
**In the Supreme Court of Pennsylvania
Middle District**

—◆—
No. 68 MAP 2022
—◆—

JONATHAN BARRIS,

Appellee,

v.

STROUD TOWNSHIP,

Appellant.

—◆—
**BRIEF OF *AMICI CURIAE* FIREARMS POLICY COALITION
AND FPC ACTION FOUNDATION IN SUPPORT OF APPELLEE**
—◆—

**APPEAL FROM COMMONWEALTH COURT ORDER DATED MAY 28, 2021,
AT DOCKET No. 671 CD 2020, REVERSING THE ORDER OF THE COURT
OF COMMON PLEAS OF MONROE COUNTY ENTERED MAY 26, 2020, AT
No. 6773 CIVIL 2015**
—◆—

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Other Authorities

1 RECORDS OF MASSACHUSETTS, 1628-1641 (Nathaniel B. Shurtleff ed., 1853).....	31
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BOS. GAZETTE, Dec. 5, 1774, at 4.....	17
Brown, M.L., FIREARMS IN COLONIAL AMERICA (1980)	13

Cooley, Thomas M., A TREATISE ON THE CONSTITUTIONAL LIMITATIONS WHICH REST UPON THE LEGISLATIVE POWER OF THE STATES OF THE AMERICAN UNION (1868)	30
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Davis, W.W.H., THE HISTORY OF BUCKS COUNTY, PENNSYLVANIA (1876).	26
DIARY AND AUTOBIOGRAPHY OF JOHN ADAMS, vol. 3 (Lyman H. Butterfield ed., 1961)	15
Diary of John Harrower, 1773-1776, in 6 THE AMERICAN HISTORICAL REVIEW (1900)	20
DIARY OF THE AMERICAN REVOLUTION FROM NEWSPAPERS AND ORIGINAL DOCUMENTS, vol. 1 (Frank Moore ed., 1863).....	24
Dillin, John G.W., THE KENTUCKY RIFLE (PALLADIUM PRESS 1998) (1924)	25
DOCUMENTARY HISTORY OF THE FIRST FEDERAL CONGRESS: DEBATES IN THE HOUSE OF REPRESENTATIVES: THIRD SESSION, DECEMBER 1790 - MARCH 1791, vol. 14 (1996)	29
DOCUMENTARY HISTORY OF THE RATIFICATION OF THE CONSTITUTION, vol. 10 (John P. Kaminski et al. eds., 1993)	9
DOCUMENTARY HISTORY OF THE RATIFICATION OF THE CONSTITUTION, vol. 12 (John P. Kaminski et al. eds., 2015)	9
DOCUMENTARY HISTORY OF THE RATIFICATION OF THE CONSTITUTION, vol. 20 (John P. Kaminski et al. eds., 2004)	11
DOCUMENTARY HISTORY OF THE RATIFICATION OF THE CONSTITUTION, vol. 3 (Merrill Jensen ed., 1978)	9

DOCUMENTARY HISTORY OF THE RATIFICATION OF THE CONSTITUTION, vol. 32 (John P. Kaminski et al. eds., 2019)	9
DOCUMENTARY HISTORY OF THE RATIFICATION OF THE CONSTITUTION, vol. 37 (John P. Kaminski et al. eds., 2020)	11, 12
Doddridge, Joseph, NOTES ON THE SETTLEMENT AND INDIAN WARS OF THE WESTERN PARTS OF VIRGINIA AND PENNSYLVANIA FROM 1763 TO 1783 (John S. Ritenour & Wm. T. Lindsey eds., 1912)	14
<i>Essay on Federal Sentiments</i> , PHILA. INDEP. GAZETTEER, Oct. 23, 1787	8
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Hanger, George, COLONEL GEORGE HANGER’S ADVICE TO ALL SPORTSMEN, FARMERS AND GAMEKEEPERS (1814)	27
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Jefferson, Thomas, WRITINGS (Merrill D. Peterson ed., 1984)	16
JEFFERSON’S MEMORANDUM BOOKS, ACCOUNTS, WITH LEGAL RECORDS AND MISCELLANY, 1767–1826, vol. 1 (2d series, James A. Bear, Jr. & Lucia C. Stanton eds., 1997)	15
Johnson, Nicholas et al., FIREARMS LAW AND THE SECOND AMENDMENT: REGULATION, RIGHTS AND POLICY (3d ed. 2021)	14
JOURNAL OF THE SECOND SESSION OF THE SENATE OF THE UNITED STATES OF AMERICA, vol. 1 (1820)	28
Keith, William, A SHORT DISCOURSE, ON THE PRESENT STATE OF THE COLONIES IN AMERICA, WITH RESPECT TO GREAT BRITAIN (1728)	10
Kopel, David B. & Greenlee, Joseph G.S., <i>The Second Amendment Rights of Young Adults</i> , 43 S. ILL.U. L.J. 495 (2019)	32

Letter from James Madison to William Bradford (June 19, 1775), <i>in</i> 1 THE PAPERS OF JAMES MADISON (William T. Hutchinson et al. eds., 1962).....	20
Letter from John Adams to Abigail Adams (June 11, 1775), <i>in</i> 1 ADAMS FAMILY CORRESPONDENCE: DECEMBER 1761-MAY 1776 (Lyman H. Butterfield ed., 1963)	23
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Letter from Samuel Nasson to George Thatcher, July 9, 1789, <i>in</i> THE COMPLETE BILL OF RIGHTS (Neil H. Cogan ed., 2d. ed. 2015).....	12
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MEMOIR OF THE LIFE OF JOSIAH QUINCY, JUNIOR, OF MASSACHUSETTS: 1774-1775 (2d ed. 1874).....	19
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N.H. GAZETTE, Jan. 27, 1775, at 1	19
Nedham, Marchamont, THE RIGHT CONSTITUTION OF A COMMONWEALTH (1656)	7
OHIO ARCHEOLOGICAL AND HISTORY PUBLICATIONS, vol. 6 (Fred J. Heer ed., 1900, Supp. 1980).....	25

