

No. 20-843

In the Supreme Court of the United States

NEW YORK STATE RIFLE & PISTOL ASSOCIATION, INC.,
ROBERT NASH, BRANDON KOCH,

Petitioners,

v.

KEVIN P. BRUEN, in His Official Capacity as Superintendent of New York State Police, RICHARD J. MCNALLY, JR., in His Official Capacity as Justice of the New York Supreme Court, Third Judicial District, and Licensing Officer for Rensselaer County,

Respondents.

*ON WRIT OF CERTIORARI
TO THE U.S. COURT OF APPEALS FOR THE SECOND CIRCUIT*

**BRIEF OF LAMBDA LEGAL DEFENSE AND
EDUCATION FUND, INC., NEW YORK CITY GAY AND
LESBIAN ANTI-VIOLENCE PROJECT, PRIDE FUND TO
END GUN VIOLENCE, GAYS AGAINST GUNS, NATIONAL
LGBTQ TASK FORCE, EQUALITY CALIFORNIA,
EQUALITY FLORIDA, AND EQUALITY NEW YORK
FUND AS AMICI CURIAE IN SUPPORT OF
RESPONDENTS**

OMAR GONZALEZ-PAGAN
RICHARD SAENZ
LAMBDA LEGAL DEFENSE
AND EDUCATION FUND, INC.
*120 Wall Street, 19th Floor
New York, NY 10005*

ANA C. REYES
Counsel of Record
MICHAEL J. MESTITZ
WILLIAMS & CONNOLLY LLP
*725 Twelfth Street, N.W.
Washington, DC 20005
(202) 434-5000
areyes@wc.com*

TABLE OF CONTENTS

	Page
INTEREST OF <i>AMICI CURIAE</i>	1
SUMMARY OF ARGUMENT	5
ARGUMENT	7
I. Gun Violence Disproportionately Harms the LGBTQ+ Community.	7
II. The Indiscriminate Availability of Guns Makes the LGBTQ+ Community Less Safe, Not More Safe.	16
CONCLUSION	18

TABLE OF AUTHORITIES

	Page
Cases:	
<i>California v. Acevedo</i> , 500 U.S. 565 (1991).....	16
<i>Clark v. Cmty. for Creative Non-Violence</i> , 468 U.S. 288 (1982)	16
<i>District of Columbia v. Heller</i> , 554 U.S. 570 (2008)	16, 17
<i>Salinas v. Texas</i> , 570 U.S. 178 (2013)	16
Constitution:	
U.S. Constitution, amend. II.....	6, 16
Other Authorities:	
<i>An Epidemic of Violence</i> , HUMAN RTS. CAMPAIGN (2020), https://reports.hrc.org/an-epidemic-of-violence-fatal-violence-against-transgender-and-gender-non-confirming-people-in-the-united-states-in-2020	11, 13
Lisa Belkin, <i>Texas Judge Eases Sentence for Killer of 2 Homosexuals</i> , N.Y. TIMES (Dec. 17, 1988).....	9
Robin Chand, <i>HRC Mourns Felycya Harris, Trans Woman Killed in Georgia</i> , HUMAN RTS. CAMPAIGN (Oct. 6, 2020), https://www.hrc.org/news/hrc-mourns-felycya-harris-trans-woman-killed-in-georgia	13
Derrick Clifton, <i>Three Out of Four Trans People Killed in 2020 Died by Gun Violence</i> , THEM. (Nov. 20, 2020), https://www.them.us/story/gun-violence-transgender-homicides-tdor-2020	11

	Page
Other Authorities:	
John J. Donohue et al., <i>Right-To-Carry Laws and Violent Crime: A Comprehensive Assessment Using Panel Data and a State-Level Synthetic Control Analysis</i> , J. OF EMPIRICAL LEGAL STUD. 16 (2) (2019), https://onlinelibrary.wiley.com/doi/abs/10.1111/jels.12219	7, 17
Gabby Easterwood, <i>'He Mattered: Family of Prichard Shooting Victim Say It Was a Result of a Hate Crime</i> , WKRG (Dec. 15, 2020), https://www.wkrg.com/mobile-county/he-mattered-family-of-prichard-shooting-victim-say-it-was-a-result-of-a-hate-crime/	13
Everytown Rsch., <i>Disarm Hate: the Deadly Intersection of Guns and Hate Crimes</i> , EVERYTOWN RSCH. (May 13, 2019), https://everytownresearch.org/report/disarm-hate-the-deadly-intersection-of-guns-and-hate-crimes/	15
Everytown Rsch., <i>Remembering and Honoring PULSE</i> (June 12, 2020), https://everytownresearch.org/wp-content/uploads/sites/4/2020/06/Pulse-Gun-Violence-Report-061120.pdf	6, 8, 12
James Factora, <i>Hate Crimes Against Black, Asian, and LGBTQ+ People Hit Record Highs in 2020</i> , THEM. (Aug. 31, 2021), https://www.them.us/story/hate-crimes-against-black-asian-and-lgbtq-people-hit-record-highs-in-2020	10

