

# 14-2410-CV

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IN THE  
**United States Court of Appeals  
for the Second Circuit**

CARA MUNN, *et al.*,

*Plaintiffs-Appellees,*

v.

THE HOTCHKISS SCHOOL,

*Defendant-Appellant.*

On Appeal from the United States District Court  
for the District of Connecticut

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**BRIEF *AMICI CURIAE* OF NATIONAL ASSOCIATION OF  
INDEPENDENT SCHOOLS, AMERICAN COUNCIL ON EDUCATION,  
AND 27 OTHER EDUCATION ASSOCIATIONS IN SUPPORT OF THE  
HOTCHKISS SCHOOL AND REVERSAL**

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## **CORPORATE DISCLOSURE STATEMENT**

Pursuant to Rules 26.1 and 29(c) of the Federal Rules of Appellate Procedure, *Amici Curiae* the National Association of Independent Schools, the American Council on Education, and all other *Amici* listed in the Addendum state that they are non-profit associations or corporations with no parent corporations and no privately-owned stock.

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**STATEMENT OF INTEREST OF *AMICI CURIAE***

*Amicus* the National Association of Independent Schools (“NAIS”) is a voluntary membership organization representing more than 1,600 private, independent elementary and secondary schools and 89 national, state, and regional school associations throughout the United States and abroad.<sup>1</sup> NAIS is the national voice of independent pre-collegiate education, and has worked for decades to support this nation’s thriving independent-school sector.

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<sup>1</sup> No party or counsel for a party authored or paid for this brief in whole or in part, or made a monetary contribution to fund the brief’s preparation or submission. No one other than *Amici* or their counsel made a monetary contribution to the brief.

*Amicus* American Council on Education (“ACE”) represents all higher education sectors. Its approximately 1800 members include a substantial majority of United States colleges and universities. Founded in 1918, ACE seeks to foster high standards in higher education, believing a strong higher education system to be the cornerstone of a democratic society. ACE regularly contributes *amicus* briefs on issues of importance to the education sector.

The Addendum contains information on other *Amici* on this brief.

#### **SUMMARY OF ARGUMENT**

Foreign travel and study abroad (“international education”) are indispensable to 21st Century education. Robust international education fosters intellectual growth and prepares students to work in a global economy and to thrive in our pluralistic Republic. This tort case raises a question with profound implications for American education: whether Connecticut’s law of negligence imposes a duty on a U.S. school to warn about and guard against the risk of insect-borne disease in the absence of any pre-trip government warning.

The district court held that The Hotchkiss School (“Hotchkiss”) had a duty to warn about and instruct students to take protective measures against such a risk. In the district court’s view, sufficient evidence of foreseeability existed, principally because a Centers for Disease Control and Prevention (“CDC”) advisory published after Hotchkiss’s faculty and students left for China instructed that the disease the

plaintiff contracted “occurs in forested regions in northeastern China.”<sup>2</sup> The district court erred for two main reasons.

First, as a matter of law the risk of insect-borne disease was not reasonably foreseeable in the absence of a CDC or other government advisory pre-dating the trip; and the post-trip CDC advisory was far too general to render reasonably foreseeable the risk of insect-borne disease at the tourist attraction where the jury found the infection occurred. Second, the district court’s duty violates public policy. Confronted with the specter of \$41-million judgments and the Sisyphean task of identifying the great number of diseases and other dangers that may occur in a country as large as China (or even the northeastern quadrant thereof), education institutions may be forced to curtail international travel and study opportunities. The district court’s duty violates public policy because it would sharply undercut the national and Connecticut imperative of enabling international education.

The judgment should be reversed.

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<sup>2</sup> As explained below, the district court inferred that the advisory was available before the trip, an incorrect inference as demonstrated by judicially noticeable facts explained in Hotchkiss’s principal brief. The district court also cited an even more general pre-trip CDC advisory referring to other insect-borne diseases that Hotchkiss’s principal brief explains was inapplicable to the destinations in question.

## ARGUMENT

### I. SCHOOL-SPONSORED FOREIGN TRAVEL AND STUDY ARE INDISPENSABLE FOR 21st CENTURY EDUCATION.

Foreign study and travel, once a badge of distinction for the lucky few, are today an essential component of education and a national imperative. International education promotes intellectual growth, and prepares students to succeed in a global economy and help sustain representative democracy at home.

