
SUPREME COURT

OF THE

STATE OF CONNECTICUT

S.C. 19832
S.C. 19833

**DONNA L. SOTO, ADMINISTRATRIX OF
THE ESTATE OF VICTORIA L. SOTO, ET AL.,**
PLAINTIFFS-APPELLANTS,

v.

**BUSHMASTER FIREARMS INTERNATIONAL,
LLC, A/K/A, ET AL.,**
DEFENDANTS-APPELLEES.

**BRIEF OF AMICUS CURIAE CONNECTICUT
CITIZENS' DEFENSE LEAGUE, INC.**

DAVID H. THOMPSON*
PETER A. PATTERSON*
JOHN D. OHLENDORF*
COOPER & KIRK, PLLC
1523 NEW HAMPSHIRE AVENUE, N.W.
WASHINGTON, D.C. 20036
(202) 220-9600
(202) 220-9601 (fax)
dthompson@cooperkirk.com
**APPEARING PRO HAC VICE*

KENNETH R. SLATER, JR.
COUNSEL OF RECORD
HALLORAN & SAGE LLP
225 ASYLUM STREET
HARTFORD, CT 06103
(860) 297-4662
(860) 860-548-0006 (fax)
slater@halloransage.com

COUNSEL FOR AMICUS CURIAE

TABLE OF CONTENTS

	<u>Page</u>
STATEMENT OF THE ISSUES	ii
TABLE OF AUTHORITIES	iii
INTEREST OF AMICUS CURIAE	v
INTRODUCTION	1
ARGUMENT	3
I. The semiautomatic firearms at issue in this case are no more dangerous, powerful, or destructive than any other firearm.....	3
II. Semiautomatic firearms like the AR-15 are used in many multiples <i>fewer</i> violent crimes, including mass shootings, than other commonly-owned firearms such as ordinary handguns.....	8
CONCLUSION	10

STATEMENT OF THE ISSUES

Whether a business may be held liable, under Connecticut tort law or the Connecticut Unfair Trade Practices Act, for lawfully distributing and selling a type of firearm that is both functionally safer and empirically less likely to be used in mass shootings or other violent crime than an ordinary handgun or hunting rifle.

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page</u>
<i>District of Columbia v. Heller</i> , 554 U.S. 570 (2008)	7, 10
<i>Illinois Ass’n of Firearms Retailers v. City of Chicago</i> , 961 F. Supp. 2d 928 (N.D. Ill. 2014).....	7
<i>Staples v. United States</i> , 511 U.S. 600 (1994)	6, 7
<i>Stenberg v. Carhart</i> , 530 U.S. 914 (2000).....	2
<i>Teixeira v. County of Alameda</i> , 822 F.3d 1047 (9th Cir. 2016).....	7
<i>United States v. Marzzarella</i> , 614 F.3d 85 (3d Cir. 2010).....	7
 <u>Other</u>	
BUREAU OF ALCOHOL, TOBACCO, AND FIREARMS, ANNUAL FIREARMS MANUFACTURING AND EXPORT REPORT (2015), available at https://goo.gl/rECFMF	2, 10
Department of the Army, Rifle Marksmanship: M16-/M4-Series Weapons (Aug. 2008), available at https://goo.gl/yisKn9	6
EVERYTOWN FOR GUN SAFETY, MASS SHOOTINGS IN THE UNITED STATES: 2009–2016, Appendix (2017), available at https://goo.gl/60LrxK	9, 10
James Alan Fox & Monica J. DeLateur, <i>Mass Shootings in America: Moving Beyond Newtown</i> , 18 HOMICIDE STUD. 127 (2014), available at http://goo.gl/Ji7Yyp	10
Stephen P. Halbrook, <i>New York’s Not So “Safe” Act</i> , 78 ALB. L. REV. 789 (2015).....	4
Nicholas J. Johnson, <i>Supply Restrictions at the Margins of Heller and the Abortion Analogue: Stenberg Principles, Assault Weapons, and the Attitudinalist Critique</i> , 60 HASTINGS L.J. 1285 (2009)	4, 5
NICHOLAS J. JOHNSON ET AL., FIREARMS LAW & THE SECOND AMENDMENT (2012)	7
Gary Kleck, <i>Large-Capacity Magazines and the Casualty Counts in Mass Shootings: The Plausibility of Linkages</i> (Mar. 2, 2016), available at https://goo.gl/oovgkE	5
GARY KLECK, TARGETING GUNS: FIREARMS AND THEIR CONTROL (2006)	5, 8
David B. Kopel, <i>Rational Basis Analysis of “Assault Weapon” Prohibition</i> , 20 J. CONTEMP. L. 381 (1994)	3
CHRISTOPHER S. KOPER, UPDATED ASSESSMENT OF THE FEDERAL ASSAULT WEAPONS BAN (June 2004), https://goo.gl/iVZvt	8, 9
WILLIAM J. KROUSE & DANIEL J. RICHARDSON, CONGRESSIONAL RESEARCH SERV., R44126, MASS MURDER WITH FIREARMS: INCIDENTS AND VICTIMS, 1999-2013 (2015), available at https://goo.gl/XuSffG	9

