No. 07-290

In the Supreme Court of the United States

DISTRICT OF COLUMBIA AND ADRIAN 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 SUPPORTING PETITIONERS OF *AMICI CURIAE* AMERICAN JEWISH COMMITTEE, ANTI-DEFAMATION LEAGUE, BAPTIST PEACE FELLOWSHIP OF NORTH AMERICA, CEASEFIRE NJ, CENTRAL CONFERENCE OF AMERICAN RABBIS, CITIZENS FOR A SAFER MINNESOTA, METHODIST FEDERATION FOR SOCIAL ACTION, CLIFTON KIRKPATRICK IN HIS CAPACITY AS THE STATED CLERK OF THE PRESBYTERIAN CHURCH (U.S.A.), EDUCATIONAL FUND TO STOP GUN VIOLENCE, FREEDOM STATES ALLIANCE, AMERICAN JEWISH CONGRESS, FRIENDS COMMITTEE ON NATIONAL LEGISLATION, GRAY PANTHERS, GUNFREEKIDS.ORG, ILLINOIS COUNCIL AGAINST

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QUESTION PRESENTED

Whether the following provisions—D.C. Code §§ 7-2502.02(a)(4), 22-4504(a), and 7-2507.02—violate the Second Amendment rights of individuals who are not affiliated with any state-regulated militia, but who wish to keep handguns and other firearms for private use in their homes?

TABLE OF CONTENTS

TABLE OF CONTENTS—Continued

TABLE OF AUTHORITIES

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

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INTEREST OF *AMICI CURIAE*

Amici curiae are religious, civic, community, and civil-rights groups and group representatives—as well as individual victims and families of victims of gun violence—with a strong interest in stemming the tide of gun violence that threatens individual lives and our communities. A description of each of the 63 *amici* on this brief is set forth in Appendix A, App., *infra*, 1a-9a.[1] For decades, many *amici* have supported meaningful handgun regulations that *amici* believe are critical to protecting life, liberty, and property. *Amici* thus have a particular interest in the manner in which the decision below struck down the District of Columbia's handgun law, because it threatens their ability to seek and obtain effective protection through firearm regulation at the state and local level. *Amici* believe that the text and historical context of the Second Amendment show that it

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[1] This brief is filed with the consent of the parties, and letters of consent have been filed with the Court. Pursuant to this Court's Rule 37.6, *amici* affirm that no counsel for a party authored this brief in whole or in part, that no such counsel or party made a monetary contribution intended to fund the preparation or submission of this brief, and that no person other than *amici* and *amici*'s counsel made such a monetary contribution.

is a federalism provision that reinforces, rather than diminishes, state and local authority.

INTRODUCTION AND SUMMARY OF ARGUMENT

Amici believe the decision below is premised on a fundamental misconception about the relationship between state and local authority and the preservation of individual liberty under our Constitution. Viewing state and local authority as inconsistent with individual liberty, the decision below distorted the Second Amendment—disregarding half of it entirely—to fit that misconception. But the Framers of the Constitution embraced federalism because they understood that state and local authority are critical to protecting life, liberty, and property. By dividing authority between the federal government and the States, the Framers established a federal government capable of pursuing the new Nation's interests on the global stage while, at the same time, preserving the integrity of state and local governments best situated to respond to local needs. Throughout this Nation's history, the States have fulfilled that role by enacting and enforcing laws necessary to ordered liberty.

I. The Second Amendment, both in its text and origins, reflects and implements that dual system of government. Far from limiting the ability of States and localities to redress threats to the safety of their citizens, the Second Amendment enhances state and local authority to protect life and liberty through the maintenance of militias composed of the local populace. It thus embodies the uniquely American principle of federalism that arose out of a uniquely American historical debate about the respective roles of state militias and a national standing army. Properly read, the Second Amendment prevents unreasonable federal intrusions into gun possession that would impair *state* authority by defeating the *States'* ability to raise "well regulated militia[s]" to protect

public welfare and order. Because the Second Amendment is a structural protection for federalism aimed at preserving the integrity of state militias, the District's handgun law does not implicate it at all. See Pet. Br. 35-40. The court below, however, ignored the Second Amendment's origins in federalism and distorted the constitutional bargain between the States and the federal government. Because the Second Amendment was designed to protect state authority, reading it to limit the ability of States to preserve the lives, liberty, and property of their citizens through firearm regulation turns that amendment on its head. Indeed, the role of the States and their militias—not the putative benefits of unregulated private firearm usage—pervaded the state debates over the Constitution's ratification.

II. Throughout this Nation's history—both before and after the Second Amendment's adoption—the States embraced a variety of approaches to militia participation, gun possession, and firearm regulation. Those early practices reflect the long-held view that the Second Amendment is a limit on *federal* authority to interfere with gun possession by individuals when that would intrude on *state* militia authority—not a limit on state and local authority to regulate in the first instance.

III. Those proposing to interpret the Second Amendment divorced from that context seek to anchor the provision in their interpretation of English law and traditions the Framers inherited from England. But that theory is belied by the historical sources it purports to invoke and is refuted by the course of history. If the Second Amendment had its origins in Blackstone or the well-established rights of Englishmen, one would expect firearm possession to be largely beyond governmental regulation in the other countries that, like ours, inherited their traditions from England. But those countries all extensively regulate firearm possession.

The Second Amendment is unique to this Nation because it stems from, and must be read in light of, the Framers' unique contribution of federalism. It constitutes a bulwark against federal diminution of state authority over militias, not an intrusion on the ability of States and localities to protect their populations in light of local needs and preferences.

ARGUMENT

I. THE SECOND AMENDMENT IS ROOTED IN THE PROTECTION OF INDIVIDUAL LIBERTY PROVIDED BY FEDERALISM

"Federalism was our Nation's own discovery. The Framers split the atom of sovereignty. It was the genius of their idea that our citizens would have two political capacities, one state and one federal, each protected from incursion by the other." *U.S. Term Limits, Inc.* v. *Thornton*, 514 U.S. 779, 838 (1995) (Kennedy, J., concurring); *Saenz* v. *Roe*, 526 U.S. 489, 504 n.17 (1999) (similar). Federalism, a "structural element[] in the Constitution," represents the Framers' "unique contribution." *United States* v. *Lopez*, 514 U.S. 549, 575 (1995) (Kennedy, J., concurring); see *Alden* v. *Maine*, 527 U.S. 706, 713 (1999); *Printz* v. *United States*, 521 U.S. 898, 918 (1997); *Seminole Tribe of Fla.* v. *Florida*, 517 U.S. 44, 71 n.15 (1996).

The Framers adopted that "constitutionally mandated division of authority" between the States and the federal government "'to ensure protection of our fundamental liberties.'" *Lopez*, 514 U.S. at 552 (quoting *Gregory* v. *Ashcroft*, 501 U.S. 452, 458 (1991)). "[S]eparation of the two spheres is one of the Constitution's *structural* protections of *liberty*." *Printz*, 521 U.S. at 921 (emphasis added); *New York* v. *United States*, 505 U.S. 144, 181 (1992) ("[T]he Constitution divides authority between

federal and state governments *for the protection of individuals*.") (emphasis added). As Madison explained:

> In the compound republic of America, the power surrendered by the people, is first divided between two distinctive governments, and then the portion allotted to each, subdivided among distinct and separate departments. Hence a double security arises to the rights of the people.

The Federalist No. 51, at 400 (James Madison) (John C. Hamilton ed., 1864).

Federalism thus "protects liberty" in multiple ways. It "restrict[s] the burdens that" the national "government can impose from a distance," and "facilitat[es] citizen participation in government that is closer to home." *United States* v. *Morrison*, 529 U.S. 598, 655 (2000) (Breyer, J., dissenting). It also protects *state authority* to enact and enforce legislation to safeguard life, liberty, and property in light of local conditions and preferences to which the States are often uniquely suited to respond. *Gregory*, 501 U.S. at 458.

The Second Amendment reinforces state authority by protecting the States' ability to raise the militias once thought critical to the maintenance of ordered liberty. See pp. 14-17, *infra*. For that reason, federal courts have routinely and overwhelmingly focused on the connection between the Second Amendment and state militias. See Pet. App. 59a (citing myriad cases). This Court's decisions have as well. See, *e.g.*, *United States* v. *Miller*, 307 U.S. 174, 178 (1939); *Presser* v. *Illinois*, 116 U.S. 252, 264-66 (1886); see also *Lewis* v. *United States*, 445 U.S. 55, 65-66 n.8 (1980).

The majority's contrary position below stems in large part from the view that preserving state authority is somehow inconsistent with individual liberty. See Pet. App. 47a-48a. But the Framers embraced federalism be-

cause they saw state and local authority as critical to the protection of life and liberty. As Federalist Number 45 explains:

> The powers delegated by the proposed constitution to the Federal Government, are few and defined. * * * The powers reserved to the several States will extend to all the objects, which, in the ordinary course of affairs, concern the lives, liberties, and properties of the people; and the internal order, improvement, and prosperity of the State.

The Federalist No. 45, at 363 (James Madison) (John C. Hamilton ed., 1864). Consequently, "[s]tate sovereignty is not just an end in itself" but a means of "secur[ing] to citizens the liberties that derive from the diffusion of state power." *New York*, 505 U.S. at 181 (citation omitted). And there can be "no better example of the police power, which the Founders denied the National Government and reposed in the States, than the suppression of violent crime and vindication of its victims." *Morrison*, 529 U.S. at 618 (citations omitted). Properly interpreted, the Second Amendment does not restrict the ability of States and localities to regulate dangerous weapons to prevent threats to the lives, liberty, and property of their citizens, or to otherwise regulate their militias. To the contrary, as explained below, text and history show that the Second Amendment is a structural reinforcement of federalism that protects state authority and ensures that the States can call forth and deploy their "well regulated militia[s]" for the security of their people.

A. Text And History Confirm That The Second Amendment Protects State Autonomy By Creating Militia-Related Rights

Read in light of the Constitution as a whole, the text and history of the Second Amendment show that it reflects the principles of federalism that pervade our republican form of government. Under those principles, the local District of Columbia legislation at issue here does not implicate the Second Amendment. Even if it were applicable to the District, that Amendment does not limit state and local authority to protect life, liberty, and property by addressing the proliferation of firearms for non-militia uses.

1. *Text And Structure Make Clear That the Second Amendment Is A Militia- and Federalism-Based Protection*

a. While interpretation of the Constitution begins with text, we will not repeat petitioners' and other *amici*'s exhaustive textual analysis. See Pet. Br. 12-21; Profs. of Linguistics and English Br. 5-30. For now, it is sufficient that the very first clause—"a well regulated militia being necessary to the security of a free State"—declares the Amendment's militia-related purpose. That "absolute" clause sets forth the purpose or reason for the remainder of the Second Amendment's text—a purpose that is critical when interpreting the Amendment's scope. See Profs. of Linguistics and English Br. 5-14. The phrase "to keep and bear Arms" likewise reflects a militia-related purpose. See Pet. Br. 16-17. And the references to "the people" are not to the contrary. As detailed at pp. 17-18, *infra*, the Framers often used "the people" to mean the people acting through the militia (which was composed of the people).

Indeed, the Second Amendment's first clause mirrors many of the preconstitutional statutes that established

state militias. Those statutes—like the Second Amendment—began with a statement of purpose. North Carolina's declared that "a well regulated militia is absolutely necessary for the defending and securing [of] the liberties of a free State." Act of Apr. 8, 1777, ch. XV, 1777 N.C. Laws 58. Georgia's likewise stated that "a well ordered and disciplined Militia, is essentially necessary, to the Safety, peace and prosperity, of this State, and a Militia Law, upon just principles hath ever been regarded, as the best Security of Liberty and the most effectual Means, of drawing forth and exerting the Natural Strength of a State." Act of Nov. 15, 1778, reprinted in 19 *Colonial Records of the State of Georgia* 103-04 (Allen Candler ed., 1911). See also App., *infra*, 10a-36a (reproducing other contemporaneous state militia statutes). That the Framers borrowed text for the Second Amendment from *state militia laws*—laws explicitly enacted to create state-controlled forces to defend *the State* and "exert[ ] *the Natural Strength of a State*"—speaks volumes about the purpose and scope of the Second Amendment.

b. The Second Amendment, moreover, must be read in light of related constitutional provisions, such as Article I, § 8, which governs state and federal control over the militias and military forces. Article I, § 8 represented a shift from the Articles of Confederation, which had made militias the nearly exclusive means of national defense and had left them in state control.[2] By

[2] The Articles mandated that the States "always keep up a well-regulated and disciplined militia, sufficiently armed and accoutered." Art. Confed. VI. States were also required to "provide and constantly have ready for use, in public stores, a due number of filed pieces and tents, and a proper quantity of arms, ammunition and camp equipage." *Ibid.* The Articles did not address the private possession of arms, but did proclaim that "[e]ach state retains its sovereignty, freedom, and independence, and every power, juris-

contrast, Article I, § 8, clauses 12 and 13 of the new Constitution gave Congress authority to raise and support an army and navy, while clause 16 gave Congress substantial authority over state militias. That authority included the ability to "provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions," and to "provide for organizing, arming, and disciplining the Militia, and for governing such Part of them as may be employed in the Service of the United States," Art. I, § 8, cl. 16. And under Article II, the President is Commander in Chief "of the Militia of the several States, when called into the actual Service of the United States." Art. II, § 2, cl. 1.

At the same time, the States retained vital control and authority over their militias. They retained the power to appoint officers, and to train "the Militia according to the discipline prescribed by Congress." U.S. Const., art. I, § 8, cl. 16. A State, moreover, could engage in war if "actually invaded" or if "in such imminent danger as will not admit of delay." Art. I, § 10, cl. 3. The States were expected to, and did, call on their state militias to maintain order, quell insurrection, and repel invasion. See pp. 12-13, *infra*. The Second Amendment cannot be construed apart from the States' use and control of militias contemplated in Article I, § 8. Indeed, the Second Amendment circumscribes the relevant "militia" further, by protecting the right to bear arms in a "well regulated militia" to ensure the "security" of a "free State." See Profs. of Linguistics and English Br. 15-18. As explained below, the ratification debates make it clearer still that the Amendment was designed to preserve the ability of the sovereign States to raise militias from their populace despite the authority granted to the national govern-

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diction, and right, which is not by this Confederation expressly delegated to the United States, in Congress assembled." Art. Confed. II.

ment—not to protect unregulated and non-militia firearm possession.

c. The effort to unmoor the Second Amendment from its federalism origins and its purpose of preserving the States' control over their militias sets the Constitution at war with itself. For example, although the majority below posited that the Second Amendment sought to protect private possession of firearms so that individuals could "resist and throw off a tyrannical government," Pet. App. 21a, the *Constitution* specifies that any effort to overthrow the government is "treason" punishable by death, Art. III, § 3. Just as courts should not read one provision of a statute to conflict with another, see *Geier* v. *Am. Honda Motor Co.*, 529 U.S. 861, 872 (2000), they ought not read the Second Amendment as arming the populace to commit what the Constitution itself deems a capital offense. See *Cohens* v. *Virginia*, 19 U.S. (6 Wheat.) 264, 393 (1821) (describing "the duty of the Court" to "construe the constitution as to give effect to both provisions, as far as it is possible to reconcile them, and not to permit their seeming repugnancy to destroy each other").

The Second Amendment, Article I, § 8 of the Constitution, and contemporaneous militia statutes all provide for the militias to be called forth to preserve *the security of the State* and to *quell insurrections*. See pp. 8-10, *supra*. To read the Second Amendment as providing arms so that militias can quell insurrection, while at the same time facilitating insurrection, makes no sense. Nor is it plausible that the Second Amendment *sub silentio* protects a right to keep and bear arms to overthrow the government when some unspecified number of individuals, in their unguided discretion, decide that the government is "tyrannical." Blackstone rejected—as a license for "anarchy" and as "fatal to civil liberty as tyranny itself"—any "right" that would allow

individuals to determine when armed force against government is necessary. William Blackstone, 1 *Commentaries on the Laws of England* *244 (1765).[3]

The Framers understood the dangers of such a theory from their own experience, just as we do today. In 1786, Daniel Shays and fellow Massachusetts citizens began an armed revolt, known as Shays' Rebellion, to resist debt collection. They described their mission as "[s]uppressing a tyrannical government in the Massachusetts State." C.O. Parmenter, *History of Pelham* 373 (1898); Daniel Shays interview, Massachusetts Centinel, Jan. 17, 20,

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[3] Blackstone rejected as "extreme" any view that would "allow[] to every individual the right of determining th[e] expedience" of "proclaim[ing] * * * resistance [to the prince] necessary" "and of employing private force to resist even private oppression * * * ." *Ibid.* Nor does Blackstone offer support for the proposition that English common law provided an unqualified personal right to bear arms. His *Commentaries* separated the civic and auxiliary right to bear arms from the personal right of self-defense. 4 Blackstone, *supra*, at *184-85. Blackstone's fifth auxiliary right "is that of having arms for their defence, suitable to their condition and degree, and such *as are allowed by law*." 1 Blackstone, *supra*, at *139 (emphasis added). Likewise, Article VII of the English Bill of Rights states "[t]hat the Subjects which are Protestants may have Armes for their defence Suitable to their Conditions *and as allowed by law*." Bill of Rights, 1689, 1 W. & M., st. 2, c. 2 (Eng.) (emphasis added). "As allowed by law" qualifies that right. Before the English Bill of Rights' passage, a wide variety of laws limited the possession of arms—including, for example, laws based on socioeconomic class that limited possession of certain hunting weapons to the wealthy. Lois G. Schwoerer, *To Hold and Bear Arms: The English Perspective*, 76 Chi.-Kent L. Rev. 27, 35, 47-49 (2000). Nor do the works of St. George Tucker and Joseph Story undermine the militia-based view of the Second Amendment. See, *e.g.*, Saul Cornell, *St. George Tucker and the Second Amendment: Original Understandings and Modern Misunderstandings*, 47 Wm. & Mary L. Rev. 1123 (2006); Saul Cornell, *A Well-Regulated Militia: The Founding Fathers and the Origins of Gun Control in America* 73-76, 150-52 (2006).

1787 (quoting Shays as seeking to "overthrow the present constitution" of Massachusetts) (cited in Leonard L. Richards, *Shays's Rebellion: The American Revolution's Final Battle* 30 (2002)). When the insurrectionists sought to seize the weapons in the arsenal at Springfield, Massachusetts, the *militia* was called out to put down the rebellion. Richards, *supra*, at 27. The Whiskey Rebellion of July 1794, swiftly suppressed when George Washington and Alexander Hamilton called forth the militia, was likewise widely denounced. Mark Bonsteel Tachau, *A New Look at the Whiskey Rebellion*, in *The Whiskey Rebellion: Past and Present Perspectives* 97 (Steven R. Boyd ed., 1985).

For the Framers, the lesson of such uprisings was that "the rebellion of a people against a government established by themselves is *not* justifiable, *even in an extreme case*, and can only result in dishonor to the state, and calamity and disgrace to those who participate in it." 1 Josiah Holland, *History of Western Massachusetts* 299-300 (Springfield, Bowles & Co. 1855) (emphasis added). Thus, in the Framers' experience, it was not the possession of arms for personal uses apart from militia service (or against the government) that preserved ordered liberty. It was the *States*' access to militias and similar state-controlled forces to protect their citizens that was essential. Modern experience confirms that view.[4]

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[4] Deeming the States and the federal government "tyrannical," members of groups like the Tax Protest Movement, the White Supremacist Movement, the Sovereign Citizen Movement, and the so-called "militia" movement have all been prosecuted for plotting to blow up federal buildings or otherwise engage in violent anti-government activities. See http://www.adl.org/learn/ext_us/default.asp?LEARN_Cat=Extremism&LEARN_SubCat=Extremism_in_America&xpicked=1&item=0; http://www.splcenter.org/intel/intelreport/article.jsp?aid=197. Timothy McVeigh's decision to bomb the Murrah Federal Building in Oklahoma City was in part motivated by

2. *The Contemporaneous Debates Confirm the Second Amendment's Purpose*

Read as a whole, the ratification debates confirm what text makes plain: The Second Amendment was designed to protect the sovereignty of the States and their ability to have and control militias—not to protect individuals wishing to possess firearms irrespective of state law. For the Court's convenience, extensive materials relating to the debates are reproduced as an Appendix hereto. App., *infra*, 37a-191a. That Appendix includes the key Virginia Convention debates held on June 14, 16, and 27, 1788. *Id.* at 91a-191a. According to the Justice Department's Office of Legal Counsel, the Virginia Convention "had particular importance, not only because of the possibility that Virginia would be the ninth State to ratify but also because of the State's significance, the prominence of its leaders, and the strength of the Anti-Federalists, led by Patrick Henry." *Whether the Second Amendment Secures an Individual Right*, Op. Off. Legal Counsel 65 (2004). That may be true, but the debates—particularly when read in their entirety—show that the Second Amendment is a federalism provision that protects individual liberty by preserving, not undermining, state authority. Far from protecting a non-militia right to possess arms outside of state authority, the Second

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a desire to avenge perceived government tyranny at Ruby Ridge, Idaho and Waco, Texas. Lou Michel & Dan Herbeck, *American Terrorist: Timothy McVeigh and the Oklahoma City Bombing* 136-37, 285-86 (2001). Relatedly, far from enhancing personal security, the widespread availability of handguns often results in its diminution. Cf. *Terry* v. *Ohio*, 392 U.S. 1, 27 (1968) (authorizing "stop-and-frisk" of citizens on "reasonable suspicion" in view of danger presented by handguns); see also *Adams* v. *Williams*, 407 U.S. 143, 150 (1972) (Douglas, J., dissenting) ("The police problem is an acute one not because of the Fourth Amendment, but because of the ease with which anyone can acquire a pistol.").

Amendment protects arms possession for state-regulated militia and internal-security purposes, thereby protecting state authority and the state-federal balance the Framers viewed as central to ordered liberty.

a. The militia clauses of the Constitution and the Second Amendment are both products of extensive Framing-era discussions concerning the proper balance between state and federal authority. In the Constitution, Congress was given authority to establish standing armies under Article I, § 8. That raised concern among Anti-Federalists that a standing army could become an instrument of oppression by the national government. As a counterbalance, the Constitution provided the States a critical role with respect to another military force—the militias—reserving for the States "the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress." Art. I, § 8, cl. 16. As the Legal Community Against Violence's brief explains at length (at 9-12), the debates surrounding that compromise make it clear that preserving the *States'* sovereign authority over their militias was seen as critical both to counterbalancing the standing army and to establishing an effective federal-state balance that would protect individual liberty.

The state debates (and Virginia's in particular) make it clear that the Second Amendment likewise was designed to achieve a proper state-federal balance by protecting state authority over militias. Because the new Constitution provided the national government with authority to "arm" the militias, there was grave concern that the national government could disable the militias by refusing to arm them. Thus, while Madison and others responded that the federal government's power over the

militias was concurrent rather than exclusive,[5] Anti-Federalists were not convinced. They feared that Article I, § 8 gave the "national government * * * an exclusive right to provide for arming, organizing, and disciplining the militia * * * ." George Mason, Remarks at the Virginia Convention Debates (June 14, 1788), reprinted in 3 Elliot, *supra*, at 379; see Patrick Henry, Remarks at the Virginia Convention Debates (June 14, 1788), reprinted in 3 Elliot, *supra*, at 385-86 (similar).

Such an exclusive authority, the Anti-Federalists warned, could be used not merely to organize the militia, but also to leave the militia disorganized and unarmed:

> [I]n *this* system, we give the general government every provision it could wish for, and even *invite* it to *subvert* the *liberties* of the *States* and *their citizens*; since we give them the right to [i]ncrease and keep up a standing army as numerous as *it* would wish, and by placing the militia under *its* power, enable it to leave the militia *totally unorganized, undisciplined*, and *even to disarm them*.

Luther Martin, *Genuine Information IV*, Maryland Gazette, Jan. 18, 1788, excerpted in *The Origin of the Second Amendment: A Documentary History of the Bill of Rights* 219, 221 (David E. Young ed., 2d ed. 1995) (some emphasis added). Similarly, George Mason argued that the federal government might "attempt to harass and abuse the militia" so as to effectively "abolish them, and raise a standing army in their stead. * * * The militia may be here destroyed * * * by rendering them

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[5] James Madison, Remarks at the Virginia Convention Debates (June 14, 1788), reprinted in 3 *The Debates in the Several State Conventions on the Adoption of the Federal Constitution* 382 (Jonathan Elliot ed., 2d ed., 1836); George Nicholas, Remarks at the Virginia Convention Debates (June 14, 1788), reprinted in 3 Elliot, *supra*, at 391.

useless—*by disarming them*. Under various pretences, *Congress may neglect to provide for arming* and disciplining the militia; and the state governments cannot do it, for Congress has an exclusive right to arm them." George Mason, Remarks at the Virginia Convention Debates (June 14, 1788) (emphasis added), reprinted in 3 Elliot, *supra*, at 379; see also Luther Martin, *To the Citizens of Maryland*, Maryland Journal, Mar. 18, 1788, excerpted in Young, *supra*, at 301, 301-02 (similar).

The concomitant concerns about a standing army and the potential for federal neglect of the state militias, which were viewed as composed of and thus responsive to the people, pervaded the debate. Exemplifying typical concerns, Federal Farmer urged that it would be impossible to maintain local responsiveness and control over militias if "the only actual influence the respective states will have * * * will be in appointing the officers." Federal Farmer, Letter No. III, *Observations Leading to a Fair Examination of the System of Proposed Government by the Late Convention; and to Several Essential and Necessary Alterations To It*, Nov. 8, 1787, excerpted in Young, *supra*, at 89, 91. Stressing the need to counterbalance the national standing army, A Farmer urged, "[y]ou, my friends, in general, know nothing of the evils that attend [a standing army]; guard and secure it well in your Bill of Rights, that it may not be in the power of any set of men to trample your liberties under their feet with it. *Organize your militia, arm them well, and under Providence they will be a sufficient security.*" A Farmer, *Letter to My Friends and Fellow Farmers*, New Hampshire Freeman's Oracle, Jan. 11, 1788, excerpted in Young, *supra*, at 204, 206 (emphasis added).

b. The Second Amendment's reference to "the people" cannot be taken as a contrary indication—particularly given the Framers' use of those words in connection with militias throughout the debates. As an

initial matter, it is entirely reasonable to urge that "the people" of this Nation have a right, for example, to serve on juries. But it is well understood that such a civic duty is exercised only together with other individuals in an organized judicial proceeding under the auspices (and control) of the State. That is how the Framers saw the Second Amendment. Because they viewed the militia as composed of the people, *i.e.*, those entitled to citizenship's rights and duties, they often referred to the militia as "the people."

Thus, in the debate over the Second Amendment, Anti-Federalists contrasted a militia composed of "the people" with "select" militias, which they feared as unrepresentative and thus a potential source of tyranny. George Mason, Remarks at the Virginia Convention Debates (June 16, 1788), reprinted in 3 Elliot, *supra*, at 425-26. "Who are the militia?" asked George Mason. "They consist now of the whole people, except a few public officers." *Ibid.*

Madison likewise connected "the people" with the "militia" of Article I, § 8, clause 16, contrasting "the people" with "the army": "If resistance should be made to the execution of the laws * * * it ought to be overcome. This could be done only in two ways—*either by regular forces or by the people.* * * * *If insurrections should arise, or invasions should take place, the people ought unquestionably to be employed*, to suppress and repel them, *rather than a standing army*. The best way to do these things was *to put the militia on a good and sure footing* * * * ." Remarks at the Virginia Convention Debates (June 14, 1788), reprinted in 3 Elliot, *supra*, at 378 (emphasis added).

Similarly, Federal Farmer equated the militia with the people. The "militia," he insisted, "are the people, *immediately under the management of the state governments* * * * ." Federal Farmer, Letter No. XVIII,

An Additional Number of Letters from the Federal Farmer to the Republican (May 1788), excerpted in Young, *supra*, at 342, 355 (emphasis added). It was thus the people composed as a "well regulated militia" "under the management of the state governments"—not arms in private hands for private use—the Framers established as an appropriate counterbalance to federal authority. Far from undermining the Second Amendment's connection to militia service, the Framers' use of the words "the people" reinforces it.

c. Those urging that the Second Amendment protects firearm possession wholly apart from militia purposes sometimes invoke partial quotations from state ratification debates. But the full quotations underscore the link between the Second Amendment and state militias. For example, Patrick Henry did assert that it was a "great object" "that every man be armed," but he was referring to arming them for *militia service*—and addressing whether the States or the federal government should discipline, arm, and control the militias:

> May we [the States] not discipline and arm [the militia], as well as Congress, if the power be concurrent? so that *our militia* shall have two sets of arms, double sets of regimentals, &c.; and thus, at a very great cost, we shall be doubly armed. The great object is, that every man be armed. But can the people afford to pay for double sets of arms, &c.? Every one who is able may have a gun. But we have learned, by experience, that, necessary as it is to have arms, and though our Assembly has, by a succession of laws for many years, endeavored *to have the militia completely armed*, it is still far from being the case. When this power is given up to Congress without limitation or bounds, how will *your militia* be armed? * * * If gentlemen are serious when they suppose a concurrent power,

> where can be the impolicy to amend it? Or, in other words, to say that Congress shall not arm or discipline them, till the states shall have refused or neglected to do it?

Patrick Henry, Remarks at the Virginia Convention Debates (June 14, 1788), reprinted in 3 Elliot, *supra*, at 386 (emphasis added).

Other efforts to divorce the Second Amendment from its state-militia purposes are self-defeating. For example, although there are infrequent instances in state debates where the right to bear arms was given a non-traditional, non-militia meaning, in each case the proposal *specifically included* language making that broader meaning clear. See 2 Bernard Schwartz, *The Bill of Rights: A Documentary History* 665 (1971) (dissenting Pennsylvania delegates' post-Convention proposal); *id.* at 681 (failed proposal at Massachusetts Convention); *id.* at 761 (New Hampshire Convention recommendation). The Second Amendment contains no such language. Nor do the ratification debates reflect any suggestion that "bear arms" had a meaning unconnected to a "well regulated militia."

Although the ratification debates were filled with statements about cementing state authority over militias (to counterbalance national authority), "there is not a single statement in the congressional debate about the proposed amendment that indicates that any congressman contemplated that it would establish an individual right to possess a weapon" apart from militia service. *Silveira* v. *Lockyer*, 312 F.3d 1052, 1085 (9th Cir. 2002) (citation and emphasis omitted); 2 *The Records of the Federal Convention of 1787*, 329-33, 384-88 (Max Farrand ed., 1911). Purposes such as state militias made it into the text of the Second Amendment. Purposes such as insurrection, self-defense, and hunting are not mentioned. Indeed, the various proposals at state ratification

debates were almost universally in the context of, and connected to, militias. See, *e.g.*, Op. Off. Legal Counsel, *supra*, at 61-77 (cataloguing proposals); see also 1 Elliot, *supra*, at 88; 2 Elliot, *supra*, at 97-98, 406, 520-22, 531, 536-37; 4 Elliot, *supra*, at 95-100, 214-15, 260-61.

The debates thus demonstrate that the Second Amendment is concerned with preserving the authority of the States to arm their citizens for state militia service—not with protecting any non-militia right to possess firearms for private purposes. Read as the federalism provision that it is, the Second Amendment ensures that the power to arm the militia does not reside only in the federal government. It makes certain that the federal government cannot disarm state militias by decree or neglect. And it guarantees the ability of the States to continue having militias, composed of the people, in which militia members "bear arms" to preserve the security of a free State.

II. PRE- AND POST-RATIFICATION EVENTS CONFIRM THAT THE SECOND AMENDMENT EMBODIES FEDERALISM PRINCIPLES

Early historical practice is a persuasive indicator of constitutionality. See, *e.g.*, *Eldred* v. *Ashcroft*, 537 U.S. 186, 213 (2003); *Knowlton* v. *Moore*, 178 U.S. 41, 56 (1900); *Burrow-Giles Lithographic Co.* v. *Sarony*, 111 U.S. 53, 57 (1884); *Stuart* v. *Laird*, 5 U.S. (1 Cranch) 299, 309 (1803). Here, that practice confirms what text and structure make plain: The Second Amendment, arising out of federalism concerns, protects state authority over the state militias for public protection. It was never intended to limit state and local police power to protect the public by regulating firearms more generally.

A. State Laws Enacted Before And After The Second Amendment's Adoption Confirm That It Reinforces Federalism

From the Articles of Confederation, to the Constitution, and throughout the Nation's early years, one thing remained constant: States broadly regulated the possession and use of firearms and other weapons. Ratification did not change that long-established practice. As shown below, some States proscribed firearm possession under a variety of circumstances—not only in the militia-related context, but also more generally. That plenary exercise of the police power cannot be reconciled with the notion that the Second Amendment limits the authority of the States to regulate firearms.

1. At our Nation's founding, the States heavily regulated individual possession of firearms, in some instances proscribing it altogether. Massachusetts and Pennsylvania, for example, mandated confiscation of weapons belonging to individuals required to serve in the militia but who refused to swear a loyalty oath or affirmation. See, *e.g.*, Act of Mar. 14, 1776, ch. VII, 1775-1776 Mass. Acts 31 (disarming persons who were "Disaffected to the Cause of America"); Act of Apr. 1, 1778, ch. 796, §§ 2, 4, 9 Pa. Stat. 238-39 (requiring loyalty oath). Massachusetts provided that, where an individual refused to swear or affirm loyalty, the State should proceed "without Delay, to disarm the said Delinquent, and take from him *all his Arms*, Ammunition and warlike Implements"—"mak[ing] strict and diligent Search" of his home if necessary, and "immediately carry[ing] and deliver[ing] [the weapons] to the Justice who made the said Warrant * * * ." Act of Mar. 14, 1776, ch. VII, 1775-76 Mass. Acts 33 (emphasis

added).[6] Massachusetts likewise disarmed its citizens for violating gunpowder-storage statutes. Act of Mar. 1, 1783, ch. XIII, Mass. Acts 218-19.

Similarly, a decade before the federal Constitution was adopted, Pennsylvania enacted a statute requiring anyone who "refused" or "neglected" to affirm loyalty "to deliver up his arms to the lieutenant * * * of the city or county where he inhabits" or face prosecution "before two or more justices of the peace for the said county * * * without appeal to the supreme or any other court whatsoever." Act of Apr. 1, 1778, ch. 796, 9 Pa. Stat. 238-39, 242. That law coexisted with a provision of the Pennsylvania Constitution declaring "[t]hat the people have a right to bear arms for the defence of themselves and the state * * * ." Pa. Const. of 1776 Art. XIII.[7] That Pennsylvania would disarm its citizens for failure to take a loyalty oath undermines the claim that the Pennsylvania Constitution protected a non-militia right to possess guns for self-defense. Moreover, the existence of those Pennsylvania and Massachusetts statutes at the Nation's founding underscores the importance the States placed on the role of militia service in matters of firearm possession. It also undermines the theory that, at that time, there was a widely accepted right to possess firearms for personal purposes apart from militia service.

The States continued to regulate after the Second Amendment's adoption. In the early 1800s, Kentucky and Louisiana banned the carrying of concealed weapons. Act of Feb. 3, 1813, ch. LXXXIX, 1813 Ky. Acts 100-111; Act of Mar. 25, 1813, 1813 La. Acts 172-75. Tennessee,

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[6] Virginia and Maryland also disarmed citizens for failure to take a loyalty oath or affirmation. See Act of May 5, 1777, ch. III, 1777 Va. Acts 8; Act of Mar. 17, 1778, ch. VII, § V, 1778 Md. Laws 445, 446.

[7] Pennsylvania repealed its loyalty oath in 1789. Act of Mar. 3, 1789, ch. 1396, 13 Pa. Stat. 222.

Virginia, and Ohio enacted similar laws. See, *e.g.*, Act of Oct. 19, 1821, ch. XIII, 1821 Tenn. Pub. Acts 15; Act of Feb. 2, 1838, ch. 101, 1838 Va. Acts 76; Act of Mar. 18, 1859, reprinted in 4 *Public Statutes at Large of the State of Ohio* 56 (Maskell Curwen ed., 1861).[8] The enactment of those state regulations in the period following the Second Amendment's adoption further suggests that the Second Amendment does not restrict in any way the States' police power to regulate firearm possession.

2. The continuity of militia regulation before and after adoption of the Second Amendment likewise supports the conclusion that, at bottom, it is a structural protection for federalism. Years after passage of the Second Amendment and the federal Uniform Militia Act of 1792, see Act of May 8, 1792, ch. 33, 1 Stat. 271, state militia statutes continued to declare that the overriding purpose of the militia was to defend the safety and security of the State. See, *e.g.*, Act of Feb. 18, 1799, 1799 Ga. Laws 76 ("the defense and safety of republican States must greatly depend on their militia * * * ."); Act of Dec. 26, 1795, ch. XII, §§ I-III, 1795 Va. Acts 17 ("a well trained militia is the only natural and safe defense of a free State, and in order to carry this principle into effect, it is essentially expedient that the militia of this commonwealth should be armed in such manner as to answer the end of its institution"). Indeed, Delaware enacted a

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[8] States also regulated the discharge of guns, see, *e.g.*, Act of Feb. 17, 1831, § 6, reprinted in 3 *Statutes of Ohio and the Northwestern Territory* 1740 (Salmon P. Chase ed., 1835); Act of Dec. 3, 1825, ch. CCXCII, § 3, 1825 Tenn. Priv. Acts 306; Act of Nov. 16, 1821, ch. LXLIII, §§ 1-2, 1821 Tenn. Pub. Acts 78-79; Act of Jan. 30, 1847, ch. 79, 1846-47 Va. Acts 67; Act of Feb. 4, 1806, ch. XCIV, 1805-06 Va. Acts 51, and the storage of gunpowder, see, *e.g.*, Act of June 26, 1792, ch. X, 1792 Mass. Acts 208; Act of Apr. 13, 1784, ch. 28, 1784 N.Y. Laws 627; Act of Dec. 6, 1783, ch. 1059, 11 Pa. Stat. 209.

statute in 1793 stating that "a well regulated militia is the proper and natural defence of every free state." Act of June 18, 1793, ch. XXXVI, 1793 Del. Laws 1134. Thus, the Second Amendment succeeded in permitting the States to retain control over their militias while enabling a more effective federal government to be put in place.

