SUPREME COURT

OF THE

STATE OF CONNECTICUT

S.C. 19832
S.C. 19833

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

v.

BUSHMASTER FIREARMS INTERNATIONAL, LLC, A/K/A ET AL.

BRIEF FOR *AMICUS CURIAE* LAW CENTER TO PREVENT GUN VIOLENCE SUPPORTING PLAINTIFF-APPELLANTS AND URGING REVERSAL

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ATTORNEYS FOR *AMICUS CURIAE* LAW CENTER TO PREVENT GUN VIOLENCE

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INTEREST OF AMICUS CURIAE

Amicus curiae the Law Center to Prevent Gun Violence ("the Law Center") is a national non-profit organization dedicated to reducing gun violence. Founded after an assault weapon massacre at a San Francisco law firm in 1993, the Law Center provides comprehensive legal expertise on gun legislation and litigation, including monitoring gun-related litigation nationwide and providing support to jurisdictions facing legal challenges to their gun laws. The Law Center has provided informed analysis in a wide range of important firearm-related cases nationwide, including *District of Columbia* v. *Heller*, 554 U.S. 570 (2008), and *McDonald* v. *Chicago*, 561 U.S. 742 (2010). The Law Center submits this brief to assist the Court as it develops its jurisprudence relating to standing to sue under the Connecticut Unfair Trade Practices Act, by bringing to its attention relevant decisions of the courts in Connecticut's sister states that have considered similar state statutes.

INTRODUCTION

Notwithstanding the tragic losses plaintiffs suffered as a result of the massacre carried out with guns sold by defendants in alleged violation of the Connecticut Unfair Trade Practices Act ("CUTPA"), and CUTPA's language establishing a cause of action for "any person" suffering such losses, the Superior Court concluded that plaintiffs lacked standing to sue and dismissed their claims. It did so after concluding that it was bound by this Court's decision, in *Ventres* v. *Goodspeed Airport, LLC*, 275 Conn. 105 (2005), to dismiss a CUTPA claim for lack of standing where the plaintiffs did not allege a business relationship with the defendants. *Amicus* submits this brief in support of Plaintiffs-Appellants and reversal.[1]

Requiring a business relationship for standing under CUTPA is irreconcilable not only with the statute's plain language, its remedial purpose, and its legislative history, as set forth in Plaintiffs'-Appellants' brief, but also with the decisions of the courts in other states that have interpreted provisions similar to CUTPA's. In all six states where courts have directly addressed whether non-consumer plaintiffs must have a business relationship with defendants for standing under their comparable statute—Florida, Massachusetts, Minnesota, Nevada, New York, and Washington—those courts, applying statutory interpretation rules essentially identical to Connecticut's, have held they do not. Connecticut should join these states and decline to impose a limitation not found in CUTPA's plain and unambiguous language and not supported by its purpose or legislative

[1] No party or counsel for a party authored this brief in whole or in part, and no such party or counsel made a monetary contribution to fund its preparation or submission. No person other than the *amicus curiae*, or its counsel, made a monetary contribution to its preparation or submission.

history. Any other result would leave Connecticut residents with lesser protections than those available to residents of other states with indistinguishable statutes.

ARGUMENT

I. Other States' Interpretations of Similar Laws Are Relevant Authority

CUTPA provides that "[n]o person shall engage in unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce." General Statutes § 42-110b. The statute further provides that "[a]ny person who suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment of a method, act or practice prohibited by section 42-110b, may bring an action." *Id.* This provision was added to CUTPA by the Connecticut legislature in 1979, significantly expanding the provision it replaced, which restricted standing to "any person who purchases or leases goods or services." Public Acts 1979, No. 79-210, § 1.

This Court regularly looks to other states' jurisprudence in interpreting Connecticut law, and should do so here. *See, e.g., State* v. *DeCiccio,* 315 Conn. 79, 93–97, 100–01 (2014) (reviewing statutory provisions and case law from other states in construing the terms "dirk knife" and "police baton"); *State* v. *Vickers*, 260 Conn. 219, 229 (2002) (following sister courts' interpretations of the phrase "place of business" in considering legislative intent of prohibition against unregulated handguns).

