

No. 20-843

**In The
Supreme Court of the United States**

—◆—
NEW YORK STATE RIFLE &
PISTOL ASSOCIATION, INC., et al.,

Petitioners,

v.

KEVIN P. BRUEN, in His Official Capacity as
Acting Superintendent of New York State Police, et al.,

Respondents.

—◆—
**On Writ Of Certiorari To The
United States Court Of Appeals
For The Second Circuit**

—◆—
**BRIEF OF AMICI CURIAE
THE DC PROJECT FOUNDATION,
OPERATION BLAZING SWORD—
PINK PISTOLS, AND JEWS FOR THE
PRESERVATION OF FIREARMS OWNERSHIP
IN SUPPORT OF PETITIONERS**

—◆—
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INTEREST OF *AMICI CURIAE*¹

Amici are citizens that face disproportionate risks of violence away from home and therefore vigorously support the right to bear arms there.

The DC Project Foundation is a coalition of female gun owners from all fifty states dedicated to protecting and preserving their Second Amendment rights. The DC Project raises awareness that firearms safety and violence prevention are achieved through education, not legislation, encourages the preservation of America's gun culture, and highlights the diversity and rising demographic of female gun owners through advocacy.

Operation Blazing Sword—Pink Pistols is a 501(c)(3) organization established to advocate on behalf of lesbian, gay, bisexual, and transgendered (“LGBT”) firearm owners, with specific emphasis on self-defense issues. It has over 1000 volunteer firearm instructors in nearly a thousand locations across all 50 states. Membership is open to anyone, regardless of sexual orientation or gender identity, who supports the rights of LGBT firearm owners.

Jews for the Preservation of Firearms Ownership (“JPFO”) is a 501(c) organization with more than 10,000 members and many more online supporters. Not a lobbying group, JPFO is an educational organization

¹ All parties consented to this brief's filing. No party's counsel authored this brief in any way, and no party made a monetary contribution intended to fund its preparation or submission.

with a vital interest in preserving the individual right to keep and bear arms.



SUMMARY OF THE ARGUMENT

August 2, 2016 was a typical day for 30-year-old Queens resident Karina Vetrano. That evening after work, she donned her running gear, grabbed her phone, and left for her normal jog in the park near her home.² But this time, something went horribly, horribly wrong. While running along the path, a man jumped her from behind, dragged her into the marsh, and sexually assaulted her. Then this monster strangled Karina, pressing so hard into her neck that it left an outline of his hand.³ Karina “put up a ferocious fight, right to the end,” but her attacker simply overpowered her.⁴

On May 18, 2013, Mark Carson, a 32-year-old gay man, was walking peacefully along the sidewalk with a friend in New York’s City West Village, only blocks from the area many consider to be the birthplace of the

² Jamie Schram *et al.*, *Slain jogger fought for her life during gruesome attack*, NEW YORK POST (Aug. 4, 2016), <https://nypost.com/2016/08/04/slain-jogger-fought-for-her-life-during-gruesome-attack/>.

³ David K. Li, *Man found guilty of 2016 murder, sex abuse of Queens jogger Karina Vetrano*, NBC NEWS (Apr. 1, 2019), <https://www.nbcnews.com/news/us-news/killing-queens-jogger-karina-vetrano-22-year-old-man-found-n989476>.

⁴ Schram *et al.*, *supra* n.2.

American gay rights movement.⁵ The two were minding their own business, not bothering anyone. But their perceived relationship alone was enough to set one man off. “You look like gay wrestlers,” the man shouted at them, hatefully.⁶ “[F]aggots” and “queers,” he called them.⁷ Bravely, Mr. Carson turned to confront the man about his hate. That was the last thing Mr. Carson ever did.⁸

And just earlier this year, two Jewish teenagers were walking along Ocean Avenue in Brooklyn when a mob surrounded them and demanded that they yell hateful antisemitic phrases like “kill all the Jews.”⁹ When the teenagers refused, the mob beat them repeatedly and choked them, wielding bats.¹⁰

⁵ Josh Voorhees, *Hate Crime in Greenwich Village: “Do You Want to Die Right Now?”* SLATE.COM (May 20, 2013), <https://slate.com/news-and-politics/2013/05/mark-carson-west-village-hate-crime-elliott-morales-charged-with-hate-crime-in-murder-of-mark-carson.html>.

⁶ *Id.*

⁷ Jamiles Lartey, *Mark Carson murder: jury finds New York man guilty of anti-gay hate crime*, THE GUARDIAN (March 9, 2016), <https://www.theguardian.com/us-news/2016/mar/09/elliott-morales-guilty-new-york-hate-crime-anti-gay-shooting-west-village>.

⁸ *Id.*

⁹ Benjamin Fearnow, *Jewish Teens in New York Assaulted by Group Demanding They Yell “Kill All the Jews,”* NEWSWEEK (May, 23, 2021), <https://www.newsweek.com/jewish-teens-new-york-assaulted-group-demanding-they-yell-kill-all-jews-1594008>.

¹⁰ Jason Lemon, *Three Charged in NYC After Yelling “Kill All the Jews,” Attacking Jewish Teens with Baseball Bat*, NEWSWEEK (May 27, 2021), <https://www.newsweek.com/three-charged-nyc-after-yelling-kill-all-jews-attacking-jewish-teens-baseball-bat-1595598>.

Fortunately, the victims managed to escape before they suffered the same fate as Ms. Vetrano and Mr. Carson.¹¹

This is just a sample of the hundreds, if not thousands, of horrid attacks that LGBT people, religious minorities, and women have endured in recent years in New York City alone. These despicable hate crimes underscore the enormous risk of violence people in these groups face when they leave their homes every single day. But the police are neither legally obligated nor capable of preventing this violence before it occurs.

It's one thing for New York to not do the job of protecting vulnerable citizens from street violence. That failure, bad enough as it is, is purely political. But it's a far worse thing for New York to stop the citizens from protecting themselves. That failure, by virtue of the Second Amendment, is unconstitutional.

Like the right to keep arms *inside* the home, the right to bear arms *outside* the home “is especially important for women and members of [these] other groups that [are] especially vulnerable to violent crime.” *McDonald v. City of Chicago, Ill.*, 561 U.S. 742, 790 (2010). New York’s “proper cause” law eviscerates this right, leaving these marginalized groups even

¹¹ Fox 5 New York, *NYPD searching for suspects after pair of anti-Jewish attacks in Brooklyn* (May 24, 2021), <https://www.fox5ny.com/news/nypd-searching-for-suspects-after-pair-of-anti-jewish-attacks-in-brooklyn>.

more at risk than they already are. It is ineffective, it is unconscionable, and it is unconstitutional. The Second Circuit’s decision upholding it must be reversed.

◆

ARGUMENT

I. Marginalized groups’ interest in the Second Amendment right to bear arms is a key factor in determining the scope of that right.

