

No. 24-178

In the

Supreme Court of the United States

OAKLAND TACTICAL SUPPLY, LLC; JASON RAINES;
MATTHEW REMENAR; SCOTT FRESH; RONALD PENROD; AND
EDWARD GEORGE DIMITROFF,

Petitioners,

v.

HOWELL TOWNSHIP, MI,

Respondent.

*ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT*

**MOTION FOR LEAVE TO FILE AMICUS
CURIAE BRIEF AND AMICUS CURIAE BRIEF
OF CENTER FOR HUMAN LIBERTY IN
SUPPORT OF PETITIONERS**

BRADLEY A. BENBROOK

Counsel of Record

STEPHEN M. DUVERNAY

Benbrook Law Group, PC

701 University Ave., Ste. 106

Sacramento, California 95825

(916) 447-4900

brad@benbrooklawgroup.com

Counsel for Amicus Curiae

**MOTION FOR LEAVE TO FILE AMICUS CURIAE
BRIEF IN SUPPORT OF PETITIONERS**

Pursuant to Rule 21.2(b), Center for Human Liberty (“CHL”) moves the Court for relief from Rule 37.2’s ten-day notice requirement for the filing of *amicus* briefs, so that CHL’s *amicus* brief in this matter may be docketed. Counsel for CHL mistakenly believed that, when the Court removed the notice and consent requirements for *amicus* briefs in connection with merits briefing, it likewise removed those requirements at the certiorari stage. We realized upon filing that Rule 37.2 still requires ten days’ notice at the certiorari stage (but not consent). We immediately notified counsel for Respondent Howell Township, MI prior to filing that morning, September 19. Because Respondent had already received an extension to submit its brief, Respondent actually received 32 days’ notice of our filing.

The clerk’s office followed up on September 23 to inquire whether Respondent’s counsel nevertheless objected to having received notice on September 19. After reaching out that day and seven more times by phone and email over the following 11 days to seek Respondent’s consent, counsel for Respondent advised on September 30 that Respondent does object to the docketing of CHL’s brief.

Despite the clerk’s request that we inquire whether Respondent objected, counsel questioned whether Respondent could grant consent to the filing and asserted that the brief’s “historical authorities appear irrelevant” to the question presented. We also note respectfully that Respondent’s objection is made despite: (a) having received 22 days’ more notice than is required by Rule 37.2

because of its extension; (b) there being no other *amicus* briefs offered in support of certiorari in this case; and (c) the Court's removal of the prior consent requirement.

We originally filed this motion as a stand-alone document on September 30, immediately after learning Respondent's position. We now resubmit the motion along with the brief pursuant to Rule 37.5.

We apologize for the mistake and pray the Court to allow the filing of CHL's *amicus* brief.

Respectfully submitted,

BRADLEY A. BENBROOK

Counsel of Record

STEPHEN M. DUVERNAY

Benbrook Law Group, PC

701 University Ave., Ste. 106

Sacramento, California 95825

brad@benbrooklawgroup.com

Counsel for Amicus Curiae

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INTEREST OF *AMICUS CURIAE*¹

The Center for Human Liberty is a nonprofit organization dedicated to defending and advancing individual liberty and freedom, including the rights and liberties protected by the Constitution. Consistent with this purpose, the Center for Human Liberty engages in legal efforts, including the submission of amicus briefs, to promote the protection of liberty. The Center is interested in this case to ensure that the government's regulation of firearm ranges is consistent with the original meaning of the Second Amendment as the Framers understood it, which is necessary to ensure that the people have the right to effectively train with firearms at long range.

SUMMARY OF ARGUMENT

The petition should be granted to resolve the split over the courts' differing treatment of firing-range regulation. *Amicus* offers this brief to establish two important and related points.

First, the panel's conclusion that the Second Amendment is not implicated by the regulation of long-range

¹ Pursuant to Supreme Court Rule 37.6, *amicus* affirms that no counsel for a party authored this brief in whole or in part, and that no person or entity other than *amicus* and its counsel made a monetary contribution intended to fund the preparation or submission of this brief. Petitioner has consented to the brief's filing. Respondent was notified on the day of filing and has not provided a response.

training stems from a profound misunderstanding of *District of Columbia v. Heller*, 554 U.S. 570 (2008). The panel wrongly assumed that because *Heller* rejected one all-or-nothing argument about the purpose of the Second Amendment (that it supposedly only protected a right to bear arms for organized militia service) the Court must have established a different all-or-nothing proposition about the Second Amendment's purpose (that it only protects an individual right to possess a weapon in case of confrontation at close range).