	Page
Other Authorities:	
Federal Bureau of Investigation, <i>Incidents and Offenses</i> (2019), https://ucr.fbi.gov/hate-crime/2019/topic-pages/incidents-and-offenses	8
Emma E. Fridel, <i>Comparing the Impact of Household Gun Ownership and Concealed Carry Legislation on the Frequency of Mass Shootings and Firearms Homicide</i> , JUST. Q. 38 (5) (2021), https://www.tandfonline.com/doi/full/10.1080/07418825.2020.1789693	7, 17
Sandro Galea, <i>A Hate Crime Against LGBT Communities, With Weapons of War</i> , BU SCH. OF PUB. HEALTH (June 19, 2016), https://www.bu.edu/sph/news/articles/2016/a-hate-crime-against-lgbt-communities-with-weapons-of-war/	7, 12, 17
Sophia Geffen & Elizabeth Kelman, <i>Gun Gun Violence and LGBT Health</i> , THE FENWAY INST. (Oct. 2016), https://fenwayhealth.org/wp-content/uploads/Gun-Violence-and-LGBT-Health.pdf	10
Grace Hauck, <i>Anti-LGBT Hate Crimes Are Rising, the FBI Says. But it Gets Worse</i> , USA TODAY (July 1, 2019)	10
Daniel Jeon, <i>Brandon Teena</i> , OUTHISTORY.ORG, https://outhistory.org/exhibits/show/tgi-bios/brandon-teena	9

	Page
Other Authorities:	
Patrick Kelleher, <i>Gay Man Chased Out of Neighborhood by Gun-Wielding Homophobe Yelling ‘We Don’t Like F****ts Around Here’</i> , PINKNEWS (Nov. 12, 2020), https://www.pinknews.co.uk/2020/11/12/south-carolina-charleston-gay-man-gun-chased-police-investigation/	15
<i>Killer Convicted in Anti-Lesbian Shooting</i> , OUT IN THE MOUNTAINS (Jan. 1989), https://web.archive.org/web/20060828081736/http://www.mountainpridemedia.org/otm/issues/1989/01jan1989/killer.html	9
Elliott Kozuch, <i>HRC Mourns Dustin Parker, Trans Man Killed in Oklahoma</i> , HUMAN RTS. CAMPAIGN (Jan. 2, 2020), https://www.hrc.org/news/hrc-mourns-dustin-parker-trans-man-killed-in-oklahoma	12
Jeffrey Martin, <i>Teen Arrested for Using Dating App to Find Victims for Three Shootings</i> , NEWSWEEK (Aug. 25, 2020)	14
Neal A. Palmer & Besiki Luka Kutateladze, <i>What Prosecutors and the Police Should Do About Underreporting of Anti-LGBTQ Hate Crime</i> , SEXUALITY RSCH. & SOC. POL’Y (July 10, 2021)	8, 10
Haeyoun Park & Iaryna Mykhyalyshyn, <i>L.G.B.T. People Are More Likely to Be Targets of Hate Crimes Than Any Other Minority Group</i> , N.Y. TIMES (June 16, 2016)	8

	Page
Other Authorities:	
John Riley, <i>Florida Gay Couple Shot and Chased in Drive-By Shooting After Being Seen Kissing</i> , METRO WEEKLY (Feb. 17, 2020), https://www.metroweekly.com/2020/02/florida-gay-couple-and-lesbian-bystander-shot-after-the-men-were-seen-kissing/	15
Madeleine Roberts, <i>HRC Mourns Sara Blackwood, Trans Woman Killed in Indianapolis</i> , HUMAN RTS. CAMPAIGN (Oct. 15, 2020), https://www.hrc.org/news/hrc-mourns-sara-blackwood-trans-woman-killed-in-indianapolis	14
Madeleine Roberts, <i>HRC Mourns Chae'Meshia Simms, Black Trans Woman Killed in Richmond, Va.</i> , HUMAN RTS. CAMPAIGN (Nov. 24, 2020), https://www.hrc.org/news/hrc-mourns-chaemeshia-simms-black-trans-woman-killed-in-richmond-va	14
Adam P. Romero, et al., <i>Gun Violence Against Sexual and Gender Minorities in the United States</i> 10, THE WILLIAMS INST. (Apr. 2019), https://williamsinstitute.law.ucla.edu/wp-content/uploads/SGM-Gun-Violence-Apr-2019.pdf	6, 11
Michael Siegel, et al., <i>The Relationship Between Gun Ownership and Firearm Homicide Rates in the United States</i> (Oct. 9, 2013), https://ajph.aphapublications.org/doi/full/10.2105/AJPH.2013.301409	7