In *D.C. v. Heller*, this Court held that the Second Amendment “guarantee[s] the individual right to possess and carry weapons in case of confrontation” and recognized that the “core lawful purpose” of this right is “self defense.” 554 U.S. 570, 592, 630 (2008). Two years later, the Court held that states may not infringe this right any more than the federal government. *McDonald v. City of Chicago, Ill.*, 561 U.S. 742, 750 (2010). Critically, the interests of marginalized groups played an essential role in defining the Second Amendment in both decisions.

Heller expressly focused on marginalized groups in embracing the need for practical and realistic Second Amendment protections. The Court observed that “[b]lacks were routinely disarmed by Southern States after the Civil War,” leading “[t]hose who opposed these injustices [to] frequently state[] that they infringed blacks’ constitutional right to keep and bear arms.” 554 U.S. at 614. The newly freed slaves had “shown by their peaceful and orderly conduct that they [could] safely

be trusted with fire-arms,” and they needed these weapons “to defend their homes, families or themselves” from violence in the newly emancipated South. *Id.* at 615. This view “was apparently widely held” during this period, and although it did “not provide as much insight into [the Second Amendment’s] original meaning as earlier sources,” this “understanding of the origins and continuing significance of the Amendment [was still] instructive.” *Id.* at 614.

Marginalized groups’ interests were even more explicitly important in *McDonald*. In addition to expanding upon *Heller*’s historical analysis, see 561 U.S. at 770–71, the Court emphasized the *current* importance of the Second Amendment right to the protection of minorities and women specifically, *id.* at 789–90. In addressing the dissent’s concern that the Second Amendment “does not protect minorities or persons neglected by those holding political power,” the Court explained:

[P]etitioners and many others who live in high-crime areas dispute the proposition that the Second Amendment right does not protect minorities and those lacking political clout. The plight of Chicagoans living in high-crime areas was recently highlighted when two Illinois legislators representing Chicago districts called on the Governor to deploy the Illinois National Guard to patrol the City’s streets. The legislators noted that the number of Chicago homicide victims during the current year equaled the number of American soldiers killed during that same period in

Afghanistan and Iraq and that 80% of the Chicago victims were black. Amici supporting incorporation of the right to keep and bear arms contend that the right is especially important for women and members of other groups that may be especially vulnerable to violent crime. If, as petitioners believe, their safety and the safety of other law-abiding members of the community would be enhanced by the possession of handguns in the home for self-defense, then the Second Amendment right protects the rights of minorities and other residents of high-crime areas whose needs are not being met by elected public officials.

Id. at 789–90 (footnotes omitted).

Heller's and *McDonald's* attention to minority rights accords with bedrock principles of constitutional law. The Founders adopted the Bill of Rights to prevent majorities from trampling the rights of minorities,¹² a point this Court made clear in a seminal First Amendment opinion:

The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials

¹² See, e.g., 1 ANNALS OF CONG. 454–55 (Rep. Madison introducing Bill of Rights and arguing that its purpose is to “limit and qualify the powers of Government, by excepting out of the grant of power those cases in which the Government ought not to act,” including “exceptions . . . in some cases, against the community itself; or, in other words, against the majority in favor of the minority”).

and to establish them as legal principles to be applied by the courts. One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections.

W. Virginia State Bd. of Educ. v. Barnette, 319 U.S. 624, 638 (1943) (emphasis added).

To respect the Bill of Rights' fundamental purpose, this Court has long used suspicious scrutiny against any legislation that undermines explicit constitutional guarantees or targets "discrete and insular minorities." See *United States v. Carolene Products Co.*, 304 U.S. 144, 153 n.4 (1938). That is, "when legislation appears on its face to be within a specific prohibition of the Constitution, such as those of the first ten Amendments," or when it reflects "prejudice against discrete and insular minorities," the Court will engage in "a correspondingly more searching judicial inquiry." *Id.*

New York's "proper cause" law warrants considerable skepticism in both respects. The Second Amendment is plainly "within a specific prohibition of the Constitution," as it is included within "the first ten Amendments," *id.*; and *Heller* confirms that it belongs on the list of "fundamental rights [that] may not be submitted to a vote," *Barnette*, 319 U.S. at 638:

[T]he enshrinement of constitutional rights necessarily takes certain policy choices off the table. These include the absolute prohibition

of handguns held and used for self-defense in the home.

Heller, 554 U.S. at 636 (citation omitted); *accord McDonald*, 561 U.S. at 790.

Furthermore, as outlined below, the right to *bear* arms outside the home serves to “protect minorities and those lacking political clout” just as much as the right to *keep* arms within the home. *McDonald*, 561 U.S. at 790. Indeed, this right “is especially important for women and members of other groups that may be especially vulnerable to violent crime.” *Id.* As in *McDonald*, because the “the safety of . . . law-abiding members of the community [here] would be enhanced by the [carrying] of handguns [outside] the home for self-defense,” “the Second Amendment right protects the rights of minorities and other residents of high-crime areas whose needs are not being met by elected public officials.” *Id.* The protection of these rights warrants extension of the Second Amendment beyond the home.

II. Marginalized groups need guns outside the home for self-protection.

As a practical matter, the right to carry a firearm outside the home for self-defense is an extraordinarily important right for the LGBT community, religious and racial minorities,¹³ and women. All of these groups

¹³ Because other *amici* adequately address the need for racial minorities to bear arms in public, we do not address this particular group in detail. *See, e.g.*, BR. OF AMICUS CURIAE ASIAN

face a heightened risk of violence outside the home and cannot rely on the police for protection. For them, the right to bear arms in public is nothing short of essential.

A. Members of the LGBT community are disproportionately victims of violent crime.

An estimated 5.6% of the population identifies as LGBT,¹⁴ with only 0.6% identifying as transgender.¹⁵ These people are disproportionately likely to be victims of both hate crimes and violence.

The hate crime statistics against LGBT people are unsettling. In 2019, there were over 1,378 *reported* hate crimes committed against lesbian, gay, and bisexual people and another 224 against the much smaller population of transgendered people.¹⁶ This constituted nearly 20% of all hate crimes for that

PACIFIC AMERICAN GUN OWNERS ASSOCIATION IN SUPPORT OF PETITIONERS; BR. OF *Amicus Curiae* NAT'L AFRICAN AMERICAN GUN ASS'N, INC. IN SUPPORT OF PETITIONERS.

¹⁴ JEFFREY M. JONES, *LGBT Identification Rises to 5.6% in Latest U.S. Estimate*, GALLUP (Feb. 24, 2021), <https://news.gallup.com/poll/329708/lgbt-identification-rises-latest-estimate.aspx>.

¹⁵ ANDREW FLORES *ET AL.*, HOW MANY ADULTS IDENTIFY AS TRANSGENDER IN THE UNITED STATES? at 3 (June 2016), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Trans-Adults-US-Aug-2016.pdf>.