U.S. education institutions increasingly answer the crucial call for international education. For example, universities now cross borders at an unprecedented pace—a much-noted development of the past decade. As of 2013, U.S. colleges and universities had established 99 branch campuses abroad, located from China and Singapore to Africa and the Middle East. ACE, Center for Internationalization and Global Engagement, Quick Facts. Secondary schools, too, now offer more international education than ever before. A 2013 NAIS survey of independent school business officers reported that 64% of respondents offered one or more study-abroad programs, with Spain, France, Italy, China, and Costa Rica the top destinations. NAIS & United Educators, Study Abroad Risk Survey and Summit Report 5 (March 2014).<sup>3</sup>

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<sup>3</sup> Available at  
<https://www.edurisksolutions.org/WorkArea/DownloadAsset.aspx?id=2147483776>

**A. Foreign Travel and Study Foster Intellectual Growth.**

To see foreign lands first-hand is to grow in understanding. This idea is nearly as old as Western civilization itself. Herodotus left ancient Greece in the 5<sup>th</sup> Century B.C. to travel the known world; he wished to study it. He observed: “if it were proposed to all nations to choose which seemed best of all customs, each, after examination, would place its own first; so well is each convinced that its own are by far the best.” The Histories, ch. 38 (A.D. Godley, trans. 1921). This observation provides a window into the value of international education. It holds up a mirror to students and forces them to examine critically their own mode of living, beliefs, and assumptions. It fosters curiosity, critical thinking, and “the examined life.”

A key aim of education—more important than ever in a fast-paced, information age—is to develop in students the ability to reason; that is, to think logically, expose fallacy, and test assumption through rigorous questioning and dialectic. Teaching students how to reason, which is really teaching students how to learn, is the key to new knowledge and freedom. It is also a crucial building block for learning how to work productively with others from different backgrounds and experiences.

One way students develop the power of reason is through interaction with the new. We learn by formulating, revising, and refining conceptions of the world

each time we encounter new facts, beliefs, experiences, and viewpoints. Peter B. Pufall, The Development of Thought: On Perceiving and Knowing, in Robert Shaw & John Bransford, Perceiving, Acting, and Knowing: Toward an Ecological Psychology 173–74 (1977). Faced with new information, students either assimilate it to fit the existing conception, or revise the conception to accommodate the new information. This “disequilibrium,” as Jean Piaget called it, and the subsequent restoration of cognitive balance, force learners to refine their thinking. Piaget taught that “disequilibrium” experiences have greatest impact when they come from “social interaction.” Jean Piaget, Piaget’s Theory, in 1 Carmichael’s Manual of Child Psychology (P. H. Mussen ed., 3d ed. Wiley 1970). A student, confronted by a civilization whose people have a new or unexpected way of looking at the world, can explore and absorb it more fully than if merely informed of it in the classroom. See, e.g., Diane N. Ruble, A Phase Model of Transitions: Cognitive and Motivational Consequences, 26 Advances in Experimental Social Psych. 163, 171 (1994).

International education supplies and catalyzes “that collision which is obtained only in society and by which a knowledge of the world and its manners is best acquired.” F.W. Garforth, Educative Democracy: John Stuart Mill on Education in Society 164 (1980) (citing David Ricardo). It “depends upon the informed and patient encounter with difference, with what is unknown or other,

and the inalterable belief that through this encounter new knowledge and new modes of knowing develop.” John Sexton, President of New York University, Global Network University Reflection (Dec. 21, 2010).<sup>4</sup> International education is a powerful catalyst for learning and growth.

**B. Foreign Travel and Study Prepare Students for a Global Society.**

In a global society, international education is indispensable. As never before, international education is a national-security and economic imperative that strengthens the foundation of representative democracy. Education institutions at all levels and in age-appropriate ways must prepare students to “become globally competent and internationally successful citizens.” See Arne Duncan, U.S. Secretary of Education, Statement on International Education Week 2013.<sup>5</sup>

*1. The federal government and Connecticut have recognized the necessity of international education.*

All three branches of the federal government and Connecticut recognize the value and importance of international education. In 1946, President Truman signed the bill that authorized the Fulbright Program, and every President at least

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<sup>4</sup> Available at <http://www.nyu.edu/about/leadership-university-administration/office-of-the-president/redirect/speeches-statements/global-network-university-reflection.html>.

<sup>5</sup> Available at <http://www.ed.gov/edblogs/international/international-education-week-2013/>.

since John F. Kennedy has endorsed international education.<sup>6</sup> Congress has appropriated monies to fund international education, including for secondary schools and students. See, e.g., 22 U.S.C. Ch. 33; U.S. State Dep't, Bureau of Education & Cultural Affairs, Exchange Programs, <http://exchanges.state.gov/us/special-focus-areas> (identifying nine “youth programs,” including the Kennedy-Lugar Youth Exchange & Study Abroad where high school students spend a semester or year attending high school abroad) (last visited Oct. 20, 2014). In 2000, the Departments of State and Education created International Education Week to foster awareness and participation. Courts have also voiced support, holding that “denial of equal opportunity in [study-abroad] programs has ramifications on students’ education as a whole and detracts from their overall education.” King v. Bd. of Control of E. Mich. Univ., 221 F. Supp. 2d 783, 791 (E.D. Mich. 2002). Likewise, Connecticut encourages international education. E.g., Conn. Gen. Stat. § 10-27(a).