OHIO ARCHEOLOGICAL AND HISTORICAL PUBLICATIONS, vol. 8 (Fred J. Heer ed., 1900).....	25, 27
Pomeroy, John Norton, AN INTRODUCTION TO THE CONSTITUTIONAL LAW OF THE UNITED STATES (1868)	30
Quincy, Jr., Josiah, <i>Observations on the Act of Parliament Commonly Called the Boston Port-Bill: With Thoughts on Civil Society and Standing Armies</i> (1774)	19
Ramsay, David, THE HISTORY OF THE AMERICAN REVOLUTION (1789)....	22
Rose, Alexander, AMERICAN RIFLE: A BIOGRAPHY (2008)	13, 14, 26
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Sawyer, Charles Winthrop, FIREARMS IN AMERICAN HISTORY, vol. 1 (1910)	23, 25, 26
<i>Tales from the 1769 Vansant/Craven Burying Ground,</i> THE CRAVEN HALL NEWSLETTER, Mar. 2021, at 7, https://perma.cc/A5FE-RAWY	26
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THE AMERICAN MUSEUM: OR REPOSITORY OF ANCIENT AND MODERN FUGITIVE PIECES, &C. PROSE AND POETICAL, vol. 6 (Mathew Carey ed., 1789).....	10
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<i>The King's Message to Parliament, of March 7, 1774, to the Declaration of Independence by the United States, in 3 AMERICAN ARCHIVES: A DOCUMENTARY HISTORY OF THE ENGLISH COLONIES IN NORTH AMERICA (4th Ser., Peter Force ed., 1840).....</i>	18
<i>The Republican: To the People, CONN. COURANT, Jan. 7, 1788</i>	9
THE STATUTES AT LARGE OF PENNSYLVANIA FROM 1682 TO 1801, vol. 5 (James T. Mitchell & Henry Flanders eds., 1898)	33
THE WORKS OF THOMAS JEFFERSON, vol. 1 (H.A. Washington ed., 1884).....	22
THE WRITINGS OF GEORGE WASHINGTON: FROM THE ORIGINAL MANUSCRIPTS 1745-1799 (John C. Fitzpatrick ed., 1932).....	22
<i>To the People of America (Feb. 3, 1775) in MEMOIRS OF THE LIFE OF THE LATE CHARLES LEE, ESQ. (1792).....</i>	20
Tyler, Moses Coit, THE LITERARY HISTORY OF THE AMERICAN REVOLUTION, 1763-1776 (1898).....	19
Wilbur, James Benjamin, IRA ALLEN: FOUNDER OF VERMONT, vol. 1 (1928)	16
WRITINGS OF JOHN QUINCY ADAMS 1801–1810, vol. 3 (Worthington Chauncey Ford ed., 1914).....	17

STATEMENT OF *AMICI CURIAE*¹

Firearms Policy Coalition (FPC) is a nonprofit organization devoted to advancing individual liberty and defending individual rights, including those protected by the Constitution. FPC accomplishes its mission through legislative, regulatory, legal, and grassroots advocacy, education, and outreach programs. FPC Law is the nation's first and largest public interest legal team focused on the right to keep and bear arms.

FPC Action Foundation (FPCAF) is a nonprofit organization dedicated to restoring human liberty and protecting the rights enshrined in the Constitution. FPCAF conducts charitable research, education, public policy, and legal programs. The scholarship and amicus briefs of the Foundation's Director of Constitutional Studies, Joseph Greenlee, have been cited in *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111, 2133 (2022); *Chiafalo v. Washington*, 140 S. Ct. 2316, 2325 (2020); and *N.Y. State Rifle & Pistol Ass'n v. City of N.Y.*, 140 S. Ct. 1525, 1541 (2020) (Alito, J., dissenting).

¹ No person or entity other than the *amici*, their members, or their counsel paid in whole or part for the preparation of this brief or authored any part of it.

Amici are interested in this case because training is an essential element of the right to keep and bear arms.

SUMMARY OF ARGUMENT

If the Second Amendment's plain text covers training, the Township can justify its training regulation only by demonstrating that it is consistent with America's historical tradition of firearm regulation. *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111, 2129-30 (2022).

The Supreme Court conducted a plain text analysis of the Second Amendment in *District of Columbia v. Heller*, 554 U.S. 570 (2008), and concluded that training is covered by the plain text. This is confirmed by state constitutions, the debates over the United States Constitution, and the drafting history of the Second Amendment. Therefore, the government can justify its training regulation only by demonstrating a historical tradition of such regulation. *Bruen*, 142 S. Ct. at 2130.

In colonial America, where arms proficiency was required for survival, training and shooting competitions were among the most popular and important activities. As tensions rose with Great Britain, Americans' emphasis on training intensified. And during the Revolutionary War, their lifelong familiarity with arms provided a critical advantage.

As the postenactment history reveals, after learning how valuable lifelong firearms practice was for resisting a tyrannical government, the

Founders were sure to protect the right to train when forming their own government.

Traditionally, restrictions on that right have been rare. Most historical training regulations promoted training. The relatively few that restricted the right were most often enacted to prevent fires or prevent shooting into crowded areas. There is no tradition that justifies the broad and burdensome regulation challenged here.

ARGUMENT

I. The plain text of the Second Amendment protects the right to train with arms.

The Supreme Court set forth the test for all Second Amendment challenges as follows:

When the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation.

N.Y. State Rifle & Pistol Ass'n v. Bruen, 142 S. Ct. 2111, 2129-30 (2022)

(quotation omitted).

A. *Heller*'s plain text analysis established that training is covered.

The Supreme Court conducted the plain text analysis of the Second Amendment in *District of Columbia v. Heller*, 554 U.S. 570 (2008), and established that training is covered by the plain text.

Analyzing “well regulated,” *Heller* declared that “the adjective ‘well-regulated’ implies...the imposition of proper discipline and *training*.” *Id.* at 597 (emphasis added).

In its analysis of “necessary to the security of a free State,” *Heller* explained that “the militia was thought to be ‘necessary to the security of a free State’” because “when the able-bodied men of a nation are *trained in arms* and organized, they are better able to resist tyranny.” *Id.* at 597-98 (emphasis added).