¹⁶ Fed. Bureau of Investigation (“FBI”), *Hate Crime Statistics, 2019: Incidents and Offenses*, UNIFORM CRIME REPORT 4, <https://ucr.fbi.gov/hate-crime/2019/topic-pages/incidents-and-offenses.pdf> [“FBI, 2019 Incidents Report”].

year,¹⁷ a number consistent with previous years.¹⁸ These figures reflect only a *fraction* of the true number of crimes against LGBT people, as “only about half of [LGBT] victimizations are reported to police.”¹⁹

Violent crime numbers are worse. LGBT people are nearly *four times more likely* than non-LGBT people to be victims of such crimes in general.²⁰ And homicides in particular are increasing. In 2017, the incidents of hate-related homicides against LGBT people rose to a staggering 52—one homicide *per week*—representing “an 86% increase in the single incident reports compared to 2016” and “the highest number ever recorded” in the 21 years this data has

¹⁷ See *id.* at 21.

¹⁸ FBI, *Hate Crime Statistics, 2018: Incidents and Offenses*, UNIFORM CRIME REPORT 2, 4, <https://ucr.fbi.gov/hate-crime/2018/topic-pages/incidents-and-offenses.pdf> [“FBI, 2018 Incidents Report”] (approximately 1,568 hate incidents against LGBT people, comprising 19.4% of all hate crimes); FBI, *Hate Crime Statistics, 2017: Incidents and Offenses*, UNIFORM CRIME REPORT 2, 4 <https://ucr.fbi.gov/hate-crime/2017/topic-pages/incidents-and-offenses.pdf> [“FBI, 2017 Incidents Report”] (1,197 incidents; 17.6% of the total); FBI, *Hate Crime Statistics, 2016: Incidents and Offenses*, UNIFORM CRIME REPORT 2, 4, <https://ucr.fbi.gov/hate-crime/2016/topic-pages/incidentsandoffenses.pdf> [“FBI, 2016 Incidents Report”] (1,195 incidents; 19.7% of the total).

¹⁹ ANDREW FLORES, *Victimization Rates and Traits of Sexual and Gender Minorities in the U.S.*, SCI. ADVANCES 5 (Oct. 2, 2020), <https://advances.sciencemag.org/content/advances/6/40/eaba6910.full.pdf>; see also Rachel E. Morgan and Barbara A. Oudekerk, *Criminal Victimization, 2018*, U.S. DEPT. OF JUSTICE, BUREAU OF JUSTICE STATISTICS 8 (Sept. 2019), <https://bjs.ojp.gov/content/pub/pdf/cv18.pdf> (“Based on the 2018 survey, less than half (43%) of violent victimizations were reported to police.”).

²⁰ FLORES, *supra* n.19, at 5.

been collected.²¹ This number may be much higher. The Human Rights Campaign documented 44 murders of transgender people alone in 2020,²² to say nothing of the murder rate for lesbian, gay, bisexual, and other queer people.

Violence against the LGBT community, moreover, is not limited to the home. Quite the opposite. Seventy-one percent of anti-LGBT violent crime in 2017 occurred in places other than private residences.²³ LGBT people were attacked on school and college campuses, in shelters, at work, and on the street.²⁴ And 2017 was no outlier. Hate-related violence against LGBT people has routinely occurred in public

²¹ NATIONAL COALITION OF ANTI-VIOLENCE PROGRAMS (“NCAVP”), LESBIAN, GAY, BISEXUAL, TRANSGENDER, QUEER AND HIV-AFFECTED HATE AND INTIMATE PARTNER VIOLENCE IN 2017 at 3, 7 (2018), <http://a vp.org/wp-content/uploads/2019/01/NCAVP-HV-IPV-2017-report.pdf> [“NCAVP, 2017 REPORT”]; *see also id.* at 13–14; NCAVP, LESBIAN, GAY, BISEXUAL, TRANSGENDER, QUEER AND HIV-AFFECTED HATE VIOLENCE IN 2016 at 9 (2017), http://avp.org/wp-content/uploads/2017/06/NCAVP_2016Hate_Violence_REPORT.pdf [“NCAVP, 2016 Report”] (28 single incident LGBT homicides in 2016, not included Pulse Nightclub shooting).

²² HUMAN RIGHTS CAMPAIGN, *Fatal Violence Against the Transgender and Gender Non-Conforming Community in 2020*, <https://www.hrc.org/resources/violence-against-the-trans-and-gender-non-conforming-community-in-2020>; *see also* NATIONAL CENTER FOR TRANSGENDER EQUALITY, *Murders of Transgender People in 2020 Surpasses Total for Last Year In Just Seven Months* (Aug. 7, 2020), <https://transequality.org/blog/murders-of-transgender-people-in-2020-surpasses-total-for-last-year-in-just-seven-months>.

²³ NCAVP, 2017 Report, *supra* n.21, at 21.

²⁴ *Id.*

spaces for years.²⁵ This is consistent with statistics on hate crimes against LGBT people more generally, which show that around 70% of these crimes occur outside the home.²⁶

The streets that New York is supposed to protect are an especially unwelcoming place for LGBT people. Historically, this has been one of the most common locations for violence and hate crimes against them, with between 20 and 25% of hate crimes occurring there annually.²⁷ Transgender women are particularly

²⁵ See, e.g., NCAVP, 2016 Report, *supra* n.21, at 33; NCAVP, LESBIAN, GAY, BISEXUAL, TRANSGENDER, QUEER AND HIV-AFFECTED HATE VIOLENCE IN 2011 at 10 (2012), http://avp.org/wp-content/uploads/2017/04/2011_ncavp_hate_violence_report.pdf; NCAVP, ANTI-LESBIAN, GAY, BISEXUAL AND TRANSGENDER VIOLENCE IN 2005 at 31 (2006), http://avp.org/wp-content/uploads/2017/04/2005_NCAVP_HV_Report.pdf [“NCAVP 2005 Report”]; NCAVP, ANTI-LESBIAN, GAY, TRANSGENDER AND BISEXUAL VIOLENCE IN 2000 at 18 (2001), http://avp.org/wp-content/uploads/2017/04/2000_NCAVP_Bias_Report.pdf [“NCAVP 2000 Report”].

²⁶ See FBI, *Hate Crime Statistics, 2019: Location Type*, UNIFORM CRIME REPORT 4–5, <https://ucr.fbi.gov/hate-crime/2019/topic-pages/location-type.pdf> [“FBI, 2019 Locations Report”]; FBI, *Hate Crime Statistics, 2018: Location Type*, UNIFORM CRIME REPORT 4, 6, <https://ucr.fbi.gov/hate-crime/2018/topic-pages/location-type.pdf> [“FBI, 2018 Locations Report”]; FBI, *Hate Crime Statistics, 2017: Location Type*, UNIFORM CRIME REPORT 3–4, 5 <https://ucr.fbi.gov/hate-crime/2017/topic-pages/location-type.pdf> [“FBI, 2017 Locations Report”].

²⁷ See, e.g., NCAVP, 2016 Report, *supra* n.21, at 33; NCAVP, 2005 Report, *supra* n.25, at 31; NCAVP, 2000 Report, *supra* n.25, at 18; FBI, *2019 Locations Report*, *supra* n.26, at 4–5; FBI, *2018 Locations Report*, *supra* n.26, at 4, 6; FBI, *2017 Locations Report*, *supra* n.26, at 3, 5.

at risk. They are “nearly three times more likely to experience violence on the street compared to survivors who did not identify as transgender women.”²⁸ No wonder people in this group overwhelmingly fear for their safety.²⁹ Public spaces are not safe for them.

