and maintain such security measures would in all likelihood be passed through to consumers in the form of higher prices, when grocery store prices are already skyrocketing. Effectively forcing retail businesses to enact such measures and bear these operational costs may even cause smaller grocery stores to close. Such closures will disproportionately impact those in low-income areas already categorized as food deserts because they have limited access to grocery stores.⁵ All in all, both businesses and consumers would be

as an ineffective (and expensive) tool to curb gun violence. See Jaclyn Schildkraut & Kathryn Grogan, *Are Metal Detectors Effective at Making Schools Safer?*, WestEd Just. & Prevention Rsch. Ctr. 1–2 (2019),

https://cdpsdocs.state.co.us/ccjj/Resources/Ref/2019_MetalDetectorsSchools.pdf.

⁴ See, e.g., Catherine Douglas Moran, *Grocery industry profit margins fall to pre-pandemic levels*: FMI, Grocery Dive (July 3, 2024), <https://www.grocerydive.com/news/grocery-industry-profit-margins-fall-to-pre-pandemic-levels-fmi/720517/>.

⁵ See, e.g., Hunter Morrison, *Northwest Florida is home to 24 food deserts*, WUWF (Aug. 1, 2022), <https://www.wuwf.org/local-news/2022-08-01/northwest-florida-is-home-to-24-food-deserts> (noting that Northwest Florida alone is home to 24 food deserts, affecting over 102,000 people, as they lack access to a grocery store or supermarket within 10 miles); Stacy Mitchell, *The Great Grocery Squeeze*, The Atlantic (Dec. 1, 2024), <https://www.theatlantic.com/ideas/archive/2024/12/food->

harmed by the expansive liability that Appellants seek.

The level of security that Appellants would have retail businesses implement may not even accomplish the goal of increasing safety. Security measures like employing armed guards or monitoring security cameras are unlikely to deter or halt random attacks or even mass shootings—particularly when they can occur in just seconds or minutes. A 2019 shooting in Dayton, Ohio, left nine dead in just 32 seconds; it took six police officers to stop the shooter despite the fact that the officers responded immediately. Alejandro de la Garza & Michael Zennie, *Dayton Shooting Lasted Just 32 Seconds and Left 9 Dead. Here's the Latest on the Tragedy*, Time (Aug. 9, 2019), <https://time.com/5643405/what-to-knowshooting-davton-ohio/>. Thus, an armed guard may offer limited protection from a shooting.

Such guards might even make matters worse. One study of school shootings observed that the presence of an armed guard may

[deserts-robinson-patman/680765/](https://www.kcur.org/news/2025-03-10/independent-grocery-stores-decline-midwest-states-support); Rachel Cramer, *Small town grocery stores face unique challenges. Some Midwest states are trying to help*, NPR (Mar. 10, 2025), <https://www.kcur.org/news/2025-03-10/independent-grocery-stores-decline-midwest-states-support> (describing the problem of food deserts in areas of the country where rural grocery stores are forced to close).

increase aggression, particularly for assailants like Mr. Wall intent on ending their own lives: “Whenever firearms are present, there is room for error, and even highly trained officers get split-second decisions wrong. Prior research suggests that many school shooters are actively suicidal, intending to die in the act, so an armed officer may be an incentive rather than a deterrent.” Jillian Peterson, James Densley & Gina Erickson, *Presence of Armed School Officials and Fatal and Nonfatal Gunshot Injuries During Mass School Shootings, United States, 1980–2019*, JAMA Network Open (2021), <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2776515>.⁶ In short, even adopting the measures Appellants believe Publix should have adopted would not necessarily have protected Appellants’ family members or anyone else, and these measures certainly would not insulate retail businesses from liability given the questionable effectiveness of these measures.

Appellants further suggest that Publix’s proactive measure of providing corporate training for addressing active shooter events

⁶ In fact, the study’s conclusion was that controlling for certain factors, “the rate of deaths was 2.83 times greater in schools with an armed guard present.” *Id.*

alone establishes the foreseeability of Mr. Wall's criminal act. But treating such proactive measures as creating a duty to protect against random criminal acts like Mr. Wall's would likely discourage retailers from undertaking such measures in the first place, an undesired and unwarranted result.

It cannot be overstated that what happened to Appellants' family members is senseless and tragic. But these terrible facts should not be used to make bad law. Absent evidence that Publix reasonably foresaw this tragedy occurring at this particular store, it should not be held liable for failing to predict Mr. Wall's act of random violence. Accepting Appellants' invitation to expand Publix's duty to encompass liability in these circumstances would turn all Florida retail businesses into guarantors of their patrons' safety, which this Court has declined to do and should continue declining to do. See *Relyea*, 385 So. 2d at 1382–83 (“[A] landowner is not an insurer of the safety of his invitees and is not required to take precautions against a sudden attack from a third person which he has no reason to anticipate.”); see also, e.g., *Hall v. Billy Jack's, Inc.*, 458 So. 2d 760, 761 (Fla. 1984) (holding that a business owner “is not required to protect the patron from every conceivable risk; he owes only a duty

to protect against those risks which are reasonably foreseeable”).

CONCLUSION

For all these reasons, the Court should affirm the trial court’s grant of summary judgment in Publix’s favor and decline Appellants’ invitation to hold retail businesses to an expansive duty of care based on nationwide data of violence rather than specific risks of gun violence on the particular premises at issue.

Respectfully submitted on May 5, 2025.

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I HEREBY CERTIFY that this document complies with the applicable font and word count limit requirements of Rules 9.045 and 9.370(b) of the Florida Rules of Appellate Procedure, in that it contains 3,650 words, according to the word-processing system used to prepare this document.

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