When analyzing “bear arms,” *Heller* noted that the phrase protected carrying arms for lawful purposes such as self-defense, militia duty, and hunting, *id.* at 599, and it also provided an example involving training. Demonstrating that “bear arms” covered “nonmilitary” uses, *Heller* quoted the following example from “Timothy Cunningham’s important 1771 legal dictionary”: “Servants and labourers shall use bows and arrows on *Sundays*, &c. and not bear other arms.” *Id.* at 581, 587-88

(quoting 1 Timothy Cunningham, A NEW AND COMPLETE LAW DICTIONARY (1771) (unpaginated)). Cunningham and *Heller* were quoting an English law requiring “Servants and Labourers” to “have Bows and Arrows” and to train with them on “Sundays and Holydays” rather than play “importune Games” like tennis and football. 12 Ric. II ch. 6 (1388).

Heller’s analysis revealed that training is covered by several aspects of the Second Amendment’s plain text.

B. State constitutions confirm that training is covered.

Heller looked to state constitutions to confirm its interpretation of the plain text. 554 U.S. at 600-03. State constitutions confirm that the Founders understood that the people must be trained to form an effective militia.

Virginia’s 1776 declaration of rights provided that “a well-regulated militia, composed of the body of the people, trained to arms, is the proper, natural, and safe defence of a free State.” 7 THE FEDERAL AND STATE CONSTITUTIONS COLONIAL CHARTERS, AND OTHER ORGANIC LAWS 3814 (Francis Thorpe ed., 1909).

Pennsylvania’s 1776 constitution provided that “[t]he freemen of this commonwealth and their sons shall be trained and armed for its defence

under such regulations, restrictions, and exceptions as the general assembly shall by law direct.” 5 *id.* at 3084.

Vermont’s 1777 constitution copied Pennsylvania’s language. 6 *id.* at 3742. And its 1786 constitution included similar language. *Id.* at 3758. In its 1793 constitution, adopted after the Second Amendment’s ratification, Vermont ensured that “[t]he inhabitants of this State shall be trained and armed for its defence, under such regulations, restrictions, and exceptions, as Congress, agreeably to the Constitution of the United States, and the Legislature of this State, shall direct.” *Id.* at 3768.

John Adams explained why a trained populace was needed to secure America’s freedom just before the Second Amendment’s ratification. “That the people be continually trained up in the exercise of arms,” Adams explained, ensures that “nothing could at any time be imposed upon the people but by their consent.” 3 John Adams, A DEFENCE OF THE CONSTITUTIONS OF GOVERNMENT OF THE UNITED STATES OF AMERICA 471-72 (1788) (quoting Marchamont Nedham, THE RIGHT CONSTITUTION OF A COMMONWEALTH 89 (1656)). For that reason, he added, “Rome, and the territories about it, were trained up perpetually in arms.” *Id.* at 472.

C. The debates over the Constitution’s ratification focused on the need for a populace trained in arms.

Heller also considered “the drafting history of the Second Amendment—the various proposals in the state conventions and the debates in Congress,” 554 U.S. at 603, but cautioned that “[i]t is dubious to rely on such history to interpret a text that was widely understood to codify a pre-existing right,” *id.* at 603.

The drafting history reveals that both Federalists and Antifederalists agreed that an armed and trained populace was the best defense against a tyrannical government.

Alexander Hamilton argued in Federalist 29 that a standing army was not a serious threat to American liberty because “that army can never be formidable to the liberties of the people, while there is a large body of citizens little if at all inferior to them in discipline and the use of arms, who stand ready to defend their own rights and those of their fellow citizens.” THE FEDERALIST NO. 29 (Alexander Hamilton). To Hamilton, a populace armed and trained was “the best possible security against” an oppressive standing army. *Id.* Many Federalists made similar arguments. *See, e.g., Essay on Federal Sentiments*, PHILA. INDEP. GAZETTEER, Oct. 23, 1787, *in* 32 DOCUMENTARY HISTORY OF THE

RATIFICATION OF THE CONSTITUTION 435 (John Kaminiski et al. eds., 2019) (a tyrannical government “could never prevail over an hundred thousand men armed and disciplined”); *The Republican: To the People*, CONN. COURANT, Jan. 7, 1788, in 3 DOCUMENTARY HISTORY, at 529-30 (“[T]he people of this country have arms in their hands; they are not destitute of military knowledge,” which “enables them to defend their rights and privileges against every invader.”); *Text of a Federalist Speech Not Delivered in the Maryland Convention*, MD. JOURNAL, July 25, 29 & August 1, 5, 8, 1788, in 12 DOCUMENTARY HISTORY, at 885 (“the citizens of thirteen different states, all of whom know the use of fire-arms would soon prove the folly and madness of” a tyrannical government); *id.* at 837-38 (Charles Carroll claiming that Americans are safer from tyranny than Europeans because “our citizens have arms in their hands, & know the use of them.”).

Perhaps no one was more influential in securing a Bill of Rights than Antifederalist George Mason. At Virginia’s convention, Mason warned that one method of effectively disarming the people that had historically been used was to allow the militia to fall into disuse. 10 *id.* at 1270-71. He noted that Pennsylvania’s royal governor, Sir William Keith,

proposed such a plan to the British Parliament “when the resolution for enslaving America was formed in Great-Britain.” *Id.* at 1271. According to Keith, it was not “good [p]olicy, to accustom all the able men in the Colonies to be well exercised in Arms.” William Keith, A SHORT DISCOURSE, ON THE PRESENT STATE OF THE COLONIES IN AMERICA, WITH RESPECT TO GREAT BRITAIN (1728), *in* 6 THE AMERICAN MUSEUM 169 (Mathew Carey ed., 1789). It was “more advisable to keep up a small, regular standing force in each province.” *Id.* Thus, Mason explained, the British had decided that “to disarm the people...was the best and most effectual way to enslave them,” and that it was best “not do it openly; but to weaken [the Americans] and let them sink gradually, by totally disusing and neglecting the militia.” 10 DOCUMENTARY HISTORY, at 1271. To Mason, an untrained populace could not stand up to a tyrannical government’s standing army: “When against a regular and disciplined army, yeomanry are the only defence—yeomanry unskilful and unarmed, what chance is there for preserving freedom?” *Id.*²

² As the Revolutionary War approached, Mason asserted that the people must be “introduce[d] to the use of arms and discipline” to best “act in defence of their invaded liberty.” 1 Kate Rowland, THE LIFE OF GEORGE MASON 430 (1892).

