No. 26-0023

In the Supreme Court of Texas

IN RE SIMON PROPERTY GROUP, L.P., SIMON PROPERTY GROUP (TEXAS), L.P., and ALLEN PREMIUM OUTLETS, L.P.,

Relators.

Original Proceeding from the Court of Appeals for the Fifth Judicial District, Dallas, Texas, No. 05-25-01370-cv

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BRIEF OF *AMICI CURIAE* THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AND AMERICAN PROPERTY CASUALTY INSURANCE ASSOCIATION IN SUPPORT OF RELATORS

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INTEREST OF *AMICI CURIAE*[*]

The Chamber of Commerce of the United States of America is the world's largest business organization. As the nation's leading advocate for business, the Chamber represents companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files *amicus curiae* briefs in cases that raise issues of concern to the Nation's business community.

American Property Casualty Insurance Association ("APCIA") is the primary national trade association for home, auto, and business insurers. APCIA promotes and protects the viability of private competition for the benefit of consumers and insurers, with a legacy dating back 150 years. APCIA's member companies represent approximately 66 percent of the total U.S. property-casualty insurance

[*] No counsel for a party authored this brief in whole or in part, and no counsel for a party made a monetary contribution intended to fund the preparation or submission of this brief. No person or entity other than *amici curiae*, their members, and their counsel made a monetary contribution to this brief's preparation or submission. *See* Tex. R. App. P. 11.

market and approximately 63 percent of the Texas insurance market. On issues of importance to the insurance industry and marketplace, APCIA advocates sound public policies on behalf of its members and consumers in legislative and regulatory forums at the federal and state levels and submits *amicus curiae* briefs in significant cases before federal and state courts, including this Court.

This is such a case. Because of its growing population and favorable business climate, Texas has emerged as one of the largest economies in the world. Crucial to that success—and of great importance to the many Chamber and APCIA members that call Texas home or do business in the State—is the soundness of the State's law and public policy. *Amici* file this brief to explain why Texas law does not and should not hold businesses liable for unforeseeable crimes committed by third parties.

INTRODUCTION

Under longstanding Texas law, a business generally bears no duty to protect against the criminal acts of a third party unless the business has notice of sufficiently recent, frequent, and similar crimes that occurred on or in the "immediate vicinity" of its premises. *Timberwalk Apartments, Partners, Inc. v. Cain*, 972 S.W.2d 749, 757–59 (Tex. 1998). And even when those conditions are met, a business will be liable only if the risk of the criminal activity outweighs the public and private burden of guarding against it. *UDR Tex. Props., L.P. v. Petrie*, 517 S.W.3d 98, 103 (Tex. 2017).

That demanding test reflects this Court's considered judgment—shared by high courts across the Nation—that businesses are not "the insurer[s] of crime victims." *Trammell Crow Cent. Tex., Ltd. v. Gutierrez*, 267 S.W.3d 9, 17 (Tex. 2008). If Texas courts were to impose tort liability on businesses based on mere general awareness that certain types of crime could occur on their premises, the consequences would be substantial. Businesses would pass their increased security and operating costs on to consumers, stores unable to absorb costs would close in communities that most need them, and ordinary commerce would increasingly occur within “the oppressive climate a police state spawns.” *UDR*, 517 S.W.3d at 103. And since the principles that control here are not “peculiar to premises-liability cases” but rather are “essential to the determination of duty in all of tort law,” the consequences would not be limited to cases like this one. *Id.* at 101.

This Court has long resisted calls to impose novel liability on businesses that departs from fundamental principles of tort law. The Court should reaffirm that, under those principles, businesses are not responsible for the unforeseeable criminal acts of third parties.

ARGUMENT

I. Businesses generally have no duty to protect against crime unless similar acts in the immediate vicinity made the risk of a specific crime foreseeable and substantial enough to require preventive measures.

Businesses generally have no duty to protect against the criminal acts of third parties. Mere awareness that a certain type of crime is statistically *possible* does not give rise to such a duty. And even foreseeable risks must be weighed against the public and private burdens of mitigating them. Texas law adheres to these well-settled principles, as do high courts across the Nation.

A. Under this Court's precedents, foreseeability is a very high bar—and only the first step of the analysis.

1. The general rule is clear: Businesses have no duty to protect invitees against the criminal acts of third parties. *Timberwalk*, 972 S.W.2d at 756. The plaintiffs here seek to invoke a narrow "exception" to Texas's "rule." *Id*. But that exception applies only when the risk of a given crime is "both foreseeable *and* unreasonable." *UDR*, 517 S.W.3d at 101.

