

# COMMON-SENSE RESTRUCTURING OF “HOMELAND SECURITY” ACCORDING TO FUNDAMENTAL CONSTITUTIONAL PRINCIPLES

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[This analysis was originally drafted prior to 9 November 2016 in order to explain why Donald Trump’s campaign for the Presidency should have stressed revitalization of “the Militia of the several States”<sup>1</sup> as the key element in the restructuring of “homeland security” under a Trump Administration.<sup>2</sup> It applies equally, if now even more emphatically, to what the Trump Administration—indeed, *any* patriotic and constitutionalist Administration—should do.]

## SUMMARY

Every American is justifiably concerned about what is called “homeland security”. The *constitutional* “common sense” of how “homeland security” should be structured has received all too little attention, however. *True* “homeland security” arises directly out of the constitutional duty of the President to “take Care that the Laws be faithfully executed”,<sup>3</sup> of his constitutional status as “Commander in Chief \* \* \* of the Militia of the several States, when called into the actual Service of the United States”,<sup>4</sup> and of the constitutional authority and responsibility of the Militia (that is, the American people themselves) to support his efforts by “execut[ing] the Laws of the Union” when “employed in the Service of the United States”.<sup>5</sup>

The importance of each of these provisions can be gauged from its unique nature. The Constitution subjects *only* the President to that duty. The Constitution confers that status upon the President *alone*. And the Constitution explicitly invests the Militia *and no one else* with that authority and responsibility. Inasmuch as Mr. Trump will take seriously his “Oath

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<sup>1</sup> U.S. Const. art. II, § 2, cl. 1.

<sup>2</sup> Given the misunderstanding of the very concept of constitutional “Militia” widespread throughout this country, in the initial stages of the Trump Campaign it might be politically prudent not to emphasize the term “Militia”, but instead to focus on what might be styled “a reorganization of ‘homeland security’ that will maximize average Americans’ ability to participate in and benefit from the program”. Exactly how to present the idea to a diverse electorate in the most politically palatable fashion will involve matters of semantics. Because this study is concerned with substance, it will address the question in the constitutionally most straightforward manner.

<sup>3</sup> U.S. Const. art. II, § 3. These “Laws” include the Constitution itself. See *In re Neagle*, 135 U.S. 1, 63-68(1890).

<sup>4</sup> U.S. Const. art. II, § 2, cl. 1.

<sup>5</sup> U.S. Const. art. I, § 8, cls. 15 and 16.

or Affirmation” to “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”,<sup>6</sup> he must be, not only conversant with these constitutional provisions in principle, but also ready to put them into practice from the very first day of a Trump Administration.

In addition, promotion of revitalization of “the Militia of the several States” renders credible in an uniquely powerful manner Mr. Trump’s promise “to make America great again”—a promise unique to him in the present Presidential campaign. The greatness of America depends upon its being “a free State”. And the Constitution declares that “[a] well regulated Militia”—*and nothing else*—is “necessary to the security of a free State”.<sup>7</sup> So, “to make America great again” *absolutely requires* reliance on the Militia.

Finally, revitalization of “the Militia of the several States” and their deployment by the President “in the actual Service of the United States” can provide unique remedies for numerous problems that now confront this country. This is a time unique in American history for both the dangers and the opportunities it presents—a time in which mobilization of a large majority of the population directly behind the President is necessary, not just in words or even votes during the campaign, but especially in deeds after the votes are counted. Those deeds can be performed with full constitutional authority and maximum efficacy *only* by and through the Militia.

## ANALYSIS AND RECOMMENDATIONS

The Trump Campaign should make revitalization of “the Militia of the several States” a central issue because: (i) revitalization is necessary “to make America great again”; (ii) the dangerous situation which today confronts this country is propitious for revitalization; and (iii) properly educated, Americans in all walks of life will support revitalization.

### I. REVITALIZATION OF “THE MILITIA OF THE SEVERAL STATES” IS NECESSARY “TO MAKE AMERICA GREAT AGAIN”.

No attempt “to make America great again”—in the sense of restoring this country’s moral, political, and legal authority; its structural integrity; its longevity; and its

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<sup>6</sup> U.S. Const. art. II, § 1, cl. 7.

<sup>7</sup> U.S. Const. amend. II.

capability for constructive growth—can possibly succeed unless the plan builds upon the foundation of this country’s organic laws: the Declaration of Independence and the Constitution.

**A.** The Declaration of Independence lays out a succinct and cogent explanation and defense of popular sovereignty and popular self-government within a national community. It teaches that all legitimate political authority and power derives from, and in the final analysis must be exercised by, “the People” themselves—namely,

- “[t]hat \* \* \* Governments are instituted among Men, deriving their just powers from the consent of the governed”;
- “[t]hat whenever any Form of Government becomes destructive these ends, it is the Right of the People to alter or to abolish it, and to institute new Government”;
- that, “when a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce the[ People] under absolute Despotism, it is their right, it is their duty, to throw off such Government”; and
- that, relying upon these principles, Americans are entitled “to assume”, *and to maintain*, “among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature’s God entitle them”.

It is not enough, however, to recognize in the abstract that “the People” are this country’s only sovereigns.<sup>8</sup> In order to exercise this supreme supervisory power whenever it may become needful, “the People” must *at all times* actually be possessed of governmental institutions, not only which *they* control and in which *they* directly participate, but also through which *they* are capable of enforcing their rights against all dangers, foreign and domestic. To talk about rights without specifying remedies for their protection is both idle and dangerous. “A right without a remedy is as if it were not. For every beneficial purpose it may be said not to exist.”<sup>9</sup> In the nature of things, only institutions coextensive with “the People” themselves can provide a remedy for the enforcement of popular sovereignty and popular self-government in the gravest extremes. In American experience, the only institutions with the requisite qualifications are “the Militia of the several States”.