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<sup>6</sup> See Steering Comm. on the Future of the Fulbright Educ. Exchange Program, Fulbright at Fifty (1997) (quoting Presidents Kennedy, Johnson, Nixon, Ford, Carter, Reagan, George H.W. Bush, and Clinton), available at <http://nationalhumanitiescenter.org/fulbright/presiden.htm>; Abraham Lincoln Commission on the Abraham Lincoln Study Abroad Fellowship Program, infra, at v (quoting President George W. Bush); White House Press Sec’y, Remarks of President Barack Obama at Student Roundtable (April 7, 2009), available at [http://www.whitehouse.gov/the\\_press\\_office/Remarks-Of-President-Barack-Obama-At-Student-Roundtable-In-Istanbul](http://www.whitehouse.gov/the_press_office/Remarks-Of-President-Barack-Obama-At-Student-Roundtable-In-Istanbul).

President Clinton explained the reason for such strong government support. ““To continue to compete successfully in the global economy and to maintain our role as a world leader, the United States needs to ensure that its citizens develop a broad understanding of the world, proficiency in other languages, and knowledge of other cultures.”” Hans de Wit, Internationalization of Higher Education in the United States of America and Europe: A Historical, Comparative, and Conceptual Analysis 29–30 (2002).

2. *International education is necessary for our national security and strengthens our representative democracy.*

International education is critical to maintaining the Nation’s security, both abroad and at home. Senator J. William Fulbright explained that ““the most important objective of transnational education [is] the civilizing and humanizing of relations between nations in ways that are within the limits of human capacity.”” Id. at 23. International education promotes peace by breaking down barriers.

It also helps keep the Nation safe. A Congressionally-appointed Commission calling for more international education appealed to the post-9/11 “desperate search for speakers of Arabic, Farsi, and Pashto.” Commission on the Abraham Lincoln Study Abroad Fellowship Program, Global Competence & National Needs 6 (Nov. 2005). It lamented that “despite the . . . the emergence of China, the former Soviet Union and Africa on the world’s economic stage, two-thirds of Americans studying abroad do so in Europe.” Id. at 17. It pointed out

that “the United States depends heavily on individuals knowledgeable about foreign cultures to advance and protect the interests of the American people.” Id. at 6. ““We no longer have the option of getting along without the expertise we need to understand and conduct our relations with the world.”” Id. (citation omitted). International education is also necessary for global and national health. “Medicine and public health must continue to become more globalized so that by addressing the emergence and distribution of diseases in low- and middle-income countries, the health of communities in high-income countries is promoted as well.” Paul K. Drain, et al., Global Health in Medical Education: A Call for More Training and Opportunities, 82 *Academic Med.* 226, 226 (2007).

International education also promotes national security by strengthening our representative democracy. By encouraging international education “we can be confident that when tomorrow’s foreign policy crises arise, there will be many Americans who can understand the regions involved and are prepared to speak knowledgably about the issues in their communities.” Commission on the Abraham Lincoln Study Abroad Fellowship Program, supra, at 8. In addition, as the United States becomes ever more pluralistic, international education prepares students to find common ground and work together with people of different backgrounds, religions, and cultures. See, e.g., Drain, supra, at 229 (“Teaching the global aspects of medicine and understanding medical resources and care in a

developing country will prepare future physicians to have a more complete understanding of health and medicine and will encourage them to pursue primary care specialties.”).

3. *International education is necessary for success in the world economy.*

The “most important” way to prepare students for the world economy is to teach them to “learn how to learn,” because “what you know today will be out-of-date sooner than you think.” Thomas L. Friedman, The World Is Flat: A Brief History of the Twenty-First Century 302 (2006). Moreover, “business leaders must work both in developed countries and a growing cohort of emerging economies, and must be attuned to the particular business, legal, political, social, and cultural environments of each, while maintaining their vision and principles.” Guiding Principles, Yale School of Management, <http://som.yale.edu/our-approach/guiding-principles/distinctively-global> (last visited Oct. 6, 2013). Students must be ready “to collaborate with the smartest, most efficient people [found] anywhere in the world.” Friedman, supra, at 442–43. Today, a student’s first job “could be melding the specialties of a knowledge team that is one-third in India, one-third in China, and a sixth each in Palo Alto and Boston . . . [which] takes a very special kind of skill . . . .” Id. at 443.<sup>7</sup> As part I.A explains,

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<sup>7</sup> Accord 20 U.S.C. § 1130 (“The Congress finds that . . . the future economic welfare of the United States will depend substantially on increasing international

international education fosters in students exactly these skills, essential for the world economy.

