# THE PRESIDENT CAN SUPPRESS SCHOOL SHOOTINGS

## INTRODUCTION

Whatever the facts may turn out to be, the recent school shooting in Parkland, Florida—and others which have preceded it throughout this country—are traumatic, tragic, and deplorable events. Effective action needs to be taken to prevent altogether, or at least to minimize the effects of, future happenings of this kind, whether in schools or other venues. All of this is self-evident. As always, though, the question remains: "What is to be done?"

Unfortunately, so far, the publicized reactions from the White House to the school shooting in Florida evidence confusion as to what should be done. Inasmuch as this school shooting is not the first such horrific event America has suffered (and probably will not be the last), the lack of a plausible plan of action, or even a coherent statement of general policy, forthcoming from that source is disturbing.

As an old Italian folk-saying has it, *"basta d'un pazzo per casa"*—"one fool in the house is enough". In the case of the White House, even one fool is too many, a plethora of fools intolerable. Yet the White House's failure to address the problem of school shootings in a courageous, a comprehensive—and especially a *constitutional*—manner amounts to foolishness in the extreme. Fortunately, as to other subjects, President Trump has shown himself to be a leader who does not suffer fools gladly (if at all), and who, when presented with a viable solution to a vexing problem, will act quickly and decisively on his own initiative.

Unfortunately, many people contend that it is not the President's place to interject himself and the General Government into the essentially State and Local issue of school shootings. For example, Mr. Jake MacAulay recently published a commentary on NewsWithViews entitled "The Vitriolic Dialogue Of Federal Gun Restrictions Continues" (14 March 2018). In this piece Mr. MacAulay argues that

> [c]urrently, the Trump administration, along with his unconstitutional Department of Education, are coming up with a plan unauthorized by the Constitution that will provide funding to states for improved background checks of gun buyers and fire arms training for teachers in government schools. In order to further his pandering of the gun lobby, Newsmax.com reported the President "has refused to increase the age restriction for so-called assault weapons. Instead, a new federal commission [on] school safety will examine the age issue, as well as a long list of other topics, as part of a longer term look at school safety and violence."
>
> So just where does the president, or Congress for that matter, get the authority to provide funding to state education infrastructures? The answer? Nowhere. The Constitution grants no such authority and there is a specific reason

for this.

Ask yourself the question, when has the federal government ever stopped or prevented a school shooting? How can the DC bureaucrats effectively keep nearly 100,000 schools safe?

Because they are the best equipped, our Founders intended the state and local government agencies to handle these types of circumstances. Your State and sheriffs' departments are the only agencies that are constitutionally authorized to deal with prevention of tragedies inside of the respective states.

How do I know this? Because I have read the Constitution, and nowhere in Article 2 (which defines the powers of the president) is there any executive authority to administrate a Department of Education, or to appropriate funding to any agencies of the government or schools. Furthermore, Article 2 does not grant the president any authority to provide firearms training for teachers. He is to be the Commander in Chief of the U.S. Armed Forces alone.

To put a finer point on it, you will find nowhere in Article I, Section 8, authority delegated to Congress to tax and spend for education or school firearms training.

The solution is to keep federal government entanglement out of state school systems and state law enforcement. Allowing the states to handle those critical areas will bring swifter, cost effective, and safer solutions because they are more equipped to deal with their own backyard.

Now, the present author is not aware of, and certainly would not uncritically defend or defer to, whatever President Trump may have in mind for what Mr. MacAulay calls "a plan unauthorized by the Constitution that will provide funding to states for improved background checks of gun buyers and fire arms training for teachers in government schools." On the other hand, although in the past Mr. MacAulay has posted many valuable commentaries on NewsWithViews, in this instance "Homer has nodded". For, as what follows herein demonstrates, it *is* possible to present a proposal for a *constitutional* direction in which President Trump could and should proceed if he wants to apply the full powers of his office to a solution of the problem of school shootings.

## ABSTRACT

**1.** Article II, Section 3 of the Constitution imposes upon the President the duty to "take Care that the Laws be faithfully executed".

**2.** Article I, Section 8, Clause 15 of the Constitution delegates to Congress the power "[t]o provide for calling forth the Militia to execute the Laws of the Union".

**3.** Article I, Section 8, Clause 16 of the Constitution delegates to Congress the power "[t]o 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".

**4.** Article I, Section 8, Clause 1 of the Constitution delegates to Congress the "Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence * * * of the United States".

**5.** Article I, Section 9, Clause 7 of the Constitution provides that "[n]o Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law".

**6.** School shootings are an egregious form of "domestic violence" which violates not only "the Laws of the Union" but also the laws of the several States, and imperils "the common Defence * * * of the United States".

**7.** In its exercise of its authority under Article I, Section 8, Clauses 15 and 16, Congress has enacted 10 U.S.C. § 253, which provides that the President, "by using the militia * * * shall take such measures as he considers necessary to suppress, in a State, any * * * domestic violence" under conditions relevant to present-day school shootings.

**8.** "[T]he militia" which 10 U.S.C. § 253 empowers the President to "us[e]" includes all or any part of "the unorganized militia", the composition of which Congress has defined in 10 U.S.C. §§ 246 and 247.

**9.** In every State, as so defined "the unorganized militia" includes large numbers of teachers, administrators, parents, and even some students.

**10.** Therefore, "by using the militia" to "take such measures as he considers necessary to suppress, in a State, any * * * domestic violence" in the particular form of school shootings, President Trump may call forth from "the unorganized militia" sufficient numbers of eligible teachers, administrators, parents, and even students—suitably organized, armed, disciplined, trained, *and invested with specific governmental authority* perforce of Presidential directives—to provide security for their schools.

**11.** In the course of "using the militia" to "take such measures as he considers necessary to suppress, in a State, any * * * domestic violence" in the particular form of school shootings, President Trump may "draw[ ] from the Treasury * * * in Consequence of Appropriations made by Law" whatever "Money" Congress may have made available for the purposes authorized by 10 U.S.C. § 253 out of the "Taxes" which Article I, Section 8, Clause 1 authorizes it "To lay and collect * * * to provide for the common Defence * * * of the United States".

**12.** Such "us[e of] the militia" would enforce the General Government's "gun-free schools" law in 18 U.S.C. § 922q in the one manner it which it undoubtedly needs to be enforced—that is, to prevent school shootings—under the President's authority as "Commander in Chief * * * of the Militia of the several States, when called into the actual Service of the United States", pursuant to

Article II, Section 2, Clause 1 and Article I, Section 8, Clauses 15 and 16 of the Constitution.

**13**. Such "us[e of] the militia" would also enforce the Second Amendment, rather than derogating from it, as do proposals for radical "gun control" now being promoted in the mass media as panaceas for the problem of school shootings.

## ANALYSIS

**I.** Self-evidently, school shootings deny their victims various rights, privileges, immunities, or protections guaranteed by the Constitution of the United States and secured by the laws of both the General Government and the States. These rights include the "unalienable Right[ ]" to "Life" itself mentioned in the Declaration of Independence, secured against deprivation without due process of law by the Fifth and Fourteenth Amendments to the Constitution, and protected in every State by criminal and civil laws against murder, attempted murder, assault with a dangerous weapon, aggravated battery, wrongful death, and so on.

