

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

ESPANOLA JACKSON, *et al.*,

Petitioners,

v.

CITY AND COUNTY OF
SAN FRANCISCO, CALIFORNIA, *et al.*,

Respondents.

**On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit**

**BRIEF OF *AMICI CURIAE* THE CONGRESS
OF RACIAL EQUALITY, DISABLED SPORTSMEN
OF NORTH AMERICA, PINK PISTOLS,
WOMEN AGAINST GUN CONTROL,
SECOND AMENDMENT SISTERS, AND
PROJECT 21 IN SUPPORT OF PETITIONERS**

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INTEREST OF *AMICI CURIAE*

Amici are organizations representing segments of the American population that are disproportionately the targets of armed criminal violence and that vigorously support the right to keep and bear arms.¹ CORE, The Congress of Racial Equality, has been one of America's leading African-American civil rights organizations since its founding in 1942. Disabled Sportsmen of North America serves the interests of disabled Americans in pursuing the shooting sports and the responsible use of firearms for self-defense. Many of America's disabled citizens who engage in shooting sports were disabled during military service. Pink Pistols is a national society that honors gender and sexual diversity and advocates the responsible use of firearms for self-defense; its creed is: "Without self-defense, there are no gay rights." Women Against Gun Control has been a leading national advocacy group for Second Amendment rights for two decades; its motto is: "The Second Amendment is the Equal Rights Amendment." Second Amendment Sisters is an advocacy group dedicated to preserving the fundamental right of self-defense and promoting responsible gun ownership. Project 21, an initiative of

¹ This brief was not authored in whole or in part by a party or a party's counsel. No one other than *amici*, their members and their counsel funded this submission. Pursuant to Rule 37(2)(a), the parties received timely notice of *amici*'s intent to file this brief and the parties graciously consented to its filing. Copies of the parties' e-mails granting consent accompany the filing of this brief.

The National Center for Public Policy Research, promotes the views of African-Americans and is committed to individual responsibility.

SUMMARY OF ARGUMENT

Amici are groups representing individuals who are far more likely than average to become victims of firearms violence: African-Americans, women, the disabled, and members of the Lesbian-Gay-Bisexual-Transgender (LGBT) community. *Amici* wish to dispel the misleading and insulting caricature that supporters of Second Amendment rights are either tobacco-chewing, gap-toothed, camouflage-wearing rednecks, or anarchist militia posers who are morbidly fascinated with firepower.

This Court held in *McDonald v. Chicago* that the Fourteenth Amendment recognized the need for recently emancipated black citizens in the South to bear arms for self-defense against the Klan and others. 130 S.Ct. 3020, 3038-41, 3049 (2010). A century and a half later, it is still the case that some groups have a particularly acute need for armed self-defense.

For example, racial minorities – and in particular, African-Americans – are the most frequent victims of firearms violence, according to FBI statistics.²

² See FBI, *2012 Hate Crime Statistics, Incidents and Offenses*, www.fbi.gov/about-us/cjis/ucr/hate-crime/2012/topic-pages/incidents-and-offenses/incidentsandoffenses_final.

Similarly, sexual minorities – whether gay, lesbian, bisexual, or transgender – are especially subject to violence based on discriminatory animus, as Congress recognized when it enacted the Matthew Shepard/James Byrd, Jr. Hate Crimes Prevention Act of 2009. See 18 U.S.C. § 249(a)(2). Approximately one-fifth of all hate crimes are motivated by animus toward the victim’s actual or perceived sexual orientation or gender identity, which makes such hate crimes second only to those based on racial animus.³ Women, too, fall victim to higher rates of violence because of their vulnerability to male predators, whether in the form of domestic violence by husbands and boyfriends or street violence by muggers and rapists. And obviously, no segment of the population is in more dire need of an “equalizer” for self-defense than the physically disabled, who by definition are severely disadvantaged when assaulted by criminals, regardless of the weapons with which their assailants are armed.

Today, blacks, women, the disabled, and the LGBT community are the face of the Second Amendment right to bear arms.

The right to self-defense may not be infringed by obstructive trigger-locks or other storage requirements that leave one defenseless for precious seconds when violence invades one’s home. This Court categorically struck down such a requirement in *District of Columbia v. Heller*, 554 U.S. 570, 630 (2008). Such

³ See *id.*

laws have an especially deleterious and unconstitutional impact on those who are least capable of defending themselves hand-to-hand against physically powerful assailants while they are struggling to open a gun safe or dismantle a trigger-lock. Women are smaller and less muscular than the male criminals who prey on them, and every second of delay that San Francisco's ordinance imposes on its female citizens could be the difference between life and death.

