

No. 07-290

---

---

IN THE  
**Supreme Court of the United States**

---

DISTRICT OF COLUMBIA and ADRIAN M. FENTY,  
Mayor of the District of Columbia,  
*Petitioners,*

*v.*

DICK ANTHONY HELLER,  
*Respondent.*

---

ON WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR THE  
DISTRICT OF COLUMBIA CIRCUIT

---

---

**BRIEF *AMICUS CURIAE* OF  
RETIRED MILITARY OFFICERS  
IN SUPPORT OF RESPONDENT**

---

---

ANDREW G. MCBRIDE  
*Counsel of Record*  
WILLIAM S. CONSOVOY  
BRENDAN J. MORRISSEY  
DAN ALBAN

WILEY REIN LLP  
1776 K Street, NW  
Washington, D.C. 20006  
(202) 719-7000

*Counsel for Amicus Curiae*

---

---

214014



COUNSEL PRESS  
(800) 274-3321 • (800) 359-6859

**TABLE OF CONTENTS**

	<i>Page</i>
TABLE OF APPENDICES .....	iii
TABLE OF CITED AUTHORITIES .....	iv
INTEREST OF AMICUS CURIAE .....	1
INTRODUCTION .....	2
ARGUMENT .....	7
I. The District’s “States’ Rights” View Of The Second Amendment Is Inconsistent With Its Place In The Constitutional Plan. .....	7
II. The Right To Individual Ownership Of Firearms Protected By The Second Amendment Is Essential To National Defense. ....	14
A. The United States Military Benefits From the Ability to Recruit From a Pool of Civilians Experienced in the Use of Firearms. ....	14
1. Military Recruits With Firearms Training and Experience Make Better Soldiers. ....	14

*Contents*

	<i>Page</i>
2. The United States Government Has a Long History of Promoting Civilian Firearms Ownership and Training. ....	19
3. Handgun Training is Beneficial to Military Effectiveness and National Defense. ....	26
B. Armed Civilians Are an Effective Deterrent To and Defense Against Foreign Invasion. ....	28
1. The American Experience .....	29
2. The Swiss Example .....	31
CONCLUSION .....	35

**TABLE OF APPENDICES**

	<i>Page</i>
Appendix A — Retired Military Officers .....	1a
Appendix B — Letters Cited .....	3a

**TABLE OF CITED AUTHORITIES**

*Page*

**FEDERAL CASES**

<i>Fresno Rifle &amp; Pistol Club, Inc. v. Van de Kamp</i> , 746 F. Supp. 1415 (E.D. Cal. 1990) .....	25
<i>Fresno Rifle &amp; Pistol Club, Inc. v. Van de Kamp</i> , 965 F.2d 723 (9th Cir. 1992) .....	25
<i>Grutter v. Bollinger</i> , 539 U.S. 306 (2003) .....	1
<i>Parker v. District of Columbia</i> , 478 F.3d 370 (D.C. Cir. 2007) .....	13
<i>Richmond Boro Gun Club, Inc.</i> <i>v. City of New York</i> , 896 F. Supp. 276 (E.D.N.Y. 1995) .....	25
<i>Richmond Boro Gun Club, Inc.</i> <i>v. City of New York</i> , 97 F.3d 681 (2d Cir. 1996) .....	25
<i>Silveira v. Lockyer</i> , 328 F.3d 567 (9th Cir. 2003) .....	12
<i>United States v. Emerson</i> , 270 F.3d 203 (5th Cir. 2001) .....	7, 8, 12
<i>United States v. Miller</i> , 307 U.S. 174 (1939) .....	8, 9, 11, 12

*Cited Authorities**Page***STATE CASES**

*Arnold v. Cleveland*,  
616 N.E.2d 163 (Ohio 1993) ..... 25

*McIntosh v. Washington*,  
395 A.2d 744 (D.C. 1978) ..... 25

**U.S. CONSTITUTION**

U.S. Const., amend. II ..... *passim*

U.S. Const. art. I, § 8 cl. 15 ..... 11

**FEDERAL STATUTES**

36 U.S.C. § 40722 ..... 24

National Defense Act of 1916 § 113,  
39 Stat. 166 (1917) ..... 23

**OTHER AUTHORITIES**

*A Democratic Federalist*, Pennsylvania Herald,  
Oct. 17, 1787, reprinted in David E. Young, *The  
Origin of the Second Amendment* (2d ed.  
1995)) ..... 9

About the CMP, Civilian Marksmanship  
Program, available at [http://www.odcmp.com/  
about\\_us.htm](http://www.odcmp.com/about_us.htm) ..... 20, 24

*Cited Authorities*

	<i>Page</i>
<i>Army Cuts Help to Gun Programs of Civilian Clubs</i> , N.Y. Times, June 22, 1968 .....	24
<i>Army Gives Figures on Civilian Weapons</i> , N.Y. Times, Aug. 16, 1964 .....	24
Arthur D. Little, Inc., <i>A Study of the Activities and Missions of the National Board for the Promotion of Rifle Practice</i> (1966), reprinted in James B. Whisker, <i>The Citizen Soldier and United States Military Policy</i> (1979) .....	4, 16-17, 18, 19
Brief for Petitioners, District of Columbia v. Heller, No. 07-290 (Jan. 4, 2008) .....	7
Brief for Respondent, District of Columbia v. Heller, No. 07-290 (Feb. 4, 2008) .....	7, 10, 26
Brief of Maj. Gen. John D. Altenburg, Jr., et al., District of Columbia v. Heller, No. 07-290 (Feb. 7, 2008) .....	25
<i>Christofferson is Pistol Champion</i> , N.Y. Times, Aug. 29, 1919 .....	27
Civilian Marksmanship Program, <i>2007 Annual Report</i> (2007), available at <a href="http://www.odcmp.com/Annual_Report.pdf">http://www.odcmp.com/Annual_Report.pdf</a> .....	20, 24

*Cited Authorities*

	<i>Page</i>
David B. Kopel, <i>It Isn't About Duck Hunting: The British Origins of the Right to Arms</i> , 93 Mich. L. Rev. 1333 (1995) .....	11
David T. Hardy, <i>Armed Citizens, Citizen Armies: Toward a Jurisprudence of the Second Amendment</i> , 9 Harv. J.L. & Pub. Pol'y 559 (1986) .....	29
Department of the Army, <i>U.S. Army Combat Pistol Training Manual</i> (2003) .....	26, 27
Department of the Navy, Marine Corps Reference Publication (MCRP) 3-01A, <i>Rifle Marksmanship</i> (2001) .....	27
Earl F. Martin, <i>America's Anti-Standing Army Tradition and the Separate Community Doctrine</i> , 76 Miss. L.J. 135 (2006) .....	8
Eric Robson, <i>The American Revolution: In Its Political and Military Aspects, 1763-1783</i> (1965) .....	30
General George W. Wingate, <i>Teach Our Boys to Shoot</i> , N.Y. Times, Jan. 31, 1915 .....	22
George Mason, <i>Remarks at the Virginia Convention Debates</i> (June 14, 1788), <i>reprinted in 3 Elliot's Debates</i> (1836) .....	10



*Cited Authorities*

	<i>Page</i>
Gregory B. Morrison & Jeff Cooper, <i>The Modern Technique of the Pistol</i> (1991) .....	27
H. Richard Uviller & William G. Merkel, <i>The Second Amendment in Context: The Case of the Vanishing Predicate</i> , 76 Chi.-Kent L. Rev. 403 (2000) .....	11-12
Harold Kennedy, <i>Beretta 9mm Finds Niche in 'Low Intensity Missions'</i> , National Defense, Oct. 2000 .....	26
Jack Raymond, <i>Closer Check is Planned on Members of Rifle Clubs Obtaining U.S. Arms</i> , N.Y. Times, June 7, 1964 .....	23
James B. Whisker, <i>The Citizen Soldier and United States Military Policy</i> (1979) .....	20
Jennifer Kavanagh, RAND National Defense Research Institute, <i>Determinants of Productivity for Military Personnel: A Review of Findings on the Contribution of Experience, Training, and Aptitude to Military Performance</i> (2005) .....	17-18
John D. Winkler and Paul S. Steinberg, RAND Corp., <i>Restructuring Military Education and Training: Lessons from RAND Research</i> (1997) .....	19