Three of this Court's cases explain the narrow scope of that exception. In the first, *Timberwalk Apartments v. Cain*, a plaintiff sued her landlord after she was assaulted, arguing that the landlord breached a duty to provide more security. 972 S.W.2d at 751. This Court rejected her argument, concluding that the landlord owed no such duty because the lack of similar assaults near the complex meant the crime was not foreseeable. *Id.* at 759.

Ten years later, in *Trammell Crow Central Texas v. Gutierrez*, this Court decided whether a fatal shooting in a mall gave rise to "the exception to the no-duty rule." 267 S.W.3d at 11. After reviewing the ten violent crimes that had occurred at the mall during the two years before the shooting, this Court held that the shooting was not foreseeable. *Id.* at 13–17. Those earlier crimes were not "sufficiently frequent and similar" to the shooting to put the defendant "on notice that a patron would be murdered . . . on its premises." *Id.* at 17.

Finally, in *UDR Texas Properties v. Petrie*, this Court rendered judgment for an apartment complex that had been sued by a man who was assaulted and robbed on its premises. 517 S.W.3d at 99. This Court explained that the foreseeability of risk and the "***unreasonableness*** of any foreseeable risk" are "separate elements requiring independent proof." *Id.* at 103 (emphasis added). The Court rejected liability because the plaintiff "presented no evidence and made no argument" on the unreasonableness element. *Id.* at 105.

Together, *Timberwalk*, *Trammell Crow*, and *UDR* firmly establish that the exception to Texas's no-duty rule for third-party criminal acts is narrow at every step. *Timberwalk* and *Trammell Crow* instruct that the relevant question is not whether crime was possible in the abstract; it is instead whether prior crimes on or near the premises made the specific crime sufficiently predictable. *UDR* then confirms that foreseeability is only the first hurdle to establishing a duty. To fall within the narrow exception, a plaintiff must also show that the risk of the foreseeable crime "outweighs the burden placed on property owners—and society at large—to prevent the risk." *UDR*, 517 S.W.3d at 103.

2. To establish foreseeability, a plaintiff must satisfy five elements. *Trammell Crow*, 267 S.W.3d at 15. **(1)** For a business to "foresee criminal conduct on [its] property, there must be evidence that other crimes have occurred on the property or in its immediate vicinity." *Timberwalk*, 972 S.W.2d at 757. Those crimes must have occurred with sufficient **(2)** "recency" and **(3)** "frequency"; "the occurrence of a few crimes over an extended time period negates the foreseeability element." *Id.* at 758–59.

(4) Even if crimes have recently and frequently occurred on or in the immediate vicinity of the premises, they still "must be sufficiently similar to the crime in question" as to put the business "on notice of the specific danger." *Id.* at 758. **(5)** Unless the crimes were "widely publicized," the business must have "actual knowledge" of them. *Id.* at 758–59.[1]

Assessing those elements in *Timberwalk*, this Court emphasized that "no violent personal crime" had occurred within the apartment complex during the ten years before the assault. 972 S.W.2d at 759. The Court then noted that during the year before the crime, only one such crime had occurred "within a one-mile radius" of the complex and that only "six assault-type crimes" had occurred in neighboring complexes. *Id.* There was "no evidence that any of [the nearby] crimes was ever reported in the media, or that Timberwalk knew or had any way of knowing about them." *Id.* Likewise, in *Trammell Crow*, this Court considered only violent crimes that had occurred at the open-air mall itself during the

[1] *Timberwalk* governs whenever a premises owner has "no direct knowledge that criminal conduct is imminent." *Del Lago Partners, Inc. v. Smith*, 307 S.W.3d 762, 768 (Tex. 2010). In the especially exceptional case, a crime will have been foreseeable "not because of prior similar criminal conduct" but "because of *immediately* preceding conduct." *Id.* at 769 (emphasis added); *see*, *e.g.*, *id.* at 770 ("during the ninety minutes of recurrent hostilities at the bar, a duty arose . . . to use reasonable care to protect the invitees from imminent assaultive conduct"). That exception is not at issue here.

two years before the crime. 267 S.W.3d at 15 (publicity of crimes not disputed).