Michael Planty & Jennifer L. Truman, *Special Report: Firearm Violence, 1993–2011*,
BUREAU OF JUSTICE STATISTICS (May 2013), available at <https://goo.gl/2MnMrV>2, 10

Simon Rogers, Rob Grant, & Sean Anderson, *How many AR15 rifles have been sold
in the US?*, THE GUARDIAN (Dec. 17, 2012), available at <https://goo.gl/3PBwDG> 2

Eugene Volokh, *Implementing the Right to Keep and Bear Arms for Self-Defense*,
56 UCLA L. REV. 1443 (2009) 3

INTEREST OF AMICUS CURIAE¹

Amicus Connecticut Citizens Defense League, Inc. ("CCDL") is a non-partisan grass-roots organization that works to promote Second Amendment rights through legislative action, to keep its members informed about legal requirements and potential legislative and regulatory developments related to the right to keep and bear arms, and to educate the public about these legal developments and about the importance of safeguarding the Second Amendment rights of law-abiding citizens. Founded in 2009, CCDL has over 27,000 members throughout the State of Connecticut. It has a strong interest in the outcome of this case because imposing liability on the Defendants for manufacturing, distributing, and selling the AR-15—to law-abiding, adult citizens and in compliance with all federal and state laws and regulatory requirements—would set a precedent that could lead to a dramatic reduction in the availability in Connecticut of *all* firearms that, like the AR-15, are commonly held by ordinary citizens for lawful purposes such as self-defense, hunting, and target shooting.

¹ Pursuant to Practice Book § 67-7, amicus certifies that no counsel for any party wrote any part of this brief, no counsel or party contributed to the cost of the preparation or submission of this brief, and no one other than the Connecticut Citizens' Defense League, its members, or its counsel made such a monetary contribution.

INTRODUCTION

When Defendant Riverview Sales sold an AR-15 rifle to Nancy Lanza in 2010, it sold her a firearm that, by every empirical measure, was *less dangerous and less likely* to be used in a mass shooting than an ordinary hunting rifle or handgun. Because it fires .223-caliber bullets, for instance, the AR-15 has about *one-quarter* the firepower of a .30-06-caliber rifle—a traditional, popular choice for deer hunting. And studies show that common handguns are used in *over 20 times as many mass shootings* as the AR-15.²

The negligent entrustment and unfair trade practices claims brought by Plaintiffs in this action depend on a contrary factual narrative. The AR-15, by their telling, is a “supremely efficient mass killer[]” that, because of its “sheer destructive power,” is “the weapon of choice for lone shooters looking to inflict maximum casualties” and is “used repeatedly, regularly, and routinely to mass kill Americans.”³ This narrative is fiction. As demonstrated below, in reality the AR-15 is functionally indistinguishable from any other of the tens, if not hundreds, of millions of semi-automatic firearms that law-abiding Americans keep in the home for self-defense, shoot at the target range, and use when they go hunting. Far from “the weapon of choice” in mass shootings, according to available data the AR-15 is only used in about 3% of all mass shootings. And of the over two million AR-15s in the United States when Nancy Lanza purchased hers in 2010,⁴ 99.8% were not used *in any*

² Based on data from a prominent anti-gun group, AR-15s are used in only 3.2% of mass shootings, *see infra* note 38, while handguns are used in 64.7%, *see infra* note 45.

³ Brief of Plaintiffs-Appellants at 14, 21, 23, 44, 45 (Mar. 1, 2017) (“Appellants’ Br.”).

⁴ Simon Rogers, Rob Grant, & Sean Anderson, *How many AR15 rifles have been sold in the US?*, THE GUARDIAN (Dec. 17, 2012), *available at* <https://goo.gl/3PBwDG>.

kind of gun crime that year.⁵ If lawfully distributing and selling the AR-15⁶ gives rise to liability under Connecticut law, then so does the distribution and sale of any handgun or semi-automatic rifle—firearms that make up *nearly two-thirds* of domestic sales.⁷

Plaintiffs are asking this Court to embrace a novel legal theory that by its own logic necessarily amounts to a near-total ban on firearm sales. Because that result cannot be squared with our practices, our legal traditions, or our constitutional protections, Plaintiffs' theory must be rejected, and the decision of the Superior Court should be affirmed.