Another influential Antifederalist, “Federal Farmer,” warned about the perils of a population too busy with their private affairs to maintain arms proficiency. He worried “that the substantial men, having families and property, will generally be without arms, without knowing the use of them, and defenceless; whereas, to preserve liberty, it is essential that the whole body of the people always possess arms, and be taught alike, especially when young, how to use them.” Federal Farmer, *Letter XVIII*, Jan. 25, 1788, in 20 DOCUMENTARY HISTORY, at 1073.

The necessity for a trained populace was reflected in proposed declarations of rights, and, as *Heller* concluded, the Second Amendment. Virginia’s proposed arms right for the United States Constitution provided “[t]hat the people have a right to keep and bear arms: that a well regulated militia composed of the body of the people trained to arms, is the proper, natural and safe defence of a free State.” 37 DOCUMENTARY HISTORY OF THE RATIFICATION OF THE CONSTITUTION 253 (John Kaminski et al. eds., 2020). North Carolina proposed the same language as Virginia. *Id.* at 266. New York’s proposal used similar language, but it substituted “the body of the people trained to arms” with “the body of the People

capable of bearing Arms.” *Id.* at 257. Rhode Island copied New York’s language. *Id.* at 273.

Future vice-president Elbridge Gerry preferred the “trained to arms” language from some proposals because it would “furnish a greater certainty” that a competent militia would be maintained. *Id.* at 403. Yet an objective of each proposal was to ensure that the populace would be familiar with arms, and as *Heller* demonstrated, this objective was reflected in the Second Amendment’s text. Antifederalist Samuel Nasson acknowledged this when urging his Federalist congressman George Thatcher to ratify the Second Amendment: “you know to learn the Use of arms is all that can Save us from a forighn foe that may attempt to subdue us, for if we keep up the Use the-of arms and become well acquainted with them we Shall allway be able to look them in the face that arise up against us.” Letter from Samuel Nasson to George Thatcher, July 9, 1789, *in* THE COMPLETE BILL OF RIGHTS 296 (Neil Cogan ed., 2d. ed. 2015).

Because the Second Amendment’s plain text covers training, the Township can justify its training restriction only by demonstrating a historical tradition of such regulation. *Bruen*, 142 S. Ct. at 2130.

II. Historically, the right to train was an essential element of the right to keep and bear arms.

A. Colonial America.

Bruen valued colonial laws and practices to the extent that they informed the original understanding of the Second Amendment. 142 S. Ct. at 2142-44.

In colonial America, arms proficiency was required for survival. Firearms were needed for food, self-defense, community defense, and conquest. Poor shooting could result in starvation, invasion, insurrection, or defeat in battle. Indeed, “[n]owhere else was the cult of accuracy so rigorously worshipped as in colonial America.” Alexander Rose, *AMERICAN RIFLE: A BIOGRAPHY* 18-19 (2008).

Training and shooting competitions were among the most popular and important forms of entertainment, as they offered both a source of amusement and an opportunity to hone the skills necessary for colonial life. See M.L. Brown, *FIREARMS IN COLONIAL AMERICA* 127 (1980) (“The popular shooting match” was a common “entertainment form” and “practical from the standpoint of practice.”).

Describing his experiences in Virginia and Pennsylvania in the 1760s-80s, Joseph Doddridge emphasized the popularity of target shooting:

“Shooting at marks was a common diversion among the men, when their stock of ammunition would allow it.” Joseph Doddridge, NOTES ON THE SETTLEMENT AND INDIAN WARS OF THE WESTERN PARTS OF VIRGINIA AND PENNSYLVANIA FROM 1763 TO 1783, at 124 (Ritenour & Lindsey eds., 1912).

“Long-distance shooting contests were major events in rural communities.” Nicholas Johnson et al., FIREARMS LAW AND THE SECOND AMENDMENT 239 (3d ed. 2021). To improve their marksmanship, “[s]ome riflemen even purchased a long, narrow brass or iron tube about half an inch in diameter that could be screwed into the top of the barrel to function as a rudimentary ‘telescopic’ sight.” Rose, AMERICAN RIFLE, at 19.

The freedom to shoot was used to lure indentured servants from overseas. For example, to encourage immigration to Maryland, George Alsop advertised that “every Servant has a Gun, Powder and Shot allowed him, to sport him withall on all Holidayes and leasurable times, if he be capable of using it, or willing to learn.” George Alsop, A CHARACTER OF THE PROVINCE OF MARYLAND 59 (Newton Mereness ed., 1902) (1666).

Historical accounts of America's Founders demonstrate how common and highly valued training was.

President John Adams was especially fond of target shooting: "I spent my time as idle Children do," Adams wrote in his autobiography, "and above all in shooting, to which Diversion I was addicted to a degree of Ardor which I know not that I ever felt for any other Business, Study or Amusement." 3 DIARY AND AUTOBIOGRAPHY OF JOHN ADAMS 257 (Lyman Butterfield ed., 1961).

Thomas Jefferson shot often, and sometimes competed. For example, Jefferson recorded in 1768 that he "Won shooting 1/6" (one sixpence), and in 1769 that he "Lost shooting" "2/6." 1 JEFFERSON'S MEMORANDUM BOOKS, ACCOUNTS, WITH LEGAL RECORDS AND MISCELLANY, 1767-1826, at 81, 150 (2d ser., Bear & Stanton eds., 1997). In 1785, Jefferson lauded the benefits of recreational shooting and recommended that his nephew prioritize it over other forms of entertainment:

As to the species of exercise, I advise the gun. While this gives a moderate exercise to the body, it gives boldness, enterprize, and independance to the mind. Games played with the ball and others of that nature, are too violent for the body and stamp no character on the mind. Let your gun therefore be the constant companion of your walks.

Thomas Jefferson, WRITINGS 816-17 (Merrill Peterson ed., 1984). Later in life, Jefferson presented James Madison's adoptive son, John Payne Todd, with firearms "in the hope they will afford you [Todd] sport in your daily rides." Letter from Thomas Jefferson to John Payne Todd, Aug. 15, 1816, *in* 10 THE PAPERS OF THOMAS JEFFERSON: RETIREMENT SERIES 321 (Jefferson Looney ed., 2013).