B. Religious minorities are disproportionately victims of violent crime.

Jews and Muslims make up an even smaller proportion of Americans than LGBT people, comprising a mere 2.4 and 1.1% of the population, respectively.³⁰ Yet like the LGBT community, these religious minorities face a heightened risk of violence in America.

Crimes based on religious bias make up an even greater proportion of hate crimes than do crimes against LGBT people. In 2019, for example, there were 1,650 religion-based hate crimes reported to law enforcement, which constituted 21.4% of all hate

²⁸ NCAVP, 2017 Report, *supra* n.21, at 21.

²⁹ CINDY B. VELDHUIS *ET AL.*, “*I Fear for My Safety, but Want to Show Bravery for Others*,” 5 *VIOLENCE & GENDER* 26, 30 (2018), <https://www.liebertpub.com/doi/pdf/10.1089/vio.2017.0032>.

³⁰ *Jewish Americans in 2020*, PEW RESEARCH CENTER (May 11, 2021), <https://www.pewforum.org/2021/05/11/the-size-of-the-u-s-jewish-population/>; Besheer Mohamed, *New estimates show U.S. Muslim population continues to grow*, PEW RESEARCH CENTER (Jan. 3, 2018), <https://www.pewresearch.org/fact-tank/2018/01/03/new-estimates-show-u-s-muslim-population-continues-to-grow/>.

crimes, second only to crimes based on race.³¹ Similar numbers were reported for the previous three years.³²

The numbers for Jews and Muslims are particularly alarming. The overwhelming majority of hate crimes based on the victim's religion target these two groups.

In 2019, for instance, an astonishing 60.3% of hate crimes against religious groups were anti-Jewish, reflecting a gradual increase over the last three years.³³ Muslims, meanwhile, endured 13.3% of religiously-biased hate crimes in 2019, a slight downturn compared to recent years, which saw rates in the 20–25% range.³⁴ Even so, the third most-targeted victim group—Catholic Americans—only accounted for 4.0% of hate crimes.³⁵ This means that Muslims were over

³¹ FBI, *2019 Incidents Report*, *supra* n.16, at 2–3.

³² See FBI, *2018 Incidents Report*, *supra* n.18, at 2–3; FBI, *2017 Incidents Report*, *supra* n.18, at 2–3; FBI, *2016 Incidents Report*, *supra* n.18, at 2–3.

³³ Compare FBI, *2019 Incidents Report*, *supra* n.16, at 3 with FBI, *2018 Incidents Report*, *supra* n.18, at 3; FBI, *2017 Incidents Report*, *supra* n.18, at 3; FBI, *2016 Incidents Report*, *supra* n.18, at 2–3.

³⁴ Compare FBI, *2019 Incidents Report*, *supra* n.16, at 3 and FBI, *2018 Incidents Report*, *supra* n.18, at 3, with FBI, *2017 Incidents Report*, *supra* n.18, at 3; FBI, *2016 Incidents Report*, *supra* n.18, at 2–3; FBI, *Hate Crime Statistics, 2015: Incidents and Offenses*, UNIFORM CRIME REPORT 3, https://ucr.fbi.gov/hate-crime/2015/topic-pages/incidentsandoffenses_final.pdf.

³⁵ FBI, *2019 Incidents Report*, *supra* n.16, at 3 (4.1%); FBI, *2018 Incidents Report*, *supra* n.18, at 3 (3.8%); FBI, *2017 Incidents Report*, *supra* n.18, at 3 (4.5%); FBI, *2016 Incidents Report*, *supra* n.18, at 2–3 (4.1%).

four times as likely to be victims of a hate crime while Jews were over *15 times* more at risk. These statistics “only tell us about a small fraction of all hate crimes,” again due to underreporting.³⁶

Even higher rates of hostility toward Jews and Muslims are revealed by other studies. The Anti-Defamation League (“ADL”), for example, “tabulated 2,107 antisemitic incidents throughout the United States” in 2019 alone, a 12% increase from 2018 that “mark[ed] the highest number on record since ADL began tracking antisemitic incidents in 1979.”³⁷ This number exceeds the total amount of *all* religiously-biased hate crimes reported to the FBI by a margin of over 500. It consists of 1,127 cases of harassment, 919 cases of vandalism, and 61 cases of assault, the last of which resulted in 95 victims and five deaths.³⁸ In 2020, the total number of antisemitic incidents fell slightly,

³⁶ ANTI-DEFAMATION LEAGUE (“ADL”), AUDIT OF ANTI-SEMITIC INCIDENTS: YEAR IN REVIEW 2020 at 34 (2021), <https://www.adl.org/media/16191/download> [“ADL, 2020 Report”]; *see also, e.g.*, SOUTH ASIAN AMERICANS LEADING TOGETHER (“SAALT”), COMMUNITIES ON FIRE: CONFRONTING HATE VIOLENCE AND XENOPHOBIC POLITICAL RHETORIC 13 (2018), <https://saalt.org/wp-content/uploads/2018/01/Communities-on-Fire.pdf> [“SAALT, 2018 Report.”] (“[U]nderreporting of hate crimes may be occurring by a factor of over 40 to 1”); SAALT, SOUTH ASIAN AMERICANS AT THE FOREFRONT OF GROWTH AND HATE IN THE 2016 ELECTION CYCLE 12 (2017), https://saalt.org/wp-content/uploads/2017/01/SAALT_Power_rpt_final3_lorez.pdf [“SAALT, 2017 Report”].

³⁷ ADL, AUDIT OF ANTI-SEMITIC INCIDENTS 2019, *Executive Summary*, <https://www.adl.org/audit2019#executive-summary> (last accessed July 14, 2021).

³⁸ *Id.*

but it was still “the third-highest year on record since . . . 1979.”³⁹ Early reports suggest that 2021 may be the worst yet.⁴⁰

Similarly, in its most recent study of the issue, one organization documented “213 incidents of hate violence” against South Asian, Muslim, Sikh, Hindu, Middle Eastern, and Arab Americans from November 2016 to November 2017, “an astounding 82%” of which “were motivated by anti-Muslim sentiment.”⁴¹ These 213 incidents represented a 64% increase compared to the analogous period from 2015 to 2016, reflecting “a multi-year escalation in anti-Muslim and antiimmigrant violence.”⁴² The reported violence included at least 71 “physical assaults” such as “beatings, violent removal of religious attire, [or] the use of a weapon.”⁴³

Outside of the home is where Jews and Muslims suffered the vast majority of these attacks, just like LGBT people. In 2019, for example, only 17.9% of the reported hate crimes that were based on religious bias

³⁹ ADL, 2020 Report, *supra* n.36, at 6.

⁴⁰ See, e.g., ADL, *Antisemitic Incidents Reported to ADL Increase Sharply During Israel-Hamas Conflict* (May 24, 2021), <https://www.adl.org/blog/antisemitic-incidents-reported-to-adl-increase-sharply-during-israel-hamas-conflict> (last accessed July 14, 2021); Max Matza, *Who’s behind recent rise in US anti-Semitic attacks?* BBC NEWS (May 28, 2021), <https://www.bbc.com/news/world-us-canada-57286341>.