ARGUMENT

I. **The semiautomatic firearms at issue in this case are no more dangerous, powerful, or destructive than any other firearm.**

⁵ Statistics on the use of the AR-15 are difficult to find, because studies often refer generally to "assault weapons"—"a political term, developed by anti-gun publicists" to refer to various firearms that share certain largely cosmetic features. *Stenberg v. Carhart*, 530 U.S. 914, 1001 n.16 (2000) (Thomas, J., dissenting) (quoting Bruce H. Kobayashi & Joseph E. Olson, *In Re 101 California Street*, 8 STAN. L. & POL'Y REV. 41, 43 (1997)). As discussed below, well under 1% of gun crimes are committed using an "assault rifle" of any kind. See *infra* note 33. Even if one were to round up to 1% of the 422,550 violent crimes committed in 2010, assume that all of these involved the AR-15, and further assume that each such crime involved a *different* AR-15 (which they plainly did not, since many incidents involved multiple victims), that would mean that at most 0.21% of the estimated 2 million AR-15s in the United States were used in a violent crime that year. See Michael Planty & Jennifer L. Truman, *Special Report: Firearm Violence, 1993–2011* at 3 tbl.3, BUREAU OF JUSTICE STATISTICS (May 2013), available at <https://goo.gl/2MnMrV>. Given the assumptions made in the calculation, even that small number is clearly an overestimate.

⁶ Plaintiffs briefly dispute whether Connecticut "determined" that the AR-15 purchased by Nancy Lanza "could be legally possessed," but they admit that the firearm "was not banned" when she purchased it. Reply Brief of Plaintiffs-Appellants at 9-10 (June 9, 2017). The inescapable implication of that concession is that it could be legally possessed, particularly against the backdrop of Connecticut laws banning *other* firearms. See *DeNunzio v. DeNunzio*, 320 Conn. 178, 194 (2016) (expression of one thing is the exclusion of another).

⁷ As shown below, handguns account for 47% of domestic firearms sales, see *infra* note 46, and semi-automatic rifles account for about 40% of rifle sales, see *infra* note 30. Together, these firearm types account for 63% of all domestic sales. See BUREAU OF ALCOHOL, TOBACCO, AND FIREARMS, ANNUAL FIREARMS MANUFACTURING AND EXPORT REPORT 1 (2015), available at <https://goo.gl/rECFMF> (our tabulation based on raw data).

Plaintiffs contend that the AR-15 is “the perfect piece of military hardware,” where “[e]very detail . . . serves the same end: to ensure that whoever wields it will achieve more wounds, of greater severity, in more victims, in less time, *every time*.” Appellants’ Br. at 2, 5. In reality, the AR-15 is simply an ordinary firearm, distinguished from any other common rifle solely by a set of largely-cosmetic features that, to the extent they have any functional effect at all, serve to make the firearm *safer* for civilian use.

Plaintiffs’ amici, for instance, emphasize that the AR-15 has a pistol grip, which they say gives it “spray-firing power.”⁸ But a pistol grip is simply a handgrip that extends below the firearm, which allows the user to comfortably grip it with the trigger hand when firing from the shoulder. That feature allows the rifle’s user to more easily position the firearm in the pocket of her shoulder, which aids in firing the rifle accurately; and it also increases the user’s ability to hold onto her firearm if someone is trying to pull it out of her hands.⁹ Both aspects make rifles with pistol grips attractive home-defense firearms; neither makes them more dangerous or apt to be criminally misused.¹⁰ And the notion that pistol grips facilitate “spray firing” from the hip is wrong twice over. First, because of the awkward way one’s wrist would have to be twisted to hold a rifle with a pistol grip at hip-level, a firearm that *does not* have a pistol grip is actually more conducive to firing from the hip.¹¹ And second, “shooting from the hip” is highly inaccurate and ineffective—hence the idiom—and for that

⁸ Brief of Amici Curiae CT Against Gun Violence & Tom Diaz at 1 (May 1, 2017) (“CT Against Gun Violence Amicus Br.”); Brief for *Amici Curiae* Katie Bakes M.D., *et al.* in Support of Plaintiffs-Appellants at 3 (Apr. 21, 2017) (“Physicians’ Amicus Br.”).

⁹ See David B. Kopel, *Rational Basis Analysis of “Assault Weapon” Prohibition*, 20 J. CONTEMP. L. 381, 396 (1994).

