

SUPREME COURT
OF THE
STATE OF CONNECTICUT

S.C. 19832

DONNA L. SOTO, ADMINISTRATRIX
(ESTATE OF VICTORIA L. SOTO), ET AL.

v.

BUSHMASTER FIREARMS INTERNATIONAL, LLC, ET AL.

BRIEF FOR *AMICI CURIAE* KATIE BAKES M.D., WILLIAM BEGG M.D., BARBARA BLOK M.D., KATHLEEN CLEM M.D., CHRISTOPHER COLWELL M.D., MARIE CRANDALL M.D., MICHAEL HIRSH M.D., STACY REYNOLDS M.D., JEFFREY SANKOFF M.D. AND COMILLA SASSON M.D. IN SUPPORT OF PLAINTIFFS-APPELLANTS

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Interest of *Amici Curiae*

Amici curiae are emergency physicians and trauma surgeons from around the country. Their application for leave to file this brief describes their background, training and current positions, and we will not repeat that here.

Amici are patriotic Americans who understand the importance of protecting our constitutional rights. They include gun owners and individuals who grew up in households with guns. They are the physicians we rely on in emergencies. They have devoted their lives to treating us, our spouses, our parents, our children, and our other loved ones and friends in the most high risk situations, when we are most vulnerable. We put our lives in their hands. Many have been responsible for the treatment of patients shot or affected by the AR-15 or similar military assault weapons, including at Aurora, Columbine, Newtown and San Bernardino. The emergencies and trauma never end for them.

Amici strongly believe that the AR-15 and similar military assault weapons create a unique class of unacceptable emergencies and trauma. These military weapons are completely distinct from handguns and rifles used for hunting or self-defense. They can cause enormous human carnage, destruction and chaos with their high energy and rapid fire bullets that leave gaping holes and turn surrounding tissue and organs into goo in large numbers of victims in a matter of seconds. *Amici* believe that with the freedom to make and sell these intrinsically dangerous military weapons to a civilian population should come the responsibility to bear the heavy costs of the foreseeable harm they cause.¹

¹ *Amici* submit this brief in their personal capacities. The views expressed here do not necessarily reflect the views of the hospitals or other institutions with which they are associated. No party or party's counsel authored this brief in whole or in part or made a monetary contribution to fund its preparation or submission. No one other than *Amici* and their counsel made a monetary contribution to its preparation or submission.

Summary of Argument

The AR-15 and similar military assault weapons were used in the mass shootings in Newtown, Connecticut, Aurora, Colorado, Orlando, Florida, and San Bernardino, California. These weapons are known for their ability rapidly to fire bullets with enormous kinetic force that can eviscerate any bone, organ, vessel, or tissue with which the bullets come in close proximity. The extraordinary power of these military assault rifles not only makes them unnecessary for hunting and self-defense, but also poses a severe public health risk to innocent civilians. The Connecticut common law of negligent entrustment should hold the makers and sellers of the AR-15 accountable for this risk.

Part I describes the distinguishing features of the AR-15, which was designed for military use and rapidly to fire bullets and inflict injury, death and destruction on an enormous scale. The AR-15's devastating destructive capacity has led to attempts to curb its availability, including through assault weapons bans here and abroad.

Part II presents *amici's* own personal experiences treating victims who have been shot or otherwise affected by the AR-15 and similar military assault weapons. *Amici* include physicians who have treated victims of the Aurora, Columbine, Newtown, and San Bernardino mass shootings and others who have observed the significant impact of the AR-15 and similar military assault weapons.

In light of the awful carnage that may be caused by an AR-15 military assault rifle, Part III argues that the common law of negligent entrustment should permit the public to seek recourse against the makers and sellers of these extraordinarily dangerous weapons.