⁴¹ SAALT, 2017 Report, *supra* n.36, at 3.

⁴² *Id.* at 9.

⁴³ *Id.* at 12.

“occurred in or near residences/homes.”⁴⁴ That number has consistently hovered around 20%,⁴⁵ putting the percentage of crimes that occurred outside the home somewhere between 70 and 80. ADL’s most recent study confirms this: “Seventy percent of the assaults” against Jewish people “took place on streets and other public areas” in 2020.⁴⁶ 2019 was even worse.⁴⁷

Despite (or perhaps because of) its rigid gun laws, New York is one of the most dangerous places for religious minorities in the United States. With respect to hate violence against Muslims, for example, New York was second only to California for the 2016–2017 period.⁴⁸ As for crimes against Jews, “[m]ore than half of the assaults nationwide took place in the five boroughs of New York City” in 2019,⁴⁹ and 2020 experienced similar levels of violence.⁵⁰ For a Jew or a Muslim, the streets of New York are simply not a safe place to be.

⁴⁴ FBI, *2019 Locations Report*, *supra* n.26, at 3.

⁴⁵ See, e.g., FBI, *2018 Locations Report*, *supra* n.26, at 3 (21.4%); FBI, *2017 Locations Report*, *supra* n.26, at 3.

⁴⁶ ADL, *2020 Report*, *supra* n.36, at 13.

⁴⁷ See ADL, *AUDIT OF ANTI-SEMITIC INCIDENTS 2019, Themes and Trends*, <https://www.adl.org/audit2019#themes-and-trends>.

⁴⁸ SAALT, *2017 Report*, *supra* n.36, at 17.

⁴⁹ ADL, *AUDIT OF ANTI-SEMITIC INCIDENTS 2019, Themes and Trends*, *supra* n.47.

⁵⁰ ADL, *2020 Report*, *supra* n.36, at 13.

C. Women are disproportionately victims of violent crime.

American women face a significant risk of violence—particularly sexual violence—that cannot be underestimated. In fact, that risk has grown in recent years: “From 2015 to 2018, the number of persons who were victims of violent crime, as well as the percentage of persons who were victims of violent crime, increased among . . . females.”⁵¹ This included over 1,500 homicides against women (across only 27 states) in 2015 and over 2,100 (across 32) in 2016.⁵²

Women are especially vulnerable to violent attacks from men because of typical size and strength disparities. Over a third of women in the U.S. have “experienced contact sexual violence, physical violence, and/or stalking by an intimate partner during their lifetime.”⁵³ One fifth have suffered “severe physical

⁵¹ Rachel E. Morgan and Barbara A. Oudekerk, *Criminal Victimization, 2018* at 1 (Sept. 2019), <https://bjs.ojp.gov/content/pub/pdf/cv18.pdf> (citation omitted); *see also id.* at 10–11.

⁵² SHEN P.D. JACK *ET AL.*, SURVEILLANCE FOR VIOLENT DEATHS—NATIONAL VIOLENT DEATH REPORTING SYSTEM, 27 STATES, 2016 at 24 (2018), <https://www.cdc.gov/mmwr/volumes/67/ss/pdfs/ss6711a1-H.pdf>; ALLISON ERTL *ET AL.*, SURVEILLANCE FOR VIOLENT DEATHS—NATIONAL VIOLENT DEATH REPORTING SYSTEM, 32 STATES, 2016 at 27 (2019), <https://www.cdc.gov/mmwr/volumes/68/ss/pdfs/ss6809a1-H.pdf>.

⁵³ SHARON G. SMITH *ET AL.*, NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY: 2015 DATA BRIEF 8 (Nov. 2018), <https://www.cdc.gov/violenceprevention/pdf/2015data-brief508.pdf>; *accord* CYNTHIA HESS *ET AL.*, INSTITUTE FOR WOMEN’S POLICY RESEARCH, THE STATUS OF WOMEN IN THE STATES 2015 at 237,

violence” from these partners.⁵⁴ More disturbingly, “about one-third of female homicide victims in the United States died at the hands of an intimate partner” between 2003 and 2012.⁵⁵ In 2015 and 2016, that number swelled to over 50%.⁵⁶

Significantly, murderers use weapons *other than guns* to kill their female victims far more often than their male victims:

A greater percentage of fatal injuries among females than among males was caused by sharp instruments (15.7% and 9.3%, respectively), personal weapons (6.2% and 3.5%, respectively), blunt instruments (6.5% and 3.3%, respectively), and hanging/ strangulation/ suffocation (7.7% and 1.3%, respectively).⁵⁷

Guns, meanwhile, are used far more often against men than women.⁵⁸

As terrible as these statistics are, none are more horrifying than the numbers on sexual violence. Almost half of all women (43.6%) have “experienced

<http://statusofwomendata.org/wp-content/uploads/2015/02/Status-of-Women-in-the-States-2015-Full-National-Report.pdf>.

⁵⁴ SMITH *ET AL.*, *supra* n.53, at 8.

⁵⁵ HESS *ET AL.*, *supra* n.53, at 249.

⁵⁶ ERTL *ET AL.*, *supra* n.52, at 9; JACK *ET AL.*, *supra* n.52, at 8.

⁵⁷ ERTL *ET AL.*, *supra* n.52, at 9; *see also* JACK *ET AL.*, *supra* n.52, at 8.

⁵⁸ *See* ERTL *ET AL.*, *supra* n.52, at 9; JACK *ET AL.*, *supra* n.52, at 8.

some form of contact sexual violence in their lifetime.”⁵⁹ At least one in three has experienced “unwanted sexual contact” like “having [her] sexual body parts fondled, groped, or grabbed.”⁶⁰ Some estimates put that number even higher.⁶¹ Worst of all, over 20% of women have endured a “completed or attempted rape” at some point in their lives.⁶² That is, one out of every five women has suffered a “completed or attempted unwanted vaginal . . . oral, or anal penetration through the use of physical force (such as being pinned or held down, or by the use of violence) or threats to physically harm” her.⁶³ And given the notoriously drastic underreporting of sex crimes in particular, that number is probably much higher.⁶⁴

⁵⁹ SMITH *ET AL.*, *supra* n.53, at 2; *see also id.* at 1.

⁶⁰ *Id.* at 1, 2.

⁶¹ HOLLY KEARL, THE FACTS BEHIND THE #METOO MOVEMENT: A NATIONAL STUDY ON SEXUAL HARASSMENT AND ASSAULT 7 (Feb. 2018), <http://www.stopstreetharassment.org/wp-content/uploads/2018/01/Full-Report-2018-National-Study-on-Sexual-Harassment-and-Assault.pdf>; UNIV. OF CALIFORNIA SAN DIEGO CENTER ON GENDER EQUITY AND HEALTH [“UCSD”], MEASURING #METOO: A NATIONAL STUDY ON SEXUAL HARASSMENT AND ASSAULT 10 (Apr. 2019), <https://gehweb.ucsd.edu/wp-content/uploads/2019/05/2019-metoo-national-sexual-harassment-and-assault-report.pdf>.

