

No. 18-280

In The
Supreme Court of the United States

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

Petitioners,

v.

CITY OF NEW YORK, *et al.*,

Respondents.

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

**BRIEF AMICUS CURIAE OF PINK PISTOLS
IN SUPPORT OF PETITIONERS**

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May 13, 2019

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INTEREST OF AMICUS CURIAE

Pink Pistols is a shooting society that honors gender and sexual diversity and advocates the responsible use of firearms for self-defense. It represents portions of the American population that are disproportionately the targets of hate crimes and armed criminal violence. Its creed is that, “Without self-defense, there *are* no gay rights.” Although it is the largest LGBT self-defense organization in the world, with thousands of members and chapters throughout the United States and Canada, Pink Pistols is open to all without regard to gender identity or sexual orientation.¹



SUMMARY OF ARGUMENT

Pink Pistols represents members of the Lesbian, Gay, Bisexual or Transgender community (“LGBT”), who are disproportionately the victims of hate crimes and other types of violence. This Court has recognized that such individuals have a special stake in the right to armed self-defense—both in and outside the home—that is the manifest and inescapable implication of *Heller* and *McDonald*. In the daily lives of these people,

¹ No counsel for a party authored this brief in whole or in part nor did such counsel or any party make a monetary contribution to fund this brief. Preparation and submission of this brief was funded in part by the NRA Civil Rights Defense Fund. The parties have graciously filed with the clerk letters granting blanket consent to the filing of amicus briefs.

constitutional rights get real. These Americans are the face of the Second Amendment.

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ARGUMENT

THIS COURT HAS STRESSED THE SPECIAL IMPORTANCE OF THE RIGHT TO BEAR ARMS FOR THOSE WHO ARE PARTICULARLY AT RISK FOR HATE CRIMES AND OTHER FORMS OF VIOLENCE.

“[I]ndividual self-defense is ‘the *central component*’ of the Second Amendment.” *McDonald v. City of Chicago*, 561 U.S. 742, 767 (2010) (quoting *District of Columbia v. Heller*, 554 U.S. 570, 599 (2008)) (emphasis by the Court in *Heller*). The Second Amendment guarantees an individual right to “wear, bear, or carry” a firearm “upon the person or in the clothing or in a pocket, for the purpose . . . of being armed and ready for offensive or defensive action in a case of conflict with another person.” *Heller*, 554 U.S. at 584 (alterations omitted). Thus “*Heller* repeatedly invokes a broader Second Amendment right than the right to have a gun in one’s home, as when it says that the amendment ‘guarantee[s] the individual right to possess and carry weapons in case of confrontation.’ Confrontations are not limited to the home.” *Moore v. Madigan*, 702 F.3d 933, 935-36 (7th Cir. 2012) (Posner, J.) (quoting *Heller*, 554 U.S. at 592). *See also Wrenn v.*

District of Columbia, 864 F.3d 650, 657-58 (D.C. Cir. 2017) (same).

This Court's Second Amendment jurisprudence thus ousts New York City's inane insistence that the right to bear arms is confined to "the inside of the premises" of one's home. 38 R.C.N.Y. § 5-23(a)(2).²

In *McDonald*, this Court recognized that the right to bear arms for self-defense "is especially important for women and members of other groups that may be especially vulnerable to violent crime." 561 U.S. at 790 & n.33 (citing amicus brief filed by Pink Pistols). It was for that reason that Pink Pistols challenged (successfully) the District of Columbia's ban on law-abiding citizens carrying licensed firearms in public for self-defense. See *Matthew Grace and Pink Pistols v. District of Columbia*, 187 F.Supp.3d 124, 132 (D.D.C. 2016), *aff'd sub nom.*, *Wrenn v. District of Columbia*, 864 F.3d 650 (D.C. Cir. 2017).

One need not impugn the good faith of government efforts to make the public streets and squares safe for all who use them to acknowledge that the police cannot always be everywhere, and to recognize that the Second Amendment's embrace of armed self-defense is a signature feature of the American culture

² Despite the clarity and manifest implications of *Heller* and *McDonald*, the court below grounded its ruling on its contrary belief that the core Second Amendment right of armed self-defense is limited to the home. See *New York State Rifle & Pistol Ass'n v. City of New York*, 883 F.3d 45, 56-57 & n.5, 58-59, 61 (2d Cir. 2018).

of self-reliance. *McDonald* explained that, in such circumstances, “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.” 561 U.S. at 790. Sexual minorities—whether lesbian, gay, or transgender—are likewise especially vulnerable to predatory violence (often by gangs) based on discriminatory animus.