3. The theory that the Second Amendment protects a non-militia right to possess firearms—and that the Amendment's militia clause simply expresses one purpose for that protection—is further undermined by state militia statutes. Before and after the Second Amendment's adoption, each State provided for its militia to be armed according to local preferences—with the States themselves often choosing to provide the arms and regulate where they were kept.

For example, Pennsylvania's 1777 militia statutes required that the Commonwealth provide arms for a portion of the militia without regard to need. Act of Mar. 17, 1777, ch. 750, § XIV, 9 Pa. Stat. 84. The arms provided by the Commonwealth were not kept in individual hands; they were kept "in the care and under the direction" of lieutenants. *Ibid.* By 1778, North Carolina followed a similar course, requiring that the Brigadier Generals of each district "take into their Possession, and distribute to the Troops to be raised, such Guns as belong to the Public, and are good and sufficient; and in case there should not be Arms for every Man, then, and in that case, the Colonel or commanding Officer of each County shall purchase Guns for the Men marching from [such County] * * * ." Act of 1778, 1778 N.C. Sess. Laws 4, § VI.

Likewise, by 1794, New York undertook to purchase weapons for its militia. Act of Mar. 22, 1794, ch. 27, 1794 N.Y. Laws 503. By 1798, New York provided for state-owned weapons to "be distributed or deposited in such place or places" as the State deemed appropriate. Act of

Aug. 27, 1798, ch. 5, 1798 N.Y. Laws 299-300. Connecticut and Delaware enacted laws to provide weapons for militia members unable to buy their own, again placing those weapons under state and local control. See Act of Dec. 18, 1776, 1776 Conn. Pub. Acts 441, 443, 445; Act of Feb. 5, 1782, 1782 Del. Laws 3, 6.[9]

For those reasons, it is a mistake to read the Uniform Militia Act of 1792 as implicitly recognizing a non-militia right to possess firearms (even apart from the fact that the Act was ignored in practice, see *Perpich* v. *Dept. of Defense*, 496 U.S. 334, 341 (1990)). Under the Act, Congress purported to discharge its constitutional duty to "arm" the militia by requiring that all militia members possess certain weapons and equipment. But both before and after the Act, the *States* determined how their militia members were to be armed when called forth by the States, with some States providing arms to their militia members and requiring that those weapons, when not being used for militia purposes, be kept by state officers under state control. That reflects the understanding that the Second Amendment was a federalism provision that enhances state authority—not a restriction on state authority to regulate firearms.

B. The Role Of State Militias In Modern Times Cannot Alter The Constitution's Meaning

That the Second Amendment is about state militias may seem incongruous in the modern era. While state militias formed a central part of the Framing-era debate, they have a different role today—although almost all of the States, and the District of Columbia, still have militia

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[9] Further, Delaware established a state-run commissary to "collect together all public [(i.e., state-owned)] Arms, Stores or Provisions and Military Stores" and to keep them "securely and safely * * * in some convenient and proper place." *Id.* at 13.

statutes allowing the militia to be called forth for a variety of purposes, including to quell rebellions.

The Second Amendment today, as it did in the late eighteenth century, protects a State's ability—if it so chooses—to have a well regulated militia made up of its citizens. By doing so, the Second Amendment protects States from unreasonable federal regulations intruding on this permissible state function.[10]

III. THE PRACTICES OF NATIONS SHARING OUR COMMON-LAW HERITAGE CONFIRM THE SECOND AMENDMENT'S UNIQUE ROOTS IN AMERICAN FEDERALISM

Notwithstanding overwhelming evidence that the Second Amendment reflects our Nation's unique experiment in federalism—and seeks to strengthen rather than handicap the States' authority to protect their citizenry—the majority below cited the English Bill of Rights and Blackstone as evidence that there was a non-militia right of gun ownership in England before ratification of the Constitution. Pet. App. 20a-22a. As noted elsewhere, that misreads English history and Blackstone, see n.3, *supra*; see Historians Br. 2-3, 5-9. More fundamentally, if private gun ownership were a natural-law right inherited from our colonial mother country, the laws of other Nations sharing our heritage should treat individual gun ownership as a protected activity. But those well-governed, democratic Nations extensively regulate and limit firearm ownership in the service of public safety. And while they do not have a Second Amendment

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[10] Indeed, in many States the militia have not been supplanted by the National Guard. Those States thus retain authority to call forth their militias in times of natural disasters, for example. See Reserve Forces Policy Board, Office of the Secretary of Defense, *Annual Report 2004* 46 (2005) ("These forces exist in 23 states and have varying organizations, structures, and responsibilities.").

or similar provision, that is merely further evidence that the Second Amendment has its origins in the uniquely American tradition of federalism—and the unique role of state militias in this Nation's early history—not in some prior common law tradition.

A. England And Canada Have Handgun Bans That Closely Parallel D.C.'s

Confronted with the destructive and unlawful use of pistols, England has banned handguns altogether. After long regulating firearms, see *e.g.*, Firearms Act, 1920, 10 & 11 Geo. 5, c. 43 (Eng.), England has only increased that regulation in response to a growing need to protect the lives of its citizens. Parliament has banned semi-automatic rifles, pump-action rifles, and regulated shotguns for decades. See Firearms (Amendment) Act, 1988, c. 45 (Eng.). And in 1996, after a licensed gun owner massacred 16 school children, see G. Bowditch & K. Alderson, *16 Classmates Die with Their Teacher*, Times (U.K.), Mar. 14, 1996, at 1, Parliament passed a near total ban on handguns. See Firearms (Amendment) Act, 1997, c. 5 (Eng.); Firearms (Amendment) (No. 2) Act, 1997, c. 64 (Eng.). Thus, the Nation that brought us both Blackstone and the English Bill of Rights bans handguns. Indeed, although the English Bill of Rights remains in effect today, it has not prevented Parliament from enacting regulations that parallel the ones at issue here.

Like England, Canada has increased firearm regulation in response to growing threats of gun violence. Since the 1930s, Canada has required permits and registration for handgun ownership. See Canada Firearms Centre, *History of Firearms Control in Canada: Up to and Including the Firearms Act*, available at http://www.cfc-cafc.gc.ca/polleg/hist/pdfs/histoe.pdf. Under Canadian law, handguns have long been classified as "restricted" firearms. Criminal Law Amendment Act of 1977, 1976-77

Acts of the Parliament of Canada, ch. 53, pp. 1283, 1310-1; Canadian Crim. Code, R.S.C., ch. C 46 § 84(1) (1985). The current Canadian regime—enacted in 1995—also requires licensing and registration of firearms. Canadian Crim. Code, R.S.C., ch. C 46 § 91(1) (1985).

B. Australia, New Zealand, And South Africa All Strictly Regulate Firearms

Other Nations with English colonial roots likewise strictly regulate firearm possession. Australia, like England and Canada, has steadily increased regulation of firearm ownership. In 1996, after 35 people were killed and 19 wounded by an assailant using a semi-automatic rifle, Editorial, *Port Arthur Revisited*, Australian, Apr. 28, 2006, at 15, the Australian states harmonized their firearm laws through a Nationwide Agreement on Firearms. That agreement effectively banned self-loading rifles and self-loading and pump-action shotguns; introduced nationwide registration for all firearms; and required that all license applicants establish a satisfactory reason for firearm ownership. Austl. Inst. of Criminology, *Firearm-related Violence: The Impact of the Nationwide Agreement on Firearms*, 1-2 (1999).

New Zealand's governing Arms Act generally requires an individual to obtain a license from the police. See Arms Act 1983, 1983 S.N.Z. No. 44, § 20. To obtain a standard firearm license, the applicant must prove that he or she is "a fit and proper person to be in possession of a firearm." *Id.* § 24(1)(b); see also Arms Regulations 1992, 1992 S.R. No. 346, §§ 14-16 (application regulations). Licensing requirements are stricter for pistols. Arms Act 1983, 1983 S.N.Z. No. 44, § 2. Among other things, licenses will issue only to those acting in one of the specified capacities in the Act—*e.g.*, as "[a] member of an incorporated pistol shooting club," "[a] person to whom the pistol or restricted weapon has special signifi-

cance as an heirloom or memento," or "[t]he Director or Curator of a bona fide museum." Arms Act 1983 §§ 29-30. Each endorsement is revocable, *id.* § 33, and subject to conditions that include strict storage requirements, a duty to maintain restricted weapons in inoperable condition, and, in some cases, any other conditions that a "member of the Police thinks fit." *Id.* § 32; see also Arms Regulations 1992 §§ 22, 28.

South Africa too imposes strict requirements on firearm owners. Responding to a rapid escalation of gun-related crimes, the South African Parliament promulgated the Firearms Control Amendment Act ("FCA") of 2000. See Firearms Control Act 60 of 2000; see also Firearms Control Act 43 of 2003 (amending original legislation). To secure a firearm license, individuals must obtain a competency certificate that requires an extensive background check, training, and testing. See Firearms Control Act 60 of 2000 §§ 6-9. The FCA defines the legitimate purposes for owning firearms, and prescribes licensing requirements accordingly. See, *e.g., id.* §§ 13-20. Additionally, it imposes strict storage requirements, *id.* §§ 83, 120(8), controls ammunition and firearm parts, *id.* §§ 90-94, declares certain persons to be unfit to possess firearms, *id.* §§ 102-05, and requires firearms to be made available for inspections, *id.* §§ 106-09. Finally, to encourage compliance, the FCA creates criminal offenses and imposes penalties (ranging from fines to imprisonment) for violations. *Id.* §§ 120-22.

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Wholly apart from any debate about the general relevance of foreign law, the experience of England and other Nations with English colonial roots discredits the claim that there is an inalienable personal right to own guns traceable to our respective Nations' common legal tradition or heritage. Each of the Nations sharing our heritage—including the country that gave us Blackstone

and the English Bill of Rights—extensively regulates private firearm possession to protect its citizens' lives, often more extensively than the District does here.[11] Thus, far from reflecting a shared pre-constitutional value, the Second Amendment reflects something uniquely American—the critical role of the states in our federal system—and the correspondingly unique role of state militias in this Nation's early history. Properly read, the Second Amendment prevents unreasonable federal encroachment on the ability of the States to maintain, arm, and call forth their militias. It does not handicap the States' exercise of their police powers to regulate dangerous instrumentalities, including firearms, to fulfill their equally central role of protecting the lives, liberty, and property of their citizens.

CONCLUSION

The judgment of the court of appeals should be reversed.

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[11] Regulations in these successful democracies also put the lie to the myth that gun control laws make it easier for government to tyrannically oppress its citizens. While many have suggested that gun control eased Hitler's rise to power, "[t]he history of gun control in Germany from the post-World War I period to the inception of World War II seems to be a history of declining, rather than increasing, gun control." Bernard E. Harcourt, *On Gun Registration, the NRA, Adolf Hitler, and Nazi Gun Laws*, 73 Fordham L. Rev. 653, 671 (2004). It was the inability of the German *government* to remain sufficiently strong and organized that allowed Hitler's "street gangs" to "seize[] control of the resources of a great modern State," causing "the gutter" to come "to power." Alan Bullock, *Hitler, A Study in Tyranny* 149 (abridged ed. 1991). While Germany had discriminatory laws that barred Jews from having firearms, that proves only the evils of discrimination. It surely does not support the myth that arming everyone might allow an oppressed minority, no matter how courageous, to restore democracy and liberty when confronted with Hitler's (or another demagogue's) larger armed mob.

Respectfully submitted.

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APPENDIX A
DESCRIPTIONS OF *AMICI CURIAE*

The American Jewish Committee ("AJC"), a national organization of over 175,000 members and supporters and 31 local chapters nationwide, including Washington, D.C., was founded in 1906 to protect the civil and religious rights of Jews and is dedicated to the defense of religious rights and freedoms of all Americans. Recognizing that the unrestricted private possession of guns constitutes a very real danger to the Nation, AJC has a long history of supporting gun control laws. Among its activities, AJC supported the federal Gun Control Act of 1968, the federal Assault Weapon Control Act of 1989, and the Brady Handgun Prevention Act of 1993.

The American Jewish Congress is an organization of American Jews founded in 1918 to protect the civil, political, economic, and religious rights of American Jews. It has supported hand gun control for over 40 years, filing numerous briefs in support of such regulations.

The Anti-Defamation League ("ADL") fights anti-Semitism and all forms of bigotry, defends democratic ideals, protects civil rights for all, and is an organization well known for its long history of monitoring, exposing, and combating extremists. ADL has called for the adoption of federal and state initiatives designed to make it more difficult for children and extremists to acquire and use guns and other dangerous weapons.

The Baptist Peace Fellowship of North America gathers, equips, and mobilizes Baptists to build a culture of peace rooted in justice. Its members work for peace and justice throughout North America and around the world. It provides training in conflict transformation and nonviolence in various countries, including Sudan and the Philippines.

Ceasefire NJ ("CFNJ") is dedicated to reducing gun violence by influencing public policy at the state, regional, and national level, educating the public, and mobilizing communities in support of reducing gun violence. CFNJ believes that framing gun violence prevention as both a public health and public policy issue will lead to enactment of sensible state and national laws and safer and healthier schools and communities.

Citizens for a Safer Minnesota is a nonprofit member-based advocacy organization dedicated to ending gun violence.

The DC Statehood Green Party (formed in 1997 by a merger between the DC Statehood Party and the DC Green Party) emphasizes the "Ten Key Values" of the national Green Party, with a focus on achieving autonomy for the District of Columbia (currently a "federal district") through full statehood. The DC Statehood Green Party focuses on, among other things, the need for the District of Columbia to have autonomy over local government operations. In connection with that, it supports the exercise of the District's police power at issue in this case.

The Educational Fund to Stop Gun Violence ("EFSGV") seeks to secure freedom from gun violence through research, strategic engagement, and effective policy advocacy. EFSGV has always supported the District of Columbia's right to determine its own gun laws.

The Freedom States Alliance is a national non-profit organization working to free Americans from gun violence. Its focus is to reduce gun-related deaths and injuries through public awareness campaigns and by providing technical assistance and support to grassroots organizations.

The Friends Committee on National Legislation ("FCNL") is the largest peace lobby in Washington, D.C.

Founded in 1943 by members of the Religious Society of Friends (Quakers), FCNL staff and volunteers work with a nationwide network of tens of thousands of people from many different races, religions, and cultures to advocate social and economic justice, peace, and good government.

The Gray Panthers seeks to create a humane society that puts the needs of people over profits, responsibility over power, and democracy over institutions.

GunFreeKids.org is a new political organization dedicated to strengthening the gun violence prevention network and to raising awareness for existing organizations.

The Illinois Council Against Handgun Violence ("ICHV") seeks to reduce death and injury caused by gun violence. ICHV does that by informing the public, the media, and policymakers about the epidemic of gun violence. ICHV also serves as a clearinghouse for information on gun violence issues.

IllinoisVictims.org is a victims' rights watchdog organization that advocates for victims' rights and violence prevention issues. The website-based organization provides resource referrals, legislative information, prisoner watch, victim support, media relations, and evaluates and promotes programs that help victims cope with or prevent violent victimization.

Iowans for the Prevention of Gun Violence ("IPGV") is a nonprofit, educational organization that seeks to reduce firearm-related deaths and injuries in Iowa, and to make Iowa a role model for other States in the area of gun violence prevention. IPGV is concerned with all forms of gun violence—gun homicides, gun suicides, and unintentional shootings.

The Jenna Foundation for Nonviolence, Inc., works diligently to end violence in our society. It teaches children and adults the tools of violence prevention. It

makes support, advocacy, education, and mentoring the building blocks for society by maintaining a low-cost mentoring program through schools towards ending violence; establishing a free community outreach center to reach victims and provide a known, trusted place for victims; and developing a community-wide gateway for delivering victim services.

The Karla Zimmerman Memorial Foundation, Gun Violence and Teens ("GAT") program provides educational programs to secondary schools in the California Bay Area regarding violence prevention. Led by victims and utilizing victim speakers, GAT teaches young people how to resolve conflicts peacefully, about the dangers and lures of guns, and about the consequences of violence and how to avoid it.

Clifton Kirkpatrick, as Stated Clerk of the General Assembly, is the senior continuing officer of the Presbyterian Church (U.S.A.). The Presbyterian Church (U.S.A.) is a national Christian denomination with nearly 2.5 million members in more than 11,200 congregations, organized into 173 presbyteries under the jurisdiction of 16 synods. It is organized through an ascending series of organizations known as church sessions, presbyteries, synods, and, ultimately, a general assembly. Through its antecedent religious bodies, it has existed as an organized religious denomination within the current boundaries of the United States since 1706. This brief is consistent with 40 years of policies adopted by the General Assembly calling for federal and state regulation of gun ownership. The General Assembly does not claim to speak for all Presbyterians, nor are its decisions binding on the membership of the Presbyterian Church. The General Assembly is the highest legislative and interpretive body of the denomination, and the final point of decision in all disputes. As such, its statements are

considered worthy of respect and prayerful consideration of all the denomination's members.

The Methodist Federation for Social Action, founded in 1907, is a national network of United Methodists working for justice and peace within and beyond the United Methodist Church. Organized into chapters across the United States, the work of the Federation is focused in the areas of peace, poverty, people's rights, and progressive initiatives. The Federation has long advocated for public policies that promote nonviolent means of resolving conflict.

The National Association for the Advancement of Colored People ("NAACP"), established in 1909, is the nation's oldest civil rights organization. It has state and local affiliates throughout the Nation. The fundamental mission of the NAACP is the advancement and improvement of the political, educational, social, and economic status of minority groups; the elimination of racial prejudice; the publicizing of adverse effects of racial discrimination; and the initiation of lawful action to secure the elimination of racial bias. The NAACP has appeared before courts throughout the Nation in numerous civil rights cases. The NAACP has challenged the physical, social, and economic impact of handgun violence on African-Americans and other minorities, and has sought injunctive relief to end the negligent sale, marketing, and distribution of handguns in the United States. In addition, the NAACP has called for the enactment of safe, sane, and sensible gun control measures.

The National Council of Jewish Women ("NCJW") is a volunteer organization, inspired by Jewish values, that works through its network of 90,000 members and supporters nationwide to improve the quality of life for women, children, and families, and to ensure individual rights and freedoms for all. NCJW's Resolutions state that the

organization endorses and resolves to work for "laws and policies to restrict and regulate guns."

New England Coalition to Prevent Gun Violence ("NECPGV") is a region-wide, non-profit organization working to prevent gun violence, deaths, and injuries. Providing education, advocacy, and public awareness campaigns, NECPGV brings together organizations and individuals from all six New England States to help raise awareness about this urgent public health and public safety issue. Founded in 2001, NECPGV is the region's only coalition dedicated exclusively to providing New Englanders with the expertise and resources needed to combat the devastating toll of guns in our society.

Since 1993, New Yorkers Against Gun Violence and its Education Fund have worked to reduce gun violence through advocacy and education designed to encourage action, influence public opinion, and lead to policy change. With a primary focus on New York State, the organizations also advocate at the local and national levels for laws, policies, and practices that protect New York State residents and particularly youth from gun violence.

North Carolinians Against Gun Violence Education Fund seeks to make North Carolina safe from gun violence. To that end, it educates the public about preventing gun violence, encourages the enforcement of current gun laws, and promotes the enactment of needed new laws.

The Ohio Coalition Against Gun Violence ("OCAGV") began as a volunteer committee in 1995 based on the concern about gun violence felt by the Interracial Religious Coalition, an organization promoting racial, ethnic, and religious harmony. OCAGV began its work under the auspices of Toledo Metropolitan Mission, which works ecumenically to improve the quality of life for all citizens of the area, especially the poor and powerless. OCAGV's

goal is to increase safety in Ohio in regards to firearms. OCAGV educates about gun homicides, suicides, and unintentional deaths and injuries. OCAGV supports and encourages local, state, and federal legislation to reduce the accessibility of firearms in our communities and families.

The Renée Olumbuni Rondeau Peace Foundation ("RORPF") works to promote the American public's awareness of the magnitude of the crime problem and our individual and collective responsibility for the solution. RORPF seeks to accomplish its mission by involvement in three areas: Direct Service to crime victims through the National Coalition of Victims in Action; Educational Support through the Renée Olubunmi Rondeau Memorial Scholarship Fund; and Advocacy through Action Americans.

ROOT (Reaching Out to Others Together) Inc. is committed to advocacy and intervention on behalf of homicide victims and their families. ROOT's mission is to motivate and mobilize communities to take a proactive approach to reducing homicides and the senseless violence occurring in our cities.

The Union for Reform Judaism ("URJ") encompasses 1.5 million Reform Jews in more than 900 North American congregations. The membership of the Central Conference of American Rabbis ("CCAR") includes 1,800 Reform rabbis. The Talmud teaches us that "one who takes a life it is as though they have destroyed the universe and one who saves one life is as though they have saved the universe." (Sanhedrin 4:5) The too-often reflexive resort to violence, and the easy use of deadly violence in particular, stand in direct violation of our traditions. URJ and CCAR have long recognized the importance of education and legislation at the national, state, and local levels that would limit and control the sale and use of firearms and

thus heed the biblical injunction that we must not "stand idly by the blood of our neighbor." (Leviticus 19:16)

The Virginia Center for Public Safety ("VACPS") is a non-profit, non-partisan grass roots organization dedicated to the reduction of gun violence in Virginia. VACPS strives to accomplish this mission through awareness, education, and advocacy. VACPS members represent a cross-section of racial, religious, professional, and political groups.

Wisconsin Anti-Violence Effort ("WAVE") Educational Fund is Wisconsin's only statewide organization dedicated solely to preventing gun violence, injuries, and deaths. Through research, education, and advocacy, WAVE raises awareness about firearm violence, provides current information to the public and to policymakers, and promotes commonsense measures that will bring us to the forefront of gun violence prevention.

The individual victims and families of victims of gun violence joining this brief include the following: Lynnette Alameddine, mother of Ross Alameddine, who was killed along with 31 others by a gunman at Virginia Polytechnic Institute and State University ("Virginia Tech") on April 16, 2007; Jeri and Michael Bishop, parents of Jamie Bishop, also killed in the Virginia Tech shooting; Dennis and Beverly Bluhm, parents of Brian Bluhm, killed in the Virginia Tech shooting; Susan Carney, mother of Katelyn Carney, injured at the Virginia Tech shooting; Letitie Clark, mother of Ryan Clark, and Pat Craig, Aunt of Ryan Clark, who was killed at Virginia Tech; Garrett Evans, injured at Virginia Tech; Donna and David Finkelstein, parents of Mindy Finkelstein, and Mindy Finkelstein, who was injured with four others by a gunman at the North Valley Jewish Community Center in California on August 10, 1999; Anne and Andrew Goddard, parents of Colin Goddard, injured at Virginia Tech; Suzanne Grimes, mother of Kevin Sterne, also injured at

Virginia Tech; Greg Gwaltney, father of Matt Gwaltney, killed at Virginia Tech; Lori Haas, mother of Emily Haas, and Emily Haas, who was injured at Virginia Tech; Elilta Habtu, also injured at Virginia Tech; Marian and Chris Hammaren, parents of Caitlin Hammaren, killed at Virginia Tech; Stefanie Hofer, widow of Jamie Bishop, killed at Virginia Tech; Harry and Karen Pryde, parents of Julia Pryde, killed at Virginia Tech; William and Jeanne O'Neil, parents of Daniel O'Neil, killed at Virginia Tech; Peter and Cathy Read, parents of Mary Read, killed at Virginia Tech; Loren Lieb and Alan Stepakoff, parents of Joshua Stepakoff, injured at the North Valley Jewish Community Center; Dr. Diane Strollo, mother of Hilary Strollo, and Dr. Patrick J. Strollo, brother of Hilary Strollo, who was injured at Virginia Tech.

APPENDIX B
STATE MILITIA STATUTES

Connecticut:

1. Act of Dec. 18, 1776, 1776 Conn. Pub. Acts 441, 443, 445, provides in relevant part:

It is therefore further Enacted by the Authority aforesaid, That all male Persons from Sixteen Years of Age to Sixty, not included in that part of the Militia called the Train-band, or exempted from common and ordinary Training, shall continue an Alarm List in this State, (excepting Members of the Council, of the House of Representatives, and *American Congress*, for the Time being, the Treasurer and Secretary of the State, Ministers of the Gospel, the President, Tutors and Students of *Yale*-College, for the Time being, and Negroes, Indians, and Molattoes); and is of sufficient Ability in the Judgment of the Select-men of the Town where they have their usual Place of Abode, shall respectively provide for and equip themselves with such Arms and Accoutrements as by Law is directed for those of the Train-band in the Militia aforesaid; and shall, in Case of an Alarm, or Orders given, be under the Command of such Officers as by this Act is directed; any Law, Usage, or Custom to the contrary notwithstanding.

* * * * *

Be it further enacted, That when the Select men shall adjudge any Person unable to equip and arm himself as in this Act is required, they shall certify the same under their Hands to the Captain or commanding Officer of the Company to which such Person shall belong; and the said Select-men shall, at the Expence of the Town, arm and equip such deficient Person, and the Arms so provided shall be the Property of such Town, and the Fines and Penalties in this Act provided for such as shall neglect or refuse to join and march when called for, shall be

appropriated for or towards reimbursing the Expences of providing such Arms.

Delaware:

2. Act of Feb. 5, 1782, 1782 Del. Laws 3, 6-7, 13, provides in relevant part:

An ACT for establishing a Militia within this State:

* * * * *

6. *And be it Enacted*, That every Person between the Ages of eighteen and fifty, or who may hereafter attain to the Age of eighteen Years (Clergymen and Preachers of the Gospel of every Denomination, Judges of the Supreme Court, Sheriffs, Keepers of the public Gaols, School-Masters teaching a Latin School, or having at least twenty English Scholars, and indented Servants *bona Fide* purchased, excepted) who is rated at Six Pounds, or upwards, towards the Payment of public Taxes, shall, at his own Expence, provide himself; and every Apprentice, or other Person, of the Age of eighteen and under twenty-one Years who hath an Estate of the Value of Eighty Pounds, or whose Parent is rated at Eighteen Pounds towards the public Taxes, shall, by his Parent or Guardian, respectively, be provided with a Musket or Fire-lock with a Bayonet, a Cartouch-Box to contain twenty-three Cartridges, a Priming-Wire, a Brush and six Flints, all in good Order, on or before the first Day of *June* next, and shall keep the same by him at all Times, ready and fit for Service, under the Penalty of Twenty Shillings for every two Months Neglect or Default, to be paid by such Person, if of full Age, or by the Parent or Guardian of such as are under twenty-one Years, the same Arms and Accoutrements to be charged by the Guardian to his Ward, and allowed at settling the Accounts of his Guardianship.

* * * * *

15. *And be it Enacted*, That all Fines and Forfeitures that shall be paid into the Hands of any Treasurer of a Battalion, in Pursuance of this Act, shall be applied for the Purpose of purchasing Arms, Accoutrements and Ammunition for the Use of the Battalion, as the President or Commander in Chief from Time to Time shall order and direct, and for purchasing such Drums, Colours and Fifes for the several Companies, and also for paying Adjutants, Drummers and Fifers, and in such Manner as the Field-Officers thereof, shall, from Time to Time, order and direct.

16. *Provided always*, *and be it Enacted*, That no Ammunition shall be delivered for the Use of any Battalion until the same be made up into Cartridges, which the President or Commander in Chief is hereby required to have done at the Expence of the State.

17. *And be it Enacted*, That whenever any Arms, Accoutrements, or Ammunition shall, by Order of the President or Commander in Chief, be delivered by the Treasurer of the Battalion, or any other Person in whose Hands the same may be, for the Use of such Battalion, the Commanding Officer thereof shall give a Receipt for the same, accurately specifying the Articles received, and the Number of Arms, Accoutrements and Cartridges respectively, who upon delivering them to the Commanding Officers of Companies, shall take Receipts in like Manner, and the said Commanding Officers of Companies, upon delivering them to the Privates, shall make Entries in a Book, fairly kept, specifying the Articles and the Numbers as aforesaid, and the Names of the Persons respectively, into whose Hands they were by him delivered, which Persons respectively shall be accountable to him for the full Value of every of the said Articles received by them, in Case of Abuse, Waste or Imbezzlement, to be sued for and recovered by him, in the Manner herein after directed, and the said Commanding Officers

of Companies shall be accountable to the Treasurer for the full Value of every of the said Articles respectively received by them, in Case of Abuse, Waste or Imbezzlement, to be sued for and recovered by the said Treasurer in like Manner.

* * * * *

33. *And be it Enacted*, That a proper Person may be appointed by the President or Commander in Chief, to be Commissary of military Stores and Provisions, in each of the Counties of this State, whose Business and Duty shall be to collect together all public Arms and Military Stores, and the same securely and safely to keep in some convenient and proper Place, in good Order and fit for Service, and not to deliver out any of the said Arms, Stores or Provisions, but by Virtue of an Order in Writing from the President or Commander in Chief, or, in his Absence, and in Case of Emergency, by an Order from the Officer commanding the Militia in the respective Counties, and to take proper Receipts for all Arms, Stores and Provisions delivered out, and make Report of the Condition of the Arms, Stores and Provisions in his Care and Custody, once in every three Months, to the President or Commander in Chief; and the said Commissary is hereby directed to keep a just and fair Account of all Arms, Stores and Provisions which may come to his Hands as aforesaid, and of the Delivery thereof.

3. Act of June 18, 1793, ch. XXXVI, 1793 Del. Laws 1134, provides in relevant part:

An ACT *for* establishing *the militia in this state*:

WHEREAS a well regulated militia is the proper and natural defence of every free state; And as the several laws enacted by the Legislature of this state for the regulation of the militia thereof have been found to

require material alterations; in order to which it has been thought more adviseable to revise the whole system, than to amend it by supplementary statutes; therefore * * *.

Georgia:

4. Act of Nov. 15, 1778, reprinted in 19 Colonial Records of the State of Georgia 103-04 (Allen Candler ed., 1911), provides in relevant part:

AN ACT, *for the better ordering and regulating the Militia of this State.*

WHEREAS a well ordered and disciplined Militia, is essentially necessary, to the Safety, peace and prosperity, of this State, and a Militia Law, upon just principles hath ever been regarded, as the best Security of Liberty and the most effectual Means, of drawing forth and exerting the Natural Strength of a State, BE IT ENACTED and it is hereby enacted by the Representatives of the People of the State of Georgia in general Assembly met, and by the authority of the same, That the Governor or Commander in Chief for the time being, with the advice and consent of the Executive Council, shall have power to assemble and call together all Male Persons, except as hereafter excepted, in this State, from the age of Fifteen to Sixty Years, within the Towns, divisions, Counties, Parishes or places within this State, at such times, and Arm and Array them, in such manner as is hereafter expressed and declared, and to form them into Companies, Troops and Regiments, and in case of Insurrection, Rebellion or Invasion them to lead, conduct, or employ, or cause to be led, conducted, and employed, as well within the said Towns, divisions, Counties, parishes or places, where such Persons reside, as into any other division, parish, County or place within this State, for suppressing all such insurrections, as may happen to be * * *.

5. Act of Feb. 18, 1799, 1799 Ga. Laws 76, provides in relevant part:

An act to alter and amend the Militia Law of this State, and to *provide for arming the militia thereof*:

WHEREAS the defence and safety of republican states must greatly depend on their militia, which cannot be well organized and disciplined without arms and experienced officers; and no adequate provision has been made by this state for the attainments of those desirable objects * * *.

Massachusetts:

6. Act of Mar. 14, 1776, ch. VII, 1775-76 Mass. Acts 31-33, provides in relevant part:

AN ACT for the executing in the Colony of the *Massachusetts-Bay*, in *New-England*, one Resolve of the *American Congress*, dated March 14, 1776, recommending the disarming such persons as are notoriously disaffected to the cause of America, or who refuse to associate to defend by arms the *United American Colonies*, against the hostile attempts of the *British* Fleets and Armies, and for the restraining and punishing persons who are inimical to the Rights and Liberties of the said *United Colonies*, and for directing the proceedings therein:

WHEREAS on the fourteenth of March *One Thousand seven Hundred and Seventy-six, a certain Resolve was made and passed by the* American *Congress, of the following Tenor*, viz. "*Resolved*, That it be recommended to the several Assemblies, Conventions and Councils, or Committees of Safety of the United Colonies, immediately to cause all Persons to be disarmed within their respective Colonies, who are notoriously disaffected to the Cause of *America*, or who have not associated and refuse to associate to defend by

Arms these United Colonies, against the hostile Attempts of the *British* Fleets and Armies; and to apply the arms taken from such Persons in each respective Colony, in the first Place, to the arming of the Continental Troops raised in said Colony; in the next, to the arming such Troops as are raised by the Colony for it's own Defense, and the Residue to be applied to the arming the Associators; that their Arms when taken, be appraised by indifferent Persons, and such as are applied to the arming Continental Troops, be paid for by Congress; and the Residue by the respective Assemblies, Conventions or Councils, or Committees of Safety:"

Be it therefore enacted by the Council, and House of Representatives in General Court assembled, and by the Authority of the same, That every Male Person above sixteen Years of Age, resident in any Town or Place in this Colony, who shall neglect or refuse to subscribe a printed or written Declaration of the Form and Tenor herein after prescribed, upon being required thereto by the Committee of Correspondence, Inspection and Safety for the Town or Place in which he dwells, or any one of them, shall be disarmed, and have taken from him in Manner hereafter directed, all such Arms, Ammunition and Warlike Implements, as by the strictest Search can be found in his Possession or belonging to him; which Declaration shall be in the Form and Words following, *viz*.

* * * * *

And be it further enacted by the Authority aforesaid, That the Committee of Correspondence, Inspection and Safety in each and every Town and Place in this Colony, or some one Member of such committee, shall without Delay tender the said Declaration to every Male Person in their respective Town and Places above the Age of sixteen Years, requiring them severally to subscribe the same with his Name or Sign in his or their Presence; and

if any one shall refuse or neglect so to do for the Space of twenty-four Hours after such Tender is made, the said Committee, or some one of them, shall forthwith give Information of such Refusal or Neglect, to some Justice of the Peace for the County in which such delinquent dwells: And the Justice to whom such Information is given, shall forthwith make his Warrant, directed to the Sheriff of the same County, or his Deputy, or one of the Constables of the Town in which such supposed Delinquent hath his usual Place of Abode, or any indifferent Person, by Name requiring him forthwith to make the Body of such Delinquent, and him bring before the said Justice to answer to such Information, and to shew cause, if any he hath, why he should not be disarmed, and have taken from him all his Arms, Ammunition and Warlike Implements; and in Case it shall be made to appear to the said Justice, that the said Information is true, and he should not shew any sufficient Cause why he should not forthwith be disarmed, &c: then the said Justice shall make his Warrant, directed to some proper Person, requiring him, without Delay, to disarm the said Delinquent, and take from him all his Arms, Ammunition and Warlike Implements; and in case such Delinquent shall refuse to resign and give up all his Arms, Ammunition and Warlike Implements, the person to whom the said Warrant is directed, shall have Power, after demanding Admission to enter the Dwelling House, or any other Place belonging to the Delinquent, where he may have Reason to suspect such Arms are concealed, and make strict and diligent Search for the Articles aforesaid: And in case he shall find any of the said Articles, he shall take them and immediately carry and deliver them to the Justice who made the said Warrant, which Justice is hereby required to receive them, and to appoint some indifferent and judicious Person or Persons to appraise the same; and the said Justice shall keep a

true Account of all such Arms, ammunition and Accoutrements, the person or Persons they were taken from, and the Sum or Sums they were appraised at, and shall return a true Account thereof into the Secretary's Office as soon as may be, and shall keep the said Arms, &c. safely to be disposed of and paid for as the General Court shall order. And if the Person to whom the Warrant is directed, shall meet with Resistance, or shall have Reason to apprehend that he shall meet with Resistance in the Execution of the said Warrant, then he shall give Information thereof to the Justice of the Peace who issued the said Warrant, who if he shall judge it needful for carrying such Warrant into Execution, shall go in Person to some Military Officer in the same County, and require him immediately to raise such a Number of the Militia as the said Justice shall judge necessary, and the said Justice shall proceed in Person with the said Militia, and the person to whom the said warrant is directed, and in the most prudent Way he can, cause the delinquent to be disarmed, and all the Articles aforesaid to be taken from him, and appraised and retained in Manner as is above directed.

And in case it shall be made to appear to any Justice of the Peace, that there is Reason to suppose that any of the Arms, Ammunition or warlike Implements, belonging to any Person who shall refuse or delay as abovesaid to subscribe the said Declaration, are concealed in any Dwelling-House or other Place not belonging to such Delinquent, such Justice shall have Power, and is hereby directed to make his Warrant to some proper Person, requiring him to make diligent search in such suspected Place or Places, to be particularly described or mentioned in such Warrant for the Articles aforesaid; and in case they shall be found, such Proceedings shall be thereupon had touching the same, as it above prescribed, when they are in the actual Possession of the Delinquent aforesaid;

and in case of Resistance or Opposition made to the Execution of such Warrant, the like Proceedings shall thereupon be had as are above directed, when Resistance is made to the searching for or taking such Articles, when in the actual Possession of such Delinquent.