Ira Allen was Vermont's most influential founder. "[F]ew if any state papers of Vermont were issued" from 1776 to 1786 that he "did not prepare or assist in preparing." 1 James Wilbur, IRA ALLEN: FOUNDER OF VERMONT, 1751-1814, at 87 (1928). Ira and his also influential brother Ethan regularly engaged in shooting. Ira wrote of one of Ethan's shooting matches in 1772:

Mr. Peck and my brother...had...some bets laid for shooting at mark next morning....In the gray of the morning, Mr. Peck and my brother were up and preparing their guns, &c., and soon began to fire....They continued their sport till the sun was two hours high.

Id. at 28. After the Second Amendment's ratification, in 1796, Ira Allen stated that in America, "[a]rms and military stores are free merchandise, so that any who have property and choose to sport with it, may turn their gardens into parks of artillery, and their houses into arsenals, without

danger to Government.” Ira Allen, PARTICULARS OF THE CAPTURE OF THE OLIVE BRANCH 403 (1798).

America’s sixth president, John Quincy Adams, shared his father’s fondness for target shooting and passed it to his children. When President Madison sent Adams to serve as Minister to Russia in 1809, Adams asked his brother Thomas to take his 9-year-old son with him on shooting excursions:

One of the things which I wish to have [my children] taught...is the use and management of firearms....As you are a sportsman, I beg you occasionally from this time to take George out with you in your shooting excursions, teach him gradually the use of the musket, its construction, and the necessity of prudence in handling it; let him also learn the use of pistols, and exercise him at firing at a mark.

3 WRITINGS OF JOHN QUINCY ADAMS 1801-1810, at 497 (Worthington Ford ed., 1914).

Of course, it was not only colonists who would become historical figures that trained. The *Boston Gazette* reported that “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. An Englishman visiting New England in 1774 noted that “in the cities you scarcely find a Lad of 12 years that does

not go a Gunning.” David Harsanyi, *FIRST FREEDOM: A RIDE THROUGH AMERICA’S ENDURING HISTORY WITH THE GUN* 47 (2018). In 1705 Virginia, Robert Beverley wrote that “most people are skilful in the use of fire-arms, being all their lives accustomed to shoot in the woods.” Robert Beverley, *THE HISTORY AND PRESENT STATE OF VIRGINIA* 217 (J.W. Randolph ed., 1855). And closer to the Revolutionary War, a Virginia gentleman described American arms culture by explaining that “[w]e are all in arms, exercising and training old and young to the use of the gun.” *The King’s Message to Parliament, of March 7, 1774, to the Declaration of Independence by the United States, in* 3 *AMERICAN ARCHIVES: A DOCUMENTARY HISTORY OF THE ENGLISH COLONIES IN NORTH AMERICA* 621 (4th Ser., Peter Force ed., 1840).

B. Revolutionary America.

As tensions rose with Great Britain, Americans’ emphasis on training intensified. In his famous 1773 Boston sermon, Reverend Simeon Howard declared that,

A people who would stand fast in their liberty, should furnish themselves with weapons proper for their defence, and learn the use of them...However numerous they may be, if they are unskilled in arms, their number will tend little more to their security, than that of a flock of sheep does to preserve them from the depredations of the wolf: accordingly it is looked upon as a point of wisdom, in every state, to be furnished with

this skill, though it is not to be obtained without great labor and expence.

A SERMON PREACHED TO THE ANCIENT AND HONORABLE ARTILLERY-COMPANY, IN BOSTON, NEW ENGLAND, JUNE 7TH, 1773, at 25-26 (1773).

Boston patriot Josiah Quincy echoed this sentiment: “The supreme power is ever possessed by those who have arms in their hands, and are disciplined to the use of them.” Josiah Quincy, Jr., *Observations on the Act of Parliament Commonly Called the Boston Port-Bill: With Thoughts on Civil Society and Standing Armies* (1774), in MEMOIR OF THE LIFE OF JOSIAH QUINCY, JUNIOR, OF MASSACHUSETTS: 1774-1775, at 347 (2d ed. 1874). Accordingly, the Provincial Congress of Massachusetts in 1775 advocated for “all the inhabitants of this colony, to be diligently attentive to learning the use of arms.” N.H. GAZETTE, Jan. 27, 1775, at 1.

Many Americans expected their lifelong arms training to give them an advantage over the British. Savannah minister John Zubly warned that “in the strong sense of liberty, and the use of firearms almost from the cradle, the Americans have vastly the advantage over men of their rank almost everywhere else.” Moses Coit Tyler, THE LITERARY HISTORY OF THE AMERICAN REVOLUTION, 1763-1776, at 484 (1898). Major General Charles Lee—Washington’s second-in-command—found “reason to doubt” that

the British “should be able to conquer 200,000 active, vigorous yeomanry...all armed, all expert in the use of arms, almost from their cradles.” *To the People of America* (Feb. 3, 1775) in MEMOIRS OF THE LIFE OF THE LATE CHARLES LEE, ESQ. 142 (1792).

James Madison boasted about Virginia’s marksmen and his own marksmanship:

The strength of this Colony will lie chiefly in the rifle-men...of whom we shall have great numbers. You would be astonished at the perfection this art is brought to. The most inexpert hands rec[k]on it an indifferent shot to miss the bigness of a man’s face at the distance of 100 Yards. I am far from being among the best & should not often miss it on a fair trial at that distance. If we come into an engagement, I make no doubt but the officers of the enemy will fall at the distance before they get within 150 or 200 Yards. Indeed I believe we have men that would very often hit such a mark 250 Yds.

Letter from James Madison to William Bradford (June 19, 1775), *in* 1 THE PAPERS OF JAMES MADISON 153 (William Hutchinson et al. eds., 1962).

Indeed, when General Washington sought 500 sharpshooters, so many applied that a competition was held. Diary of John Harrower, 1773-1776, *in* 6 THE AMERICAN HISTORICAL REVIEW 100 (1900). They were such skilled shots, however, that the target was quickly destroyed:

The commanding Officer...took a board of a foot squar and with Chalk drew the shape of a moderate nose in the center and nailed it up to a tree at 150 yd distance and those who came nighest the mark with a single ball was to go. But by the

first 40 or 50 that fired the nose was all blown out of the board, and by the time his Comp. was up the board shared the same fate.

Id.