Under this Court's five-element test, generalized crime statistics, standing alone, do not establish foreseeability. Indeed, this Court expressly stated that "[s]tatistics regarding large or undefined geographic areas do not by themselves make crime foreseeable at a specific location." *Timberwalk*, 972 S.W.2d at 757. And this Court has underscored that "criminal conduct of a specific nature at a particular location is never foreseeable merely because crime is increasingly random and violent and may possibly occur almost anywhere." *Id.* at 756.

So the fact that a business knows that a certain type of crime is *possible* does not establish that the business should "reasonably be expected to foresee" that the crime will occur on its premises. *Trammell Crow*, 267 S.W.3d at 17. Even if that business trains its employees on how to respond to the crime, that still does not give rise to a duty to protect; "it merely show[s]" the business "was aware of the possibility" that the crime *could* occur. *Varone v. Publix Super Mkts., Inc.*, 433 So. 3d 826, 836 (Fla. Dist. Ct. App. 2026) (supermarket had no duty to protect against a shooting). And if the business operates *nationwide*, the training merely shows that it knew the crime could occur "somewhere at one of its [locations] across the country at some point." *Id.* That is not sufficient to establish foreseeability.

Nor, in cases like this one, are "nationwide statistics of shootings" sufficient to make it "objectively reasonable" for a company to "expect the specific danger of a random act of gun violence" occurring on its premises. *Varone*, 433 So. 3d at 836. Again, as this Court explained in *Timberwalk*, "[s]tatistics regarding large . . . geographic areas do not by themselves make crime foreseeable at a specific location." 972 S.W.2d at 757.

Even if a plaintiff can show that previous crimes occurred with sufficient "proximity, recency, frequency, similarity, and publicity," *Timberwalk*, 972 S.W.2d at 759, that alone does not establish a duty. "Foreseeability is the beginning, not the end, of the analysis in determining the extent of the duty to protect against criminal acts of third parties." *Id.* at 756 (quoting *Lefmark Mgmt. Co. v. Old*, 946 S.W.2d 52, 57 (Tex. 1997) (Owen, J., concurring)). Assuming a specific risk is foreseeable, courts must still consider whether the risk "outweigh[ed] the burden placed on property owners—and society at large—to prevent the risk." *UDR*, 517 S.W.3d at 103.

When "the burden of preventing the harm is unacceptably high, the risk of the harm is not unreasonable." *UDR*, 517 S.W.3d at 103. This reflects the basic tort principle that courts must weigh "the risk, foreseeability and likelihood of injury against," among other things, "the consequences of placing the burden on the defendant." *Houston Area Safety Council, Inc. v. Mendez*, 671 S.W.3d 580, 583 (Tex. 2023); *see also UDR*, 517 S.W.3d at 107 (Willett, J., concurring) (a "mainstream principle[] of tort law" is that the "negligence question focuses on whether the defendant acted reasonably under the circumstances").

Because "the burden of preventing the harm" of violent crime can be significant, and because "[l]ife in a free society carries a degree of risk," the question in suits like this is whether the law "should require premises owners—even those who have experienced crime in the past—to provide the same level of security that airports enlist to prevent terrorism." *UDR*, 517 S.W.3d at 103. Texas law does not, and should not, require that.

*   *   *

"If a landowner had a duty to protect people on his property from criminal conduct whenever crime *might* occur, the duty would be universal. This is not the law." *Timberwalk*, 972 S.W.2d at 756. Instead, the longstanding default Texas rule is that a business bears no duty to protect against the criminal acts of third parties, and the narrow exception to that rule is demanding at both steps. First, the plaintiff must show that the business had notice of sufficiently recent, frequent, and similar crimes that occurred on or in the immediate vicinity of its premises. Second, even if the risk was foreseeable, the risk must have outweighed the burden of preventing it. Only the rare case can clear both hurdles.

B. The high courts of other States agree with the principles underlying Texas law on this issue.

Other high courts across the Nation have converged on the basic principles that animate *Timberwalk*, *Trammell Crow*, and *UDR*. Because this Court's cases reflect an application of familiar common-law tort principles, that is unsurprising. *See*, *e.g.*, *United Scaffolding, Inc. v. Levine*, 537 S.W.3d 463, 474 (Tex. 2017) ("After all, premises liability is a form of negligence, and in all negligence actions, the foreseeability of the harmful consequences resulting from the particular conduct is the underlying basis for liability.”).