⁶² SMITH *ET AL.*, *supra* n.53, at 2.

⁶³ *Id.* at 2.

⁶⁴ *See id.* at 12; MORGAN & OUDEKERK, *supra* n.51, at 8; RACHEL E. MORGAN & GRACE KENA, CRIMINAL VICTIMIZATION, 2016 at 7 (23.2% in 2016 and 32.5% in 2015); Rebecca Solnit, *A Rape a Minute, A Thousand Corpses a Year*, *THE NATION* (Jan.

This despicable violence occurs *outside* the home in a substantial proportion of cases. When victims of “sexual harassment and assault were asked to select just one place that they felt was where they had experienced sexual abuse the most across their lifetime, a public space was the most frequently selected” answer, with 38% of women choosing that option.⁶⁵ Although this figure “may be more indicative of sexual harassment than assault,”⁶⁶ a significant number of sexual assault victims still identified places other than their own homes as the location of the assault.⁶⁷ One in three women has also been “physically followed” at some point in her life,⁶⁸ and one in six has been a victim of stalking—an inherently public crime that includes “[w]atching or following from a distance” and “showing up in places, such as the victim’s home, workplace, or school when it was unwanted.”⁶⁹ Approximately 30% of female homicides occur outside the home.⁷⁰

These statistics demonstrate a reality that Second Amendment jurisprudence cannot ignore. The threat of violence women face when they go out in public is very real and quite substantial. No amount of gun control legislation can change that. Indeed, the ability

24, 2013), <https://www.thenation.com/article/archive/rape-minute-thousand-corpse-year/>.

⁶⁵ KEARL, *supra* n.61, at 26.

⁶⁶ *Id.*; *see also id.* at 21.

⁶⁷ *Id.* at 22.

⁶⁸ KEARL, *supra* n.61, at 26; *cf.* UCSD, *supra* n.61, at 10.

⁶⁹ SMITH *ET AL.*, *supra* n.53, at 5.

⁷⁰ *See* ERTL *ET AL.*, *supra* n.52, at 9.

to carry a firearm is a vital means for women to protect themselves from violent male assailants.

D. None of these groups can rely on law enforcement for protection.

Because they face such a heightened risk of violence, LGBT people, religious minorities, and women have a pronounced need for some form of protection outside their homes. New York likes to pretend that law enforcement can meet this need. This is a fantasy. The police simply cannot provide these groups the protection they so desperately require in public spaces.

Law enforcement lacks the resources necessary to prevent crimes from occurring.⁷¹ Criminals rarely engage in violence when officers are already present at the scene, in a position where they can prevent the harm. And if a victim or bystander does manage to call 911 before then, the police usually cannot respond quickly enough. Even in New York City, with an officer on every corner, the average response time to a 911 call for a violent crime in progress—like robbery or assault with a deadly weapon—is still over seven minutes.⁷²

⁷¹ See Robert L. Barrow, *Women with Attitude: Self Protection, Policy, and the Law*, 21 T. JEFFERSON L. REV. 59, 64–65 (1999).

⁷² See CITY OF NEW YORK, *End-to-End Response Time*, NYC 911 REPORTING (2021), <https://www1.nyc.gov/site/911reporting/reports/end-to-end-reponse-time.page> (last accessed July 14, 2021); see also CITY OF NEW YORK, *Definitions: Incident Type Definitions*, NYC 911 REPORTING (2021), <https://www1.nyc.gov/site/911reporting/reports/definitions.page> (last accessed July 14, 2021).

For other serious crimes—like automobile theft or simple assault—that number climbs to over nine minutes.⁷³ A lot can happen in the time it takes the police to arrive on the scene. All too often, it is too little too late.⁷⁴

Even if police could respond quickly enough to stop most crimes before they happen, they have no legal duty to do so. This Court has long held that “nothing in the language of the Due Process Clause itself requires the State to protect the life, liberty, and property of its citizens against invasion by private actors.” *DeShaney v. Winnebago County Dep’t of Soc. Serv.*, 489 U.S. 189, 195 (1989). Accordingly, “a State’s failure to protect an individual against private violence simply does not constitute a violation of the Due Process Clause.” *Id.* at 197; *see also Bowers v. DeVito*, 686 F.2d 616, 618 (7th Cir. 1982) (“[T]here is no constitutional right to be protected by the state against being murdered by criminals.”). For this reason, law enforcement officials have no constitutional duty to protect individuals from the violent acts of third parties. *See Town of Castle Rock, Colo. v. Gonzales*, 545 U.S. 748, 766–68 (2005).

⁷³ *See* CITY OF NEW YORK, *End-to-End Response Time*, *supra* n.72; *see also* CITY OF NEW YORK, *Definitions*, *supra* n.72.

⁷⁴ *See* Adam Goldman and Mark Berman, “They took too damn long: Inside the police response to the Orlando shooting,” THE WASHINGTON POST (Aug. 1, 2016), https://www.washingtonpost.com/world/national-security/they-took-too-damn-long-inside-the-police-response-to-the-orlando-shooting/2016/08/01/67a66130-5447-11e6-88eb-7dda4e2f2aec_story.html.

Instead, the police enjoy ample discretion in determining when and where to exercise their authority, even when a statute purports to require arrests:

A well established tradition of police discretion has long coexisted with apparently mandatory arrest statutes. In each and every state there are long-standing statutes that, by their terms, seem to preclude nonenforcement by the police. However, for a number of reasons, including their legislative history, insufficient resources, and sheer physical impossibility, it has been recognized that such statutes cannot be interpreted literally. They clearly do not mean that a police officer may not lawfully decline to make an arrest. . . . It is . . . simply common sense that all police officers must use some discretion in deciding when and where to enforce city ordinances.

Id. at 760–61 (cleaned up).

The vast majority of police officers exercise this discretion admirably and to the best of their ability, often in dangerous situations and with little thanks from the public. Shamefully, however, a small minority of officers choose to exercise their discretion in a manner that harms marginalized groups. LGBT people, for example, experience significant levels of violence and discrimination at the hands of these bad apples, an injustice that has been well documented.⁷⁵

⁷⁵ CHRISTY MALLORY *ET AL.*, DISCRIMINATION AND HARASSMENT BY LAW ENFORCEMENT OFFICERS IN THE LGBT COMMUNITY 7–11

In one study, 48% of LGBT hate violence survivors who interacted with the police indicated that they “experienced police misconduct,” including “unjustified arrest,” “use of excessive force,” “entrapment,” and “police raid[s].”⁷⁶ Worse, some “respondents reported that they had experienced verbal abuse, physical violence, and sexual violence *perpetrated by police officers*,” with rogue officers accounting for “6% of known offenders” and a stunning 23% of “offenders who were personally unknown to the victim.”⁷⁷ Most disturbing of all, “[i]n three out of 52 or 6% of the hate violence homicides recorded in 2017, the victims were *killed* by police responding to incidents.”⁷⁸

Women also suffer police abuse far too frequently. A 2014 study of police violence against women, for example, “identified an unprecedented 548 cases of police sex-related crime—all of them occurring within a brief three-year window of time (2005-2007).”⁷⁹ These included “118 cases of rape . . . 93 cases of forcible sodomy, 43 aggravated and simple assaults, and 11

(March 2015), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Discrimination-by-Law-Enforcement-Mar-2015.pdf>.