Indeed, the General Government's own "gun-free schools" law itself is obviously intended—albeit on the basis of faulty reasoning—to protect students', teachers', and administrators' rights to life (among other cognate rights). *See* Act of 29 November 1990, Pub. L. 101-647, TITLE XVII-GENERAL PROVISIONS, § 1702 ("Gun-Free School Zones Act of 1990"), 104 Stat. 4789, 4844; *declared unconstitutional but then reënacted as amended in* An Act Making omnibus consolidated appropriations for the fiscal year ending September 30, 1997, and for other purposes, Act of 30 September 1996, TITLE VI—GENERAL PROVISIONS, § 657, 110 Stat. 3009, 3009-369; *now codified at* 18 U.S.C. § 922q. In addition, many of the States have enacted their own "gun-free schools" or equivalent statutes for the same purpose. *See, e.g.,* Code of Virginia § 18.2-308.1. Plainly, these laws are violated every time a school shooting occurs, even if no one is actually killed or injured.

Now, with some *very limited* exceptions, no careful student of the subject can be a proponent of "gun-free zones" of any kind. Yet one must also recognize that in an imperfect world it sometimes takes a crooked stick to beat a mad dog; that, as the Supreme Court observed in *Anderson* v. *Dunn*, 19 U.S. (6 Wheaton) 204, 226 (1821), "[t]he science of government * * * is the science of experiment"; that "politics is the art of the possible"; and that "gun-free schools" laws *are* on the books throughout this country (no matter how poorly thought out and otherwise inadvisable they may be). So, with appropriate circumspection, advantage should be taken of such laws until something better comes along.

On the other hand, the plain fact of the matter is that, so far, even armed with "gun-free schools" laws both the General Government and the States have proven themselves incapable of effectively suppressing school shootings, as such horrors continue to take place. So something more is needed to ensure that *these laws* are effectively executed for *that purpose*.

After all, a realistic appraisal of the present situation must take into account that far too many average Americans (as well as public officials) are untutored in the basic constitutional

principles and practices of what the Second Amendment calls "a free State", are incessantly bombarded with slick propaganda from "gun-control" fanatics eager to ban so-called "assault rifles" (and, if the truth be told, all other types of firearms), and are more likely than not to be driven by raw emotion rather than swayed by logical reasoning. Such people will tend to sympathize with the apparently "commonsensical" (but actually nonsensical) notion that the availability of the inanimate instruments employed in some school shootings is to blame for the carnage, rather than the homicidal intentions or impulses of the perpetrators, along with the contrived circumstances of the "gun-free zones" which facilitate, and even ensure the success of, such attacks.

This being the case, it is probably counterproductive for champions of the Second Amendment to stress the principle that the Amendment protects "the right of the people to keep and bear [*semi*-automatic] Arms [of *quasi*-military pattern]", notwithstanding that in practice such "Arms" are all too often employed in school shootings. True enough, both the Second Amendment and the Militia Clauses of the original Constitution *absolutely* protect that right, as a matter of "the supreme Law of the Land". *See, e.g.,* the present author's brief *amici curiae* in *Kolbe v. Hogan,* No. 17-127 (U.S. Sup. Ct., 23 August 2017), *to be found at* <www.scotusblog.com/case-files/cases/kolbe-v-hogan/>. And, of even greater consequence, if ordinary Americans were prohibited from possessing *semi*-automatic rifles and other "Arms" suitable for service in "well regulated Militia", then *no one*—including students in this country's schools—could hope to live for very much longer in even the semblance of "a free State", in light of the strongly *neo*-Bolshevist political tendencies at work almost everywhere throughout this country. Nonetheless, for citizens unfamiliar with these particulars of constitutional law, and therefore unaware of the fatal consequences to "a free State" that will inevitably ensue if these principles are disregarded, the more convincing—because eminently pragmatic—argument must be that security against school shootings can best be guaranteed by transforming *totally* "*gun-free* schools" into *internally* "*gun-protected* schools". That is, "gun-free schools" laws must be supplemented by executive actions and perhaps new statutes that as much as possible render schools effectively "gun free" *for potential school shooters*, by suitably arming and training teachers, administrators, parents, and even some students *so that in the gravest extreme they can protect themselves immediately with guns, there being no equally effective alternative*. For, with respect to school shootings, one sorry experience after another has confirmed in innocent blood the wry observation that "when seconds count the police are just minutes away".

**II.** The Constitution and at least one statute of the General Government (in addition to its own "gun-free schools" law) provide a ready means for President Trump to deal with this situation *on his own initiative, without further assistance from Congress or the States than is already available to him*.

**A.** Pursuant to Article II, Section 1, Clause 7 of the Constitution, the President-elect "solemnly swear[s] (or affirm[s]) that [he] will faithfully execute the Office of President of the United States, and will to the best of [his] Ability, preserve, protect and defend the Constitution of the United States." Article II, Section 3 imposes on the President the duty to "take Care that the Laws be faithfully executed". Article II, Section 2, Clause 1 designates him as the "Commander in Chief * * * of the Militia of the several States, when called into the actual Service of the United States". Article I, Section 8, Clause 15 empowers Congress "[t]o provide for calling forth the Militia

to execute the Laws of the Union". The Second Amendment declares that "[a] well regulated Militia" is "necessary to the security of a free State". And it should be self-evident that "the Laws [are not being] faithfully executed", and "the security of a free State" is being imperiled, when schools—which should the agents for instilling in students the principles, and instructing them in the practices, of "a free State"—are suffered to remain "free-fire zones" for religious or ideological fanatics, drugged-up zombies, madmen, and *agents provocateurs* who obey no law other than the law of the jungle.

**B.** In pertinent part, 10 U.S.C. § 253 provides that

> [t]he President, by using the militia * * * shall take such measures as he considers necessary to suppress, in a State, any insurrection, domestic violence, unlawful combination, or conspiracy, if it—
>
> (1) so hinders the execution of the laws of that State, and of the United States within the State, that any part or class of its people is deprived of a right, privilege, immunity, or protection named in the Constitution and secured by law, and the constituted authorities of that State are unable, fail, or refuse to protect that right, privilege, or immunity, or to give that protection; or
>
> (2) opposes or obstructs the execution of the laws of the United States or impedes the course of justice under those laws.
>
> In any situation covered by clause (1), the State shall be considered to have denied the equal protection of the laws secured by the Constitution.

This is no novel piece of legislation, but derives from *An Act to enforce the Provisions of the Fourteenth Amendment to the Constitution of the United States, and for other Purposes,* Act of 20 April 1871, CHAP. XXII, § 3, 17 Stat. 13, 14.

The application of this statute to school shootings in particular is straightforward:

**(i)** The statute imposes no limit on the definition of "domestic violence". And school shootings constitute, by commonplace understanding, an extremely serious form of "domestic violence" in every instance. (In some cases they may involve "unlawful combination[s], or conspirac[ies]" as well.)