*Cited Authorities*

	<i>Page</i>
John W. Shy, <i>The Military Conflict Considered as a Revolutionary War</i> , <i>Essays on the American Revolution</i> (Stephen Kurtz & James Hutson eds., 1973) reprinted in John W. Shy, <i>A People Numerous and Armed</i> (rev. ed. 1989) .....	29
Laurence Tribe, <i>American Constitutional Law</i> (3d ed. 2000) .....	11
Lawrence Patton McDonald, Gen. George S. Patton & Gen. Lewis W. Walt, <i>The Swiss Report</i> (1983), available at <a href="http://www.constitution.org/mil/swiss_report.htm">http://www.constitution.org/mil/swiss_report.htm</a> .....	31
Letter from Colonel F.C. Endicott, Director of Civilian Marksmanship, A.G.F., to the National Rifle Association (Feb. 27, 1943) .....	27
Letter from General Dwight D. Eisenhower, Commander-in-Chief, Allied Force Headquarters, to M.J. Damlos, Cleveland Civilian Marksman's Association (Aug. 16, 1943) .....	15
Letter from Harry S. Truman, President of the United States, to C.B. Lister, Secretary-Treasurer, National Rifle Association (Nov. 14, 1945) .....	16

*Cited Authorities*

	<i>Page</i>
Letter from John F. Kennedy, President of the United States, to Franklin L. Orth, Executive Vice President, National Rifle Association (Mar. 20 1961) .....	16
Letter from Lewis G. Hershey, Director, Selective Service System, to the National Rifle Association (Feb. 1, 1943) .....	16
Letter from Paul V. McNutt, Chairman, War Manpower Commission, to the National Rifle Association (Feb. 3, 1943) .....	16
Letter from Franklin D. Roosevelt, President of the United States, to Major General M. A. Reckord, Executive Vice President, National Rifle Association (Feb. 1, 1938) .....	15
Letter from Theodore Roosevelt, President of the United States, to Priv. Howard Gensch, New Jersey Nat'l Guard (Sept. 25, 1904), <i>excerpted in Jeffrey L. Rodengen, NRA: An American Legend</i> (2002) .....	15
<i>Marines Triumph in Pistol Shoot</i> , N.Y. Times, Sept. 5, 1939 .....	27
Michael Slackman, <i>Target: Pearl Harbor</i> (1991) .....	31

*Cited Authorities*

	<i>Page</i>
Nelson Lund, <i>The Past and Future of the Individual's Right to Arms</i> , 31 Ga. L. Rev. 1 (1996) .....	10
<i>Plans a Great Army of Expert Marksmen</i> , N.Y. Times, Oct. 17, 1904 .....	22
<i>Remembering WWII Militia That Guarded Alaska After Japanese Attack</i> , Associated Press, Oct. 15, 2007, available at <a href="http://www.ktuu.com/global/story.asp?s=7217004">http://www.ktuu.com/global/story.asp?s=7217004</a> .....	31
Robert V. Remini, <i>The Battle of New Orleans: Andrew Jackson and America's First Military Victory</i> (2001) .....	30-31
Roy G. Weatherup, <i>Standing Armies and Armed Citizens: An Historical Analysis of the Second Amendment</i> , 2 Hastings Const. L.Q. 961 (1975) .....	8
<i>Secretary Root's Farewell Report</i> , N.Y. Times, Dec. 7, 1903 .....	14
Sheppard Kelly, <i>Short Range Training Ammo, American Handgunner Tactical: 2008 Special Edition Annual</i> (2007) .....	28
Stephen P. Halbrook, <i>Target Switzerland: Swiss Armed Neutrality in World War II</i> (2003) ...	32

*Cited Authorities*

	<i>Page</i>
The Federalist No. 29 (Alexander Hamilton) . . . <i>passim</i>	
The Federalist No. 46 (James Madison) . . . . .	9, 10
<i>USAMU Hosts Small Arms Championships,</i> Infantry Magazine, Mar. 1, 2005 . . . . .	27
<i>Universal Gun Safety Rules,</i> Americans for Gun Safety Foundation, at <a href="http://www.campaign&lt;br/&gt;advantage.com/services/websites/archive/&lt;br/&gt;agsfoundation/safety/r_universal.html">http://www.campaign advantage.com/services/websites/archive/ agsfoundation/safety/r_universal.html</a> . . . . .	27
William Marina, <i>Militia, Standing Armies, and the Second Amendment,</i> The Law & Liberty, Summer 1975 . . . . .	30

**INTEREST OF AMICUS CURIAE**<sup>1</sup>

*Amici* are retired military officers of the Army, Navy, Air Force, Marine Corps, and National Guard that have served at the highest levels of military command.<sup>2</sup> Based on these experiences, *Amici* are uniquely able to address the direct impact this case will have on our military. Indeed, this Court has in the past recognized the value of the military's perspective in constitutional cases. *See Grutter v. Bollinger*, 539 U.S. 306, 331 (2003). Given that Petitioners' collectivist view of the Second Amendment would undermine both military preparedness and national defense, *Amici* have a strong interest in this case.

In particular, banning personal firearm possession eliminates an important deterrent to those who might attack the homeland. This country profits from our enemies' recognition that an attack on the United States would be met with force by not only our armed forces, but also by a body politic fully capable of defending itself from foreign aggression. Moreover, private ownership of firearms makes

---

1. No counsel for a party authored this brief in whole or in part, and no such counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than the *amicus curiae*, or its counsel, made a monetary contribution to its preparation or submission. The amicus has given the parties at least seven days notice of its intention to file this brief.

2. A complete list of the *amici* retired military officers is provided as an appendix to this brief. *Amici* include 19 retired officers ranked Brigadier General/Rear Admiral (lower half) or higher, one retired Sergeant Major of the Army (the senior enlisted member of the United States Army and senior enlisted advisor to the Chief of Staff of the Army) and one former member of Congress.

for a more effective fighting force. Military recruits with previous firearms experience and training are generally better marksmen, and accordingly, better soldiers. In short, experience has taught that individual ownership of firearms is an indispensable element of national security. *Amici* therefore submit this brief in support of Respondent and urge affirmance of the decision below.

## INTRODUCTION

Text, structure, and history lead to the inexorable conclusion that the Second Amendment guarantees to “the People” an individual right to own and possess firearms. The Second Amendment would be irreconcilable with the remainder of the Bill of Rights if it, as Petitioners starkly assert, merely delegated to the several States an unfettered right to regulate the right “to keep and bear Arms.” Indeed, under the “states’ rights” interpretation offered by the District of Columbia (“the District”), labeling the Second Amendment a “right” would be quite misleading. Governments have powers; the People have rights. Moreover, classifying the Second Amendment as a state power, and thereby vesting supreme authority over gun ownership in government, is incompatible with the history surrounding its enactment.

The Second Amendment, like many other provisions of the Constitution, was born of compromise and necessity. The founding generation had become acutely aware of the shortcomings of the Articles of Confederation. In particular, the Articles established a woefully deficient system of national defense under which the States had a primary role. The Constitutional

Convention, perhaps above any other single reason, was convened to redress this problem. At the same time, however, the Framers' experience with the British made them all too familiar with the dangers that large standing armies posed to individual liberty. Thus, while there was broad agreement that a stronger federal military was needed, any call for a large and permanent national armed force would be met with resistance.

The Second Amendment, which enshrined the preexisting right to personal firearm ownership in the Constitution, offered a solution agreeable to all concerned. For those (primarily Anti-Federalists) concerned with the threat posed by a large national army to domestic tranquility, guaranteeing the right to "keep and bear arms" in the Constitution ensured that the People could act as a direct check against any tyrannical impulses this national army might harbor. As both James Madison and Alexander Hamilton explained in the Federalist Papers, the national army, no matter how fierce, could never overtake a body politic armed and trained to defend its liberty. Through the Second Amendment, and contrary to the path chosen by almost every other nation throughout history, the Framers made clear that the ultimate responsibility to defend the nation from internal assault rested with each American citizen.

For those concerned that a smaller national army would be insufficient to meet the growing security needs of the country, the Second Amendment ensured a reservoir of trained marksmen capable of contributing to the national defense if circumstances required. Whether organized formally or informally, the militia depended on a citizenry in possession of, and familiar



with, firearms. The Federal government's authority to call the "militia" to national service would be meaningless if those answering the call were of limited or no use on the battlefield. That is, a national defense apparatus that depends on the grace of the several States resembles the ineffective system employed under the Articles of Confederation and intentionally abandoned in the Constitution. Accordingly, Petitioners' conception of the Second Amendment simply cannot be squared with its evident purpose.

Moreover, the purpose underlying the enactment of the Second Amendment has been realized. As time and experience has proven, a citizenry with access to—and experience with—firearms is an invaluable aspect of national security. Foremost, individual firearm ownership creates a pool of talented recruits. Our nation's military leaders have consistently noted that recruits entering the military with firearms experience in civilian life generally become better marksmen, and thus better soldiers. Empirical analysis has confirmed these insights. A study conducted by Arthur D. Little, Inc. reached the same conclusion: the military achieves significant benefits from its ability to recruit from a pool of citizens experienced with firearms. Outright bans on gun ownership, such as the law under review here, are thus detrimental to national security.