Heller did no such thing. To the contrary, it demonstrated repeatedly that the Founders understood the Second Amendment protected multiple uses of firearms in addition to individual self-defense. Those purposes include hunting and collective defense, whether to repel a foreign enemy or a tyrannical federal government. Importantly for this case, each of these additional uses necessarily involves long-range firing.

Second, consistent with *Heller*'s conclusion, the historical record reveals multiple instances in which long-range firing provided significant benefit to our Republic. Outstanding marksmanship not only allowed frontier and rural colonists to survive, but then-General Washington's first recruits for the Continental Army were frontier riflemen. Their exploits took on mythical status.

The public's interest in long-range accuracy was further evidenced by consistent technological advances in riflery during both the 18th and 19th centuries. President Lincoln took interest in this evolution and its impact on long-range firing, and he insisted that the Union Army be stocked with the most up-to-date rifles.

And when the general level of marksmanship declined, as in the period leading up to the Civil War, several leaders exhorted civilians to regain those skills to ultimately promote the national defense. A renaissance in marksmanship ensued, and long-range firing facilities and competitions sprung up around the nation.

President Theodore Roosevelt continued to lobby Congress and the people to pursue these efforts through a government-funded program that eventually became the Civilian Marksmanship Program, which has provided essential firearms training and promoted marksmanship through competitions for over a century. This program continues today.

In sum, the historical evidence demonstrates that *Heller* was correct: since the Founding, the people have valued their Second Amendment protected right to keep and bear arms for purposes beyond simply personal self-defense at close range.

The petition should be granted.

ARGUMENT

I. **The Second Amendment's Purpose Is Not Limited To Arming Individuals For Self-Defense At Close Range.**

The panel begins with the flawed premise that the Second Amendment *only* “secures an individual right to ‘possess and carry weapons in case of confrontation.’” *Oakland Tactical Supply, LLC v. Howell Township, MI*, 103 F.4th 1186, 1192 (6th Cir. 2024) (citing *Heller*, 554 U.S. at 592). From there, the panel assumed that any right to train for the safe and proficient exercise of the right to

keep and bear arms must also be limited to training only for “confrontation” at close range. *Id.* at 1198. The panel accepted that short-range training “was necessarily implied by the Second Amendment,” but longer-range training, it concluded, was not: While “the Founding-era public understood *military* proficiency to include accuracy at these long distances, they do not establish that the Second Amendment right—which is unconnected to ‘participation in a structured military organization’—was similarly understood.” *Id.* at 1199 (quoting *Heller*, 554 U.S. at 584).

The panel’s analysis stems from a profound misunderstanding of *Heller*. The question in *Heller* was whether the District of Columbia’s total ban on possession of firearms violated the Second Amendment. The District of Columbia argued that the Second Amendment’s prefatory clause—“A well regulated Militia, being necessary to the security of a free State”—cabined the right to “no more than the right to keep and use weapons as a member of an organized militia.” 554 U.S. at 600.

When *Heller* stated that the Second Amendment protected right was “unconnected” from organized military service, *see, e.g.*, 554 U.S. at 577, 583, 606, 610, it was rejecting the all-or-nothing argument that the Second Amendment protected *only* a right to bear arms for military service. When analyzing the Second Amendment’s operative clause, for instance, it wrote that the term “bear arms” did not “*connote*[] participation in a structured military organization,” *id.* at 584 (emphasis added), meaning the two were not inseparable. And it emphasized that “‘bear arms’ did not refer *only* to carrying a weapon in an organized military unit.” *Id.* at 585 (emphasis added).

The panel wrongly concludes that the consequence of *Heller* rejecting one all-or-nothing argument is that another all-or-nothing proposition must take its place; namely, that the Second Amendment does not protect the right to keep and bear arms to prepare for military service at all, and instead, the *only* purpose of the individual right is to have arms available for “confrontation” at close range.

Heller clarifies repeatedly that the right exists to protect *multiple* purposes. Indeed, when setting up the basic question in the case, the Court explained that the respondent argued the Second Amendment “protects an individual right to possess a firearm unconnected with service in a militia, and to use that arm for traditionally lawful purposes, such as self-defense within the home.” 554 U.S. at 577; see also *id.* at 636–37 (Stevens, J. dissenting) (whether the Second Amendment “also protects the right to possess and use guns for nonmilitary purposes like hunting and personal self-defense is the question presented in this case”). It went on to emphasize that “[t]he prefatory clause does not suggest that preserving the militia was the *only* reason Americans valued the ancient right; most undoubtedly thought it even more important for self-defense and hunting.” *Id.* at 599 (emphasis added).