**(ii)** The statute imposes no limit, either, on what "militia" (or part thereof) the President may "us[e]", so long as that "militia" is recognized as such by some law of Congress. Pursuant to Article I, Section 8, Clauses 15 and 16 of the Constitution, for "employ[ment] in the Service of the United States" in aid of "execut[ing] the Laws of the Union" (among other responsibilities) Congress has assigned most Americans to "the unorganized militia". *See* 10 U.S.C. §§ 246 and 247. For their own purposes, the States, too, have consigned most of their citizens to "the unorganized militia". *See, e.g.,* Code of Virginia §§ 44-1, 44-4, and 44-5. Although an "*unorganized* militia" cannot qualify as "[a] *well regulated* Militia" for all possible constitutional ends, nonetheless it is a "militia" by statutory

definition, is capable of performing some basic functions "necessary to the security of a free State", and therefore comes within the compass of the President's statutory authority to "us[e] the militia" * * * to suppress * * * domestic violence".

**(iii)** The statute imposes no limits on "the measures" the President may "consider[ ] necessary to suppress, in a State, any * * * domestic violence"—and clearly must include "using the militia" (which the statute allows) in order "to execute [*whatever*] Laws of the Union" may apply to the situation (which authority and responsibility the Constitution explicitly assigns to the Militia in Article I, Section 8, Clause 15).

**(iv)** History even as recent as what just happened in Parkland, Florida, should conclusively establish to the satisfaction of President Trump (or any other sentient and unbiased observer) that "the constituted authorities of th[e] State[s]" have time and again proven themselves "unable", have "fail[ed]", or have "refuse[d] to protect" students, teachers, and administrators (directly), as well as parents (indirectly), from school shootings, thus leaving that "part or class of [the States'] people * * * deprived of a right, privilege, immunity, or protection named in the Constitution, and secured by law"—the most obvious such "protection * * * secured by law" being the "protection" promised by "gun-free schools" laws against violent attacks with firearms in school. Apparently, too, "the constituted authorities" of the General Government with jurisdiction over the matter have done no better, or even worse, as the FBI's shocking non-, mis-, or malfeasance prior to the Florida school shooting evidences. And, to make matters worse (if that be possible), the courts deny the victims of violent attacks any right to bring civil actions for monetary damages against such officials on account of their derelictions, because the judges' misconceptions of "due process of law" supposedly do not "require the State to protect the life, liberty, and property of its citizens against invasion by private actors". *See DeShaney* v. *Winnebago County DSS,* 489 U.S. 189, 195-197 (1989).

**(v)** In particular, inadequately enforced "gun-free schools" laws deny equal protection of the law to teachers, administrators, students, and parents. In States not under the heels of "gun-control" fanatics in public office, when teachers, administrators, parents, and even some students who qualify for concealed-carry permits are outside of school they can protect themselves with firearms to the selfsame degree as all other citizens. *See, e.g.,* Code of Virginia § 18.2-308.01. Yet, even in such States, when those very same teachers, administrators, parents, and students are inside "gun-free schools" the relevant laws deny them the right of self-defense with firearms, and all other students the right to be protected by those teachers, administrators, parents, and fellow students who but for those laws could be armed. *See, e.g.,* Code of Virginia § 18.2-308.1.

The right of personal self-defense, however, is neither just a statutory nor simply a constitutional right, but instead is a *natural* right that precedes and is independent of and superior to all statutes and constitutions. As the Founding Fathers' most influential legal mentor, Sir William Blackstone, explained, "[s]elf-defence, * * * as it is justly called the primary law of nature, so it is not, neither can it be in fact, taken away by the law of society." *Commentaries on the Laws of England* (Philadelphia, Pennsylvania: Robert Bell, American Edition, 4 Volumes & Appendix, 1771-1773), Volume 3, at 4. Therefore, inasmuch as the right of self-defense in aid of one's life cannot be "taken

away by the law of society" at all, and inasmuch as when confronted by an armed assailant a victim's best (if not only) defense is his own firearm, it is impossible to imagine on what legitimate grounds public officials, on the one hand, can enable all eligible citizens to effectuate that right through the concealed carry of firearms outside the schools, but, on the other hand, can deny that very same right to some of those very same citizens within "gun-free schools", where experience teaches that the dangers from attempted mass shootings are almost always far greater than anywhere else.

The only minimally arguable justification for this discrimination would have to be that, in contrast to its lackadaisical performance elsewhere, within "gun-free schools" the government provides such sure and certain protection for students, teachers, administrators, and parents as to render totally unnecessary their self-defense or their defense of others *with firearms*. Common experience, however, proves that this is *never* the case, because administrators invariably instruct teachers and students in the face of actual or even threatened school shootings to take various self-protective actions (other than the use of firearms) *in addition to their reliance on whatever "security" measures the government has put into place*. And everyone knows that such "security" as the authorities do deign to arrange or recommend *can* fail—and in too many instances *has* failed, with catastrophic consequences. Of course, it might also turn out that allowing teachers, administrators, some students, and parents to "keep and bear Arms" under appropriately controlled conditions while in school would not suffice to forefend school shootings in enough cases to establish the utility of that measure. But inasmuch as "[t]he science of government * * * is the science of experiment", and inasmuch as other experiments for securing schools against mass shootings have not succeeded, the experimental method would recommend that such an allowance at least be tried.

**C.** All of the legal preconditions for an experiment of that sort have already been satisfied. As explained above, the Constitution imposes on President Trump the duty to "take Care that the [General Government's 'gun-free schools' law] be faithfully executed". The Constitution invests the President with personal authority and endows him with sufficient means to do so, he being the "Commander in Chief * * * of the Militia of the several States, when [they are] called into the actual Service of the United States", and the Militia being empowered "to execute the Laws of the Union" under his command with neither exception nor limitation. And in 10 U.S.C. § 253 Congress has provided the President and the Militia with a sweeping statutory mandate eminently suitable for that purpose, and the constitutionality of which cannot be questioned.

**III.** In light of the foregoing, President Trump not only is undoubtedly constitutionally able, *but also is arguably constitutionally required*, to promulgate an Executive Order or other appropriate directive to execute 10 U.S.C. § 253 by calling forth selected individuals from "the unorganized militia"—appropriately organized, armed, disciplined, trained, and invested with specific governmental authority—to provide security against "domestic violence" in America's schools. Initially, this would not encompass *all* teachers, administrators, students, parents, relevant experts, and other useful personnel eligible for such service in "the unorganized militia", because in the exercise of prudence any necessarily experimental program should be put into operation only gradually, with careful evaluation of the success or need for amendment of each step in the process. Little beginnings, though, often—and in this case surely would—lead to big things.

At the outset, however, President Trump must realize that the degree of coöperation he can expect from the States (and even from personnel in his own Administration) will vary widely. The political establishments in some, probably too many, so-called "blue States" will intransigently oppose him—either because rogue public officials in those States are fanatically committed to one or another form of radical "gun control" that aims at complete disarmament of the populace, no matter its fatal effects on "the security of a free State" in schools and elsewhere; or because they simply hate the thought that, in contrast with their own serial failures, Mr. Trump might actually "Make America Great Again" *pro tanto* by significantly reducing the incidence of, or even altogether eliminating, school shootings in a thoroughly constitutional manner. And, of course, the hostile mass media will vehemently inveigh against him on the ridiculous grounds that anyone who seeks to revitalize the Militia for any purpose must be a dangerous "fascist", even though both the Constitution and Congressional statutes explicitly provide for the President's employment of the Militia "to execute the Laws of the Union" in aid of suppressing "domestic violence", whether in schools or elsewhere.