The obvious benefits of a citizenry trained in the use of firearms has not been lost on Congress. Indeed, Congress has consistently promoted individual firearms expertise through its Civilian Marksmanship Program. Through this program, which dates back to 1903, Congress has funded firearms training, sponsored

national marksmanship competitions, and authorized the distribution and sale of surplus military weapons to these programs. The Civilian Marksmanship Program necessarily assumes the existence of an individual right to keep firearms. Were gun possession subject to unchecked State control, Congress surely would have allocated the funds to the States instead of providing direct funding. Congress' longstanding support for individual firearms training confirms its rejection of the "states' rights" view of the Second Amendment advocated by the District.

That this case involves a ban on handguns, and not military rifles, is not meaningful. The military regularly issues handguns to service members. Indeed, roughly three million service pistols were produced for the U.S. military over the last century. The wide distribution of handguns in the military makes sense; pistols are routinely carried and used in military operations. In any event, many skills involved in shooting, safely handling, and cleaning firearms are fairly universal and thus may be applied to other firearms beyond handguns. Moreover, in urban areas such as the District, smaller shooting ranges and storage areas make the handgun a far more suitable weapon for training purposes. In a case such as this, banning handguns is tantamount to banning any meaningful gun possession and ownership whatsoever.

Finally, individual gun ownership has a direct national security benefit: it deters foreign aggressors from attacking the United States. Those otherwise disposed to attack this country realize that for such an invasion to succeed, they must not only defeat our first-

rate military, but they must also defeat a people armed, trained, and prepared to defend its sovereignty. From the American Revolution, to the War of 1812, to the Hawaiian Islands on December 7, 1941, Americans have proven quite capable of contributing to the armed defense of this Nation without the command or blessing of the several States. In addition, Switzerland, perhaps the least bellicose Western nation, has earned its reputation through a national commitment to individual firearm ownership and marksmanship. Swiss citizens are almost universally armed and are expected to defend the country should it be attacked. The commitment of the Swiss to individual firearm ownership exemplifies the idea of peace through strength.

In the end, both the purpose and effect of the Second Amendment intersect with basic principles of national defense. The Framers understood that individual gun ownership provided a final line of defense against attacks on liberty—whether the threat is internal or foreign. Our national experience with gun ownership has validated this belief. Individual gun ownership provides a pool of talented military recruits and thus produces a more skilled fighting force. Moreover, those skilled in the use of firearms, but not serving in the military, deter attacks from abroad. There simply can be no question that the Second Amendment is an indispensable aspect of national defense, and in turn, individual liberty. For these reasons, *Amici* support Respondent and urge affirmance of the decision below.

## ARGUMENT

### **I. The District’s “States’ Rights” View Of The Second Amendment Is Inconsistent With Its Place In The Constitutional Plan.**

The Second Amendment provides: “A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.” U.S. Const., amend. II. The District argues that the “text and history of the Second Amendment” prove that it “protects the possession and use of guns only in the service of an organized militia.” Brief for Petitioners at 8, *District of Columbia v. Heller*, No. 07-290 (Jan. 4, 2008) (“Pet. Br.”). In their view, the Second Amendment “was enacted to *protect* states’ prerogatives; not constrain them.” *Id.* at 36. Petitioner’s “states’ rights” conception of the Second Amendment is flatly incompatible with the text and structure of the Constitution. *See* Brief for Respondent at 5-10, *District of Columbia v. Heller*, No. 07-290 (Feb. 4, 2008) (“Resp. Br.”). Even if the Second Amendment has an entirely military focus, however, Petitioners’ argument that the individual right to “keep and bear Arms” extends only to service in a state-run militia is untrue to history and unfaithful to the Second Amendment’s place in our constitutional order. *See id.* at 19-40.

“The primary shortcoming of the Articles of Confederation was that the central government it provided for was too weak.” *United States v. Emerson*, 270 F.3d 203, 236 (5th Cir. 2001). The establishment of a

cohesive national military, therefore, was a central objective of the constitutional convention. See Roy G. Weatherup, *Standing Armies and Armed Citizens: An Historical Analysis of the Second Amendment*, 2 Hastings Const. L.Q. 961, 980-82 (1975) (noting that Shays' Rebellion in 1786 awakened many to the need for a stronger central military and that Madison pointed to it as one of the "ripening incidents" that led to the constitutional convention) (citation omitted); Earl F. Martin, *America's Anti-Standing Army Tradition and the Separate Community Doctrine*, 76 Miss. L.J. 135, 154 (2006) ("[T]he Articles of Confederation was too weak to enable the country to overcome security threats posed by both internal and external forces. . . . When the Federal Constitutional Convention opened in the late spring of 1787, the ability of the nation to defend itself had the full attention of the convention delegates.")

At the same time, "although a stronger central government was needed, the central government was to remain one of limited and enumerated powers only, lest the cure be worse than the disease." *Emerson*, 270 F.3d at 236. There was genuine concern that a standing federal army represented a threat to individual liberty. See, e.g., *United States v. Miller*, 307 U.S. 174, 178-79 (1939) ("The sentiment of the time strongly disfavored standing armies."). As a contemporary publication rhetorically asked: "What then will there be to oppose to their encroachments? Should they ever pretend to tyrannize over the people, their *standing army* will

silence every popular effort. . . .” *A Democratic Federalist*, Pennsylvania Herald, Oct. 17, 1787, reprinted in David E. Young, *The Origin of the Second Amendment* 46 (2d ed. 1995). The prospect of a standing federal army, therefore, presented a difficult problem. Imposing too many institutional constraints on its formation and structure would mean the continuation of the failed national defense plan associated with the Articles of Confederation; however, there was no assurance that a standing army, once formed, would remain immune from tyrannical impulses. The problem was resolved in large measure by securing the pre-existing individual right “to keep and bear Arms” in the new Constitution.

First, through the Second Amendment, the Framers ensured that the People could act as a direct check on any threat to domestic tranquility that a standing national army might represent; a federal army would be powerless against the People trained to arms. The size of such an army would not “exceed one hundredth part of the whole number of souls; or one twenty-fifth part of the number able to bear arms,” or approximately “twenty-five or thirty thousand men.” *The Federalist* No. 46 (James Madison). By comparison, Madison wrote, rising in opposition to a national army turned against the People “would be . . . a militia amounting to near half a million of citizens with arms in their hands.”<sup>3</sup> *Id.*

---

3. At the time of the framing, it was universally understood that the “militia” encompassed all males physically capable of bearing arms. *See Miller*, 307 U.S. at 179 (“[T]he Militia comprised all males physically capable of acting in concert for the common defense.”); *The Federalist* No. 29 (Alexander Hamilton) (explaining that the militia are “men who are daily

(Cont’d)

This check on the potential abuse of power associated with large standing armies thus assuaged much of the concern expressed by Anti-Federalists. *See* Resp. Br. at 15, 36-37. As James Madison explained, “[i]t may well be doubted, whether a militia thus circumstanced could ever be conquered by such a proportion of regular troops.” The Federalist No. 46 (James Madison). Americans were less susceptible to tyranny by a strong central government because, unlike “the people of almost every other nation,” they have “the advantage of being armed.” *Id.* A national army could “never be formidable to the liberties of the people while there is a large body of citizens . . . who stand ready to defend their own rights and those of their fellow-citizens.” The Federalist No. 29 (Alexander Hamilton). This is only true, however, if the “right” belongs to the individual; vesting the right to “keep and bear Arms” in the several States would allow the states to disarm the people completely, should they so choose, and would thereby render the check on tyranny illusory.

Second, an armed body politic could provide a reservoir of troops capable of defending the Nation in times of emergency, limiting the need for a large standing army. *See* George Mason, Remarks at the Virginia Convention Debates (June 14, 1788), *reprinted in 3 Elliot’s Debates* 378 (1836) (“If insurrections should

---

(Cont’d)

mingling with the rest of their countrymen”). Thus, in contrast to Petitioners’ contention that the militia was seen as a kind of specialized fighting force, the militia was in fact the way that the people organized themselves into a more organized and effective fighting force. *See* Nelson Lund, *The Past and Future of the Individual’s Right to Arms*, 31 Ga. L. Rev. 1, 23 (1996).

arise, or invasions should take place, the people ought unquestionably to be employed.”); *Miller*, 307 U.S. at 179 (“[T]he common view was that adequate defense of country and laws could be secured through the Militia—civilians primarily, soldiers on occasion.”). As Professor Laurence Tribe has explained, “the core meaning of the Second Amendment is a populist/republican/federalism one: Its central object is to arm ‘We the People’ so that ordinary citizens can participate in the collective defense of their community and their state.” 1 Laurence Tribe, *American Constitutional Law* 902 n.221 (3d ed. 2000); David B. Kopel, *It Isn’t About Duck Hunting: The British Origins of the Right to Arms*, 93 Mich. L. Rev. 1333, 1355 (1995) (“[O]ne of the reasons Congress guaranteed the right of the people to keep and bear arms was so that a popular militia could be drawn from the body of the people.”).