	Page
Other Authorities:	
Mark Joseph Stern, <i>The Long, Tragic History of Violence at LGBTQ Bars and Clubs in America</i> , SLATE (June 12, 2016), https://slate.com/human-interest/2016/06/pulse-nightclub-shooting-and-tragic-history-of-violence-at-lgbtq-clubs-in-u-s.html	9
Rebecca Stotzer, <i>Comparison of Hate Crimes Across Protected and Unprotected Groups—An Update 4</i> (2012), http://escholarship.org/uc/item/43z1q49r#page-4	8
<i>Teen Killings Tied to Sexual Orientation</i> , WASH. POST (Mar. 29, 2008)	9
Steven W. Thrasher, <i>Latino Community Mourns Pulse Shooting Victims: '90% Were Hispanic,'</i> THE GUARDIAN (June 14, 2016), https://www.theguardian.com/us-news/2016/jun/14/latino-hispanic-orlando-shooting-victims	11
Daniel Villarreal, <i>Montana Man John Russell Howard Indicted on Hate Crime Charges for Allegedly Firing Gun Into Victim's House</i> , NEWSWEEK (June 3, 2021)	15
Emily Waters, et al., <i>A Crisis of Hate: A Report on Lesbian, Gay, Bisexual, Transgender, and Queer Hate Violence Homicides in 2017</i> , Nat'l Coalition of Anti-Violence Programs 7 (2018), http://avp.org/wp-content/uploads/2018/01/a-crisis-of-hate-january-release-12218.pdf	8

	Page
Other Authorities:	
Matilda Young, <i>HRC Mourns Selena Reyes-Hernandez, Trans Woman Killed in Chicago</i> , HUMAN RTS. CAMPAIGN (June 22, 2020), https://www.hrc.org/news/hrc-mourns-selena-reyes-hernandez-transgender-woman-killed-in-chicago	13
Ann Zaniewski, <i>Detroit Man Charged in Triple Homicide Targeting LGBTQ Community</i> , DETROIT FREE PRESS (June 6, 2019).....	9

INTEREST OF *AMICI CURIAE**

Amici are nonprofit legal, advocacy, and community organizations that advocate for the rights and wellbeing of Lesbian, Gay, Bisexual, Transgender, and Queer (“LGBTQ+”)** people, including the prevention of bias-motivated violence that often affects the LGBTQ+ community and other vulnerable populations. This includes gun violence, which disproportionately affects LGBTQ+ people and, in particular, LGBTQ+ people of color.

Amici share an interest in ensuring that members of the LGBTQ+ community can live safely in their communities without being threatened by deadly hate crimes based on their sexual orientation or gender identity. *Amici* submit this brief because bias-motivated violence, particularly gun violence, against the LGBTQ+ community is a pervasive national problem, and they believe that reasonable gun regulations comport with the Constitution and are necessary to save lives.

Founded in 1973, *amicus* **Lambda Legal Defense and Education Fund, Inc. (“Lambda Legal”)** is the nation’s oldest and largest legal organization committed to achieving full recognition of the civil rights of LGBT peo-

* Pursuant to Rule 37.6, *amici* affirm that no counsel for any party authored this brief in whole or in part and that no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amici*, their members, or their counsel made a monetary contribution to its preparation or submission. Petitioners filed a blanket consent to *amicus* briefs, and respondents consented to the filing of this brief.

** LGBTQ+ is used throughout this brief for brevity and consistency. However, some *amici* and sources cited herein use variations of this acronym.

ple and everyone living with HIV through impact litigation, education, and public policy work. Lambda Legal has served as counsel or *amicus* in seminal cases regarding the rights of LGBT people and people living with HIV. See, e.g., *Bostock v. Clayton Cty., Ga.*, 140 S. Ct. 1731 (2020); *Obergefell v. Hodges*, 576 U.S. 644 (2015); *United States v. Windsor*, 570 U.S. 744 (2013); *Lawrence v. Texas*, 539 U.S. 558 (2003); *Romer v. Evans*, 517 U.S. 620 (1996). Lambda Legal won an early landmark case involving a highly publicized hate crime against a transgender man, *Brandon v. County of Richardson*, 264 Neb. 1020 (Neb. 2002). Lambda Legal also served as counsel for *amici* defending the constitutionality of the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act, 18 U.S.C. § 249, in *United States v. Hill*, 927 F.3d 188 (4th Cir. 2019), *cert. denied*, 141 S. Ct. 272 (2020).

Amicus **New York City Gay and Lesbian Anti-Violence Project (“AVP”)** is a nonprofit organization founded in 1980 that empowers LGBTQ and HIV-affected communities and allies to end all forms of violence through organizing, education, counseling, direct legal representation, and advocacy. AVP’s Legal Services Department represents LGBTQ immigrant survivors of violence, including intimate partner violence. AVP is also the convener for the National Coalition of Anti-Violence Programs (“NCAVP”), which addresses the needs of LGBTQ communities nationally, including LGBTQ immigrants.

Amicus **Pride Fund to End Gun Violence (“Pride Fund”)** is a national LGBTQ hybrid political action committee focused solely on gun violence prevention. Pride Fund was founded by a gay Iraq War veteran in the days following the June 2016 mass shooting at Pulse, a gay nightclub in Orlando, Florida. In that incident, a man filled with hate and armed with an assault rifle shot and

killed 49 people and injured 53 others. Pride Fund supports sensible gun policy reforms while championing LGBTQ safety and equality. Pride Fund seeks to create policy change by advocating for legislation at the state and federal levels, including legislation that restricts access to assault weapons, expands background checks to cover all gun sales, and prevents individuals convicted of hate crimes from purchasing guns.