The scope of other states' similar laws is particularly relevant in interpreting CUTPA because Connecticut's legislature specifically intended that CUTPA provide protections to Connecticut residents commensurate with those available to residents of other states under their parallel statutes. During the Joint Standing Committee hearings, Commissioner Barbara Dunn expressly noted in introducing the bill that "[f]orty one States now have laws providing greater regulatory protection for consumers than does Connecticut." Conn. Joint

Standing Committee Hearings, General Law, 1973 Sess., p. 690. As set forth below, courts in other states with similar standing provisions in their comparable statutes, when they have directly addressed the issue, have uniformly held that a business relationship is *not* required when the relevant statute allows "any person" or "a person" injured by a violation of the statute to bring an action.

II. No State with Statutory Standing Language Similar to CUTPA's Has Imposed a Business Relationship Requirement on Suits by Non-Consumers

We have reviewed the law of Connecticut's forty-nine sister states and the District of Columbia relating to standing under their respective similar statutes. We append to this brief a table setting forth the relevant language of each jurisdiction's similar statute and citations to other relevant authority (the "Appendix").[2]

A. In Thirty-Six Jurisdictions, the Standing-Related Law is Inapposite

The law in thirty-six of the fifty jurisdictions is inapposite to this Court's analysis. One state has no private cause of action under the comparable statute.[3] In twenty-five states, only consumers have standing to sue under the comparable statute, based on explicit limitations in the statutory language, or interpretation of the statutory language by the courts, or both.[4] The approach of these twenty-five states is inapposite because—as the Superior Court recognized, *Order* at 41—it is well established that Connecticut does not

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[2] The Appendix does not address the limitations, if any, within each jurisdiction regarding the kinds of relief—including injunctive relief and compensation for personal, economic or other types of injury—available under each statute.

[3] *See* Appendix entry for Iowa.

[4] *See* Appendix entries for Alabama, Arizona, Colorado, Idaho, Indiana, Kansas, Kentucky, Maine, Mississippi, Missouri, Montana, Nebraska, New Jersey, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, Texas, Utah, Vermont, West Virginia, Wyoming, and Washington, D.C. We note that various states have drawn the definition of the consumer granted standing in various ways—as only one example, some states grant standing only to direct purchasers, while other states have interpreted their statutes to authorize suits by indirect purchasers as well. The Appendix does not attempt to define the scope of the consumer authorized to sue in each of these twenty-five states.

limit CUTPA standing to consumers. *See, e.g., Macomber* v. *Travelers Prop. & Cas. Corp.*, 261 Conn. 620, 643 (2002) ("[W]e reject the defendants' contention that a consumer relationship is a prerequisite for maintaining a CUTPA cause of action."). In addition, there are ten states in which the status of the relevant law is unclear, but in ways that are similarly inapposite to whether non-consumers must have a business relationship with defendants for standing.[5]

B. Of the Remaining Fourteen Jurisdictions, None Has Held that a Non-Consumer Must Have a Business Relationship with Defendant for Standing Under the Comparable Statute, and in the Six States in which the Courts Have Directly Addressed the Question, They Have Affirmatively Found That No Such Relationship is Required

The standing provisions of the comparable statutes in the remaining fourteen jurisdictions, like CUTPA, broadly permit "any person" or "a person" injured by a violation of the statute to bring an action, and the courts in those jurisdictions have not interpreted the statutes to limit standing to consumers. *See* Appendix entries for Arkansas, Florida, Illinois, Louisiana, Massachusetts, Minnesota, Nevada, New Hampshire, New Mexico, New York, South Carolina, South Dakota, Tennessee, and Washington.