In other words, contrary to the panel’s theory, preserving collective defense through the militia was one of the purposes of the Second Amendment. Indeed, at the Founding, “[i]t was understood across the political spectrum that the right helped to secure the ideal of a citizen militia, which might be necessary to oppose an oppressive military force if the constitutional order broke down.”

Heller, 554 U.S. at 599. And *Heller* emphasized that “when the able-bodied men of a nation are trained in arms and organized, they are better able to resist tyranny.” *Id.* at 598. The Court continued this theme in *McDonald v. City of Chicago*, 561 U.S. 742, 769–70 (2010) (citing 3 J. Story, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES OF AMERICA § 1890, p. 746 (1833) (right to keep and bear arms “offers a strong moral check against the usurpation and arbitrary power of rulers”)). The purposes of “securing the ideal of a citizen militia” and of resisting tyranny may fall within the general rubric of “self-defense” and “confrontation,” but they imply uses of arms at distances far greater than an individual resisting a “confrontation” at close range.

Heller’s endorsement of hunting as another major purpose for the Second Amendment’s protection further underscores that long-range firing is covered. Indeed, “[i]n colonial America, arms proficiency was required for survival. Guns were needed for food, self-defense, community defense, and conquest. Poor shooting, therefore, had deadly consequences. It could result in starvation, invasion, insurrection, or defeat in battle.” Greenlee, *The Right to Train: A Pillar of the Second Amendment*, 31 WM. & MARY BILL RTS. J. 93, 107 (2022).

In short, when *Heller* affirmed that the Second Amendment *does* protect an individual’s right to keep and bear arms in case of confrontation, it nowhere suggested that *other* purposes for the right to bear arms somehow ceased to exist. And those other purposes necessarily involve the ability to use firearms at more than just close range.

II. Long-Range Marksmanship Has Proved Important To The Republic Since The Founding.

A. The Colonists' Obsession With Accuracy Sowed The Seeds For Success In The Revolution.

It should come as no surprise that when a society depends on proficiency in an activity for its survival, many people will become expert in such activity—and they will strive to keep improving. Such was the case in the rural colonies.

Many colonists depended on accurate shooting to provide their food. “Hardly a history has been written wherein the part played by the pioneer’s rifle in meat-getting has been overlooked. Dillin, *THE KENTUCKY RIFLE* 7 (Palladium Press ed. 1998). In Europe, by contrast, where markets offered alternative food sources, “the unsuccessful hunter could readily supply by purchase the dinner which he lost by a bad shot.” 1 Sawyer, *FIREARMS IN AMERICAN HISTORY* 34 (1910). “That the early pioneer was a skilled shot [also] arose from the fact that occasionally his life depended upon” repelling an Indian attack. Dillin, 7.²

² As Justice Kennedy observed during the *Heller* oral argument, the colonial settler had “to defend himself and his family against hostile Indian tribes” in addition to “outlaws, wolves and bears . . . and things like that.” Tr. of Oral Arg. at 8, *Dist. of Columbia v. Heller*, 554 U.S. 570 (2008) (No. 07-290) (Kennedy, J.). For rural colonists, “[f]oremost among [their] worries were Indians, and for very good reason.” Palmer, *THE WAY OF THE FOX: AMERICAN*

Moreover, the economic reality that powder and lead balls cost money played a role in the colonists' need for accuracy: "In Europe hunting with guns was a pursuit reserved for the nobility," whereas in America, "gun ownership on the frontier was more common if not universal" since it was necessary for food. Rose, *AMERICAN RIFLE: A BIOGRAPHY* 19 (2009); *see also* Sawyer, 1 ("Everywhere the gun was more abundant than the tool."). Rural colonists struggling to survive did not have the luxury of wasting ammunition. For all these reasons, "[m]arksmanship was of paramount importance to the American frontiersman." Rose, 20.

1. The Necessities Of Frontier Survival Led To Tremendous Advances In Riflery.

In the half-century preceding the Revolutionary War, the frontiersman's obsession with marksmanship drove critical technical advancements. The rifles manufactured in Central Europe in the late 1600s and early 1700s "failed utterly to meet the requirements of the American pioneer." Dillin, 11. European rifles "were large of bore, clumsy of construction, badly sighted, too unwieldy for long journeys and very hard to load . . ." *Id.* In the wilderness of America, "[t]he weapon must be accurate, and must waste none of the powder of the charge, hence a long

STRATEGY IN THE WAR FOR AMERICA, 1775–1783 87 (1975); *see also* Halbrook, *THE RIGHT TO BEAR ARMS* 132 (2021) ("It is difficult for modern Americans to appreciate the acute, consuming fear of 'Indian raids' held by early Americans.").

barrel was necessary. Ammunition sufficient for a long period must be carried on the person; hence a small-bore weapon, that many charges might weigh little.” *Id.* at 35.