¹⁰ *Id.*; see also Eugene Volokh, *Implementing the Right to Keep and Bear Arms for Self-Defense*, 56 UCLA L. REV. 1443, 1484 (2009).

¹¹ Stephen P. Halbrook, *New York’s Not So “Safe” Act*, 78 ALB. L. REV. 789, 803 (2015).

reason a firearm designed to be foolishly fired in this way would in any event be less lethal in the hands of a determined murderer.¹²

Plaintiffs and their amici also point to the AR-15's muzzle velocity, which supposedly gives it the "power to tear the human body to pieces,"¹³ and turn "organs into goo."¹⁴ Plaintiffs' amici suggest that because of the firearm's muzzle velocity its "bullets explode inside the body"¹⁵ like "grenade[s]."¹⁶ But simple physics refutes this hysteria. Far from having fantastical destructive power akin to the weapons from some science fiction film, the AR-15 is in reality significantly *less* powerful than many common hunting rifles. As one of Plaintiffs' amici explains, "[t]he energy of a bullet varies with its mass and velocity."¹⁷ While the AR-15's muzzle velocity is on the higher end, because the .223 ammunition it fires is significantly lighter than the bullets used in many other common firearms, it has significantly less power overall. For instance, the common .30-06 caliber rifle—used for scores of years by millions of Americans for hunting deer and other big game—fires a bullet three or four times heavier than the AR-15; as a result, typical rifles in this caliber have *three to four times the overall firepower* of an AR-15, even if their muzzle velocity is marginally lower.¹⁸

Plaintiffs next posit that the AR-15 is especially dangerous because its purportedly

¹² *Id.*

¹³ Appellants' Br. at 5–6, 21.

¹⁴ Physicians' Amicus Br. at v.

¹⁵ Brief of Amici Curiae Newtown Action Alliance & Connecticut Ass'n of Public School Superintendents at 7 (May 1, 2017).

¹⁶ Physicians' Amicus Br. at 2.

¹⁷ CT Against Gun Violence Br. at 6.

¹⁸ Nicholas J. Johnson, *Supply Restrictions at the Margins of Heller and the Abortion Analogue: Stenberg Principles, Assault Weapons, and the Attitudinalist Critique*, 60 HASTINGS L.J. 1285, 1303–04 (2009) (AR-15's bullets have energy of 1282 foot-pounds at the muzzle and 296 foot-pounds at 400 yards, compared to several common .30-06 rifles, which have 3100 foot-pounds of energy at the muzzle and 1410 at 400 yards).

large-capacity magazines—which do not distinguish AR-15s from other semi-automatic firearms—“allow for prolonged assaults.”¹⁹ Wrong again. According to one scholar, because “[s]killed shooters can change detachable magazines in two seconds or less, and even relatively unskilled persons can, with minimal practice, do so in four seconds,” using a higher capacity magazine “do[es] not increase the time needed to fire a given number of rounds by much.”²⁰ Later in their brief Appellants *themselves make this point*, noting that Adam Lanza “taped [several of his magazines] together to allow for faster reload”—a technique Defendants obviously could have done nothing to prevent.²¹ And in fact, most of Lanza’s 30-round magazines were later recovered from the scene *with ten or more rounds left inside*. Consistent with these facts, the data indicate that the availability of large-capacity magazines is essentially *irrelevant* to the number of casualties in mass-shooting events: they are used in “less than 1/3 of 1% of mass shootings,”²² and in any event mass killers almost never “maintain[] a sustained rate of fire that could not also have been maintained—even taking reloading time into account—with either multiple guns or with an ordinary six-shot revolver and the common loading devices known as ‘speedloaders.’ ”²³

Finally, Plaintiffs and their amici suggest that the AR-15 is uniquely dangerous and lethal because its semiautomatic fire “unleashes a torrent of bullets in a matter of seconds.”²⁴ Indeed, they estimate that a semiautomatic firearm “can empty a 30-round

¹⁹ Appellants’ Br. at 5.

²⁰ Gary Kleck, *Large-Capacity Magazines and the Casualty Counts in Mass Shootings: The Plausibility of Linkages* 5–6 (Mar. 2, 2016), available at <https://goo.gl/oovgkE>.

²¹ Appellants’ Br. at 12.

²² Kleck, *supra* note 20, at 2.

²³ GARY KLECK, *TARGETING GUNS: FIREARMS AND THEIR CONTROL* 125 (2006).