7. Act of Mar. 1, 1783, ch. XIII, 1783 Mass. Acts 218-19, provides in relevant part:

An Act in addition to the several acts already made for the prudent storage of gun-powder within the town of *Boston*:

WHEREAS the depositing of loaded Arms in the Houses of the Town of Boston, *is dangerous to the Lives of those who are* disposed *to exert themselves when a Fire happens to break out in the said Town*:

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the Authority of the same, That if any Person shall take into any Dwelling-House, Stable, Barn, Out-house, Ware-house, Store, Shop, or other Building, within the Town of *Boston*, any Cannon, Swivel, Mortar, Howitzer, or Cohorn, or Fire-Arm, loaded with, or having Gun-Powder in the same, or shall receive into any Dwelling-House, Stable, Barn, Out-house, Store, Warehouse, Shop, or other Building, within the said Town, any Bomb, Grenade, or other Iron Shell, charged with, or having Gun-Powder in the same, such Person shall forfeit and pay the Sum of *Ten Pounds*, to be recovered at the Suit of the Firewards of the said Town, in an Action, of Debt, before any Court proper to try the same; one Moiety thereof to the Use of the said Firewards, and the other Moiety to the Support of the Poor of the Town of *Boston*.

And be it further enacted by the Authority aforesaid, That all Cannon, Swivels, Mortars, Howitzers, Cohorns, Fire-Arms, Bombs, Grenades, and Iron Shells of any

Kind, that shall be found in any Dwelling House, Out-House, Stable, Barn, Store, Warehouse, Shop, or other Building, charged with, or having in them any Gun-Powder, shall be liable to be seized by either of the Firewards of the said Town: And upon Complaint made by the said Firewards to the Court of Common Pleas, of such Cannon, Swivels, Mortars, or Howitzer, being so found, the Court shall proceed to try the Merits of such Complaint by a Jury; and if the Jury shall find such Complaint supported, such Cannon, Swivel, Mortar, or Howitzer, shall be adjudged forfeit, and be sold at public Auction; and one Half of the Proceeds thereof shall be disposed of to the Firewards, and the other Half to the Use of the Poor of the Town of *Boston*. And when any Fire-Arms, or any Bomb, Grenade, or other Shell, shall be found in any House, Out-House, Barn, Stable, Store, Warehouse, Shop, or other Building, so charged, or having Gun-Powder in the same, the same shall be liable to be seized in Manner aforesaid; and on complaint thereof, made and supported before a Justice of the Peace, shall be sold and disposed of as is above provided for Cannon.

Be it further enacted, That Appeals shall be allowed in Prosecutions upon this Act as is usual in other Cases.

8. Act of June 26, 1792, ch. X, 1792 Mass. Acts 208-09, provides in relevant part:

An Act in addition to the several Acts now in force, which respect the carting and transporting Gun-Powder, through the streets of the Town of *Boston*, and the storage thereof in the same Town:

WHEREAS the provision in the said acts made, have been found insufficient to prevent the carting and transporting gun-powder, through the streets of the said town, in a dangerous and alarming mode:

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, That from and after the first day of *August* next, no gun-powder shall be carried or transported to or from the magazine, within the said town, or through any of the streets thereof, in any quantity, exceeding twenty-five pounds, being the quantity allowed by law, to be kept in shops for sale, unless the same be carried and transported in a wagon or carriage, closely covered with leather or canvas, and without iron on any part thereof, to be first approbated by the Firewards of said town, and marked in capitals, with the words *approved powder carriage*, under the penalty of forfeiting all such gun-powder, one moiety thereof, to the use of the poor of the said town, and the other moiety to the use of him or them who shall inform and sue for the same.

And be it further enacted by the authority aforesaid, That all gun-powder which shall be imported into the said town of *Boston*, from and after the said first day of *August*, shall be landed at such place or places only, and be carried to the magazine aforesaid, by such passage by land or water only, as shall be directed and pointed out by the Firewards of the said town, under the penalty of forfeiting to the uses aforesaid, all such powder as shall be landed or conveyed otherwise than is in this act provided: The penalties and forfeitures aforesaid, to be sued for and recovered by bill, plaint or information in any Court proper to try the same; and the Firewards aforesaid, are hereby directed, from time to time, to publish their regulations and orders respecting the same in three of the public newspapers in the said town, six weeks successively; *provided nevertheless*, That nothing in this act shall be construed to extend, or operate as a prohibition to the transporting of powder, from and out of the magazine, in the town of *Boston*, into any part of this Commonwealth, or from the powder-mills, in the

country to the magazine aforesaid, in such carts or carriages, as hath been customary, and heretofore used.

New Hampshire:

9. Act of June 24, 1786, N.H. Laws 114-25, provides in relevant part:

AN ACT, for forming and regulating the militia within this state, and for repealing all the laws heretofore made for that purpose:

WHEREAS it is the duty and interest of every state to have the militia thereof of properly armed, trained, and in complete readiness to defend against every violence of invasion whatever and whereas the laws now in force respecting the regulation of the militia, are insufficient for those purposes:

BE it therefore enacted by the Senate and house of representatives, in general court convened, and by the *authority* of the same. That the several laws, clauses and paragraphs of laws relative to regulating the militia, be and hereby are repealed, and declared null and void.

New York:

10. The Act of Apr. 13, 1784, ch. 28, 1784 N.Y. Laws 627, provides in relevant part:

AN ACT to prevent the danger arising from the pernicious practice of lodging gun powder in dwelling houses, stores, or other places within certain parts of the city of New York, or on board of vessels within the harbour thereof:

* * * * *

WHEREAS the storing of gun powder within the city of New York is dangerous to the safety thereof.

Be it therefore enacted by the People of the State of New York, represented in Senate and Assembly, and it

is hereby enacted by the authority of the same, That from and after the passing of this act, it shall not be lawfull for any merchant, shopkeeper, or retailer, or any other person, or persons whatsoever, to have or keep any quantity of gun powder exceeding twenty-eight pounds weight, in any one place, less than one mile to the northward of the city hall of the said city, except in the public magazine at the Fresh-water, and the said quantity of twenty-eight pounds weight, which shall be lawfull for any person to have and keep at any place within this city, shall be seperated into four stone jugs or tin canisters, which shall not contain more than seven pounds each, on pain of forfeiting all such gun powder, and the sum of fifty pounds for every hundred weight, and in that proportion for a greater or lesser quantity, and upon pain of forfeiting such quantity which any person may lawfully keep as aforesaid, and which shall not be seperated as above directed, with full costs of suit to any person, or persons, who will inform and sue for the same, by any action, bill, or information, in any of the courts of record, in this city, who are hereby impowered, and required, to give special judgment in such action bills or information's, to be brought by virtue of this act, as well for the recovery of the value of such gun powder in specie, as for the penalty aforesaid, besides costs, and to award, effectual execution thereon, provided always that all suits, actions, or prosecutions to be brought, commenced, or prosecuted, against any person or persons, for any thing done in pursuance of this act, shall be commenced and prosecuted without willful delay, within two callendar months next after the fact was committed, and not otherwise.

And whereas vessels arriving from sea, and having onboard as part of their cargo a quantity of gun powder.

Be it enacted by the authority aforesaid, That the commander, or owner or owners, of all such ships or

vessels, having gun powder onboard, shall, within twenty-four hours after her arrival in the harbour, and before they hawl along side of any wharf, pier or key within the city, land the said gun powder, by means of their boat or boats, or any other craft, at any place along the ship yards on the East river, or at any place to the northward of the air furnace on the North river, which may be contigious to the magazine at Fresh water, and shall cause the same to be stored there, or in any other proper magazine, which now is or hereafter may be built for that purpose, at any place to the northward thereof, on pain of forfeiting all such gun powder, to any person or persons, who will inform and sue for the same, in like manner, as is herein before directed, with respect to the having and storing of gun powder within the city as aforesaid. And in order to prevent any fatal consequences which may arise, from the carriage of gun powder, in and through the streets of the city of New York, by carts, carriages, or by hand, or otherways, it shall be in tight cask, well headed and hooped, and shall be put into bags or leather-cases, and intirely covered therewith, so as that none be spilt or scattered in the passage thereof, on pain of forfeiting all such gun powder, as shall be conveyed through any of the streets aforesaid in any other manner than is herein directed, and it shall and may be lawfull for any person or persons, to seize the same to his or their own use and benefit—provided the person or persons so offending, be thereof lawfully convicted, before the mayor, recorder, or any two justices of the city aforesaid. And that it shall and may be lawfull, for the mayor recorder, or any two justices of the peace of the city and county of New York, upon demand made by any inhabitant or inhabitants of the said city, who assigning a reasonable cause of suspicion on oath, of the sufficiency of which the said mayor or recorder, or justices, is and are to judge, to issue his or their warrant or warrants,

under his or their hands and seals, for searching in the day time for gun powder in any building or place whatsoever, within the limits aforesaid, or any ship or vessel within forty eight hours after her arrival in the harbour, or at any time after any such ship or vessel shall and may have hawled alongside of any wharf pier or key within the limits aforesaid, and that upon any such search, it shall be lawfull for the searchers or persons finding the same, immidiatly to seize, and at any time within twelve hours after such seizure, to cause the same to be removed to the magazine at Fresh water, or to any other proper magazine, which now is or hereafter may be at any place north of Fresh water aforesaid, and the same being so removed, it shall be lawfull to detain and keep the same untill it shall be determined by the mayor, recorder or any two of the justices of the peace of the city and county aforesaid, whether the same shall be forfeited by virtue of this act, and the person or persons so detaining the same, shall not be subject or liable to any action or suit, for the detention thereof, provided always that nothing in the act contained, shall be construed to authorize any person, having such warrant to take advantage of the same, for serving any civil process of any kind whatsoever.

And be further enacted by the authority aforesaid, That if any gun powder, exceeding the quantity which any person by this act may lawfully keep in his custody, shall be found during any fire, or alarm of fire, in the said city, by any of the firemen of the said city, it shall be lawfull for him to seize the same, without warrant from a majestrate, and to hold and have the same to his own use, any thing in this act to contrary notwithstanding. This act to be and continue in force from the passing thereof, untill the twenty-eight day of February in the year of our Lord one thousand, seven hundred and eighty six.

11. Act of Mar. 22, 1794, ch. 27, 1794 N.Y. Laws 503, provides in relevant part:

AN ACT to provide field artillery, arms accoutrements and ammunition for the use of the militia of this State:

Be it enacted by the People of the State of New York represented in Senate and Assembly, That a sum not exceeding seventy five thousand dollars be appropriated to the purchase of field artillery, arms, accoutrements and ammunition for the use of the militia of this State, and that Matthew Clarkson, James Watson and Benjamin Walker be commissioners for that purpose and that they or any two of them are hereby, authorized to purchase such field artillery, arms, accoutrements, and ammunition agreeably to such instructions as they may receive from the person administering the government of this State.

12. Act of Aug. 27, 1798, ch. 5, 1798 N.Y. Laws 299, provides in relevant part:

AN ACT for the further defence of this State and for other purposes:

* * * * *

And be it further enacted, That the arms, ammunition, cannon and military stores, now belonging to the people of this State, and such as may be purchased by virtue of this act, shall be distributed or deposited in such place or places, as the person administering the government of this State shall from time to time direct.

North Carolina:

13. Act of Apr. 8, 1777, ch. XV, §§ I, II, 1777 N.C. Sess. Laws 58, provides in relevant part:

An Act to amend an Act, intitled An act to establish a militia in this state:

I. Whereas a well regulated Militia is absolutely necessary for the defending and securing the Liberties of a free State;

II. *BE it Enacted by the General Assembly of the State of* North Carolina, *and it is hereby Enacted by the Authority of the same*, That every captain of Militia within this state, once in every Six Months, shall return a Muster Roll of his Company, divided and numbered as by the Act aforesaid is directed, to the commanding Officer of the Regiment, under Pain of forfeiting Five Pounds for every Default; and the commanding Officer of each Regiment shall make an exact Return from such Lifts within Twenty Days after receiving the same to the Brigadier General of the District, under Pain of forfeiting Twenty Five Pounds for every default.

14. Act of 1778, 1778 N.C. Sess. Laws 4, §VI, provides in relevant part:

VI. *AND be it further Enacted, by the Authority aforesaid*, That the Brigadier Generals of each District shall take into their Possession, and distribute to the Troops so raised, such Guns as belong to the Public, and are good and sufficient; and in case there should not be Arms for every man, then, and in that Case, the Colonel or commanding Officer of each County shall purchase Guns for the Men marching from the same, and shall give Certificates to those from whom the Guns are bought; which Certificates, countersigned by the Clerks of the respective counties, shall be paid by the Treasurer of either District, and allowed in the settlement of their accounts with the public.

Pennsylvania:

15. Act of Mar. 17, 1777, ch. 750, § XIV, 9 Pa. Stat. 84, provides in relevant part:

An Act to Regulate *the* Militia of the Commonwealth of Pennsylvania:

[Section XIV] (Section XVIII, P. L.) And be it further enacted by the authority aforesaid, That arms and accoutrements sufficient for two classes in each company shall be provided at the expense of the state as soon as convenient by the lieutenant of the city of Philadelphia and of the several counties of this state, and shall be in the care and under the direction of the said lieutenants respectively and marked with the name of the county and the number of the battalion to which they belong.

16. Act of Apr. 1, 1778, ch. 796, §§ I, II, V, 9 Pa. Stat 238-39, provides in relevant part:

An ACT *for the further Security of the Government.*

SECTION 1. WHEREAS the welfare and happiness of the good people of this Common-Wealth, do, next under God, entirely depend upon the maintaining and supporting the independence and sovereignty of the State, as declared by Congress;

SECT. 2. *Be it therefore enacted, and it is hereby enacted by the Representatives of the Freemen of the Common-Wealth of Pennsylvania, in General Assembly met, and by the authority of the same,* That all male white inhabitants of this State above the age of eighteen years, who have not hitherto taken the oath or affirmation mentioned and appointed to be taken in the Act of Assembly intitled, "An Act obliging the male white inhabitants of this State to give assurances of allegiance to the same, and for other purposes therein mentioned," enacted the thirteenth day of June last, shall, on or before the first day of June next, take and subscribe the

same in manner and form as by the said Act is directed; and that every such person, neglecting to take the said oath or affirmation, shall, during the time of such neglect, be liable to all the disabilities, incapacities and penalties to which they are subjected by the said Act; and also shall be disabled, from and after the said day, to sue or use any action, bill, plaint or information, in courte of Law, or to prosecute any suit in equity or otherwise howsoever, or to be guardian of the person or estate of any child, or executor or administrator of any person, or capable of any legacy or deed of gift, or to make any will or testament, and moreover shall be liable and compelled to pay double the taxes, which another person of equal estate, who has taken such oath or affirmation, shall be rated or assessed at, to be levied by the Collector of the public taxes of the Township, Ward or District in which such offender dwells.

* * * * *

SECT. 5. *And be it further enacted*, That every such person who shall refuse or neglect to take the oath or affirmation before mentioned on or before the said first day of June next, and shall refuse or neglect to deliver up his arms to the Lieutenant, or one of the Sub-Lieutenants, of the City or County where he inhabits, on or before the tenth day of June next, or who shall, from and after the same day last mentioned, carry any arms about his person or keep any arms or ammunition in his house or elsewhere, shall forfeit the said arms and ammunition to the State, and also double the value thereof to such person or persons who shall discover the same to any Justice of the Peace of the County where such offender resides, and shall legally prosecute him to conviction before two or more Justices of the Peace for the said County, who are hereby authorised, impowered and required to hear, try, and finally determine the same, and

to award the legal costs without appeal to the Supream or any other Court whatsoever.

17. Act of Mar. 20, 1780, ch. 902, §§ I, II, 10 Pa. Stat. 144, provides in relevant part:

An Act for the Regulation of the Militia of the Commonwealth of Pennsylvania:

(Section I, P. L.) Whereas a militia law founded upon just and equitable principles hath been ever regarded as the best security of liberty, and the most effectual means of drawing forth and exerting the natural strength of a state:

(Section II, P. L.) And whereas a well regulated militia is the only safe and constitutional method of defending a free state, as the necessity of keeping up a standing army, especially in times of peace is thereby superceded:

Virginia:

18. Act of May 5, 1777, 1777 Va. Acts 8, provides in relevant part:

An ACT to oblige the free male inhabitants of this state above a certain age to give assurance of ALLEGIANCE to the same, and for other purposes.

WHEREAS allegiance and protection are reciprocal, and those who will not bear the former are not entitled to the benefits of the latter: Therefore, BE it enacted by the General Assembly, that all free born male inhabitants of this state, above the age of sixteen years, except imported servants during the time of their service, shall, on or before the tenth day of October next, take and subscribe the following oath or affirmation before some one of the justices of the peace of the county, city, or borough, where they shall respectively inhabit; and the said justice shall give a certificate thereof to every such

person, and the said oath or affirmation shall be as followeth, viz. I do swear or affirm, that I renounce and refuse all allegiance to George the third, king of Great Britain, his heirs and successours, and that I will be faithful and bear true allegiance to the commonwealth of Virginia, as a free and independent state, and that I will not, at any time, do or cause to be done, any matter or thing that will be prejudicial or injurious to the freedom and independence thereof, as declared by Congress; and also, that I will discover and make known to some one justice of the peace for the said state, all treasons or traiterous conspiracies which I now or hereafter shall know to be formed against this or any of the United States of America. And the form of the said certificate shall be as follows, to wit: I do hereby certify that hath taken and subscribed the oath or affirmation of allegiance and fidelity, as directed by an act of General Assembly intituled An act to oblige the free male inhabitants of this state above a certain age to give assurance of allegiance to the same, and for other purposes. Witness my hand and seal, this day of A. B.

* * * * *

AND be it farther enacted, by the authority aforesaid, that within one month after the passing of this act, or at the next succeeding court, the court of every county in this commonwealth shall appoint some of their members to make a tour of the county, and tender the oath or affirmation aforesaid to every free born male person above the age of sixteen years, except as before excepted; and that in the certificate directed to be returned, of those who take the oath or affirmation, shall be mentioned the names of such as refuse. And the justices tendering such oath or affirmation are hereby directed to deliver a list of the names of such recusants to the county lieutenant, or chief commanding officer of the militia, who

is hereby authorised and directed forthwith to cause such recusants to be disarmed.

19. Act of 1785, 1785 Va. Acts 1, ch. 1 §§ 1-2, provides in relevant part:

An ACT *to amend and reduce into one Act, the several* Laws *for* Regulating *and* Disciplining *the* Militia, *and guarding against* Invasions *and* Insurrections:

SECTION I. WHEREAS the defence and safety of the Commonwealth depend upon having its citizens properly armed and taught the knowledge of military duty, and the different laws heretofore enacted being found inadequate to such purposes, and in order that the same may be formed into one plain and regular system;

SECT. II. *BE it enacted by the General Assembly*, That the Officers of the militia who were displaced and removed from office, by virtue of an Act "For amending the several laws for regulating and disciplining the militia, and guarding against invasions and insurrections," are hereby reinstated, and shall take precedency of rank agreeable to the dates of the commissions they severally held prior to the passing of the said Act; and vacancies supplied by appointment of the Governor, with the advice of the Privy Council, or recommendation from the respective County Courts.

20. Act of Dec. 26, 1795, ch. XII, §§ I-III, 1795 Va. Acts 17, provides in relevant part:

An ACT authorizing *the Executive to procure arms for the defence of the Commonwealth*:

WHEREAS a well trained militia is the only natural and safe defence of a free state, and in order to carry this principle into effect, it is essentially expedient that the militia of this commonwealth should be armed in such manner as to answer the end of its institution:

SEC. I. *BE it therefore enacted by the General Assembly*, That the Governor, with the advice of the Privy Council, shall, and he is hereby authorized and required, annually to procure for the use and defence of this commonwealth, four thousand stand of small arms and accoutrements, to be distributed amongst the militia, when called into actual service, in such manner as the Executive may direct.

SEC. II. *AND be it further enacted*, That the Executive shall be authorized to furnish each company of artillery with one field piece in good order, if there be a sufficient number of field pieces belonging to this commonwealth, and that the commanding officer of each company shall be responsible for the preservation and return of the field piece.

SEC. III. THIS act shall commence and be in force from and after the passing thereof.

21. Act of Feb. 4, 1806, ch. XCIV, §§ 1-4, 1805-06 Va. Acts 51, provides in relevant part:

An ACT *concerning Free Negroes and Mulattoes*:

* * * * *

Section 1. *BE it enacted by the General Assembly*, That no free negro or mulatto shall be suffered to keep or carry any fire lock of any kind, any military weapon, or any powder or lead, without first obtaining a license from the court of the county or corporation in which he resides, which license may at any time be withdrawn by an order of such court. Any free negro or mulatto who shall so offend, shall, on conviction before a justice of the peace, forfeit all such arms and ammunition to the use of the informer.

Sec. 2. It shall be the duty of every constable to give information against, and prosecute every free negro or

mulatto who shall keep or carry any arms or ammunition contrary to this act.

Sec. 3. If any free negro or mulatto who shall have been convicted of keeping or carrying arms or ammunition, shall a second time offend in like manner, he shall, in addition to the forfeiture aforesaid, be punished with stripes, at the discretion of the justice, not exceeding thirty-nine.

Sec. 4. This act shall commence and be in force from and after the first day of June next.

22. Act of Feb. 2, 1838, ch. 101, §§ 1-3, 1838 Va. Acts 76, provides in relevant part:

An ACT to prevent the carrying of concealed weapons.

* * * * *

1. *Be it enacted by the general assembly*, That if any person shall hereafter habitually or generally keep or carry about his person any pistol, dirk, bowie knife, or any other weapon of the like kind, from the use of which the death of any person might probably ensue, and the same be hidden or concealed from common observation, and he be thereof convicted, he shall for every such offence forfeit and pay the sum of not less than fifty dollars nor more than five hundred dollars, or be imprisoned in the common jail for a term not less than one month nor more than six months, and in each instance at the discretion of the jury; and a moiety of the penalty recovered in any prosecution under this act, shall be given to any person who may voluntarily institute the same.

2. *And be it further enacted*, That if any person shall hereafter be examined in any county or corporation court upon a charge of murder or felony, perpetrated by shooting, stabbing, maiming, cutting or wounding, and it shall appear that the offence charged was in fact commit-

ted by any such weapon as is above mentioned, and that the same was hidden or concealed from or kept out of the view of the person against whom it was used, until within the space of one half hour next preceding the commission of the act, or the infliction of the wound, which shall be charged to have caused the death, or constituted the felony, it shall be the duty of the examining court to state that the fact did so appear from the evidence; and if the court shall discharge or acquit the accused, such discharge or acquittal shall be no bar to an indictment for the same offence in the superior court having jurisdiction thereof, provided the same be found within one year thereafter. And whether the accused shall be by such court sent on for further trial or discharged, it shall be lawful to charge in the indictment that the offence was committed in any of the modes herein before described; and upon the trial it shall be the duty of the jury (if they find the accused not guilty of the murder or felony) to find also whether the act charged was in fact committed by the accused, though not feloniously, and whether the same was committed or done with or by means of any pistol, dirk, bowie knife, or other dangerous weapon, which was concealed from or kept out of the view of the person on or against whom it was used, for the space before mentioned, next preceding such use thereof; and if the jury find that the act was so committed, they shall assess a fine against the accused, and it shall be lawful for the court to pronounce judgment as in cases of misdemeanor.

3. This act shall be in force from and after the first day of June next.

23. Act of Jan. 30, 1847, ch. 79, §§ 1-2, 1846-47 Va. Acts 67, provides in relevant part:

An ACT providing for the punishment of certain offences within the cities, towns and boroughs of this commonwealth:

* * * * *

1. *Be it enacted by the general assembly*, That if any person shall unlawfully shoot at another in any public square, street, lane or alley, or other place of public resort in any city, town, or borough within this commonwealth, with intent in so doing to maim, disfigure, disable or kill such person, or to do him some other bodily harm, or with intent to resist or prevent the lawful apprehension or detention of the party so offending, or of any other persons, every such offender, his aiders and abettors, shall be guilty of a high misdemeanor, and shall on conviction, be punished by imprisonment in the common jail for a period not less than six months nor more than three years; and shall moreover be fined in a sum not less than one hundred dollars, nor more than one thousand dollars, to be ascertained by the verdict of a jury.

2. This act shall be in force form the passing thereof.

APPENDIX C
HISTORICAL DEBATES AND MATERIALS

1. Proceedings of the Federal Convention, August 18, 1787, as compiled in 2 *The Records of the Federal Convention* 329-33 (Max Farrand ed., 1911) (hereafter "Farrand"), reads in relevant part as follows:

* * * * *

Mr. Gerry took notice that there was (no) check here agst. standing armies in time of peace. The existing Congs. is so constructed that it cannot of itself maintain an army. This wd. not be the case under the new system. The people were jealous on this head, and great opposition to the plan would spring from such an omission. He suspected that preparations of force were now making agst. it. (he seemed to allude to the activity of the Govr. of N. York at this crisis in disciplining the militia of that State.) He thought an army dangerous in time of peace & could never consent to a power to keep up an indefinite number. He proposed that there shall not be kept up in time of peace more than thousand troops. His idea was that the blank should be filled with two or three thousand.

Instead of "to build and equip fleets" — "to provide & maintain a navy" agreed to nem. con as a more convenient definition of the power.

"To make rules for the Government and regulation of the land & naval forces," — added from the existing Articles of Confederation.

Mr. L. Martin and Mr. Gerry now regularly moved "provided that in time of peace the army shall not consist of more than thousand men.[ ]

Genl. Pinkney asked whether no troops were ever to be raised untill an attack should be made on us?

Mr. Gerry. if there be no restriction, a few States may establish a military Govt.

Mr. Williamson, reminded him of Mr. Mason's motion for limiting the appropriation of revenue as the best guard in this case.

Mr. Langdon saw no room for Mr. Gerry's distrust of the Representatives of the people.

Mr. Dayton. preparations for war are generally made in peace; and a standing force of some sort may, for ought we know, become unavoidable. He should object to no restrictions consistent with these ideas.

The motion of Mr. Martin & Mr. Gerry was disagreed to nem. con.

Mr. Mason moved as an additional power "to make laws for the regulation and discipline of the Militia of the several States reserving to the States the appointment of the Officers". He considered uniformity as necessary in the regulation of the Militia throughout the Union.

Genl Pinkney mentioned a case during the war in which a dissimilarity in the militia of different States had produced the most serious mischiefs. Uniformity was essential. The States would never keep up a proper discipline of their militia.

Mr. Elseworth was for going as far in submitting the militia to the Genl Government as might be necessary, but thought the motion of Mr. Mason went too far. He (moved) that the militia should have the same arms (& exercise and be under rules established by the Genl Govt. when in actual service of the U. States and when States neglect to provide regulations for militia, it shd. be regulated & established by the Legislature of U. S.)[ ] The whole authority over the Militia ought by no means to be taken away from the States whose consequence would pine away to nothing after such a sacrifice of power. He thought the Genl Authority could not sufficiently pervade

the Union for such a purpose, nor could it accommodate itself to the local genius of the people. It must be vain to ask the States to give the Militia out of their hands.

Mr Sherman 2ds. the motion.

Mr Dickenson. We are come now to a most important matter, that of the sword. His opinion was that the States never would nor ought to give up all authority over the Militia. He proposed to restrain the general power to one fourth part at a time, which by rotation would discipline the whole Militia.

Mr. Butler urged the necessity of submitting the whole Militia to the general Authority, which had the care of the general defence.

Mr. Mason– had suggested the idea of a select militia. He was led to think that would be in fact as much as the Genl. Govt could advantageously be charged with. He was afraid of creating insuperable objections to the plan. He withdrew his original motion, and moved a power "to make laws for regulating and disciplining the militia, not exceeding one tenth part in any one year, and reserving the appointment of officers to the States."

Genl Pinkney, renewed Mr. Mason's original motion. For a part to be under the genl. and a part under the State Govts. wd be an incurable evil. He saw no room for such distrust of the Genl Govt.

Mr. Langdon 2ds. Genl. Pinkney's renewal. He saw no more reason to be afraid of the Genl. Govt than of the State Govts. He was more apprehensive of the confusion of the different authorities on this subject, than of either.

Mr Madison thought the regulation of the Militia naturally appertaining to the authority charged with the public defence. It did not seem in its nature to be divisible between two distinct authorities. If the States would trust the Genl. Govt. with a power over the public treasure, they would from the same consideration of necessity

grant it the direction of the public force. Those who had a full view of the public situation wd. from a sense of the danger, guard agst. it: the States would not be separately impressed with the general situation, nor have the due confidence in the concurrent exertions of each other.

Mr. Elseworth– considered the idea of a select militia as impracticable; & if it were not it would be followed by a ruinous declension of the great body of the Militia. The States will never submit to the same militia laws. Three or four shilling's as a penalty will enforce obedience better in New England, than forty lashes in some other places.

Mr. Pinkney thought the power such an one as could not be abused, and that the States would see the necessity of surrendering it. He had however but a scanty faith in Militia. There must be (also) a real military force — This alone can (effectually answer the purpose.) The United States had been making an experiment without it, and we see the consequence in their rapid approaches toward anarchy.[ ]

Mr Sherman, took notice that the States might want their Militia for defence agst invasions and insurrections, and for enforcing obedience to their laws. They will not give up this point– In giving up that of taxation, they retain a concurrent power of raising money for their own use.

Mr. Gerry thought this the last point remaining to be surrendered. If it be agreed to by the Convention, the plan will have as black a mark as was set on Cain. He had no such confidence in the Genl. Govt. as some Gentlemen possessed, and believed it would be found that the States have not.

Col. Mason. thought there was great weight in the remarks of Mr. Sherman– and moved an exception to his

motion "of such part of the Militia as might be required by the States for their own use."

Mr. Read doubted the propriety of leaving the appointment of the Militia officers in the States. In some States they are elected by the legislatures; in others by the people themselves. He thought at least an appointment by the State Executives ought to be insisted on.

* * * * *

2. Proceedings of the Federal Convention, August 23, 1787, as compiled in 2 Farrand, *supra*, at 384-88, reads in relevant part as follows:

The Report of the Committee of Eleven made Aug: 21. being taken up, and the following clause being under consideration to wit "To make laws for organizing, arming & disciplining the Militia, and for governing such parts of them as may be employed in the service of the U.S. reserving to the States respectively, the appointment of the officers, and authority of training the militia according to the discipline prescribed" —[ ]

Mr Sherman moved to strike out the last member — "and authority of training &c. He thought it unnecessary. The States will have this authority of course if not given up.

Mr. Elsworth doubted the propriety of striking out the sentence. The reason assigned applies as well to the other reservation of the appointment to offices. He remarked at the same time that the term discipline was of vast extent and might be so expounded as to include all power on the subject.

Mr. King, by way of explanation, said that by *organizing* the Committee meant, proportioning the officers & men — by *arming*, specifying the kind size and caliber of arms — & by *disciplining* prescribing the manual exercise evolutions &c.

Mr. Sherman withdrew his motion

Mr Gerry, This power in the U— S. as explained is making the States drill-sergeants. He had as lief let the Citizens of Massachusetts be disarmed, as to take the command from the States, and subject them to the Genl Legislature. It would be regarded as a system of Despotism.

Mr Madison observed that "*arming*" as explained did not did not extend to furnishing arms; nor the term "disciplining" to penalties & Courts martial for enforcing them.

Mr. King added, to his former explanation that *arming* meant not only to provide for uniformity of arms, but included authority to regulate the modes of furnishing, either by the militia themselves, the State Governments, or the National Treasury: that *laws* for disciplining, must involve penalties and every thing necessary for enforcing penalties.

Mr. Dayton moved to postpone the paragraph, in order to take up the following proposition

"To establish an uniform & general system of discipline for the Militia of these States, and to make laws for organizing, arming, disciplining & governing *such part of them as may be employed in the service of the U.S.*, reserving to the States respectively the appointment of the officers, and all authority over the Militia not herein given to the General Government"

* * * * *

Mr. Elsworth & Mr. Sherman moved to postpone the 2d. clause in favor of the following

"To establish an uniformity of arms, exercise & organization for the Militia, and to provide for the Government of them when called into the service of the U. States"

The object of this proposition was to refer the plan for the Militia to the General Govt. but leave the execution of it to the State Govts.

Mr Langdon said He could not understand the jealousy expressed by some Gentleman. The General & State Govts. were not enemies to each other, but different institutions for the good of the people of America. As one of the people he could say, the National Govt. is mine, the State Govt is mine — In transferring power from one to the other — I only take out of my left hand what it cannot so well use, and put it into my right hand where it can be better used.

Mr. Gerry thought it was rather taking out of the right hand & putting it into the left. Will any man say that liberty will be as safe in the hands of eighty or a hundred men taken from the whole continent, as in the hands of two or three hundred taken from a single State?

Mr. Dayton was against so absolute a uniformity. In some States there ought to be a greater proportion of cavalry than in others. In some places rifles would be most proper, in others muskets &c —

Genl Pinkney preferred the clause reported by the Committee, extending the meaning of it to the case of fines &c —

Mr. Madison. The primary object is to secure an effectual discipline of the Militia. This will no more be done if left to the States separately than the requisitions have been hitherto paid by them. The States neglect their Militia now, and the more they are consolidated into one nation, the less each will rely on its own interior provisions for its safety & the less prepare its Militia for that purpose; in like manner as the Militia of a State would have been still more neglected than it has been if each County had been independently charged with the care of its Militia. The Discipline of the Militia is evidently a

National concern, and ought to be provided for in the *National* Constitution.

Mr L— Martin was confident that the States would never give up the power over the Militia; and that, if they were (to do so,) the militia would be less attended to by the Genl. than by the State Governments.

Mr Randolph asked what danger there could be that the Militia could be brought into the field and made to commit suicide on themselves. This is a power that cannot from its nature be abused, unless indeed the whole mass should be corrupted. He was for trammelling the Genl Govt. whenever there was danger. but here there could be none — He urged this as an essential point; observing that the Militia were every where neglected by the State Legislatures, the members of which courted popularity too much to enforce a proper discipline. Leaving the appointment of officers to the States protects the people agst. every apprehension that could produce murmur.

On Question on Mr. Elsworth's Motion

N. H. no. Mas— no— Ct. ay. N. J. no. Pa. no. Del. no. Md. no. Va no— N— C. no. S. C no. Geo. no. [Ayes — 1; noes — 10.]

A motion was then made to recommit the 2d clause which was negatived.

On the question to agree to the 1st. part of the clause, namely

"To make laws for organizing arming & disciplining the Militia, and for governing such part of them as may be employed in the service of the U. S".

N. H ay. Mas. ay. Ct. no. N. J. ay. Pa. ay. Del. ay. Md no. Va ay. N— C— ay. S. C. ay. Geo. ay. [Ayes — 9 noes — 2.]

Mr. Madison moved to amend the next part of the clause so as to read "reserving to the States respectively,

the appointment of the officers, *under the rank of General officers*."

Mr. Sherman considered this as absolutely inadmissible. He said that if the people should be so far asleep as to allow the Most influential officers of the Militia to be appointed by the Genl. Government, every man of discernment would rouse them by sounding the alarm to them —

Mr. Gerry. Let us at once destroy the State Govts have an Executive for life or hereditary, and a proper Senate, and then there would be some consistency in giving full powers to the Genl Govt. but as the States are not to be abolished, he wondered at the attempts that were made to give powers inconsistent with their existence. He warned the Convention agst pushing the experiment too far. Some people will support a plan of vigorous Government at every risk. Others of a more democratic cast will oppose it with equal determination. And a Civil war may be produced by the conflict.

Mr. Madison. As the greatest danger is that of disunion of the States, it is necessary to guard agst. it by sufficient powers to the Common Govt. and as the greatest danger to liberty is from large standing armies, it is best to prevent them by an effectual provision for a good Militia —

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3. Noah Webster, *A Citizen of America* (Oct. 17, 1787), reprinted in *The Essential Federalist and Anti-Federalist Papers* 110, 129, 132 (David Wootton ed., 2003), states in pertinent part:

* * * * *

* * * But the constitution provides for our safety; and while it gives Congress power to raise armies, it declares that no appropriation of money to their support shall be for a longer term than two years.

Congress likewise are to have power to provide for organizing, arming, and disciplining the militia, but have no other command of them, except when in actual service. Nor are they at liberty to call out the militia at pleasure—but only, to execute the laws of the union, suppress insurrections, and repel invasions. For these purposes, government must always be armed with a military force, if the occasion should require it; otherwise laws are nugatory, and life and property insecure.

* * * * *

Another source of power in government is a military force. But this, to be efficient, must be superior to any force that exists among the people, or which they can command: for otherwise this force would be annihilated, on the first exercise of acts of oppression. Before a standing army can rule, the people must be disarmed; as they are in almost every kingdom in Europe. The supreme power in America cannot enforce unjust laws by the sword; because the whole body of the people are armed, and constitute a force superior to any band of regular troops that can be, on any pretense, raised in the United States. A military force, at the command of Congress, can execute no laws, but such as the people perceive to be just and constitutional; for they will possess the *power*, and jealousy will instantly inspire the *inclination*, to resist the execution of a law which appears to them unjust and oppressive.

* * * * *

4. A Democratic Federalist, Philadelphia Pennsylvania Herald (Oct. 17, 1787), excerpts reprinted in *The Origin of the Second Amendment: A Documentary History of the Bill of Rights* 45, 46 (David E. Young ed., 2d ed. 1995) (hereafter "Young"), states in pertinent part:

* * * * *

[T]he federal rulers are vested with each of the three essential powers of government—their laws are to be *paramount* to the laws of the different states. What then will there be to oppose their encroachments? Should they ever pretend to tyrannize over the people, their *standing army* will silence every popular effort; it will be theirs to explain the powers which have been granted to them. * * * [T]he liberty of the people will be no more.

5. *Essay on Federal Sentiments*, Philadelphia Independent Gazetteer (Oct. 23, 1787), excerpt reprinted in Young, *supra*, at 57, states in pertinent part:

* * * If the president and the whole senate should happen to be the boldest wealthiest, most artful men in the union, supported by the most powerful connexions, and unanimous in the design of subduing the nation; and if by the concurrence of the representatives they obtained money and troops for the purpose; yet the whole personal influence of the Congress, and their parricide army could never prevail over an hundred thousand men armed and disciplined, owners of the country, animated not only with a spirit of liberty, but ardent resentment against base treacherous tyrants.