America's corporations agree. What 65 leading American businesses, including Coca-Cola, Boeing, and Dow Chemical, told the U.S. Supreme Court in a case addressing a different educational issue—the importance of student-body diversity—is at least as pertinent to this case. Given the “increasingly global reach of American business, the skills and training needed to succeed in business today demand exposure to widely diverse people, cultures, ideas and viewpoints.” Brief for Amici Curiae 65 Leading American Businesses in Support of Respondents, Grutter v. Bollinger, 539 U.S. 306 (2003) (No. 02-241), at 5. Such exposure is necessary because businesses “operate and compete in a global environment, serving and working with people and cultures of all kinds.” Id. at 7. Education that exposes students to diverse cultures enhances creativity, product appeal, and teamwork. See id.

The benefits of international education are not limited to older students; indeed, the young may benefit more, because they are open to the lessons it imparts. Praising international youth exchange programs, President Reagan

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skills in the business community and creating an awareness among the American public of the internationalization of our economy.”); id. (seeking to “increas[e] and promot[e] the Nation’s capacity for international understanding and economic enterprise through the provision of suitable international education and training for business personnel in various stages of professional development”).

explained: “[T]here’s a flickering spark in us all which, if struck at just the right age, I think, can light the rest of our lives, elevating our ideals, deepening our tolerance, and sharpening our appetite for knowledge about the rest of the world. Education and cultural exchanges, especially among our young, provide a perfect opportunity for this precious spark to grow, making us more sensitive and wiser international citizens through our careers.” Remarks at a White House Meeting of Program Representatives and Supporters of International Youth Exchange Programs (May 24, 1982) (emphasis added).<sup>8</sup>

In sum, “[t]he lack of language skills and civic and global awareness among American citizens increasingly jeopardizes their ability to interact with local and global peers or participate meaningfully in business, diplomatic, and military situations.” Council on Foreign Relations, U.S. Education Reform and National Security, 11 (2012).<sup>9</sup> Writing three decades ago, Justice Powell recognized that our “‘nation’s future depends upon leaders trained through wide exposure’ to the ideas and mores of students as diverse as this Nation of many peoples,” Regents of the Univ. of Calif. v. Bakke, 438 U.S. 265, 313 (1978) (citation omitted). Today, he could easily replace “Nation” with “world.” Given the critical importance of

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<sup>8</sup> Available at <http://www.reagan.utexas.edu/archives/speeches/1982/52482d.htm>.

<sup>9</sup> Available at [http://i.cfr.org/content/publications/attachments/TFR68\\_Education\\_National\\_Security.pdf](http://i.cfr.org/content/publications/attachments/TFR68_Education_National_Security.pdf).

international education and the vastness of the world, the application of U.S. tort principles in the international education context has profound implications.

## **II. THE DISTRICT COURT ERRED AS A MATTER OF LAW IN FINDING A DUTY.**

In Connecticut, duty is a question of law with two parts: reasonable foreseeability and public policy. Sic v. Nunan, 54 A.3d 553, 557–58 (Ct. 2012). The district court created a negligence duty that is untethered to reasonable foreseeability and ignores the national and Connecticut imperative for international education. The result is an unachievable standard that will impede teaching and learning, without any meaningful reduction in avoidable harm.

### **A. The Risk of Insect-Borne Disease Was Not Reasonably Foreseeable.**

When determining duty, the foreseeability question is whether “an ordinary person in the defendant’s position, knowing what the defendant knew or should have known, would anticipate that harm of the general nature of that suffered was likely to result.” Id. The district court held sufficient evidence existed that Hotchkiss should have foreseen the risk of insect-borne disease on Mount Pan.<sup>10</sup> The court relied on a CDC publication that declared “[t]ickborne encephalitis

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<sup>10</sup> The district court concluded that “insect-borne disease” is harm of the same general nature as tickborne encephalitis. However, “insect-borne disease” that results in no more than a skin rash is in a different category than tickborne encephalitis.

occurs in forested regions in northeastern China.” See ECF No. 254, at 24–25.<sup>11</sup>

Hotchkiss’s brief ably demonstrates that because the CDC advisory was published nearly two months after Hotchkiss’s students departed for China, it provides no basis to conclude plaintiff’s injury was reasonably foreseeable. However, assuming for the sake of argument that the advisory had been published in time, as a matter of law it is still far too general to support a conclusion that harm from insect-borne disease was reasonably foreseeable.