A Pennsylvanian, writing of a company of “a thousand riflemen,” explained that “[t]hey are, at ’listing, rejected, unless they can hit a playing-card, without a rest, at one hundred and twenty yards distance.” Letter From Thomas Lynch to Mr. Izard, *in* 1 CORRESPONDENCE OF MR. RALPH IZARD, OF SOUTH CAROLINA, FROM THE YEAR 1774 TO 1804, at 100 (1844). He added that “[a]lmost every sensible man, in all the colonies, is trained.” *Id.*

The Continental Congress warned King George III that “men trained to Arms from their infancy, and animated by the love of liberty, will afford neither a cheap or easy conquest.” 1 JOURNALS OF THE AMERICAN CONGRESS FROM 1774-1788, at 110 (1823).

Bearing out this warning, Americans’ success in the Revolutionary War was widely attributed to their proficiency with arms. Discussing the 1775 Battle of Bunker Hill in 1789, David Ramsay, a South Carolina legislator and delegate to the Continental Congress, explained,

None of the provincials in this engagement were riflemen, but they were all good marksmen. The whole of their previous military knowledge had been derived from hunting, and the

ordinary amusements of sportsmen. The dexterity which by long habit they had acquired in hitting beasts, birds, and marks, was fatally applied to the destruction of British officers.

1 David Ramsay, *THE HISTORY OF THE AMERICAN REVOLUTION* 204 (1789).

Ramsay determined that Americans had an advantage because “the inhabitants had been, from their early years...taught the use of arms.”

Id. at 191. “Europeans,” by contrast, “from their being generally unacquainted with fire arms are less easily taught the use of them than Americans, who are from their youth familiar with these instruments of war.” *Id.* at 195.

Thomas Jefferson believed British casualties were higher because Americans were better marksmen: “This difference [in casualties] is ascribed to our superiority in taking aim when we fire; every soldier in our army having been intimate with his gun from his infancy.” 1 *THE WORKS OF THOMAS JEFFERSON* 208 (H.A. Washington ed., 1884). George Washington agreed: “Our Scouts, and the Enemy’s Foraging Parties, have frequent skirmishes; in which they always sustain the greatest loss in killed and Wounded, owing to our Superior skill in Fire arms.” 7 *THE WRITINGS OF GEORGE WASHINGTON: FROM THE ORIGINAL MANUSCRIPTS 1745-1799*, at 198 (John Fitzpatrick ed., 1932).

John Hancock, President of the Continental Congress, praised American riflemen as “the finest Marksmen in the world.” Letter from John Hancock to Joseph Warren (June 18, 1775), *in* 1 LETTERS OF MEMBERS OF THE CONTINENTAL CONGRESS 134 (Edmund Burnett ed., 1921). John Adams called them “the most accurate Marksmen in the world.” Letter from John Adams to Abigail Adams (June 11, 1775), *in* 1 ADAMS FAMILY CORRESPONDENCE: DECEMBER 1761-MAY 1776, at 215 (Lyman Butterfield ed., 1963).

In the summer of 1775, General Washington “arranged a spectator review of his riflemen.”

In the presence of the army...and an immense crowd of spectators, in which a number of British spies were welcome visitors, a pole 7 inches in diameter was set up....The mark was about equal to that a man would present standing sideways, and the range about 200 yards....[T]he riflemen...so riddled the pole that it was apparent that no enemy could survive an instant.

1 Charles Sawyer, FIREARMS IN AMERICAN HISTORY 79-80 (1910). “General Howe,” the commander-in-chief of the British land forces, “was fully as much impressed as the spectators, and wrote home about the ‘terrible guns of the rebels.’” *Id.* at 80.

A letter from Maryland on August 1, 1775, described an impressive display that occurred there.

[The riflemen] were drawn out to show...their dexterity at shooting. A clapboard, with a mark the size of a dollar, was put up; they began to fire off-hand...few shots being made that were not close to or in the paper....[S]ome lay on their backs, some on their breast or side, others ran twenty or thirty steps, and firing, appeared to be equally certain of their mark.

3 AMERICAN ARCHIVES, at 2.

Days later, the *Virginia Gazette* reported another remarkable display from Lancaster, Pennsylvania.

Two brothers in the company took a piece of board five inches broad and seven inches long...while one of them supported this board perpendicularly between his knees, the other, at the distance upwards of sixty yards, and without any kind of rest, shot eight bullets through it successively, and spared a brother's thigh! Another of the company held a barrel stave perpendicularly in his hands...while one of his comrades, at the same distance...shot several bullets through it....The spectators...were told that there were upwards of fifty persons in the same company who could do the same thing; that there was not one who could not plug nineteen bullets out of twenty...within an inch of the head of a tenpenny nail.

1 DIARY OF THE AMERICAN REVOLUTION FROM NEWSPAPERS AND ORIGINAL DOCUMENTS 122 (Frank Moore ed., 1863). The *Gazette* added that “some of them proposed to stand with apples on their heads, while others at the same distance, undertook to shoot them off.” *Id.*

The Americans were equally impressive in battle. In Boston, the riflemen picked off Howe's men from long distances. One rifleman, “seeing some British on a scow at a distance of fully half a mile, found a good resting place on a hill and bombarded them until he potted the lot.”

Sawyer, FIREARMS IN AMERICAN HISTORY, at 81. British soldiers discovered that “it was almost certain death to expose their heads within two hundred yards of the riflemen.” 8 OHIO ARCHEOLOGICAL AND HISTORICAL PUBLICATIONS 222 n.35 (Fred Heer ed., 1900). As Army surgeon Dr. James Thacher observed,

These men are remarkable for the accuracy of their aim; striking a mark with great certainty at two hundred yards distance....[T]heir shot have frequently proved fatal to British officers and soldiers, who expose themselves to view, even at more than double the distance of common musket-shot.

6 *id.* at 222 n.35.

On August 16, 1775, the *Pennsylvania Gazette* reported that “[a] centry was killed at 250 yards distance,” John Dillin, THE KENTUCKY RIFLE 84 (PALLADIUM PRESS 1998) (1924), and the *Pennsylvania Packet* added that “only half his head was seen,” *id.* On the 21st, the *Pennsylvania Gazette* further reported that “some rifleman...killed three men on board a ship at Charlestown ferry, at the distance of full half a mile.” *Id.* at 85.