Amicus **Gays Against Guns** is a community of LGBTQ individuals and allies committed to achieving meaningful gun law reform. Gays Against Guns was founded in June 2016 after the Pulse nightclub shooting. The collective advocates for gun law reform through non-violent direct action and public outreach campaigns. Gays Against Guns advocates for reasonable gun law reform because gun violence is a public health crisis that disproportionately affects people of color, religious minorities, and LGBTQ individuals.

Amicus the **National LGBTQ Task Force** advances full freedom, justice and equality for LGBTQ people. It is building a future where everyone is free to be themselves in every aspect of their lives. Today, despite all the progress made to end discrimination, millions of LGBTQ people face barriers in every aspect of their lives: in housing, employment, healthcare, retirement, and basic human rights. These barriers must go. That's why the Task Force is training and mobilizing millions of activists across our nation to deliver a world where you can be you. Founded in 1972, it is the country's oldest national LGBTQ advocacy group. Since its inception, the LGBTQ community has lost far too many precious souls to gun violence motivated by hate, as this brief emphasizes. The Task Force supports reasonable restrictions such as licensing laws, for they are constitutional.

Founded in 1999, *amicus* **Equality California** (“**EQCA**”) is the nation’s largest statewide lesbian, gay, bisexual, transgender and queer+ (“LGBTQ+”) civil rights organization. Equality California brings the voices of LGBTQ+ people and allies to institutions of power in California and across the United States, striving to create a world that is healthy, just, and fully equal for all LGBTQ+ people. The organization advances civil rights and social justice by inspiring, advocating, and mobilizing through an inclusive movement that works tirelessly on behalf of those we serve. In the wake of the Pulse nightclub attack, Equality California launched its “Safe and Equal” campaign, which made gun safety reform one of the organization’s highest priorities. Equality California advocates for gun safety reform because LGBTQ individuals, particularly transgender women, are disproportionately impacted by gun violence. Equality California frequently participates in litigation in support of the rights of LGBTQ+ persons.

Amicus **Equality Florida Institute** (“**Equality Florida**”) is the largest civil rights organization dedicated to securing full equality for Florida’s LGBTQ community. Through grassroots organizing and public education, Equality Florida is working to end LGBTQ discrimination, accelerate acceptance of all Floridians, make schools safe for LGBTQ students, and move equality forward. After the Pulse massacre claimed 49 lives in 2016, Equality Florida committed to advocating for common sense gun violence prevention as part of its work to move equality forward for LGBTQ people and became a founding member of the Florida Coalition to Prevent Gun Violence. Equality Florida knows that discrimination against the LGBTQ community can be lethal, and that gun violence is a civil rights issue that disproportionately impacts marginalized communities, especially transgender women of

color.

Amicus Equality New York Fund (“EQNY”) is a statewide advocacy organization working to advance equality and justice for LGBTQI New Yorkers and their families, including the right to be safe and free from violence. EQNY organizes and educates LGBTQI people, their allies, and their community and political leaders, and uses an intersectional lens to ensure equitable outcomes for our community.

Amici submit that their experience and knowledge will assist the Court in considering the necessity of reasonable gun regulations, like those at issue in this case.

SUMMARY OF ARGUMENT

Gun violence has long haunted the LGBTQ+ community. In November 1978, Dan White shot San Francisco supervisor Harvey Milk five times—twice in the head. Milk was the first openly gay elected official in California’s history. For the next four decades, people used their guns to slaughter countless LGBTQ+ people simply because of who they are or who they love. Then, on a warm night in June 2016, a gunman killed 49 people and wounded 53 more in a mass shooting at Pulse nightclub, a favorite gay bar for the local Orlando, Florida Latinx LGBTQ+ community. The Pulse shooting was the deadliest act of terrorism on U.S. soil since September 11, 2011—a unfortunate distinction it would hold for less than a year, when it was eclipsed by another mass shooting in Las Vegas, Nevada.

History and the tragedies that continue to this day demonstrate that the ready availability of guns disproportionately harms gay, lesbian, bisexual, transgender, and queer people. LGBTQ+ people, per capita, are more likely to be targeted for a hate crime than any other

group.¹ And, as one organization put it, “Hate is far more deadly when armed with a gun.”² All this leads to one conclusion: Reasonable gun regulations save LGBTQ+ lives.

To be sure, LGBTQ+ people, like all Americans, have a Second Amendment right to bear arms. Some members of the community exercise that right by keeping a firearm for self-defense. And the State of New York has crafted a law to accommodate that purpose, licensing individuals to carry guns for particular purposes, including self-defense, upon a showing of cause. Resp. Br. 1. Indeed, petitioners’ licenses authorize them to carry guns for self-defense. *Id.* at 2.

While *amici* express no opinion here on whether respondents’ law strikes the right balance as a matter of legislative policy, *amici* agree that reasonable gun regulations comport with the Constitution and are necessary to save lives. Sweeping away respondents’ sensible gun regulations at issue here, which provide multiple avenues for individuals to carry a firearm in public if necessary for self-defense, would be a cure worse than the disease.

The snappy quip that “The only thing that can stop a bad guy with a gun is a good guy with a gun” is a slogan, not a solution. A study by the National Bureau of Economic Research showed that right-to-carry laws increase,

¹ Adam P. Romero, et al., *Gun Violence Against Sexual and Gender Minorities in the United States* 10, THE WILLIAMS INST. (Apr. 2019), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/SGM-Gun-Violence-Apr-2019.pdf>.