President Trump must turn a deaf ear to these discordant voices, treating them with the dismissal and even disdain they deserve. For, rather than the subjects of a political "popularity contest", school shootings are matters of life and death for "the children"—on whose behalf Mr. Trump's antagonists have always shown themselves more inclined to affect hypocritically lachrymose concern than willing to swallow their pride, shut their mouths, roll up their sleeves, and set to work to alleviate the problem in a constitutional manner. If he grasps the nettle firmly, "the Deplorables" will support him. And that should prove to be enough.

Unfortunately, President Trump should also expect some misguided opposition from those among his supporters who honestly question the legality of the General Government's "gun-free schools" law. By supposedly compromising the Second Amendment, such people will contend, his invocation of that law for *any* purpose will betray his erstwhile promises to "Make America Great Again". This line of argument, however, is an error easily exposed. For, no matter how many unconstitutional applications of the General Government's "gun-free schools" law can be imagined, it is certainly constitutional as a basis for the President to "take Care that [that law] be faithfully executed" *for the specific purpose of rendering schools "gun free" in terms of illegal "domestic violence" with firearms*, by suitably arming teachers, administrators, parents, and some students called forth from "the unorganized militia". After all, if a statute can fairly be read to further *any* undoubtedly constitutional purpose, it must be deemed constitutional *for that purpose*, no matter how many plainly unconstitutional purposes some tendentious misreadings of its bare language might supposedly license. "The cardinal principle of statutory construction is to save and not to destroy", "'to ascertain whether a construction of the statute is fairly possible by which the [constitutional] question may be avoided.'" *NLRB* v. *Jones & Laughlin Steel Corporation,* 301 U.S. 1, 30 (1937); *and United States* v. *Thirty-seven Photographs*, 402 U.S. 363, 369 (1971), *quoting Crowell* v. *Benson,* 285 U.S. 22, 62 (1932). *Accord, e.g., Lynch* v. *Overholser,* 369 U.S. 705, 710-711 (1962).

**A.** As any competent experimental scientist will recommend, as his first step President Trump should call forth from "the unorganized militia" individuals qualified to survey the relevant historical and legal literature, conducting comprehensive re-investigations of what *actually* happened in

previous school shootings, not just what some public officials have declared to be their "findings", or the mass media have reported as "facts", in those cases. Just as there remain good reasons to continue to question the official "findings" and journalistic "facts" in the public record of (say) the assassinations of President Kennedy and Dr. Martin Luther King, so too do good reasons exist to doubt the completeness, accuracy, and even honesty of the "findings" and "facts" in the public records of school shootings. In this regard, three basic questions must be answered: Why was "security" nonexistent or inadequate in those instances? If adequate in principle, why did such "security" fail in practice? And would not arming and training teachers, administrators, parents, and even some students under the auspices of the Militia have done better?

**B.** Because of credible reports of many school shooters' apparent involvement with physician-prescribed or -administered psychotropic drugs, President Trump should call forth from "the unorganized militia" individuals with the specialized expertise required to perform a thoroughgoing critical review of the FDA's allowance and supervision of the general use (or, more likely, misuse and even abuse) of such medications. The primary issue would be whether these dangerous substances have been permitted to enter the stream of commerce without adequate administrative investigation and controls, without sufficient warnings to physicians and their patients (and in many cases their patients' parents and school officials, too), and without notice to other authorities—particularly the FBI, the BATFE, and State agencies tasked with overseeing the purchase and possession of firearms—that the individuals taking these drugs potentially posed serious risks to themselves and others. The BATFE's and various State agencies' forms which collect information for "background checks" on commercial sales of firearms already require disclosure of prospective purchasers' use of *illegal* drugs. Perhaps a *very carefully crafted* new line-item should be included to apprise regulators of a buyer's use of "legitimate" psychotropic substances, too—thus allowing adequate time for investigation of the actual adverse effects of such use before the buyer's personal possession (as opposed to ownership) of certain types of (or even any) firearms were approved—with, of course, adequate guarantees that buyers who used such drugs would not thereby find themselves listed on some sort of medical "Bill of Attainder", and otherwise would receive every possible protection afforded by due process of law. *See* U.S. Const. art. I, § 9, cl. 3; art. I, § 10, cl. 1; *and* amends. V and XIV, § 1.

Even more thorny is the problem of under what procedures a firearm already legally possessed by an individual who uses legitimate psychotropic drugs could constitutionally be seized by the government if that individual credibly indicated to others that he might misuse his firearm to perpetrate a mass shooting or some other homicidal act. For—distinguishably from all other forms of "property" entitled only to the general guarantees against "unreasonable * * * seizures" in the Fourth Amendment and deprivation "without due process of law" in the Fifth Amendment and Section 1 of the Fourteenth Amendment to the Constitution—"Arms" are "property" explicitly protected by the Second Amendment against all "infringe[ments]" on "the right of the people to keep and bear" them, because they have an unique relationship to "the security of a free State". *Compare and contrast, e.g., Sniadach* v. *Family Finance Corporation,* 395 U.S. 337 (1969) (seizure of wages without prior notice and hearing); *Fuentes* v. *Shevin,* 407 U.S. 67 (1972) (seizure of ordinary household appliances without prior notice and hearing).

**C.** Inasmuch as membership in "the unorganized militia" nowhere in the United States today requires individuals to undergo training which would specifically qualify them to provide any type of armed security in schools, President Trump should enlist experts from both the public and the private sectors to devise appropriate model training protocols for and programs of instruction.

From the public sector he should seek the assistance of outstanding personnel from well-accredited State police academies or like establishments. This would be especially appropriate, because preparing teachers, administrators, and some students in "the unorganized militia" to provide armed security in their schools would necessarily involve certain types of training already standardized for State and Local police forces—such as the legal principles and practices relating to the use of deadly force, to the detention of suspects, to identification and preservation of evidence at a crime scene, and so on.

Due to the unrestricted reach of 10 U.S.C. §§ 246 and 253 (as well as the limited exemptions allowed by 10 U.S.C. § 247), it could well be argued that, perforce of Article VI, Clause 2 (the so-called "Supremacy Clause") of the Constitution, State law could not exempt personnel employed in police academies from service in "the unorganized militia", and that therefore, just as any other citizens, such individuals could be called forth by the President for Militia duty "in[ ] the actual Service of the United States". In any event, as a matter of coöperative federalism, the Governors in most "red States" certainly should be expected to direct such police personnel over whom they exercise jurisdiction to participate in the President's program in the capacity of advisors, inasmuch as effective enforcement of the General Government's "gun-free schools" law would redound to the States' advantage, too, by indirectly enforcing the States' own "gun-free schools" statutes.