Dangerous and disease-carrying creatures inhabit much of the planet. For example, poisonous spiders, snakes, ticks carrying disease or other harmful pests are found in all regions in the United States. However, the presence of dangerous animals in a region neither makes resulting injury reasonably foreseeable to a landowner nor creates a duty to warn or protect. See, e.g., Brunelle v. Signore, 215 Cal. App. 3d 122, 129–30, 132 (Cal. Ct. App. 1989) (refusing to impose a duty when premises owner had no reason to believe the harmful spider was “prevalent

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<sup>11</sup> The district court also pointed to a pre-departure CDC advisory describing health risks in “East Asia,” including the risk of malaria “in some areas of China” and “dengue, filariasis, Japanese encephalitis, leishmaniasis, and plague are diseases carried by insects . . . in this region.” ECF No. 254, at 24. Hotchkiss’s principal brief ably explains why that advisory did not apply to the locations it visited in China. In addition, as such advisory is even more general than the advisory about tick-borne encephalitis (“TBE”), *Amici’s* arguments regarding the TBE advisory apply *a fortiori* to the East Asia advisory. So, too, with the British health advisory cited by the district court, which observed that TBE occurred “in forested regions of China and Japan.” Id. at 27.

in the area where his residence is located,” despite defendant’s awareness the species lived in rocky areas in the United States); Nicholson v. Smith, 986 S.W.2d 54, 62–63 (Tex. Ct. App. 1999) (collecting cases); see also Liability of Owner or Operator of Business Premises for Injuries to Patron Caused by Insect or Small Animal, 48 A.L.R.3d 1257 (1973) (explaining that liability “depends to some extent on the owner’s or operator’s knowledge, or lack thereof, of the existence of the insect or animal or of its dangerous propensities”). It appears Connecticut, too, would require a degree of particularized knowledge. See Giacalone v. Hous. Auth. of Wallingford, 51 A.3d 352, 357 (Ct. 2012) (explaining that Connecticut law obligates an innkeeper to take protective measures “once placed on notice” that rats were encroaching the specific property) (citing Williams v. Milner Hotels Co., 36 A.2d 20 (Ct. 1944)).

Harm from dangerous pests is foreseeable only when there is actual or constructive knowledge of such a pest’s presence on or around the specific property. Compare CeBuzz, Inc. v. Sniderman, 466 P.2d 457, 459–60 (Colo. 1970) (en banc) (holding grocery store patron bitten by spider that was concealed in bananas had a duty when a similar spider had been seen among bananas a few days earlier), with Rhodes v. B. C. Moore & Sons, Inc., 264 S.E.2d 500, 501 (Ga. Ct. App. 1980) (holding it is “clear that because there had been no previous incidents of insect bites in the store, appellee would have no reason to anticipate the arrival

of, presence of or attack by a flying, stinging insect”). “It is the distinction between general knowledge that black widow spiders are frequently found in wood storage areas and specific knowledge that a black widow is in a wood storage area.” Butcher v. Gay, 29 Cal. App. 4th 388, 404 (Cal. Ct. App. 1994).

For example, in Butcher, plaintiff alleged that she contracted Lyme Disease “as a result of exposure to infested ticks’ on respondent’s property, and that respondent had ‘failed to spray the area, post signs or prevented [*sic*] domestic dog(s) from coming into contact with the plaintiff thereby exposing her to a vector of [Lyme] disease without her knowledge.’” 29 Cal. App. 4th at 392 (first alteration in original). The plaintiff attempted to establish foreseeability by introducing evidence of a California Department of Health Services advisory. Id. at 396. The leaflet reported that the Western Black-legged Tick spread Lyme disease and had been reported in 50 of 58 California counties. It also provided eight recommendations for avoiding the disease, including wearing protective clothing and applying insect repellent. Id. at 396–97. The leaflet included a map, but it was impossible to tell “with any degree of certainty” whether the defendant’s property was in or out of the area where the tick had been found. See id. at 397. Moreover, the local veterinarian stated that she had not “received any warning notices from the California State Department of Health or the local Mosquito

Abatement District regarding the presence of Lyme disease in the Frazier Park or Pine Mountain area.” Id. at 394 (emphasis added).

The California Court of Appeals held the defendants owed no duty to the plaintiff because there was insufficient evidence that the defendant “knew or reasonably should have known there was any danger or potential danger associated with . . . defendant’s act or failure to act.” Id. at 403–05. More specifically, it was “not generally known that there was any risk of Lyme disease in the Pine Mountain area” of the county in which the incident took place. Id. at 404. The court disregarded the leaflet map because it was unclear and there was no evidence of its distribution in the Pine Mountain area, nor in the surrounding county. See id. at 397, 405.