6. Centinel II, Philadelphia Independent Gazetteer (Oct. 24, 1787), excerpt reprinted in Young, *supra*, at 58, 59, states in pertinent part:

* * * * *

* * * A standing army with regular provision of pay and contingencies, would afford a strong temptation to some ambitious man to step up into the throne, and to

seize absolute power. The keeping on foot a hired military force *in time of peace*, ought not be gone into, unless *two thirds* of the members of the federal legislature agree to the necessity of the measure, and adjust the numbers employed. * * *

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7. An Officer of the Late Continental Army, Philadelphia Independent Gazetteer (Nov. 6, 1787), reprinted in 1 *The Debate on the Constitution* 97, 100 (Bernard Bailyn ed., 1993) (hereafter "Bailyn"), states in pertinent part:

* * * * *

The MILITIA is to be under the immediate command of congress, and men *conscientiously scrupulous of bearing arms*, may be compelled to perform military duty.

* * * * *

8. Pamphlet by Federal Farmer, *Observations Leading to a Fair Examination of the System of Proposed by the Late Convention; and to Several Essential and Necessary Alterations in It, Letter III* (Nov. 8, 1787), excerpts reprinted in Young, *supra*, at 89, 91-92, states in pertinent part:

* * * * *

* * * It is true, the yeomanry of the country possess the lands, the weight of property, possess arms, and are too strong a body of men to be openly offended—and, therefore, it is urged [by proponents of the Constitution], they will take care of themselves, that men who shall govern will not dare pay any disrespect to their opinions. It is easily perceived, that if they have not their proper negative upon passing laws in congress, or on the passage of laws relative to taxes and armies, they may in twenty or thirty years be by means imperceptible to them, totally deprived of that boasted weight and

strength: This may be done in a great measure by congress, if disposed to do it, by modelling the militia. Should one fifth, or one eighth part of the men capable of bearing arms, be made a select militia, as has been proposed, and those the young and ardent part of the community, possessed of but little or no property, and all the others put upon a plan that will render them of no importance, the former will answer all the purposes of an army, while the latter will be defenceless. The state must train the militia in such form and according to such systems and rules as Congress shall prescribe: and the only actual influence the respective states will have respecting the militia will be in appointing the officers. I see no provision made for calling out the *posse commitatus* for executing the laws of the union, but provision is made for Congress to call forth the militia for the execution of them—and the militia in general, or any select part of it, may be called out under military officers, instead of the sheriff to enforce an execution of federal laws, in the first instance and thereby introduce an entire military execution of the laws.

9. Cato, *Letter No. 5* (Nov. 8, 1787), reprinted in Wootton, *supra*, at 58, 63, states in pertinent part:

* * * * *

* * * The most general objections to the first article, are * * * that standing armies may be established, and appropriation of money made for their support, for two years; that the militia of the most remote state may be marched into those states situated at the opposite extreme of this continent; that the slave trade is, to all intents and purposes permanently established; and a slavish capitation, or poll-tax, may at any time be levied—these are some of the many evils that will attend the adoption of this government.

10. Plain Truth, *Rebuttal to "An Officer of the Late Continental Army,"* Philadelphia Independent Gazetteer (Nov. 10, 1787), reprinted in Bailyn, *supra*, at 105, 112, states in pertinent part:

* * * * *

Congress may "provide for *calling forth* the militia," "and may provide for organizing, arming and disciplining it."—But the States respectively can only *raise it*, and they expressly reserve the right of "appointment of officers and of training it."—Now we know that men conscientiously scrupulous by sect or profession are not *forced* to bear arms in any of the States, a pecuniary compensation being accepted in lieu of it.—Whatever may be my sentiments on the present state of this matter is foreign to the point: But it is certain that whatever redress may be wished, for or expected, can only come from *the state Legislature*, where, and where only, the dispensing power or enforcing power is *in the first instance* placed. *Article* 1, *section* 8.

11. Cincinnatus IV, New York Journal (Nov. 22, 1787), excerpted in Young, *supra*, at 107-08, states in pertinent part:

* * * * *

Sir, The public appear to me, sir, to be much indebted to you, for informing them; for what purpose a power was given by the proposed Constitution, of raising and supporting armies.—Some, indeed, might have suspected, that such power, uncontrouled by any declaration, that the military should always be subject to the civil power, might be intended for the purposes of ambition. Your declaration has removed all doubt. Every principle of policy, you say, would be subverted unless we kept up armies—for what—for our defence?—no,—to support declarations of war—to strike home, with dispatch and secrecy, before the enemy can be apprized of your in-

tention. Upon the same principle a small army would be rediculous. Nothing less than the Prussian number, about 200,000 men would embrace this salutary object. And as you now say— "no man that regards the dignity and safety of his country can deny the necessity of a military force."—You will next affirm, that no one, for the same reason, can deny the necessity of a large army. The safety of the country, we have already experienced to depend, upon the militia. * * *

12. Statement of Luther Martin, Maryland House of Representatives, Nov. 29, 1787, as compiled in 3 Farrand, *supra*, at 208-09, reads in relevant part as follows:

* * * * *

[53] By the *next* paragraph, Congress is to have the power to provide for *organizing, arming,* and *disciplining* the *militia*, and for *governing* such part of them as may be *employed in the service* of the United States.

[54] For this *extraordinary* provision, by which the *militia*, the *only defence* and *protection* which the *State* can have for the security of *their rights* against *arbitrary encroachments* of the *general government*, is taken entirely *out of the power* of their *respective States*, and placed under the *power of Congress*, it was speciously assigned as a reason, that the general government would cause the militia to be better regulated and better disciplined than the State governments, and that it would be proper for the whole militia of the Union to have a uniformity in their arms and exercise. To this it was answered, that the reason, however *specious*, was *not just;* that it would be absurd, the militia of the western settlements, who were exposed to an Indian enemy, should either be confined to the *same arms* or *exercise* as the militia of the eastern or middle States; that the same penalties which would be sufficient to enforce an obedience to militia laws in some States, would be totally

disregarded in others; that, leaving the power to the several States, they would respectively best know the situation and circumstances of their citizens, and the regulations that would be necessary and sufficient to effect a well-regulated militia in each; that we were satisfied the militia had heretofore been as well disciplined as if they had been under the regulations of Congress, and that the States would now have an *additional* motive to keep their militia in proper order, and fit for service, as it would be the *only chance* to preserve their *existence* against a general government armed with powers *sufficient* to destroy them.

[55] * * * [Some proponents of the Constitution] said, the States ought to be at the mercy of the general government, and, therefore, that the militia ought to be put under its power, and not suffered to remain under the power of the respective States. In answer to these declarations, it was urged, that, if after having obtained to the general government the great powers already granted, and among those, that of *raising* and *keeping* up regular troops without limitations, the *power* over the *militia* should be *taken away* from *the States*, and also given to the general government, it ought to be considered as the last *coup de grace* to the *State governments;* that it must be the most convincing proof, the advocates of this system design the *destruction* of the State governments, and that no *professions* to the contrary ought to be *trusted*; and that every State in the Union ought to reject such a system with indignation, since, if the general government should attempt to oppress and enslave them, they could not have any possible means of self-defence; because the proposed system taking away from the States the right of organizing, arming and disciplining the militia, the *first attempt* made by a *State* to put the militia in a situation to counteract the arbitrary measures of the general government would be construed into an *act* of *rebellion*

or *treason*; and Congress would *instantly march* their *troops* into the State. It was further observed that, when a government *wishes* to deprive its citizens of freedom, and reduce them to *slavery*, it *generally makes use of a standing army* for that purpose, and leaves the militia in a situation as contemptible as possible, lest they might oppose its arbitrary designs; * * *

13. John De Witt, American Herald (Dec. 3, 1787), reprinted as *Antifederalist No. 28* in *The Antifederalist Papers* 74, 75 (Morton Borden ed., 1965), states in pertinent part:

* * * They have left the appointment of officers in the breasts of the several States; but this appears to me an insult rather than a privilege, for what avails this right if they at their pleasure may arm or disarm all or any part of the freemen of the United States, so that when their army is sufficiently numerous, they may put it out of the power of the freemen militia of America to assert and defend their liberties, however they might be encroached upon by Congress. Does any, after reading this provision for a regular standing army, suppose that they intended to apply to the militia in all cases, and to pay particular attention to making them the bulwark of this continent? And would they not be equal to such an undertaking? Are they not abundantly able to give security and stability to your government as long as it is free? Are they not the only proper persons to do it? Are they not the most respectable body of yeomanry in that character upon earth? Have they not been engaged in some of the most brilliant actions in America, and more than once decided the fate of princes? In short, do they not preclude the necessity of any standing army whatsoever, unless in case of invasion? And in that case it would be time enough to raise them, for no free government under heaven, with a well disciplined militia, was ever yet subdued by mercenary troops.

* * * * *

14. Philadelphiensis III, Philadelphia Freeman's Journal (Dec. 5, 1787), excerpts reprinted in Young, *supra*, at 138, 139, states in pertinent part:

* * * * *

* * * And in respect to the *standing army*, it will only be made up of profligate idle ruffians, whose prowess will chiefly consist in feats of cruelty exercised on their innocent fellow citizens; but in facing a foreign foe, they will prove themselves a body of mean cowards; * * *

15. Statement of James Wilson, Pennsylvania Convention Debates, Dec. 11, 1787, as compiled in 2 *The Debates in the Several State Conventions on the Adoption of the Federal Constitution* 521-22 (Jonathan Elliot ed., 2d ed. 1836) (hereafter "Elliot"), reads in relevant part as follows:

* * * * *

It is said that Congress should not possess the power of calling out the militia, to execute the laws of the Union, suppress insurrections, and repel invasions; nor the President have the command of them when called out for such purposes.

I believe any gentleman, who possesses military experience, will inform you that men without a uniformity of arms, accoutrements, and discipline, are no more than a mob in a camp; that, in the field, instead of assisting, they interfere with one another. If a soldier drops his musket, and his companion, unfurnished with one, takes it up, it is of no service, because his cartridges do not fit it. By means of this system, a uniformity of arms and discipline will prevail throughout the United States.

I really expected that, for this part of the system at least, the framers of it would have received plaudits instead of censures, as they here discover a strong anxiety to have this body put upon an effective footing, and there-

by, in a great measure, to supersede the necessity of raising or keeping up standing armies.

The militia formed under this system, and trained by the several states, will be such a bulwark of internal strength, as to prevent the attacks of foreign enemies.

* * * * *

16. Philadelphiensis IV, Philadelphia Freeman's Journal (Dec. 12, 1787), reprinted in 1 Bailyn, *supra*, at 494, 497-98, states in pertinent part:

* * * * *

There is not the most distant hope, that we shall ever have a navy under this constitution which annihilates the state governments; for, if each state were to retain its *sovereignty*, I am well convinced, that we might have a considerable *fleet* in a few years; the larger states might each build a ship of the line every year, and the lesser states would furnish us with frigates; a noble emulation among the states would be the consequence, one state would vie with another, and public spirited individuals would contribute generously to raise the character of their own state. But this consolidation of all the states into one general government, renders this project impossible; the federal government having an unlimited power in taxation, which, no doubt, they will exercise to the utmost; leaves the states without the means of building even a *boat*. But had they money, they dare not use it for that purpose, for, Congress are to have an absolute power over the *standing army, navy,* and *militia*; so that it is out of the question, whether a particular state be, or be not, able to build a ship of war; she must meddle with no such matter; it only belongs to the emperor and our well born Congress to build and maintain a navy. * * *

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17. The Republican, Hartford Connecticut Courant (Jan. 7, 1788), excerpts reprinted in Young, *supra*, at 188, 190, states in pertinent part:

* * * * *

It is a capital circumstance in favor of our liberty that the people themselves are the military power of our country. In countries under arbitrary government, the people oppressed and dispirited neither possess arms nor know how to use them. Tyrants never feel secure until they have disarmed the people. They can rely upon nothing but standing armies of mercenary troops for the support of their power. But the people of this country have arms in their hands; they are not destitute of military knowledge; every citizen is required by law to be a soldier; we are all marshaled into companies, regiments, and brigades, for the defense of our country. This is a circumstance which increases the power and consequence of the people; and enables them to defend their rights and privileges against every invader.

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18. Centinel IX, Philadelphia Independent Gazetteer (Jan. 8, 1788), excerpt reprinted in Young, *supra*, at 191, 192, states in pertinent part:

* * * I was ever jealous of the select militia, consisting of infantry and troops of horse, instituted in this city and in some of the counties * * * [.] Are not these corps provided to suppress the first efforts of freedom, and to check the spirit of the people until a regular and sufficiently powerful military force shall be embodied to rivet the chains of slavery on a deluded nation. * * *

19. Alexander Hamilton, *The Federalist No. 29* (Jan. 9, 1788), states:

The power of regulating the militia, and of commanding its services in times of insurrection and invasion, are natural incidents to the duties of superintending the

common defense, and of watching over the internal peace of the Confederacy.

It requires no skill in the science of war to discern, that uniformity in the organization and discipline of the militia, would be attended with the most beneficial effects, whenever they were called into service for the public defense. It would enable them to discharge the duties of the camp, and of the field, with mutual intelligence and concert; an advantage of peculiar moment in the operations of an army; And it would fit them much sooner to acquire the degree of proficiency in military functions, which would be essential to their usefulness. This desirable uniformity can only be accomplished, by confiding the regulation of the militia, to the direction of the national authority. It is therefore with the most evident propriety, that the plan of the convention proposes to empower the union "to provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, *reserving to the states respectively the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress*."

Of the different grounds, which have been taken in opposition to this plan, there is none that was so little to have been expected, or is so untenable in itself, as the one from which this particular provision has been attacked. 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. If standing armies are dangerous to liberty, an efficacious power over the militia, in the same body, ought, as far as possible, to take away the inducement and the pretext, to such unfriendly institutions. 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.

In order to cast an odium upon the power of calling forth the militia to execute the laws of the Union, it has been remarked, that there is nowhere any provision in the proposed constitution for requiring the POSSE COMITATUS, to assist the magistrate in the execution of his duty; whence it has been inferred, that military force was intended to be his only auxiliary. There is a striking incoherence in the objections which have appeared, and sometimes even from the same quarter, not much calculated to inspire a very favorable opinion of the sincerity or fair dealing of their authors. The same persons who tell us in one breath, that the powers of the federal government will be despotic and unlimited, inform us in the next, that it has not authority sufficient even to call out the POSSE COMITATUS. The latter, fortunately, is as much short of the truth, as the former exceeds it. It would be as absurd to doubt, that a right to pass all laws *necessary* and *proper* to execute its declared powers, would include that of requiring the assistance of the citizens to the officers who may be intrusted with the execution of those laws; as it would be to believe, that a right to enact laws necessary and proper for the imposition and collection of taxes, would involve that of varying the rules of descent, and of the alienation of landed property, or of abolishing the trial by jury in cases relating to it. It being therefore evident, that the supposition of a want of power to require the aid of the POSSE COMITATUS is entirely destitute of colour, it will follow, that the conclusion which has been drawn from it, in its application to the authority of the federal government over the militia, is as

uncandid, as it is illogical. What reason could there be to infer, that force was intended to be the sole instrument of authority, merely because there is a power to make use of it when necessary? What shall we think of the motives which could induce men of sense to reason in this extraordinary manner? How shall we prevent a conflict between charity and conviction?

By a curious refinement upon the spirit of republican jealousy, we are even taught to apprehend danger from the militia itself, in the hands of the federal government. It is observed, that select corps may be formed, composed of the young and the ardent, who may be rendered subservient to the views of arbitrary power. What plan for the regulation of the militia, may be pursued by the national government, is impossible to be foreseen. But so far from viewing the matter in the same light with those who object to select corps as dangerous, were the constitution ratified, and were I to deliver my sentiments to a member of the federal legislature on the subject of a militia establishment, I should hold to him in substance the following discourse:

"The project of disciplining all the militia of the United States, is as futile as it would be injurious, if it were capable of being carried into execution. A tolerable expertness in military movements, is a business that requires time and practice. It is not a day, nor a week, nor even a month that will suffice for the attainment of it. To oblige the great body of the yeomanry, and of the other classes of the citizens, to be under arms for the purpose of going through military exercises and evolutions, as often as might be necessary, to acquire the degree of perfection which would entitle them to the character of a well regulated militia, would be a real grievance to the people, and a serious public inconvenience and loss. It would form an annual deduction from the productive labour of the country, to an amount, which, calculating

upon the present numbers of the people, would not fall far short of a million of pounds. To attempt a thing which would abridge the mass of labour and industry to so considerable an extent, would be unwise; and the experiment, if made, could not succeed, because it would not long be endured. Little more can reasonably be aimed at, with respect to the people at large, than to have them properly armed and equipped; and in order to see that this be not neglected, it will be necessary to assemble them once or twice in the course of a year.

"But, though the scheme of disciplining the whole nation must be abandoned as mischievous or impracticable; yet it is a matter of the utmost importance, that a well digested plan should, as soon as possible, be adopted for the proper establishment of the militia. The attention of the government ought particularly to be directed to the formation of a select corps of moderate size, upon such principles as will really fit it for service in case of need. By thus circumscribing the plan, it will be possible to have an excellent body of well trained militia, ready to take the field whenever the defense of the State shall require it. This will not only lessen the call for military establishments; but if circumstances should at any time oblige the government to form an army of any magnitude, 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. This appears to me the only substitute that can be devised for a standing army; and the best possible security against it, if it should exist."

Thus differently from the adversaries of the proposed constitution should I reason on the same subject; deducing arguments of safety, from the very sources which they represent as fraught with danger and perdition.

But how the national legislature may reason on the point, is a thing which neither they nor I can foresee.

There is something so far fetched and so extravagant, in the idea of danger to liberty from the militia, that one is at a loss whether to treat it with gravity or with raillery; whether to consider it as a mere trial of skill, like the paradoxes of rhetoricians; as a disingenuous artifice, to instil prejudices at any price; or as the serious offspring of political fanaticism. Where, in the name of common-sense, are our fears to end, if we may not trust our sons, our brothers, our neighbours, our fellow-citizens? What shadow of danger can there be from men, who are daily mingling with the rest of their countrymen; and who participate with them in the same feelings, sentiments, habits and interests? What reasonable cause of apprehension can be inferred from a power in the union to prescribe regulations for the militia, and to command its services when necessary; while the particular states are to have the *sole and exclusive appointment of the officers?* If it were possible seriously to indulge a jealousy of the militia, upon any conceivable establishment under the federal government, the circumstance of the officers being in the appointment of the states. ought at once to extinguish it. There can be no doubt, that this circumstance will always secure to them a preponderating influence over the militia.

In reading many of the publications against the constitution, a man is apt to imagine that he is perusing some ill written tale or romance; which, instead of natural and agreeable images, exhibits to the mind nothing but frightful and distorted shapes—

"Gorgons, hydras, and chimeras dire";

discolouring and disfiguring whatever it represents, and transforming everything it touches into a monster.

A sample of this is to be observed in the exaggerated and improbable suggestions, which have taken place respecting the power of calling for the services of the militia. That of New Hampshire is to be marched to Georgia, of Georgia to New Hampshire, of New-York to Kentucky, and of Kentucky to Lake Champlain. Nay, the debts due to the French and Dutch, are to be paid in militia-men instead of Louis d'ors and ducats. At one moment, there is to be a large army to lay prostrate the liberties of the people; at another moment, the militia of Virginia are to be dragged from their homes, five or six hundred miles, to tame the republican contumacy of Massachusetts; and that of Massachusetts is to be transported an equal distance to subdue the refractory haughtiness of the aristocratic Virginians. Do the persons, who rave at this rate, imagine that their art or their eloquence can impose any conceits or absurdities upon the people of America for infallible truths?

If there should be an army to be made use of as the engine of despotism, what need of the militia? If there should be no army, whither would the militia, irritated by being required to undertake a distant and distressed expedition, for the purpose of riveting the chains of slavery upon a part of their countrymen, direct their course, but to the seat of the tyrants, who had meditated so foolish, as well as so wicked a project, to crush them in their imagined entrenchments of power; and to make them an example of the just vengeance of an abused and incensed people? Is this the way in which usurpers stride to dominion over a numerous and enlightened nation? Do they begin by exciting the detestation of the very instruments of their intended usurpations? Do they usually commence their career by wanton and disgustful acts of power, calculated to answer no end, but to draw upon themselves universal hatred and execration? Are suppositions of this sort, the sober admonitions of dis-

cerning patriots to a discerning people? Or are they the inflammatory ravings of chagrined incendiaries, or distempered enthusiasts? If we were even to suppose the national rulers actuated by the most ungovernable ambition, it is impossible to believe that they would employ such preposterous means to accomplish their designs.

In times of insurrection, or invasion, it would be natural and proper, that the militia of a neighboring state should be marched into another, to resist a common enemy, or to guard the republic against the violences of faction or sedition. This was frequently the case, in respect to the first object, in the course of the late war; and this mutual succour is, indeed, a principal end of our political association. If the power of affording it be placed under the direction of the union, there will be no danger of a supine and listless inattention to the dangers of a neighbour, till its near approach had superadded the incitements of self-preservation, to the too feeble impulses of duty and sympathy.

20. A Farmer, New Hampshire Freeman's Oracle (Jan. 11, 1788), excerpts reprinted in Young, *supra*, at 204, 206, states in pertinent part:

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* * * An army, either in peace or war, is like the locust and caterpillers of Egypt; they bear down all before them—and many times, by designing men, have been used as an engine to destroy the liberties of a people, and reduce them to the most abject slavery. I have both summered and wintered with an army: You, my friends, in general, know nothing of the evils that attend it; guard and secure it well in your Bill of Rights, that it may not be in the power of any set of men to trample your liberties under their feet with it. Organize your militia, arm them well, and under Providence they will be a sufficient security. * * *

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21. A Landholder, Philadelphia Freeman's Journal (Jan. 16, 1788), excerpt reprinted in Young, *supra*, at 211, 211-13, states in pertinent part:

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* * * Tyrants have never placed any confidence on a militia composed of freemen. Experience has taught them that a standing body of regular forces, whenever they can be completely introduced, are always efficacious in enforcing their edicts, however arbitrary; * * *

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There is no instance of any government being reduced to a confirmed tyranny without military oppression; and the first policy of tyrants has been to annihilate all other means of national activity and defence, when they feared opposition, and to rely solely upon standing troops. * * *

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22. A Countryman, New York Journal (Jan. 22, 1788), excerpt reprinted in Young, *supra*, at 224, 224, states in pertinent part:

Should the new constitution be sufficiently corrected *by a substantial* bill of rights * * * separating the legislative, judicial and executive departments entirely, and confining the national government to its proper objects; but, by no means admitting a standing army in time of peace, nor a select militia, which last, is a scheme that a certain head has, for some time, been teeming with,[ ] and is nothing else but an artful introduction to the other—Nor ought the militia, or any part of it, I think, to be marched out of the state, without the consent of the legislature, and then, not for more than a certain reasonable time, etc.—leaving the states sovereign and independent with respect to their internal police, * * * I

imagine we might become a happy and respectable people. * * *

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23. James Madison, *The Federalist No. 46* (Jan. 29, 1788), states:

Resuming the subject of the last paper, I proceed to inquire, whether the federal government or the state governments, will have the advantage with regard to the predilection and support of the people.

Notwithstanding the different modes in which they are appointed, we must consider both of them as substantially dependent on the great body of the citizens of the United States. I assume this position here as it respects the first, reserving the proofs for another place. The federal and state governments are in fact but different agents and trustees of the people, instituted with different powers, and designed for different purposes. The adversaries of the constitution seem to have lost sight of the people altogether, in their reasonings on this subject; and to have viewed these different establishments, not only as mutual rivals and enemies, but as uncontrolled by any common superiour in their efforts to usurp the authorities of each other. These gentlemen must here be reminded of their errour. They must be told, that the ultimate authority, wherever the derivative may be found, resides in the people alone; and that it will not depend merely on the comparative ambition or address of the different governments, whether either, or which of them, will be able to enlarge its sphere of jurisdiction at the expense of the other. Truth, no less than decency, requires, that the event, in every case, should be supposed to depend on the sentiments and sanction of their common constituents.

Many considerations, besides those suggested on a former occasion, seem to place it beyond doubt, that the

first and most natural attachment of the people will be to the governments of their respective states. Into the administration of these, a greater number of individuals will expect to rise. From the gift of these, a greater number of offices and emoluments will flow. By the superintending care of these, all the more domestic and personal interests of the people will be regulated and provided for. With the affairs of these, the people will be more familiarly and minutely conversant; and with the members of these, will a greater proportion of the people have the ties of personal acquaintance and friendship, and of family and party attachments. On the side of these, therefore, the popular bias may well be expected most strongly to incline.

Experience speaks the same language in this case. The federal administration, though hitherto very defective, in comparison with what may be hoped under a better system, had, during the war, and particularly whilst the independent fund of paper emissions was in credit, an activity and importance as great as it can well have, in any future circumstances whatever. It was engaged, too, in a course of measures which had for their object the protection of everything that was dear, and the acquisition of everything that could be desirable to the people at large. It was, nevertheless, invariably found, after the transient enthusiasm for the early congresses was over, that the attention and attachment of the people were turned anew to their own particular governments; that the federal council was at no time the idol of popular favor; and that opposition to proposed enlargements of its powers and importance, was the side usually taken by the men who wished to build their political consequence on the prepossessions of their fellow-citizens.

If, therefore, as has been elsewhere remarked, the people should in future become more partial to the federal than to the state governments, the change can only

result from such manifest and irresistible proofs of a better administration, as will overcome all their antecedent propensities. And in that case, the people ought not surely to be precluded from giving most of their confidence where they may discover it to be most due: but even in that case, the state governments could have little to apprehend, because it is only within a certain sphere, that the federal power can, in the nature of things, be advantageously administered.

The remaining points, on which I propose to compare the federal and state governments, are the disposition and faculty they may respectively possess, to resist and frustrate the measures of each other.

It has been already proved, that the members of the federal will be more dependent on the members of the state governments, than the latter will be on the former. It has appeared also, that the prepossessions of the people, on whom both will depend, will be more on the side of the state governments, than of the federal government. So far as the disposition of each towards the other, may be influenced by these causes, the state governments must clearly have the advantage. But in a distinct and very important point of view, the advantage will lie on the same side. The prepossessions, which the members themselves will carry into the federal government, will generally be favourable to the states; whilst it will rarely happen, that the members of the state governments will carry into the public councils a bias in favour of the general government. A local spirit will infallibly prevail much more in the members of the congress, than a national spirit will prevail in the legislatures of the particular states. Everyone knows that a great proportion of the errours committed by the state legislatures proceeds from the disposition of the members to sacrifice the comprehensive and permanent interests of the state, to the particular and separate views of the counties or

districts in which they reside. And if they do not sufficiently enlarge their policy to embrace the collective welfare of their particular state, how can it be imagined, that they will make the aggregate prosperity of the Union, and the dignity and respectability of its government, the objects of their affections and consultations? For the same reason that the members of the state legislatures will be unlikely to attach themselves sufficiently to national objects, the members of the federal legislature will be likely to attach themselves too much to local objects. The states will be to the latter, what counties and towns are to the former. Measures will too often be decided according to their probable effect, not on the national prosperity and happiness, but on the prejudices, interests, and pursuits of the governments and people of the individual states. What is the spirit that has in general characterized the proceedings of congress? A perusal of their journals, as well as the candid acknowledgments of such as have had a seat in that assembly, will inform us, that the members have but too frequently displayed the character, rather of partisans of their respective states, than of impartial guardians of a common interest; that where, on one occasion, improper sacrifices have been made of local considerations to the aggrandizement of the federal government, the great interests of the nation have suffered on a hundred, from an undue attention to the local prejudices, interests, and views of the particular states. I mean not by these reflections to insinuate, that the new federal government will not embrace a more enlarged plan of policy, than the existing government may have pursued; much less, that its views will be as confined as those of the state legislatures; but only that it will partake sufficiently of the spirit of both, to be disinclined to invade the rights of the individual states, or the prerogatives of their governments. The motives on the part of the state govern-

ments, to augment their prerogatives by defalcations from the federal government, will be overruled by no reciprocal predispositions in the members.

Were it admitted, however, that the federal government may feel an equal disposition with the state governments to extend its power beyond the due limits, the latter would still have the advantage in the means of defeating such encroachments. If an act of a particular state, though unfriendly to the national government, be generally popular in that state, and should not too grossly violate the oaths of the state officers, it is executed immediately, and, of course, by means on the spot, and depending on the State alone. The opposition of the federal government, or the interposition of federal officers, would but inflame the zeal of all parties on the side of the state; and the evil could not be prevented or repaired, if at all, without the employment of means which must always be resorted to with reluctance and difficulty. On the other hand, should an unwarrantable measure of the federal government be unpopular in particular states, which would seldom fail to be the case, or even a warrantable measure be so, which may sometimes be the case, the means of opposition to it are powerful and at hand. The disquietude of the people; their repugnance and, perhaps, refusal to cooperate with the officers of the Union; the frowns of the executive magistracy of the state; the embarrassments created by legislative devices, which would often be added on such occasions, would oppose, in any state, difficulties not to be despised; would form, in a large state, very serious impediments; and where the sentiments of several adjoining states happened to be in unison, would present obstructions which the federal government would hardly be willing to encounter.

But ambitious encroachments of the federal government, on the authority of the state governments, would

not excite the opposition of a single state, or of a few states only. They would be signals of general alarm. Every government would espouse the common cause. A correspondence would be opened. Plans of resistance would be concerted. One spirit would animate and conduct the whole. The same combinations in short, would result from an apprehension of the federal, as was produced by the dread of a foreign yoke; and unless the projected innovations should be voluntarily renounced, the same appeal to a trial of force would be made in the one case, as was made in the other. But what degree of madness could ever drive the federal government to such an extremity. In the contest with Great Britain, one part of the empire was employed against the other. The more numerous part invaded the rights of the less numerous part. The attempt was unjust and unwise; but it was not in speculation absolutely chimerical. But what would be the contest, in the case we are supposing? Who would be the parties? A few representatives of the people would be opposed to the people themselves; or rather one set of representatives would be contending against thirteen sets of representatives, with the whole body of their common constituents on the side of the latter.

The only refuge left for those who prophesy the downfall of the state governments, is the visionary supposition, that the federal government may previously accumulate a military force for the projects of ambition. The reasonings contained in these papers must have been employed to little purpose indeed, if it could be necessary now to disprove the reality of this danger. That the people and the states should, for a sufficient period of time, elect an uninterupted succession of men ready to betray both; that the traitors should, throughout this period, uniformly and systematically pursue some fixed plan for the extension of the military establishment; that the governments and the people of the states should

silently and patiently behold the gathering storm, and continue to supply the materials, until it should be prepared to burst on their own heads, must appear to every one more like the incoherent dreams of a delirious jealousy, or the misjudged exaggerations of a counterfeit zeal, than like the sober apprehensions of genuine patriotism. Extravagant as the supposition is, let it however be made. Let a regular army, fully equal to the resources of the country, be formed; and let it be entirely at the devotion of the federal government; still it would not be going too far to say, that the state governments, with the people on their side, would be able to repel the danger. The highest number to which, according to the best computation, a standing army can be carried in any country, does not exceed one hundredth part of the whole number of souls; or one twenty-fifth part of the number able to bear arms. This proportion would not yield, in the United States, an army of more than twenty-five or thirty thousand men. To these would be opposed a militia amounting to near half a million of citizens with arms in their hands, officered by men chosen from among themselves, fighting for their common liberties, and united and conducted by governments possessing their affections and confidence. It may well be doubted, whether a militia thus circumstanced, could ever be conquered by such a proportion of regular troops. Those who are best acquainted with the late successful resistance of this country against the British arms, will be most inclined to deny the possibility of it. Besides the advantage of being armed, which the Americans possess over the people of almost every other nation, the existence of subordinate governments, to which the people are attached, and by which the militia officers are appointed, forms a barrier against the enterprises of ambition, more insurmountable than any which a simple government of any form can admit of. Notwithstanding the military establishments in

the several kingdoms of Europe, which are carried as far as the public resources will bear, the governments are afraid to trust the people with arms. And it is not certain, that with this aid alone, they would not be able to shake off their yokes. But were the people to possess the additional advantages of local governments chosen by themselves, who could collect the national will, and direct the national force, and of officers appointed out of the militia, by these governments, and attached both to them and to the militia, it may be affirmed with the greatest assurance, that the throne of every tyranny in Europe would be speedily overturned in spite of the legions which surround it. Let us not insult the free and gallant citizens of America with the suspicion, that they would be less able to defend the rights of which they would be in actual possession, than the debased subjects of arbitrary power would be to rescue theirs from the hands of their oppressors. Let us rather no longer insult them with the supposition that they can ever reduce themselves to the necessity of making the experiment, by a blind and tame submission to the long train of insidious measures which must precede and produce it.

The argument under the present head may be put into a very concise form, which appears altogether conclusive. Either the mode in which the federal government is to be constructed, will render it sufficiently dependent on the people, or it will not. On the first supposition, it will be restrained by that dependence from forming schemes obnoxious to their constituents. On the other supposition, it will not possess the confidence of the people, and its schemes of usurpation will be easily defeated by the state governments, which will be supported by the people.

On summing up the considerations stated in this and the last paper, they seem to amount to the most convincing evidence, that the powers proposed to be lodged

in the federal government, are as little formidable to those reserved to the individual states, as they are indispensably necessary to accomplish the purposes of the union; and that all those alarms which have been sounded, of a meditated and consequential annihilation of the state governments, must, on the most favorable interpretation, be ascribed to the chimerical fears of the authors of them.

24. Franklin County Petition, Pennsylvania Carlisle Gazette (Jan. 30, 1788), excerpt reprinted in Young, *supra*, at 238, 238-39, states in pertinent part:

* * * * *

The PETITION of the Subscribers freemen of the County of Franklin.

Most Respectfully Sheweth.

* * * * *

That the powers therein proposed to be granted to the government of the united states are too great, and that the proposed distribution of these powers are dangerous and inimical to liberty and equality amongst the people.

* * * * *

That they conceive standing armies in time of peace are dangerous to liberty, and that a well organized militia will be the proper security for our defence.

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25. Aristides' [Alexander Contee Hanson], *Remarks on the Proposed Plan of a Federal Government, Addressed to the Citizens of the United States of America, and Particularly to the People of Maryland* (Jan. 31, 1788), excerpt reprinted in Young, *supra*, at 239, 240, states in pertinent part:

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* * * It may be material here to remark, that although a well regulated militia has ever been considered as the true defence of a free republic, there are always honest purposes, which are not to be answered by a militia. * * * If indeed it be possible in the nature of things, that congress shall, at any future period, alarm us by an improper augmentation of troops, could we not, in that case, depend on the militia, which is ourselves. In such a case it would be ridiculous to urge, that the federal government is invested with a power over the whole militia of the union. Even when congress shall exercise this power, on the most proper occasions, it is provided in the constitution, that each state shall officer, and train its own militia.

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26. A Columbian Patriot [Mercy Otis Warren], *Observations on the Constitution* (Feb. 1788), reprinted in 2 Bailyn, *supra*, at 284, 291-92, states in pertinent part:

* * * * *

Though it has been said by Mr. *Wilson* and many others, that a Standing-Army is necessary for the dignity and safety of America, yet freedom revolts at the idea, when the Divan, or the Despot, may draw out his dragoons to suppress the murmurs of a few, who may yet cherish those sublime principles which call forth the exertions, and lead to the best improvement of the human mind. * * * Standing armies have been the nurs-

ery of vice and the bane of liberty from the Roman legions, to the establishment of the artful Ximenes, and from the ruin of the Cortes of Spain, to the planting the British cohorts in the capitals of America: — By the edicts of authority vested in the sovereign power by the proposed constitution, the militia of the country, the bulwark of defence, and the security of national liberty is no longer under the controul of civil authority; but at the rescript of the Monarch, or the aristocracy, they may either be employed to extort the enormous sums that will be necessary to support the civil list—to maintain the regalia of power—and the splendour of the most useless part of the community, or they may be sent into foreign countries for the fulfilment of treaties, stipulated by the President and two thirds of the Senate.

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27. Statement of Samuel Nason, Massachusetts Convention Debates, Feb. 1, 1788, as compiled in 2 Elliot, *supra*, at 136-37, reads in relevant part as follows:

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* * * Suffer me, sir, to say a few words on the fatal effects of standing armies, that bane of republican governments. A standing army! Was it not with this that Caesar passed the *Rubicon*, and laid prostrate the liberties of his country? By this have seven eighths of the once free nations of the globe been brought into bondage! Time would fail me, were I to attempt to recapitulate the havoc made in the world by standing armies. Britain attempted to enforce her arbitrary measures by a standing army. But, sir, we had patriots then who alarmed us of our danger; who showed us the serpent, and bade us beware of it. Shall I name them? I fear I shall offend your excellency, but I cannot avoid it. I must. We had a Hancock, an Adams, and a Warren. Our sister states, too, produced a Randolph, a Washington, a Greene, and a

Montgomery, who led us in our way. Some of these have given up their lives in defence of the liberties of their country; and my prayer to God is, that, when this race of illustrious patriots shall have bid adieu to the world, from their dust, as from the sacred ashes of the phoenix, another race may arise, who shall take our posterity by the hand, and lead them on to trample on the necks of those who shall dare to infringe on their liberties. Sir, had I a voice like Jove, I would proclaim it throughout the world; and had I an arm like Jove, I would hurl from the globe those villains that would dare attempt to establish in our country a standing army. I wish, sir, that the gentlemen of Boston would bring to their minds the fatal evening of the 5th of March, 1770, when by standing troops they lost five of their fellow-townsmen. I will ask them, What price can atone for their lives? What money can make satisfaction for the loss? The same causes produce the same effects. An army may be raised on pretence of helping a friend; or many pretences might be used. That night, sir, ought to be a sufficient warning against standing armies, except in cases of great emergency. They are too frequently used for no other purpose than dragooning the people into slavery. But I beseech you, my countrymen, for the sake of your posterity, to act like those worthy men who have stood forth in defence of the rights of mankind, and show to the world that you will not submit to tyranny. What occasion have we for standing armies? We fear no foe. If one should come upon us, we have a militia, which is our bulwark. Let Lexington witness that we have the means of defence among ourselves. If, during the last winter, there was not much alacrity shown by the militia in turning out, we must consider that they were going to fight their countrymen.