² Everytown Rsch., *Remembering and Honoring PULSE 2* (June 12, 2020), <https://everytownresearch.org/wp-content/uploads/sites/4/2020/06/Pulse-Gun-Violence-Report-061120.pdf>.

rather than decrease, violent crime.³ The indiscriminate availability of more guns in public leads to more homicides.⁴ And States with permissive gun laws have higher rates of gun homicides than States with regulations allowing law enforcement to deny concealed carry permits.⁵ Thus, “[w]hile arguments about the rights to gun ownership often center around self-protection from other firearms, the evidence is overwhelmingly clear that this argument is not supported by the data.”⁶

Amici know, based on experience, that more guns mean more deaths—regardless of the intended effect. And in a political debate over gun safety regulations, LGBTQ+ lives will be caught in the crossfire.

ARGUMENT

I. Gun Violence Disproportionately Harms the LGBTQ+ Community.

A. The LGBTQ+ community has historically been the target of a disproportionate number of reported hate

³ John J. Donohue et al., *Right-To-Carry Laws and Violent Crime: A Comprehensive Assessment Using Panel Data and a State-Level Synthetic Control Analysis*, J. OF EMPIRICAL LEGAL STUD. 16 (2) (2019), <https://onlinelibrary.wiley.com/doi/abs/10.1111/jels.12219>.

⁴ Michael Siegel, et al., *The Relationship Between Gun Ownership and Firearm Homicide Rates in the United States, 1981–2010* (Oct. 9, 2013), <https://ajph.aphapublications.org/doi/full/10.2105/AJPH.2013.301409>.

⁵ Emma E. Fridel, *Comparing the Impact of Household Gun Ownership and Concealed Carry Legislation on the Frequency of Mass Shootings and Firearms Homicide*, JUST. Q. 38 (5) (2021), <https://www.tandfonline.com/doi/full/10.1080/07418825.2020.1789693>.

⁶ Sandro Galea, *A Hate Crime Against LGBT Communities, With Weapons of War*, BU SCH. OF PUB. HEALTH (June 19, 2016), <https://www.bu.edu/sph/news/articles/2016/a-hate-crime-against-lgbt-communities-with-weapons-of-war/>.

crimes.⁷ On average, over 10,300 hate crimes in the United States each year involve a firearm—more than 28 every day.⁸ And the FBI reported 1,619 hate crimes based on sexual orientation or gender identity in 2019 alone, the latest year for which data is available.⁹ Members of the community are more likely to be targets of hate crimes than other minority groups, and anti-LGBTQ+ crime involves a greater incidence of violence and serious injury.¹⁰ And more often than not, the deadliest crimes against the LGBTQ+ community involve guns. One study showed that guns were used in almost 60% of bias-motivated homicides against LGBTQ+ people.¹¹

History is replete with examples. In 1988, Rebecca Wright was shot and killed while hiking with her partner

⁷ Haeyoun Park & Iaryna Mykhyalyshyn, *L.G.B.T. People Are More Likely to Be Targets of Hate Crimes Than Any Other Minority Group*, N.Y. TIMES (June 16, 2016), <http://nyti.ms/1YtDYV8>; Rebecca Stotzer, *Comparison of Hate Crimes Across Protected and Unprotected Groups—An Update* 4 (2012), <http://escholarship.org/uc/item/43z1q49r#page-4>.

⁸ Everytown Rsch., *supra* n. 2, at 2.

⁹ Federal Bureau of Investigation, *Incidents and Offenses* (2019), <https://ucr.fbi.gov/hate-crime/2019/topic-pages/incidents-and-offenses>.

¹⁰ Neal A. Palmer & Besiki Luka Kutateladze, *What Prosecutors and the Police Should Do About Underreporting of Anti-LGBTQ Hate Crime*, SEXUALITY RSCH. & SOC. POL'Y (July 10, 2021).

¹¹ Emily Waters et al., *A Crisis of Hate: A Report on Lesbian, Gay, Bisexual, Transgender, and Queer Hate Violence Homicides in 2017*, Nat'l Coalition of Anti-Violence Programs 7 (2018), <http://avp.org/wp-content/uploads/2018/01/a-crisis-of-hate-january-release-12218.pdf>.

on the Appalachian trail, by a man who claimed they “provoked” the assault by being lesbians.¹² Days later, two gay men in Dallas were shot and killed because they were gay—the judge later sentenced the murderer to less time because of the victims’ sexual orientation.¹³ In 1993, Brandon Teena, a transgender man, was raped and then fatally shot in Nebraska.¹⁴ In 2000, Danny Overstreet was killed, and six others were severely injured, when a man walked into a gay bar in Virginia and opened fire; the man later testified in court that he wished he could have “killed more fags.”¹⁵ In 2008, Simmie Williams, a Black, gender non-conforming 17-year-old, was shot and killed in Florida.¹⁶ In 2019, a man in Detroit shot and killed two gay men and a transgender woman; two other victims survived.¹⁷

¹² *Killer Convicted in Anti-Lesbian Shooting*, OUT IN THE MOUNTAINS (Jan. 1989), <https://web.archive.org/web/20060828081736/http://www.mountainpridemedia.org/oitm/issues/1989/01jan1989/killer.html>.