The Militia Clause, U.S. Const. art. I, § 8 cl. 15, which allowed the federal government to call on the People to defend the nation in times of need, thus reduced the demand for a massive federal army:

If the federal government can command the aid of the militia in those emergencies which call for the military arm in support of the civil magistrate, it can the better dispense with the employment of a different kind of force. If it cannot avail itself of the former, it will be obliged to recur to the latter. To render an army unnecessary, will be a more certain method of preventing its existence than a thousand prohibitions upon paper.

The Federalist 29 (Alexander Hamilton); H. Richard Uviller & William G. Merkel, *The Second Amendment in Context*:



*The Case of the Vanishing Predicate*, 76 Chi.-Kent L. Rev. 403, 512 (2000) (“In the years 1789-91, the operational role of the militia reflected the military dualism of the founders, who envisioned both a smallish standing army and a serviceably effective militia, each held in check by the federal structure.”); *Emerson*, 270 F.3d at 240 (“[F]ederal militia powers obviated the need for, or [at least] minimized the likelihood of, a large standing army being kept in existence.”).

The role of the People in defense of liberty, whether threatened domestically or from abroad, thus necessarily depended on citizens having ready access to arms. *See* The Federalist No. 29 (Alexander Hamilton) (“Little more can reasonably be aimed at, with respect to the people at large, than to have them properly armed and equipped. . . .”). Indeed, an individual right to keep arms “assure[s] the continuation and render[s] possible the effectiveness of the militia.” *Miller*, 370 U.S. at 178. And, by guaranteeing this right, citizens would have the skill needed to usefully bear them in defense of the Nation should the need arise. *See, e.g., Emerson*, 270 F.3d at 235 (“The militia consisted of the people bearing their own arms when called to active service, arms which they kept and hence knew how to use.”); *Silveira v. Lockyer*, 328 F.3d 567, 587 (9th Cir. 2003) (“An effective militia requires not only that people have guns, but that they be able to shoot them with more danger to their adversaries than themselves.”).

Thus, as the court below explained, “[a] ban on the use and ownership of weapons for private purposes, if allowed, would undoubtedly have had a deleterious, if not catastrophic, effect on the readiness of the militia

for action.” *Parker v. District of Columbia*, 478 F.3d 370, 394 (D.C. Cir. 2007). Petitioners’ conception of the Second Amendment, however, places the existence of the militia within the unfettered discretion of the States. It is inconceivable that the Framers enacted an amendment to the Constitution that once again gave the States a dominant role in national defense. As Alexander Hamilton wrote, the States cannot have the ultimate say in how the federal government utilizes the militia as part of its national security responsibilities: “If a well-regulated militia be the most natural defense of a free country, it ought certainly to be under the regulation and at the disposal of that body which is constituted the guardian of the national security.” *The Federalist No. 29* (Alexander Hamilton).

In sum, Petitioners’ contention that the Second Amendment is a grant of unconditional authority to the States to disarm the People is inconsistent with the bargain struck in the Constitution. By guaranteeing the right “to keep and bear Arms” in the Constitution, the Framers provided a check against the potential abuses a standing army might otherwise commit. Moreover, individual firearm ownership provided a second line of defense against foreign attack, thus allowing the formation of a smaller national army. A view of the Second Amendment that renders these important purposes subject to a State veto is not only historically inaccurate, but as Respondent has explained, irreconcilable with the text and structure of the Constitution. The court below correctly ruled that “the Second Amendment protects an individual right to keep and bear arms.” *Parker*, 478 F.3d at 395.

## **II. The Right To Individual Ownership Of Firearms Protected By The Second Amendment Is Essential To National Defense.**

The United States military benefits substantially from the ability to recruit from a pool of civilians that are already experienced in the use of firearms. In addition, having a ready force of armed civilians able to defend the nation from foreign invasion is a key component of national security. As such, failure to preserve the individual right to bear arms protected by the Second Amendment will undermine the national security of the United States.

### **A. The United States Military Benefits From the Ability to Recruit From a Pool of Civilians Experienced in the Use of Firearms.**

#### **1. *Military Recruits With Firearms Training and Experience Make Better Soldiers.***

Military recruits with training and experience with firearms in civilian life generally make better marksmen—and therefore better service members—than those who have not had such experience. As Secretary of War Elihu Root once explained:

‘I know of nothing more important in the way of preparation for war than teaching the young men of the country to shoot straight. . . . It is of no use to pay, equip, subsist, and transport a soldier to the battlefield unless he can hit an enemy when he shoots at him.’

*Secretary Root’s Farewell Report*, N.Y. Times, Dec. 7, 1903, at 5. “As a nation we must depend upon our

volunteer soldiers in time of trial. . . . Of course, a soldier who cannot shoot is a soldier who counts for very little in battle, and all credit is due to those who keep up the standard of marksmanship.” Letter from Theodore Roosevelt, President of the United States, to Priv. Howard Gensch, New Jersey Nat’l Guard (Sept. 25, 1904), *excerpted in* Jeffrey L. Rodengen, *NRA: An American Legend* 43 (2002).

The Nation’s political and military leaders thus placed a heavy emphasis on civilian marksmanship during World War II. President Franklin D. Roosevelt called “promotion, among the citizens of this Nation, of rifle marksmanship . . . an essential contribution to the national defense.” Letter from Franklin D. Roosevelt, President of the United States, to Major General M. A. Reckord, Executive Vice President, Nat’l Rifle Ass’n (Feb. 1, 1938) (reprinted in Appendix at 3a). Then-General Dwight D. Eisenhower similarly observed that “[a]ny young man that has ahead of him prospective service in the armed forces will do well to learn all he can about the American military rifle. . . . Expertness in its use cannot be over emphasized.” Letter from Gen. Dwight D. Eisenhower, Commander-in-Chief, Allied Force Headquarters, to Dr. M. J. Damlos, Cleveland Civilian Marksman’s Ass’n (Aug. 16, 1943) (5a).

During World War II, the National Rifle Association, in conjunction with the Army’s National Board for the Promotion of Rifle Practice (“NBPRP”), organized civilian shooting clubs and civilian instructors in a nationwide pre-induction rifle training program. The Director of the Selective Service System praised this program for “giv[ing] an opportunity to thousands of

American men to learn the basic principles of straight shooting prior to entering military service. . . . The place of marksmanship in the training of any soldier of the fight for victory cannot be underestimated.” Letter from Lewis G. Hershey, Dir., Selective Serv. Sys., to the Nat’l Rifle Ass’n (Feb. 1, 1943) (7a). Similarly, the Chairman of the War Manpower Commission noted that “our men must be trained to make the best use of the superior weapons with which they are armed,” and said that the National Rifle Association’s program “means more straight shooting and makes for victory.” Letter from Paul V. McNutt, Chairman, War Manpower Comm’n, to the Nat’l Rifle Ass’n (Feb. 3, 1943) (8a).<sup>4</sup>

Empirical data confirms these insights. The Department of the Army commissioned the consulting firm of Arthur D. Little, Inc. to evaluate the effectiveness of its civilian marksmanship program, the NBPRP, administered by the Director of Civilian Marksmanship (“DCM”). See Arthur D. Little, Inc., *A Study of the Activities and Missions of the National Board for the Promotion of Rifle Practice* (1966), reprinted in James

---

4. President Harry S. Truman later added that “[t]he tradition of a citizen soldiery is firmly, and properly, imbedded in our national ideals.” Letter from Harry S. Truman, President of the United States, to C. B. Lister, Sec’y-Treasurer, Nat’l Rifle Ass’n (Nov. 14, 1945) (9a). President John F. Kennedy, himself a World War II veteran, likewise attested to the importance of civilian marksmanship: “Through competitive matches and sports in coordination with the [NBPRP], the [National Rifle] Association fills an important role in our national defense effort, and fosters in an active and meaningful fashion the spirit of the Minutemen.” Letter from John F. Kennedy, President of the United States, to Franklin L. Orth, Executive Vice President, Nat’l Rifle Ass’n (Mar. 20, 1961) (11a).

B. Whisker, *The Citizen Soldier and United States Military Policy* (1979) (“Arthur D. Little Report”). The Arthur D. Little Report analyzed data from over 12,880 Army trainees at four Army Training Centers, and found that trainees who had previous experience with firearms in civilian life are generally better marksmen, are more likely to use their weapon effectively in combat, and are less likely to be wounded or killed in combat. *See id.* at 47, 58, 64.