“[S]timulated by the complaints and criticisms of their customers, the early gunsmiths entered into a rivalry which resulted in the perfection of a new type of weapon destined to take its place in American history as the ‘Kentucky Rifle.’” Dillin, 11.³ Sawyer recounts that pioneers “consulted and experimented” until, around 1750, “a new form of weapon had come into general use. This was the long, slender, graceful, heavy, small-bore rifle, using a ball . . . which could be fired in rapid sequence because the ball was lubricated.” Sawyer, 35.

“A key ancillary effect” of the longer barrel was a reduction of caliber: Lead-ball bullets (or “bores”) shrank from .75 of an inch to between .45 to .5 of an inch. Dillin, 18.⁴ Not only did this allow for greater economizing—a

³ Many attribute the name to Daniel Boone’s use of the rifle in his explorations west of the Cumberland mountains in the area now comprising Tennessee and Kentucky and then referred to as Kentucky. Rose, 16; Dillin, 1–2. At the time, production of Kentucky Rifles centered around Pennsylvania’s frontier settlement of Lancaster, the gateway to exploration over the Cumberlands. Rose, 16; Dillin, 11.

⁴ Increasing the distance between the front and rear sights and the ends of the barrel also allowed for better aiming. Rose, 19.

pound of lead yielded three times more balls for the Kentucky rifle—it also massively increased the bullet’s lethality: while a British and American shooter would use the same amount of powder, the smaller American bullet left the barrel traveling three times as fast—and thus went much farther. *Id.*

Most important, these innovations improved accuracy: “How accurate were Kentucky rifles? Compared to modern weapons they were monstrously inaccurate, but *at the time* contemporaries regarded them as terrifyingly unerring instruments of death.” Rose, 20. Fortunately for the frontiersmen, the “experimentation” that led to these advancements could take place in the wilderness. In modern America, the only practical way for an individual to engage in such experimentation is to shoot at a long-range training facility.

The frontiersmen were not alone in their drive for expert marksmanship, however. Greenlee, 114. Colonists up and down the seaboard routinely trained with their long guns. “Besides the regular trained militia in New-England, all the planters sons and servants are taught to use the fowling piece from their youth, and generally fire balls with great exactness at fowl or beast.” *Bos. Gazette*, Dec. 5, 1774, at 4 (as quoted in Kopel & Greenlee, *The Second Amendment Rights of Young Adults*, 43 S. ILL. UNIV. L.J. 495, 532–33 (2019)). When Benjamin Franklin returned from London in 1775, he found “all America from one End of the 12 united Provinces to the other, busily employed in learning the Use of Arms.” Letter from Benjamin Franklin to Jonathan Shipley (July 7, 1775), *in* 1 LETTERS OF

DELEGATES TO CONGRESS, 1774-1789, at 604 (Paul H. Smith ed., 1976) (as quoted in Greenlee, *supra*, at 115).

As conflict with Britain appeared inevitable, colonists intensified their training—and began flexing their marksmanship muscles before the occupying British forces. Greenlee, 116 (recounting famous incident at Boston Common where ordinary colonist embarrassed a Redcoat in a shooting contest).

2. Frontier Riflemen Played A Significant Role In Securing Victory In The Revolution.

Frontier riflemen were the first troops the Continental Congress recruited: In June 1775, the Congress called for “six companies of expert riflemen” from Pennsylvania, Maryland, and Virginia for deployment to Boston. Rose, 42–43. Though it “may [have] seem[ed] strange that the first men called into service should be those furthest from the scene and hardest to reach,” George Washington “knew the backwoodsmen like a brother . . . [having] fought side by side with them” in and around Pennsylvania during the French and Indian War. Dillin, 77; *see also* Rose, 29–38.