Argument

I. The AR-15 Military Assault Rifle Was Originally Designed for Military Use and To Cause Maximum Carnage with Extreme Efficiency

In approximately five minutes on December 14, 2012, Adam Lanza, armed with a Bushmaster AR-15 semiautomatic assault rifle and multiple thirty-round magazines, killed twenty first-grade children and six adults at Sandy Hook Elementary School. He fired approximately 154 shots, or nearly one bullet for every two seconds he was at the school. Almost all of the victims suffered from multiple gunshot wounds.² On July 20, 2012, less than five months earlier, James Holmes arrived at the Aurora, Colorado movie theatre armed with an AR-15 with a 100-round extended capacity magazine. Motivated by a desire to shoot “as many people as possible,” he fired 65 .223 caliber bullets in under a minute, six shots from a shotgun and five shots from a .40-caliber handgun. In less than three minutes, Holmes killed 12 people and injured at least 70 others.³

Lanza and Holmes, together with the shooters in San Bernardino⁴ and Orlando,⁵ could inflict such carnage in a short time because of the unique characteristics of military

² N.R. Kleinfield et al., *Newtown Killer’s Obsessions*, in *Chilling Detail*, N.Y. Times (Mar. 28, 2013), <http://www.nytimes.com/2013/03/29/nyregion/search-warrants-reveal-items-seized-at-adam-lanzas-home.html>; Reuven Fenton, *Nearly all 26 Newtown massacre victims suffered ‘multiple gunshot wounds,’ death certificates reveal*, N.Y. Post (June 18, 2013), <http://nypost.com/2013/06/18/nearly-all-26-newtown-massacre-victims-suffered-multiple-gunshot-wounds-death-certificates-reveal>.

³ Louis Klarevas, *Rampage Nation: Securing America from Mass Shootings* 192, 225 (2016); Phil Tenser, *Aurora police testify in James Holmes’ trial: 240 ballistic impacts found after theater shooting*, KJRH (May 14, 2015), <http://www.kjrh.com/news/national/aurora-police-testify-in-james-holmes-trial-240-ballistic-impacts-found-after-theater-shooting>.

⁴ On December 2, 2015, Syed Rizwan Farook and Tashfeen Malik, armed with two .223-caliber military assault rifles (one of which was a Remington brand) and two 9-millimeter semiautomatic pistols, killed 14 people and wounded 21 others. Christine Hauser, *The Investigation So Far: What We Know*, N.Y. Times (Dec. 4, 2015), <https://www.nytimes.com/live/san-bernardino-shooting/the-investigation-so-far>.

style weapons. In the 1960s, after studying casualty reports from prior wars, the Army's Operations Research Office learned that "in the overall picture, aimed fire did not seem to have any more important role in creating casualties than randomly fired shots," meaning that "[m]arksmanship was not as important as volume."⁶ As a result, at the request of the military, ArmaLite created the first prototype of the AR-15 with the goal of "fir[ing] smaller-caliber bullets with greater force" and "holding more ammunition, which translated into greater 'kill potential.'"⁷ The gun had a "fairly gentle recoil," that is "able to fire, under capable hands, eight rounds in a second."⁸ Because the bullets are fired at a high velocity and can fragment on impact, a bullet enters the body like a "grenade" going off and can leave a "nasty, jagged hole the size of an orange."⁹ Early testing by the military showed the AR-15 caused "amputations of limbs, massive body wounds, and decapitations."¹⁰

In 1962, the U.S. military renamed the AR-15 the M16 and began using it for military combat in Vietnam.¹¹ After the Vietnam War ended and the military's need for the M16 declined, ArmaLite began marketing the AR-15 to the public as a weapon for hunting and

⁵ On June 12, 2016, Omar Mateen, armed with a .223 caliber AR-15 style military assault rifle and a 9-millimeter handgun killed 49 people and wounded 53 others in the deadliest mass shooting in U.S. history. Josh Keller et al., *Why the Orlando Shooting Was So Deadly*, N.Y. Times (June 12, 2016), <https://www.nytimes.com/interactive/2016/06/12/us/why-the-orlando-shooting-was-so-deadly.html>.

⁶ Violence Policy Ctr., *Semiautomatic Assault Weapons—What Are They? What's So Bad About Them?: Modern Descendants of the STG-44 on America's Streets* (2003), available at <http://www.vpc.org/studies/hosefive.htm>.

⁷ Klarevas, *supra* note 3, at 196, 207.

⁸ Alan Feuer, *AR-15 Rifles Are Beloved, Reviled and a Common Element in Mass Shootings*, N.Y. Times (June 13, 2016), <https://www.nytimes.com/2016/06/14/nyregion/ar-15-rifles-are-beloved-reviled-and-a-common-element-in-mass-shootings.html>.

⁹ Sarah Zhang, *What an AR-15 Can Do to the Human Body*, Wired (June 17, 2016), <https://www.wired.com/2016/06/ar-15-can-human-body>.