²⁴ Appellants’ Br. at 5.

magazine in five to ten seconds.”²⁵ Yet again, this claim is highly misleading. According to the U.S. Army, the maximum effective rate of fire for the M16 in semi-automatic mode is between 45–65 rounds per minute—*five to eight times slower* than Plaintiffs claim.²⁶ Plaintiffs’ own characterization of Lanza’s rate of fire—154 bullets in five minutes, or a little over one shot every two seconds—supports the Army’s assessment, not theirs.²⁷

The AR-15’s *actual* rate of fire also shows why Plaintiffs are wrong to dismiss the obvious mechanical distinction between that commonly-owned firearm and the military’s M-16: while the former fires only one shot per pull of the trigger, the M-16 is a fully-automatic “machine gun,” capable of firing continuously with one trigger pull until the trigger is released or the magazine has been emptied. See *Staples v. United States*, 511 U.S. 600, 620 n.1 (1994). Contrary to Plaintiffs’ flawed estimates, the U.S. Army’s Field Manual confirms that the M-16’s maximum effective rate of fire in fully automatic mode is *three to four multiples higher* than in semi-automatic mode. That is a major functional difference by any measure, and Plaintiffs’ dismissal of the distinction in a footnote²⁸—and their amici’s suggestion that the difference is “slight”²⁹—simply cannot be credited. Indeed, the distinction between semiautomatic and automatic fire is one the U.S. Supreme Court has identified as marking the boundary between firearms that “traditionally have been widely accepted as lawful possessions” and those that have not. *Staples*, 511 U.S. at 612. The fact that no modern military utilizes the AR-15, as opposed to its fully-automatic-capable

²⁵ *Id.* at 5 n.4.

²⁶ Department of the Army, Rife Marksmanship: M16-/M4-Series Weapons at 2-1 tbl.2-1 (Aug. 2008), available at <https://goo.gl/yisKn9>.

²⁷ Appellants’ Br. at 12.

²⁸ Appellants’ Br. at 5 n.4.

²⁹ Physicians’ Amicus Br. at 2.

cousin, cements the importance of the distinction.

Even setting these points aside, the necessary implications of Plaintiffs' argument that the AR-15 is especially dangerous because it is semiautomatic prove that it cannot be right. For not only is the AR-15 semiautomatic: *so are tens, if not hundreds, of millions of other common firearms owned by law-abiding Americans*. Semi-automatic firearms are extraordinarily commonplace—they account for about 40% of the rifles sold in the United States, and about 80% of the handguns.³⁰ Accordingly, if the AR-15 is especially dangerous because it is semiautomatic, then *so are half or more of the Nation's total stock of firearms*, from hunting rifles to handguns. Under Plaintiffs' theory of the case, that means that whenever a company distributes or sells a semiautomatic rifle or pistol, it becomes exposed to liability for negligent entrustment if that firearm is ultimately misused.³¹

Plaintiffs thus seek to transform this State's negligent entrustment law into a *de facto* ban on the sale of most firearms. That is not the law. The U.S. Supreme Court has held that possession of handguns for self-defense is constitutionally protected, *see District of Columbia v. Heller*, 554 U.S. 570, 636 (2008), and it cannot be illegal to *sell* to law-abiding citizens the very firearms that they have a constitutional right to *possess*. *See Teixeira v. County of Alameda*, 822 F.3d 1047, 1056 (9th Cir. 2016), *reh'g en banc granted*, 854 F.3d 1046; *United States v. Marzzarella*, 614 F.3d 85, 92 n.8 (3d Cir. 2010); *Illinois Ass'n of Firearms Retailers v. City of Chicago*, 961 F. Supp. 2d 928, 930 (N.D. Ill. 2014).

II. Semiautomatic firearms like the AR-15 are used in many multiples fewer violent crimes, including mass shootings, than other commonly-owned firearms such as ordinary handguns.

³⁰ NICHOLAS J. JOHNSON ET AL., FIREARMS LAW & THE SECOND AMENDMENT 8, 11 (2012).

³¹ Appellants' Br. at 15–26.

In addition to their failed claims that the AR-15's features give it an "unparalleled capacity to kill," Plaintiffs also contend that Defendants should be held liable because they were on notice, before distributing and selling the AR-15, that it "had become the weapon of choice for lone shooters looking to inflict maximum casualties," a context where it "reigns supreme."³² Once again, the available data squarely refutes Plaintiffs' narrative. AR-15s are almost never used in crime; criminals by an overwhelming margin prefer cheaper and more portable handguns. And far from being the "weapon of choice" in mass shooting events, only a *miniscule fraction* of mass shooters use the AR-15.