The report also found that trainees with previous firearms experience were more likely to enlist in the armed forces, more likely to prefer a combat unit, more likely to choose units where they were likely to use a rifle (such as infantry and airborne units), more likely to seek to become marksmanship instructors, and more confident of their ability to use their rifle effectively in combat. *Id.* at 58. While only 15.4% of trainees overall achieved “Expert” marksmanship scores (the highest possible category), 68.6% of trainees who were members of a DCM-affiliated civilian shooting club achieved an “Expert” score. *Id.* The report therefore concluded that, “[t]he marksmanship instruction, supervised practice, safety training, and competitions . . . sponsored and supported by clubs, the NRA, and the DCM are of particular value to the military.” *Id.* at 82 (emphasis added).

More recently, a RAND Corporation report found that service members with previous experience or training in a variety of military-oriented tasks generally perform better than novices. Jennifer Kavanagh, RAND National Defense Research Institute, *Determinants of Productivity for Military Personnel: A Review of Findings on the Contribution of Experience, Training,*

*and Aptitude to Military Performance* (2005). Regarding the importance of experience in performing tasks, the report found that “there are relatively substantial returns to experience in the form of more effective performance on a wide range of tasks, heightened accuracy, and increased productivity.” *Id.* at 4. The report found similar benefits from training: “additional training can improve proficiency, reduce performance error, and lead to a higher technical skill level among personnel.” *Id.* at x.

Importantly, the report found that brief training periods—such as basic training—are not as effective at boosting performance as lifelong training: “Many studies suggest that it is the accumulation of training over a lifetime that has the largest effect on individual performance, rather than simply training in the previous six months.” *Id.* The implication for marksmanship training is clear: service members who have lifelong experience and training in handling firearms are likely to perform better in marksmanship and other firearms skills than those who only receive firearms instruction upon entering military service.

In sum, because of the distinct advantages of recruiting from a pool of civilians with firearms experience, the United States military can field a more potent and effective fighting force to defend our Nation. The Arthur D. Little Report found that “the more marksmanship instruction trainees received prior to service, the higher their record scores,” and concluded that “[s]hooting experience, and particularly marksmanship instruction, with military-type small arms prior to entry into military service contributes

significantly to the training of the individual soldier.” Arthur D. Little Report, *supra*, at 59, 82. Moreover, “the more marksmanship instruction, practice, competition and shooting experience individuals get before entering service, and the greater the density of such prior experience in the population of young men entering service, the more effective rifle units will be in combat and the fewer casualties they will suffer.” *Id.* at 64.<sup>5</sup> Put simply, the individual right to keep arms increases our military’s chances for battlefield success and, accordingly, its ability to protect the nation.

**2. *The United States Government Has a Long History of Promoting Civilian Firearms Ownership and Training.***

Training military personnel to use firearms “is an extensive, resource-intensive activity, using considerable manpower, equipment, consumables, facilities and installations.” John D. Winkler & Paul S. Steinberg, RAND Corp., *Restructuring Military Education and Training: Lessons from RAND Research 1* (1997). Moreover, in a crisis situation, the military may need to rapidly muster a large force with little time for formal training:

The problem is that the Army can by no means guarantee that sufficient in-service training

---

5. The report also noted that even trainees with no previous firearms experience assigned to units with a high number of experienced shooters tended to have higher marksmanship qualification scores. *Id.* at 63. The report explained that this was likely either because marksmanship instructors did not need to spend as much time with experienced shooters, or that the experienced shooters shared their knowledge and provided additional coaching to inexperienced shooters. *Id.*



time will be available in a future contingency. There could easily be a time when trained men might be required almost immediately. A future world war could not be expected to allow the luxury of time granted in the two previous world wars. A future police action might require troops immediately as well. It is against such possibilities that a trained reservoir of manpower is maintained.

James B. Whisker, *The Citizen Soldier and United States Military Policy* 39-40 (1979) (citations omitted).

To address these concerns, the United States government has had a long-standing national policy of promoting civilian marksmanship and civilian firearms ownership. The Civilian Marksmanship Program dates to 1903, when the War Department Appropriations Act created the National Board for the Promotion of Rifle Practice (NBPRP) and the National Matches, an annual shooting competition. *See* Civilian Marksmanship Program, *2007 Annual Report 2* (2007), available at [http://www.odcmp.com/annual\\_report.pdf](http://www.odcmp.com/annual_report.pdf) (last visited Feb. 9, 2008) (“2007 Annual Report”). Its purpose was “to provide civilians an opportunity to learn and practice marksmanship skills so they would be skilled marksmen if later called on to serve the U.S. military.” About the CMP, Civilian Marksmanship Program, [http://www.odcmp.com/about\\_us.htm](http://www.odcmp.com/about_us.htm) (last visited Feb. 9, 2008) (“About the CMP”).

At its first meeting on April 21, 1903, the NBPRP recommended:

that every facility should be offered citizens outside of the Army, Navy, Marine Corps, and organized militia to become proficient in rifle shooting, and that this purpose can best be accomplished by means of rifle clubs. The board therefore respectfully recommends the encouragement by the War Department of the organization of rifle clubs composed of those who would be eligible for service in time of war, but without special obligation for war service on account of membership. . . .

Rodengen, *supra*, at 41. The NBPRP also adopted a resolution in 1904 that created a National Marksmen's Reserve competition for members of civilian shooting clubs. High scoring shooters in the competition were recorded as members of the nation's "second line of defense" by the War Department. *Id.* at 43. "In the event of a national emergency, members of the Marksmen's Reserve were promised 'first consideration' after volunteering for active duty." *Id.* Commenting on the NBPRP's purpose and early activities, Acting Secretary of War General Robert Shaw Oliver said:

Our permanent military establishment or regular army must be small, . . . and in the event of a war with one or more of the first-class powers of the world we must depend largely upon the militia and the volunteers for our fighting force. With the modern long-range small arm it is all-important that the

soldier should know how to shoot, and to hit what he shoots at.

*Plans a Great Army of Expert Marksmen*, N.Y. Times, Oct. 17, 1904, at 9.

The NBPRP also promoted civilian ownership of military firearms. In 1905, at the request of the NBPRP, Congress passed Public Law 149, which authorized the sale, at cost, of surplus military rifles and ammunition to civilian shooting clubs approved by the NBPRP. *See* Rodengen, *supra*, at 43. In 1910, Congress authorized the War Department to issue free surplus rifles and ammunition to shooting clubs, under the direction of the NBPRP. *See id.* at 53-54; *see also infra* note 6 and accompanying text.

The national commitment to civilian marksmanship was to some, however, still insufficient. As World War I raged in Europe, and U.S. entry seemed imminent, American Civil War veteran General George W. Wingate penned an editorial in the *New York Times* entitled “Teach Our Boys How to Shoot,” which pointed to “the utter failure of the hastily collected and untrained ‘emergency men’ of Pennsylvania to offer any resistance worthy of the name to the invasion of that State by Lee’s Veterans in 1863” as well as “the lamentable lack of skill in the use of the rifle shown by the British volunteers, and the great superiority of the Boers in battle resulting from their splendid marksmanship.” Gen. George W. Wingate, *Teach Our Boys How to Shoot*, N.Y. Times, Jan. 31, 1915, at SM21. General Wingate proclaimed the necessity of civilian marksmanship to a useful military reserve for the U.S. military and called for a national rifle club movement: “It is a sport practiced

as a sport, but it has a national value that other sports do not have, in that it will fit those who practice it to be efficient soldiers if their country needs them to be soldiers.” *Id.* He also noted that the New York City Public Schools Athletic League trained 5,000 boys a year with .22 caliber rifles, and produced 400 boy sharpshooters whose shooting with a service rifle was equal or superior to National Guardsmen despite never having used a service rifle before competition. *Id.*

The National Defense Act of 1916 solidified the national policy of promoting civilian marksmanship and gun ownership. *See* Rodengen, *supra*, at 64-65. The Act dedicated \$300,000 to promoting civilian marksmanship training. *Id.* It also directed that all military rifle ranges “shall be open for use by . . . all able-bodied males capable of bearing arms,” and authorized the President to detail military firearms instructors to shooting ranges “for the purpose of training the citizenry in the use of the military arm.” National Defense Act of 1916 § 113, 39 Stat. 166, 211 (1917). The Act continued the distribution of surplus military rifles to civilians, authorizing the Secretary of War “to provide for the issue of a reasonable number of standard military rifles and such quantities of ammunition as may be available for use in conducting such rifle practice.”<sup>6</sup> *Id.*

---

6. The distribution of surplus firearms and ammunition to civilians and civilian shooting clubs for free, on loan, or at substantial discounts continued for over fifty years. *See* Jack Raymond, *Closer Check is Planned on Members of Rifle Clubs Obtaining U.S. Arms*, N.Y. Times, June 7, 1964, at 41. From 1960 to 1964, the Army sold 539,267 rifles and other firearms to civilians at discount, and spent another \$12 million distributing free weapons and ammunition,

(Cont’d)

Finally, the Act created the office of the Director of Civilian Marksmanship (“DCM”) as the implementing agency for the NBPRP, and part of the U.S. Army. Rodengen, *supra*, at 64-65. The Civilian Marksmanship Program, as it later became known, was run under the U.S. Army’s DCM supervision from 1916 to 1996. About the CMP, *supra*. The Civilian Marksmanship Program continues to the present day, having been privatized in 1996 and entrusted to the congressionally created Corporation for the Promotion of Rifle Practice and Firearm Safety, which is directed “to instruct citizens of the United States in marksmanship . . . to promote practice and safety in the use of firearms . . . to conduct competitions in the use of firearms . . . to issue, loan, or sell firearms, ammunition, repair parts, and other supplies.” 36 U.S.C. § 40722. The Civilian Marksmanship Program operates with the cooperation and support of the U.S. Army, which supplies surplus .22 and .30 caliber rifles. 2007 Annual Report at 1-2.