¹³ Lisa Belkin, *Texas Judge Eases Sentence for Killer of 2 Homosexuals*, N.Y. TIMES (Dec. 17, 1988), <https://www.nytimes.com/1988/12/17/us/texas-judge-eases-sentence-for-killer-of-2-homosexuals.html>.

¹⁴ Daniel Jeon, *Brandon Teena*, OUTHISTORY.ORG, <https://outhistory.org/exhibits/show/tgi-bios/brandon-teena>.

¹⁵ Mark Joseph Stern, *The Long, Tragic History of Violence at LGBTQ Bars and Clubs in America*, SLATE (June 12, 2016), <https://slate.com/human-interest/2016/06/pulse-nightclub-shooting-and-tragic-history-of-violence-at-lgbtq-clubs-in-u-s.html>.

¹⁶ *Teen Killings Tied to Sexual Orientation*, WASH. POST (Mar. 29, 2008), <https://www.washingtonpost.com/wp-dyn/content/article/2008/03/28/AR2008032803386.html>.

¹⁷ Ann Zaniewski, *Detroit Man Charged in Triple Homicide Targeting LGBTQ Community*, DETROIT FREE PRESS (June 6, 2019),

Unfortunately, anti-LGBTQ+ attacks are becoming more common. The number of hate crimes motivated by sexual orientation has increased every year from 2014 to 2019.¹⁸ The numbers hit an all-time high in 2020—anti-LGBTQ+ offenses were up 16% from 2019.¹⁹

B. These statistics—themselves quite sobering—almost certainly underrepresent the problem. The National Crime Victimization Survey—which collects data independent from law-enforcement sources—suggested that Americans experience 200,000 hate crimes each year, compared with the FBI’s estimate of 7,500.²⁰ An independent study found that fewer than half of bias-motivated crimes were reported to police, and only a small fraction were correctly designated as anti-LGBTQ+ hate crimes in official data.²¹ A 2015 study from the National Coalition of Anti-Violence Programs found that, even as anti-LGBT homicides and other attacks rose year-over-year, fewer survivors reported the crimes.²² Fatal vio-

<https://www.freep.com/story/news/local/michigan/detroit/2019/06/06/detroit-man-charged-triple-homicide-targeting-lgbtq-community/1373416001/>.

¹⁸ Grace Hauck, *Anti-LGBT Hate Crimes Are Rising, the FBI Says. But it Gets Worse*, USA TODAY (July 1, 2019), <https://www.usatoday.com/story/news/2019/06/28/anti-gay-hate-crimes-rise-fbi-says-and-they-likely-undercount/1582614001/>.

¹⁹ James Factora, *Hate Crimes Against Black, Asian, and LGBTQ+ People Hit Record Highs in 2020*, THEM. (Aug. 31, 2021), <https://www.them.us/story/hate-crimes-against-black-asian-and-lgbtq-people-hit-record-highs-in-2020>.

²⁰ Hauck, *supra* n. 18.

²¹ Sophia Geffen & Elizabeth Kelman, *Gun Violence and LGBT Health*, THE FENWAY INST. (Oct. 2016), <https://fenwayhealth.org/wp-content/uploads/Gun-Violence-and-LGBT-Health.pdf>.

²² Palmer & Kutateladze, *supra* n. 10.

lence against transgender and gender nonconforming individuals, in particular, is often underreported, and victims may be misgendered in official statistics.²³

C. Here’s what we *do* know: Gun violence poses a real risk to both the physical and mental wellbeing of LGBTQ+ people. Although gun violence affects all parts of the LGBTQ+ community, the threat is particularly acute for some members. Transgender and gender nonconforming people, for example, are more frequently the victims of fatal gun violence than the rest of the LGBTQ+ community.²⁴ For almost a decade, guns have been the leading cause of death in murders of transgender people in the United States.²⁵ Three out of four transgender people killed in 2020 alone died from gun violence.²⁶

LGBTQ+ people of color face an especially heightened risk of hate crime violence. 90% of the victims of the Pulse shooting were Latinx.²⁷ And across multiple years and many tragedies, LGBTQ+ people of color—particularly Black and Latinx members of the community—face

²³ *An Epidemic of Violence*, HUMAN RTS. CAMPAIGN (2020), <https://reports.hrc.org/an-epidemic-of-violence-fatal-violence-against-transgender-and-gender-non-confirming-people-in-the-united-states-in-2020>.

²⁴ *Id.*

²⁵ Romero, et al., *supra* n. 1.

²⁶ Derrick Clifton, *Three Out of Four Trans People Killed in 2020 Died by Gun Violence*, THEM. (Nov. 20, 2020), <https://www.them.us/story/gun-violence-transgender-homicides-tdor-2020>.