From the private sector, President Trump should select top-flight instructors from the best firearms-training organizations (such as Academi, Gunsite Academy, Front Sight Firearms Training, the Massad Ayoob Group, the National Rifle Association, and Thunder Ranch). Besides enlisting individuals with varieties of expertise, experience, enlightenment, and infectious enthusiasm not generally expected to be found amongst personnel in police academies, this would give the lie to the disgraceful defamation now being broadcast in the mass media that the NRA, in particular, has "blood on its hands" because, supposedly motivated by the lowest of mercenary considerations, it puts a fictitious "individual right" of irresponsible Americans to possess dangerous *semi*-automatic rifles ahead of the safety of innocent students, teachers, administrators, and parents in this country's schools.

In light of President Trump's apparently warm relationship with the government of Israel, he might seek the assistance of *anti*-terrorism experts from that country, too. Their experience and insights should surely prove profitable. Their participation might also convince large numbers of persons within America's Jewish community that, at least with respect to school shootings which indiscriminately target Jews as well as others, their traditionally disproportionate support for "gun control" is counterproductive.

These model training protocols and programs would supply the necessary predicates for the

execution of the President's Executive Orders, as well as for such new State and Congressional legislation as might be needed.

**D.** To facilitate passage of such legislation in the States, President Trump should call forth from "the unorganized militia" experienced legislative draftsmen to write model Militia laws tailored to each State's particular statutory code. Admittedly, preparing the documents needed for comprehensive nationwide reform of this sort would be a tedious task, inasmuch as fifty separate model laws (along with supporting legal memoranda and other explanatory materials) would be required. And no guarantee could be had that all, or a majority, or even more than a few of the States would follow the President's lead at first. In light of the seriousness of the situation, though, something would be better than nothing—especially if that "something" proved effective. For the success some States would achieve would assuredly generate uncompromising demands by citizens in other States for their recalcitrant political leaders either "to get on board" with Mr. Trump's program or "to get out of Dodge". It is hard to imagine how, even with knee-jerk support in the mass media, rogue public officials obsessed with "gun control" and obdurate in their opposition to employment of "the unorganized militia" could persist in obstruction of the President's initiative when the hot breath of the voters scorched their necks.

Moreover, those States which adopted and faithfully implemented such model laws could be assured that no further intervention in their affairs on that score would be forthcoming from the General Government.

**E.** If rogue public officials in some States or Localities should attempt to thwart President Trump's program—along the lines of the arrant "sanctuary-State" and "sanctuary-cities" obstructionism now being interposed against the General Government's enforcement of its laws relating to illegal immigration—rather than coddling or negotiating with such miscreants he should peremptorily execute the General Government's "gun-free schools" law by ordering the direct "federalization" of teachers, administrators, students, parents, and others in "the unorganized militia" in those areas, under the plenary authority vouchsafed to him by 10 U.S.C. § 253.

**(a)** To this, no disgruntled State or Local official could offer any legal objection, whether under the Tenth Amendment to the Constitution or otherwise. For, as 10 U.S.C. § 253 provides, should President Trump determine that "domestic violence * * * so hinders the execution of the laws of [a] State, and of the United States within th[at] State, that any part or class of its people is deprived of a right, privilege, immunity, or protection named in the Constitution and secured by law, and the constituted authorities of that State are unable, fail, or refuse to protect that right, privilege, or immunity, or to give that protection", he may "consider" that "the State * * * ha[s] denied the equal protection of the laws secured by the Constitution." Thus, 10 U.S.C. § 253 is "appropriate legislation" through which Congress has explicitly empowered the President to "enforce" in the first instance the requirement that no State shall "deny to any person within its jurisdiction the equal protection of the laws", perforce of Sections 1 and 5 of the Fourteenth Amendment to the Constitution. *See* the origin of 10 U.S.C. § 253 in *An Act to enforce the Provisions of the Fourteenth Amendment to the Constitution of the United States, and for other Purposes,* Act of 20 April 1871, CHAP.

XXII, § 3, 17 Stat. 13, 14.

Section 5 of the Fourteenth Amendment delegates to Congress a plenary supervisory power which it may wield in aid of Section 1 of that Amendment against the States perforce of Article VI, Clause 2 ("the Supremacy Clause"). Under that Clause, Sections 1 and 5 of the Fourteenth Amendment, 10 U.S.C. § 253, and the General Government's "gun-free schools" law are "the supreme Law of the Land" by which "the Judges in every State shall be bound * * * , any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." And, as required by Article VI, Clause 3, "the Members of the several State Legislatures, and all executive and judicial Officers * * * of the several States, shall be bound by Oath or Affirmation, to support th[e] Constitution" in the foregoing regard, not to disregard let alone defy it.

**(b)** Of course, were all State and Local public officials constitutionally literate and politically responsible, no objection would ever be broached by any of them, because President Trump's enforcement of the General Government's "gun-free schools" law through application of 10 U.S.C. § 253 would entail as clear-cut a case of true federalism in action as could be imagined.

**(i)** Plainly enough, that statute is an exercise of Congress's constitutional authority under Article I, Section 8, Clauses 15 and 18 "[t]o provide for calling forth the Militia to execute the Laws of the Union", and "[t]o make all Laws which shall be necessary and proper for carrying into Execution the * * * Power[ of Congress to call forth the Militia], and all other Powers vested by th[e] Constitution in the Government of the United States, or in any Department or Officer thereof"—including the power and duty of the President, in his capacity as "Commander in Chief * * * of the Militia of the several States", to "take Care that the Laws be faithfully executed" under Article II, Section 2, Clause 1 and Article II, Section 3.

And although Article II, Section 2, Clause 1 of the Constitution makes clear that "the unorganized militia" are components of "the Militia *of the several States*" (not of some nonexistent "Militia *of the United States*"), the States can claim no right to exclusive control over them. For under Article I, Section 8, Clauses 15 and 16; Article II, Section 2, Clause 1; and Article VI, Clause 2, the States are constitutionally bound at all times to make their Militia (in whole or in part) available to "be employed in the Service of the United States" "to execute the Laws of the Union" under the President's personal command. No exception to this requirement exists.

Moreover, for obvious reasons Article I, Section 8, Clause 16 empowers Congress alone, not the States willy-nilly, "[t]o provide * * * for governing such Part of the[ Militia of the several States] as may be employed in the Service of the United States". At the present time, Congress has "provide[d]" no specific statute, code, or other set of rules "for governing" "the unorganized militia", in whole or in "Part". In 10 U.S.C. § 253, however, Congress has generally empowered "[t]he President, by using the militia * * * [to] take such measures as he considers necessary . . ." and so on, without limitation. In the absence of more specific Congressional directives, in order to "us[e] the militia" at all effectively in the execution of that statute the President himself would have to promulgate such "measures as he consider[ed] necessary" "for governing such Part of the[ Militia]"

as he might call forth to "be employed in the Service of the United States", and then would have to see to the enforcement of those "measures" in his capacity as "Commander in Chief * * * of the Militia of the several States, when called into th[at] actual Service", under Article II, Section 2, Clause 1. Indeed, because 10 U.S.C. § 253 could not at this time reasonably be enforced "by using the militia" without the President's provision of rules adequate "for governing such Part of the[Militia]" when "employed in th[at] Service of the United States", for the President not to promulgate such rules would be to shirk his duty under Article II, Section 3, to "take Care that the Laws be faithfully executed". The States, of course, would have no say as to either the substance of the "measures" the President "consider[ed] necessary" for governing "the unorganized militia", or his applications of them.