Among the largest states—whose courts most often confront claims seeking to hold businesses liable for third-party crime—Illinois sets out the two-step framework with particular clarity. As in Texas, the rule in Illinois is that a business “generally has no duty to protect lawful entrants from criminal attacks by third parties.” *Hills v. Bridgeview Little League Ass’n*, 745 N.E.2d 1166, 1178 (Ill. 2000). For a business to have such a duty, the crime at issue must have been “reasonably foreseeable”—that is, “objectively reasonable to expect, not merely what might conceivably occur.” *Id.* at 1184, 1187. “In addition, whether a duty exists will depend upon a consideration of the likelihood of injury, the magnitude of the burden to guard against it, and the consequences of placing that burden upon the defendant.” *Id.* at 1187.

For its part, California law emphasizes the proximity and similarity elements that lie at the heart of foreseeability analysis. As the California Supreme Court has explained, “a high degree of foreseeability is required” before a business will have a duty to hire security guards, for example, and that degree of foreseeability “rarely, if ever, can be proven in the absence of prior similar incidents of violent crime" on the premises. *Ann M. v. Pac. Plaza Shopping Ctr.*, 863 P.2d 207, 215 (Cal. 1993). For instance, "statistical crime rate" data about an area surrounding a premises is insufficient to establish foreseeability. *Id.* "To hold otherwise" would effectively force businesses "to become the insurers of public safety, contrary to well established policy." *Id.* at 215–16.

New York caselaw echoes that rationale. In New York, although businesses have a "duty to minimize *foreseeable* dangers on their property, including the criminal acts of third parties, they are not the insurers of a visitor's safety." *Maheshwari v. City of New York*, 810 N.E.2d 894, 897 (N.Y. 2004) (emphasis added).

In setting the scope of any tort duty to protect against third-party crime, New York courts therefore ask whether the "types of crimes" previously committed on the premises would "lead defendants to predict" that the crime at issue "would occur or could be prevented." *Maheshwari*, 810 N.E.2d at 897. Applying that standard, the New York Court of Appeals held that a "random criminal attack" did not give rise to premises liability because the crime was "extraordinary and not foreseeable or preventable in the normal course of events." *Id.* at 896–98.

Florida law points the same way. In Florida as in Texas, "[f]oreseeability, as it bears on duty, arises from a [business's] knowledge of prior similar conduct." *Varone*, 433 So. 3d at 835; *see id.* at 836 ("While a shooting remained within the realm of a conceivable possibility, it was not objectively reasonable for Publix to expect the subject attack."). So the Florida Supreme Court tied the foreseeability of third-party attacks on tavern patrons to a tavern's specific history of violence. *See Hall v. Billy Jack's, Inc.*, 458 So. 2d 760, 761–62 (Fla. 1984) (explaining that foreseeability arises from a tavern's "past experience" of disorderly conduct); *Allen v. Babrab, Inc.*, 438 So. 2d 356, 357 (Fla. 1983) (tavern had "a history of fighting and other disturbances"); *Stevens v. Jefferson*, 436 So. 2d 33, 35 (Fla. 1983) (tavern had "a history of fights and gunplay").

As this brief survey shows, plaintiffs here challenge a rule not only well-entrenched in Texas law, but also hardly unique to Texas. A different rule—one that imposed tort liability on businesses based on nothing more than the remote possibility that a third party *might* commit a certain type of crime—would contravene basic tort principles and make Texas a costly outlier. This Court should not saddle businesses in Texas with a burden that other high courts have declined to impose on businesses operating in their states.

II. Expanding premises liability to cover more third-party crime would harm Texans.

Expanding premises liability to cover more third-party crime than it already does would not just break with longstanding tort-law principles; it would inflict widespread harm on the state. Businesses would be forced to pay more for security and operating costs; consumers would consequently pay more for goods and services; rising prices—and shuttered stores—would hurt Texas's low-income communities the most; and going to the store would increasingly require journeying into "the oppressive climate a police state spawns." *UDR*, 517 S.W.3d at 103.

A. Expanded liability would translate into higher prices for Texas shoppers.

Expanded premises liability would be costly for Texas businesses and the people they serve. "No one really knows why people commit crime, hence no one really knows what [] adequate deterrence [is] in any given situation." *Lefmark*, 946 S.W.2d at 57 (Owen, J., concurring) (quoting *Ann M.*, 863 P.2d at 215). Therefore, businesses would be left to guess at the extent to which they should assume functions traditionally entrusted to law enforcement.