¹⁰ *Kolbe v. Hogan*, No. 14-1945, 2017 WL 679687, at *5 (4th Cir. Feb. 21, 2017) (en banc).

¹¹ Klarevas, *supra* note 3, at 196.

self-defense, while also “tout[ing] the[] products’ battlefield prowess.”¹² The “key difference” between the AR-15 and the M16 — which is not protected by the Second Amendment — is that the AR-15 is a semiautomatic rifle, while the M16 can be set to shoot in automatic or semiautomatic mode.¹³ However, even that difference is “slight” as “the automatic firing of all the ammunition in a large-capacity thirty-round magazine takes about two seconds, whereas a semiautomatic rifle can empty the same magazine in as little as five seconds.”¹⁴

The AR-15 has soared in popularity in the civilian market. In the year after the Newtown massacre, business boomed for the manufacturer of the Bushmaster AR-15, which estimated that “net sales [would] be up 34 percent to \$1.25 billion.”¹⁵ The AR-15’s popularity has resulted from several factors, including that it is “fairly reliable, practically effortless to wield,” and “[y]ou can be this soldier but you don’t have to enlist.”¹⁶ It is the “embodiment of a certain military glamour.”¹⁷

The AR-15 is unnecessary and impractical for hunting and self-defense. The Bureau of Alcohol, Tobacco, Firearms and Explosives has described assault weapons generally as “mass produced mayhem,” which are not “particularly suitable for or readily adaptable to sporting purposes.”¹⁸ Hunters have said the AR-15 “empower[s] sloppy,

¹² Klarevas, *supra* note 3, at 197-98; *Kolbe*, 2017 WL 679687, at *5.

¹³ *District of Columbia v. Heller*, 554 U.S. 570, 627 (2008) (“*Heller I*”); Klarevas, *supra* note 3, at 197 n.45.

¹⁴ *Kolbe*, 2017 WL 679687, at *5.

¹⁵ Josh Harkinson, *The Producer of Bushmaster Assault Rifles Has Made a Killing Since Newtown*, Mother Jones (Dec. 10, 2013), <http://www.motherjones.com/politics/2013/12/freedom-group-cerberus-calstrs-bushmaster-newtown-sandy-hook>.

¹⁶ *Id.* at 198.

¹⁷ Feuer, *supra* note 8.

¹⁸ Brady Center to Prevent Gun Violence, *Assault Weapons: “Mass Produced Mayhem,”* at 1 (Oct. 2008).

'spray and pray' hunters to waste ammunition."¹⁹ As one hunter who served in the military explained, "A hunter does not need a semi-automatic rifle to hunt, if he does he sucks, and should go play video games."²⁰

The AR-15's spray-firing power also makes it dangerous for self-defense because the bullets, which are designed to "penetrate" humans and structures, create a "heightened risk of hitting innocent bystanders."²¹

Because of their lethality, semiautomatic assault weapons, like the AR-15, have become more prevalent in mass shootings.²² Studies have shown that the use of assault weapons or large capacity magazines in mass shootings has resulted in "over 50% more people killed."²³ The use of military weapons in a civilian setting, and the devastation they have caused, has led the American College of Emergency Physicians ("ACEP") to create a task force to address the "challenges of reducing morbidity and mortality from active

¹⁹ Justin Peters, *The NRA Claims the AR-15 Is Used for Hunting and Home Defense. Not Exactly.*, Slate (June 12, 2016), http://www.slate.com/blogs/crime/2013/01/02/gun_control_ar_15_rifle_the_nra_claims_the_ar_15_rifle_is_for_hunting_and.html.

²⁰ *Id.*

²¹ Brady Center to Prevent Gun Violence, *supra* note 18, at 16.

²² Klarevas, *supra* note 3, at 220 (the use of assault weapons in mass shootings has increased 3-fold in the past 50 years); Christopher S. Koper et al., U. Penn. Jerry Lee Ctr. of Criminology, *An Updated Assessment of the Federal Assault Weapons Ban: Impacts on Gun Markets and Gun Violence, 1994-2003*, at 87 (June 2014), available at <https://www.ncjrs.gov/pdffiles1/nij/grants/204431.pdf>. ("[Assault weapons] account for a larger share of guns used in mass murders and murders of police.").