Similarly, in Rodgers v. La Quinta Motor Inn, a guest sued a motel in Arkansas after suffering a brown recluse spider bite. 873 S.W.2d 551, 551 (Ark. 1994). According to the National Institutes of Health, the brown recluse can cause coma, kidney failure, and seizures, and is “most common in the south and central states of the United States, especially in . . . Arkansas.”<sup>12</sup> In La Quinta, the Arkansas Supreme Court held that plaintiff “[was unable to show] the brown recluse spider was prevalent in the area where the motor inn is located” or that “its

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<sup>12</sup> MedlinePlus, Brown recluse spider, <http://www.nlm.nih.gov/medlineplus/ency/article/002859.htm> (last visited Oct. 3, 2014).

employees had ever seen a brown recluse spider on the premises.” Id. at 552. Accordingly, the defendant owed no duty. See id. (citing Kay v. Kay, 306 Ark. 322, 323 (Ark. 1991)).

Here, a CDC advisory provided that “[t]ickborne encephalitis occurs in forested regions in northeastern China.” At best, the advisory would have revealed that ticks carrying encephalitis are sometimes found in forested areas in one-quarter of China. As in Butcher and La Quinta, the advisory is far too general to make reasonably foreseeable the presence of TBE-carrying ticks in the Tianjin province or Mount Pan. If knowledge that a harmful insect is found in a particular state is insufficient, as courts held, then reference to a quadrant of a country as large as China—9 million square kilometers—falls far short of what is necessary for reasonable foreseeability.

Even assuming the general CDC advisory triggered a duty to investigate, the district court cited no evidence that further search would have revealed a specific risk of insect-borne disease at Mount Pan—which the district court described as having a paved path and Gondola and surrounded by an exurban landscape with growing housing density—or any other location Hotchkiss students visited. The district court cited no sign warning of disease-carrying or even ordinary ticks or insects at the foot of Mount Pan’s paved path, nor any such warnings on public travel websites about Mount Pan or the local surrounding area. Just as in Butcher,

where there was no evidence of warnings about disease-carrying ticks in or specific to the Pine Mountain area, the district court here cited no evidence of disease-carrying insects on Mount Pan or in its surrounding exurban landscape in Tianjin. Just as in Butcher, the risk of harm from disease-carrying ticks was therefore unforeseeable as a matter of law, and Hotchkiss owed no duty.

One might imagine an insect-borne disease so ubiquitous or a country so small that a country- or regional- CDC advisory would be sufficient for reasonable foreseeability. But that is not this case. As a matter of law, there was no evidence that Hotchkiss reasonably could have foreseen risk from insect-borne disease on or around Mount Pan.

**B. Public Policy Bars Imposition of a Duty.**

Public policy also bars imposition of a duty in these circumstances. Four factors guide the public policy analysis: (1) the normal expectations of the participants in the activity under review; (2) the public policy of encouraging participation in the activity, while weighing the safety of participants; (3) the avoidance of increased litigation; and (4) the decisions of other jurisdictions. Murillo v. Seymour Ambulance Ass'n, Inc., 823 A.2d 1202, 1205–06 (Ct. 2003). All four factors militate against imposition of a duty here. As education associations, *Amici* focus here on the public policy of encouraging participation in international education while weighing the safety of students.

The district court's duty extends well beyond the duty of secondary schools to provide a safe learning environment on campus or to protect students from known risks. Cf. Conn. Gen. Stat. § 10-220. The district court would impose a duty to protect students from remote risks a school cannot reasonably be expected to anticipate, just because the danger is sometimes found in an area as large as a quarter of China.

According to the CDC Yellowbook, for example, 61 of 72 listed diseases are found in China.<sup>13</sup> Even if it were theoretically possible for an education institution to sort through and provide meaningful warnings to students about all such diseases, the paperwork would be so lengthy as to be ignored. Thus, imposing such a duty is unlikely to increase safety by reducing avoidable harm.

The district court's reasoning would not limit the broad duty it created to international education. The simple hypothetical example of a class trip to New York City and Central Park demonstrates the disabling burdens such a duty would impose on educators.

To begin, the New York City Department of Health and Mental Hygiene ("NYCDOHM") states that from 2012–2014, there were 42 cases of reported West

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<sup>13</sup> See CDC The Yellowbook: Health Information for International Travel, Ch. 3 (2014) (the "Yellowbook"), available at <http://wwwnc.cdc.gov/travel/yellowbook/2014/table-of-contents>. Following the district court's lead, *Amici's* count includes diseases reportedly found worldwide or in parts of Asia.

Nile Virus infections presenting with “Neuroinvasive Disease” in the five Boroughs, including seven cases in Manhattan.<sup>14</sup> Accordingly, the NYCDOHM cautions New Yorkers to take protective measures against mosquitos, including by applying bug spray. Id. Under the district court’s conception of duty, an education institution could have a duty to instruct students to apply DEET on Fifth Avenue.