⁷⁶ *Id.* at 7.

⁷⁷ *Id.* (emphasis added).

⁷⁸ NCAVP, 2017 Report, *supra* n.21, at 8, 22 (emphasis added); *see also* NCAVP, 2016 Report, *supra* n.21, at 34.

⁷⁹ STINSON *ET AL.*, *Police sexual misconduct: A national scale study of arrested officers*, BOWLING GREEN STATE UNIVERSITY CRIMINAL JUSTICE FACULTY PUBLICATIONS, at 24 (2014), <https://www.bwjp.org/assets/documents/pdfs/webinars/dhhs-police-sexual-misconduct-a-national-scale-study.pdf>.

cases that involved a sexual assault with an object.”⁸⁰ This represented a drastic increase over previously reported instances of police violence against women.⁸¹

As with hate crimes more generally, the reported instances represent only a fraction of the abuse that marginalized groups suffer at the hands of the few law enforcement officers who exploit their power. As explained in the context of violence against women:

Cases of sex-related misconduct and crime have been described as hidden offenses that are likely to go unreported and, hence, difficult to document and study. Victims may not report instances of police sexual misconduct to authorities because they feel humiliated or they may fear retaliation. Victims may also encounter barriers to filing a complaint since that process can be unnecessarily difficult and/or intimidating. Researchers are also hard-pressed for data on cases that do get officially reported because of the reluctance of officers and organizations to expose cases of sex-related police misconduct to outside scrutiny. . . . [T]he obstacles to acquiring official data on the phenomenon cannot be overstated and . . . it is almost impossible to obtain information without a court order or a covert and perhaps ethically problematic research design.⁸²

⁸⁰ *Id.* at 25.

⁸¹ *See id.* at 5–7; *see also* SAALT, 2017 Report, *supra* n.36, at 22–23.

⁸² STINSON *ET AL.*, *supra* n.79, at 3.

The same logic extends to police crimes against LGBT people and religious minorities.

Further, the nature of police work affords the small number of rogue officers opportunities “to engage in acts of sexual deviance and crimes against citizens.”⁸³ Officers “routinely operate alone and largely free from any direct supervision, either from administrators or fellow officers.”⁸⁴ They commonly encounter “citizens who are vulnerable, usually because they are victims, criminal suspects, or perceived as ‘suspicious’ and subject to the power and coercive authority granted to police.”⁸⁵ Compounding the problem, “[p]olice-citizen interactions often occur in the late-night hours that provide low public visibility and ample opportunities to those officers who are able and willing to take advantage of citizens.”⁸⁶ These acts of rogue officers provide further reason why marginalized groups cannot rely on the police for protection.

E. The right to bear arms in public is a necessary, effective tool that people in marginalized groups can use to defend themselves.

The ineffectiveness of the police in protecting the LGBT community, religious minorities, and women from violence makes the right to bear arms in public

⁸³ *Id.* at 2.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

critically important for these groups to defend themselves against frequent attacks. And where honored, that right has proven effective.

Research has shown that the “[d]efensive use of guns by crime victims is a common occurrence.”⁸⁷ In fact, “[a]lmost all national survey estimates indicate that defensive gun uses by victims are at least as common as offensive uses by criminals, with estimates of annual uses ranging from about 500,000 to more than 3 million in the context of about 300,000 violent crimes involving firearms in 2008.”⁸⁸ Even the “radically lower estimate of only 108,000 annual defensive uses” per year still outweighs *all* firearm homicides in a given year.⁸⁹

The defensive use of firearms to ward off an attacker has also proven effective. Studies on “incidents in which a gun was ‘used’ by the crime victim in the sense of attacking or threatening an offender have found consistently lower injury rates among gun-using crime victims compared with victims who used other

⁸⁷ INSTITUTE OF MEDICINE AND NATIONAL RESEARCH COUNCIL OF THE NATIONAL ACADEMIES, PRIORITIES FOR RESEARCH TO REDUCE THE THREAT OF FIREARM-RELATED VIOLENCE 15 (2013), <https://www.nap.edu/read/18319/chapter/3#15>.

⁸⁸ *Id.* (citations omitted).

⁸⁹ *Id.*; see also CENTERS FOR DISEASE CONTROL AND PREVENTION, NATIONAL CENTER FOR HEALTH STATISTICS, *Fast Stats Homepage: Injuries: Assault or Homicide* (March 1, 2021), <https://www.cdc.gov/nchs/fastats/homicide.htm>; WILLIAM ENGLISH, 2021 NATIONAL FIREARMS SURVEY 1 (July 14, 2021), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3887145.

self-protective strategies.”⁹⁰ Indeed, research consistently “indicate[s] that victims who resist by using guns or other weapons are less likely to be injured compared to victims who do not resist or to those who resist without weapons.”⁹¹

This benefit is particularly pronounced for women. The usually-male attackers often threaten women with weapons other than firearms, such as knives, blunt objects, or even just their fists.⁹² But a readily available firearm can help a woman even the odds against these larger, stronger assailants. In fact, studies show that women who do not resist an attacker are over twice as likely to sustain serious injuries than women who resist with a firearm.⁹³ Other research has shown that, for each additional woman carrying a concealed handgun, the women’s murder rate declines between three and four times more than the male murder rate for each additional man carrying a firearm.⁹⁴

⁹⁰ INSTITUTE OF MEDICINE, *supra* n.87, at 15.

⁹¹ Gary Kleck & Marc Gertz, *Armed Resistance to Crime: The Prevalence and Nature of Self-Defense with A Gun*, 86 J. CRIM. L. & CRIMINOLOGY 150, 151–52 (1995).

⁹² ERTL *ET AL.*, *supra* n.52, at 9; *see also* JACK *ET AL.*, *supra* n.52, at 8.

⁹³ *See* JOHN LOTT, JR., *MORE GUNS LESS CRIME: UNDERSTANDING CRIME AND GUN CONTROL LAWS* 4–5 (3d ed. 2010); *see also* Kleck & Gertz, *supra* n.91, at 902.

⁹⁴ JOHN LOTT, JR., *MORE GUNS, LESS CRIME* 62, 161 (2d ed., Univ. of Chicago, 2000) (1998).

The statistics only tell part of the story. Again and again, members of marginalized groups have successfully defended themselves against aggressors through the use of a firearm.