The AR-15 is virtually never used in crime. Numerous studies have investigated the percentage of violent crimes committed with so-called "assault rifles." The average estimate of these studies is that substantially fewer than 1% of violent crimes involve an assault rifle of any kind. For example, a recent analysis of about 40 studies of the issue concluded that "less than 2% of crime guns are 'assault weapons' . . . and well under 1% are 'assault rifles.'"³³ In another assessment—a 2004 study sponsored by the Department of Justice in an effort to justify the now-defunct federal "assault weapon ban"—researchers attempting to defend the ban were forced to concede that "assault weapons" accounted only for "between 1% and 6% of guns used in crime according to . . . several national and local data sources," and that the vast majority of these—"by a ratio of 3 to 1"—were handguns, not rifles.³⁴ Data from Connecticut's Uniform Crime Reports provides further confirmation: in the ten years before the Sandy Hook shooting, for instance, only 0.8% of gun homicides

³² *Id.* at 5–6, 8, 14.

³³ KLECK, *supra* note 23, at 112.

³⁴ CHRISTOPHER S. KOPER, UPDATED ASSESSMENT OF THE FEDERAL ASSAULT WEAPONS BAN 15–16 (June 2004), <https://goo.gl/iVZvt>. Even if confined to rifles, these studies *still* overestimate the number of AR-15s used in crime, since they include *all* "assault rifles."

committed in the state involved a rifle *of any kind*, much less an AR-15 in particular.³⁵

Even the mass shootings that Plaintiffs focus on involve the use of an AR-15 only a small fraction of the time. The 2004 Department of Justice study estimated that between 4% and 13% of mass shootings involved “assault weapons” of any kind.³⁶ A 2015 report by the Congressional Research Service similarly concluded that “offenders used firearms that could be characterized as ‘assault weapons’ in . . . 9.78%” of mass shootings.³⁷ Again, that number includes both “assault pistols” and “assault rifles” of any kind. When only AR-15s are counted, the percentage drops. For example, in the analysis of 156 mass shootings published by the anti-gun group Everytown for Gun Safety, *only five*—about three percent—involved an AR-model firearm.³⁸ Plaintiffs’ assertion that the AR-15 is the “weapon of choice” for mass shooters³⁹ is thus demonstrably and palpably false.

Unsurprisingly, the federal government’s abortive attempt to ban so-called “assault weapons” had no measurable effect on the incidence of mass shootings. Plaintiffs’ amici suggest that “[m]ass shootings dropped while [the ban] was in effect” and “doubled” after it expired,⁴⁰ but that is not so. Data from the FBI demonstrates that over the last four decades, there have been on average approximately 20 mass shootings per year—with no

³⁵ According to the Uniform Crime Reports for each year between 2002 and 2011—each available for download at <http://www.dpsdata.ct.gov/dps/ucr/ucr.aspx>—there were 735 homicides committed with a firearm during that ten-year span, only 6 of which involved a rifle.

³⁶ KOPER, *supra* note 34, at 15.

³⁷ WILLIAM J. KROUSE & DANIEL J. RICHARDSON, CONGRESSIONAL RESEARCH SERV., R44126, MASS MURDER WITH FIREARMS: INCIDENTS AND VICTIMS, 1999-2013 29, (2015), *available at* <https://goo.gl/XuSffG>.

³⁸ EVERYTOWN FOR GUN SAFETY, MASS SHOOTINGS IN THE UNITED STATES: 2009–2016, Appendix (2017), *available at* <https://goo.gl/60LrxK> (our tabulation based on raw data).

³⁹ Appellants’ Br. at 8, 14.

⁴⁰ Physicians’ Amicus Br. at 4.

discernable decrease when the federal ban was in effect and no discernable rise after its repeal.⁴¹ The “stud[y]” cited by Plaintiffs’ amici for the contrary proposition is a blog post that reproduces the flawed Mother Jones database of public mass shootings⁴²—which has been repeatedly criticized by scholars for cherry-picking its data based on confusing and subjective “criteria that are hard to defend [and] . . . not necessarily applied consistently.”⁴³

Plaintiffs’ suggestion that the AR-15’s misuse by Adam Lanza was “foreseeable” thus cannot be credited. Indeed, by every measure the misuse of any given AR-15 is far less likely—and thus far less foreseeable—than the misuse of an *ordinary handgun*. While AR-15s are used only in some fraction of 1% of violent crimes, *nearly 90% of such crimes involve handguns*.⁴⁴ Similarly, while these firearms are used in only around 3% of mass shootings, *nearly 65% involve handguns*.⁴⁵ On Plaintiffs’ theory, then, companies are exposed to tort liability every time they distribute or sell an ordinary handgun—a class of arms that make up 47% of all sales,⁴⁶ and the very type of firearm that *Heller* described as “the quintessential self-defense weapon” and held constitutionally protected. 554 U.S. at 629, 636. That conclusion simply cannot be right. Neither, then, can Plaintiffs’ theory.