²³ Mayors Against Illegal Guns, *Mass Shootings Since January 20, 2009*, at 1 (2013), https://www.washingtonpost.com/blogs/wonkblog/files/2013/02/mass_shootings_2009-13_-_jan_29_12pm1.pdf.

shooter incidents and terrorist attacks,” including through the “[t]ranslation of military emergency medicine and out-of-hospital (EMS) lessons learned to the civilian setting.”²⁴

Many states, including Connecticut, New York, Maryland, and California, and Washington, D.C., have enacted assault weapons bans, which have survived constitutional challenges.²⁵ In 1994, the United States enacted a 10-year federal assault weapons ban that was specifically directed at “semiautomatic firearms having features that appear useful in military and criminal applications but unnecessary in shooting sports or self-defense.”²⁶ Several versions of the AR-15 were banned under the law. The ban lapsed in 2004 because of significant political pressure. Studies have shown that during the period the ban was in effect the incidence of mass shootings was down, and the number of mass shootings per year has doubled since the ban expired.²⁷

²⁴ Press Release, American College of Emergency Physicians, Announcing the new ACEP High Threat Emergency Casualty Care Task Force (2016), *available at* <http://www.thecentralline.com/?p=3212>.

²⁵ *See, e.g., N.Y. State Rifle & Pistol Ass’n, Inc. v. Cuomo*, 804 F.3d 242 (2d Cir. 2015) (Connecticut and New York); *Kolbe*, 2017 WL 679687 (Maryland); *Friedman v. City of Highland Park, Ill.*, 784 F.3d 406 (7th Cir. 2015) (City of Highland Park); *Heller v. District of Columbia*, 670 F.3d 1244 (D.C. Cir. 2011) (“*Heller II*”) (Washington, D.C.); *People v. James*, 174 Cal. App. 4th 662 (2009) (California).

²⁶ Koper, *supra* note 22, at 1.

²⁷ Sam Wang, *Did the federal ban on assault weapons matter?*, Princeton Election Consortium (Dec. 14, 2012), <http://election.princeton.edu/2012/12/14/did-the-federal-ban-on-assault-weapons-matter/#more-9009>. Other countries have attempted to reduce mass shootings through an assault weapons ban. For example, Australia enacted a ban in 1996, following a mass shooting in which a man used 2 semiautomatic rifles to kill 35 people and wound 19 others. Unlike the U.S. ban, which grandfathered existing assault weapons, Australia instituted a mandatory buyback program for semiautomatic rifles and other guns. Since its enactment, there have no fatal mass shootings in Australia, in contrast to the 13 mass shootings in the 18 years before the ban. *See* Simon Chapman et al., *Association Between Gun Law Reforms and Intentional Firearm Deaths in Australia, 1979-2013*, 316 JAMA 291, 292 (2016), <http://jamanetwork.com/journals/jama/fullarticle/2530362>. Similarly, after a mass shooting in Scotland in 1996, Britain banned semiautomatic weapons and has had only one mass shooting since then. Anthony Faiola, *After shooting tragedies, Britain*

II. *Amici* Have Observed the Significant Physical and Psychological Harm Caused by the AR-15-Style Military Assault Rifle

1. Dr. Katie Bakes

Dr. Bakes has seen and treated many patients who were shot, paralyzed, and killed by military assault weapons. She is aware of the carnage military assault weapons can cause because of their ability to kill multiple people in seconds.

Dr. Bakes believes there is room for responsible gun owners, but not for assault weapons in civilian hands. The more lethal and high capacity the weapons, the more death and destruction they can cause. Dr. Bakes has tried to understand the rationale for putting military assault weapons in civilian hands, and has been unable to do so. The makers and sellers of these weapons make so much money by distributing them in mass quantities. The youth are able to acquire them easily. But there is no need to make available to the public guns that can cause this kind of carnage.

2. Dr. William Begg

Dr. Begg was the emergency physician on duty in Danbury Hospital during the morning of the Sandy Hook mass shooting. He was also the EMS Medical Director in contact with EMS personnel at Sandy Hook who were deciding how to care for the victims. Most of the child victims never made it to the hospital because of the horrific injuries to their little bodies. Each child endured 3 to 11 AR-15 gunshot wounds. Because the AR-15 bullets explode in the body, organs are obliterated, leaving nothing to resuscitate.

went after guns, Wash. Post (Feb. 1, 2013), https://www.washingtonpost.com/world/europe/after-shooting-tragedies-britain-went-after-guns/2013/01/31/b94d20c0-6a15-11e2-9a0b-db931670f35d_story.html?utm_term=.943043364c3a.