Though Congress could not guarantee payment for their service, “the mid-Colonial pioneers were born and bred to fighting,” Sawyer, 78, and far more volunteered than Congress had requested. In one instance, Washington hoped to stage a shooting competition at 150 yards to winnow out the less-talented sharpshooters, but the plan was foiled: the one-foot-square target was destroyed after the first 40 participants obliterated it. Greenlee, 117 (citing Diary of John Harrower, 1773-1776, in 6 THE AMERICAN HISTORICAL REVIEW 100 (1900)). Indeed, one

account states that volunteers were “rejected” at enlistment “unless they can hit a playing-card” at 120 yards’ distance. Greenleee, 117 (citing Letter from Thomas Lynch to Ralph Izard (July 7, 1775) *in* 1 LETTERS OF DELEGATES TO CONGRESS, 1774-1789 609 (Paul H. Smith ed., 1976)).

Many of the colorful volunteers traveled and fought wearing Indian-style hunting shirts and warpaint, armed with tomahawks as well as their rifles. “Their appearance alone inspired fear and wonder in their foes.” Rose, 41. Along the way to Boston, the companies gave outlandish demonstrations of their skill, to the delight and amazement of the public. *See, e.g.*, Sawyer, 78–79 (noting that the riflemen gave “exhibitions of their skill to hearten the inhabitants and develop enthusiasm for enlisting”).

When the riflemen reached Boston, Washington used them to instill fear even before they engaged the enemy. He arranged a massive demonstration for the regular army, locals, and even British spies: a pole seven inches in diameter was erected and a company of riflemen stood more than 200 yards away. “No New England farmer would waste powder and ball firing at such a mark and distance with his musket or fowling piece. . . . But the riflemen, firing singly or at command, so riddled the pole that it was apparent that no enemy could survive an instant.” Sawyer, 80. British General Howe “wrote home about the ‘terrible guns of the rebels.’” *Id.*

The benefits of deploying the sharpshooters were immediately recognized. The rifle’s expanded range allowed the sharpshooters to sit well outside the range of British muskets: the riflemen’s shots “frequently proved fatal to

British officers and soldiers, who expose themselves to view, even at more than double the distance of common musket-shot.” Thacher, *A MILITARY JOURNAL DURING THE AMERICAN REVOLUTIONARY WAR: FROM 1775 TO 1783* 38 (1823).

History has recorded many astounding feats of the marksmen. Dillin cites reports in August 1775 that riflemen “in one day killed ten of a reconnoitering party,” including “[a] centry [that] was killed at 250 yards distance” despite the fact that “only half his head was seen.” Dillin, 84. Sawyer relayed that a rifleman who, seeing some British on a scow at a distance of [roughly 900 yards], found a good resting place on a hill and bombarded them until he potted the lot.” Sawyer, 81.

Even if the accounts were somewhat exaggerated, *cf.* Rose, 47, the riflemen boosted the Continental Army—and their tactics harmed British morale. Sawyer, 82 (“[S]peeches in Parliament frequently voiced the national dread of the deadly American weapons[.]”). Indeed, when General Howe sent a captured marksman to England to give demonstrations, the public became so “frighten[ed]” that “enlistments in the army, difficult to get before, absolutely stopped for a period, and the only new recruits were those forced into service” *Id.* at 81.

As the war dragged on, Washington continued leaning on the riflemen, including, most famously, Colonel Daniel Morgan’s elite regiment. “Washington regarded Morgan’s riflemen as his joy and pride.” Rose, 54. He sent Morgan’s men to New Jersey in 1777 to disrupt Howe’s forces, directed Morgan to form a new regiment (the Provisional Rifle Corps) that he led at the Battle of Saratoga,

and detailed Morgan's Riflemen to support the Sullivan Campaign and to fight at the Battle of Monmouth. *See* Zambone, DANIEL MORGAN: A REVOLUTIONARY LIFE 109–82 (2018).

Morgan's crowning achievement, recognized as a turning point of the war, came in Battle of Saratoga in September and October 1777. His riflemen slipped through the woods for two weeks to pepper Burgoyne's troops. Zambone, 141–52. When Morgan spotted General Fraser on horseback, he ordered his best marksman (Tim Murphy) to shoot him; Murphy scaled a tree and killed Fraser from a distance of 300 yards. *Id.* at 146–48; Sawyer, 86. Burgoyne retreated to Saratoga. "There, surrounded, hungry, thirsty, and daily thinned by the deadly American rifles which sought them from across the river, the British were obliged to surrender." Sawyer, 86.

Following this victory, the French committed to assisting the Americans. "Success at Saratoga was therefore the hinge upon which the Revolution swung. And the bearing point in that hinge was Tim Murphy's rifle bullet." *Id.* at 87.