Congress recognized this when it enacted the Matthew Shepard Hate Crimes Prevention Act of 2009, which expanded the scope of the federal statute to include violence driven by the perpetrator’s hostility toward his target’s actual or perceived sexual orientation or gender identity. *See* 18 U.S.C. § 249(a)(2). The statute is named for Matthew Shepard, a 21-year-old, openly gay college student who was attacked, beaten, tortured, pistol-whipped, bound to a fence, set on fire and left to die.

The origins of Pink Pistols lie in a gay-bashing incident with a very different outcome. On an overcast autumn evening in Little Rock, Arkansas in 1987, a young gay man stood next to a pickup truck in a parking lot, talking to another man. A car entered the lot and drove by those two men very slowly, then turned back towards them. Somebody in the car shouted, “Fucking faggots, get AIDS and die!” and then four young men piled out, one wielding a baseball bat, another gripping a tire iron. The young man by the truck “smelled his own death,” but lived to tell this tale because his companion reached into his truck, pulled a

handgun out from under the seat, and pointed it at the four gay-bashers—who fled.³

That story became the opening of an online article entitled *Pink Pistols*, in which journalist Jonathan Rauch proposed an alternative strategy to portraying homosexuals as helpless victims: “Arm them.”⁴ The young gay man in that Little Rock parking lot is now a certified firearms instructor who is licensed to carry a concealed handgun—which he has never had to fire.⁵ Hence the benefit of peace through strength: *Si vis pacem, para bellum*.⁶

Some years later, a member of the Pink Pistols chapter of Delaware Valley, Pennsylvania left a bar in Philadelphia one evening and found himself being followed by young drunks who yelled “Faggot!” and brandished clubs and metal pipes. He drew his handgun. They ran away.⁷

³ Jonathan Rauch, *Pink Pistols*, SALON (Mar. 15, 2000), <https://www.salon.com/2000/03/14/pistol/>. Mr. Rauch at that time was a visiting scholar at the Brookings Institution, where he is now a senior fellow.

⁴ *Id.*

⁵ *Id.*

⁶ “If you desire peace, prepare for war.” This is the most familiar translation of the popular Latin adage, which is actually a paraphrase. The original passage is “*Igitur qui desiderat pacem, praeparet bellum*”; it appears in a collection of maxims in the third book of the *EPITOMA REI MILITARIS*, a military treatise by the fourth century Roman general, Publius Flavius Vegetius Renatus.

⁷ Breck Dumas, “We teach queers to shoot”: Group dubbed the “gay NRA” growing in popularity, THEBLAZE (June 12, 2018),

In 2013, the FBI reported that more than one-fifth of all hate crimes were driven by hostility based on sexual orientation and gender identification, which made this category of hate crimes second in prevalence only to crimes based on racism.⁸ The same held true in 2014.⁹ Federal hate crimes against the LGBT community increased 17% in 2017 over the previous year, and even that alarming figure is a gross undercount because most hate crimes still go unreported.

In 2016, there were 77 reports of hate-violence-related homicides of LGBT people—the highest number ever recorded and *more than triple* the death toll for the year before.¹⁰ “There appears to be a trend of targeting queer, bi, or gay cisgender men for violence, robbery and homicides” by setting traps for them through personal ads and online dating applications.¹¹ Transgender Americans are also increasingly targeted: the National Coalition of Anti-Violence Programs, an organization based in New York City, “collected data

<https://www.theblaze.com/news/2018/06/12/we-teach-queers-to-shoot-group-dubbed-the-gay-nra-growing-in-popularity>.

⁸ See *FBI: Uniform Crime Reporting Program, 2013 Hate Crime Statistics: Incidents and Offenses*, https://ucr.fbi.gov/hate-crime/2013/topic-pages/incidents-and-offenses/incidentsandoffenses_final.

⁹ See *FBI: Uniform Crime Reporting Program, 2014 Hate Crime Statistics: Incidents and Offenses*, https://ucr.fbi.gov/about-us/cjis/ucr/hate-crime/2014/topic-pages/incidentsandoffenses_final.