28. Agrippa XVIII [James Winthrop], Massachusetts Gazette (Feb. 5, 1788), reprinted in 2 Bailyn, *supra*, at 155, 158, states in pertinent part:

* * * * *

"Resolved, that the constitution lately proposed for the United States be received only upon the following conditions:

* * * * *

"6. Each state shall have the command of its own militia.

7. No continental army shall come within the limits of any state, other than garrison to guard the publick stores, without the consent of such states in time of peace.

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29. Deliberator, Philadelphia Freeman's Journal (Feb. 20, 1788), reprinted as *Antifederalist No. 44*, in Borden, *supra*, at 122, 123, states in pertinent part:

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"Congress cannot train the militia." This is not strictly true. For by the 1st Article they are empowered "to *provide* for organizing, arming, and *disciplining*" them; and tho' the respective states are said to have the authority of training the militia, it must be "according to the discipline prescribed by Congress." In this business, therefore, they will be no other than subalterns under Congress, to execute their orders; which, if they shall neglect to do, Congress will have constitutional powers to provide for, by any other means they shall think proper. They shall have power to declare what description of persons shall compose the militia; to appoint the stated times and places for exercising them; to compel *personal* attendance, whether when called for into actual service, or on other occasions, under what penalties they shall think proper, without regard to scruples of conscience or

any other consideration. Their executive officer may march and countermarch them from one extremity of the state to the other—and all this without so much as consulting the legislature of the particular states to which they belong! Where then is that boasted security against the annihilation of the state governments, arising from "the powerful military support" they will have from their militia?

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30. A Pennsylvanian III [Tench Coxe], Philadelphia Pennsylvania Gazette (Feb. 20, 1788), excerpts reprinted in Young, *supra*, at 275, 275-76, states in pertinent part:

The power of the sword, say the minority of Pennsylvania is in the hands of Congress. My friends and countrymen, it is not so, for THE POWERS OF THE SWORD ARE IN THE HANDS OF THE YEOMANRY OF AMERICA FROM SIXTEEN TO SIXTY. The militia of these free commonwealths, entitled and accustomed to their arms, when compared with any possible army must be *tremendous and irresistable*. Who are these militia? *are they not our selves*. Is it feared, then, that we shall turn our arms *each man against his own bosom*. Congress have no power to disarm the militia. Their swords, and every other terrible implement of the soldier, are *the birthright of an American*. What clause in the state or foedral constitution hath *given away* that important right. * * * From this circumstance, and from the citizens of the United States possessing the right of creating directly or indirectly every military officer and of granting every military resource, I do not hesitate to affirm, that the unlimited power of the sword is not in the hands of either the *foederal or state governments*, but, where I trust in God it will ever remain, *in the hands of the people*.

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31. The Impartial Examiner, Virginia Independent Chronicle (Feb. 27, 1788), reprinted in 2 Bailyn, *supra*, at 251, 253-54, states in pertinent part:

* * * It has ever been held that standing armies in times of peace are dangerous to a free country; and no observation seems to contain more reason in it. Besides being useless, as having no object of employment, they are inconvenient and expensive. * * * Hence they have in all ages afforded striking examples of contributing, more or less, to enslave mankind;—and whoever will take the trouble to examine, will find that by far the greater part of the different nations, who have fallen from the glorious state of liberty, owe their ruin to standing armies. It has been urged that they are necessary to provide against sudden attacks. Would not a well regulated militia, duly trained to discipline, afford ample security? * * *

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32. An Impartial Citizen, Petersburg Virginia Gazette (Mar. 13, 1788), excerpts reprinted in Young, *supra*, at 299, 299, states in pertinent part:

But here the enemies of the new system frighten us with the idea of a standing army. I am a mortal enemy to standing armies, in time of peace particularly; but the necessity of armies in some cases is very obvious. If there be a probability of attack by foreign nations, or of an overthrow of the government by civil discord, we ought not to wait the enemies attack in either case. * * *

33. Luther Martin, Baltimore Maryland Journal (Mar. 18, 1788), excerpts reprinted in Young, *supra*, at 301, 301-02, states in pertinent part:

That a system may enable government wantonly to exercise power over the militia, to call out an unreasonable number from any particular state without its permission, and to march them upon, and continue them in, remote and improper services—that the same system

should enable the government totally to discard, render useless, and even disarm the militia, when it would remove them out of the way of opposing its ambitious views, is by no means inconsistent, and is really the case in the proposed constitution:—In both these respects it is, in my opinion, highly faulty, and ought to be amended. In the proposed system the general government has a power not only *without* the *consent*, but *contrary* to the *will* of the *state government*, to call out the *whole* of its militia, without regard to *religious scruples*, or any other consideration, and to continue them in service as long as it pleases, thereby subjecting the *freemen* of a whole state to *martial* law, and reducing them to the situation of *slaves*.—It has also, by another clause, the powers, by *which only* the militia can be organized and armed, and by the neglect of which they may be rendered utterly useless and insignificant, when it suits the ambitious purposes of government:—Nor is the suggestion unreasonable, even if it had been made, that the government might improperly oppress and harass the militia, the better to reconcile them to the idea of regular troops, who might relieve them from the burthen, and to render them less opposed to the measures it might be disposed to adopt for the purpose of reducing them to that state of insignificancy and uselessness.

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34. A Ploughman, Winchester Virginia Gazette (Mar. 19, 1788), reprinted in Young, *supra*, at 303, 303, states in pertinent part:

* * * * *

And in order to rivet the chains of perpetual slavery upon us, they have made a standing army an essential of the Federal Constitution, which the world cannot produce an instance of a more permanent foundation to erect the fabrick of tyranny upon; * * * to keep a standing

army, gives cause to suspect that the rulers are afraid of the people, or that they have a design upon them. If their designs are oppressive, the army is necessary to compleat the tyranny; if the army is the strongest force in a State, it must be a military government, and it is eternally true, that a free government and a standing army are absolutely incompatible.

35. Federal Farmer, *An Additional Number of Letters from the Federal Farmer to the Republican, Letter XVIII* (May 1788), excerpts reprinted in Young, *supra*, at 342, 354, states in pertinent part:

* * * * *

The military forces of a free country may be considered under three general descriptions—1. The militia. 2. the navy—and 3. the regular troops—and the whole ought ever to be, and understood to be, in strict subordination to the civil authority—and that regular troops, and select corps, ought not to be kept up without evident necessity. Stipulations in the constitution to this effect, are perhaps, too general to be of much service, except merely to impress on the minds of the people and soldiery, that the military ought ever to be subject to the civil authority, &c. But particular attention, and many more definite stipulations, are highly necessary to render the military safe, and yet useful in a free government; and in a federal republic, where the people meet in distinct assemblies, many stipulations are necessary to keep a part from transgressing, which would be unnecessary checks against the whole met in one legislature, in one entire government.—A militia, when properly formed, are in fact the people themselves, and render regular troops in a great measure unnecessary. The powers to form and arm the militia, to appoint their officers, and to command their services, are very important; nor ought they in a confederated republic to be lodged, solely, in

any one member of the government. First, the constitution ought to secure a genuine and guard against a select militia, by providing that the militia shall always be kept well organized, armed, and disciplined, and include, according to the past and general usuage of the states, all men capable of bearing arms; and that all regulations tending to render this general militia useless and defenceless, by establishing select corps of militia, or distinct bodies of military men, not having permanent interests and attachments in the community to be avoided. I am persuaded, I need not multiply words to convince you of the value and solidity of this principle, as it respects general liberty, and the duration of a free and mild government: having this principle well fixed by the constitution, then the federal head may prescribe a general uniform plan, on which the respective states shall form and train the militia, appoint their officers and solely manage them, except when called into the service of the union, and when called into that service, they may be commanded and governed by the union. This arrangement combines energy and safety in it; it places the sword in the hands of the solid interest of the community, and not in the hands of men destitute of property, of principle, or of attachment to the society and government, who often form the select corps of peace or ordinary establishments: by it, the militia are the people, immediately under the management of the state governments, but on a uniform federal plan, and called into the service, command, and government of the union, when necessary for the common defence and general tranquility. But, say gentlemen, the general militia are for the most part employed at home in their private concerns, cannot well be called out, or be depended upon; that we must have a select militia; that is, as I understand it, particular corps or bodies of young men, and of men who have but little to do at home, particularly armed and disciplined in some

measure, at the public expence, and always ready to take the field. These corps, not much unlike regular troops, will ever produce an inattention to the general militia; and the consequence has ever been, and always must be, 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; nor does it follow from this, that all promiscuously must go into actual service on every occasion. The mind that aims at a select militia, must be influenced by a truly anti-republican principle; and when we see many men disposed to practice upon it, whenever they can prevail, no wonder true republicans are for carefully guarding against it. As a farther check, it may be proper to add, that the militia of any state shall not remain in the service of the union, beyond a given period, without the express consent of the state legislature.

36. Statement of Patrick Henry, Virginia Convention Debates, June 5, 1788, as compiled in 3 Elliot, *supra*, at 47-48, 51-52, reads in relevant part as follows:

* * * * *

* * * My great objection to this government is, that it does not leave us the means of defending our rights, or of waging war against tyrants. It is urged by some gentlemen, that this new plan will bring us an acquisition of strength — an army, and the militia of the states. This is an idea extremely ridiculous: gentlemen cannot be earnest. This acquisition will trample on our fallen liberty. Let my beloved Americans guard against that fatal lethargy that has pervaded the universe. Have we the means of resisting disciplined armies, when our only defence, the militia, is put into the hands of Congress?

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A standing army we shall have, also, to execute the execrable commands of tyranny; and how are you to punish them? Will you order them to be punished? Who shall obey these orders? Will your mace-bearer be a match for a disciplined regiment? In what situation are we to be? The clause before you gives a power of direct taxation, unbounded and unlimited, exclusive power of legislation, in all cases whatsoever, for ten miles square, and over all places purchased for the erection of forts, magazines, arsenals, dockyards, &c. What resistance could be made? The attempt would be madness. You will find all the strength of this country in the hands of your enemies; their garrisons will naturally be the strongest places in the country. Your militia is given up to Congress, also, in another part of this plan: they will therefore act as they think proper: all power will be in their own possession. You cannot force them to receive their punishment: of what service would militia be to you, when, most probably, you will not have a single musket in the state? for, as arms are to be provided by Congress, they may or may not furnish them.

Let me here call your attention to that part which gives the Congress power "to provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States—reserving to the states, respectively, the appointment of the officers, and the authority of training the militia, according to the discipline prescribed by Congress." By this, sir, you see that their control over our last and best defence is unlimited. If they neglect or refuse to discipline or arm our militia, they will be useless: the states can do neither—this power being exclusively given to Congress. The power of appointing officers over men not disciplined or armed is ridiculous; so that this pretended little remains of power left to the

states may, at the pleasure of Congress, be rendered nugatory. * * *

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37. Oration of David Ramsay at Charleston South Carolina, printed in the Columbian Herald (June 5, 1788), reprinted in 2 Bailyn, *supra*, at 506, 507, states in pertinent part:

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Nothing is more likely to secure a people from foreign attacks than a preparedness for repelling them. On this principle the militia arrangements of the new constitution promise a long exemption from foreign war.—What European power will dare to attack us, when it is known that the yeomanry of the country uniformly armed and disciplined, may on any emergency be called out to our defence by one legislature, and commanded by one person? * * *

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38. Statement of Patrick Henry, Virginia Convention Debates, June 9, 1788, as compiled in 3 Elliot, *supra*, at 168-69, reads in relevant part as follows:

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* * * They [Congress] are also to have magazines in each state. These depositories for arms, though within the state, will be free from the control of its legislature. Are we at last brought to such an humiliating and debasing degradation, that we cannot be trusted with arms for our own defence? Where is the difference between having our arms in our own possession and under our own direction, and having them under the management of Congress? If our defence be the *real* object of having those arms, in whose hands can they be trusted with more propriety, or equal safety to us, as in our own hands? If our legislature be unworthy of legislating for

every foot in this state, they are unworthy of saying another word.

The clause which says that Congress shall "provide for arming, organizing, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively the appointment of the officers," seemed to put the states in the power of Congress. I wished to be informed, if Congress neglected to discipline them, whether the states were not precluded from doing it. Not being favored with a particular answer, I am confirmed in my opinion, that the states have not the power of disciplining them, without recurring to the doctrine of constructive implied powers. If, by implication, the states may discipline them, by implication, also, Congress may officer them; because, in a partition of power, each has a right to come in for part; and because implication is to operate in favor of Congress on all occasions, where their object is the extension of power, as well as in favor of the states. We have not one fourth of the arms that would be sufficient to defend ourselves. The power of arming the militia, and the means of purchasing arms, are taken from the states by the paramount powers of Congress. If Congress will not arm them, they will not be armed at all.

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39. Statement of Henry Lee, Virginia Convention Debates. June 9, 1788, as compiled in 3 Elliot, *supra*, at 178, reads in relevant part as follows:

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I cannot understand the implication of the honorable gentleman [Patrick Henry], that, because Congress may arm the militia, the states cannot do it: nor do I understand the reverse of the proposition. The states are, by no part of the plan before you, precluded from arming

and disciplining the militia, should Congress neglect it. * * *

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40. Statement of John Williams, New York Convention Debates, June 27, 1788, as compiled in 2 Elliot, *supra*, at 338, reads in relevant part as follows:

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* * * Now, if the Congress should judge it a proper provision, for the common defence and general welfare, that the state governments should be essentially destroyed, what, in the name of common sense, will prevent them? Are they not constitutionally authorized to pass such laws? Are not the terms, *common defence and general welfare*, indefinite, undefinable terms? What checks have the state governments against such encroachments? * * * And what restraint have they against tyranny in their head? Do they rely on anything but arms, the *ultima ratio*? And to this most undesirable point must the states recur, in order to secure their rights. But have they the means necessary for the purpose? Are they not deprived of the command of the purse and the sword of their citizens? Is not the power, both over taxation and the militia, wrested from their hands by this Constitution, and bestowed upon the general government? Yes, sir, it is. * * *

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41. Foreign Spectator, *Philadelphia Federal Gazette* (Nov. 14, 1788) reprinted in Young, *supra*, at 567, 567-69, states in pertinent part:

REMARKS *on the Amendments to the Federal Constitution, proposed by the Conventions of Massachusetts, New-Hampshire, New-York, Virginia, South and North-Carolina, with the minorities of Pennsylvania and Maryland, by a* FOREIGN SPECTATOR.

NUMBER VIII.

A Good militia is the natural, easy, powerful and honorable defence of a country. Even those nations which are surrounded with formidable neighbours, need not altogether depend on great standing armies, which are not favorable to liberty, and create an enormous expence. Indeed regular troops are more excellent, as they resemble a militia; which is evidently seen in the Swedish army, and acknowledged by the best military writers of different nations. America will be well defended against any attack by the united strength of a small but well appointed army, and a numerous well ordered militia. * * *

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The constitution *reserves to the states respectively the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress*. This surely is a perfect security to any state against an encroachment of the federal power. The safety of the union requires that the militia of every state should be well armed, and in every respect qualified for the defence of the country, consequently general and effectual regulations must be made by Congress. Fines, penalties, and punishments of a proper kind are a necessary part of discipline; if these are to be exercised by the several states, it is needless to compliment the Congress with the ridiculous power of organizing the militia.

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42. A Pennsylvanian [Tench Coxe], *Remarks on the First Part of the Amendments to the Federal Constitution*, Philadelphia Federal Gazette (June 18, 1789), reprinted in Young, *supra*, at 670, 671, states in pertinent part:

* * * * *

As civil rulers, not having their duty to the people, duly before them, may attempt to tyrannize, and as the military forces which shall be occasionally raised to defend our country, might pervert their power to the injury of their fellow-citizens, the people are confirmed by the next article in their right to keep and bear their private arms.

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43. Centinel *Revived No. XXIX*, Philadelphia Independent Gazetteer (Sept. 9, 1789), excerpts reprinted in Young, *supra*, at 711, 712, states in pertinent part:

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Article 5th of the proposed amendments—"A well regulated militia, composed of the body of the people, being the best security of a free state, the right of the people to keep and bear arms, shall not be infringed, &c." It is remarkable that this article only makes the observation, "that a well regulated militia, composed of the *body* of the people, is the best security of a free state;" it does not ordain, or constitutionally provide for, the establishment of such a one. The absolute command vested by other sections in Congress over the militia, are not in the least abridged by this amendment. The militia may still be subjected to martial law and all its concomitant severities, and disgraceful punishments, may still be marched from state to state and made the unwilling instruments of crushing the last efforts of expiring liberty.

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44. Governor John Hancock, New York Journal (Jan. 28, 1790), reprinted in Young, *supra*, at 731, 731, states in pertinent part:

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" * * * Hence we are called upon in an especial manner, to maintain an equal and regular system of revenue and taxation, to support the faith, and perform the engagements of our republic; to arm and cause our militia to be disciplined according to the mode which shall be provided by Congress; and to see that they are officered with men, who are capable of making the greatest progress in the art military, and who delight in the freedom and happiness of their country. A well regulated and disciplined militia, is at all times a good objection to the introduction of that bane of all free governments—a standing army."

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45. A Farmer, Philadelphia Independent Gazetteer (Jan. 29, 1791), reprinted in Young, *supra*, at 741, 741-42, states in pertinent part:

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Under every government the dernier resort of the people, is an appeal to the sword; whether to defend themselves against the open attacks of a foreign enemy, or to check the insidious encroachments of domestic foes. Whenever a people are so enervated by luxury as to intrust the defence of their country to a regular, standing army, composed of mercenaries, the power of that country will remain under the direction and influence of the most wealthy citizens. The history of Holland and other modern republics will manifest, how far a *mere monied interest* is to be intrusted with the liberties of the people.—This subject requires your most serious consideration. Whatever form your government may assume, your liberties will be safe as long as you support a well

regulated militia. Those who experience the labor of acquiring property, will ever be the best defenders of it.

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46. Proceedings of the Virginia Convention, as compiled in 3 Elliot, *supra* (page numbers in brackets), reads in relevant part as follows:

From June 14, 1788:

[378] Mr. CLAY wished to be informed why the Congress were to have power to provide for calling forth the militia, to put the laws of the Union into execution.

Mr. MADISON supposed the reasons of this power to be so obvious that they would occur to most gentlemen. If resistance should be made to the execution of the laws, he said, it ought to be overcome. This could be done only in two ways—either by regular forces or by the people. By one or the other it must unquestionably be done. If insurrections should arise, or invasions should take place, the people ought unquestionably to be employed, to suppress and repel them, rather than a standing army. The best way to do these things was to put the militia on a good and sure footing, and enable the government to make use of their services when necessary.

Mr. GEORGE MASON. Mr. Chairman, unless there be some restrictions on the power of calling forth the militia, to execute the laws of the Union, suppress insurrections, and repel invasions, we may very easily see that it will produce dreadful oppressions. It is extremely unsafe, without some alterations. It would be to use the militia to a very bad purpose, if any disturbance happened in New Hampshire, to call them from Georgia. This would harass the people so much that they would agree to abolish the use of the militia, and establish a standing army. I conceive the general government ought to have power over the militia, but it ought to have some bounds. If gentlemen say that the militia of a neighbor-

ing state is not sufficient, the government ought to have power to call forth those of other states, the most convenient and contiguous. But in this case, the consent of the state legislatures ought to be had. On *real* emergencies, this consent will never be denied, each state being concerned in the safety of the rest. This power may be restricted without any danger. I wish such an amendment as this—that the militia of any state should not be marched beyond the limits of the adjoining state; and if it be necessary to draw them from one end of the continent to [379] the other, I wish such a check, as the consent of the state legislature, to be provided. Gentlemen may say that this would impede the government, and that the state legislatures would counteract it by refusing their consent. This argument may be applied to all objections whatsoever. How is this compared to the British constitution? Though the king may declare war, the Parliament has the means of carrying it on. It is not so here. Congress can do both. Were it not for that check in the British government, the monarch would be a despot. When a war is necessary for the benefit of the nation, the means of carrying it on are never denied. If any unjust requisition be made on Parliament, it will be, as it ought to be, refused. The same principle ought to be observed in our government. In times of real danger, the states will have the same enthusiasm in aiding the general government, and granting its demands, which is seen in England, when the king is engaged in a war apparently for the interest of the nation. This power is necessary; but we ought to guard against danger. If ever they attempt to harass and abuse the militia, they may abolish them, and raise a standing army in their stead. There are various ways of destroying the militia. A standing army may be perpetually established in their stead. I abominate and detest the idea of a government, where there is a standing army. The militia may be here de-

stroyed by that method which has been practised in other parts of the world before; that is, by rendering them useless—by disarming them. Under various pretences, Congress may neglect to provide for arming and disciplining the militia; and the state governments cannot do it, for Congress has an exclusive right to arm them, &c. Here is a line of division drawn between them—the state and general governments. The power over the militia is divided between them. The national government has an exclusive right to provide for arming, organizing, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States. The state governments have the power of appointing the officers, and of training the militia, according to the discipline prescribed by Congress, if they should think proper to prescribe any. Should the national government wish to render the militia useless, they may neglect them, and let them perish, in order to have a pretence of establishing a standing army.

[380] No man has a greater regard for the military gentlemen than I have. I admire their intrepidity, perseverance, and valor. But when once a standing army is established in any country, the people lose their liberty. When, against a regular and disciplined army, yeomanry are the only defence,—yeomanry, unskilful and unarmed,—what chance is there for preserving freedom? Give me leave to recur to the page of history, to warn you of your present danger. Recollect the history of most nations of the world. What havoc, desolation, and destruction, have been perpetrated by standing armies! An instance within the memory of some of this house will show us how our militia may be destroyed. Forty years ago, when the resolution of enslaving America was formed in Great Britain, the British Parliament was advised by an artful man, [Sir William Keith] who was governor of Pennsylvania, to disarm the people; that it

was the best and most effectual way to enslave them; but that they should not do it openly, but weaken them, and let them sink gradually, by totally disusing and neglecting the militia. [Here Mr. Mason quoted sundry passages to this effect.] This was a most iniquitous project. Why should we not provide against the danger of having our militia, our real and natural strength, destroyed? The general government ought, at the same time, to have some such power. But we need not give them power to abolish our militia. If they neglect to arm them, and prescribe proper discipline, they will be of no use. I am not acquainted with the military profession. I beg to be excused for any errors I may commit with respect to it. But I stand on the general principles of freedom, whereon I dare to meet any one. I wish that, in case the general government should neglect to arm and discipline the militia, there should be an express declaration that the state governments might arm and discipline them. With this single exception, I would agree to this part, as I am conscious the government ought to have the power.

They may effect the destruction of the militia, by rendering the service odious to the people themselves, by harassing them from one end of the continent to the other, and by keeping them under martial law.

The English Parliament never pass a mutiny bill but for [381] one year. This is necessary; for otherwise the soldiers would be on the same footing with the officers, and the army would be dissolved. One mutiny bill has been here in force since the revolution. I humbly conceive there is extreme danger of establishing cruel martial regulations. If, at any time, our rulers should have unjust and iniquitous designs against our liberties, and should wish to establish a standing army, the first attempt would be to render the service and use of militia odious to the people themselves—subjecting them to un-

necessary severity of discipline in time of peace, confining them under martial law, and disgusting them so much as to make them cry out, "Give us a standing army!" I would wish to have some check to exclude this danger; as, that the militia should never be subject to martial law but in time of war. I consider and fear the natural propensity of rulers to oppress the people. I wish only to prevent them from doing evil. By these amendments I would give necessary powers, but no unnecessary power. If the clause stands as it is now, it will take from the state legislatures what divine Providence has given to every individual—the means of self-defence. Unless it be moderated in some degree, it will ruin us, and introduce a standing army.

Mr. MADISON. Mr. Chairman, I most cordially agree, with the honorable member last up, that a standing army is one of the greatest mischiefs that can possibly happen. It is a great recommendation for this system, that it provides against this evil more than any other system known to us, and, particularly, more than the old system of confederation. The most effectual way to guard against a standing army, is to render it unnecessary. The most effectual way to render it unnecessary, is to give the general government full power to call forth the militia, and exert the whole natural strength of the Union, when necessary. Thus you will furnish the people with sure and certain protection, without recurring to this evil; and the certainty of this protection from the whole will be a strong inducement to individual exertion. Does the organization of the government warrant a belief that this power will be abused? Can we believe that a government of a federal nature, consisting of many coëqual sovereignties, and particularly having one branch chosen from the people, would drag the militia unnecessarily to an immense distance? This, sir, would be unworthy the most arbitrary despot. [382] They have no

temptation whatever to abuse this power; such abuse could only answer the purpose of exciting the universal indignation of the people, and drawing on themselves the general hatred and detestation of their country.

I cannot help thinking that the honorable gentleman has not considered, in all its consequences, the amendment he has proposed. Would this be an equal protection, sir, or would it not be a most partial provision? Some states have three or four states in contact. Were this state invaded, as it is bounded by several states, the militia of three or four states would, by this proposition, be obliged to come to our aid; and those from some of the states would come a far greater distance than those of others. There are other states, which, if invaded, could be assisted by the militia of one state only, there being several states which border but on one state. Georgia and New Hampshire would be infinitely less safe than the other states. Were we to adopt this amendment, we should set up those states as butts for invasions, invite foreign enemies to attack them, and expose them to peculiar hardships and dangers. Were the militia confined to any limited distance from their respective places of abode, it would produce equal, nay, more inconveniences. The principles of equality and reciprocal aid would be destroyed in either case.

I cannot conceive that this Constitution, by giving the general government the power of arming the militia, takes it away from the state governments. The power is concurrent, and not exclusive. Have we not found, from experience, that, while the power of arming and governing the militia has been solely vested in the state legislatures, they were neglected and rendered unfit for immediate service? Every state neglected too much this most essential object. But the general government can do it more effectually. Have we not also found that the militia of one state were almost always insufficient to

succor its harassed neighbor? Did all the states furnish their quotas of militia with sufficient promptitude? The assistance of one state will be of little avail to repel invasion. But the general head of the whole Union can do it with effect, if it be vested with power to use the aggregate strength of the Union. If the regulation of the militia were to be committed to the executive authority alone, there might be reason for providing [383] restrictions. But, sir, it is the legislative authority that has this power. They must make a law for the purpose.

The honorable member is under another mistake. He wishes martial law to be exercised only in time of war, under an idea that Congress can establish it in time of peace. The states are to have the authority of training the militia according to the congressional discipline; and of governing them at all times when not in the service of the Union. Congress is to govern such part of them as may be employed in the actual service of the United States; and such part only can be subject to martial law. The gentlemen in opposition have drawn a most tremendous picture of the Constitution in this respect. Without considering that the power was absolutely indispensable, they have alarmed us with the possible abuse of it, but have shown no inducement or motive to tempt them to such abuse. Would the legislature of the state drag the militia of the eastern shore to the western frontiers, or those of the western frontiers to the eastern shore, if the local militia were sufficient to effect the intended purpose? There is something so preposterous, and so full of mischief, in the idea of dragging the militia unnecessarily from one end of the continent to the other, that I think there can be no ground of apprehension. If you limit their power over the militia, you give them a pretext for substituting a standing army. If you put it in the power of the state governments to refuse the militia, by requiring their consent, you destroy the general govern-

ment, and sacrifice particular states. The same principles and motives which produce disobedience to requisitions, will produce refusal in this case.

The restrictions which the honorable gentleman mentioned to be in the British constitution are all provisions against the power of the executive magistrate; but the House of Commons may, if they be so disposed, sacrifice the interest of their constituents in all those cases. They may prolong the duration of mutiny bills, and grant supplies to the king to carry on an impolitic war. But they have no motives to do so; for they have strong motives to do their duty. We halve more ample security than the people of Great Britain. The powers of the government are more limited and guarded, and our representatives are more responsible than the members of the British House of Commons.

[384] Mr. CLAY apprehended that, by this power, our militia might be sent to the Mississippi. He observed that the sheriff might raise the *posse comitatus* to execute the laws. He feared it would lead to the establishment of a military government, as the militia were to be called forth to put the laws into execution. He asked why this mode was preferred to the old, established custom of executing the laws.

Mr. MADISON answered, that the power existed in all countries; that the militia might be called forth, for that purpose, under the laws of this state and every other state in the Union; that public force must be used when resistance to the laws required it, otherwise society itself must be destroyed; that the mode referred to by the gentleman might not be sufficient on every occasion, as the sheriff must be necessarily restricted to the *posse* of his own county. If the *posse* of one county were insufficient to overcome the resistance to the execution of the laws, this power must be resorted to. He did not, by any means, admit that the old mode was superseded by the

introduction of the new one. And it was obvious to him, that, when the civil power was sufficient, this mode would never be put in practice.

Mr. HENRY. Mr. Chairman, in my judgment the friends of the opposition have to act cautiously. We must make a firm stand before we decide. I was heard to say, a few days ago, that the sword and purse were the two great instruments of government; and I professed great repugnance at parting with the purse, without any control, to the proposed system of government. And now, when we proceed in this formidable compact, and come to the national defence, the sword, I am persuaded we ought to be still more cautious and circumspect; for I feel still more reluctance to surrender this most valuable of rights.

The honorable member who has risen to explain several parts of the system was pleased to say, that the best way of avoiding the danger of a standing army, was, to have the militia in such a way as to render it unnecessary; and that, as the new government would have power over the militia, we should have no standing army—it being unnecessary. This argument destroys itself. It demands a power, and denies the probability of its exercise. There are suspicions of power on one hand, and absolute and unlimited confi[385]dence on the other. I hope to be one of those who have a large share of suspicion. I leave it to this house, if there be not too small a portion on the other side, by giving up too much to that government. You can easily see which is the worst of two extremes. Too much suspicion may be corrected. If you give too little power to-day, you may give more to-morrow. But the reverse of the proposition will not hold. If you give too much power to-day, you cannot retake it to-morrow: for to-morrow will never come for that purpose. If you have the fate of other nations, you will never see it. It is

easier to supply deficiencies of power than to take back excess of power. This no man can deny.

But, says the honorable member, Congress will keep the militia armed; or, in other words, they will do their duty. Pardon me if I am too jealous and suspicious to confide in this remote possibility. My honorable friend went on a supposition that the American rulers, like all others, will depart from their duty without bars and checks. No government can be safe without checks. Then he told us they had no temptation to violate their duty, and that it would be their interest to perform it. Does he think you are to trust men who cannot have separate interests from the people? It is a novelty in the political world (as great a novelty as the system itself) to find rulers without private interests, and views of personal emoluments, and ambition. His supposition, that they will not depart from their duty, as having no interest to do so, is no satisfactory answer to my mind. This is no check. The government may be most intolerable and destructive, if this be our only security.

My honorable friend attacked the honorable gentleman with universal principles—that, in all nations and ages, rulers have been actuated by motives of individual interest and private emoluments, and that in America it would be so also. I hope, before we part with this great bulwark, this noble palladium of safety, we shall have such checks interposed as will render us secure. The militia, sir, is our ultimate safety. We can have no security without it. But then, he says that the power of arming and organizing the militia is concurrent, and to be equally exercised by the general and state governments. I am sure, and I trust in the candor of that gentleman, that he will recede from that [386] opinion, When his recollection will be called to the particular clause which relates to it.

As my worthy friend said, there is a positive partition of power between the two governments. To Congress is

given the power of "arming, organizing, and disciplining the militia, and governing such part of them as may be employed in the service of the United States." To the state legislatures is given the power of "appointing the officers, and training the militia according to the discipline prescribed by Congress." I observed before, that, if the power be concurrent as to arming them, it is concurrent in other respects. If the states have the right of arming them, &c., concurrently, Congress has a concurrent power of appointing the officers, and training the militia. If Congress have that power, it is absurd. To admit this mutual concurrence of powers will carry you into endless absurdity—that Congress has nothing exclusive on the one hand, nor the states on the other. The rational explanation is, that Congress shall have exclusive power of arming them, &c., and that the state governments shall have exclusive power of appointing the officers, &c. Let me put it in another light.

May we not discipline and arm them, as well as Congress, if the power be concurrent? so that our militia shall have two sets of arms, double sets of regimentals, &c.; and thus, at a very great cost, we shall be doubly armed. The great object is, that every man be armed. But can the people afford to pay for double sets of arms, &c.? Every one who is able may have a gun. But we have learned, by experience, that, necessary as it is to have arms, and though our Assembly has, by a succession of laws for many years, endeavored to have the militia completely armed, it is still far from being the case. When this power is given up to Congress without limitation or bounds, how will your militia be armed? You trust to chance; for sure I am that that nation which shall trust its liberties in other hands cannot long exist. If gentlemen are serious when they suppose a concurrent power, where can be the impolicy to amend it? Or, in other words, to say that Congress shall not arm or disci-

pline them, till the states shall have refused or neglected to do it? This is my object. I only wish to bring it to what they themselves say is implied. Implication is to be the foundation of our civil liberties; and when you speak of arming the militia by a [387] concurrence of power, you use implication. But implication will not save you, when a strong army of veterans comes upon you. You would be laughed at by the whole world, for trusting your safety implicitly to implication.

The argument of my honorable friend was, that rulers might tyrannize. The answer he received was, that they will not. In saying that they would not, he admitted they might. In this great, this essential part of the Constitution, if you are safe, it is not from the Constitution, but from the virtues of the men in government. If gentlemen are willing to trust themselves and posterity to so slender and improbable a chance, they have greater strength of nerves than I have.

The honorable gentleman, in endeavoring to answer the question why the militia were to be called forth to execute the laws, said that the civil power would probably do it. He is driven to say, that the civil power may do it instead of the militia. Sir, the military power ought not to interpose till the civil power refuse. If this be the spirit of your new Constitution, that the laws are to be enforced by military coercion, we may easily divine the happy consequences which will result from it. The civil power is not to be employed at all. If it be, show me it. I read it attentively, and could see nothing to warrant a belief that the civil power can be called for. I should be glad to see the power that authorizes Congress to do so. The sheriff will be aided by military force. The most wanton excesses may be committed under color of this; for every man in office, in the states, is to take an oath to support it in all its operations. The honorable gentleman said, in answer to the objection that the militia might be marched

from New Hampshire to Georgia, that the members of the government would not attempt to excite the indignation of the people. Here, again, we have the general unsatisfactory answer, that they will be virtuous, and that there is no danger.

Will gentlemen be satisfied with an answer which admits of dangers and abuses if they be wicked? Let us put it out of their power to do mischief. I am convinced there is no safety in the paper on the table as it stands now. I am sorry to have an occasion to pass a eulogium on the British government, as gentlemen may object to it. But how natural it is, when comparing deformities to beauty, to be [388] struck with the superiority of the British government to that system! In England, self-love — self-interest — powerfully stimulates the executive magistrate to advance the prosperity of the nation. In the most distant part, he feels the loss of his subjects. He will see the great advantage of his posterity inseparable from the felicity of his people. Man is a fallen creature, a fallible being, and cannot be depended on without self-love. Your President will not have the same motives of self-love to impel him to favor your interests. His political character is but transient, and he will promote, as much as possible, his own private interests. He will conclude, the constant observation has been that he will abuse his power, and that it is expected. The king of England has a more permanent interest. His stock, his family, is to continue in possession of the same emolument. The more flourishing his nation, the more formidable and powerful is he. The sword and purse are not united, in that government, in the same hands, as in this system. Does not infinite security result from a separation?

But it is said that our Congress are more responsible than the British Parliament. It appears to me that there is no real, but there may be some specious responsibility.

If Congress, in the execution of their unbounded powers, shall have done wrong, how will you come at them to punish them, if they are at the distance of five hundred miles? At such a great distance, they will evade responsibility altogether. If you have given up your militia, and Congress shall refuse to arm them, you have lost every thing. Your existence will be precarious, because you depend on others, whose interests are not affected by your infelicity. If Congress are to arm us exclusively, the man of New Hampshire may vote for or against it, as well as the Virginian. The great distance and difference between the two places render it impossible that the people of that country can know or pursue what will promote our convenience. I therefore contend that, if Congress do not arm the militia, we ought to provide for it ourselves.

Mr. NICHOLAS. Mr. Chairman, the great object of government, in every country, is security and public defence. I suppose, therefore, that what we ought to attend to here, is, what is the best mode of enabling the general government to protect us. One of three ways must be pursued [389] for this purpose. We must either empower them to employ, and rely altogether on, a standing army; or depend altogether on militia; or else we must enable them to use the one or the other of these two ways, as may be found most expedient. The least reflection will satisfy us that the Convention has adopted the only proper method. If a standing army were alone to be employed, such an army must be kept up in time of peace as would be sufficient in war. The dangers of such an army are so striking that every man would oppose the adoption of this government, had it been proposed by it as the only mode of defence. Would it be safe to depend on militia alone, without the agency of regular forces, even in time of war? Were we to be invaded by a powerful, disciplined army, should we be safe with militia? Could men unacquainted with the hardships, and un-

skilled in the discipline of war,—men only inured to the peaceable occupations of domestic life,—encounter with success the most skilful veterans, inured to the fatigues and toils of campaigns? Although some people are pleased with the theory of reliance on militia, as the sole defence of a nation, yet I think it will be found, in practice, to be by no means adequate. Its inadequacy is proved by the experience of other nations. But were it fully adequate, it would be unequal. If war be supported by militia, it is by personal service. The poor man does as much as the rich. Is this just? What is the consequence when war is carried on by regular troops? They are paid by taxes raised from the people, according to their property; and then the rich man pays an adequate share.