B. Marksmanship Remained Essential To The Evolving Nation's Security In The 19th Century And Beyond.

1. Marksmanship And The Modern Rifle During The Civil War.

The years between the Revolution and the end of the Civil War saw a continued evolution of long guns' range and accuracy, as armorers and gunsmiths in America and

abroad refined the rifle and its components into the familiar modern weapon we know today. Rose, 105–52. In these decades, the breech-loading rifle established its precedence, the metallic cartridge was brought into wide production, and gunmakers patented and produced different models of repeating rifles that enabled shooters to fire multiple shots before reloading.

Logistical constraints and political maneuvering limited the use of such state-of-the-art rifles during the Civil War,⁵ but both the Union and Confederate armies deployed dedicated regiments of long-range riflemen. These “Sharpshooters”—named after the “Sharps” model rifle the soldiers favored—were akin to modern snipers, dedicated to firing at specific targets from longer distances as opposed to the frenzied close-quarters combat that defined the Civil War. Rose, 151.

The Union sharpshooters were founded by Hiram Berdan, who published a recruiting announcement in newspapers around the North, calling for marksman to

⁵ Most notably, James Ripley’s tenure as Chief of Ordnance at the War Department from the Civil War’s outbreak in 1861 until September 1863 was defined (at least in retrospect) by his resistance to breech-loading and repeating rifles. This was due in part to Ripley’s practical concerns about stockpiling arms and the limitations of outfitting and training Union soldiers, but his outright intransigence in defying President Lincoln’s repeated orders to secure rifles ultimately led to Ripley’s dismissal. *See* Rose, 131–37, 140–48.

try out. The standards were strict: Would-be sharpshooters were required to place 10 bullets within five inches of center at 200 yards. Harsanyi, *FIRST FREEDOM* 128 (2018); Rose, 190. When the regiment toured Washington, D.C., in 1861, Berdan displayed his skill—and confirmed the utility of breechloading repeating rifles—in front of President Lincoln by striking a target from 600 yards away. Harsanyi, 129.

In 1861, Lincoln specifically ordered the War Department to purchase tens of thousands of newly-developed repeating rifles after testing several models himself. Rose, 142–44; Harsanyi, 123–27. These commands were met with resistance by the Chief of Ordnance. *See id.* After positive press accounts of the Spencer repeating rifle's performance at the Battle of Gettysburg, Christopher Spencer (the rifle's inventor) visited the White House and provided a private demonstration to President Lincoln at Treasury Park. Spencer recalled that the President displayed the skill of a natural marksman:

The target was a board about 6 inches wide and 3 feet long, with a black spot painted at each end. The rifle contained six 50-caliber, rim-fire, copper cartridges. Mr. Lincoln's first shot was to the left and 5 inches low, but the next shot hit the bullseyes and the other five were placed close around it.

Abraham Lincoln and the Repeating Rifle, *Scientific American*, at 102 (Dec. 1921); *see* Rose, 147–48.

A few Union cavalry detachments secured repeating rifles—often at their own expense directly from manufac-

turers in light of logistical constraints—and notched notorious victories in skirmishes with Confederate troops. Harsanyi, 127–28; Rose, 146–47. Dueling Union and Confederate sharpshooters faced off at the Battle of Fredericksburg and featured prominently in the Siege of Vicksburg. *See generally* Yee, UNION SHARPSHOOTER VS. CONFEDERATE SHARPSHOOTER, AMERICAN CIVIL WAR 1861-65 (2019).

The Civil War sharpshooters did not reach the mythical status of the riflemen in the Revolutionary War, however, likely because by then fewer citizens relied on marksmanship for their day-to-day survival.

2. The Marksmanship Renaissance After The Civil War.

The Civil War brought to light the relative decline of marksmanship in American society, revealing in stark terms how facility with rifles had atrophied since the Revolution. As one author colorfully put it, “[a] hundred years ago there was no doubt as to the nationality of the rifleman,” who “was peculiar to the only republics then existing, America and Switzerland.” Whittaker, *The Story of Creedmoor*, Aug. 1876, collected in the *Galaxy*, vol. 22, at 258 (1876). But “[in] America there has been . . . a great change of habits. Step by step with the advance of civilization, the use of the rifle has disappeared from the old and settled States, passing away to the west and southwest . . .” *Id.* “1866 found us practically a nation of ‘duffers,’ as far as general exactitude of aim went.” *Id.* at 260. Postwar budgetary restrictions exacerbated the trend, as soldiers were limited to only ten rounds *each month* for infantry practice. Rose, 193.

Against this backdrop, overlapping developments led to a revival of American marksmanship.