Dr. Begg was strongly affected by this experience. He believes gun violence is a public health issue, and our society should not make assault weapons, like the AR-15, available to civilians.

3. Dr. Barbara Blok

On the night of the Aurora mass shooting, twenty-three of the eighty-two victims were brought to Dr. Blok's hospital. She saw the terrible destruction the AR-15 caused, leaving patients with massive destructive wounds, large tissue loss, bowels hanging out of bellies, big wounds to the face and scalp, and organs destroyed. Unlike a traditional gunshot wound which follows the trajectory of the bullet, the injuries from an AR-15 are much bigger and spread into surrounding tissue. Treating the victims had a profound effect on everyone who provided care in the hospital that night. Their innocence was snatched away. Dr. Blok still feels grief and sadness when she thinks of that night.

Dr. Blok grew up on a farm with family members who used guns to hunt. She feels strongly that there is no civilian use for the AR-15 military assault rifles. They are unnecessary, overkill, and do not need to be available.

4. Dr. Kathleen Clem

When the most seriously injured victims of the San Bernardino mass shooting were brought into Dr. Clem's hospital, she was in charge of ensuring that the appropriate trauma teams were in place and oversaw the victims' treatment. She learned that the awful effect of the AR-15 is not confined to the injured victims. Prior gun shootings in San Bernardino did not create the type of fear and concern for safety that the entire San Bernardino community felt after the mass shooting.

Dr. Clem's husband owns guns and uses them for target shooting. Dr. Clem believes those guns are vastly different from the AR-15, which is a weapon of war. The

AR-15 is not designed for sport or self-defense. It is designed to be a weapon of war and has no place in civilian hands.

5. Dr. Christopher Colwell

Dr. Colwell treated victims of the Columbine High School massacre²⁸ and the Aurora mass shooting and is acutely aware of the devastation the AR-15 and other military assault weapons cause to the human body. At Columbine, he pronounced each of the 13 victims dead and treated 17 or 18 of the more than 20 victims who survived. Later, he was called to the Denver Health Hospital to work on the night of the Aurora shootings. He treated victims who had shattered limbs and torn out chests.

Dr. Colwell has observed the dramatic difference between the damage caused by a .22 caliber pistol and an assault rifle. An assault rifle inflicts enormous, absurd and mind-boggling injuries, including heads blown open. It causes mass destruction and can devastate numerous people in a matter of seconds, including unintended targets as bullets pass through walls and cars. Because an assault rifle shooter can fire multiple bullets rapidly, the shooter can inflict injuries before anyone has time to react. If someone wants to cause mass injuries and death at a large gathering — such as a school, a mall, a parade or a sporting event — an assault weapon is the weapon of choice. Because of this potential for enormous destruction, Dr. Colwell believes makers and sellers of assault rifles must understand and be held accountable for the fact that anyone with an AR-15 has the potential to cause mass chaos and devastating damage with the pull of a trigger.

²⁸ The weapons used by the shooters in the Columbine massacre included a pump-action shotgun, a carbine, a double-barreled shotgun, and an Intratec TEC-DC9 assault pistol. Violence Policy Ctr., *Where'd They Get Their Guns?* (2001), available at <http://www.vpc.org/studies/wgun990420.htm>.

6. Dr. Marie Crandall

Dr. Crandall has operated on victims of high velocity weapons, including the AR-15, in hospitals in Los Angeles, Chicago, Seattle, and at Northwestern University. Although the number of these injuries dropped during the period the federal assault weapons ban was in effect, after the ban terminated the incidence soared and exceeded pre-ban levels.

Dr. Crandall has seen that being shot by an AR-15 is like being blasted with a cannon. A bullet fired by an AR-15 has enormous velocity and kinetic energy (equal to the mass times the velocity squared) because it travels at a rate of 1000-2000 meters per second, as compared to a bullet fired by a .22 caliber weapon which travels at a rate of 200-300 meters per second. This increased energy causes a shockwave that damages the tissue near the bullet's trajectory and creates a large hole in a victim's body. Surrounding blood vessels are damaged even if they are not hit by the explosive force of the missile.

Dr. Crandall believes there is no civilian or law enforcement need for the AR-15. Easy access to these guns contributes to their impulsive use and lethality. Our society should not become inured to their horrific effects.