²⁷ Steven W. Thrasher, *Latino Community Mourns Pulse Shooting Victims: ‘90% Were Hispanic,’* THE GUARDIAN (June 14, 2016), <https://www.theguardian.com/us-news/2016/jun/14/latino-hispanic-orlando-shooting-victims>.

disproportionate levels of violence, including gun violence.²⁸

The burden of gun violence falls especially harshly on transgender women of color. Black trans women are disproportionately victims of violence: only sixteen percent of the transgender community in the United States is Black, but 79% of known trans homicide victims between 2017 and 2019 were Black.²⁹ And that violence is disproportionately committed with guns: during the same period, 81% of homicides committed against Black trans women were shootings.³⁰

D. Sterile percentages and mortality rates are a poor proxy for the human costs of gun violence. The individuals below are only a small handful of the LGBTQ+ people killed in 2020:

- Dustin Parker, a 25-year-old transgender man, was fatally shot in Oklahoma. Dustin was a founding member of a local LGBTQ organization, and his community remembered him as “a steadfast friend” and “an amazing husband.”³¹
- Neulisa Luciano Ruiz, a Latinx transgender woman, was fatally shot in Puerto Rico. Her

²⁸ Galea, *supra* n. 6.

²⁹ Everytown Rsch., *supra* n. 2, at 4.

³⁰ *Id.*

³¹ Elliott Kozuch, *HRC Mourns Dustin Parker, Trans Man Killed in Oklahoma*, HUMAN RTS. CAMPAIGN (Jan. 2, 2020), <https://www.hrc.org/news/hrc-mourns-dustin-parker-trans-man-killed-in-oklahoma>.

attackers followed her in a car, filmed the murder and posted it online.³²

- Jahiem Pugh, a 19-year-old gay man, was fatally shot at a Christmas party. According to his mother, nobody helped him, and social media posts from other attendees said he should not have been dressed like a girl. He loved music and worked two jobs.³³
- Selena Reyes-Hernandez, a 37-year-old Black transgender woman, was fatally shot in Illinois after she came out to her killer as trans.³⁴
- Felycya Harris, a 33-year-old Black transgender woman, was fatally shot in Georgia. She was an interior decorator—taught by her late grandmother—and enjoyed dance, fashion, and style.³⁵
- Jonathan Breeding, a gay man, was fatally shot in Texas. Breeding’s killer also shot two

³² *An Epidemic of Violence*, *supra* n. 23.

³³ Gabby Easterwood, ‘*He Mattered: Family of Prichard Shooting Victim Say It Was a Result of a Hate Crime*’, WKRG (Dec. 15, 2020), <https://www.wkrg.com/mobile-county/he-mattered-family-of-prichard-shooting-victim-say-it-was-a-result-of-a-hate-crime/>.

³⁴ Matilda Young, *HRC Mourns Selena Reyes-Hernandez, Trans Woman Killed in Chicago*, HUMAN RTS. CAMPAIGN (June 22, 2020), <https://www.hrc.org/news/hrc-mourns-selena-reyes-hernandez-transgender-woman-killed-in-chicago>.

³⁵ Robin Chand, *HRC Mourns Felycya Harris, Trans Woman Killed in Georgia*, HUMAN RTS. CAMPAIGN (Oct. 6, 2020), <https://www.hrc.org/news/hrc-mourns-felycya-harris-trans-woman-killed-in-georgia>.

other gay men in the area, using a popular dating app to target gay men.³⁶

- Sara Blackwood, a 39-year-old transgender woman, was fatally shot in Indiana. She died on National Coming Out Day, shot while she was walking home.³⁷
- Chae'Meshia Simms, a Black transgender woman in her 30s, was fatally shot in Virginia. She went by "ChaeChae," and was remembered by her friends as "good," "kind," and "caring."³⁸

Each of these deaths might have been prevented if the killers had been less able to access firearms.

Nonlethal gun violence also imposes a high cost on the LGBTQ+ community. Involving a gun in a hate crime makes it more likely to be deadly—and even the near-misses are harrowing. Only a few of the incidents from 2020 illustrate how quickly the hate crimes could have turned deadly:

- In February, two gay men were ambushed and fired on repeatedly by two or three shooters, who

³⁶ Jeffrey Martin, *Teen Arrested for Using Dating App to Find Victims for Three Shootings*, NEWSWEEK (Aug. 25, 2020), <https://www.newsweek.com/teen-arrested-using-dating-app-find-victims-three-shootings-1527609>.

³⁷ Madeleine Roberts, *HRC Mourns Sara Blackwood, Trans Woman Killed in Indianapolis*, HUMAN RTS. CAMPAIGN (Oct. 15, 2020), <https://www.hrc.org/news/hrc-mourns-sara-blackwood-trans-woman-killed-in-indianapolis>.