¹⁰ See National Coalition of Anti-Violence Programs, *A Crisis of Hate: A Report on Homicides Against Lesbian, Gay, Bisexual and Transgender People* (2018) at 6.

¹¹ *Id.* at 10.

on 27 hate-violence-related homicides of transgender and gender non-conforming people” in 2017—a 42% increase over 2016.¹² The State of New York had more of these targeted acts of terrorism than any state except Texas.¹³

Hate-crimes legislation is a vital weapon in the battle against criminal violence. Furthermore, the law-enforcement statistics that such laws generate furnish a useful metric for studying the problem. Yet the focus on hate-crimes statutes also raises a disquieting point that underscores why anti-LGBT violence is a matter of constitutional, not just of statutory, significance. Journalist and social critic Jonathan Rauch asked a pointed question two decades ago:

After decades of antigay killings, many of them unutterably savage, why was it the [Matthew] Shepard murder that finally became a cause *celebre* among heterosexual Americans? . . . Shepard looked angelic and could have been anyone’s child; the story of his agonizing deathbed countdown riveted attention; the crime and its symbolism were horrible and moving. But there is, I think, one more reason, which is not quite so innocuous. Shepard was [five-foot-two], helpless and childlike. . . . This made him a sympathetic figure . . . comfortingly familiar to straight Americans: the weak homosexual. Since time

¹² *Id.* at 7.

¹³ *Id.* at 7. See also Human Rights Campaign Foundation, A NATIONAL EPIDEMIC: FATAL ANTI-TRANSGENDER VIOLENCE IN AMERICA IN 2018 (2018).

immemorial, weakness has been a defining stereotype of homosexuality. Think of the words you heard on the school playground: “limp-wrist,” “pansy,” “panty-waist,” “fairy.” No other minority has been so consistently identified with contemptible weakness. Hate-crimes laws, whatever their other attributes, do nothing to challenge the stereotype of the pathetic faggot. Indeed, they confirm it. By running to the heterosexual majority for protection, homosexuals reaffirm their vulnerability and victimhood.¹⁴

This point is crucial for understanding the Second Amendment claim made by those, including women, blacks, and the LGBT community, for whom the right to bear arms for self-defense “is especially important.” *McDonald*, 561 U.S. at 790. These citizens welcome the support of government programs and legislation in securing their public safety. But they are not asking for a government *hand-out*; rather, they want the government to be *hands-off* with respect to their constitutional rights. The Second Amendment right to keep and bear arms is not just about self-defense: it is about self-reliance and self-determination.

The blithe dismissals of a robust constitutional right to armed self-defense that feature in the decision below (and in the opinions of some other circuit courts) have the sterile aroma of a library or a cloistered study, untainted by the atmosphere of life as it is actually lived outdoors in America’s avenues and alleys, byways

¹⁴ Jonathan Rauch, *Pink Pistols*, *supra* note 3.

and vacant lots. “For those . . . who work in marbled halls, guarded constantly by a vigilant and dedicated police force, the guarantees of the Second Amendment might seem antiquated and superfluous. But the Framers made a clear choice: They reserved to all Americans the right to bear arms for self-defense.” *Peruta v. California*, 137 S.Ct. 1995, 1999-2000 (2017) (Thomas, J., joined by Gorsuch, J., dissenting from denial of certiorari).

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CONCLUSION

Amicus Pink Pistols files this brief to dispel the misguided assumption that the right to bear arms is an atavistic constitutional curiosity, of interest only to gap-toothed, tobacco-chewing rednecks who have a firearms fetish or to camouflage-wearing survivalists and militia-wannabes who exhibit an adolescent fascination with firepower. The right to bear arms is not about “boys and their toys.” Those caricatures are *not* the face of the Second Amendment.

Rather, the face of the right to bear arms is the bruised and battered visage of a transgender woman stalked by predators in the darkened streets and shadowed corners of public spaces. It is the anxious expressions of lesbians and gay men departing clubs and bars late in the evening, menaced by gay-bashers with cudgels in their hands, malice in their hearts, and sneering threats on their lips. *These* are the faces of the Second Amendment.

Pink Pistols respectfully urges the Court to reverse the judgment below.

May 13, 2019

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