Nor would the district court’s logic seem to stop at insect-borne disease. A school could also have to guard against other possible dangers. If students ride the subway, the school would need to warn that train doors may close on arms and legs. See Griffith v. Staten Island Rapid Transp. Operating Auth., 269 A.D.2d 596, 596 (N.Y. App. Div., 2d Dep’t 2000) (alleging such an injury); Oren Yaniv, Straphanger Jonathan Lynn Sues MTA Over Incident Where his Arm Got Trapped in Subway Doors, Daily News (May 30, 2011).<sup>15</sup> Before walking New York City sidewalks, students would need a safety briefing on falling air conditioner units. See, e.g., Air Conditioner in Danger of Falling, The Official Website of the City of New York, <http://www1.nyc.gov/nyc-resources/service/1018/air-conditioner-in-danger-of-falling> (last visited on Oct. 3, 2014) (government website urging citizens

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<sup>14</sup> See NYCDOHM, West Nile Virus Reports, Results and Summaries - 2014 Positive Results Summary, New York City Department of Health and Mental Hygiene, <http://www.nyc.gov/html/doh/html/environmental/wnv-reports.shtml> (last visited Oct. 6, 2014).

<sup>15</sup> Available at <http://www.nydailynews.com/new-york/straphanger-jonathan-lynn-sues-mta-incident-arm-trapped-subway-doors-article-1.147099>.

to dial 311 to report dangerous air conditioners); CBS News New York, Air Conditioner Falls Onto Man in Manhattan (Sept. 28, 2010).<sup>16</sup> They would also need to be cautioned against walking on subway and basement grates embedded in the sidewalk. See, e.g., AP, Manhattan: Woman Falls Through Sidewalk Grate, The New York Times, May 18, 2007; AP, Woman on Sidewalk Falls to Subway Tracks, The New York Times, Dec. 17, 1988. Near Central Park, in addition to bug spray, students would need to be warned not to approach the horse-drawn carriages, lest they suffer a bite. NYCDOHM, Horse Drawn Carriage Operator’s Course: Training Manual, 19 (June 2012) (instructing on what to do if “your horse bites someone”).<sup>17</sup> Students would also need a briefing on earthquake safety, as the U.S. government recently has warned of the risk of earthquakes in Manhattan. Sam Roberts, U.S. Raises Threat of Quake but Lowers Risk for Towers, N.Y. Times, July 17, 2014, at A17. It is difficult to imagine all of the possibilities, but easy to imagine frustrated educators deciding not to venture outside the classroom, much less abroad.

As explained in detail in Part I, international education is essential to 21st Century education, in ways that are key to training the next generation for the

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<sup>16</sup> Available at <http://newyork.cbslocal.com/2010/09/28/air-conditioner-falls-from-window-onto-elderly-man/>.

<sup>17</sup> Available at <http://www.nyc.gov/html/doh/downloads/pdf/hany/carriage-operators-manual.pdf>.

Nation's future. Education institutions must prepare students to confront a globalized world, "including developing the ability to compete economically, to operate effectively in other cultures and settings, to use knowledge to improve their own lives and their communities, and to better comprehend the realities of the contemporary world so that they can meet their responsibilities as citizens." ACE, Report of the Blue Ribbon Panel on Global Engagement: Strength through Global Leadership and Engagement 14 (Nov. 2011).<sup>18</sup> For little, if any, increase in safety, the district court's duty would deter institutions from providing a crucial learning opportunity and would thus do a disservice to education institutions, students, and the larger society.

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<sup>18</sup> Available at <http://www.acenet.edu/news-room/Documents/2011-CIGE-BRPRReport.pdf>.

## CONCLUSION

For the foregoing reasons, the judgment should be reversed.

Respectfully submitted,

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Dated: October 21, 2014

## **ADDENDUM**

- The National Association of Independent Schools (“NAIS”) is described at page 1 of this brief.
- The American Council on Education (“ACE”) is described at page 1 of this brief.
- The Alliance for International Educational and Cultural Exchange (“Alliance Exchange”) is an association of 88 U.S.-based nongovernmental entities that conduct or support international exchange programs.
- The American Association of Community Colleges (“AACC”) is the primary advocacy organization for the nation’s community colleges. It represents nearly 1,200 two-year, associate-degree-granting institutions.
- The American Association of State Colleges and Universities (“AASCU”) is a higher education association of more than 400 public colleges, universities, and systems.
- The American Councils for International Education (“ACIE”) is a premier, international nonprofit creating educational opportunities that prepare individuals and institutions to succeed in an interconnected and increasingly interdependent world through academic exchanges, overseas language immersion, and educational development programs.
- The American Dental Education Association (“ADEA”) is the voice of dental education. Its members include all U.S. and Canadian dental schools and many allied and advanced dental education programs, corporations, deans, program directors, administrators, faculty, and students, residents and fellows.
- The American Field Service (“AFS”) is a non-profit international exchange organization for students and adults that operates in more than 50 countries, and organizes and supports intercultural learning experiences.
- The Association of American Medical Colleges (“AAMC”) is a non-profit educational association whose members include all 141 accredited U.S. and 17 accredited Canadian medical schools; nearly 400 major teaching hospitals

and health systems; and 90 academic and scientific societies. The AAMC recently established the Global Health Learning Opportunities (“GHLO”) program, which currently facilitates cross-border medical student clinical rotations among 86 medical schools in 28 countries.