**(ii)** Nonetheless, even when the Militia are called forth to "be employed in the Service of the United States", Article I, Section 8, Clause 16 of the Constitution "reserv[es] to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress". This, however, should pose no insurmountable obstacles to President Trump's invocation of 10 U.S.C. § 253 to "us[e] the militia * * * to suppress, in a State, any * * * domestic violence" associated with school shootings.

First, in light of the peculiar nature of the security required "to suppress, in a State, any * * * [such] domestic violence", it would likely be possible for President Trump to promulgate "measures" which did not require the formal "Appointment of Officers" for governing "such Part" of "the unorganized militia" as he called forth to execute 10 U.S.C. § 253. Although as a practical matter the President's "measures" would certainly have to assign different rights and duties to different persons performing different *tasks*, they would not necessarily need to vest the powers and privileges of *rank* in anyone. On the other hand, neither the Constitution nor that statute imposes any prohibition of or limitation on "measures" promulgated by the President which would authorize the members of "the unorganized militia" to select "Officers" from amongst themselves in order to perform "the Service of the United States" for which they were called forth. After all, even "the unorganized militia" are *official State institutions, recognized as such not only by the Constitution in general but also by State statutes in particular*. *See, e.g.,* Code of Virginia §§ §§ 44-1 and 44-4. Otherwise, they could not be called forth by Congress to perform any "militia" function whatsoever, as Congress's power in that regard extends only to "the Militia *of the several States*". That being so, the statutorily authorized actions of "the unorganized militia" (or any "Part" thereof) in any State—whether called forth either by the State herself for her own purposes or by Congress "to be employed in the Service of the United States"—constitute "State action" in the constitutional sense. For whenever anyone who, "by virtue of public position under a State government * * * acts in the name and for the State, and is clothed with the State's power, his act is that of the State." Ex parte *Virginia,* 100 U.S. 339, 347 (1880). Therefore, "the Appointment of [their] Officers" by those members of "the unorganized militia" President Trump called forth "to execute the Laws of the Union" perforce of the authority delegated to him by Congress under 10 U.S.C. § 253 would be sanctioned by the power reserved to the States in Article I, Section 8, Clause 16.

Second, although Congress itself has not "prescribed" a general code of "discipline" for

"training" "the unorganized militia", it has necessarily delegated that authority to the President under 10 U.S.C. § 253—for otherwise the President would be unable effectively to "us[e] [that part of ]the militia * * * to suppress, in a State, any * * * domestic violence", in the form of school shootings or anything else. And no statute may be so misconstrued in principle as to render it nugatory in practice. With respect to "training", the plan proposed in the instant paper depends entirely on personnel called forth from "the unorganized militia" or seconded to it by some other State agencies (such as police academies), under the supervisory authority of the President as "Commander in Chief * * * of the Militia of the several States, when called into the actual Service of the United States". Therefore, in compliance with Article I, Section 8, Clause 16, this plan would retain for the States "the Authority of training the Militia according to the discipline prescribed by Congress" through its delegation of that power of prescription to the President under 10 U.S.C. § 253.

**F.** Pursuant to that statute, President Trump may "us[e] the militia * * * [to] take such measures as he considers necessary to suppress, in a State, any * * * domestic violence", without limitation as to either the sort of "domestic violence" which needs to be "suppress[ed]", or the nature or extent of the "measures" necessary for that purpose. Presumably, such a sweeping mandate should suffice to enable him to call forth from "the unorganized militia" in any State whichever personnel he might require, on whatever terms and during whatever periods of time he might deem expedient, and to impose on those personnel whatever rights, powers, privileges, immunities, and duties he chose to stipulate, in order to deal with the "domestic violence" of school shootings in that State.

Nonetheless, because President Trump could rightly be concerned that the "measures" he promulgated in an Executive Order could be subject to outright repeal, vitiating amendments, or simple disregard in a subsequent Administration, he could also request Congress to enact new legislation which incorporated, expanded upon, and made permanent those "measures" with regard not only to school shootings but also to other widespread forms of "domestic violence" to which 10 U.S.C. § 253 should be applied. This could have two important additional effects: First, it could enable the President to call forth "the unorganized militia" in aid of State and Local police forces, Sheriffs' departments, and other law-enforcement agencies now so handicapped by insufficiencies of personnel that they cannot effectively come to grips, not only with school shootings, but also with violent criminal enterprises organized in and funded through nationwide and even international networks. Second, such legislation could enable the President to call forth "the unorganized militia" to put paid to *officially sanctioned* "domestic violence" manifested most obnoxiously today in widespread "police brutality" (often of a maniacally homicidal character) which all too many incompetent and even corrupt State and Local law-enforcement agencies, prosecutors, and judges tolerate. Once called forth in "the unorganized militia" and vested with legal authority under the General Government's laws, Local citizens theretofore long exposed to such depredations would surely show no mercy in eradicating them.

**G.** To be sure, most if not all of the "measures" President Trump promulgated in an Executive Order would presumably require adequate funding to be implemented. It is difficult to imagine, though, that *somewhere* within the General Government's voluminous *Statutes at Large* Congress has not provided *some* "Appropriations made by Law" for *some* "Money" which the

President could "draw[ ] from the Treasury" pursuant to Article I, Section 9, Clause 7 of the Constitution for the purpose of putting 10 U.S.C. § 253 into effect.

**H.** Notwithstanding all of the foregoing, President Trump should expect that, through its minions, partisans, and useful idiots in the visible governments in the District of Columbia and the States' capitals, the invisible government of "the Deep State" would bend its every malevolent effort to prevent his employment of "the unorganized militia" to suppress the "domestic violence" of school shootings. As has already befallen some of Mr. Trump's attempts to "repel Invasions" by illegal aliens (for which purpose he should long ago have called forth "the unorganized militia" throughout this country), "the Deep State's" seditious opposition to his calling forth "the unorganized militia" to deal with school shootings would most likely disguise itself initially in the garb of "judicial supremacy"—in particular, the purported power of a *single* rogue judge in a *single* trial court to issue a "*nationwide* injunction" which ties the President's hands in every relevant instance, while the case slowly wends its tortuous way through a maze of writs, appeals, petitions, and so on, generating sheaves of orders, findings of fact and law, opinions, and other legalistic screeds as confusing to many lawyers as they are unintelligible to most laymen. For President Trump to acquiesce in such judicial imperialism would be inexcusable as a matter of law.