Austin Fulk, a gay man from Arkansas, is one of many who owes his life to a firearm that someone was lawfully carrying in public.⁹⁵ One night in 1987, he was chatting with another man in a parking lot when four gay bashers charged them with baseball bats and tire irons.⁹⁶ Fulk's companion drew his pistol from under the seat of his car, brandished it at the attackers, and fired a single shot over their heads, causing them to flee and saving the would-be victims from serious harm.⁹⁷

Mr. Fulk is not alone. Headlines are replete with other stories of guns saving the lives of victims across the country.⁹⁸ In Tennessee, a good guy with a gun stopped a criminal strangling a woman outside a fast food restaurant.⁹⁹ In North Carolina, a woman shot a

⁹⁵ Jonathan Rauch, *Pink pistols: The gay movement often portrays homosexuals as helpless victims. Here's an alternative: Arm them.*, SALON (March 14, 2000), <https://www.salon.com/2000/03/14/pistol/>.

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ See Joshua Gillem, *Guns Save Women Lives, Over and Over*, CONCEALED CARRY.COM (April 5, 2019), <https://www.concealedcarry.com/justified-shooters/guns-save-women-lives-over-and-over/>.

⁹⁹ Caleb Wethington, *Jefferson City Police: Legally armed good Samaritan stops assault*, ABC NEWS 6, WATE.COM (July 9, 2020), <https://www.wate.com/news/local-news/jefferson-city-police-legally-armed-good-samaritan-stops-assault/>.

man who was charging at her with an axe before he could reach her.¹⁰⁰ And in Texas, a woman shot one of five men after they surrounded her car and tried to rob her.¹⁰¹

These are just a handful of the real-life stories in which a gun saved women and minorities from death or serious bodily injury in public. Calling 911 does not now and never will suffice. The only thing standing between these Americans and the people who would do them harm is a gun. Countless lives have been saved as a result.

III. New York’s “Proper Cause” Law denies women, LGBT people, religious minorities, and people of color access to guns outside the home.

Despite their effectiveness in stopping violence before it occurs, New York does not permit the average citizen to carry firearms in public. See *Kachalsky v. County of Westchester*, 701 F.3d 81, 86 (2d Cir. 2012). Instead, it requires citizens to obtain a license, which

¹⁰⁰ Ben Smart, “Chaos, It Was Scary”: Woman Shoots, Kills Man She Says Charged at Her With an Ax: High Point Police, WFMY NEWS 2 DIGITAL (July 27, 2019), <https://www.wfmynews2.com/article/news/local/chaos-it-was-scary-woman-shoots-kills-man-she-says-charged-at-her-with-an-ax-high-point-police/83-6c84ff63-55d1-4a23-b537-e72673d229a3>.

¹⁰¹ Miya Shay, *Woman shoots man who reached into car and tried to steal purse in SW Houston: Police*, ABC 13 EYEWITNESS NEWS HOUSTON (Sept. 3, 2019), <https://abc13.com/woman-shoots-man-who-tried-to-steal-her-purse-police/5511638/>.

in turn requires “proper cause” to carry a firearm outside the home. *Id.* If the applicant wishes to obtain a license “without any restrictions,” he must “demonstrate a special need for self-protection distinguishable from that of the general community or of persons engaged in the same profession.” *Id.*

This is an extraordinarily high burden. It cannot be met based on “[a] generalized desire to carry a concealed weapon to protect one’s person and property.” *Id.* “Nor is living or being employed in a high crime area”—a problem that plagues many minority groups—sufficient to procure a license. *Id.*¹⁰² Indeed, “[e]ven the fact that one carries large amounts of cash . . . in areas noted for criminal activity does not demonstrate per se a special need for self protection distinguishable from that of the general community of the person engaged in the same business or profession.” *In re Bastiani*, 23 Misc. 3d 235, 236, 881 N.Y.S.2d 591, 592 (Co. Ct. 2008).

¹⁰² Cf. John Creamer, *Poverty Rates for Blacks and Hispanics Reached Historic Lows in 2019: Inequalities Persist Despite Decline in Poverty For All Major Race and Hispanic Origin Groups*, U.S. CENSUS BUREAU (Sept. 15, 2020), <https://www.census.gov/library/stories/2020/09/poverty-rates-for-blacks-and-hispanics-reached-historic-lows-in-2019.html>; M.V. BADGETT *ET AL.*, *LGBT POVERTY IN THE UNITED STATES: A STUDY OF DIFFERENCES BETWEEN SEXUAL ORIENTATION AND GENDER IDENTITY GROUPS* 8–12 (Oct. 2019), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/National-LGBT-Poverty-Oct-2019.pdf>; JONATHAN HORNSTEIN, *JEWISH POVERTY IN THE UNITED STATES: A SUMMARY OF RECENT RESEARCH* 3, 7 (Feb. 2019), <https://cdn.fedweb.org/fed-42/2892/jewish-poverty-in-the-united-states%2520Weinberg%2520Report.pdf>.

Rather, the “special need for self-protection” standard “require[s] a showing of extraordinary personal danger, documented by proof of recurrent threats to life or safety.” *Kaplan v. Bratton*, 249 A.D.2d 199, 201, 673 N.Y.S.2d 66, 68 (1998). This is consistent with other “proper cause” licensing regimes that exist across the country, which also impose heightened, individualized standards to justify carrying a firearm.¹⁰³

Critically, membership in a group that faces a disproportionate risk of violence *does not* meet this standard. In *Kachalsky*, for example, one of the plaintiffs “attempted to show a special need for self-protection by asserting that as a transgender female, she [was] more likely to be the victim of violence.” 701 F.3d at 88. The licensing official nevertheless denied her application because the plaintiff “did not report any type of threat to her own safety anywhere.” *Id.* (ellipsis omitted). To the official, “her status as a transgender” did not “put[] her at [a sufficient] risk of violence” to establish the “proper cause” necessary for a permit. *Id.*

The implications of this rule cannot be understated. As outlined above, transgender people likely face the greatest risk of violence in public compared to other members of the population. If they cannot meet the “special need for self-protection” standard, other LGBT people, religious minorities, and women

¹⁰³ See, e.g., *Peruta v. County of San Diego*, 824 F.3d 919, 926 (9th Cir. 2016) (en banc); *Gould v. Morgan*, 907 F.3d 659, 663 (1st Cir. 2018); *Drake v. Filko*, 724 F.3d 426, 428 (3d Cir. 2013).

certainly cannot either, despite the disproportionate risk of violence they all face when they leave their homes.

Without the tools of meaningful self-defense, there are no gay rights, there are no religious-minority rights, and there are no women's rights. By stripping these groups of their right to bear arms, New York has left millions of the most vulnerable citizens powerless to defend themselves against the all-too-common threats of violence they may face at any given moment.

Nothing but politics motivates this. New York has apparently decided that the supposed evil of allowing its citizens to carry guns for self-defense is worse than the loss of thousands of LGBT, Jewish, Muslim, and women's lives. The state's politicians may consider this an acceptable price to pay for the gun control lobby's favor. But the Constitution does not allow them to pay it because the right to bear arms belongs not to the rulers but to the people. *See Heller*, 554 U.S. at 636.

◆

CONCLUSION

For these reasons, *amici* the DC Project Foundation, Operation Blazing Sword—Pink Pistols, and Jews for the Preservation of Firearms Ownership respectfully request that this Court reverse the Court of Appeals and confirm that LGBT people, religious and racial minorities, and women have a Second

Amendment right to bear arms outside their homes for their own self-protection.

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