We have reviewed the law of these jurisdictions concerning any limitations on the standing of non-consumers to sue. In eight jurisdictions—Arkansas, Illinois, Louisiana, New Hampshire, New Mexico, South Carolina, South Dakota, and Tennessee—we have not found cases specifically addressing whether non-consumers must have a business

[5] *See* Appendix entries for Alaska, California, Delaware, Georgia, Hawaii, Maryland, Michigan, North Carolina, Virginia, and Wisconsin. In Alaska, California, Georgia, Hawaii, Virginia, and Wisconsin, we have not found case law addressing whether non-consumers have standing under the relevant statute. In Delaware, Maryland, Michigan, and North Carolina, there is conflicting case law as to whether non-consumers are permitted to sue under the comparable statute.

relationship with defendants for standing.[6] Instead, in all of these jurisdictions, the case law reflects that at least certain types of non-consumers have standing—including, in various jurisdictions, competitors of defendants, *see, e.g.*, Appendix entries for New Mexico, South Carolina, South Dakota, and Tennessee; and other plaintiffs with business relationships with defendants, *see, e.g.*, Appendix entries for Arkansas, Illinois, Louisiana, and New Hampshire—without addressing whether a business relationship with defendant is *required*. Moreover, we have not found any case law in these jurisdictions holding that only certain types of non-consumers have standing or imposing any test for standing on non-consumers other than the requirements set forth in the statute. Instead, in many of these jurisdictions, the courts have emphasized the broad language of their parallel statutes, similar to the language in CUTPA.[7] In brief, we have found no authority in these states holding that only *some* non-consumers can sue.

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[6] In Illinois, New Mexico, and Tennessee, damages for personal injury are not recoverable under the CUTPA-comparable statute. *See, e.g., Wheeler* v. *Sunbelt Tool Co.*, 181 Ill. App. 3d 1088, 1109 (1989); *Porcell v. Lincoln Wood Prod., Inc.*, No. 08 Civ. 617, 2010 WL 1541264, at *5 (D.N.M. Mar. 31, 2010); *Kirksey* v. *Overton Pub, Inc.*, 804 S.W.2d 68, 73 (Tenn. App. 1990).

[7] For example, similar to CUTPA, Louisiana's Unfair Trade Practices and Consumer Protection Law ("LUTPA") provides that "[a]ny person who suffers any ascertainable loss . . . as a result of the use or employment by another person of an unfair or deceptive method, act, or practice" may bring an action. La. Rev. Stat. § 51:1409. In *Cheramie Services, Inc.* v. *Shell Deepwater Prod., Inc.*, 35 So. 3d 1053 (La. 2010), the Louisiana Supreme Court held that plaintiffs need not be competitors or consumers to bring a LUPTA action. The court observed that because LUTPA "does not contain a clear, unequivocal and affirmative expression that the private right of action . . . extends only to business competitors and consumers," LUTPA therefore "does not exclude other persons who assert a 'loss of money or . . . property'" as a result of an unfair act or practice. *Id.* at 1058 (alterations in original). The court concluded that "consistent with the definition and usage of the word 'person,' there is no such limitation on those who may assert a LUTPA cause of action. Any such limitation that has found its way into the jurisprudence resulted without proper analysis of the statute." *Id.* at 1057. The court repudiated contrary holdings in lower courts, "because any limitation must be contained in the language of the statute." *Id.* at 1058. The court therefore held that plaintiff, a service provider who provided personnel to

The courts in the remaining six jurisdictions—Florida, Massachusetts, Minnesota, Nevada, New York, and Washington—*have* directly addressed the issue whether non-consumers must have a business or commercial relationship with defendants for standing under their comparable statutes, in cases involving plaintiffs who, on the facts presented, did not have any such relationship with defendants. In all six states, the courts uniformly held that no such relationship is required. In doing so, they applied the same statutory interpretation rules as those employed by the Connecticut courts: as set forth in Plaintiffs'-Appellants' brief, those rules provide that statutory language should be given its plain meaning, and construed, in the case of remedial statutes like CUTPA, so as to give effect to the statute's remedial purpose. *See* Plaintiffs'-Appellants' Brief at 40–44.