Congress’ commitment to civilian marksmanship training further undermines the District’s “states’ rights” conception of the Second Amendment.<sup>7</sup> Indeed,

---

(Cont’d)

including 246.9 million rounds of free ammunition. *See Army Gives Figures on Civilian Weapons*, N.Y. Times, Aug. 16, 1964, at 46. In the late 1960s, the program was scaled back “to those clubs most of whose members still have their service obligation ahead of them and whose marksmanship training would be of greatest value to the military services.” *Army Cuts Help to Gun Programs of Civilian Clubs*, N.Y. Times, June 22, 1968, at 1.

7. *Amici* recognize that a separate group of retired military officers has offered its views to the Court regarding the value of

(Cont’d)

the entire program is premised on the assumption that fostering private ownership and experience with firearms contributes to national defense. Had Congress agreed with the position taken here by the District, promotion and direct financing of individual firearms training would make little sense. Congress simply could have allocated funds to the States—as it does in a myriad of other areas, such as education, where the state and local government have primary authority. The Civilian Marksmanship Program is powerful evidence of Congress’ longstanding commitment to an individual-rights view of the Second Amendment.

---

(Cont’d)

an individual right to keep and bear arms to military service, as well as other issues. *See* Brief of Maj. Gen. John D. Altenburg, Jr., et al., *District of Columbia v. Heller*, No. 07-290 (Feb. 7, 2008). While *Amici* agree with that portion of the brief explaining why such access is vital to the national defense, *Amici* do not share their view that this case can be resolved under the Home Act Rule or an implied preemption analysis. *See, e.g., McIntosh v. Washington*, 395 A.2d 744, 751 (D.C. 1978) (firearms legislation permitted under Home Rule Act); *Fresno Rifle & Pistol Club, Inc. v. Van de Kamp*, 746 F. Supp. 1415, 1426-27 (E.D. Cal. 1990), *aff’d*, 965 F.2d 723, 725-27 (9th Cir. 1992) (state firearms statute not preempted by Civilian Marksmanship Program); *Richmond Boro Gun Club, Inc. v. City of New York*, 896 F. Supp. 276, 288-89 (E.D.N.Y. 1995), *aff’d*, 97 F.3d 681, 688 (2d Cir. 1996) (same); *Arnold v. Cleveland*, 616 N.E.2d 163, 175 (Ohio 1993) (same). In any event, these issues were not litigated below and are not part of the questions presented as formulated by this Court.

### **3. *Handgun Training is Beneficial to Military Effectiveness and National Defense.***

As Respondent explains, there is no serious argument that handguns fall beyond the protection of the Second Amendment. *See* Resp. Br. at 46-50. Indeed, although rifles are the primary combat weapon issued to infantry units, handguns are issued to many service members and are frequently used by the military. The armed services “issue pistols for personal protection to officers, senior non-commissioned officers, military police personnel, pilots, and crews of aircraft, combat vehicles and automatic weapons systems.” Harold Kennedy, *Beretta 9mm Finds Niche in ‘Low Intensity’ Missions*, National Defense, Oct. 2000. More than 2.5 million .45 caliber Colt M1911 and M1911A1 service pistols were produced for the U.S. military over three quarters of a century. *Id.* The 9mm Beretta M9 service pistol was adopted as the official military service pistol in 1985, and over 316,000 pistols were delivered to the U.S. military in its first fifteen years of service. *Id.*

This wide distribution of handguns is not without reason; handguns see frequent use in the military. In the fifteen year period of 1985-2000, U.S. service members carried the M9 on more than 70 operations. *Id.* Furthermore, the U.S. military has long encouraged handgun training and marksmanship. The Department of the Army produces a 100-page U.S. Army Combat Pistol Training manual, which includes instruction on operating the M9, the M1911A1, and the .38 caliber revolver. Department of the Army, *U.S. Army Combat Pistol Training Manual* (2003). And, for at least a century, the various branches of the military have

sponsored and competed in a variety of pistol matches, including the prestigious National Pistol Match. *See USAMU Hosts Small Arms Championships*, Infantry Magazine, Mar. 1, 2005 (mentioning service member winners of the “Secretary of the Army Pistol Match”); *Marines Triumph in Pistol Shoot*, N.Y. Times, Sept. 5, 1939, at 34; *Christofferson is Pistol Champion*, N.Y. Times, Aug. 28, 1919, at 13.

Moreover, many skills involved in shooting, safely handling, and cleaning firearms are fairly universal and thus may be applied to other firearms beyond handguns. Director of Civilian Marksmanship Colonel F.C. Endicott noted that “the basic marksmanship fundamentals which apply to the rifle apply as well to any other gun, large or small.”<sup>8</sup> Letter from Colonel F.C. Endicott, Dir. of Civilian Marksmanship, A.G.F., to the Nat’l Rifle Ass’n (Feb. 27, 1943) (13a). Firearms experts therefore have developed universal gun safety rules. *See, e.g.*, Gregory B. Morrison & Jeff Cooper, *The Modern Technique of the Pistol* (1991); *Universal Gun Safety Rules*, Americans for Gun Safety Foundation, available at [http://www.campaignadvantage.com/services/websites/archive/agsfoundation/safety/r\\_universal.html](http://www.campaignadvantage.com/services/websites/archive/agsfoundation/safety/r_universal.html) (last visited Feb. 9, 2008) (stating that their Universal Gun

---

8. The six basic marksmanship fundamentals discussed in the *U.S. Army Combat Pistol Training Manual* are very similar to the Fundamentals of Marksmanship discussed in Marine Corps Reference Publication (MCRP) 3-01A, *Rifle Marksmanship*, with both manuals explaining sight alignment, sight placement/sight picture, breath control, grip, and trigger control/trigger squeeze. *Cf.* Department of the Army, *U.S. Army Combat Pistol Training Manual* (2003); Department of the Navy, Marine Corps Reference Publication (MCRP) 3-01A, *Rifle Marksmanship* (2001).



Safety Rules “apply to virtually any situation involving firearms.”). Thus, civilians who are familiar with handgun marksmanship and safety are much more likely to be able to safely and accurately fire a rifle or other firearm with minimal training upon entering military service.<sup>9</sup>

### **B. Armed Civilians Are an Effective Deterrent To and Defense Against Foreign Invasion.**

In addition to the benefits that the military derives from being able to recruit from a pool of civilians experienced in the use of firearms, the existence of a large number of armed civilians poses a strong deterrent to any potential foreign invasion. Potential foreign aggressors know that to successfully invade the United States, they must not only defeat our military forces on the field of battle, but they must also attempt to suppress a well-armed population experienced in the use of firearms.

---

9. Moreover, in many urban areas, such as the District, handguns are a much more practical firearm for most residents to own because they are both easier to store in smaller urban dwellings and because local range facilities are more likely to accommodate handguns than rifles. Because of the more powerful ammunition used in rifles, it is often difficult to find rifle ranges in urban areas. See Sheppard Kelly, *Short Range Training Ammo, American Handgunner Tactical: 2008 Special Edition Annual* 84 (2007). In order for urban residents, such as the citizens of the District, to become proficient in the use of a firearm and thereby contribute to the national defense, it must be legal for them to own a handgun that they can store and transport both within their homes and to shooting ranges and repair facilities.