When an English soldier on the New Jersey side of the Delaware River “mocked” Jacobus Scout on the Pennsylvania side, the Pennsylvania gunsmith “shot [the] English soldier at 900 yards and killed him.” *Tales*

from the 1769 Vansant/Craven Burying Ground, THE CRAVEN HALL NEWSLETTER, Mar. 2021, at 7, <https://perma.cc/A5FE-RAWY>.

Perhaps no long-distance shot was as consequential as Timothy Murphy's during the Battle of Saratoga. The Pennsylvania hunter killed General Simon Fraser from around 300 yards during a pivotal point in the battle, which became a turning point in the war. Sawyer, FIREARMS IN AMERICAN HISTORY, at 86. The victory provided the Americans a needed morale boost and motivated the French to enter the war as American allies.

Daniel Morgan gave Murphy the order to shoot. Morgan, like others, held a shooting competition for admission into his company. Rose, AMERICAN RIFLE, at 43. Morgan "found the best shooters in western Virginia by setting up a target depicting a British officer's head (some said it was of King George III) at one hundred yards and requiring his recruits to hit it on their first shot." *Id.* at 51.

"[T]he best marksman in the British Army" was Major George Hanger. *Id.* at 56. He described an attack that was foiled when an American rifleman killed his companion's horse from 300 yards away. George Hanger, COLONEL GEORGE HANGER'S ADVICE TO ALL SPORTSMEN,

FARMERS AND GAMEKEEPERS 122 (1814). As a captive during the war,

Hanger inquired about the Americans' training:

I have often asked American riflemen, what was the most they thought they could do with their rifle? They have replied, that they thought they were generally sure of splitting a man's head at two hundred yards, for so they termed their hitting the head. I have also asked several whether they could hit a man at four hundred yards, — they have replied certainly, or shoot very near him, by only aiming at the top of his head.

Id. at 144. Hanger was “certain, that, provided an American rifleman were to get a perfect aim at 300 yards at me, standing still, he most undoubtedly would hit me.” *Id.* at 210. He added, “I never in my life saw...men who shot better.” *Id.* at 122.

Many British soldiers agreed. “In the British camp the riflemen were called...the most fatal widow-and-orphan makers in the world.” 8 OHIO ARCHEOLOGICAL, at 222 n.35. And it was not just the riflemen who impressed with their accuracy. As one British officer remarked, “[Americans] were generally good marksmen, and many of them used long guns made for Duck-Shooting.” Frederick MacKenzie, A BRITISH FUSILIER IN REVOLUTIONARY BOSTON, BEING THE DIARY OF LIEUTENANT FREDERICK MACKENZIE 67 (Allen French ed., 1926).

The Americans may have lost the war if not for their superior marksmanship. They learned how valuable lifelong firearms practice was

for resisting a tyrannical government, and they kept that in mind when forming their own government.³

C. Postenactment History.

Bruen cautioned “against giving postenactment history more weight than it can rightly bear,” but considered “evidence of how the Second Amendment was interpreted from immediately after its ratification through the end of the 19th century.” 142 S. Ct. at 2132 (quoting *Heller*, 554 U.S. at 605); *but see id.* at 2137 (“to the extent later history contradicts what the text says, the text controls”).

By President Washington’s first address to a joint session of Congress, New Jersey, Maryland, and North Carolina had ratified the proposed Bill of Rights. Washington reminded Americans in his address that “a free people ought not only to be armed, but disciplined.” 1 JOURNAL OF THE SECOND SESSION OF THE SENATE OF THE UNITED STATES OF AMERICA 6 (1820).

The same point was made during debates in the first Congress. On December 17, 1790—at which point nine of the required eleven states

³ For more training history, see Joseph Greenlee, *The Right to Train: A Pillar of the Second Amendment*, 31 WM & MARY BILL RTS. J. (Forthcoming 2022), <https://ssrn.com/abstract=4089974>.

had ratified the Bill of Rights—the House of Representatives discussed the people’s ability to defend themselves. Representative James Jackson declared “that every citizen was...duty bound to perfect himself in the use of them, and thus be capable of defending his country.” 14 DOCUMENTARY HISTORY OF THE FIRST FEDERAL CONGRESS: DEBATES IN THE HOUSE OF REPRESENTATIVES: THIRD SESSION, DECEMBER 1790 - MARCH 1791, at 95 (1996). To Jackson, one could not credibly contend “that the whole body of the people ought not to be armed, and properly trained.” *Id.*

The “most famous” legal scholar of the 19th century was “the judge and professor Thomas Cooley, who wrote a massively popular 1868 Treatise on Constitutional Limitations.” *Heller*, 554 U.S. at 618. According to Cooley, “to bear arms implies something more than the mere keeping; it implies the learning to handle and use them in a way that makes those who keep them ready for their efficient use; in other words, it implies the right to meet for voluntary discipline in arms.” Thomas Cooley, THE GENERAL PRINCIPLES OF CONSTITUTIONAL LAW IN THE UNITED STATES OF AMERICA 271 (1880). Cooley explained that “[t]he alternative to a standing army is ‘a well-regulated militia,’ but this cannot exist

unless the people are trained to bearing arms.” Thomas Cooley, A TREATISE ON THE CONSTITUTIONAL LIMITATIONS WHICH REST UPON THE LEGISLATIVE POWER OF THE STATES OF THE AMERICAN UNION 350 (1868). Thus, “Cooley understood the right not as connected to militia service, but as securing the militia by ensuring a populace familiar with arms.” *Heller*, 554 U.S. at 618.

That same year—the year the Fourteenth Amendment was ratified—John Norton Pomeroy explained that the purpose of the Second Amendment is “to secure a well-armed militia....But a militia would be useless unless the citizens were enabled to exercise themselves in the use of warlike weapons. To preserve this privilege...government is forbidden by any law or proceeding to invade or destroy the right to keep and bear arms.” John Norton Pomeroy, AN INTRODUCTION TO THE CONSTITUTIONAL LAW OF THE UNITED STATES 152-53 (1868).