But, if you confine yourselves to militia alone, the poor man is oppressed. The rich man exempts himself by furnishing a substitute. And, although it be oppressive to the poor, it is not advantageous to the rich? For what he gives would pay regular troops. It is therefore neither safe nor just to depend entirely on militia. As these two ways are ineligible, let us consider the third method. Does this Constitution put this on a proper footing? It enables Congress to raise an army when necessary, or to call forth the militia when necessary. What will be the consequence of their having these two powers? Till there be a necessity for an army to be raised, militia will do. And when an army will be raised, the militia will still be employed, which [390] will render a less numerous army sufficient. By these means, there will be a sufficient defence for the country, without having a standing army altogether, or oppressing the people. The worthy member has said, that it ought to be a part of the Constitution that the militia ought not to go out of the state without the consent of the state legislature. What would be the consequence of this? The general defence is trusted to the general government. How is it to protect the Union?

It must apply to the state governments before it can do it. Is this right? Is it not subjecting the general will to the particular will, and exposing the general defence to the particular caprice of the members of the state governments? This would entirely defeat the power given to Congress to provide for the general defence; and unless the militia were to aid in the execution of the laws when resisted, the other powers of Congress would be nugatory. But he has said that this idea is justified by the English history; for that the king has the power of the sword, but must apply to the commons for the means of using it—for the purse. This is not a similar case. The king and commons are parts of the same government. But the general government is separate and perfectly distinct from the individual governments of the states. Should Congress be obliged to apply to the particular states for the militia, they may be refused, and the government overturned. To make the case similar, he ought to show us that the king and Parliament were obliged to call on some other power to raise forces, and provide for the means of carrying on war; for, otherwise, there is no similitude.

If the general government be obliged to apply to the states, a part will be thereby rendered superior to the whole. What are to be the effects of the amendments proposed? To destroy one of the most beneficial parts of the Constitution, put an obstacle in the way of the general government, and put it in the power of the state governments to take away the aid of the militia. Who will be most likely to want the aid of the militia? The Southern States, from their situation. Who are the most likely to be called for? The Eastern States, from their strength, &c. Should we put it in the power of particular states to refuse the militia, it ought to operate against ourselves. It is the height of bad policy to alter this part of the system. But it is said, the [391] militia are to be

disarmed. Will they be worse armed than they are now? Still, as my honorable friend said, the states would have power to arm them. The power of arming them is concurrent between the general and state governments; for the power of arming them rested in the state governments before; and although the power be given to the general government, yet it is not given exclusively; for, in every instance where the Constitution intends that the general government shall exercise any power exclusively of the state governments, words of exclusion are particularly inserted. Consequently, in every case where such words of exclusion are not inserted, the power is concurrent to the state governments and Congress, unless where it is impossible that the power should be exercised by both. It is, therefore, not an absurdity to say, that Virginia may arm the militia, should Congress neglect to arm them. But it would be absurd to say that we should arm them after Congress had armed them, when it would be unnecessary; or that Congress should appoint the officers, and train the militia, when it is expressly excepted from their powers.

But his great uneasiness is, that the militia may be under martial law when not on duty. A little attention will be sufficient to remove this apprehension. The Congress is to have power "to provide for the arming, organizing, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States." Another part tells you that they are to provide for calling them forth, to execute the laws of the Union, suppress insurrections, and repel invasions. These powers only amount to this—that they can only call them forth in these three cases, and that they can only govern such part of them as may be in the actual service of the United States. This causes a sufficient security that they will not be under martial law but when in actual service. If, sir, a mutiny bill has continued since

the revolution, recollect that this is done under the present happy government. Under the new government, no appropriation of money, to the use of raising or supporting an army, shall be for a longer term than two years. The President is to command. But the regulation of the army and navy is given to Congress. Our representatives will be a powerful check here. The influence of the commons, in England, in this case, is very predominant. But the worthy member [392] on the other side of the house has said that the militia are the great bulwark of the nation, and wishes to take no step to bring them into disuse. What is the inference? He wishes to see the militia employed. The Constitution provides what he wants. This is, to bring them frequently into use. If he expects that, by depriving the general government of the power of calling them into more frequent use, they will be rendered more useful and expert, he is greatly deceived. We ought to part with the power to use the militia to somebody. To whom? Ought we not to part with it for the general defence? If you give it not to Congress, it may be denied by the states. If you withhold it, you render a standing army absolutely necessary; for if they have not the militia, they must have such a body of troops as will be necessary for the general defence of the Union.

It was said, by the gentleman, that there was something singular in this government, in saying that the militia shall be called forth to execute the laws of the Union. There is a great difference between having the power in three cases, and in all cases. They cannot call them forth for any other purpose than to execute the laws, suppress insurrections, and repel invasions. And can any thing be more demonstrably obvious, than that the laws ought to be enforced if resisted, and insurrections quelled, and foreign invasions repelled? But it is asked, Why has not the Constitution declared that the civil power shall be employed to execute the laws? Has it said that the civil

power shall not be employed? The civil officer is to execute the laws on all occasions; and, if he be resisted, this auxiliary power is given to Congress of calling forth the militia to execute them, when it shall be found absolutely necessary.

From his argument on this occasion, and his eulogium on the executive magistrate of Britain, it might be inferred that the executive magistrate here was to have the power of calling forth the militia. What is the idea of those gentlemen who heard his argument on this occasion? Is it not that the President is to have this power —that President, who, he tells us, is not to have those high feelings, and that fine sensibility, which the British monarch possesses? No, sir, the President is not to have this power. God forbid we should ever see a public man in this country who should [393] have this power. Congress only are to have the power of calling forth the militia. And will the worthy member say that he would trust this power to a prince, governed by the dictates of ambition, or mere motives of personal interest, sooner than he would trust it in the hands of Congress? I will trust Congress, because they will be actuated by motives of fellow-feeling. They can make no regulations but what will affect themselves, their friends, and relations. But I would not trust a prince, whose ambition and private views would be the guide of his actions. When the government is carried on by representatives, and persons of my own choice, whom I can follow when far removed, who can be displaced at stated and short periods,—I can safely confide the power to them. It appears to me that this power is essentially necessary; for, as the general defence is trusted to Congress, we ought to intrust fully the means. This cannot be fully done without giving the power of calling forth the militia; and this power is sufficiently guarded.

Mr. MADISON. Mr. Chairman, the honorable gentleman has laid much stress on the maxim, that the purse and sword ought not to be put in the same hands, with a view of pointing out the impropriety of vesting this power in the general government. But it is totally inapplicable to this question. What is the meaning of this maxim? Does it mean that the sword and purse ought not to be trusted in the hands of the same government? This cannot be the meaning; for there never was, and I can say there never will be, an efficient government, in which both are not vested. The only rational meaning is, that the sword and purse are not to be given to the same member. Apply it to the British government, which has been mentioned. The sword is in the hands of the British king; the purse in the hands of the Parliament. It is so in America, as far as any analogy can exist. Would the honorable member say that the sword ought to be put in the hands of the representatives of the people, or in other hands independent of the government altogether? If he says so, it will violate the meaning of that maxim. This would be a novelty hitherto unprecedented. The purse is in the hands of the representatives of the people. They have the appropriation of all moneys. They have the direction and regulation of land and naval forces. They are to provide for calling forth the militia; and the [394] President is to have the command, and, in conjunction with the Senate, to appoint the officers. The means ought to be commensurate to the end. The end is general protection. This cannot be effected without a general power to use the strength of the Union.

We are told that both sides are distinguished by these great traits, confidence and distrust. Perhaps there may be a less or greater tincture of suspicion on one side than the other. But give me leave to say that, where power can be safely lodged, if it be necessary, reason commands its cession. In such case, it is imprudent and unsafe to

withhold it. It is universally admitted that it must be lodged in some hands or other. The question, then, is, in what part of the government it ought to be placed; and not whether any other political body, independent of the government, should have it or not. I profess myself to have had a uniform zeal for a republican government. If the honorable member, or any other person, conceives that my attachment to this system arises from a different source, he is greatly mistaken. From the first moment that my mind was capable of contemplating political subjects, I never, till this moment, ceased wishing success to a well-regulated republican government. The establishment of such in America was my most ardent desire. I have considered attentively (and my consideration has been aided by experience) the tendency of a relaxation of laws and a licentiousness of manners.

If we review the history of all republics, we are justified in the supposition that, if the bands of the government be relaxed, confusion will ensue. Anarchy ever has produced, and I fear ever will produce, despotism. What was the state of things that preceded the wars and revolutions in Germany? Faction and confusion. What produced the disorders and commotions of Holland? The like causes. In this commonwealth, and every state in the Union, the relaxed operation of the government has been sufficient to alarm the friends of their country. The rapid increase of population in every state is an additional reason to check dissipation and licentiousness. Does it not strongly call for the friends of republican government to endeavor to establish a republican organization? A change is absolutely necessary. I can see no danger in submitting to practice an experiment which seems to be founded on the best theoretic principles.

[395] But the honorable member tells us there is not an equal responsibility delineated, on that paper, to that which is in the English government. Calculations have

been made here, that, when you strike off those entirely elected by the influence of the crown, the other part does not bear a greater proportion to the number of their people, than the number fixed in that paper bears to the number of inhabitants in the United States. If it were otherwise, there is still more responsibility in this government. Our representatives are chosen for two years. In Great Britain, they are chosen for seven years. Any citizen may be elected here. In Great Britain, no one can be elected, to represent a county, without having an estate of the value of six hundred pounds sterling a year; nor to represent a corporation, without an annual estate of three hundred pounds. Yet we are told, there is no sympathy or fellow-feeling between the people here and their representatives; but that in England they have both. A just comparison will show that, if confidence be due to the government there, it is due tenfold here.

[Mr. Madison made many other observations, but spoke so very low that he could not be distinctly heard.]

Mr. HENRY. Mr. Chairman, it is now confessed that this is a national government. There is not a single federal feature in it. It has been alleged, within these walls, during the debates, to be national and federal, as it suited the arguments of gentlemen.

But now, when we have heard the definition of it, it is purely national. The honorable member was pleased to say that the sword and purse included every thing of consequence. And shall we trust them out of our hands without checks and barriers? The sword and purse are essentially necessary for the government. Every essential requisite must be in Congress. Where are the purse and sword of Virginia? They must go to Congress. What is become of your country? The Virginian government is but a name. It clearly results, from his last argument, that we are to be consolidated. We should be thought unwise indeed to keep two hundred legislators in

Virginia, when the government is, in fact, gone to Philadelphia or New York. We are, as a state, to form no part of the government. Where are your checks? The most essential objects of government are to be adminis-[396]tered by Congress. How, then, can the state governments be any check upon them? If we are to be a republican government, it will be consolidated, not confederated.

The means, says the gentleman, must be commensurate to the end. How does this apply? All things in common are left with this government. There being an infinitude in the government, there must be an infinitude of means to carry it on. This is a sort of mathematical government that may appear well on paper, but cannot sustain examination, or be safely reduced to practice. The delegation of power to an adequate number of representatives, and an unimpeded reversion of it back to the people, at short periods, form the principal traits of a republican government. The idea of a republican government, in that paper, is something superior to the poor people. The governing persons are the servants of the people. There, the servants are greater than their masters; because it includes infinitude, and infinitude excludes every idea of subordination. In this the creature has destroyed and soared above the creator. For if its powers be infinite, what rights have the people remaining? By that very argument, despotism has made way in all countries where the people unfortunately have been enslaved by it. We are told, the sword and purse are necessary for the national defence. The junction of these, without limitation, in the same hands, is, by logical and mathematical conclusions, the description of despotism.

The reasons adduced here to-day have long ago been advanced in favor of passive obedience and non-resistance. In 1688, the British nation expelled their monarch

for attempting to trample on their liberties. The doctrine of divine right and passive obedience was said to be commanded by Heaven — it was inculcated by his minions and adherents. He wanted to possess, without control, the sword and purse. The attempt cost him his crown. This government demands the same powers. I see reason to be more and more alarmed. I fear it will terminate in despotism. As to his objection of the abuse of liberty, it is denied. The political inquiries and promotions of the peasants are a happy circumstance. A foundation of knowledge is a great mark of happiness. When the spirit of inquiry after political discernment goes forth among the lowest of the people, it rejoices my heart. Why such fearful apprehensions? I [397] defy him to show that liberty has been abused. There has been no rebellion here, though there was in Massachusetts. Tell me of any country which has been so long without a rebellion. Distresses have been patiently borne, in this country, which would have produced revolutions in other countries. We strained every nerve to make provisions to pay off our soldiers and officers. They, though not paid, and greatly distressed at the conclusion of the war, magnanimously acquiesced. The depreciation of the circulating currency very much involved many of them, and thousands of other citizens, in absolute ruin; but the same patient fortitude and forbearance marked their conduct. What would the people of England have done in such a situation? They would have resisted the government, and murdered the tyrant. But in this country, no abuse of power has taken place. It is only a general assertion, unsupported, which suggests the contrary. Individual licentiousness will show its baneful consequences in every country, let its government be what it may.

But the honorable gentleman says, responsibility will exist more in this than in the British government. It exists here more in name than any thing else. I need not

speak of the executive authority. But consider the two houses — the American Parliament. Are the members of the Senate responsible? They may try themselves, and, if found guilty on impeachment, are to be only removed from office. In England, the greatest characters are brought to the block for their sinister administration. They have a power there, not to dismiss them from office, but from life, for mal-practices. The king himself cannot pardon in this case. How does it stand with respect to your lower house? You have but ten. Whatever number may be there, six is a majority. Will your country afford no temptation, no money to corrupt them? Cannot six fat places be found to accommodate them? They may, after the first Congress, take any place. There will be a multiplicity of places. Suppose they corruptly obtain places. Where will you find them, to punish them? At the farthest parts of the Union; in the ten miles square, or within a state where there is a stronghold. What are you to do when these men return from Philadelphia? Two things are to be done. To detect the offender and bring him to punishment. You will find it difficult to do either.

[398] In England, the proceedings are openly transacted. They deliver their opinions freely and openly. They do not fear all Europe. Compare it to this. You cannot detect the guilty. The publication from time to time is merely optional in them. They may prolong the period, or suppress it altogether, under pretence of its being necessary to be kept secret. The yeas and nays will avail nothing. Is the publication daily? It may be a year, or once in a century. I know this would be an unfair construction in the common concerns of life. But it would satisfy the words of the Constitution. It would be some security were it once a year, or even once in two years. When the new election comes on, unless you detect them, what becomes of your responsibility? Will they discover

their guilt when they wish to be reëlected? This would suppose them to be not only bad, but foolish men, in pursuit of responsibility. Have you a right to scrutinize into the conduct of your representatives? Can any man, who conceives himself injured, go and demand a sight of their journals? But it will be told that I am suspicious. I am answered, to every question, that they will be good men. In England, they see daily what is doing in Parliament. They will hear from their Parliament in one thirty-ninth part of the time that we shall hear from Congress in this scattered country. Let it be proposed, in England, to lay a poll tax, or enter into any measure, that will injure one part and produce emoluments to another, intelligence will fly quickly as the rays of light to the people. They will instruct their representatives to oppose it, and will petition against it, and get it prevented or redressed instantly. Impeachment follows quickly a violation of duty. Will it be so here? You must detect the offence, and punish the defaulter. How will this be done when you know not the offender, even though he had a previous design to commit the misdemeanor? Your Parliament will consist of sixty-five. Your share will be ten out of the sixty-five. Will they not take shelter, by saying they were in the minority — that the men from New Hampshire and Kentucky outvoted them? Thus will responsibility, that great pillar of a free government, be taken away.

The honorable gentleman wished to try the experiment. Loving his country as he does, he would not surely wish to trust his happiness to an experiment, from which much harm, but no good, may result.

[399] I will speak another time, and will not fatigue the committee now. I think the friends of the opposition ought to make a pause here; for I can see no safety to my country, if you give up this power.

Mr. MADISON. Mr. Chairman, the honorable member expresses surprise that I wished to see an experiment made of a republican government, or that I would risk the happiness of my country on an experiment. What is the situation of this country at this moment? Is it not rapidly approaching to anarchy? Are not the bands of the Union so absolutely relaxed as almost to amount to a dissolution? What has produced despotism and tyranny in other parts of the world? Is it not agreed, upon all hands, that a reform is necessary? If any takes place, will it not be an experiment, as well as this system? He acknowledges the existing system to be defective. He admits the necessity of *some* change. Would not the change he would choose himself be also an experiment? He has repeated objections which have already been clearly refuted, and which, therefore, I will pass over.

With respect to responsibility, still the honorable member thinks that the House of Representatives and Senate will suffer by a comparison with the British Parliament. I will not repeat the contrast made before, which he has mentioned. He tells us what may be done by our representatives with respect to the admission to offices, and insinuates that less may be done in Great Britain by the members of Parliament. In this country, by this system, no new office can be taken by a member of the government, and if he takes an old one, he loses his seat. If the emoluments of any existing office be increased, he cannot take it. How is it in Great Britain? Any member may have any place; for Parliament may create any new offices they please, or increase the emoluments of existing offices, and yet the members may accept any such places. Any member may accept any office whatever, and go again into Parliament. Does this comparison militate against this system? He tells us the affairs of our country are not alarming. I wish this assertion was well founded. I concur with him in

rejoicing to see the people enlightened and vigilant. I should be happy to see the people paying respect to the laws and magistracy. But is respect paid to our laws? Every man's experience will tell him more, perhaps, than any thing I could say. [400] Public and private confidence daily and rapidly decrease. Experiments must be made, and in that form which we must find most to the interest of our country.

Gov. RANDOLPH. Mr. Chairman, our attention is summoned to this clause respecting the militia, and alarms are thrown out to persuade us that it involves a multiplicity of danger. It is supposed by the honorable gentleman lately up, and another gentleman, that the clause for calling forth the militia to suppress insurrections, repel invasions, and execute the laws of the Union, implies that, instead of using civil force in the first instance, the militia are to be called forth to arrest petty offenders against the laws. Ought not common sense to be the rule of interpreting this Constitution? Is there an exclusion of the civil power? Does it provide that the laws are to be enforced by military coercion in all cases? No, sir. All that we are to infer is, that when the civil power is not sufficient, the militia must be drawn out. Who are they? He says (and I cheerfully acquiesce in the rectitude of the assertion) that they are the bulwarks of our liberties. Shall we be afraid that the people, this bulwark of freedom, will turn instruments of slavery? The officers are to be appointed by the states. Will you admit that they will act so criminally as to turn against their country? The officers of the general government are attached to it, because they derive their appointment from it. Admitting the militia officers to be corrupt, what is to make them be in favor of the general government? Will not the same reason attach them to the state governments? But it is feared that the militia are to be subjected to martial law when not in service. They are

only to be called out in three cases, and only to be governed by the authority of Congress when in the actual service of the United States; so that their articles of war can no longer operate upon them than when in the actual service of the Union.

Can it be presumed that you can vest the supreme power of the United States with the power of defence, and yet take away this natural defence from them? You risk the general defence by withholding this power.

The honorable gentleman, speaking of responsibility, has mistaken facts. He says the king cannot pardon offenders found guilty on impeachment. The king can pardon after [401] impeachment, though not before. He says, further, that in America every thing is concealed, whereas in England the operations of the government are openly transacted. In England, those subjects which produce impeachments are not opinions. No man ever thought of impeaching a man for an opinion. It would be impossible to discover whether the error in opinion resulted from a wilful mistake of the heart, or an involuntary fault of the head. What are the occasions of impeachments most commonly? Treaties. Are these previously known? No. Till after they are presented to the public eye, they are not known. Those who advised a treaty are not known till then. There ought not to be a publication on the subject of negotiations till they are concluded. So that, when he thinks there is a greater notoriety in this case in England than here, I say he is mistaken. There will be as much notoriety in America as in England. The spirit of the nation occasions the notoriety of their political operations, and not any constitutional requisition. The spirit of liberty will not be less predominant in America, I hope, than there. With respect to a standing army, I believe there was not a member in the federal Convention, who did not feel indignation at such an institution. What remedy, then, could be provided?

Leave the country defenceless? In order to provide for our defence, and exclude the dangers of a standing army, the general defence is left to those who are the objects of defence. It is left to the militia, who will suffer if they become the instruments of tyranny. The general government must have power to call them forth when the general defence requires it. In order to produce greater security, the state governments are to appoint the officers. The President, who commands them when in actual service of the Union, is appointed secondarily by the people. This is a further security. Is it not incredible that men who are interested in the happiness of their country—whose friends, relations, and connections, must be involved in the fate of their country—should turn against their country? I appeal to every man whether, if any of our own officers were called upon to destroy the liberty of their country, he believes they would assent to such an act of suicide. The state governments, having the power of appointing them, may elect men who are the most remarkable for their virtue of attachment to their country.

[402] Mr. GEORGE MASON, after having read the clause which gives Congress power to provide for arming, organizing, and disciplining the militia, and governing those in actual service of the Union, declared it as his firm belief, that it included the power of annexing punishments, and establishing necessary discipline, more especially as the construction of this, and every other part of the Constitution, was left to those who were to govern. If so, he asked if Congress could not inflict the most ignominious punishments on the most worthy citizens of the community. Would freemen submit to such indignant treatment? It might be thought a strained construction, but it was no more than Congress might put upon it. He thought such severities might be exercised on the militia as would make them wish the use

of the militia to be utterly abolished, and assent to the establishment of a standing army. He then adverted to the representation, and said it was not sufficiently full to take into consideration the feelings and sentiments of all the citizens. He admitted that the nature of the country rendered a full representation impracticable. But he strongly urged that impracticability as a conclusive reason for granting no powers to the government but such as were absolutely indispensable, and these to be most cautiously guarded.

He then recurred to the power of impeachment. On this subject he entertained great suspicions. He apologized for being suspicious. He entered into the world with as few suspicious as any man. Young men, he said, were apt to think well of every one, till time and experience taught them better. After a treaty manifestly repugnant to the interests of the country was made, he asked how they were to be punished. Suppose it had been made by the means of bribery and corruption. Suppose they had received one hundred thousand guineas, or louis d'ors, from a foreign nation, for consenting to a treaty, how was the truth to be come at? Corruption and bribery of that kind had happened in other governments, and might in this. The House of Representatives were to impeach them. The senators were to try themselves. If a majority of them were guilty of the crime, would they pronounce themselves guilty? Yet, says he, this is called responsibility. He wished to know in what court the members of the government were to be tried for the commission of indictable offences, or injuries to individuals. [403] He acknowledged himself to be no lawyer; but he thought he could see that they could be tried neither in the state nor federal courts. The only means, therefore, of bringing them to punishment, must be by a court appointed by law; and the law to punish them must also be made by themselves. By whom is it to be made?

demanded he. By the very men who are interested in not inflicting punishment. Yet, says he, though they make the law, and fix the punishment to be inflicted on themselves, it is called responsibility. If the senators do not agree to the law, it will not be made, and thus they will escape altogether.

[Mr. Mason then animadverted on the ultimate control of Congress over the elections, and was proceeding to prove that it was dangerous, when he was called to order, by Mr. Nicholas, for departing from the clause under consideration. A desultory conversation ensued, and Mr. Mason was permitted to proceed. He was of opinion that the control over elections tended to destroy responsibility. He declared he had endeavored to discover whether this power was really necessary, or what was the necessity of vesting it in the government, but he could find no good reason for giving it; that the reasons suggested were that, in case the states should refuse or neglect to make regulations, or in case they should be prevented from making regulations by rebellion or invasion, then the general government should interpose.]

Mr. Mason then proceeded thus: If there be any other cases, I should be glad to know them; for I know them not. If there be no other, why not confine them to these cases? But the power here, as in a thousand other instances, is without reason. I have no power which any other person can take from me. I have no right of representation, if they can take it from me. I say, therefore, that Congress may, by this claim, take away the right of representation, or render it nugatory, despicable, or oppressive. It is at least argumentative, that what may be done will be done, and that a favorite point will be done by those who can.

Suppose the state of Virginia should adopt such regulations as gentlemen say, (and in which I accord with all my heart,) and divide the state into ten districts.

Suppose, then, that Congress should order, instead of this, that the elections should be held in the borough of Norfolk. Will any man say that any man in Frederick or Berkely county would have any share in this representation, if the members were chosen in Norfolk? Nay, I might go farther, and say that [404] the elections for all the states might be had in New York, and then we should have to go so far that the privilege would be lost altogether; for but few gentlemen could afford to go thither. Some of the best friends of the Constitution have advocated that the elections should be in one place. This power is not necessary, and is capable of great abuse. It ought to be confined to the particular cases in which they assert it to be necessary. Whatever gentlemen may think of the opposition, I will never agree to give any power which I conceive to be dangerous.

I have doubts on another point. The 5th section of the 1st article provides, "that each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may, in their judgment, require secrecy." This enables them to keep the negotiations about treaties secret. Under this veil they may conceal any thing and every thing. Why not insert words that would exclude ambiguity and danger? The words of the Confederation, that defective system, are, in this respect, more eligible. What are they? In the last clause of the 9th article it is provided, "that Congress shall publish the journal of their proceedings monthly, except such parts thereof, relating to treaties, alliances, or military operations, as, in their judgment, require secrecy." The proceedings, by that system, are to be published monthly, with certain exceptions. These are proper guards. It is not so here. On the contrary, they may conceal what they please.

Instead of giving information, they will produce suspicion. You cannot discover the advocates of their

iniquitous acts. This is an additional defect of responsibility. Neither house can adjourn, without the consent of the other, for more than three days. This is no parliamentary rule. It is untrodden ground, and it appears to me liable to much exception.

The senators are chosen for six years. They are not recallable for those six years, and are reëligible at the end of the six years. It stands on a very different ground from the Confederation. By that system, they were only elected for one year, might be recalled, and were incapable of reëlection. But in the new Constitution, instead of being elected for one, they are chosen for six years. They cannot be recalled, in all that time, for any misconduct, and at the end of that long term may again be elected. What will be [405] the operation of this? Is it not probable that those gentlemen, who will be elected senators, will fix themselves in the federal town, and become citizens of that town more than of our state? They will purchase a good seat in or near the town, and become inhabitants of that place. Will it not be, then, in the power of the Senate to worry the House of Representatives into any thing? They will be a continually existing body. They will exercise those machinations and contrivances which the many have always to fear from the few. The House of Representatives is the only check on the Senate, with their enormous powers. But, by that clause, you give them the power of worrying the House of Representatives into a compliance with any measure. The senators, living on the spot, will feel no inconvenience from long sessions, as they will vote themselves handsome pay, without incurring any additional expenses. Your representatives are on a different ground, from their shorter continuance in office. The gentlemen from Georgia are six or seven hundred miles from home, and wish to go home. The Senate, taking advantage of this, by stopping the other house from adjourning, may

worry them into any thing. These are my doubts, and I think the provision not consistent with the usual parliamentary modes.

Mr. LEE, (of Westmoreland.) Mr. Chairman, I am anxious to know the truth on this great occasion. I was in hopes of receiving true information, but have been disappointed. I have heard suspicions against possibility, and not against probability. As to the distinction which lies between the gentlemen for and against the Constitution, — in the first place, most of the arguments the latter use pay no regard to the necessity of the Union, which is our object. In the next place, they use contradictory arguments. It may be remembered that we were told there was great danger of an aristocracy governing this country; for that their wages would be so low, that the rich alone could serve. And what does another gentleman say? That the price will be so high, that they will fix themselves comfortably in office, and, by their power and extravagant emoluments, ruin us. Ought we to adduce arguments like these, which imply a palpable contradiction? We ought to use arguments capable of discussion.

I beg leave to make some reply to what the honorable [406] gentleman over the way said. He rose with great triumph and exultation, saying that we had conceded that the government was national. The honorable gentleman is so little used to triumph on the grounds of reasoning, that he suffers himself to be quite captivated by the least appearance of victory. What reason had he to say that we admitted it to be a national government? We agree that the sword and the purse are in the hands of the general government for different designated purposes. What had the honorable member conceded? That the objects of the government were general, as designated in that system, equally affecting the interests of the people of every state. This was the sole concession, and which

by no means warrants his conclusion. Then why did the honorable gentleman seize it as a victory? Does he mean to object to the Constitution by putting words into our mouths which we never uttered? Did that gentleman say that the happiness of the people depended on the private virtues of the members of the government, and not on its construction? Did any gentleman admit this, as he insinuated? No, sir, we never admitted such a conclusion. Why, then, take up the time of this house in declaiming on words we never said? We say that it will secure our liberty and happiness, and that it is so constructed and organized, that we need apprehend no danger.

But, says he, the creature destroys the creator. How has he proved it? By his bare assertion. By ascribing infinitude to powers clearly limited and defined, for certain designated purposes. I shall not repeat the arguments which have fully refuted this idea of the honorable gentleman.

But gentlemen say that we must apply to the militia to execute the constitutional laws, without the interposition of the civil power, and that a military officer is to be substituted for the sheriff in all cases. This unwarrantable objection is urged, like many others, to produce the rejection of this government, though contrary to reason. What is the meaning of the clause under debate? Does not their explanation violate the natural meaning of language? Is it to be inferred that, when the laws are not opposed, judgments must be executed by the militia? Is this the right and liberal way of discussing the general national objects? I am astonished that gentlemen should attempt to impose so absurd a construction upon us.

[407] The honorable gentleman last up says, that organizing the militia gives Congress power to punish them when not in the actual service of the government. The gentleman is mistaken in the meaning of the word *organization*, to explain which would unnecessarily take

up time. Suffice it to say, it does not include the infliction of punishments. The militia will be subject to the common regulations of war when in actual service; but not in time of peace.

But the honorable gentleman said there is danger of an abuse of the power, and attempted to exemplify. And delegated power may be abused. It would be civil and candid in those gentlemen, who inveigh against this Constitution with such malignity, to show in what manner adequate powers can be given without a possibility of being abused. It appears to me to be as well secured as it can be, and that the alterations he proposes would involve many disadvantages. I cannot, then, but conclude that this government will, in my opinion, secure our liberty and happiness, without any alteration.

Mr. CLAY made several remarks; but he spoke too low. He admitted that he might be mistaken with respect to the exclusion of the civil power in executing the laws. As it was insinuated that he was not under the influence of common sense in making the objection, his error might result from his deficiency in that respect. But he thought that another gentleman was as deficient in common decency as he was in common sense. He was not, however, convinced that the civil power would be employed. If it was meant that the militia should not be called out to execute the laws in all cases, why were they not satisfied with the words, "repel invasions, suppress insurrections"? He thought the word *insurrection* included every opposition to the laws; and if so, it would be sufficient to call them forth to suppress insurrections, without mentioning that they were to execute the laws of the Union. He added that, although the militia officers were appointed by the state governments, yet, as they were sworn to obey the superior power of Congress, no check or security would result from their nomination of them.

Mr. MADISON. Mr. Chairman, I cannot think that the explanation of the gentleman last up is founded in reason. It does not say that the militia shall be called out in all cases, [408] but in certain cases. There are cases in which the execution of the laws may require the operation of militia, which cannot be said to be an invasion or insurrection. There may be a resistance to the laws which cannot be termed an insurrection.

My honorable friend over the way has opened a new source of argument. He has introduced the assertions of gentlemen out of doors. If we thus depart from regularity, we shall never be able to come to a decision.

If there be any gentleman who is a friend to the government, and says that the elections may or ought to be held in one place, he is an enemy to it on that ground. With respect to the time, place, and manner of elections, I cannot think, notwithstanding the apprehensions of the honorable gentleman, that there is any danger, or, if abuse should take place, that there is not sufficient security. If all the people of the United States should be directed to go to elect in one place, the members of the government would be execrated for the infamous regulation. Many would go to trample them under foot for their conduct; and they would be succeeded by men who would remove it. They would not dare to meet the universal hatred and detestation of the people, and run the risk of the certain dreadful consequences. We must keep within the compass of human probability. If a possibility be the cause of objection, we must object to every government in America. But the honorable gentleman may say that better guards may be provided. Let us consider the objection. The power of regulating the time, place, and manner of elections, must be vested somewhere. It could not be fixed in the Constitution without involving great inconveniences. They could then have no authority to adjust the regulation to the changes

of circumstances. The question then is, whether it ought to be fixed unalterably in the state governments, or be subject to the control of the general government. Is it not obvious that the general government would be destroyed without this control? It has already been demonstrated that it will produce many conveniences. Have we not sufficient security against abuse? Consider fully the principles of the government. The sum of the powers given up by the people of Virginia is divided into two classes — one to the federal and the other to the state government. Each is subdivided into three branches. These [409] may be kept independent of each other in the one as well as the other. In this system, they are as distinct as is consistent with good policy. This, in my opinion, instead of diminishing, increases the security of liberty more than any government that ever was; for the powers of government which, in every other country, are given to one body, are here given to two, and are favorable to public liberty. With respect to secrecy, if every thing in which it is necessary could be enumerated, I would have no objection to mention them. All the state legislatures can keep secret what they think ought to be concealed. The British House of Commons can do it. They are in this respect under much less restraint than Congress. There never was any legislative assembly without a discretionary power of concealing important transactions, the publication of which might be detrimental to the community. There can be no real danger as long as the government is constructed on such principles.

He objects also to the clause respecting adjournment — that neither house shall, without the consent of the other, adjourn for more than three days. It was before remarked that, if a difference should take place between the houses about the time of adjournment, the President could still determine it; from which no danger could arise, as he is chosen in a secondary degree by the people, and

would consequently fix no time which would be repugnant to the sense of the representatives of the people. Another and more satisfactory answer is this: Suppose the Senate wished to chain down the House of Representatives; what is to hinder them from going home? How bring them back again? It would be contrary to the spirit of the Constitution to impede the operations of the government, perhaps at a critical period. I cannot conceive that such difference will often happen. Were the Senate to attempt to prevent an adjournment, it would but serve to irritate the representatives without having the intended effect, as the President could adjourn them. There will not be occasion for the continual residence of the senators at the seat of government. What business have they more than the House of Representatives? The appointment of officers and treaties. With respect to the appointment of officers, a law may be made to grant it to the President alone. It must be supposed there will be but few and subordinate officers to be appointed, as the principal [410] offices will be filled. It is observed that the President, when vacancies happen during the recess of the Senate, may fill them till it meets. With respect to treaties, the occasions of forming them will not be many, and will make but a small proportion of the time of session.

Mr. CLAY wished to know the instances where an opposition to the laws did not come within the idea of an insurrection.

Mr. MADISON replied, that a riot did not come within the legal definition of an insurrection. There might be riots, to oppose the execution of the laws, which the civil power might not be sufficient to quell. This was one case, and there might probably be other cases. He referred to the candor of the committee, whether the militia could ever be used to destroy themselves.

From June 16, 1788:

[410] The Convention, according to the order of the day, again resolved itself into a committee of the whole Convention, to take into further consideration the proposed plan of government. Mr. WYTHE in the chair.

[The 8th section still under consideration. See page 378.]

Mr. HENRY thought it necessary and proper that they should take a collective view of this whole section, and revert again to the first clause. He adverted to the clause which gives Congress the power of raising armies, and proceeded as follows: To me this appears a very alarming power, when unlimited. They are not only to raise, but to support, armies; and this support is to go to the utmost abilities of the United States. If Congress shall say that the general welfare requires it, they may keep armies continually on foot. There is no control on Congress in raising or stationing them. They may billet them on the people at pleasure. This unlimited authority is a most dangerous power: its principles are despotic. If it be unbounded, it must lead to despotism; for the power of a people in a free government is supposed to be paramount to the existing power.

We shall be told that, in England, the king, lords, and commons, have this power; that armies can be raised by the prince alone, without the consent of the people. How does this apply here? Is this government to place us in the situation of the English? Should we suppose this government to resemble king, lords, and commons, we of this state [411] should be like an English county. An English county cannot control the government. Virginia cannot control the government of Congress any more than the county of Kent can control that of England. Advert to the power thoroughly. One of our first complaints, under the former government, was the

quartering of troops upon us. This was one of the principal reasons for dissolving the connection with Great Britain. Here we may have troops in time of peace. They may be billeted in any manner — to tyrannize, oppress, and crush us.

We are told, we are afraid to trust ourselves; that our own representatives — Congress — will not exercise their powers oppressively; that we shall not enslave ourselves; that the militia cannot enslave themselves, &c. Who has enslaved France, Spain, Germany, Turkey, and other countries which groan under tyranny? They have been enslaved by the hands of their own people. If it will be so in America, it will be only as it has been every where else. I am still persuaded that the power of calling forth the militia, to execute the laws of the Union, &c., is dangerous. We requested the gentleman to show the cases where the militia would be wanting to execute the laws. Have we received a satisfactory answer? When we consider this part, and compare it to other parts, which declare that Congress may declare war, and that the President shall command the regular troops, militia, and navy, we shall find great danger. Under the order of Congress, they shall suppress insurrections. Under the order of Congress, they shall be called to execute the laws. It will result, of course, that this is to be a government of force. Look at the part which speaks of excises, and you will recollect that those who are to collect excises and duties are to be aided by military force. They have power to call them out, and to provide for arming, organizing, disciplining, them. Consequently, they are to make militia laws for this state.

The honorable gentleman said that the militia should be called forth to quell riots. Have we not seen this business go on very well to-day without military force? It is a long-established principle of the common law of England, that civil force is sufficient to quell riots. To

what length may it not be carried? A law may be made that, if twelve men assemble, if they do not disperse, they may be fired upon. [412] I think it is so in England. Does not this part of the paper bear a strong aspect? The honorable gentleman, from his knowledge, was called upon to show the instances, and he told us the militia may be called out to quell riots. They may make the militia travel, and act under a colonel, or perhaps under a constable. Who are to determine whether it be a riot or not? Those who are to execute the laws of the Union? If they have power to execute their laws in this manner, in what situation are we placed! Your men who go to Congress are not restrained by a bill of rights. They are not restrained from inflicting unusual and severe punishments, though the bill of rights of Virginia forbids it. What will be the consequence? They may inflict the most cruel and ignominious punishments on the militia, and they will tell you that it is necessary for their discipline.

Give me leave to ask another thing. Suppose an excise-man will demand leave to enter your cellar, or house, by virtue of his office; perhaps he may call on the militia to enable him to go. If Congress be informed of it, will they give you redress? They will tell you that he is executing the laws under the authority of the continent at large, which must be obeyed, for that the government cannot be carried on without exercising severity. If, without any reservation of rights or control, you are contented to give up your rights, I am not. There is no principle to guide the legislature to restrain them from inflicting the utmost severity of punishment. Will gentlemen voluntarily give up their liberty? With respect to calling the militia to enforce every execution indiscriminately, it is unprecedented. Have we ever seen it done in any free country? Was it ever so in the mother country? It never was so in any well-regulated country. It is a

government of force, and the genius of despotism expressly. It is not proved that this power is necessary, and if it be unnecessary, shall we give it up?

