

FILED
SUPREME COURT
STATE OF WASHINGTON
2/21/2025
BY SARAH R. PENDLETON
CLERK

FILED
Court of Appeals
Division I
State of Washington
2/21/2025 12:00 PM

No. 84933-6-I
(consolidated with No. 85558-1-I)

Case #: 1037309

COURT OF APPEALS, DIVISION I,
OF THE STATE OF WASHINGTON

RUTH SCOTT, individually, and as personal
representative of the ESTATE OF MIKAEL SCOTT,
a deceased individual; JEFF MUHLEMAN, individually,
and as personal representative of the ESTATE OF
TYLER MUHLEMAN, a deceased individual; and
CINDY CRUZ, individually,

Petitioners,

v.

AMAZON.COM, INC., a
Delaware Corporation,

Respondent.

MARY-ELLEN VIGLIS, individually, and as personal
representative of the ESTATE OF DEMETRIOS VIGLIS,
a deceased individual; JAMES PASSANNANTI, individually,
and as personal representative of the ESTATE OF
AVA PASSANNANTI, a deceased individual; and
ANNETTE GALLEGGO, individually,

Petitioners,

v.

AMAZON.COM, INC., a
Delaware Corporation,

Respondent.

BRIEF OF *AMICI CURIAE* PROFESSORS OF PEDIATRICS
IN SUPPORT OF PETITIONERS' PETITION FOR REVIEW

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TABLE OF CONTENTS

I.	IDENTITY AND INTEREST OF AMICI CURIAE.....	1
II.	STATEMENT OF THE CASE	3
III.	ARGUMENT.....	5
	A. Adolescents Are Particularly Vulnerable Due to Their Brain Development and the Prevalence of Digital Media Promoting Suicide.....	5
	B. Restricting Access to Lethal Methods of Suicide Saves Lives.	12

TABLE OF AUTHORITIES

Cases	Page(s)
<i>Webstad v. Stortini</i> , 83 Wn. App. 857, 924 P.2d 940 (1996), <i>review</i> <i>denied</i> , 131 Wn.2d 1016 (1997).....	15
 Other Authorities	
<i>AAP-AACAP-CHA Declaration of a National Emergency in Child and Adolescent Mental Health</i> , Am. Acad. Pediatrics (Oct. 19, 2021), https://www.aap.org/en/advocacy/child-and-adolescent-healthy-mental-development/aap-aacap-cha-declaration-of-a-national-emergency-in-child-and-adolescent-mental-health/	10
Ali Pourmand <i>et al.</i> , <i>Social Media and Suicide: A Review of Technology-Based Epidemiology and Risk Assessment</i> , 25 Telemedicine J. & e- Health 880–88 (2019), https://www.liebertpub.com/doi/epub/10.1089/tmj.2018.0203	8
<i>Attempters' Longterm Survival</i> , Harvard Univ., https://www.hsph.harvard.edu/means-matter/means-matter/survival/ (last visited Feb. 20, 2025).....	15

David Owens <i>et al.</i> , <i>Fatal and non-fatal repetition of self-harm</i> , British J. Psychiatry 193–99 (2002), https://www.cambridge.org/core/services/aop-cambridge-core/content/view/721FD68B3030C46E2070CC08CA869523/S000712500002715Xa.pdf/fatal-and-non-fatal-repetition-of-self-harm-systematic-review.pdf	15
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Jorge V. Verlenden <i>et al.</i> , <i>Mental Health and Suicide Risk Among High School Students and Protective Factors – Youth Risk Behavior Survey, United States, 2023</i>	4
Madelyn S. Gould & Alison M. Lake, <i>The Contagion of Suicidal Behavior</i> (2013), https://www.ncbi.nlm.nih.gov/books/NBK207262/	9
<i>Means Matter Basics</i> , Harvard Univ., https://www.hsph.harvard.edu/means-matter/means-matter/ (last visited Feb. 20, 2025)	13
<i>Means Reduction Saves Lives</i> , Harvard Univ., https://www.hsph.harvard.edu/means-matter/means-matter/saves-lives/ (last visited Feb. 20, 2025)	14