7. Dr. Michael Hirsh

When Dr. Hirsh's mentor, friend and colleague was shot to death outside their hospital after leaving to go home to be with his ill pregnant wife, Dr. Hirsh decided he would dedicate a part of his life to addressing gun violence. He has worked to remove guns, including semiautomatic assault weapons, from his community through buyback programs.

While Dr. Hirsh has never personally treated someone wounded by an AR-15, he has treated patients shot with an AK-47, the Russian equivalent that can fire multiple rounds at high velocity. When a patient is shot with this sort of weapon, it wreaks havoc not just in the bullet's path, but in a large surrounding radius. As the bullet spins like a drill,

nearby tissue implodes, and organs turn to “goo.” When a blood vessel is hit with a lower velocity bullet, there is a possibility of repair. But the “blast effect” around the trajectory of a bullet from a semiautomatic weapon can almost never be repaired. Such bullets knock out swaths of tissue and can amputate limbs. Because the bullets are not easily stopped, they hit other structures and can sever the spine and transect the body. The bleeding caused by these weapons is also far greater. Being shot by a military assault rifle is carnage in the truest sense of the word. They should not be in civilian hands.

8. Dr. Stacy Reynolds

Dr. Reynolds is familiar with the damage military assault rifles inflict. It is not confined to the trajectory of the bullet, but radiates outward to cause tremendous injury. Because of the number of rounds that can be fired in quick succession, assault weapons, unlike a handgun, have the capacity quickly to decimate many individuals.

Dr. Reynolds feels strongly that assault weapons should not be available for civilian use because they can destroy so many lives.

9. Dr. Jeffrey Sankoff

Dr. Sankoff believes militarized weapons, such as the AR-15, have no place in a civilized society and should not be sold to civilians. These guns are promoted based on false hypotheticals and appeals to emotion — that civilians need them for protection, including from the possibility of a tyrannical government. These promotions ignore the extraordinary societal costs of these weapons.

Giving people with risk factors for violence access to assault weapons creates particular threats. The medical literature describes a “weapons effect” — that the physical presence of a firearm may incite aggressive cognition and provoke violent behavior. Beyond that, violence has infectious qualities, and individuals may be inspired to commit

acts of violence in emulation of previous killers — a concept known as identification.

Assault weapons advertisements also activate people who are predisposed to but might not engage in violence if they did not have access to the weapons.

The AR-15 has other considerable external costs because of its ability to inflict mass casualties and consume resources. The huge costs are transferred to others that are not the gun makers and sellers. For example, because the AR-15 and other military assault weapons are and may be used by civilians to cause enormous casualties, an ACEP task force is now considering how to import military strategies into the civilian sector to deal with the casualties. Additionally, Active Shooter Plans — also known as, Code Silver emergency response plans — designed to improve survival in the event of an active shooter have proliferated since the killings at Aurora and Newtown, and have been implemented in virtually all healthcare environments. These plans require not only administrative time for development, but regular training, drilling and review by all employees in the hospital. The costs associated with these plans are enormous — hundreds of thousands of dollars for large institutions — and only a fraction is reimbursed through federal grants. The majority of these costs are borne by hospital operating budgets, i.e., derived from patient care.

10. Dr. Comilla Sasson

Dr. Sasson observed the effects of an AR-15 on its victims when she treated 23 patients on the night of the Aurora mass shooting. The level of destruction blew her mind. Guts and other body parts were falling out and injuries were devastating. The effect of these injuries physically, mentally and emotionally on the patients, first responders and healthcare providers who cared for them is ever-lasting. The shooting has not only had an extreme impact on the patients; it has also radically affected even the most veteran

healthcare providers. The sheer volume of injuries, the horrible destruction the AR-15 caused, and the devastating effect on patients and their families and friends cannot and will never be forgotten.

Approximately one week after the shooting, Dr. Sasson hosted a meeting for the providers in conjunction with the University of Colorado Psychiatry Department. For weeks and months following the shooting, the healthcare providers and first responders were still having anxiety, nightmares, difficulty sleeping and other symptoms commonly seen in post-traumatic stress disorder patients. Dr. Sasson could not turn on the television on the day of the Sandy Hook massacre because it brought back so many horrible memories and visions of what she saw after the Aurora shooting.

Dr. Sasson has stayed in contact with some of the patients she treated that night. No one believes more strongly than those patients that the AR-15 does not have a place outside the military for war. It should not be available for civilian use.