Businesses might default to hiring armed guards at significant expense, and some insurers might insist on it. *See* Omri Ben-Shahar & Kyle D. Logue, *Outsourcing Regulation: How Insurance Reduces Moral Hazard*, 111 Mich. L. Rev. 197, 209 (2012). Businesses might limit how many customers they allow on premises, which would make site control easier but reduce business opportunities. Or businesses might respond by shrinking or eliminating their physical presence altogether.

At the very least, insurance rates would likely face upward pressure created by the increased risk of liability. *See* David McKnight & Paul Hinton, U.S. Chamber Inst. for Legal Reform, *Tort Costs in America: An Empirical Analysis of Costs and Compensation of the U.S. Tort System* 32 (Nov. 2024), available at perma.cc/WR2N-8TC9 (insurance premiums reflect factors like litigation costs and compensation paid to claimants).

Consumers would inevitably bear much of the cost. Businesses facing higher operating costs would need to recover some of those costs by raising prices. Businesses pass roughly 60 percent of cost increases on to customers. Wändi Bruine de Bruin et al., *How Do Firms Adjust Prices in a High Inflation Environment?*, Liberty St. Econ. (June 2, 2023), available at perma.cc/C46V-VLP6 (published by the Federal Reserve Bank of New York). Expanding premises liability would increase labor costs, among other expenses, making higher prices all but inevitable.

B. Expanded liability would harm Texas's most vulnerable.

Texas's poorest individuals would bear the brunt of the harm of expanded premises liability. Consider, for example, the consequences for grocery shopping. Pressured to pay more for security and insurance, grocery stores serving less affluent customers would be forced to raise prices just like businesses in the rest of the State. Texans who already struggle to afford groceries could least bear those higher prices.

But even if low-income Texans could shoulder the higher prices, many of the local businesses on which they rely could not. Though companies are able to pass some costs on to consumers, they must absorb roughly 40 percent of cost increases themselves. *See supra* pp. 17–18. For businesses like grocery stores that operate with razor-thin margins, that 40 percent could be the difference between staying open and shutting down. *See* Prof. Aswath Damodaran*, Margins by Sector (US)*, Damodaran Online, available at perma.cc/WSA6-YZER (reporting 1.32 percent net profit margins for Retail (Grocery and Food) in January 2026).

To low-income Texans—many of whom already lack "reasonable access to healthy foods that are affordable"—the closure of even one neighborhood grocery store could be devastating. *See* Jessie Barber, Tex. Dep't of Agric., *Texas Food Access Study* 5 (Dec. 31, 2022), available at perma.cc/25FW-VM7U; *see also id*. at 30 (noting that low profit margins already make grocers reluctant to operate in low-income areas). Low-income Texans spend more than one-third of their income on food. *Id.* at 5. They need accessible, affordable groceries and other goods, not an over-expanded tort regime.

C. Expanded liability would turn storefronts into security checkpoints.

Expanding premises liability would also change the character of public life in Texas. Because "crime is increasingly random and violent and may possibly occur almost anywhere," *Timberwalk,* 972 S.W.2d at 756, transforming businesses into guarantors of public safety would encourage them to guard their storefronts with screening, surveillance, and armed security.

The result would be the public square remade into a series of security checkpoints. Texans could increasingly expect to be confronted at the grocery store, the mall, and beyond with "the same level of security that airports enlist to prevent terrorism." *UDR*, 517 S.W.3d at 103. "Life in a free society" should not have that character. *Id.*

PRAYER

For these reasons, the Court should grant the petition and reaffirm the settled rule that businesses are not responsible for the unforeseeable criminal acts of third parties.

Dated: July 24, 2026

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Certificate of Compliance

In compliance with Texas Rule of Appellate Procedure 9.4(i)(2)(B), I certify that this brief contains 3,775 words, excluding the portions of the brief exempted by Rule 9.4(i)(1).

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ahodson@gibsondunn.com
Envelope ID: 117802741
Filing Code Description: Amicus Brief
Filing Description: Brief of Amici Curiae the Chamber of Commerce of the United States of America and American Property Casualty Insurance Association in Support of Relators
Status as of 7/24/2026 3:17 PM CST

Associated Case Party: WonHwanCho

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