<i>Method Choice and Intent</i> , Harvard Univ., https://www.hsph.harvard.edu/means-matter/means-matter/intent/ (last visited Feb. 20, 2025).....	13, 14
Olivia Carville, <i>TikTok’s Algorithm Keeps Pushing Suicide to Vulnerable Kids</i> , Bloomberg (Apr. 19, 2023, 9:01 PM), https://www.bloomberg.com/news/features/2023-04-20/tiktok-effects-on-mental-health-in-focus-after-teen-suicide	8
<i>Pacific Northwest Suicide Prevention Resource Center</i> , Harborview Inj. Prevention & Resch. Ctr., https://hiprc.org/outreach/suicide/ (last visited Feb. 20, 2025).....	11, 13
<i>Protecting Youth Mental Health: The U.S. Surgeon General’s Advisory</i> , U.S. Dep’t Health & Hum. Servs. (2021), https://www.hhs.gov/sites/default/files/surgeon-general-youth-mental-health-advisory.pdf	5, 10
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Tyler Kingkade & Elizabeth Chuck, <i>Suicidal thoughts are increasing in young kids, experts say. It began before the pandemic.</i> , NBC News (Apr. 8, 2021, 2:00 AM), https://www.nbcnews.com/news/us-news/suicidal-thoughts-are-increasing-young-kids-experts-say-it-began-nl263347	9

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<i>Why Teens Are Impulsive, Addiction-Prone And Should Protect Their Brains</i> , Nat'l Pub. Radio (Apr. 15, 2016, 1:41 PM), https://www.npr.org/2016/04/15/474348291/why-teens-are-impulsive-addiction-prone-and-should-protect-their-brains	8
<i>Youth Suicide Rates</i> , Wash. State Dep't of Children, Youth & Families, https://dcyf.wa.gov/node/3261 (last visited Feb. 20, 2025).....	11

I. IDENTITY AND INTEREST OF AMICI CURIAE

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Jonathan P. Winickoff, MD, MPH, is a Professor of Pediatrics at Harvard Medical School and MassGeneral Hospital for Children. As a pediatrician, Dr. Winickoff is on the front line of screening and counseling youth for mental health conditions, substance use disorders, self-harm, and suicidal ideation and has been treating child and adolescent patients for

over 25 years. As a researcher, Dr. Winickoff examines youth risk behavior, including tobacco use and nicotine addiction.

Amici have no personal interests in this case. Rather, amici's sole interest is in public information and communication about reducing youth risk behavior, including self-harm and attempted suicide.

Amici submit this brief because they understand that youth risk behavior is a complex matter driven by various cognitive, emotional, and psychosocial factors, and amici believe it is critical that the Court understand the complexities that drive youth risk behavior and suicidal actions, as it considers Petitioners' request for review.

All parties have consented to the filing of this brief. No party's counsel authored this brief in whole or in part, no party's counsel contributed money intended to fund preparing or submitting the brief, and no person other than amici or their counsel contributed money intended to fund preparing or submitting the brief.

II. STATEMENT OF THE CASE

This case is about the responsibility of an online retailer alleged to have negligently delivered a particularly lethal means of suicide to individuals, including children as young as seventeen. As the Court of Appeals observed, “[t]his case presents truly tragic facts about profound loss and illuminates some of the many impacts of the internet on suicidal ideation and mental health generally: the broad availability of instruction about, or support for, suicide, and the previously unfathomable accessibility to instrumentalities of death.” App. 36. While no one is immune to these “impacts of the internet,” they present particularly elevated risks to adolescents. Young people today come of age in an environment permeated by social media platforms and other digital media amplifying and promoting negative emotions and behaviors, including self-harm and suicide. Nationwide, young people are reporting alarming rates of anxiety, depression, and suicidal ideation. The 2023 Youth Risk Behavior Survey found that one in five high school

students seriously considered attempting suicide during the 12 months before the survey, and nearly one in ten students attempted suicide during the same time period.¹

As the Court of Appeals concluded, “the controlling law has yet to adapt to our lived experiences.” App. 37. The controlling law is out of sync not only with how digital media have reshaped the adolescent experience, but also with the current understanding of suicide prevention. One of the most effective tools of suicide prevention is restricting access to lethal means. Many more people attempt suicide and survive than die by suicide, and the majority of people who survive a suicide attempt never attempt suicide again. Research indicates that the “intent” associated with a suicide attempt is often faltering, that suicide is an impulsive act, and that use of highly

¹ Jorge V. Verlenden *et al.*, *Mental Health and Suicide Risk Among High School Students and Protective Factors – Youth Risk Behavior Survey, United States, 2023*, 73 Morbidity & Mortality Weekly Rep. 79–86 (2024), <https://www.cdc.gov/mmwr/volumes/73/su/pdfs/su7304a9-H.pdf>.

lethal methods is often a question of availability rather than degree of intent. These things are especially true with respect to teenagers, as they are less likely, based on their developmental stage, to be able to appreciate the finality of their actions.