Mr. MADISON. Mr. Chairman, I will endeavor to follow the rule of the house, but must pay due attention to the observations which fell from the gentleman. I should conclude, from abstracted reasoning, that they were ill founded. I should think that, if there were any object which the general government ought to command, it would be the direction of the national forces. And as the force which lies in militia is most safe, the direction of that part ought to be [413] submitted to, in order to render another force unnecessary. The power objected to is necessary, because it is to be employed for national purposes. It is necessary to be given to every government. This is not opinion, but fact. The highest authority may be given, that the want of such authority in the government protracted the late war, and prolonged its calamities.

He says that one ground of complaint, at the beginning of the revolution, was, that a standing army was quartered upon us. This was not the whole complaint. We complained because it was done without the local authority of this country — without the consent of the people of America. As to the exclusion of standing armies in the bill of rights of the states, we shall find that though, in one or two of them, there is something like a prohibition, yet, in most of them, it is only provided that no armies shall be kept without the legislative authority; that is, without the consent of the community itself. Where is the impropriety of saying that we shall have an army, if necessary? Does not the notoriety of this constitute security? If inimical nations were to fall upon us when defenceless, what would be the consequence? Would it be wise to say, that we should have no defence? Give me leave to say, that the only possible way to

provide against standing armies is to make them unnecessary.

The way to do this is to organize and discipline our militia, so as to render them capable of defending the country against external invasions and internal insurrections. But it is urged that abuses may happen. How is it possible to answer objections against the possibility of abuses? It must strike every logical reasoner, that these cannot be entirely provided against. I really thought that the objection in the militia was at an end. Was there ever a constitution, in which if authority was vested, it must not have been executed by force, if resisted? Was it not in the contemplation of this state, when contemptuous proceedings were expected, to recur to something of this kind? How is it possible to have a more proper resource than this? That the laws of every country ought to be executed, cannot be denied. That force must be used if necessary, cannot be denied. Can any government be established, that will answer any purpose whatever, unless force be provided for executing its [414] laws? The Constitution does not say that a standing army shall be called out to execute the laws. Is not this a more proper way? The militia ought to be called forth to suppress smugglers. Will this be denied? The case actually happened at Alexandria. There were a number of smugglers, who were too formidable for the civil power to overcome. The military quelled the sailors, who otherwise would have perpetrated their intentions. Should a number of smugglers have a number of ships, the militia ought to be called forth to quell them. We do not know but what there may be a combination of smugglers in Virginia hereafter. We all know the use made of the Isle of Man. It was a general depository of contraband goods. The Parliament found the evil so great, as to render it necessary to wrest it out of the hands of its possessor.

The honorable gentleman says that it is a government of force. If he means military force, the clause under consideration proves the contrary. There never was a government without force. What is the meaning of government? An institution to make people do their duty. A government leaving it to a man to do his duty or not, as he pleases, would be a new species of government, or rather no government at all. The ingenuity of the gentleman is remarkable in introducing the riot act of Great Britain. That act has no connection, or analogy, to any regulation of the militia; nor is there any thing in the Constitution to warrant the general government to make such an act. It never was a complaint, in Great Britain, that the militia could be called forth. If riots should happen, the militia are proper to quell it, to prevent a resort to another mode. As to the infliction of ignominious punishments, we have no ground of alarm, if we consider the circumstances of the people at large. There will be no punishments so ignominious as have been inflicted already. The militia law of every state to the north of Maryland is less rigorous than the particular law of this state. If a change be necessary to be made by the general government, it will be in our favor. I think that the people of those states would not agree to be subjected to a more harsh punishment than their own militia laws inflict. An observation fell from a gentleman, on the same side with myself, which deserves to be attended to. If we be dissatisfied with the national government, if we should choose to re[415]nounce it, this is an additional safeguard to our defence. I conceive that we are peculiarly interested in giving the general government as extensive means as possible to protect us. If there be a particular discrimination between places in America, the Southern States are, from their situation and circumstances, most interested in giving the national government the power of protecting its members.

[Here Mr. Madison made some other observations, but spoke so very low, that his meaning could not be comprehended.]

An act passed, a few years ago, in this state, to enable the government to call forth the militia to enforce the laws when a powerful combination should take place to oppose them. This is the same power which the Constitution is to have. There is a great deal of difference between calling forth the militia, when a combination is formed to prevent the execution of the laws, and the sheriff or constable carrying with him a body of militia to execute them in the first instance; which is a construction not warranted by the clause. There is an act, also, in this state, empowering the officers of the customs to summon any persons to assist them when they meet with obstruction in executing their duty. This shows the necessity of giving the government power to call forth the militia when the laws are resisted. It is a power vested in every legislature in the Union, and which is necessary to every government. He then moved that the clerk should read those acts — which were accordingly read.

Mr. GEORGE MASON asked to what purpose the laws were read. The objection was, that too much power was given to Congress — power that would finally destroy the state governments more effectually by insidious, underhanded means, than such as could be openly practised. This, said he, is the opinion of many worthy men, not only in this Convention, but in all parts of America. These laws could only show that the legislature of this state could pass such acts. He thought they militated against the cession of this power to Congress, because the state governments could call forth the militia when necessary, so as to compel a submission to the laws; and as they were competent to it, Congress ought not to have the power. The meeting of three or four persons might be called an insurrection, and the

militia might be called out to disperse them. He was not satisfied with [416] the explanation of the word *organization* by the gentleman in the military line, (Mr. Lee.)

He thought they were not confined to the technical explanation, but that Congress could inflict severe and ignominious punishments on the militia, as a necessary incident to the power of organizing and disciplining them. The gentleman had said there was no danger, because the laws respecting the militia were less rigid in the other states than this. This was no conclusive argument. His fears, as he had before expressed, were, that grievous punishments would be inflicted, in order to render the service disagreeable to the militia themselves, and induce them to wish its abolition, which would afford a pretence for establishing a standing army. He was convinced the state governments ought to have the control of the militia, except when they were absolutely necessary for general purposes. The gentleman had said that they would be only subject to martial law when in actual service. He demanded what was to hinder Congress from inflicting it always, and making a general law for the purpose. If so, said he, it must finally produce, most infallibly, the annihilation of the state governments. These were his apprehensions; but he prayed God they might be groundless.

Mr. MADISON replied, that the obvious explanation was, that the states were to appoint the officers, and *govern all* the militia except that part which was called into the actual service of the United States. He asked, if power were given to the general government, if we must not give it executive power to use it. The vice of the old system was, that Congress could not execute the powers nominally vested in them. If the contested clause were expunged, this system would have nearly the same defect.

Mr. HENRY wished to know what authority the state governments had over the militia.

Mr. MADISON answered, that the state governments might do what they thought proper with the militia, when they were not in the actual service of the United States. They might make use of them to suppress insurrections, quell riots, &c., and call on the general government for the militia of any other state, to aid them, if necessary.

Mr. HENRY replied that, as the clause expressly vested the general government with power to call them out to sup[417]press insurrections, &c., it appeared to him, most decidedly, that the power of suppressing insurrections was *exclusively* given to Congress. If it remained in the states, it was by implication.

Mr. CORBIN, after a short address to the chair, in which he expressed extreme reluctance to get up, said, that all contentions on this subject might be ended, by adverting to the 4th section of the 4th article, which provides, "that the United States shall guaranty to every state in the Union a republican form of government, and shall protect each of them against invasion, and, on application of the legislature, or of the executive, (when the legislature cannot be convened,) against domestic violence." He thought this section gave the states power to use their own *militia*, and call on Congress for the militia of other states. He observed that our representatives were to return every second year to mingle with their fellow-citizens. He asked, then, how, in the name of God, they would make laws to destroy themselves. The gentleman had told us that nothing could be more humiliating than that the *state governments* could not control the general government. He thought the gentleman might as well have complained that one county could not control the state at large. Mr. Corbin then said that all confederate governments had

the care of the national defence, and that Congress ought to have it. Animadverting on Mr. Henry's observations, that the French had been the instruments of their own slavery, that the Germans had enslaved the Germans, and the Spaniards the Spaniards, &c., he asked if those nations knew any thing of representation. The want of this knowledge was the principal cause of their bondage. He concluded by observing that the general government had no power but such as the state government had, and that arguments against the one held against the other.

Mr. GRAYSON, in reply to Mr. Corbin, said he was mistaken when he produced the 4th section of the 4th article, to prove that the state governments had a right to intermeddle with the militia. He was of opinion that a previous application must be made to the federal head, by the legislature when in session, or otherwise by the executive of any state, before they could interfere with the militia. In his opinion, no instance could be adduced where the states could employ the militia; for, in all the cases wherein they could be [418] employed, Congress had the exclusive direction and control of them. Disputes, he observed, had happened in many countries, where this power should be lodged. In England, there was a dispute between the Parliament and King Charles who should have power over the militia. Were this government well organized, he would not object to giving it power over the militia. But as it appeared to him to be without checks, and to tend to the formation of an aristocratic body, he could not agree to it. Thus organized, his imagination did not reach so far as to know where this power should be lodged. He conceived the state governments to be at the mercy of the generality. He wished to be open to conviction, but he could see no case where the states could command the militia. He did not believe that it corresponded with the intentions of those who formed it, and it was altogether without an

equilibrium. He humbly apprehended that the power of providing for organizing and disciplining the militia, enabled the government to make laws for regulating them, and inflicting punishments for disobedience, neglect, &c. Whether it would be the spirit of the generality to lay unusual punishments, he knew not; but he thought they had the power, if they thought proper to exercise it. He thought that, if there was a constructive implied power left in the states, yet, as the line was not clearly marked between the two governments, it would create differences. He complained of the uncertainty of the expression, and wished it to be so clearly expressed that the people might see where the states could interfere.

As the exclusive power of arming, organizing, &c., was given to Congress, they might entirely neglect them; or they might be armed in one part of the Union, and totally neglected in another. This he apprehended to be a probable circumstance. In this he might be thought suspicious; but he was justified by what had happened in other countries. He wished to know what attention had been paid to the militia of Scotland and Ireland since the union, and what laws had been made to regulate them. There is, says Mr. Grayson, an excellent militia law in England, and such as I wish to be established by the general government. They have thirty thousand select militia in England. But the militia of Scotland and Ireland are neglected. I see the necessity of the concentration of the forces of the Union. [419] I acknowledge that militia are the best means of quelling insurrections, and that we have an advantage over the English government, for their regular forces answer the purpose. But I object to the want of checks, and a line of discrimination between the state governments and the generality.

Mr. JOHN MARSHALL asked if gentlemen were serious when they asserted that, if the state governments had power to interfere with the militia, it was by implication. If they were, he asked the committee whether the least attention would not show that they were mistaken. The state governments did not derive their powers from the general government; but each government derived its powers from the people, and each was to act according to the powers given it. Would any gentleman deny this? He demanded if powers not given were retained by implication. Could any man say so? Could any man say that this power was not retained by the states, as they had not given it away? For, says he, does not a power remain till it is given away? The state legislatures had power to command and govern their militia before, and have it still, undeniably, unless there be something in this Constitution that takes it away.

For Continental purposes Congress may call forth the militia, — as to suppress insurrections and repel invasions. But the power given to the states by the people is not taken away; for the Constitution does not say so. In the Confederation Congress had this power; but the state legislatures had it also. The power of legislating given them within the ten miles square is exclusive of the states, because it is expressed to be exclusive. The truth is, that when power is given to the general legislature, if it was in the state legislature before, both shall exercise it; unless there be an incompatibility in the exercise by one to that by the other, or negative words precluding the state governments from it. But there are no negative words here. It rests, therefore, with the states. To me it appears, then, unquestionable that the state governments can call forth the militia, in case the Constitution should be adopted, in the same manner as they could have done before its adoption. Gentlemen have said that the states

cannot defend themselves without an application to Congress, because Congress can interpose! Does not every man feel a refutation of the argument in his own breast? I will show [420] that there could not be a combination, between those who formed the Constitution, to take away this power. All the restraints intended to be laid on the state governments (besides where an exclusive power is expressly given to Congress) are contained in the 10th section of the 1st article. This power is not included in the restrictions in that section. But what excludes every possibility of doubt, is the last part of it — that "no state shall engage in war, unless actually invaded, or in such imminent danger as will not admit of delay." When invaded, they can engage in war, as also when in imminent danger. This clearly proves that the states can use the militia when they find it necessary. The worthy member last up objects to the Continental government's possessing the power of disciplining the militia, because, though all its branches be derived from the people, he says they will form an aristocratic government, unsafe and unfit to be trusted.

Mr. GRAYSON answered, that he only said it was so constructed as to form a great aristocratic body.

Mr. MARSHALL replied, that he was not certain whether he understood him; but he thought he had said so. He conceived that, as the government was drawn from the people, the feelings and interests of the people would be attended to, and that we should be safe in granting them power to regulate the militia. When the government is drawn from the people, continued Mr. Marshall, and depending on the people for its continuance, oppressive measures will not be attempted, as they will certainly draw on their authors the resentment of those on whom they depend. On this government, thus depending on ourselves for its existence, I will rest my safety, notwithstanding the danger depicted by the

honorable gentleman. I cannot help being surprised that the worthy member thought this power so dangerous. What government is able to protect you in time of war? Will any state depend on its own exertions? The consequence of such dependence, and withholding this power from Congress, will be, that state will fall after state, and be a sacrifice to the want of power in the general government. *United we are strong, divided we fall.* Will you prevent the general government from drawing the militia of one state to another, when the consequence would be, that every state must depend on itself? The enemy, possessing [421] the water, can quickly go from one state to another. No state will spare to another its militia, which it conceives necessary for itself. It requires a superintending power, in order to call forth the resources of all to protect all. If this be not done, each state will fall a sacrifice. This system merits the highest applause in this respect. The honorable gentleman said that a general regulation may be made to inflict punishments. Does he imagine that a militia law is to be ingrafted on the scheme of government, so as to render it incapable of being changed? The idea of the worthy member supposes that men renounce their own interests. This would produce general inconveniences throughout the Union, and would be equally opposed by all the states. But the worthy member fears, that in one part of the Union they will be regulated and disciplined, and in another neglected. This danger is enhanced by leaving this power to each state; for some states may attend to their militia, and others may neglect them. If Congress neglect our militia, we can arm them ourselves. Cannot Virginia import arms? Cannot she put them into the hands of her militia-men?

He then concluded by observing, that the power of governing the militia was not vested in the states by implication, because, being possessed of it antecedent to

the adoption of the government, and not being divested of it by any grant or restriction in the Constitution, they must necessarily be as fully possessed of it as ever they had been. And it could not be said that the states derived any powers from that system, but retained them, though not acknowledged in any part of it.

Mr. GRAYSON acknowledged that all power was drawn from the people. But he could see none of those checks which ought to characterize a free government. It had not such checks as even the British government had. He thought it so organized as to form an aristocratic body. If we looked at the democratic branch, and the great extent of country, he said, it must be considered, in a great degree, to be an aristocratic representation. As they were elected with craving appetites, and wishing for emoluments, they might unite with the other two branches. They might give reciprocally good offices to one another, and mutually protect each other; for he considered them all as united in interest, and as but one branch. There was no check to prevent such [422] a combination; nor, in cases of concurrent powers, was there a line drawn to prevent interference between the state governments and the generality.

Mr. HENRY still retained his opinion, that the states had no right to call forth the militia to suppress insurrections, &c. But the right interpretation (and such as the nations of the earth had put upon the concession of power) was that, when power was given, it was given exclusively. He appealed to the committee, if power was not confined in the hands of a *few* in almost all countries of the world. He referred to their candor, if the construction of conceded power was not an exclusive concession, in nineteen twentieth parts of the world. The nations which retained their liberty were comparatively few. America would add to the number of the oppressed nations, if she depended on constructive rights and

argumentative implication. That the powers given to Congress were exclusively given, was very obvious to him. The rights which the states had must be founded on the restrictions on Congress. He asked, if the doctrine which had been so often circulated, that rights not given were retained, was true, why there were negative clauses to restrain Congress. He told gentlemen that these clauses were sufficient to shake all their implication; for, says he, if Congress had no power but that given to them, why restrict them by negative words? Is not the clear implication this — that, if these restrictions were not inserted, they could have performed what they prohibit?

The worthy member had said that Congress ought to have power to protect all, and had given this system the highest encomium. But he insisted that the power over the militia was concurrent. To obviate the futility of this doctrine, Mr. Henry alleged that it was not reducible to practice. Examine it, says he; reduce it to practice. Suppose an insurrection in Virginia, and suppose there be danger apprehended of an insurrection in another state, from the exercise of the government; or suppose a national war, and there be discontents among the people of this state, that produce, or threaten, an insurrection; suppose Congress, in either case, demands a number of militia, — will they not be obliged to go? Where are your reserved rights, when your militia go to a neighboring state? Which call is to be obeyed, the congressional call, or the call of the state legislature? The call of Congress must be obeyed. I need not remind this [423] committee that the sweeping clause will cause their demands to be submitted to. This clause enables them "to make all laws which shall be necessary and proper to carry into execution all the powers vested by this Constitution in the government of the United States, or in any department or officer thereof." Mr. Chairman, I will turn

to another clause, which relates to the same subject, and tends to show the fallacy of their argument.

The 10th section of the 1st article, to which reference was made by the worthy member, militates against himself. It says, that "no state shall engage in war, unless actually invaded." If you give this clause a fair construction, what is the true meaning of it? What does this relate to? Not domestic insurrections, but war. If the country be invaded, a state may go to war, but cannot suppress insurrections. If there should happen an insurrection of slaves, the country cannot be said to be invaded. They cannot, therefore, suppress it without the interposition of Congress. The 4th section of the 4th article expressly directs that, in case of domestic violence, Congress shall protect the states on application of the legislature or executive; and the 8th section of the 1st article gives Congress power to call forth the militia to quell insurrections: there cannot, therefore, be a concurrent power. The state legislatures ought to have power to call forth the efforts of the militia, when necessary. Occasions for calling them out may be urgent, pressing, and instantaneous. The states cannot now call them, let an insurrection be ever so perilous, without an application to Congress. So long a delay may be fatal.

There are three clauses which prove, beyond the possibility of doubt, that Congress, and *Congress only*, can call forth the militia. The clause giving Congress power to call them out to suppress insurrections, &c.; that which restrains a state from engaging in war except when actually invaded; and that which requires Congress to protect the states against domestic violence, — render it impossible that a state can have power to intermeddle with them. Will not Congress find refuge for their actions in these clauses? With respect to the concurrent jurisdiction, it is a political monster of absurdity. We have passed that clause which gives Congress an

unlimited authority over the national wealth; and here is an unbounded control over the national strength. Notwithstand[424]ing this clear, unequivocal relinquishment of the power of controlling the militia, you say the states retain it, for the very purposes given to Congress. Is it fair to say that you give the power of arming the militia, and at the same time to say you reserve it? This great national government ought not to be left in this condition. If it be, it will terminate in the destruction of our liberties.

Mr. MADISON. Mr. Chairman, let me ask this committee, and the honorable member last up, what we are to understand from this reasoning. The power must be vested in Congress, or in the state governments; or there must be a division or concurrence. He is against division. It is a political monster. He will not give it to Congress for fear of oppression. Is it to be vested in the state governments? If so, where is the provision for general defence? If ever America should be attacked, the states would fall successively. It will prevent them from giving aid to their sister states; for, as each state will expect to be attacked, and wish to guard against it, each will retain its own militia for its own defence. Where is this power to be deposited, then, unless in the general government, if it be dangerous to the public safety to give it exclusively to the states? If it must be divided, let him show a better manner of doing it than that which is in the Constitution. I cannot agree with the other honorable gentleman, that there is no check. There is a powerful check in that paper. The state governments are to govern the militia when not called forth for general national purposes; and Congress is to govern such part only as may be in the actual service of the Union. Nothing can be more certain and positive than this. It expressly empowers Congress to govern them when in the service of the United States. It is, then, clear that the

states govern them when they are not. With respect to suppressing insurrections, I say that those clauses which were mentioned by the honorable gentleman are compatible with a concurrence of the power. By the first, Congress is to call them forth to suppress insurrections, and repel invasions of foreign powers. A concurrence in the former case is necessary, because a whole state may be in insurrection against the Union. What has passed may perhaps justify this apprehension. The safety of the Union and particular states requires that the general government should have power to [425] repel foreign invasions. The 4th section of the 4th article is perfectly consistent with the exercise of the power by the states. The words are, "The United States shall guaranty to every state in this Union a republican form of government, and shall protect each of them against invasion, and, on application of the legislature, or of the executive, (when the legislature cannot be convened,) against domestic violence." The word *invasion* here, after power had been given in the former clause to repel invasions, may be thought tautologous, but it has a different meaning from the other. This clause speaks of a particular state. It means that it shall be protected from invasion by other states. A republican government is to be guarantied to each state, and they are to be protected from invasion from other states, as well as from foreign powers; and, on application by the legislature or executive, as the case may be, the militia of the other states are to be called to suppress domestic insurrections. Does this bar the states from calling forth their own militia? No; but it gives them a supplementary security to suppress insurrections and domestic violence.

The other clause runs in these words: "No state shall, without the consent of Congress, lay any duty on tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another state,

or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay." They are restrained from making war, unless invaded, or *in imminent danger*. When in such danger, they are not restrained. I can perceive no competition in these clauses. They cannot be said to be repugnant to a concurrence of the power. If we object to the Constitution in this manner, and consume our time in verbal criticism, we shall never put an end to the business.

Mr. GEORGE MASON. Mr. Chairman, a worthy member has asked who are the militia, if they be not the *people* of this country, and if we are not to be protected from the fate of the Germans, Prussians, &c., by our representation? I ask, Who are the militia? They consist now of the whole people, except a few public officers. But I cannot say who will be the militia of the future day. If that paper on the table gets no alteration, the militia of the future day may not consist of all classes, high and low, and [426] rich and poor; but they may be confined to the lower and middle classes of the people, granting exclusion to the higher classes of the people. If we should ever see that day, the most ignominious punishments and heavy fines may be expected. Under the present government, all ranks of people are subject to militia duty. Under such a full and equal representation as ours, there can be no ignominious punishment inflicted. But under this national, or rather consolidated government, the case will be different. The representation being so small and inadequate, they will have no fellow-feeling for the people. They may discriminate people in their own predicament, and exempt from duty all the officers and lowest creatures of the national government. If there were a more particular definition of their powers, and a clause exempting the militia from martial law except when in actual service, and from fines and punishments of an unusual nature, then we might expect that the

militia would be what they are. But, if this be not the case, we cannot say how long all classes of people will be included in the militia. There will not be the same reason to expect it, because the government will be administered by different people. We know what they are now, but know not how soon they may be altered.

Mr. GEORGE NICHOLAS. Mr. Chairman, I feel apprehensions lest the subject of our debates should be misunderstood. Every one wishes to know the true meaning of the system; but I fear those who hear us will think we are captiously quibbling on words. We have been told, in the course of this business, that the government will operate like a *screw*. Give me leave to say that the exertions of the opposition are like that instrument. They catch at every thing, and take it into their vortex. The worthy member says that this government is defective, because it comes from the people. Its greatest recommendation, with me, is putting the power in the hands of the people. He disapproves of it because it does not say in what particular instances the militia shall be called out to execute the laws. This is a power of the Constitution, and particular instances must be defined by the legislature. But, says the worthy member, those laws which have been read are arguments against the Constitution, because they show that the states are now in possession of the power, and competent to its execution. [427] Would you leave this power in the states, and by that means deprive the general government of a power which will be necessary for its existence? If the state governments find this power necessary, ought not the general government to have a similar power? But, sir, there is no state check in this business. The gentleman near me has shown that there is a very important check.

Another worthy member says there is no power in the states to quell an insurrection of slaves. Have they it

now? If they have, does the Constitution take it away? If it does, it must be in one of the three clauses which have been mentioned by the worthy member. The first clause gives the general government power to call them out when necessary. Does this take it away from the states? No. But it gives an additional security; for, besides the power in the state governments to use their own militia, it will be the duty of the general government to aid them with the strength of the Union when called for. No part of this Constitution can show that this power is taken away.

But an argument is drawn from that clause which says "that no state shall engage in war unless actually invaded, or in such imminent danger as will not admit of delay." What does this prohibition amount to? It must be a war with a foreign enemy that the states are prohibited from making; for the exception to the restriction proves it. The restriction includes only offensive hostility, as they are at liberty to engage in war when invaded, or in imminent danger. They are, therefore, not restrained from quelling domestic insurrections, which are totally different from making war with a foreign power. But the great thing to be dreaded is that, during an insurrection, the militia will be called out from the state. This is his kind of argument. Is it possible that, at such a time, the general government would order the militia to be called? It is a groundless objection, to work on gentlemen's apprehensions within these walls. As to the 4th article, it was introduced wholly for the particular aid of the states. A republican form of government is guarantied, and protection is secured against invasion and domestic violence on application. Is not this a guard as strong as possible? Does it not exclude the unnecessary interference of Congress in business of this sort?

The gentleman over the way cannot tell who will be the [428] militia at a future day, and enumerates dangers

of select militia. Let me attend to the nature of gentlemen's objections. One objects because there will be select militia; another objects because there will be no select militia; and yet both oppose it on these contradictory principles. If you deny the general government the power of calling out the militia, there must be a recurrence to a standing army. If you are really jealous of your liberties, confide in Congress.

Mr. MASON rose, and said that he was totally misunderstood. The contrast between his friend's objection and his was improper. His friend had mentioned the propriety of having select militia, like those of Great Britain, who should be more thoroughly exercised than the militia at large could possibly be. But *he*, himself, had not spoken of a selection of militia, but of the exemption of the highest classes of the people from militia service; which would justify apprehensions of severe and ignominious punishments.

Mr. NICHOLAS wished to know whether the representatives of the people would consent to such exemptions, as every man who had twenty-five acres of land could vote for a federal representative.

Mr. GRAYSON. Mr. Chairman, I conceive that the power of providing and maintaining a navy is at present dangerous, however warmly it may be urged by gentlemen that America ought to become a maritime power. If we once give such power, we put it in the hands of men whose interest it will be to oppress us. It will also irritate the nations of Europe against us. Let us consider the situation of the maritime powers of Europe: they are separated from us by the Atlantic Ocean. The riches of all those countries come by sea. Commerce and navigation are the principal sources of their wealth. If we become a maritime power, we shall be able to participate in their most beneficial business. Will they suffer us to put ourselves in a condition to rival them? I believe the

first step of any consequence, which will be made towards it, will bring war upon us. Their ambition and avarice most powerfully impel them to prevent our becoming a naval nation. We should, on this occasion, consult our ability. Is there any gentleman here who can say that America can support a navy? The riches of America are not sufficient to bear the enormous expense it must certainly occasion. I may be supposed to exagger[429]ate, but I leave it to the committee to judge whether my information be right or not.

It is said that shipwrights can be had on better terms in America than in Europe; but necessary materials are so much dearer in America than in Europe, that the aggregate sum would be greater. A seventy-four gun ship will cost you ninety-eight thousand pounds, including guns, tackle, &c. According to the usual calculation in England, it will cost you the further sum of forty-eight thousand pounds to mail it, furnish provisions, and pay officers and men. You must pay men more here than in Europe, because, their governments being arbitrary, they can command the services of their subjects without an adequate compensation; so that, in all, the expenses of such a vessel would be one hundred and forty thousand pounds in one year. Let gentlemen consider, then, the extreme difficulty of supporting a navy, and they will concur with me, that America cannot do it. I have no objection to such a navy as will not excite the jealousy of the European countries. But I would have the Constitution to say, that no greater number of ships should be had than would be sufficient to protect our trade. Such a fleet would not, probably, offend the Europeans. I am not of a jealous disposition; but when I consider that the welfare and happiness of my country are in danger, I beg to be excused for expressing my apprehensions. Let us consider how this navy shall be raised. What would be the consequence under those

general words, "to provide and maintain a navy"? All the vessels of the intended fleet would be built and equipped in the Northern States, where they have every necessary material and convenience for the purpose. Will any gentleman say that any ship of war can be raised to the south of Cape Charles? The consequence will be that the Southern States will be in the power of the Northern States.

We should be called upon for our share of the expenses, without having equal emoluments. Can it be supposed, when this question comes to be agitated in Congress, that the Northern States will not take such measures as will throw as much circulating money among them as possible, without any consideration as to the other states? If I know the nature of man, (and I believe I do,) they will have no consideration for us. But, supposing it were not so, America [430] has nothing at all to do with a fleet. Let us remain for some time in obscurity, and rise by degrees. Let us not precipitately provoke the resentment of the maritime powers of Europe. A well-regulated militia ought to be the defence of this country. In some of our constitutions it is said so. This Constitution should have inculcated the principle. Congress ought to be under some restraint in this respect. Mr. Grayson then added, that the Northern States would be principally benefited by having a fleet; that a majority of the states could vote the raising a great navy, or enter into any commercial regulation very detrimental to the other states. In the United Netherlands there was much greater security, as the commercial interest of no state could be sacrificed without its own consent. The raising a fleet was the daily and favorite subject of conversation in the Northern States. He apprehended that, if attempted, it would draw us into a war with Great Britain or France. As the American fleet would not be competent to the defence of all the states, the Southern States would be

most exposed. He referred to the experience of the late war, as a proof of what he said. At the period the Southern States were most distressed, the Northern States, he said, were most happy. They had privateers in abundance, whereas we had but few. Upon the whole, he thought we should depend on our troops on shore, and that it was very impolitic to give this power to Congress without any limitation.

Mr. NICHOLAS remarked that the gentleman last up had made two observations — the one, that we ought not to give Congress power to raise a navy; and the other, that we had not the means of supporting it. Mr. Nicholas thought it a false doctrine. Congress, says he, has a discretionary power to do it when necessary. They are not bound to do it in five or ten years, or at any particular time. It is presumable, therefore, that they will postpone it until it be proper.

Mr. GRAYSON had no objection to giving Congress the power of raising such a fleet as suited the circumstances of the country. But he could not agree to give that unlimited power which was delineated in that paper.

Adverting to the clause investing Congress with the power of exclusive legislation in a district not exceeding ten miles square, he said he had before expressed his doubts that this [431] district would be the favorite of the generality, and that it would be possible for them to give exclusive privileges of commerce to those residing within it. He had illustrated what he said by European examples. It might be said to be impracticable to exercise this power in this manner. Among the various laws and customs which pervaded Europe, there were exclusive privileges and immunities enjoyed in many places. He thought that this ought to be guarded against; for should such exclusive privileges be granted to merchants residing within the ten miles square, it would be highly injurious to the inhabitants of other places.

Mr. GEORGE MASON thought that there were few clauses in the Constitution so dangerous as that which gave Congress exclusive power of legislation within ten miles square. Implication, he observed, was capable of any extension, and would probably be extended to augment the congressional powers. But here there was no need of implication. This clause gave them an unlimited authority, in every possible case, within that district. This ten miles square, says Mr. Mason, may set at defiance the laws of the surrounding states, and may, like the custom of the superstitious days of our ancestors, become the sanctuary of the blackest crimes. Here the federal courts are to sit. We have heard a good deal said of justice.

It has been doubted whether jury trial be secured in civil eases. But I will suppose that we shall have juries in civil cases. What sort of a jury shall we have within the ten miles square? The immediate creatures of the government. What chance will poor men get, where Congress have the power of legislating in all cases whatever, and where judges and juries may be under their influence, and bound to support their operations? Even with juries the chance of justice may here be very small, as Congress have unlimited authority, legislative, executive, and judicial. Lest this power should not be sufficient, they have it in every case. Now, sir, if an attempt should be made to establish tyranny over the people, here are ten miles square where the greatest offender may meet protection. If any of their officers, or creatures, should attempt to oppress the people, or should actually perpetrate the blackest deed, he has nothing to do but get into the ten miles square. Why was this dangerous power given? Felons may receive an asylum there and in [432] their strongholds. Gentlemen have said that it was dangerous to argue against possible abuse, because there could be no power delegated but

might be abused. It is an incontrovertible axiom, that, when the dangers that may arise from the *abuse* are greater than the benefits that may result from the use, the power ought to be withheld. I do not conceive that this power is at all necessary, though capable of being greatly abused.

We are told by the honorable gentleman that Holland has its Hague. I confess I am at a loss to know what inference he could draw from that observation. This is the place where the deputies of the United Provinces meet to transact the public business. But I do not recollect that they have any exclusive jurisdiction whatever in that place, but are subject to the laws of the province in which the Hague is. To what purpose the gentleman mentioned that Holland has its Hague, I cannot see.

Mr. MASON then observed that he would willingly give them exclusive power, as far as respected the police and good government of the place; but he would give them no more, because he thought it unnecessary. He was very willing to give them, in this as well as in all other cases, those powers which he thought indispensably necessary.

Mr. MADISON. Mr. Chairman: I did conceive, sir, that the clause under consideration was one of those parts which would speak its own praise. It is hardly necessary to say any thing concerning it. Strike it out of the system, and let me ask whether there would not be much larger scope for those dangers. I cannot comprehend that the power of legislating over a small district, which cannot exceed ten miles square, and may not be more than one mile, will involve the dangers which he apprehends. If there be any knowledge in my mind of the nature of man, I should think it would be the last thing that would enter into the mind of any man to grant exclusive advantages, in a very circumscribed district, to the prejudice of the community at large. We make

suppositions, and afterwards deduce conclusions from them, as if they were established axioms. But, after all, bring home this question to ourselves. Is it probable that the members from Georgia, New Hampshire, &c., will concur to sacrifice the privileges of their friends? I believe that, whatever state may become the seat of the gen[433]eral government, it will become the object of the jealousy and envy of the other states. Let me remark, if not already remarked, that there must be a cession, by particular states, of the district to Congress, and that the states may settle the terms of the cession. The states may make what stipulation they please in it, and, if they apprehend any danger, they may refuse it altogether. How could the general government be guarded from the undue influence of particular states, or from insults, without such exclusive power? If it were at the pleasure of a particular state to control the session and deliberations of Congress, would they be secure from insults, or the influence of such state? If this commonwealth depended, for the freedom of deliberation, on the laws of any state where it might be necessary to sit, would it not be liable to attacks of that nature (and with more indignity) which have been already offered to Congress? With respect to the government of Holland, I believe the States General have no jurisdiction over the Hague; but I have heard that mentioned as a circumstance which gave undue influence to Holland over the rest. We must limit our apprehensions to certain degrees of probability. The evils which they urge must result from this clause are extremely improbable; nay, almost impossible.

Mr. GRAYSON. Mr. Chairman, one answer which has been given is, the improbability of the evil — that it will never be attempted, and that it is almost impossible. This will not satisfy us, when we consider the great attachments men have to a great and magnificent capital. It would be the interest of the citizens of that district to

aggrandize themselves by every possible means in their power, to the great injury of the other states. If we travel all over the world, we shall find that people have aggrandized their own capitals. Look at Russia and Prussia. Every step has been taken to aggrandize their capitals. In what light are we to consider the ten miles square? It is not to be a fourteenth state. The inhabitants will in no respect whatever be amenable to the laws of any state. A clause in the 4th article, highly extolled for its wisdom, will be rendered nugatory by this exclusive legislation. This clause runs thus: "No person held to service or labor in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such [434] service or labor, but shall be delivered up on the claim of the party to whom such labor or service may be due." Unless you consider the ten miles square as a state, persons bound to labor, who shall escape thither, will not be given up; for they are only to be delivered up after they shall have escaped into a state. As my honorable friend mentioned, felons, who shall have fled from justice to the ten miles square, cannot be apprehended. The executive of a state is to apply to that of another for the delivery of a felon. He cannot apply to the ten miles square. It was often in contemplation of Congress to have power of regulating the police of the seat of government; but they never had an idea of exclusive legislation in all cases. The power of regulating the police and good government of it will secure Congress against insults. What originated the idea of the exclusive legislation was, some insurrection in Pennsylvania, whereby Congress was insulted, — on account of which, it is supposed, they left the state.

It is answered that the consent of the state must be required, or else they cannot have such a district, or places for the erecting of forts, &c. But how much is

already given them! Look at the great country to the north-west of the Ohio, extending to and commanding the lakes.

Look at the other end of the Ohio, towards South Carolina, extending to the Mississippi. See what these, in process of time, may amount to. They may grant exclusive privileges to any particular part of which they have the possession. But it may be observed that those extensive countries will be formed into independent states, and that their consent will be necessary. To this I answer, that they may still grant such privileges as, in that country, are already granted to Congress by the states. The grants of Virginia, South Carolina, and other states, will be subservient to Congress in this respect. Of course, it results from the whole, that requiring the consent of the states will be no guard against this abuse of power.

[A desultory conversation ensued.]

Mr. NICHOLAS insisted that as the state, within which the ten miles square might be, could prescribe the terms on which Congress should hold it, no danger could arise, as no state would consent to injure itself: there was the same [435] security with respect to the places purchased for the erection of forts, magazines, &c.; and as to the territory of the United States, the power of Congress only extended to make needful rules and regulations concerning it, without prejudicing the claim of any particular state, the right of territory not being given up; that the grant of those lands to the United States was for the general benefit of all the states, and not to be perverted to their prejudice; that, consequently, whether that country were formed into new states or not, the danger apprehended could not take place; that the seat of government was to be still a part of the state, and, as to general regulations, was to be considered as such.

Mr. GRAYSON, on the other hand, contended that the ten miles square could not be viewed as a state; that the state within which it might be would have no power of legislating over it; that, consequently, persons bound to labor, and felons, might receive protection there; that exclusive emoluments might be granted to those residing within it; that the territory of the United States, being a part of no state or states, might be appropriated to what use Congress pleased, without the consent of any state or states; and that, consequently, such exclusive privileges and exemptions might be granted, and such protection afforded to fugitives, within such places, as Congress should think proper; that, after mature consideration, he could not find that the ten miles square was to be looked upon even as a part of a state, but to be totally independent of all, and subject to the exclusive legislation of Congress.