³⁸ Madeleine Roberts, *HRC Mourns Chae'Meshia Simms, Black Trans Woman Killed in Richmond, Va.*, HUMAN RTS. CAMPAIGN (Nov. 24, 2020), <https://www.hrc.org/news/hrc-mourns-chaemeshia-simms-black-trans-woman-killed-in-richmond-va>.

saw the men kissing. A bystander was also injured.³⁹

- In March, a Montana man fired his gun directly into a victim’s home, stating that he wanted to “get rid of the lesbians [and] gays.” He had previously used antigay slurs against the victim.⁴⁰
- In October, an assailant chased a gay man out of a neighborhood in Charleston, South Carolina, brandishing a gun and telling him, “We don’t like fag-gots around here, keep going.”⁴¹

And even for those members of the LGBTQ+ community not directly targeted, gun violence has a real and harmful effect. After the Pulse shooting, members of the LGBTQ+ community all around the United States felt less safe, and were less likely to congregated even in LGBTQ+ spaces.⁴² Anti-LGBTQ+ crimes force community members to mourn their siblings and to confront the

³⁹ John Riley, *Florida Gay Couple Shot and Chased in Drive-By Shooting After Being Seen Kissing*, METRO WEEKLY (Feb. 17, 2020), <https://www.metroweekly.com/2020/02/florida-gay-couple-and-lesbian-bystander-shot-after-the-men-were-seen-kissing/>.

⁴⁰ Daniel Villarreal, *Montana Man John Russell Howard Indicted on Hate Crime Charges for Allegedly Firing Gun Into Victim’s House*, NEWSWEEK (June 3, 2021), <https://www.newsweek.com/montana-man-john-russell-howard-indicted-hate-crime-charges-allegedly-firing-gun-victims-house-1597053>.

⁴¹ Patrick Kelleher, *Gay Man Chased Out of Neighborhood by Gun-Wielding Homophobe Yelling ‘We Don’t Like F****ts Around Here’*, PINKNEWS (Nov. 12, 2020), <https://www.pinknews.co.uk/2020/11/12/south-carolina-charleston-gay-man-gun-chased-police-investigation/>.

⁴² Everytown Rsch., *Disarm Hate: the Deadly Intersection of Guns and Hate Crimes*, EVERYTOWN RSCH. (May 13, 2019), <https://everytownresearch.org/report/disarm-hate-the-deadly-intersection-of-guns-and-hate-crimes/>.

fear that they, too, are unsafe.

II. The Indiscriminate Availability of Guns Makes the LGBTQ+ Community Less Safe, Not More Safe.

By limiting who may legally carry a loaded handgun in public, reasonable gun safety laws keep people safe. LGBTQ+ people, like other members of the public, have a Second Amendment right to bear arms. But “[l]ike most rights, the right secured by the Second Amendment is not unlimited.” *District of Columbia v. Heller*, 554 U.S. 570, 626 (2008).

The Constitution recognizes appropriate accommodations even on fundamental personal rights. For example, speech may be restricted based on time, place, and manner. *Clark v. Cmty. for Creative Non-Violence*, 468 U.S. 288 (1982). Individuals may enjoy a reduced right of privacy on the road. *California v. Acevedo*, 500 U.S. 565 (1991). A person has the right to remain silent, but must expressly invoke it. *Salinas v. Texas*, 570 U.S. 178 (2013).

Respondents’ regulation reflects New York’s longstanding approach to regulating firearms, and includes a provision allowing individuals to show cause for obtaining a permit to be able to carry a firearm outside the home for self-defense. Resp. Br. 5-7. *Amici* are concerned that an alternative rule—striking down, *in toto*, reasonable gun restrictions on who may carry firearms outside their home—will only make the problem worse.

Often, calls for looser firearm restrictions, or no restrictions at all, are justified by a desire to make it easier for people, including people in vulnerable populations, to obtain guns for self-defense. But data show that when guns are indiscriminately or easily available, they *increase* gun violence, rather than making people safer. An article in the *Annals of Internal Medicine* conducting a

meta-analysis of 16 studies found that firearm accessibility was associated with increased risk of homicides.⁴³ A 2019 study in the *Journal of Empirical Legal Studies* comparing data from 33 States over three decades concluded that the adoption of shall-issue or right-to-carry laws were associated with a 13 percent to 15 percent increase in violent crime rates a decade after implementation.⁴⁴ And data collected and analyzed from 1991 to 2016 showed both that mass shootings disproportionately occur in States with higher levels of gun ownership and homicide rates are higher in States with more permissive concealed-carry laws.⁴⁵

In sum, data “uniformly support[] the conclusion” that looser gun safety laws “lead to a substantial increase in violent crime.”⁴⁶ Too often, the bodies those guns are pointed at, and the lives they take, are LGBTQ+. *Supra*, pp. 7-15. Reasonable restrictions on gun ownership comport with the Constitution, *see Heller*, 554 U.S. at 626, and make everyone—including LGBTQ+ individuals—safer.

⁴³ Galea, *supra* n. 6.

⁴⁴ Donohue, et al., *supra* n. 3, at 200.

⁴⁵ Fridel, *supra* n. 5, at 892.

⁴⁶ Donohue, et al., *supra* n. 3, at 201.

CONCLUSION

The judgment of the United States Court of Appeals for the Second Circuit should be affirmed.

Respectfully submitted,

OMAR GONZALEZ-PAGAN
RICHARD SAENZ
LAMBDA LEGAL DEFENSE
AND EDUCATION FUND, INC.
120 Wall Street, 19th Floor
New York, NY 10005

ANA C. REYES
Counsel of Record
MICHAEL J. MESTITZ
WILLIAMS & CONNOLLY LLP
725 Twelfth Street, N.W.
Washington, DC 20005
(202) 434-5000
areyes@wc.com

SEPTEMBER 21, 2021