Amici submit this brief in order to highlight for the Court's consideration research on the developing adolescent brain, the heightened dangers of digital media for youth today, and the effectiveness of suicide prevention measures.

III. ARGUMENT

A. Adolescents Are Particularly Vulnerable Due to Their Brain Development and the Prevalence of Digital Media Promoting Suicide.

Rates of suicidal ideation, suicide attempts, and death by suicide among children and teens in the U.S. have risen alarmingly in recent years. These rates are rising in the context of what the Surgeon General has warned is a national youth mental health crisis.² In issuing the advisory, the Surgeon

² *Protecting Youth Mental Health: The U.S. Surgeon General's Advisory*, U.S. Dep't Health & Hum. Servs. (2021), <https://www.hhs.gov/sites/default/files/surgeon-general-youth->

General stated, “[m]ental health challenges in children, adolescents, and young adults are real and widespread. Even before the pandemic, an alarming number of young people struggled with feelings of helplessness, depression, and thoughts of suicide—and rates have increased over the past decade.”³

Adolescence can be a dangerous time. For many, it is a period of great risk-taking behaviors. Critically, the pre-frontal cortex, which is key to impulse control, decision-making, and information processing, is not fully developed in adolescents. The pre-frontal cortex is one of the last areas of the brain to

[mental-health-advisory.pdf](#). The American Academy of Pediatrics, the American Academy of Child and Adolescent Psychiatry, and the Children’s Hospital Association also declared a national emergency in child and adolescent mental health in 2021.

³ *U.S. Surgeon General Issues Advisory on Youth Mental Health Crisis Further Exposed by COVID-19 Pandemic*, U.S. Dep’t Health & Hum. Servs. (Dec. 7, 2021), <https://public3.pagefreezer.com/browse/HHS.gov/30-12-2021T15:27/https://www.hhs.gov/about/news/2021/12/07/us-surgeon-general-issues-advisory-on-youth-mental-health-crisis-further-exposed-by-covid-19-pandemic.html>.

develop and generally does not fully mature until early adulthood. In contrast, regions in the brain's limbic system associated with emotional reactivity and impulsivity are fully developed by adolescence.⁴ As a result, "the adolescent brain is 'wired' to have strong emotional reactions, particularly to interpersonal interactions, at a time when their ability to plan and control impulses is less developed."⁵ As neuroscientist Dr. Frances Jensen explained in a *National Public Radio* interview, there is "an increased risk of suicide in this window of development" because adolescents "have enough of [their] systems working in order to actually manifest a depression," while their frontal lobes and impulse control are underdeveloped, and suicide is, in part, "an impulsive act."⁶

⁴ Elizabeth D. Ballard & Maryland Pao, *Neurobiology of Suicide in Children and Adolescents: Implications for Assessment and Treatment* (2022), https://link.springer.com/chapter/10.1007/978-3-031-06127-1_2.

⁵ *Id.* at 14.

⁶ *Why Teens Are Impulsive, Addiction-Prone And Should Protect Their Brains*, Nat'l Pub. Radio (Apr. 15, 2016, 1:41

In addition to the risks inherent in their “wiring,” today’s teens must navigate a new set of risks present in digital media. To start, social networking platforms can amplify common but powerful emotions such as sadness and hopelessness because of constant social comparison, compulsive use, and a lack of sleep. But social media platforms often go far beyond that, pushing an endless, algorithm-driven feed of “recommended content” displaying words and imagery related to suicide or suicidal ideation.^{7, 8, 9} In addition, as alleged in the *Scott*

PM), <https://www.npr.org/2016/04/15/474348291/why-teens-are-impulsive-addiction-prone-and-should-protect-their-brains>.

⁷ See Ali Pourmand *et al.*, *Social Media and Suicide: A Review of Technology-Based Epidemiology and Risk Assessment*, 25 *Telemedicine J. & e-Health* 880–88 (2019), <https://www.liebertpub.com/doi/epub/10.1089/tmj.2018.0203>.

⁸ Olivia Carville, *TikTok’s Algorithm Keeps Pushing Suicide to Vulnerable Kids*, *Bloomberg* (Apr. 19, 2023, 9:01 PM), <https://www.bloomberg.com/news/features/2023-04-20/tiktok-effects-on-mental-health-in-focus-after-teen-suicide>.