**(i)** As a general proposition (which need not be extensively elaborated here), "judicial supremacy" is (to borrow Bentham's apt phrase) "nonsense on stilts". *See, e.g.,* my books *How To Dethrone the Imperial Judiciary* (San Antonio, Texas: Vision Forum Ministries, 2004), and *By Tyranny Out of Necessity: The Bastardy of "Martial Law"* (Ashland, Ohio: Bookmasters, Inc., 2014, 2016), at 481-491. Indeed, by candid admission of its own repeated blunders with respect to constitutional questions, the Supreme Court has exposed "judicial supremacy" as incoherent. *See, e.g., Payne* v. *Tennessee,* 501 U.S. 808, 828-830 & note 1 (1991) (collecting cases). For, self-evidently, "no amount of repetition of * * * errors in judicial opinions can make the errors true". *Wallace* v. *Jaffree,* 472 U.S. 38, 107 (1985) (Rehnquist, C.J., dissenting).

**(ii)** Decisively, the breadth of President Trump's authority to call forth "the unorganized militia" "to execute the Laws of the Union" pursuant to statutes enacted for that purpose has long been settled in his favor by the Constitution, the specific statute under consideration here (10 U.S.C. § 253), and even relevant precedent from the highest judicial authority.

First, the Constitution establishes three *coördinate, co-equal* branches in the General Government—the Legislative Branch (Congress), in Article I; the Executive Branch (the President), in Article II; and the Judicial Branch (the Supreme Court and other inferior courts which Congress may ordain and establish), in Article III, Section 1. Even the Supreme Court concedes that, by definition, a "coördinate" branch of government is "one [which] has no power to enforce its decisions upon the other [coördinate branch]". *Town of South Ottawa* v. *Perkins*, 94 U.S. 260, 268 (1877).

Second, Article II, Section 1, Clause 7 of the Constitution requires the President-elect to "take the * * * Oath or Affirmation" that he "'do[es] solemnly swear (or affirm) that [he] will faithfully execute the Office of President of the United States, and will to the best of [his] Ability,

preserve, protect and defend the Constitution of the United States." Plainly, this commitment requires him to "'execute [his] Office to the best of [*his own*] Ability'", not in intellectually slavish obedience to the opinion of some judge, whose "Ability" may be far inferior to his own. Moreover, together with Article II, Section 3 of the Constitution, his "Oath or Affirmation" requires the President to "'preserve, protect and defend the Constitution of the United States", and to "take Care that the Laws be faithfully executed", against *everyone*, including *rogue* members of the Judiciary who misapply their "Abilit[ies]" in patent derogation of the Constitution and other "Laws".

Third, Article II, Section 3 imposes upon the President the duty to "take Care that *the Laws* be faithfully executed". Judicial opinions, however, are not "Laws"—because in Article I, Section 1 the Constitution provides that "[a]ll legislative Powers * * * granted [in the Constitution] shall be vested in a Congress of the United States", not to any degree in the Judiciary. The "Laws" are what they themselves say they are; whereas judicial opinions are just that—the mere *opinions* of fallible judges about the "Laws", which may be correct *or incorrect*. And, contrary to the illogical notions that "the judiciary is supreme in the exposition of the * * * Constitution", and that therefore an "interpretation of the [Constitution] enunciated by th[e Supreme] Court * * * is the supreme law of the land", an *incorrect* "exposition of the * * * Constitution" is doubtlessly entitled to no greater legal standing than any other falsehood. *Pace Cooper* v. *Aaron,* 358 U.S. 1, 18 (1958).

Fourth, Article I, Section 8, Clause 15 of the Constitution empowers Congress (not the Judiciary) "to provide for calling forth the Militia to execute the Laws of the Union". And through 10 U.S.C. § 253 Congress has delegated to *the President* (not the Judiciary) the power to "us[e] the militia" to "take such measures *as he considers necessary* to suppress, in a State, * * * domestic violence". That statute further authorizes *the President* (not the Judiciary) to determine whether "domestic violence"

> (1) so hinders the execution of the laws of that State, and of the United States within the State, that any part or class of its people is deprived of a right, privilege, immunity, or protection named in the Constitution and secured by law, and the constituted authorities of that State are unable, fail, or refuse to protect that right, privilege, or immunity, or to give that protection; or
>
> (2) opposes or obstructs the execution of the laws of the United States or impedes the course of justice under those laws.

And, as the statute evidences, in the exercise of its power under Sections 1 and 5 of the Fourteenth Amendment to the Constitution, Congress has determined that, "[i]n any situation covered by clause (1), the State shall be considered [*by everyone, including the Judiciary,*] to have denied the equal protection of the laws secured by the Constitution." *See* the origin of 10 U.S.C. § 253 in *An Act to enforce the Provisions of the Fourteenth Amendment to the Constitution of the United States, and for other Purposes,* Act of 20 April 1871, CHAP. XXII, § 3, 17 Stat. 13, 14. This obviates the otherwise relevant requirement set out in Article IV, Section 4 of the Constitution that "[t]he United States * * * shall protect each of the[ States] * * * on Application of the Legislature, or of the Executive (when the

Legislature cannot be convened) against domestic violence."

Fifth, were the Constitution and 10 U.S.C. § 253 by themselves not enough to drive the point home, the Supreme Court has in principle already opined (correctly in this instance) that *the President's* determinations under that statute must be accepted as conclusive *by everyone else, including the Judiciary*.

Pursuant to its constitutional power "[t]o provide for calling forth the Militia * * * to repel Invasions", in 1795 Congress enacted legislation which provided in pertinent part

> [t]hat whenever the United States shall be invaded, or be in imminent danger of invasion from any foreign nation or Indian tribe, it shall be lawful for the President of the United States to call forth such number of the militia of the state, or states, most convenient the place of danger, or scene of action, as he may judge necessary to repel such invasion, and to issue his orders for that purpose, to such officer or officers of the militia, as he shall think proper.

*An Act to provide for calling forth the Militia to execute the laws of the Union, suppress insurrections, and repel invasions; and to repeal the act in force for those purposes,* Act of 28 February 1795, CHAP. XXXVI, § 1, 1 Stat. 424, 424.

Referring to the power so delegated by Congress to the President, the Supreme Court described it as

> not a power which can be executed without a corresponding responsibility. It is, in its terms, a limited power, confined to cases of actual invasion, or of imminent danger of invasion. If it be a limited power, * * * by whom is the exigency to be judged of and decided? Is the president the sole and exclusive judge whether the exigency has arisen, or is it to be considered as an open question * * * ? We are all of opinion, that the authority to decide whether the exigency has arisen, belongs exclusively to the president, and that his decision is conclusive upon all other persons.
>
> * * * * *
>
> If we look at the language of the act of 1795, * * * [t]he power itself is confided to the executive of the Union, to him who is, by the constitution, "the commander in chief of the militia, when called into the actual service of the United States," whose duty it is to "take care that the laws be faithfully executed," and whose responsibility for an honest discharge of his official obligations is secured by the highest sanctions. He is necessarily constituted the judge of the existence of the exigency in the first instance, and is bound to act according to his belief of the facts. If he does so act, and decides to call forth the militia, his orders for this purpose are in strict conformity with the provisions of the law; and it would seem to follow as a necessary consequence, that every act done by a subordinate officer, in obedience to such orders, is equally justifiable. The law contemplates that, under such

> circumstances, orders shall be given to carry the power into effect; and it cannot, therefore, be a correct inference, that any other person has a just right to disobey them. The law does not provide for any appeal from the judgment of the president, or for any right in subordinate officers to review his decision, and in effect defeat it. Whenever a statute gives a discretionary power to any person, to be exercised by him, upon his own opinion of certain facts, it is a sound rule of construction, that the statute constitutes him the sole and exclusive judge of the existence of those facts.