Florida.[8] As already discussed, CUTPA's standing provision was expanded by the Connecticut legislature in 1979: whereas it previously authorized suit by "any person who purchases or leases goods or services," P.A. 79-210, § 1, it now provides that "[a]ny person who suffers any ascertainable loss" may sue. General Statutes § 42-110g. Similarly, in 1991, Florida's legislature amended the Florida Deceptive and Unfair Trade Practices Act ("FDUTPA"): where it previously authorized suit by "a consumer," the amended statute authorized suit by "a person." *See Caribbean Cruise Line, Inc.* v. *Better Bus. Bureau of Palm Beach, Inc.*, 169 So. 3d 164, 168 (Fla. Dist. App. 2015). In *Caribbean Cruise Line*,

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oil companies, had standing to sue the defendant, an oil company, for a violation of LUTPA. *See also Prime Ins. Co.* v. *Imperial Fire & Cas. Ins. Co.*, 151 So. 3d 670, 678 (La. App. 2014) ("Claims under LUTPA are not limited to consumers and business competitors, but are available to any person who suffers any ascertainable loss as a result of violations of the statute.").

[8] Damages for personal injury are not recoverable under FDUTPA. Fla. Stat. Ann. § 501.212 ("this part does not apply to: . . . (3) A claim for personal injury or death or a claim for damage to property other than the property that is the subject of the consumer transaction").

the Florida appellate court held that this legislative change "indicates that the legislature no longer intended FDUTPA to apply to only consumers, but to other entities able to prove the remaining elements of the claim as well." *Id.* at 169. Thus, when faced with a case in which a cruise line sought to bring suit under FDUPTA against the Better Business Bureau—with no suggestion that the cruise line had a business relationship with the Better Business Bureau—the Florida court upheld the cruise line's right to sue. *Id.*

Massachusetts. The same year CUTPA was amended, the Massachusetts legislature also amended its consumer protection law—from authorizing suit by "[a]ny person who purchases or leases goods, services or property. . . .," Mass. Gen. Laws Ann. 93A, § 9 (1973), to authorizing suit by "[a]ny person . . . who has been injured by another person's use or employment of any method, act or practice declared to be unlawful by [the section prohibiting unfair practices]". Mass. Gen. Laws Ann. 93A, § 9; *Van Dyke* v. *St. Paul Fire & Marine Ins. Co*., 448 N.E.2d 357, 360 (Mass. 1983) ("This 1979 amendment substantially broadened the class of persons who could maintain actions."). In *Maillet* v. *ATF-Davidson Co.*, 552 N.E.2d 95 (Mass. 1990), the Massachusetts Supreme Court affirmed that the amended consumer protection law allows "any person" to bring an action for unfair and deceptive acts or practices and "no longer limits relief to consumers." *Id.* at 98. In *Maillet*, the court considered whether a plaintiff who was injured by a printing press purchased by his employer was entitled to relief. There is no suggestion in the case that the employee had a business relationship with the defendant manufacturer of the printing press. Nevertheless, the court held that the employee had standing to bring an action against the manufacturer for unfair and deceptive acts or practices. *Id.* at 98–99.

Minnesota. Minnesota's Unlawful Trade Practices Act ("MUTPA") prohibits misrepresentations in connection with sales, Minn. Stat. Ann. § 325D.12, and provides that "any person injured by a violation of [MUTPA] may bring a civil action." *Id.* § 8.31 Subd. 3a. Recognizing that "the plain and unambiguous language of the governing statute allows 'any person' to bring a private action for redress of violations of [MUTPA]," *Group Health Plan, Inc*. v. *Philip Morris Inc*., 621 N.W.2d 2, 8 (Minn. 2001), the Minnesota Supreme Court found that health maintenance organizations ("HMOs") seeking to recover costs for increased healthcare services they provided to their members as a result of tobacco-related illnesses did not have to be purchasers of the defendant tobacco companies' products to have standing under MUTPA, *id.* at 4. The court applied the "oft-repeated rule of statutory interpretation that when the words of a law in their application to an existing situation are clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit." (Internal quotations and alterations omitted). *Id.* at 9. In so doing, the court stressed that it is not the judiciary's "role to narrow the reach where the legislature has spoken in unequivocally broad terms." *Id*. at 11.