⁹ Queenie Wong, *Suicide and self-harm content is scarily easy to find on social media*, *CNET* (Oct. 1, 2021, 8:47 AM), <https://www.cnet.com/health/personal-care/suicide-and-self-harm-content-is-scarily-easy-to-find-on-social-media/>.

complaint, certain websites, such as the “Sanctioned Suicide” website, normalize suicide and provide specific instructions on methods of suicide.¹⁰ For decades, research on suicide “contagion” has suggested that suicidal behavior can be contagious based on media reporting on suicide and exposure to a suicidal peer.¹¹ And unlike traditional media such as newspapers, social media, for many of today’s youth, is a constant presence.

This combination of factors creates an incredibly treacherous environment for today’s adolescents and their families.¹² As the Surgeon General noted, rates of suicidal

¹⁰ See App. 9–10 (discussing the facts alleged regarding Mikael Scott’s death).

¹¹ See Madelyn S. Gould & Alison M. Lake, *The Contagion of Suicidal Behavior* (2013), <https://www.ncbi.nlm.nih.gov/books/NBK207262/>.

¹² Rates of suicidal ideation and suicide are increasing for children even younger than adolescence, as well. See, e.g., Tyler Kingkade & Elizabeth Chuck, *Suicidal thoughts are increasing in young kids, experts say. It began before the pandemic.*, NBC News (Apr. 8, 2021, 2:00 AM), <https://www.nbcnews.com/news/us-news/suicidal-thoughts-are-increasing-young-kids-experts-say-it-began-n1263347>.

ideation increased among young people nationwide even before the pandemic. From 2009 to 2019, the percentage of high school students who seriously considered suicide increased by 36 percent, and the percentage of those who created a suicide plan increased by 44 percent.¹³ From 2007 to 2019, suicide rates among youth ages 10 to 24 in the U.S. increased by 57 percent.¹⁴ By 2018, suicide was the second-leading cause of death for youth ages 10 to 24.¹⁵

These alarming trends are prevalent both nationally and in Washington. The young people to whom Amazon shipped deadly sodium nitrite in this case lived in Texas, California,

¹³ *Protecting Youth Mental Health: The U.S. Surgeon General's Advisory* at 8, U.S. Dep't Health & Hum. Servs. (Dec. 7, 2021), <https://www.hhs.gov/sites/default/files/surgeon-general-youth-mental-health-advisory.pdf>.

¹⁴ *Id.*

¹⁵ *AAP-AACAP-CHA Declaration of a National Emergency in Child and Adolescent Mental Health*, Am. Acad. Pediatrics (Oct. 19, 2021), <https://www.aap.org/en/advocacy/child-and-adolescent-healthy-mental-development/aap-aacap-cha-declaration-of-a-national-emergency-in-child-and-adolescent-mental-health/>.

Virginia, and Arizona. In Washington, rates of youth suicide and attempted suicide increased by more than 600 percent between 2013 and 2021.¹⁶ Consistent with the national Youth Risk Behavior Surveillance System data, one in five 10th grade students in Washington have seriously considered suicide.¹⁷

With suicidal ideation and suicide attempts reported at such high rates among students nationwide, it cannot be that these students are intent on dying and that prevention measures would not make a difference. Instead, these statistics reflect the grim reality that youth nationwide are experiencing serious mental and emotional distress, while navigating an online environment that normalizes and amplifies pro-suicide messages. This reality, coupled with the inherent vulnerability and impulsivity that characterize adolescence, creates a

¹⁶ *Youth Suicide Rates*, Wash. State Dep't of Children, Youth & Families, <https://dcyf.wa.gov/node/3261> (last visited Feb. 20, 2025).

¹⁷ *Pacific Northwest Suicide Prevention Resource Center*, Harborview Inj. Prevention & Resch. Ctr., <https://hiprc.org/outreach/suicide/> (last visited Feb. 20, 2025).

heightened danger for teens and increases the likelihood that adolescents will contemplate and attempt suicide. But it does not mean that such adolescents have fully formed an intent to die, or that they can weigh and appreciate the consequences of their actions. A suicide attempt is often a cry for help—one that can only be heeded when the attempt is unsuccessful.