CONCLUSION

For the foregoing reasons, the decision of the Superior Court should be affirmed.

⁴¹ James Alan Fox & Monica J. DeLateur, *Mass Shootings in America: Moving Beyond Newtown*, 18 HOMICIDE STUD. 127, 129 (2014), available at <http://goo.gl/Ji7Yyp>.

⁴² Physicians’ Amicus Br. at 4 n.23.

⁴³ Fox & DeLateur, *supra* note 41, at 128–29; Kleck, *supra* note 20, at 12–13.

⁴⁴ *Firearm Violence*, *supra* note 5, at 3 tbl.3 (our tabulation based on 2011 data).

⁴⁵ EVERYTOWN FOR GUN SAFETY, *supra* note 38 (our tabulation based on raw data).

⁴⁶ ANNUAL FIREARMS MANUFACTURING AND EXPORT REPORT, *supra* note 7 (our tabulation based on raw data).

Dated: June 20, 2017

Respectfully submitted,

David H. Thompson*
Peter A. Patterson*
John D. Ohlendorf*
COOPER & KIRK, PLLC
1523 New Hampshire Avenue, N.W.
Washington, D.C. 20036
(202) 220-9600
(202) 220-9601 (fax)
dthompson@cooperkirk.com
**Appearing Pro Hac Vice*

/s/ Kenneth R. Slater, Jr.
Kenneth R. Slater, Jr.
Counsel of Record
HALLORAN & SAGE LLP
225 Asylum Street
Hartford, CT 06103
(860) 297-4662
(860) 860-548-0006 (fax)
slater@halloransage.com

CERTIFICATION

I hereby certify that (1) a copy of the foregoing has been mailed or delivered electronically on June 20, 2017 to each counsel of record and the trial judge as follows, in compliance with Practice Book § 62-7 and § 67-2; (2) the copy of the foregoing being filed with the appellate clerk is a true copy of the foregoing that was submitted electronically; (3) the foregoing has been redacted or does not contain any names or other personal identifying information that is prohibited from disclosure by rule, statute, court order or case law and (4) the foregoing complies with all applicable rules of appellate procedure.

The Honorable Barbara Bellis
Superior Court
1061 Main Street
Bridgeport, CT 06604

For the Plaintiffs-Appellants

Joshua D. Koskoff, Esq.
Alinor C. Sterling, Esq.
Katherine Mesner-Hage, Esq.
Koskoff, Koskoff & Bieder, P.C.
350 Fairfield Avenue
Bridgeport, Ct 06604
Tel: (203) 336-4421
Fax: (203) 368-3244
jkoskoff@koskoff.com
asterling@koskoff.com
khage@koskoff.com

*For Bushmaster Firearms International LLC, a/k/a;
Freedom Group, Inc., a/k/a;
Bushmaster Firearms, a/k/a;
Bushmaster Firearms, Inc., a/k/a;
Bushmaster Holdings, Inc., a/k/a
Remington Arms Company, LLC, a/k/a;
Remington Outdoor Company, Inc., a/k/a*

Jonathan P. Whitcomb, Esq.
Scott M. Harrington, Esq.

Diserio Martin O'Connor & Castiglioni, LLP
One Atlantic Street
Stamford, CT 06901
Tel: (203) 358-0800
Fax: (203) 348-2321
jwhitcomb@dmoc.com
sharrington@dmoc.com

For Remington Arms Company, LLC, a/k/a; Remington Outdoor Company, Inc., a/k/a

Andrew A. Lothson, Esq.
James B. Vogts, Esq.
Swanson Martin & Bell, LLP
330 North Wabash, #3300
Chicago, IL 60611
Tel: (312) 321-9100
Fax: (312) 321-0990
alothson@smbtrials.com
jvogts@smbtrials.com

For Camfour, Inc.;
Camfour Holding, LLP, a/k/a

Scott Charles Allan, Esq.
Christopher Renzulli, Esq.
Renzulli Law Firm, LLP
81 Main Street, #508
White Plains, NY 10601
Tel: (914) 285-0700
Fax: (914) 285-1213
sallan@renzullilaw.com
crenzulli@renzullilaw.com

For Riverview Sales, Inc.;
David LaGuercia

Peter Matthew Berry, Esq.
Berry Law LLC
107 Old Windsor Road, 2nd Floor
Bloomfield, CT 06002
Tel: (860) 242-0800
Fax: (860) 242-0804
firm@berrylawllc.com