William C. Church, a Union veteran and editor of the *Army and Navy Journal*, sought “to expose what he believed was the shameful decline in American shooting prowess.” Rose, 193. He enlisted the help of another veteran, George Wingate, to write a series of articles on rifle practice; in one of these articles, Wingate proposed the formation of an association in New York that would “promote and encourage rifle-shooting on a scientific basis.” Wingate, *Rifle Practice—No. IV*, 8 ARMY & NAVY J. 836, 836–37 (Aug. 12, 1871); see Rose, 196–97. Wingate invoked the success of a similar group in Britain, crying out for “a Wimbledon on American principles,” referencing the well-known annual shooting competition held by the British Rifle Association. Wingate, 8 ARMY & NAVY J. at 837. Church and Wingate followed through on this proposal by forming the National Rifle Association.

After securing \$25,000 in funding from the New York legislature and \$10,000 each from Brooklyn and New York City, the NRA purchased a 70-acre plot of farmland on the flat plains of Long Island and built a shooting range and grounds for the public. Rose, 196. Named “Creedmoor”—a portmanteau of the farmer’s name (Creed) and the boggy wasteland the range inhabited—Wingate’s vision of an American Wimbledon came to pass in a few short years. The *New York Times* covered Creedmoor’s 1873 opening, which included shooting matches at 200 and 500 yards. *America’s Wimbledon*, N.Y. TIMES (June 22, 1873). The *Times* quoted General Sherman’s letter to Church praising the range’s mission:

When I was in England I heard much of the school at Wimbledon, which serves as the model for yours, and the judgment was universal that it gave great encouragement to their volunteers, which correspond with your National Guard, in the precision of fire, which is a chief excellence in troops. I therefore authorize you to say that I, in common with all the officers of the army, am pleased to know that you have organized this association in New York on a scale that entitles it to the name of national.

Id. The *Times* also observed that the shooting was not particularly sharp on that first competition day: “The shooting at the 500 yards range was somewhat wild, owing to the want of proper practice at that range.” *Id.* The Americans, however, would quickly gain proficiency at that distance and beyond.

What transpired at Creedmoor the following year became legend. Coming off a victory at Wimbledon, the captain of Ireland’s sport-shooting team published a challenge to the Americans in the *New York Herald*, prescribing a target distance of 800, 900, and 1,000 yards. Rose, 197.⁶ Over 5,000 spectators watched on September 26,

⁶ The ability to shoot more accurately at longer distances was made possible in part by the gaining popularity of centerfire ammunition. Sharpshooter Hiram Berdan patented a centerfire primer in 1866, and “[f]rom 1867 onward rifles were capable of firing bullets farther and faster than ever was possible before.” Rose, 171.

1874, as six riflemen from each nation took aim and fired 15 shots at each distance. The Americans eked out a victory when John Bodine's final shot from 1,000 yards found the bullseye. Rose, 199–200; *see also* Whittaker, *The Story of Creedmoor, supra*, at 258–66. After this victory, “[t]arget shooting instantly became the most popular sport in the country and was practiced with consummately ‘scientific’ skill and seriousness Within a month of the match there were no fewer than four rifle clubs in Chicago alone; within a year dozens more sprang up as far afield as Florida and California.” Rose, 200. Moreover, “[s]oon all-women clubs were flourishing in half a dozen cities.” *Id.* at 202.

In an 1877 feature, Harper's Weekly noted that “[t]he popular interest in the great international rifle match on the Creedmoor grounds is greater this year than on any previous occasion,” and explained the importance of marksmanship training to the nation's collective security:

Apart from the pleasure which all take in exhibitions of great skill in marksmanship, there can be no doubt of the practical advantages of rifle practice in a country like ours, where the regular army is small, and where, in times of peril from foreign invasion or domestic insurrection, the government must rely upon trained volunteers for the maintenance of its safety. . . . [B]ut although our military successes in the earlier part of our history were largely due to the skill in [the rifle's] use displayed by our ancestors, we have been in danger of losing

sight of the fact that the change in the habits of the American people is rapidly depriving them of that, proficiency in arms which once formed one of the great elements of our national strength. We have ceased for years to be a “nation of marksmen” with the rifle, the shot-gun being by far the favorite arm.

Creedmoor, Harper’s Weekly (Sept. 22, 1877). This state of affairs “is the more to be regretted as the general introduction of breech-loading arms of long range and precision has made the marksman’s skill in time of war even more important now than it was under the old system.” *Id.* Widespread marksmanship training was thus essential to keep the nation ready should war come.