Benjamin Abbott’s treatise echoed these sentiments. Abbott stressed that “[s]ome general knowledge of firearms is important to the public welfare; because it would be impossible, in case of war, to organize promptly an efficient force of volunteers unless the people had some familiarity with weapons of war.” Benjamin Abbott, JUDGE AND JURY: A

POPULAR EXPLANATION OF LEADING TOPICS IN THE LAW OF THE LAND 333 (1880). Moreover, “[t]he Constitution secures the right of the people to keep and bear arms. No doubt, a citizen who keeps a gun or pistol under judicious precautions, practises in safe places the use of it, and in due time teaches his sons to do the same, exercises his individual right.” *Id.* “As to guns and pistols, then, the citizen who practises with them is in the exercise of a constitutional right,” because “[o]ne has a general right to practise with firearms.” *Id.* at 334-35.

III. Most colonial- and founding-era training regulations promoted, rather than restricted, training.

A. Most training laws promoted training.

Many colonial- and founding-era laws involving training encouraged, rather than restricted, training. In 1629, so the community “may bee the better able to resist both forraigne enemies & the natives,” the governor of Massachusetts Bay asked that the people “bee exercised in the use of armes.” 1 RECORDS OF MASSACHUSETTS, 1628-1641, at 392 (Nathaniel Shurtleff ed., 1853). In 1645, determining that “the training up of youth to the art and practice of arms will be of great use in the country in divers respects,” Massachusetts Bay ordered “that all youth within this

jurisdiction, from ten years old to the age of sixteen years, shall be instructed...in the exercise of arms.” THE CHARTERS AND GENERAL LAWS OF THE COLONY AND PROVINCE OF MASSACHUSETTS BAY 734 (1814). Starting in 1656, Plymouth Colony required its militiamen to bear arms to church “with powder and bullett to improve if occation shall require”— i.e., practice shooting after church when necessary. THE COMPACT WITH THE CHARTER AND LAWS OF THE COLONY OF NEW PLYMOUTH 102 (1836).

The most common laws ensuring arms proficiency were militia laws. The American colonies and early states enacted hundreds of militia laws that required virtually all able-bodied males (typically, those aged 16-to-60) to keep arms and train with them. See David Kopel & Joseph Greenlee, *The Second Amendment Rights of Young Adults*, 43 S. ILL.U. L.J. 495, 533-89 (2019) (covering the 13 original states and colonies, Vermont, and Plymouth Colony).

B. Most training restrictions prevented shooting into crowded public locations.

The 18th-century restrictions that limited where training could occur were intended to prevent fires or to ensure that people did not fire guns into crowded public areas such as streets and walkways.

At least one colonial restriction was designed to prevent fires. A 1750 Pennsylvania law, enacted “for preventing accidents which may happen by fire,” required a license to “fire any gun or other fire-arm” within a “built and settled” town. ⁵ THE STATUTES AT LARGE OF PENNSYLVANIA FROM 1682 TO 1801, at 108-09 (Mitchell & Flanders eds., 1898). Another section forbade gambling on shooting matches, which makes clear that training still occurred under the law. *Id.* at 109.

Most colonial restrictions were designed to prevent shooting into crowded public areas. A 1713 law forbade anyone without permission to “discharge or fire off any gun upon Boston Neck within ten rods of the road or highway.” THE CHARTER GRANTED BY THEIR MAJESTIES KING WILLIAM AND QUEEN MARY, TO THE INHABITANTS OF THE PROVINCE OF THE MASSACHUSETTS BAY IN NEW-ENGLAND 227 (1726). A similar 1746 law forbade any person to “discharge any gun or pistol, charged with shot or ball, in the town of Boston (the islands thereto being excepted), or in any part of the harbour between the castle and said town.” ³ THE ACTS AND RESOLVES, PUBLIC AND PRIVATE, OF THE PROVINCE OF MASSACHUSETTS BAY 306 (1878). New York City’s 1731 “Law Against Firing Guns in the Street” fined anyone who would “fire and discharge any gun [or]

pistol...in any street, lane or alley, or within any orchard, garden or other inclosure, or in any place where persons frequent to walk.” 4 MINUTES OF THE COMMON COUNCIL OF THE CITY OF NEW YORK 1675-1776, at 105 (1905). That same year, Newport, Rhode Island, forbade shooting in “the Streets or Lanes of any Town.” The CHARTER, GRANTED BY HIS MAJESTY, KING CHARLES II, TO THE GOVERNOR AND COMPANY OF THE ENGLISH COLONY OF RHODE-ISLAND AND PROVIDENCE-PLANTATIONS, IN NEW ENGLAND, IN AMERICA 120 (1744).

The Commonwealth’s amicus brief provided an appendix listing several 19th-century laws restricting where firearms could be discharged. Many of these laws—like the colonial- and founding-era laws above—prevented shooting into crowded areas. *See, e.g.*, Appx. 3-4 (1824 Philadelphia, Pennsylvania: “streets, lanes and alleys”); *id.* at 4 (1824 Schenectady, New York: “street, lane or alley, or in any yard, garden or other enclosure, or in any place which persons frequent to walk”); (1836 Brooklyn, New York: near “turnpike”); *id.* at 5 (1823 Portsmouth, New Hampshire: “within one mile of the courthouse”—i.e., “the compact part of the town”); (1817 New Orleans, Louisiana: “in any street, courtyard, lot, walk or public way”); (1821 Tennessee: “within the bounds of any

town, or within two-hundred yards of any public road of the first or second class”); *id.* at 6 (1823 Columbia, South Carolina: “within the limits bounded by Henderson, Blossom, Lincoln and Upper streets”); *id.* at 8 (1832 Portland, Maine: “streets, wharves, lanes, alleys, or public squares, or in any yard or garden within the city”); *id.* at 10 (1851 Newport, Rhode Island: “in the compact part of the town”).

Other laws listed in the Appendix completely banned firing guns—even for self-defense—in violation of the Second Amendment. *See, e.g.*, Appx. 7 (1845 New Haven, Connecticut); *id.* at 8 (1855 Chicago, Illinois); (1855 Jeffersonville, Indiana); *id.* at 9 (1856 Winchester, Virginia); (1856 Burlington, Iowa); *id.* at 10 (1858 St. Paul, Minnesota). Laws eliminating the right to keep and bear arms cannot justify modern regulations.

Because laws preventing shooting into crowded areas and laws eliminating the right to keep and bear arms do not support the Township’s broad regulation, no historical tradition has been established.

CONCLUSION

The Commonwealth Court’s decision should be affirmed.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that based on the word count of Microsoft Word, this brief does not exceed 7,000 words, pursuant to P.A.R.A.P. 2135.

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