## 1. *The American Experience*

Armed civilians have defended America since even before its formal existence, as colonists took up arms against the tyranny of British rule. See David T. Hardy, *Armed Citizens, Citizen Armies: Toward a Jurisprudence of the Second Amendment*, 9 Harv. J.L. & Pub. Pol'y 559, 593 (1986) (“The widespread American ownership of arms did not go unnoticed in the mother country, where it was often cited by English Whigs as a reason to negotiate rather than use force.”). The colonial militia played a key role in the American Revolution:

[F]rom the British viewpoint, rebel militia was one of the most troublesome and [un]predictable elements in a confusing war. The militia nullified every British attempt to impose royal authority short of using massive armed force. The militia regularly made British light infantry, German Jäger, and Tory Raiders pay a price, whatever the cost to the militia itself. . . . The militia never failed in any real emergency to provide reinforcements and even reluctant draftees for the State and Continental regular forces. From the British viewpoint, the militia was the virtually inexhaustible reservoir of rebel military manpower, and it was also the sand in the gears of the pacification machine.

John W. Shy, *The Military Conflict Considered as a Revolutionary War*, *Essays on the American Revolution* (Stephen Kurtz & James Hutson eds., 1973) reprinted in John W. Shy, *A People Numerous and Armed* 213, 237 (rev. ed. 1989).

Beleaguered by the continued harassment from frequent guerilla attacks by both regular and irregular militia, British morale plummeted as troops found themselves isolated in an unfriendly land. “Restricted to little more than the ground they stood on, the British increasingly found subsistence a matter of considerable difficulty.” Eric Robson, *The American Revolution: In Its Political and Military Aspects, 1763-1783* at 162 (1965). This success of the colonial militia in hounding the redcoats across the countryside—and perhaps the success of the American Revolution itself—would not have been possible had colonial citizens not been widely armed. See William Marina, *Militia, Standing Armies, and the Second Amendment*, *The Law & Liberty* (Summer 1975) (explaining that the “most important single fact about the Revolution, and which alone made a protest and a fight to defend their liberties possible” was “the almost universal ownership of firearms, expertise in their usage, and membership in a citizen’s militia, which characterized the American scene”).

Having helped to win the nation’s independence, American civilians were again called upon to defend their country as the militia in the War of 1812, most notably in the Siege and Battle of New Orleans, which culminated on January 8, 1815. In the battle, General Andrew Jackson commanded not only regular military units, but also an irregular force composed of state militia from several southern states, New Orleans uniformed and irregular city militia mustered en masse from the city residents, a battalion of free men of color, frontiersmen volunteers, Choctaw Indians, and a group of Baratarian pirates (or “privateers”) fighting under Jean Lafitte. See Robert V. Remini, *The Battle of New Orleans*:

*Andrew Jackson and America's First Military Victory* 2, 59, 133 (2001). Although the performance of some untested irregular units was not flawless, the irregulars' marksmanship, local knowledge, and other skills nonetheless proved invaluable as Jackson handily defeated a much larger force of British regulars. *See id.* at 116, 146, 153-54, 162.

Moreover, even after the militia in America had largely been formalized as the National Guard, armed civilians have been called upon to defend the nation. On December 7, 1941, Hawaii activated the Hawaiian Territorial Guard, a group made up largely of ROTC cadets from the University of Hawaii and local high schools that was assigned to guard important public buildings and other installations. *See* Michael Slackman, *Target: Pearl Harbor* 254 (1991). Similarly, after the Alaska National Guard had been called up for federal service, the Alaskan territory was defended by the civilian Alaskan Territorial Guard, a largely Native militia of 6,600 "old men," "boys," and "sharpshooting women." *Remembering WWII Militia That Guarded Alaska After Japanese Attack*, Associated Press, Oct. 15, 2007, available at <http://www.ktuu.com/global/story.asp?s=7217004> (last visited Feb. 9, 2008).

## **2. *The Swiss Example***

Switzerland is often recognized for its successful reliance on a well-armed citizen militia to deter invasion and defend the nation. *See* Lawrence Patton McDonald, Gen. George S. Patton & Gen. Lewis W. Walt, *The Swiss Report* (1983), available at [http://www.constitution.org/mil/swiss\\_report.htm](http://www.constitution.org/mil/swiss_report.htm) ("The Swiss Report") (last visited Feb. 9, 2008). This is generally attributed to the fact that

the Swiss militia encompasses every able-bodied male between the ages of 20-50, who must keep a rifle and militia equipment in their homes, coupled with the strong Swiss tradition of competitive marksmanship: “Since 1815 the Swiss have not fought in a foreign war, yet they have maintained the tradition of a citizen army and rifle and pistol shooting are among the nation’s most popular sports with almost every village having a shooting range.” *Id.*

Despite sitting at the crossroads of Europe, neutral Switzerland was left alone by Nazi Germany during World War II—not because the German military was unable to invade—but because it was unwilling; German military officers determined that the resistance of the heavily armed Swiss citizens would make the cost too great. *See id.*; *see also* Stephen P. Halbbrook, *Target Switzerland: Swiss Armed Neutrality in World War II* 65-66 (2003). Their decision was likely influenced by descriptions of the Swiss militia at the time as “the best defensive force in Europe . . . an army of sharpshooters who have competed for marksmen’s prizes from boyhood.” *Id.* at 71 (quotation and citation omitted).

Anticipating potential Nazi aggression in early 1939, the Swiss government announced an ordinance giving it authority to mobilize their militia without further notice; the announcement was designed as a deterrent measure, made just hours before Adolf Hitler was to give his annual Reichstag speech, which the Swiss feared might declare their nation a target. *See id.* at 65. In further preparation, the Swiss shooting associations urged the citizenry to take “the strongest measures of preparedness.” *Id.* at 66. On September 1, 1939, the

morning that Germany invaded Poland, the Swiss militia was ordered to mobilize; two days later, the Swiss militia had mobilized a fighting force of 435,000 from a population of just 4.2 million. *See id.* at 78. In contrast to the French, who took weeks to mobilize, “[t]he Swiss could mobilize quickly because *every man had his arms and equipment at home.*” *Id.* (emphasis added). Using this threat of a ready and highly capable citizen militia, Switzerland successfully defended its borders during the second world war.

The Swiss employed a similar defensive doctrine during the Cold War. The Swiss militia continues to have two primary goals: “(1) to deter war by the principle of dissuasion; and (2) if deterrence fails, to defend the territory and the population.” The Swiss Report, *supra*. The Swiss doctrine emphasizes making any potential invasion as costly as possible to the aggressor:

Dissuasion is a strategic posture which should persuade a potential aggressor to avoid armed conflict, by convincing him of the disproportion existing between the advantages gained from an attack on the country and the risks entailed. The risks which a potential aggressor must be made to perceive consists in the loss of prestige, military forces, war-potential and time, as well as in running counter to his ideological, political and economic interests.

*Id.* (quotation marks omitted). The Swiss will initially engage an enemy at the borders in conventional warfare, and then battle unconventionally if necessary: “The Swiss plan is to make every inch gained by the enemy a

bloody and costly gain. In the event main units of the Army are destroyed, Swiss doctrine calls for continued passive and active resistance by means of guerrilla warfare.” *Id.*

The key to the Swiss defensive doctrine of dissuasion is a nation full of armed citizens:

The armed population is no bluff. Swiss militiamen are not required to turn in their weapons upon completion of their obligation. It is said that every Swiss home contains at least three weapons, for not only is there the militia system, but there is a long tradition of civilian ownership of firearms and, as pointed out before, rifle and pistol shooting are virtually the national sports of Switzerland.

*Id.* Without armed civilians in every home, the Swiss defensive doctrine would be rendered toothless and ineffective.

\* \* \*

In sum, besides representing the proper construction of this constitutional provision, interpreting the Second Amendment to guarantee individuals the right to keep arms is in the national interest. Individual ownership and possession of firearms clearly leads to a citizenry skilled in their use. Widespread familiarity with, and access to, firearms thus contributes to national defense in two important ways: it produces better soldiers and provides a second line of defense against foreign aggressors. As experience has taught, these are

not remote concerns; the People have consistently been called on to defend the Nation. By affirming the decision below, this Court can ensure that national defense and military preparedness is no longer undermined by jurisdictions, such as the District, that have thoughtlessly decided to disarm their citizens.

### CONCLUSION

For all of these reasons, the judgment of the court of appeals should be affirmed.