As Rose puts it, a new “‘cult of accuracy’ and rifleman-ship became a national phenomenon after the Civil War.” Rose, 201. Accompanying this popular attention, Wingate’s articles from the *Army and Navy Journal* were collected and published as the *Manual for Rifle Practice*. Later editions of the manual reflect revisions to account for advances in understanding long-range shooting based on the experience at Creedmoor and other ranges, and to provide guidance for shooting at distances up to 1,000 yards. *See generally* Wingate, *MANUAL FOR RIFLE PRACTICE* (7th ed. 1878). Around the same time, the Army reformed its training practices to, among other things, incorporate some of Wingate’s lessons from Creedmoor and diversify range training to include long-distance firing. Rose, 203–05.

C. The Civilian Marksmanship Program To This Day Reflects The Efforts Of Theodore Roosevelt And Congress To Establish An Enduring Tradition Of Marksmanship.

Not long after the early days of Creedmoor, there came another call for attention to marksmanship training. In 1903, Congress established the National Board for the Promotion of Rifle Practice and the Director of Civilian Marksmanship, in part to address concerns over training and marksmanship revealed during the Spanish-American War. *See* Mayberry, et al., *An Evaluation of the Corporation for the Promotion of Rifle Practice and Firearms Safety* 1 (Rand Corp. 2019).

Secretary of War Elihu Root explained in his 1903 year-end report that the purpose of these programs was to “secur[e] a comprehensive and progressive treatment of the whole subject of improving the marksmanship of the Army and the militia.” U.S. Dep’t of War, FIVE YEARS OF THE WAR DEPARTMENT FOLLOWING THE WAR WITH SPAIN 1899-1903, p. 353 (Annual Report of the Secretary of War for 1903). Root went on: “I know of nothing more important in the way of preparation for war than teaching the young men of the country to shoot straight,” especially given the “greatly increased range of modern rifles, which determines battles while the combatants are at great distances from each other, and which makes practice more necessary for good marksmanship than ever before.” *Id.* at 353, 354.

It should be little surprise that President Theodore Roosevelt championed the importance of marksmanship as essential to national security. In his 1906 address to

Congress, for instance, President Roosevelt praised the National Board for the Promotion of Rifle Practice's efforts, explaining that a soldier's "efficiency on the line of battle is almost directly proportionate to excellence in marksmanship," calling for "shooting galleries in all the large public and military schools" and "national target ranges in different parts of the country," and advocating that Americans "should in every way encourage the formation of rifle clubs throughout all parts of the land." President Theodore Roosevelt, Sixth Annual Message to Congress (Dec. 6, 1906).

The Board's "objective was to foster national defense by promoting marksmanship training and competition among military personnel and later among civilians who could serve in the military." Anderson, *A Brief History of the CMP 2*, Civilian Marksmanship Program (Summer 2001). The cornerstone of these efforts was a series of rifle and pistol matches, organized by the War Department, held annually at Camp Perry, Ohio. *See id.* at 3–4.

A former Member of this Court demonstrated the long-term success of Roosevelt's entreaties: Justice Scalia participated in championship rifle teams at St. Francis Xavier High School, a Catholic school that was also a military academy. *See* Rosen, SCALIA: RISE TO GREATNESS 1936-1986 22–25 (2023). He carried his rifle on the subway riding from Queens to Manhattan. *See, e.g., Scalia Champions the Call of the Hunt*, Law.com (Feb. 28, 2006), <https://www.law.com/almID/900005547919/>.

From the early 1900s through the 1960s, what is now known as the Civilian Marksmanship Program (CMP) taught marksmanship to several generations of youth. Anderson, 4–5. In 1996, Congress privatized the CMP and transitioned its operations by establishing the non-profit Corporation for the Promotion of Rifle Practice and Firearm Safety. *See* 36 U.S.C. §§ 40701–40733. The CMP continues providing essential training on firearms safety, rifle practice, and marksmanship to this day through programs and shooting matches around the country. Fitzpatrick, *The Modern Civilian Marksmanship Program: Going Strong*, RifleShooter (Aug. 31, 2022); *see also* Civilian Marksmanship Program, *About, What is the Civilian Marksmanship Program?*, <https://thecmp.org/about/>.

CONCLUSION

History demonstrates the importance to the nation of the people regularly training with arms at long range. The Court should grant the petition.

Respectfully submitted,

BRADLEY A. BENBROOK

Counsel of Record

STEPHEN M. DUVERNAY

Benbrook Law Group, PC

701 University Ave., Ste. 106

Sacramento, California 95825

brad@benbrooklawgroup.com

Counsel for Amicus Curiae

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