*Martin* v. *Mott*, 25 U.S. (12 Wheaton) 19, 29-32 (1827) (Story, J., for the Court).

This legal analysis applies directly, and with decisive effect, to 10 U.S.C. § 253—

• Congress enacted the Act of 1795 pursuant to its power in Article I, Section 8, Clause 15 "[to] provide for calling forth the Militia to * * * repel Invasions". That very same Clause also authorizes Congress "[t]o provide for calling forth the Militia to execute the Laws of the Union". The principles *Martin* v. *Mott* invoked are equally applicable to both of those purposes for which the Militia may be called forth.

• The Act of 1795 empowered the President "to call forth such number of the militia * * * *as he may judge necessary*", and "to issue his orders for that purpose, to such officer or officers of the militia, *as he shall think proper*". In like wise, 10 U.S.C. § 253 delegates to the President the broad authority "by using the militia * * * [to] take such measures *as he considers necessary*". Thus, the latter statute is entitled to the same construction *Martin* v. *Mott* applied to the former one—namely, that "the authority to decide whether the exigency has arisen, belongs exclusively to the president, and * * * his decision is conclusive upon all other persons"; and "that, under such circumstances, orders shall be given to carry the power into effect", and no "other person has a just right to disobey them." Indeed, as applied to 10 U.S.C. § 253, the principles of *Martin* v. *Mott* should extend far beyond the facts of that case. For there the President's power could be directed only at actual members of the Militia; whereas, under 10 U.S.C. § 253, "such measures as [the President] considers necessary" are not confined to members of the Militia alone, but instead may reach essentially anyone and everyone whose behavior is in any way implicated, for good or for bad, in the "domestic violence" those "measures" are designed "to suppress".

• *Martin* v. *Mott* held that the Act of 1795 "d[id] not provide for any appeal from the judgment of the president, or for any right in subordinate officers to review his decision, and in effect defeat it"—whether through their own unaided efforts or by importuning the Judiciary to interject itself into the matter on their behalf (which the Supreme Court refused to do in that case). Neither does 10 U.S.C. § 253 "provide for any [such] appeal" or "right * * * to review" for a member of "the unorganized militia". Even the modern-day Supreme Court has recognized that the Judiciary may not interfere with the President's enforcement of discipline within the Militia. *See Gilligan* v. *Morgan*, 413 U.S. 1, 5-12 (1973). And other persons affected by the President's "measures" are no better off. For whereas under the Act

of 1795 the President's power extended only to actual members of the Militia, under 10 U.S.C. § 253 "such measures as [the President] considers necessary" are not confined to members of the Militia alone, but instead may reach essentially anyone and everyone whose behavior is in any way involved in the perpetration or suppression of "domestic violence".

• In reference to the Act of 1795, *Martin* v. *Mott* observed that "[w]henever a statute gives a discretionary power to any person, to be exercised by him, upon his own opinion of certain facts, * * * the statute constitutes him the sole and exclusive judge of the existence of those facts." No less than that Act, 10 U.S.C. § 253 delegates an equally "discretionary power" to the President to "take such measures as he considers necessary". That being so, the President's exercise of that power cannot be second-guessed by the Judiciary for any reason whatsoever. For "[t]he province of the court is, solely, to decide on the rights of individuals, not to enquire how the executive, or executive officers, perform duties in which they have a discretion. Questions in their nature political, or which are, by the constitution and laws, submitted to the executive, can never be made in this court." *Marbury* v. *Madison,* 5 U.S. (1 Cranch) 137, 170 (1803) (Marshall, C.J., for the Court). To be sure, because in the situation under consideration here the statutory purpose and permission for "such measures" do not extend beyond "suppress[ing] * * * domestic violence" in a constitutional manner, some judicially enforceable limits to the President's actions might conceivably exist. For example, his "measures" may not contravene any applicable provisions of the Bill of Rights. Otherwise, though, the scope, substance, and application of those "measures" are "political questions" left to his judgment alone.

• Finally, no matter how deeply "the Deep State's" friends on the Bench despise President Trump and how desperately they desire to thwart him at every turn, unless and until the Supreme Court overrules *Martin* v. *Mott* the lower courts are required to adhere to its reasoning "no matter how misguided the judges of those courts may think it to be". *Hutto* v. *Davis*, 454 U.S. 370, 375 (1982). And should any one of those judges refuse to do so, and should attempt to curtail the President's use of 10 U.S.C. § 253 by means of a purported "injunction" or other specious order, the President should simply refuse to comply.

## CONCLUSION

The present author is not an attorney working for the Department of Justice. He is not a $1,000-*per*-hour lawyer of the genre with which President Trump is undoubtedly familiar from his former private life. He does not speak or write on behalf of any "gun-rights" group currently trying to solve the problem of school shootings without violating the Second Amendment or other provisions of the Constitution. Rather, he is simply a *semi*-retired attorney living in the placid obscurity of the "Canoe Capital of Virginia". But if he can parse the legal literature and propose a viable solution to that problem in the instant paper, why is the matter so difficult for the bright lights of the Bar now roaming the White House to understand?

President Trump cannot shelter behind his legal advisors' inattentiveness, insouciance,

inactivity, or incompetence in this regard. For, even if no one in his entourage assists him, he remains *personally* obligated to figure out what to do. After all, how can he honestly claim to be "tak[ing] Care that the Laws be faithfully executed" with respect to the present-day crisis of school shootings if he neglects, fails, or refuses to investigate what the relevant "Laws" actually are and how they ought best to be applied?

This paper provides *its author's* idea of a satisfactory answer to the question "What is to be done about school shootings?" The further query necessarily left unanswered, though, is "What will *the President* do?" Unfortunately, some of the approaches President Trump has suggested so far will surely prove counterproductive. For they fly in the face of the Fifth and Fourteenth Amendments; the Second Amendment; Article I, § 8, Clauses 15 and 16; Article II, Section 2, Clause 1; and Article II, Section 3 of the Constitution. *See, e.g.*, <http://thehill.com/homenews/administration/376097-trump-take-the-guns-first-go-through-due-process-second> *and* <http://www.bretibart.com/big-government/2018/02/28/president-trump-asks-dianne-feinstein-add-assault-weapons-ban-school-safety-bill/>. And they certainly take no advantage of his statutory authority under 10 U.S.C. § 253. Of course, perhaps Mr. Trump has just been incautiously "shooting from the hip" about school shootings and "gun control", and on reflection will align his thinking with the Constitution and common sense—rather than with the last "*pro*-gun" (or "*anti*-gun") lobbyists who happen to get his attention. *See, e.g.,* <https://www.nytimes.com/2018/03/01/us/politics/trump-republicans-gun-control-html>.

If, however, President Trump's future actions demonstrate that he cannot make up his mind on these subjects *in a fully constitutional fashion,* then America will have very serious cause to lament "*basta d'un pazzo per casa*".