Respectfully submitted,

ANDREW G. McBRIDE

*Counsel of Record*

WILLIAM S. CONSOVOY

BRENDAN J. MORRISSEY

DAN ALBAN

WILEY REIN LLP

1776 K Street, NW

Washington, D.C. 20006

(202) 719-7000

*Counsel for Amicus Curiae*



**APPENDIX A — RETIRED MILITARY OFFICERS**

Rear Admiral John C. Albright, National Oceanic and  
Atmospheric Administration

Brigadier General Sidney Baumgarten, New York  
National Guard

Major General John E. Bianchi, California National  
Guard

Brigadier General Vincente T. Blaz, United States  
Marine Corps, former member of United States  
Congress

Major General Miles Durfey, United States Air Force

Sergeant Major Julius W. Gates, United States Army

Rear Admiral Jan C. Gaudio, United States Navy

Rear Admiral Harry E. Gerhard, Jr., United States Navy

Brigadier General Arthur Gerwin, United States Air  
Force

Major General Timothy M. Haake, United States Army  
Reserve

Lieutenant Colonel Steven M. Harness, United States  
Army

Lieutenant General William M. Keys United States  
Marine Corps

Brigadier General Stephen D. Korenek, Alaska National  
Guard

Major Edward James Land, Jr., United States Marine  
Corps

*Appendix A*

Major General Douglas S. Metcalf, United States Air  
Force

Rear Admiral Jack Monger, United States Navy

Major General Jerald C. Newman, New York National  
Guard

Brigadier General William A. Newton, Jr., United States  
Army

Captain Daniel I. Nylén, United States Navy

Rear Admiral Robert S. Owens, United States Navy

Rear Admiral Robert O. Passmore, United States Navy

Rear Admiral Frank E. Raab, United States Navy  
Reserve

Brigadier General Lewis Spencer Roach, United States  
Army Reserve

Colonel Frederick Wintrich, United States Army

**APPENDIX B — LETTERS CITED**

**THE WHITE HOUSE**

Washington

February 1, 1938

My dear General Reckord:

On the occasion of the Annual Dinner of the National Rifle Association on February fourth, I will be very happy if you will convey my greetings and best wishes for a long life of service for your successful organization.

From a small beginning your Association has grown to large proportions. You are doing what I believe to be a meritorious work, contributing your efforts to carrying on the successful promotion, among the citizens of this Nation, of rifle marksmanship — an accomplishment in which our forefathers so effectively excelled. The growth of your Association is thoroughly consistent with the fundamental soundness of the purpose for which it was organized.

Both national and international rifle competitions, which you encourage, have served to inject the idea of sport into rifle shooting. I sincerely hope that it may always be kept on this basis which, while encouraging a free spirit of rivalry also makes an essential contribution to the national defense.

Very sincerely yours

s/ Franklin D. Roosevelt

4a

*Appendix B*

Major General M.A. Reckord,  
Executive Vice President,  
National Rifle Association  
Washington, D.C.

5a

*Appendix B*

ALLIED FORCE HEADQUARTERS  
Office of the Commander-in-Chief

16 August, 1943.

Dear Dr. Damlos:

It was nice to hear from you after all these years. I knew you'd be doing something useful in this war.

Any young man that has ahead of him prospective service in the armed forces will do well to learn all he can about the American military rifle. If he can become a really capable rifleman, so much the better. Once he has donned the uniform he will find his hours and days so packed with intensive training that he will find the time all too short to learn the many things he should know, for his own self-preservation, before he is called upon to meet the enemy. The one weapon that every man – soldier, sailor and airman – should be able to use effectively is the rifle. It is always his weapon of personal safety in an emergency, and for many it is the primary weapon of offense and defense. Expertness in its use cannot be over emphasized.

If the Cleveland Civilian Marksman's Association is bringing this kind of training and knowledge to the men who will one day become either officers or enlisted men in any of the armed forces, it is doing them, and the country, a service of incalculable value. I wish you luck.

Cordially,  
s/ Dwight D. Eisenhower

6a

*Appendix B*

Dr. M.J. Damlos,  
Mentor Ave. and Southwood Road,  
Mentor, Ohio.

7a

*Appendix B*

NATIONAL HEADQUARTERS  
SELECTIVE SERVICE SYSTEM  
21ST STREET AND C STREET, N.W.  
WASHINGTON, D.C.

February 1, 1943

National Rifle Association  
1600 Rhode Island Avenue, N.W.  
Washington, D.C.

Gentlemen:

The National Rifle Association Nation Wide Pre-Induction Rifle Training Program will give an opportunity to thousands of American men to learn the basic principles of straight shooting prior to entering military service. I am sure that all prospective selectees will take advantage of these benefits wherever it is possible for them to do so.

The place of marksmanship in the training of any soldier of the fight for victory cannot be underestimated. It is reassuring to know that prospective soldiers have an opportunity to learn to use the finest small arms weapons in the world.

Sincerely yours,

s/ Lewis G. Hershey  
DIRECTOR.

8a

*Appendix B*

Office for Emergency Management

WAR MANPOWER COMMISSION

Washington, D.C.

February 3, 1943

National Rifle Association  
1600 Rhode Island Avenue, N.W.  
Washington, D.C.

Gentlemen:

Americans in war have always been deadly against enemies of their country because of superb leadership backed up by high courage and great skill in the use of weapons.

To defeat the bandit nations which have wantonly attacked us, our men must be trained to make the best use of the superior weapons with which they are armed.

The patriotic program of the National Rifle Association to organize the volunteer effort of its more than 3,000 rifle clubs and hundreds of capable instructors to provide pre-induction rifle training to our men who are soon to be called to the colors means more straight shooting and makes for victory.

Sincerely yours,

Paul V. McNutt  
Chairman



9a

*Appendix B*

THE WHITE HOUSE

Washington

November 14, 1945

Dear Mr. Lister:

The tradition of a citizen soldiery is firmly, and properly, imbedded in our national ideals. Initiative, discipline, and skill in the use of small arms are essentials for the development of the finished citizen soldier.

The National Rifle Association, in the periods between our last four wars, has done much to encourage the improvement of small arms and of small-arms marksmanship in the regular services, as well as in the National Guard, reserve units, and the civilian population.

During the war just ended, the contributions of the Association in the matter of small-arms training aids, the nation-wide pre-induction training program, the recruiting of experienced small-arms instructors for all branches of the armed services, and technical advice and assistance to Government civilian agencies aiding in the prosecution of the war – all contributed freely and without expense to the Government – have materially aided our war effort.

10a

*Appendix B*

I hope that the splendid program which the National Rifle Association has followed during the past three-quarters of a century will be continued. It is a program which is good for a free America.

Sincerely,

s/ Harry Truman

Mr. C.B. Lister, Secretary-Treasurer  
National Rifle Association of America  
1600 Rhode Island Avenue, N.W.  
Washington, D.C.

11a

*Appendix B*

THE WHITE HOUSE

WASHINGTON

March 20, 1961

Dear Mr. Orth:

On the occasion of Patriots Day, I wish to offer my congratulations and best wishes to the National Rifle Association of America which over the past years has done credit to our country by the outstanding achievements of its members in the art of shooting.

Through competitive matches and sports in coordination with the National Board for the Promotion of Rifle Practice, the Association fills an important role in our national defense effort, and fosters in an active and meaningful fashion the spirit of the Minutemen.

I am pleased to accept Life Membership in the National Rifle Association and extend to your organization every good wish for continued success.

Sincerely,

s/ John F. Kennedy

Mr. Franklin L. Orth  
Executive Vice President  
National Rifle Association of America  
1600 Rhode Island Avenue  
Washington, D.C.

12a

*Appendix B*

WAR DEPARTMENT  
OFFICE OF  
DIRECTOR OF CIVILIAN MARKSMANSHIP  
WASHINGTON, D.C.

February 27, 1943

National Rifle Association of America,  
1600 Rhode Island Avenue, N.W.  
Washington, D.C.

Gentlemen:

I heartily indorse the program of the National Rifle Association and The Evening Star offering pre-induction marksmanship instruction to the men of Washington. This training course, and the national program of which it is a part, will be of inestimable value to the student and to the Army as well, and will go a long way toward making America's fighting forces the finest marksmen in the world.

Training in rifle marksmanship is of more importance in this war than ever. First, because every unit in the field is a combat unit, whether it be infantry, artillery, quartermaster or motor maintenance. It is subject to sudden and unexpected attack by parachute troops or roving mechanized forces. Thus, to be prepared for such eventuality, each man must be trained in the use of his individual weapon – rifle, carbine or submachine gun.

*Appendix B*

Second, because the basic marksmanship fundamentals which apply to the rifle apply as well to any other gun, large or small. Men who are properly grounded in this use of the rifle adapt themselves more quickly when in the service to any gun assigned them.

The instruction methods to be followed in this course are based on sound principles and doctrine, are identical to those followed at the Small Arms Firing School held in conjunction with the National Matches at Camp Perry, and closely parallel marksmanship instruction courses in all branches of service. All men anticipating military service should regard it an obligation to take advantage of this school.

Yours truly,

s/ F.C. Endicott  
Colonel, GSC,  
Director of Civilian  
Marksmanship, A.G.F.