B. Restricting Access to Lethal Methods of Suicide Saves Lives.

The precedent constraining the appellate court's decision does not reflect what is today a well-established principle of suicide prevention: restricting access to lethal means is highly effective in preventing suicide. Research has demonstrated that restricting access to highly lethal means—such as sodium nitrite—can save lives. In many instances, the progression from suicidal ideation to a suicide attempt occurs during a short-term period of crisis and is, as discussed above, an impulsive act. “If highly lethal means are made less available to impulsive attempters and they substitute less lethal means, or temporarily

postpone their attempt, the odds are increased that they will survive.”¹⁸

Furthermore, and perhaps counterintuitively, research has not established a correlation between the seriousness of an individual’s suicidal intent and the lethality of the method used in a suicide attempt. Most suicide attempts are unsuccessful: According to the Harborview Injury Prevention & Research Center at the University of Washington, for every person who dies by suicide in the U.S., 60 people will survive a suicide attempt.¹⁹ Studies of survivors of suicide attempts have not found a relationship between the resoluteness of intent to die and the medical severity of the attempt.²⁰ One reason for this

¹⁸ *Means Matter Basics*, Harvard Univ., <https://www.hsph.harvard.edu/means-matter/means-matter/> (last visited Feb. 20, 2025).

¹⁹ *Pacific Northwest Suicide Prevention Resource Center*, Harborview Injury Prevention & Rsch. Ctr., <https://hiprc.org/outreach/suicide/> (last visited Feb. 20, 2025).

²⁰ *Method Choice and Intent*, Harvard Univ., <https://www.hsph.harvard.edu/means-matter/means-matter/intent/> (last visited Feb. 20, 2025).

may be that it is often availability, more than any other factor, that determines what method will be used.²¹

While there is no established relationship between the resoluteness of an individual's intent to die and the lethality of the method chosen, there is, unsurprisingly, a relationship between the lethality of the method and survival of the attempt. Indeed, "[a] number of studies have indicated that when lethal means are made less available or less deadly, suicide rates by that method decline, and frequently suicide rates overall decline. This has been demonstrated in a number of areas: bridge barriers, detoxification of domestic gas, pesticides, medication packaging, and others."²²

The fact that the availability of lethal means can have such an effect on suicide outcomes calls into question the assumptions historically relied upon by Washington courts

²¹ *Id.*

²² *Means Reduction Saves Lives*, Harvard Univ., <https://www.hsph.harvard.edu/means-matter/means-matter/saves-lives/> (last visited Feb. 20, 2025).

evaluating liability in the context of suicide, including defining suicide as “a voluntary willful choice determined by a moderately intelligent mental power, which knows the purpose and the physical effect of the suicidal act.” App. 24 (quoting *Webstad v. Stortini*, 83 Wn. App. 857, 866, 924 P.2d 940 (1996), *review denied*, 131 Wn.2d 1016 (1997)). The majority of people who survive a suicide attempt will not go on to die by suicide at a later date.²³ One meta-analysis of 90 longitudinal studies found that only seven percent of people who attempted suicide and required medical care later died as a result of another suicide attempt.²⁴ Thus, suicidal intent is not nearly as absolute as outdated case law has presumed it to be. Instead,

²³ *Attempters’ Longterm Survival*, Harvard Univ., <https://www.hsph.harvard.edu/means-matter/means-matter/survival/> (last visited Feb. 20, 2025).

²⁴ David Owens *et al.*, *Fatal and non-fatal repetition of self-harm*, 181 *British J. Psychiatry* 193–99 (2002), <https://www.cambridge.org/core/services/aop-cambridge-core/content/view/721FD68B3030C46E2070CC08CA869523/S000712500002715Xa.pdf/fatal-and-non-fatal-repetition-of-self-harm-systematic-review.pdf>.

analyses of suicide-related data and survival outcomes point to an understanding of suicide attempts as an impulsive act, often taken in a moment of acute, short-term crisis. For adolescents—at a stage in their development where the region of the brain responsible for impulse inhibition and executive function is, literally, not fully connected—any suicidal intent is even more tenuous.

What the data demonstrate is that even when an individual experiences suicidal ideation and attempts suicide, the ultimate outcome is influenced by many other causal factors, and particularly by the accessibility and lethality of suicidal means. Purveyors of a chemical known to be an especially lethal and irreversible means of suicide should be required to take care in selling and shipping such a chemical to individuals. In this context, any number of measures could avoid a tragic outcome—restricting access, slowing delivery, or increasing warnings about the certainty of death and likelihood of suffering. Conversely, failing to take such measures and

instead making lethal chemicals available with the click of a button and rapid delivery ensures that a teenager's impulsive act in a moment of crisis will be irreversible.

I hereby certify that this document contains 2,500 words in accordance with RAP 18.17.

RESPECTFULLY SUBMITTED this 21st day of February, 2025.

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February 21, 2025 - 12:00 PM

Transmittal Information

Filed with Court: Court of Appeals Division I
Appellate Court Case Number: 84933-6
Appellate Court Case Title: Ruth Scott, et al, Respondents v. Amazon.com, Inc., Petitioner

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