Similarly, the plight of a disabled person hobbling on his crutches or struggling to climb into a wheelchair to move across his bedroom to a gun safe, or desperately fumbling with a trigger-lock at 4 a.m. while an armed thug breaks through the window, is too horrific to contemplate. *Cf.* Tr. of Oral Argument at 82-85, *Heller*, No. 07-290 (remarks of Roberts, C.J., and Scalia, J.) (mocking efforts of District of Columbia's counsel to characterize opening a trigger lock when awakened in terror in the middle of the night as a quick and easy task even for an able-bodied citizen).

ARGUMENT

San Francisco's Infringement of the Second Amendment Rights of Law-Abiding Citizens To Defend Themselves Within Their Own Homes Cannot Be Justified By The Supposed Threat That Such Citizens Pose to Public Safety.

Although "the Supreme Court made clear in *Heller* that it wasn't going to make the right to bear

arms depend on casualty counts,” *Moore v. Madigan*, 702 F.3d 933, 939 (7th Cir. 2012), San Francisco nevertheless attempts to justify its ordinance on the supposition that armed, law-abiding citizens defending themselves from violence inside their own homes pose a threat to public safety. In the courts below, San Francisco, its expert witnesses, and its *amici* relied on studies supposedly indicating that a gun kept in the home for self-defense is more likely to shoot a friend, neighbor or a member of the family than a criminal intruder.⁴ But this research was comprehensively discredited a decade ago by the federal government’s own public-health agencies, neither of which can be dismissed as a fan of the firearms industry: (1) the National Research Council (NRC) of the National Academies of Science and (2) the Centers for Disease Control (CDC).

The NRC reviewed the entire body of firearms literature and singled out the studies invoked by San Francisco and its allies for particular censure. The NRC concluded that: (i) the studies utterly failed to establish that gun ownership increased the risk of

⁴ See, e.g., A.L. Kellerman & D.T. Reay, *Protection or Peril? An Analysis of Firearm-related Deaths in the Home*, 314 NEW ENG. J. MED. 1557-60 (1986); A.L. Kellerman et al., *Gun Ownership as a Risk Factor for Homicide in the Home*, 329 NEW ENG. J. MED. 1084-91 (1993); A.L. Kellerman et al., *Injuries and Deaths Due to Firearms in the Home*, 45 J. TRAUMA 263-67 (1998); see also M. Miller et al., *Household Firearm Ownership Levels and Homicide Rates Across U.S. Regions and States*, 13 EPIDEMIOLOGY 517 & n.7 (2002) (relying on Kellerman’s work).

violence to the owner, (ii) the studies were incapable of throwing light on “the impact of firearms on homicide or the utility of firearms for self-defense,” and (iii) the studies’ conclusions “that owning firearms for personal protection is ‘counterproductive’ and that ‘people should be strongly discouraged from keeping guns in the home’” were simply “not tenable.” Charles F. Wellford, *et al.* (eds.), FIREARMS AND VIOLENCE: A CRITICAL REVIEW 118-19 (2005).

The CDC likewise found that the research was flawed and “inconsistent” and as a result there was “insufficient evidence” to conclude that firearms injury can be reduced by requiring gun owners “to store firearms locked or unloaded” in the home. *See First Reports Evaluating the Effectiveness of Strategies for Preventing Violence: Firearms Laws*, 52 MORBIDITY & MORTALITY WEEKLY REPORT 15, 17-18 (CDC Oct. 3, 2003); Robert Hahn, *et al.*, *Firearms Laws and the Reduction of Violence: A Systematic Review* 28 AM.J.PREV. MED. 40, 49, 56 (2005).

Nor can San Francisco justify its ordinance on the supposed premise that civilians defending themselves within their own homes constitute an unacceptable risk to public safety because, unlike the police, citizens cannot be trusted to identify when it is proper to use a firearm in self-defense. In truth, armed civilians – even though they outnumber police by several orders of magnitude – ***make far fewer mistakes with their firearms than do the police.*** Each year there are approximately thirty instances in which a civilian mistakenly shoots and kills an

innocent individual who was not actually a burglar or similar assailant – but “[o]ver the same period the *police erroneously kill five to eleven times more innocent people.*”⁵ Armed civilians defending themselves within their homes are an asset to public safety: “Regardless of which counts of homicides by police are used, the results indicate that civilians legally kill far more felons than police officers do.”⁶

CONCLUSION

The Court should grant review and reverse the decision below.

Respectfully submitted,
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⁵ See JOYCE LEE MALCOLM, GUNS AND VIOLENCE: THE ENGLISH EXPERIENCE 239 & n.71 (2002) (emphasis added).

⁶ See Gary Kleck, *Keeping, Carrying, and Shooting Guns for Self-Protection*, in DON B. KATES, JR. AND GARY KLECK, THE GREAT AMERICAN GUN DEBATE: ESSAYS ON FIREARMS AND VIOLENCE 199 (1997).