- The Association of American Universities (“AAU”) is an association of 61 leading public and private research universities in the United States and Canada. Founded to advance the international standing of U.S. research universities, AAU today focuses on issues that are important to research-intensive universities, such as funding for research, research policy issues, and graduate and undergraduate education.
- The Association of Governing Boards of Universities and Colleges (“AGB”) is the only national association that serves the interests and needs of academic governing boards, boards of institutionally related foundations, and campus CEOs and other senior-level campus administrators on issues related to higher education governance and leadership.
- The Association of International Education Administrators (“AIEA”) is the leadership organization in the field of international higher education. It is the professional development organization for senior international officers focusing on leading the internationalization of higher education institutions.
- The Association of Jesuit Colleges and Universities (“AJCU”) represents all 28 Jesuit institutions in the U.S. and is affiliated with over 100 Jesuit institutions worldwide.
- The Association of Military Colleges and Schools of the United States (“AMCSUS”) is a voluntary membership organization representing 41 private and public military schools and colleges and over 20,000 students.
- The Association of Public and Land-grant Universities (“APLU”) is a research and advocacy organization of public research universities, land-grant institutions, and state university systems with member campuses in all 50 states, U.S. territories, and the District of Columbia.
- The Connecticut Association of Boards of Education (“CABE”) is a non-profit association representing the vast majority of public school boards and their members in the state of Connecticut.

- The Connecticut Association of Independent Schools (“CAIS”) is a professional fellowship of 97 member institutions, collectively educating over 30,000 students.
- The Council for Christian Colleges & Universities (“CCCU”) is a Washington, DC based association of Christian institutions of higher education, with 152 located in North America and another 24 in 17 countries around the world.
- The Council on International Educational Exchange (“CIEE”) was founded in 1947 to promote intercultural understanding and world peace through international education and exchange programs. Today, CIEE is the largest non-profit exchange organization in the country.
- The Forum on Education Abroad (“Forum”) is a non-profit, membership association recognized by the U.S. Department of Justice and the Federal Trade Commission as the Standards Development Organization (“SDO”) for the field of education abroad.
- The Global Education Benchmark Group (“GEBG”), a non-profit that represents more than 160 member schools and 60,000 students, identifies best practices in global education by collecting, analyzing, and sharing data from GEBG members.
- The Hispanic Association of Colleges and Universities (“HACU”), founded in 1986, represents more than 400 colleges and universities committed to Hispanic higher education success in the U.S., Puerto Rico, Latin America, and Spain.
- The Institute of International Education (“IIE”), founded in 1919, is a leading not-for-profit educational and cultural exchange organization in the United States. IIE promotes educational exchange around the world through the renowned Fulbright Program and a range of other programs.
- NAFSA: Association of International Educators (“NAFSA”) was founded in 1948 to promote the professional development of U.S. college and university officials responsible for assisting and advising the 25,000 foreign students who had come to study in the United States after World War II.

- NASPA—The Student Affairs Administrators in Higher Education is the leading association for the advancement, health, and sustainability of the student affairs profession.
- The National Association of Independent Colleges and Universities (“NAICU”) serves as the unified national voice of private, non-profit higher education in the United States. It has nearly 1,000 members nationwide.
- The National Business Officers Association (“NBOA”) is the only national association focused exclusively on supporting independent school business officers and business operations staff, and fostering financial and operational excellence, among independent PK-12 schools.
- The New York State Association of Independent Schools (“NYSAIS”), a voluntary association of 191 independent nursery, elementary, and secondary schools and organizations enrolling 79,000 students, promotes the independence, well-being and public understanding of, and respect for, New York independent schools and serves as an accrediting body.
- The University Risk Management and Insurance Association (“URMIA”) promotes the advancement and application of effective risk management principles and practices in institutions of higher education.

**CERTIFICATE OF COMPLIANCE**

Pursuant to Fed R. App. P. 32(a)(7)(C), I hereby certify that the foregoing brief was produced using the Times New Roman 14-point typeface and contains 6,743 words.

/s/ Alexander E. Dreier  
Alexander E. Dreier

**CERTIFICATE OF SERVICE**

I certify that on October 21, 2014, the foregoing was electronically filed through this Court's CM/ECF system, which will send a notice of filing to all registered users.

/s/ Alexander E. Dreier  
Alexander E. Dreier