Nevada. Nevada's Deceptive Trade Practices Act provides that "[a]n action may be brought by any person who is a victim of consumer fraud." Nev. Rev. Stat. Ann. § 41.600(1). Consumer fraud is in turn defined to include deceptive trade practices. Nev. Rev. Stat. Ann. § 41.600(2)(e). In *Del Webb Communities, Inc.* v. *Partington*, 652 F.3d 1145 (9th Cir. 2011), the Ninth Circuit reviewed the state statutory language and noted that there was no basis in the text "to limit standing to a group broader than consumers but no broader than business competitors." *Id.* at 1153. Thus, the Court held that the plaintiff retirement community developer had standing to sue the defendants, who operated a

property inspection company, for engaging in deceptive practices towards residents of plaintiff's retirement community, even though the plaintiff was neither a consumer nor a competitor of defendant. *Id.* Indeed there is no indication in the case that there was any business relationship between the parties. *Id.*

New York. Under New York's consumer protection law, "any person who has been injured by reason of any violation" of the statute may bring an action. N.Y. Gen. Bus. Law § 349(h). In *North State Autobahn, Inc.* v. *Progressive Ins. Grp.*, 102 A.D.3d 5 (2012), the plaintiffs, who operated a vehicle repair shop, alleged that the defendant insurers had violated Section 349 of the General Business Law by making misrepresentations about independent repair shops like plaintiffs' in order to induce defendants' insureds to use repair shops with which defendants had entered into agreements for special rates. The Appellate Division upheld plaintiffs' standing to sue, holding "we find no reason to judicially graft an additional requirement onto the statute so as to deprive [plaintiffs] of standing based solely on their role in the consumer transaction." *Id.* at 19.[9]

Washington.[10] Washington's Consumer Protection Act ("CPA") provides that "[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful." Wn. Rev. Code Ann. § 19.86.020.

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[9] In upholding plaintiffs' standing, the *North State Autobahn* court noted two Court of Appeals cases in which the high court held plaintiffs could not maintain Section 349 claims on "standing" grounds, but in those cases, the standing issue did not relate in any way to plaintiffs' lack of a business relationship with defendants—instead those plaintiffs' injuries were found to be too remote because they were derivative of the claims of other injured persons, unlike the direct injuries to the business of the plaintiff repair shop operators. Id. at 17-18 (distinguishing *Blue Cross & Blue Shield of N.J., Inc.* v. *Philip Morris USA Inc.*, 818 N.E.2d 1140 (N.Y. 2004), and *New York* v. *Smoke-Spirits.com, Inc.*, 12 N.Y. 616 (N.Y. 2009)).

[10] Damages for personal injury are not recoverable under CPA. *See Ambach* v. *French*, 167 Wn. 2d 167, 173 (2009) (en banc).

Under the CPA, "[a]ny person who is injured in his or her business or property by a violation" of the CPA may bring an action. *Id.* § 19.86.090. In *Panag* v. *Farmers Ins. Co. of Washington*, 204 P.3d 885 (Wash. 2009) (en banc), the issue was whether a motorist involved in a car accident had standing to sue the other motorist's insurance company and its collection agency in relation to their collection methods. Washington's Supreme Court reviewed the CPA's language and stated that "[n]othing in this language requires that the plaintiff must be a consumer or in a business relationship with the actor." *Id.* at 890. The court explained that because the CPA mandates that it be liberally construed, "we will not narrowly construe the act by importing a requirement that the plaintiff be a consumer or be in a consensual business relationship, when to do so would conflict with the language of the act and its stated purposes." *Id*. at 891. *See also Thornell* v. *Seattle Serv. Bureau, Inc.*, 184 Wn. 2d 793, 798-803 (Wash. 2015) (en banc) (holding that out-of-state mother of a motorist involved in a collision could bring a CPA claim against an in-state collection company).

In sum, in jurisdictions with statutory standing language similar to CUTPA and relevant case law, we have found none that holds that non-consumer plaintiffs must have a business relationship with defendant for standing; and in these six states in which the courts have directly considered the question, all have affirmatively found that no such relationship is required.

CONCLUSION

The relevant authority of Connecticut's sister states overwhelmingly weighs against any interpretation of CUTPA that a plaintiff must have a business relationship with the defendant for standing where no such requirement appears in the language of the statute. The Superior Court's imposition of such a requirement should be reversed.

Dated: March 20, 2017

RESPECTFULLY SUBMITTED,

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