III. The Common Law of Negligent Entrustment Should Provide a Cause of Action Against the Makers and Sellers of the AR-15

The common law of negligent entrustment should be applied to protect innocent parties from the foreseeable risk of harm caused by the devastatingly lethal AR-15 military assault rifle, which Connecticut has banned. Tort common law has long offered compensation to innocent parties for injuries from intrinsically dangerous products that cause foreseeable harm to the public. As this Court has explained, the “fundamental policy purposes of the tort compensation system” are “compensation of innocent parties, shifting the loss to responsible parties or distributing it among appropriate entities, and deterrence of wrongful conduct.” *Rizzuto v. Davidson Ladders, Inc.*, 280 Conn. 225, 235 (2006); *see also Mingachos v. CBS, Inc.*, 196 Conn. 91, 104-05 (1985).

“[C]ourts have in effect recognized a new doctrine, that the defendant’s [conduct], while it will be tolerated by the law, must pay its way.” Prosser & Keeton, *Law of Torts* 536 (5th ed. 1984). For example, the common law protects the public from an individual’s use of “intrinsically dangerous means to accomplish a lawful end,” such as exploding dynamite during construction, because such conduct exposes the public to “the danger of probable injury.” *Whitman Hotel Corp. v. Elliott & Watrous Eng’g Co.*, 137 Conn. 562, 565 (1951). Similarly, courts have recognized a cause of action against owners of wild animals, such as chimpanzees, because, “even with proper care, [they] expose the community to the risk of a very dangerous thing.” *Nash v. Herold*, No. X05CV095010750S, 2010 WL 2573764, at *4 (Conn. Super. Ct. May 18, 2010).

Connecticut courts have also expanded common law protections “based on the changing attitudes and needs of society.” *Mueller v. Tepler*, 312 Conn. 631, 650 (2014); *Ely v. Murphy*, 207 Conn. 88, 93-95 (1988) (adult who served alcohol to a minor was liable for the injuries the minor caused because Connecticut statutes demonstrated a “growing public awareness and concern that children as a class are simply incompetent by reason of their youth and inexperience to deal responsibly with the effects of alcohol”); *Clohessy v. Bachelor*, 237 Conn. 31, 46 (1996) (recognizing a cause of action for bystander emotional distress because of changing public policy, including the State’s interest in “personal emotional stability”).

These cases demonstrate that tort law protections are “anything but static.” Prosser & Keeton, *Law of Torts* 4. Tort law “is a dynamic and growing thing and its rules arise from the application of reason to the changing conditions of society.” *Goodrich v. Waterbury Republican-Am., Inc.*, 188 Conn. 107, 127 (1982). “The adaptability of the common law to

the changing needs of passing time has been one of its most beneficent characteristics.”
Herald Pub. Co. v. Bill, 142 Conn. 53, 62 (1955).

Connecticut’s prohibition on the possession of semiautomatic assault weapons, including the AR-15, shows the State’s concern with their destructive capacity. See Conn. Gen. Stat. § 53–202a(1)(B); *N.Y. State Rifle & Pistol Ass’n, Inc*, 804 F.3d at 250, 269 (upholding ban). Connecticut courts have recognized the “increasing risk to society” posed by assault weapons for at least two decades, and upheld an older version of the ban because it “serves a legitimate interest of the state acting pursuant to its police power.” *Benjamin v. Bailey*, 234 Conn. 455, 471 (1995).

Connecticut’s tort law should protect the public from the foreseeable risk of the devastating damage caused by the AR-15 and similar semiautomatic military assault rifles when they are placed in the hands of civilians. These weapons are intrinsically dangerous because of their ability to inflict significant carnage in seconds. That very destructive capacity is a cause of their increased use in mass shootings. Makers and sellers of the AR-15 should be liable for the injuries they cause by negligently entrusting it to civilians.

Conclusion

For the foregoing reasons, *amici* respectfully request this Court to reverse the Superior Court’s decision and remand the case for further proceedings.

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Respectfully submitted,

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CERTIFICATION

I hereby certify that (1) a copy of the foregoing has been mailed or delivered electronically on March __, 2017 to each counsel of record and to the trial judge as follows, in compliance with Practice Book § 62-7; (2) the brief being filed with the appellate clerk is a true copy of the brief that was submitted electronically; (3) the brief 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 brief complies with all provisions of Practice Book § 67-2.

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