Mr. LEE strongly expatiated on the impossibility of securing any human institution from possible abuse. He thought the powers conceded in the paper on the table not so liable to be abused as the powers of the state governments. Gentlemen had suggested that the seat of government would become a sanctuary for state villains, and that, in a short time, ten miles square would subjugate a country of eight hundred miles square. This appeared to him a most improbable possibility; nay, he might call it impossibility. Were the place crowded with rogues, he asked if it would be an agreeable place of residence for the members of the general government, who were freely chosen by the people and the state governments. Would the people be so lost to honor and virtue, as to select men who would willingly [436] associate with the most abandoned characters? He thought the honorable gentleman's objections against remote possibility of abuse went to prove that government of no sort was eligible, but that a state of nature was

preferable to a state of civilization. He apprehended no danger; and thought that persons bound to labor, and felons, could not take refuge in the ten miles square, or other places exclusively governed by Congress, because it would be contrary to the Constitution, and a palpable usurpation, to protect them.

Mr. HENRY entertained strong suspicions that great dangers must result from the clause under consideration. They were not removed, but rather confirmed, by the remarks of the honorable gentleman, in saying that it was extremely improbable that the members from New Hampshire and Georgia would go and legislate exclusively for the ten miles square. If it was so improbable, why ask the power? Why demand a power which was not to be exercised? Compare this power, says he, with the next clause, which gives them power to make all laws which shall be necessary to carry their laws into execution. By this they have a right to pass any law that may facilitate the execution of their acts. They have a right, by this clause, to make a law that such a district shall be set apart for any purpose they please, and that any man who shall act contrary to their commands, within certain ten miles square, or any place they may select, and strongholds, shall be hanged without benefit of clergy. If they think any law necessary for their personal safety, after perpetrating the most tyrannical and oppressive deeds, cannot they make it by this sweeping clause? If it be necessary to provide, not only for this, but for any department or officer of Congress, does not this clause enable them to make a law for the purpose? And will not these laws, made for those purposes, be paramount to the laws of the states? Will not this clause give them a right to keep a powerful army continually on foot, if they think it necessary to aid the execution of their laws? Is there any act, however atrocious, which they cannot do by virtue of this clause? Look at the use which has been

made, in all parts of the world, of that human thing called power. Look at the predominant thirst of dominion which has invariably and uniformly prompted rulers to abuse their powers. Can you say that you will be safe when you give such unlimited pow[437]ers, without any real responsibility? Will you be safe when you trust men at Philadelphia with power to make any law that will enable them to carry their acts into execution? Will not the members of Congress have the same passions which other rulers have had? They will not be superior to the frailties of human nature. However cautious you may be in the selection of your representatives, it will be dangerous to trust them with such unbounded powers. Shall we be told, when about to grant such illimitable authority, that it will never be exercised!

I conjure you once more to remember the admonition of that sage man who told you that, when you give power, you know not what you give. I know the absolute necessity of an energetic government. But is it consistent with any principle of prudence or good policy to grant unlimited, unbounded authority, which is so totally unnecessary that gentlemen say it will never be exercised? But gentlemen say that we must make experiments. A wonderful and unheard-of experiment it will be, to give unlimited power unnecessarily! I admit my inferiority in point of historical knowledge; but I believe no man can produce an instance of an unnecessary and unlimited power, given to a body independent of the legislature, within a particular district. Let any man in this Convention show me an instance of such separate and different powers of legislation in the same country — show me an instance where a part of the community was independent of the whole.

The people within that place, and the strongholds, may be excused from all the burdens imposed on the rest of the society, and may enjoy exclusive emoluments, to

the great injury of the rest of the people. But gentlemen say that the power will not he abused. They ought to show that it is necessary. All their powers may be fully carried into execution, without this exclusive authority in the ten miles square. The sweeping clause will fully enable them to do what they please. What could the most extravagant and boundless imagination ask, but power to do every thing? I have reason to suspect ambitious grasps at power. The experience of the world teaches me the jeopardy of giving enormous power. Strike this clause out of the form of the government, and how will it stand? Congress will still have power, by the sweeping clause, to make laws within that [438] place and the strongholds, independently of the local authority of the state. I ask you, if this clause be struck out, whether the sweeping clause will not enable them to protect themselves from insult. If you grant them these powers, you destroy every degree of responsibility. They will fully screen them from justice, and preclude the possibility of punishing them. No instance can be given of such a wanton grasp of power as an exclusive legislation in all cases whatever.

Mr. MADISON. Mr. Chairman, I am astonished that the honorable member should launch out into such strong descriptions without any occasion. Was there ever a legislature in existence that held their sessions at a place where they had not jurisdiction? I do not mean such a legislature as they have in Holland; for it deserves not the name. Their powers are such as Congress have now, which we find not reducible to practice. If you be satisfied with the shadow and form, instead of the substance, you will render them dependent on the local authority. Suppose the legislature of this country should sit in Richmond, while the exclusive jurisdiction of the place was in some particular county; would this country think it

safe that the general good should be subject to the paramount authority of a part of the community?

The honorable member asks, Why ask for this power, and if the subsequent clause be not fully competent for the same purpose. If so, what new terrors can arise from this particular clause? It is only a superfluity. If that latitude of construction which he contends for were to take place with respect to the sweeping clause, there would be room for those horrors. But it gives no supplementary power. It only enables them to execute the delegated powers. If the delegation of their powers be safe, no possible inconvenience can arise from this clause. It is at most but explanatory. For when any power is given, its delegation necessarily involves authority to make laws to execute it. Were it possible to delineate on paper all those particular cases and circumstances in which legislation by the general legislature would be necessary, and leave to the states all the other powers, I imagine no gentleman would object to it. But this is not within the limits of human capacity. The particular powers which are found necessary to be given [439] are therefore delegated generally, and particular and minute specification is left to the legislature.

[Here Mr. Madison spoke of the distinction between regulation of police and legislation, but so low he could not be heard.]

When the honorable member objects to giving the general government jurisdiction over the place of their session, does he mean that it should be under the control of any particular state, that might, at a critical moment, seize it? I should have thought that this clause would have met with the most cordial approbation. As the consent of the state in which it may be must be obtained, and as it may stipulate the terms of the grant, should they violate the particular stipulations it would be an usurpation; so that, if the members of Congress were to

be guided by the laws of their country, none of those dangers could arise.

[Mr. Madison made several other remarks, which could not be heard.]

Mr. HENRY replied that, if Congress were vested with supreme power of legislation, paramount to the constitution and laws of the states, the dangers he had described might happen; for that Congress would not be confined to the enumerated powers. This construction was warranted, in his opinion, by the addition of the word *department*, at the end of the clause, and that they could make any laws which they might think necessary to execute the powers of any department or officer of the government.

Mr. PENDLETON. Mr. Chairman, this clause does not give Congress power to impede the operation of any part of the Constitution, or to make any regulation that may affect the interests of the citizens of the Union at large. But it gives them power over the local police of the place, so as to be secured from any interruption in their proceedings. Notwithstanding the violent attack upon it, I believe, sir, this is the fair construction of the clause. It gives them power of exclusive legislation in any case within that district. What is the meaning of this? What is it opposed to? Is it opposed to the general powers of the federal legislature, or to those of the state legislatures? I understand it as opposed to the legislative power of that state where it shall be. What, then, is the power? It is, that Congress shall exclusively legislate there, in order to pre[440]serve the police of the place and their own personal independence, that they may not be overawed or insulted, and of course to preserve them in opposition to any attempt by the state where it shall be. This is the fair construction. Can we suppose that, in order to effect these salutary ends, Congress will make it an asylum for villains and the vilest characters from all

parts of the world? Will it not degrade their own dignity to make it a sanctuary for villains? I hope that no man that will ever compose that Congress will associate with the most profligate characters.

Why oppose this power? Suppose it was contrary to the sense of their constituents to grant exclusive privileges to citizens residing within that place; the effect would be directly in opposition to what he says. It could have no operation without the limits of that district. Were Congress to make a law granting them an exclusive privilege of trading to the East Indies, it could have no effect the moment it would go without that place; for their exclusive power is confined to that district. Were they to pass such a law, it would be nugatory; and every member of the community at large could trade to the East Indies as well as the citizens of that district. This exclusive power is limited to that place solely, for their own preservation, which all gentlemen allow to be necessary.

Will you pardon me when I observe that their construction of the preceding clause does not appear to me to be natural, or warranted by the words.

They say that the state governments have no power at all over the militia. The power of the general government to provide for arming and organizing the militia is to introduce a uniform system of discipline to pervade the United States of America. But the power of *governing* the militia, so far as it is in Congress, extends only to such parts of them as may be employed in the service of the United States. When not in their service, Congress has no power to govern them. The states then have the sole government of them; and though Congress *may* provide for arming them, and prescribe the mode of discipline, yet the states have the authority of training them, according to the uniform discipline prescribed by Congress. But there is nothing to preclude them from

arming and disciplining them, should Congress neglect to do it. As to calling the militia to execute the laws of the [441] Union, I think the fair construction is directly opposite to what the honorable member says. The 4th section of the 4th article contains nothing to warrant the supposition that the states cannot call them forth to suppress domestic insurrections. [*Here he read the section.*] All the restraint here contained is, that Congress may, at their pleasure, on application of the state legislature, or (in vacation) of the executive, protect each of the states against domestic violence. This is a restraint on the general government not to interpose. The state is in full possession of the power of using its own militia to protect itself against domestic violence; and the power in the general government cannot be exercised, or interposed, without the application of the state itself. This appears to me to be the obvious and fair construction.

With respect to the necessity of the ten miles square being superseded by the subsequent clause, which gives them power to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof, I understand that clause as not going a single step beyond the delegated powers. What can it act upon? Some power given by this Constitution. If they should be about to pass a law in consequence of this clause, they must pursue some of the delegated powers, but can by no means depart from them, or arrogate any new powers; for the plain language of the clause is, to give them power to pass laws in order to give effect to the delegated powers.

Mr. GEORGE MASON. Mr. Chairman, gentlemen say there is no new power given by this clause. Is there any thing in this Constitution which secures to the states

the powers which are said to be retained? Will powers remain to the states which are not expressly guarded and reserved? I will suppose a case. Gentlemen may call it an impossible case, and suppose that Congress will act with wisdom and integrity. Among the enumerated powers, Congress are to lay and collect taxes, duties, imposts, and excises, and to pay the debts, and to provide for the general welfare and common defence; and by that clause (so often called the *sweeping clause*) they are to make all laws necessary to execute those laws. Now, suppose oppressions [442] should arise under this government, and any writer should dare to stand forth, and expose to the community at large the abuses of those powers; could not Congress, under the idea of providing for the general welfare, and under their own construction, say that this was destroying the general peace, encouraging sedition, and poisoning the minds of the people? And could they not, in order to provide against this, lay a dangerous restriction on the press? Might they not even bring the trial of this restriction within the ten miles square, when there is no prohibition against it? Might they not thus destroy the trial by jury? Would they not extend their implication? It appears to me that they may and will. And shall the support of our rights depend on the bounty of men whose interest it may be to oppress us? That Congress should have power to provide for the general welfare of the Union, I grant. But I wish a clause in the Constitution, with respect to all powers which are not granted, that they are retained by the states. Otherwise, the power of providing for the general welfare may be perverted to its destruction.

Many gentlemen, whom I respect, take different sides of this question. We wish this amendment to be introduced, to remove our apprehensions. There was a clause in the Confederation reserving to the states respectively every power, jurisdiction, and right, not expressly

delegated to the United States. This clause has never been complained of, but approved by all. Why not, then, have a similar clause in this Constitution, in which it is the more indispensably necessary than in the Confederation, because of the great augmentation of power vested in the former? In my humble apprehension, unless there be some such clear and finite expression, this clause now under consideration will go to any thing our rulers may think proper. Unless there be some express declaration that every thing not given is retained, it will be carried to any power Congress may please.

Mr. HENRY moved to read from the 8th to the 13th article of the declaration of rights; which was done.

Mr. GEORGE NICHOLAS, in reply to the gentlemen opposed to the clause under debate, went over the same grounds, and developed the same principles, which Mr. Pendleton and Mr. Madison had done. The opposers of the [443] clause, which gave the power of providing for the general welfare, supposed its dangers to result from its connection with, and extension of, the powers granted in the other clauses. He endeavored to show the committee that it only empowered Congress to make such laws as would be necessary to enable them to pay the public debts and provide for the common defence; that this general welfare was united, not to the general power of legislation, but to the particular power of laying and collecting taxes, imposts, and excises, for the purpose of paying the debts and providing for the common defence, — that is, that they could raise as much money as would pay the debts and provide for the common defence, in consequence of this power. The clause which was affectedly called the *sweeping clause* contained no new grant of power. To illustrate this position, he observed that, if it had been added at the end of every one of the enumerated powers, instead of being inserted at the end

of all, it would be obvious to any one that it was no augmentation of power. If, for instance, at the end of the clause granting power to lay and collect taxes, it had been added that they should have power to make necessary and proper laws to lay and collect taxes, who could suspect it to be an addition of power? As it would grant no new power if inserted at the end of each clause, it could not when subjoined to the whole.

He then proceeded thus: But, says he, who is to determine the extent of such powers? I say, the same power which, in all well-regulated communities, determines the extent of legislative powers. If they exceed these powers, the judiciary will declare it void, or else the people will have a right to declare it void. Is this depending on any man? But, says the gentleman, it may go to any thing. It may destroy the trial by jury; and they may say it is necessary for providing for the general defence. The power of providing for the general defence only extends to raise any sum of money they may think necessary, by taxes, imposts, &c. But, says he, our only defence against oppressive laws consists in the virtue of our representatives. This was misrepresented. If I understand it right, no new power can be exercised. As to those which are actually granted, we trust to the fellow-feelings of our representatives; and if we are deceived, we then trust to altering our [444] government. It appears to me, however, that we can confide in their discharging their powers rightly, from the peculiarity of their situation, and connection with us. If, sir, the powers of the former Congress were very inconsiderable, that body did not deserve to have great powers.

It was so constructed that it would be dangerous to invest it with such. But why were the articles of the bill of rights read? Let him show us that those rights are given up by the Constitution. Let him prove them to be violated. He tells us that the most worthy characters of

the country differ as to the necessity of a bill of rights. It is a simple and plain proposition. It is agreed upon by all that the people have all power. If they part with any of it, is it necessary to declare that they retain the rest? Liken it to any similar case. If I have one thousand acres of land, and I grant five hundred acres of it, must I declare that I retain the other five hundred? Do I grant the whole thousand acres, when I grant five hundred, unless I declare that the five hundred I do not give belong to me still? It is so in this case. After granting some powers, the rest must remain with the people.

Gov. RANDOLPH observed that he had some objections to the clause. He was persuaded that the construction put upon it by the gentlemen, on both sides, was erroneous; but he thought any construction better than going into anarchy.

Mr. GEORGE MASON still thought that there ought to be some express declaration in the Constitution, asserting that rights not given to the general government were retained by the states. He apprehended that, unless this was done, many valuable and important rights would be concluded to be given up by implication. All governments were drawn from the people, though many were perverted to their oppression. The government of Virginia, he remarked, was drawn from the people; yet there were certain great and important rights, which the people, by their bill of rights, declared to be paramount to the power of the legislature. He asked, Why should it not be so in this Constitution? Was it because we were more substantially represented in it than in the state government? If, in the state government, where the people were substantially and fully represented, it was necessary that the great rights of human nature should [445] be secure from the encroachments of the legislature, he asked if it was not more necessary in this government, where they were but inadequately represented?

He declared that artful sophistry and evasions could not satisfy him. He could see no clear distinction between rights relinquished by a positive grant, and lost by implication. Unless there were a bill of rights, implication might swallow up all our rights.

Mr. HENRY. Mr. Chairman, the necessity of a bill of rights appears to me to be greater in this government than ever it was in any government before. I have observed already, that the sense of the European nations, and particularly Great Britain, is against the construction of rights being retained which are not expressly relinquished. I repeat, that all nations have adopted this construction — that all rights not expressly and unequivocally reserved to the people are impliedly and incidentally relinquished to rulers, as necessarily inseparable from the delegated powers. It is so in Great Britain; for every possible right, which is not reserved to the people by some express provision or compact, is within the king's prerogative. It is so in that country which is said to be in such full possession of freedom. It is so in Spain, Germany, and other parts of the world. Let us consider the sentiments which have been entertained by the people of America on this subject. At the revolution, it must be admitted that it was their sense to set down those great rights which ought, in all countries, to be held inviolable and sacred. Virginia did so, we all remember. She made a compact to reserve, expressly, certain rights.

When fortified with full, adequate, and abundant representation, was she satisfied with that representation? No. She most cautiously and guardedly reserved and secured those invaluable, inestimable rights and privileges, which no people, inspired with the least glow of patriotic liberty, ever did, or ever can, abandon. She is called upon now to abandon them, and dissolve that compact which secured them to her. She is called upon to accede to another compact, which most infallibly

supersedes and annihilates her present one. Will she do it? This is the question. If you intend to reserve your unalienable rights, you must have the most express stipulation; for, if implication be allowed, you are ousted of those rights. If the people do not think it necessary to [446] reserve them, they will be supposed to be given up. How were the congressional rights defined when the people of America united by a confederacy to defend their liberties and rights against the tyrannical attempts of Great Britain? The states were not then contented with implied reservation. No, Mr. Chairman. It was expressly declared in our Confederation that every right was retained by the states, respectively, which was not given up to the government of the United States. But there is no such thing here. You, therefore, by a natural and unavoidable implication, give up your rights to the general government.

Your own example furnishes an argument against it. If you give up these powers, without a bill of rights, you will exhibit the most absurd thing to mankind that ever the world saw — government that has abandoned all its powers — the powers of direct taxation, the sword, and the purse. You have disposed of them to Congress, without a bill of rights — without check, limitation, or control. And still you have checks and guards; still you keep barriers — pointed where? Pointed against your weakened, prostrated, enervated state government! You have a bill of rights to defend you against the state government, which is bereaved of all power, and yet you have none against Congress, though in full and exclusive possession of all power! You arm yourselves against the weak and defenceless, and expose yourselves naked to the armed and powerful. Is not this a conduct of unexampled absurdity? What barriers have you to oppose to this most strong, energetic government? To that government you have nothing to oppose. All your

defence is given up. This is a real, actual defect. It must strike the mind of every gentleman. When our government was first instituted in Virginia, we declared the common law of England to be in force.

That system of law which has been admired, and has protected us and our ancestors, is excluded by that system. Added to this, we adopted a bill of rights. By this Constitution, some of the best barriers of human rights are thrown away. Is there not an additional reason to have a bill of rights? By the ancient common law, the trial of all facts is decided by a jury of impartial men from the immediate vicinage. This paper speaks of different juries from the common law in criminal cases; and in civil controversies [447] excludes trial by jury altogether. There is, therefore, more occasion for the supplementary check of a bill of rights now than then. Congress, from their general powers, may fully go into business of human legislation. They may legislate, in criminal cases, from treason to the lowest offence — petty larceny. They may define crimes and prescribe punishments. In the definition of crimes, I trust they will be directed by what wise representatives ought to be governed by. But when we come to punishments, no latitude ought to be left, nor dependence put on the virtue of representatives. What says our bill of rights? — "that excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." Are you not, therefore, now calling on those gentlemen who are to compose Congress, to prescribe trials and define punishments without this control? Will they find sentiments there similar to this bill of rights? You let them loose; you do more — you depart from the genius of your country. That paper tells you that the trial of crimes shall be by jury, and held in the state where the crime shall have been committed. Under this extensive provision, they may proceed in a manner extremely dangerous to liberty:

a person accused may be carried from one extremity of the state to another, and be tried, not by an impartial jury of the vicinage, acquainted with his character and the circumstances of the fact, but by a jury unacquainted with both, and who may be biased against him. Is not this sufficient to alarm men? How different is this from the immemorial practice of your British ancestors, and your own! I need not tell you that, by the common law, a number of hundredors were required on a jury, and that afterwards it was sufficient if the jurors came from the same county. With less than this the people of England have never been satisfied. That paper ought to have declared the common law in force.

In this business of legislation, your members of Congress will loose the restriction of not imposing excessive fines, demanding excessive bail, and inflicting cruel and unusual punishments. These are prohibited by your declaration of rights. What has distinguished our ancestors? — That they would not admit of tortures, or cruel and barbarous punishment. But Congress may introduce the practice of the civil law, in preference to that of the common law. They may [448] introduce the practice of France, Spain, and Germany — of torturing, to extort a confession of the crime. They will say that they might as well draw examples from those countries as from Great Britain, and they will tell you that there is such a necessity of strengthening the arm of government, that they must have a criminal equity, and extort confession by torture, in order to punish with still more relentless severity. We are then lost and undone. And can any man think it troublesome, when we can, by a small interference, prevent our rights from being lost? If you will, like the Virginian government, give them knowledge of the extent of the rights retained by the people, and the powers of themselves, they will, if they be honest men, thank you for it. Will they not wish to go on sure

grounds? But if you leave them otherwise, they will not know how to proceed; and, being in a state of uncertainty, they will assume rather than give up powers by implication.

A bill of rights may be summed up in a few words. What do they tell us? — That our rights are reserved. Why not say so? Is it because it will consume too much paper? Gentlemen's reasoning against a bill of rights does not satisfy me. Without saying which has the right side, it remains doubtful. A bill of rights is a favorite thing with the Virginians and the people of the other states likewise. It may be their prejudice, but the government ought to suit their geniuses; otherwise, its operation will be unhappy. A bill of rights, even if its necessity be doubtful, will exclude the possibility of dispute; and, with great submission, I think the best way is to have no dispute. In the present Constitution, they are restrained from issuing general warrants to search suspected places, or seize persons not named, without evidence of the commission of a fact, &c. There was certainly some celestial influence governing those who deliberated on that Constitution; for they have, with the most cautious and enlightened circumspection, guarded those indefeasible rights which ought ever to be held sacred! The officers of Congress may come upon you now, fortified with all the terrors of paramount federal authority. Excisemen may come in multitudes; for the limitation of their numbers no man knows. They may, unless the general government be restrained by a bill of rights, or some similar restriction, go into your cellars and rooms, and search, ransack, and [449] measure, every thing you eat, drink, and wear. They ought to be restrained within proper bounds. With respect to the freedom of the press, I need say nothing; for it is hoped that the gentlemen who shall compose Congress will take care to infringe as little as possible the rights of human

nature. This will result from their integrity. They should, from prudence, abstain from violating the rights of their constituents. They are not, however, expressly restrained. But whether they will intermeddle with that palladium of our liberties or not, I leave you to determine.

Mr. GRAYSON thought it questionable whether rights not given up were reserved. A majority of the states, he observed, had expressly reserved certain important rights by bills of rights, and that in the Confederation there was a clause declaring expressly that every power and right not given up was retained by the states. It was the general sense of America that such a clause was necessary; otherwise, why did they introduce a clause which was totally unnecessary? It had been insisted, he said, in many parts of America, that a bill of rights was only necessary between a prince and people, and not in such a government as this, which was a compact between the people themselves. This did not satisfy his mind; for so extensive was the power of legislation, in his estimation, that he doubted whether, when it was once given up, *any thing* was retained. He further remarked, that there were some negative clauses in the Constitution, which refuted the doctrine contended for by the other side. For instance; the 2d clause of the 9th section of the 1st article provided that "the privilege of the writ of *habeas corpus* shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require it." And, by the last clause of the same section, "no title of nobility shall be granted by the United States." Now, if these restrictions had not been here inserted, he asked whether Congress would not most clearly have had a right to suspend that great and valuable right, and to grant titles of nobility. When, in addition to these considerations, he saw they had an indefinite power to provide for the general welfare, he

thought there were great reasons to apprehend great dangers. He thought, therefore, that there ought to be a bill of rights.

Mr. GEORGE NICHOLAS, in answer to the two gen[450]tlemen last up, observed that, though there was a declaration of rights in the government of Virginia, it was no conclusive reason that there should be one in this Constitution; for, if it was unnecessary in the former, its omission in the latter could be no defect. They ought, therefore, to prove that it was essentially necessary to be inserted in the Constitution of Virginia. There were five or six states in the Union which had no bill of rights, separately and distinctly as such; but they annexed the substance of a bill of rights to their respective constitutions. These states, he further observed, were as free as this state, and their liberties as secure as ours. If so, gentlemen's arguments from the precedent were not good. In Virginia, all powers were given to the government without any exception. It was different in the general government, to which certain special powers were delegated for certain purposes. He asked which was the more safe. Was it safer to grant general powers than certain limited powers? This much as to the theory, continued he. What is the practice of this invaluable government? Have your citizens been bound by it? They have not, sir. You have violated that maxim, "that no man shall be condemned without a fair trial." That man who was killed, not *secundum artem*, was deprived of his life without the benefit of law, and in express violation of this declaration of rights, which they confide in so much. But, sir, this bill of rights was no security. It is but a paper check. It has been violated in many other instances. Therefore, from theory and practice, it may be concluded that this government, with special powers, without any express exceptions, is better than a government with general powers and special exceptions.

But the practice of England is against us. The rights there reserved to the people are to limit and check the king's prerogative. It is easier to enumerate the exceptions to his prerogative, than to mention all the cases to which it extends. Besides, these reservations, being only formed in acts of the legislature, may be altered by the representatives of the people when they think proper. No comparison can be made of this with the other governments he mentioned. There is no stipulation between the king and people. The former is possessed of absolute, unlimited authority.

But, sir, this Constitution is defective because the common [451] law is not declared to be in force! What would have been the consequence if it had? It would be immutable. But now it can be changed or modified as the legislative body may find necessary for the community. But the common law is not excluded. There is nothing in that paper to warrant the assertion. As to the exclusion of a jury from the vicinage, he has mistaken the fact. The legislature may direct a jury to come from the vicinage. But the gentleman says that, by this Constitution, they have power to make laws to define crimes and prescribe punishments; and that, consequently, we are not free from torture. Treason against the United States is defined in the Constitution, and the forfeiture limited to the life of the person attainted. Congress have power to define and punish piracies and felonies committed on the high seas, and offences against the laws of nations; but they cannot define or prescribe the punishment of any other crime whatever, without violating the Constitution. If we had no security against torture but our declaration of rights, we might be tortured to-morrow; for it has been repeatedly infringed and disregarded. A bill of rights is only an acknowledgment of the preëxisting claim to rights in the people. They belong to us as much as if they had been inserted in the Constitution. But it is said that,

if it be doubtful, the possibility of dispute ought to be precluded. Admitting it was proper for the Convention to have inserted a bill of rights, it is not proper here to propose it as the condition of our accession to the Union. Would you reject this government for its omission, dissolve the Union, and bring miseries on yourselves and posterity? I hope the gentleman does not oppose it on this ground solely. Is there another reason? He said that it is not only the general wish of this state, but all the states, to have a bill of rights. If it be so, where is the difficulty of having this done by way of subsequent amendment? We shall find the other states willing to accord with their own favorite wish. The gentleman last up says that the power of legislation includes every thing. A general power of legislation does. But this is a special power of legislation. Therefore, it does not contain that plenitude of power which he imagines. They cannot legislate in any case but those particularly enumerated. No gentleman, who is a friend to the government, ought to withhold his assent from it for this reason.

[452] Mr. GEORGE MASON replied that the worthy gentleman was mistaken in his assertion that the bill of rights did not prohibit torture; for that one clause expressly provided that no man can give evidence against himself; and that the worthy gentleman must know that, in those countries where torture is used, evidence was extorted from the criminal himself. Another clause of the bill of rights provided that no cruel and unusual punishments shall be inflicted; therefore, torture was included in the prohibition.

Mr. NICHOLAS acknowledged the bill of rights to contain that prohibition, and that the gentleman was right with respect to the practice of extorting confession from the criminal in those countries where torture is used; but still he saw no security arising from the bill of

rights as separate from the Constitution, for that it had been frequently violated with impunity.

From June 27, 1788:

[657] *Another engrossed form of the ratification*, agreed to on Wednesday last, containing the proposed Constitution of government, as recommended by the federal Convention on the seventeenth day of September, one thousand seven hundred and eighty-seven, being prepared by the secretary, was read and signed by the president, in behalf of the Convention.

On motion, *Ordered*, That the said ratification be deposited by the secretary of this Convention in the archives of the General Assembly of this state.

Mr. WYTHE reported, from the committee appointed, such *amendments* to the proposed Constitution of government for the United States as were by them deemed necessary to be recommended to the consideration of the Congress which shall first assemble under the said Constitution, to be acted upon according to the mode prescribed in the 5th article thereof; and he read the same in his place, and afterwards delivered them in at the clerk's table, where the same were again read, and are as follows: —

"That there be a declaration or bill of rights asserting, and securing from encroachment, the essential and unalienable rights of the people, in some such manner as the following: —

"1st. That there are certain natural rights, of which men, when they form a social compact, cannot deprive or divest their posterity; among which are the enjoyment of life and liberty, with the means of acquiring, possessing, and protecting property, and pursuing and obtaining happiness and safety.

"2d. That all power is naturally invested in, and consequently derived from, the people; that magistrates

therefore are their *trustees* and *agents*, at all times amenable to them.

"3d. That government ought to be instituted for the common benefit, protection, and security of the people; and that the doctrine of non-resistance against arbitrary power and oppression is absurd, slavish, and destructive to the good and happiness of mankind.

"4th. That no man or set of men are entitled to separate or exclusive public emoluments or privileges from the community, but in consideration of public services, which not being descendible, neither ought the offices of magistrate, legislator, or judge, or any other public office, to be hereditary.

"5th. That the legislative, executive, and judicial powers of govern[658]ment should be separate and distinct; and, that the members of the two first may be restrained from oppression by feeling and participating the public burdens, they should, at fixed periods, be reduced to a private station, return into the mass of the people, and the vacancies be supplied by certain and regular elections, in which all or any part of the former members to be eligible or ineligible, as the rules of the Constitution of government, and the laws, shall direct.

"6th. That the elections of representatives in the legislature ought to be free and frequent, and all men having sufficient evidence of permanent common interest with, and attachment to, the community, ought to have the right of suffrage; and no aid, charge, tax, or fee, can be set, rated, or levied, upon the people without their own consent, or that of their representatives, so elected; nor can they be bound by any law to which they have not, in like manner, assented, for the public good.

"7th. That all power of suspending laws, or the execution of laws, by any authority, without the consent of

the representatives of the people in the legislature, is injurious to their rights, and ought not to be exercised.

"8th. That, in all criminal and capital prosecutions, a man hath a right to demand the cause and nature of his accusation, to be confronted with the accusers and witnesses, to call for evidence, and be allowed counsel in his favor, and to a fair and speedy trial by an impartial jury of his vicinage, without whose unanimous consent he cannot be found guilty, (except in the government of the land and naval forces;) nor can he be compelled to give evidence against himself.

"9th. That no freeman ought to be taken, imprisoned, or disseized of his freehold, liberties, privileges, or franchises, or outlawed, or exiled, or in any manner destroyed, or deprived of his life, liberty, or property, but by the law of the land.

"10th. That every freeman restrained of his liberty is entitled to a remedy, to inquire into the lawfulness thereof, and to remove the same, if unlawful, and that such remedy ought not to be denied nor delayed.

"11th. That, in controversies respecting property, and in suits between man and man, the ancient trial by jury is one of the greatest securities to the rights of the people, and to remain sacred and inviolable.

"12th. That every freeman ought to find a certain remedy, by recourse to the laws, for all injuries and wrongs he may receive in his person, property, or character. He ought to obtain right and justice freely, without sale, completely and without denial, promptly and without delay; and that all establishments or regulations contravening these rights are oppressive and unjust.

"13th. That excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

"14th. That every freeman has a right to be secure from all unreasonable searches and seizures of his person, his papers, and property; all warrants, therefore, to search suspected places, or seize any freeman, his papers, or property, without information on oath (or affirmation of a person religiously scrupulous of taking an oath) of legal and sufficient cause, are grievous and oppressive; and all general warrants to search suspected places, or to apprehend any suspected person, without specially naming or describing the place or person, are dangerous, and ought not to be granted.

"15th. That the people have a right peaceably to assemble together to [659] consult for the common good, or to instruct their representatives; and that every freeman has a right to petition or apply to the legislature for redress of grievances.

"16th. That the people have a right to freedom of speech, and of writing and publishing their sentiments; that the freedom of the press is one of the greatest bulwarks of liberty, and ought not to be violated.

"17th. That 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; that standing armies, in time of peace, are dangerous to liberty, and therefore ought to be avoided, as far as the circumstances and protection of the community will admit; and that, in all cases, the military should be under strict subordination to, and governed by, the civil power.

"18th. That no soldier in time of peace ought to be quartered in any house without the consent of the owner, and in time of war in such manner only as the law directs.

"19th. That any person religiously scrupulous of bearing arms ought to be exempted, upon payment of an equivalent to employ another to bear arms in his stead.

"20th. That religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence; and therefore all men have an equal, natural, and unalienable right to the free exercise of religion, according to the dictates of conscience, and that no particular religious sect or society ought to be favored or established, by law, in preference to others."

AMENDMENTS TO THE CONSTITUTION.

"1st. That each state in the Union shall respectively retain every power, jurisdiction, and right, which is not by this Constitution delegated to the Congress of the United States, or to the departments of the federal government.

"2d. That there shall be one representative for every thirty thousand, according to the enumeration or census mentioned in the Constitution, until the whole number of representatives amounts to two hundred; after which, that number shall be continued or increased, as Congress shall direct, upon the principles fixed in the Constitution, by apportioning the representatives of each state to some greater number of people, from time to time, as population increases.

"3d. When the Congress shall lay direct taxes or excises, they shall immediately inform the executive power of each state, of the quota of such state, according to the census herein directed, which is proposed to be thereby raised; and if the legislature of any state shall pass a law which shall be effectual for raising such quota at the time required by Congress, the taxes and excises laid by Congress shall not be collected in such state.

"4th. That the members of the Senate and House of Representatives shall be ineligible to, and incapable of holding, any civil office under the authority of the United

States, during the time for which they shall respectively be elected.

"5th. That the journals of the proceedings of the Senate and House of Representatives shall be published at least once in every year. except such [660] parts thereof, relating to treaties, alliances, or military operations, as, in their judgment, require secrecy.

"6th. That a regular statement and account of the receipts and expenditures of public money shall be published at least once a year.

"7th. That no commercial treaty shall be ratified without the concurrence of two thirds of the whole number of the members of the Senate; and no treaty ceding, contracting, restraining, or suspending, the territorial rights or claims of the United States, or any of them, or their, or any of their rights or claims to fishing in the American seas, or navigating the American rivers, shall be made, but in cases of the most urgent and extreme necessity; nor shall any such treaty be ratified without the concurrence of three fourths of the whole number of the members of both houses respectively.

"8th. That no navigation law, or law regulating commerce, shall be passed without the consent of two thirds of the members present, in both houses.

"9th. That no standing army, or regular troops, shall be raised, or kept up, in time of peace, without the consent of two thirds of the members present, in both houses.

"10th. That no soldier shall be enlisted for any longer term than four years, except in time of war, and then for no longer term than the continuance of the war.

"11th. That each state respectively shall have the power to provide for organizing, arming, and disciplining its own militia, whensoever Congress shall omit or neglect to provide for the same. That the militia shall not

be subject to martial law, except when in actual service, in time of war, invasion, or rebellion; and when not in the actual service of the United States, shall be subject only to such fines, penalties, and punishments, as shall be directed or inflicted by the laws of its own state.

"12th. That the exclusive power of legislation given to Congress over the federal town and its adjacent district, and other places, purchased or to be purchased by Congress of any of the states, shall extend only to such regulations as respect the police and good government thereof.

"13th. That no person shall be capable of being President of the United States for more than eight years in any term of sixteen years.

"14th. That the judicial power of the United States shall be vested in one Supreme Court, and in such courts of admiralty as Congress may from time to time ordain and establish in any of the different states. The judicial power shall extend to all cases in law and equity arising under treaties made, or which shall be made, under the authority of the United States; to all cases affecting ambassadors, other foreign ministers, and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more states, and between parties claiming lands under the grants of different states. In all cases affecting ambassadors, other foreign ministers, and consuls, and those in which a state shall be a party, the Supreme Court shall have original jurisdiction; in all other cases before mentioned, the Supreme Court shall have appellate jurisdiction, as to matters of law only, except in cases of equity, and of admiralty, and maritime jurisdiction, in which the Supreme Court shall have appellate jurisdiction both as to law and fact, with such exceptions and under such regulations as the Congress shall make: but the judicial

power of [661] the United States shall extend to no case where the cause of action shall have originated before the ratification of the Constitution, except in disputes between states about their territory, disputes between persons claiming lands under the grants of different states, and suits for debts due to the United States.

"15th. That, in criminal prosecutions, no man shall be restrained in the exercise of the usual and accustomed right of challenging or excepting to the jury.

"16th. That Congress shall not alter, modify, or interfere in the times, places, or manner of holding elections for senators and representatives, or either of them, except when the legislature of any state shall neglect, refuse, or be disabled, by invasion or rebellion, to prescribe the same.

"17th. That those clauses which declare that Congress shall not exercise certain powers, be not interpreted, in any manner whatsoever, to extend the powers of Congress; but that they be construed either as making exceptions to the specified powers where this shall be the case, or otherwise, as inserted merely for greater caution.

"18th. That the laws ascertaining the compensation of senators and representatives for their services, be postponed, in their operation, until after the election of representatives immediately succeeding the passing thereof; that excepted which shall first be passed on the subject.

"19th. That some tribunal other than the Senate be provided for trying impeachments of senators.

"20th. That the salary of a judge shall not be increased or diminished during his continuance in office, otherwise than by general regulations of salary, which may take place on a revision of the subject at stated periods of not less than seven years, to commence from

the time such salaries shall be first ascertained by Congress."