*For CT Against Gun Violence
Tom Diaz*

Daniel J. Klau, Esq.
McElroy, Deutsch, Mulvaney & Carpenter / PH LLP
One State Street
Hartford, CT 06103-3102
Tel: (860) 522-5175
Fax: (860) 522-2796
dklau@mdmc-law.com

For Law Center to Prevent Gun Violence

John J. Kennedy, Jr., Esq.
Brendan K. Nelligan, Esq.
Kennedy, Johnson, Schwab & Roberge, LLC
555 Long Wharf Drive, 13th Floor
New Haven, CT 06511
Tel: (203) 936-7931
Fax: (203) 865-5345
jkennedy@kennedyjohnson.com
bnelligan@kennedyjohnson.com

Brad S. Karp, Esq., Esq.
H. Christopher Boehning, Esq.
Amy J. Beaux, Esq.
Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas
New York, NY 10019-6064
Tel: (212) 373-3000
Fax: (212) 757-3990
bkarp@paulweiss.com
cboehning@paulweiss.com
abeaux@paulweiss.com

*For Newtown Action Alliance
CT Association of Public School Superintendents*

David N. Rosen, Esq.
Alexander Taubes, Esq.
David Rosen & Associates, P.C.
400 Orange Street
New Haven, CT 06511
Tel: (203) 787-3513
Fax: (203) 789-1605

drosen@davidrosenlaw.com
ataubes@davidrosenlaw.com

For Physicians

Michael J. Dell, Esq.
Kramer Levin Naftalis & Frankel LLP
1177 Avenue of the Americas
New York, NY 10036
Tel: (212) 715-9100
Fax: (212) 757-8000
mdell@kramerlevin.com

Matthew H. Geelan, Esq.
Donahue, Durham & Noonan, P.C.
741 Boston Post Road
Guilford, CT 06437
Tel: (203) 458-9168
Fax: (203) 458-4424
mgeelan@ddnctlaw.com

Rebecca T. Dell, Esq.
Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas
New York, NY 10019-6064
Tel: (212-373-3000
Fax: (212) 757-3990
rdell@paulweiss.com

For Professors

James J. Healy, Esq.
Cowdery & Murphy, LLC
280 Trumbull Street
Hartford, CT 06103
Tel: (860) 278-5555
Fax: (860) 249-0012
jhealy@cowderymurphy.com

*For State of CT
Department of Consumer Protection*

Jeremy Pearlman, Esq.
110 Sherman Street
Hartford, CT 06105

Tel: (860) 808-5400
Fax: (860) 808-5593
jeremy.pearlman@ct.gov

For The Brady Center to Prevent Gun Violence

Vaughan Finn, Esq.
Shipman & Goodman LLP
One Constitution Plaza
Hartford, CT 06103
Tel: (860) 251-5505
Fax: (860) 251-5219
vfinn@goodwin.com

Thomas H. Zellerbach, Esq.
Orrick, Herrington & Sutcliffe LLP
1000 Marsh Road
Menlo Park, CA 94025
Tel: (650) 614-7446
Fax: (650) 614-7401
tzellerbach@orrick.com

For Trinity Church Wall Street

Howard Zelbo, Esq.
Evan A. Davis, Esq.
Elizabeth Vicens, Esq.
Cleary Gottlieb Steen & Hamilton LLP
One Liberty Plaza
New York, NY 10006
Tel: (212) 225-2000
Fax: (212) 225-3999
hzelbo@cgsh.com
edavis@cgsh.com
evicens@cgsh.com

For National Shooting Sports Foundation

Lawrence G. Keane, Esq.
National Shooting Sports Foundation
11 Mile Hill Road
Newtown, CT 06470
Tel: (203) 426-1320
Fax: (203) 426-1087
lkeane@nssf.org

For Connecticut Defense Lawyers Association

Robert J. Chomiak, Esq.
Goldberg Segalla LLP
100 Pearl Street, Suite 1100
Hartford, CT 06103
Tel: (860) 760-3305
Fax: (860) 760-3301
rchomiak@goldbergsegalla.com

For Gun Owners of America, Inc.

Joseph P. Secola, Esq.
Secola Law Offices, LLC
78 North Mountain Road
Brookfield, CT 06804
Tel: (203) 740-2350
Fax: (203) 740-2355
attorneysecola@sbcglobal.net

Robert J. Olson, Esq.
Herbert W. Titus, Esq.
William J. Olson, Esq.
Jeremiah L. Morgan
William J. Olson, P.C.
370 Maple Avenue W, Suite 4
Vienna, VA 22180-5615
Tel: (703) 356-5070
Fax: (703) 356-5085
wjo@mindspring.com

By /s/ Kenneth R. Slater, Jr. (Juris #404736)
Kenneth R. Slater, Jr.