**B.** In this regard, the Constitution addresses both the right and the remedy, when it declares that “WE THE PEOPLE \* \* \* do ordain and establish this Constitution”,<sup>10</sup> and that

<sup>8</sup> See, e.g., *Afroyim v. Rusk*, 387 U.S. 253, 257 (1967); and *Chisholm v. Georgia*, 2 U.S. (2 Dallas) 419, 454 and 456-457 (opinion of Wilson, J.), 470-472 (opinion of Jay, C.J.) (1793).

<sup>9</sup> *United States ex rel. Von Hoffman v. City of Quincy*, 71 U.S. (4 Wallace) 535, 554 (1867). *Accord*, *Poindexter v. Greenhow*, 114 U.S. 270, 303 (1885); *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 162-163 (1803).

<sup>10</sup> U.S. Const. preamble (the exercise of the right of popular sovereignty and popular self-government).

“[a] well regulated Militia” is “necessary to the security of a free State”.<sup>11</sup>

1. The original Constitution empowers Congress “[t]o provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions”, and “[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”.<sup>12</sup> And it confers upon the President the status of “Commander in Chief \* \* \* of the Militia of the several States, when called into the actual Service of the United States”.<sup>13</sup>

Self-evidently, the existence, authority, responsibility, and operations of “the Militia of the several States” are not optional—with either Congress, the President, the States, or WE THE PEOPLE themselves. In principle, no part of the Constitution can ever be dismissed as “superfluous”.<sup>14</sup> For “[i]t cannot be presumed, that any clause in the constitution is intended to be without effect”.<sup>15</sup> Rather, “every word must have its due force, and appropriate meaning; for it is evident from the whole instrument, that no word was unnecessarily used, or needlessly added.”<sup>16</sup> The constitutional provisions relating to the Militia contain no exceptions—and “where no exception is made in terms, none will be made by mere implication or construction.”<sup>17</sup>

More specifically, because they are “the Militia of the several States”—that is, because they are *State* institutions which the Constitution permanently incorporates into its federal system—the General Government cannot dispense with or eliminate them, any more than it can dispense with or eliminate the States. And because the General Government has a right to call forth the Militia at any time for the three purposes the Constitution specifies, the States cannot dispense with or eliminate them, either. For “[t]his Constitution \* \* \* shall be the supreme Law of the Land”, to the support of which all State officials “shall be bound by Oath or Affirmation”.<sup>18</sup> In addition, the Militia are institutions *separate from and independent of* both the Army and Navy of the United States, and the “Troops, of Ships of War which the

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<sup>11</sup> U.S. Const. amend. II (the specification of the remedy for the preservation of popular sovereignty and popular self-government).

<sup>12</sup> U.S. Const. art. I, § 8, cls. 15 and 16.

<sup>13</sup> U.S. Const. art. II, § 2, cl. 1.

<sup>14</sup> *Hurtado v. California*, 110 U.S. 516, 534 (1884). *See also* *Martin v. Hunter's Lessee*, 14 U.S. (1 Wheaton), 304, 338-339 (1816).

<sup>15</sup> *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 174 (1803).

<sup>16</sup> *Williams v. United States*, 289 U.S. 553, 572-573 (1933).

<sup>17</sup> *Rhode Island v. Massachusetts*, 37 U.S. (12 Peters) 657, 722 (1838).

<sup>18</sup> U.S. Const. art. VI, cls. 2 and 3.

States may “keep \* \* \* in time of Peace” “with[ ] the Consent of Congress”.<sup>19</sup>

2. Contrary to a widely held misconception, the Second Amendment is primarily concerned, not with a so-called “*individual* right to keep and bear arms” solely for individual purposes, but rather with “the right of the *people* to keep and bear Arms” as individuals in order for them to participate collectively in “well regulated Militia” within each of “the several States”.<sup>20</sup> The Amendment’s ultimate purpose is political, not personal: namely, to guarantee “the security of a free State” throughout the United States. “[T]he right of the people to keep and bear Arms” is instrumental for this purpose, not as an end in itself.

a. The Second Amendment renders obvious that “the Militia of the several States” are neither the States’ “Troops, of Ships of War” nor part of “the land and naval Forces” of the United States. For, if “the people” enjoy a “right \* \* \* to keep and bear Arms” in order to enable them to serve in “well regulated Militia”, then they must also enjoy a *right* to have “well regulated Militia” within each State at all times, and therefore must require neither “the Consent of Congress” nor their enlistment in “the Army and Navy of the United States” to do so.<sup>21</sup>

b. Although the Second Amendment does not define “a free State”, the meaning of that term is plain enough. “[A] free State” is a “polity” (a politically organized community) in which the governmental organization aims all of its efforts at “freedom”.<sup>22</sup> “[A] free State” is not simply a thoroughly armed anarchy, because its “security” requires “[a] well regulated Militia”. In general, “a free State” is a “republic”.<sup>23</sup> More specifically, under the Constitution “a free State” is a polity with “a Republican Form of Government”.<sup>24</sup> In American political science, “a [republican] Government is \* \* \* one constructed on th[e] principle, that the Supreme Power resides in the body of the people”.<sup>25</sup> More particularly, in substance a “republic” is a polity in which “the people” themselves possess “the Supreme Power” *capable of human exercise*—which is a “Power” derived from, subordinate to, consistent with, *and therefore necessarily limited by* “the Laws of Nature and of Nature’s God”. Under the aegis of that “Power” directly and those “Laws” ultimately, the “Government” “deriv[es] \* \* \* [its

<sup>19</sup> Compare and Contrast U.S. Const. art. I, § 8, cls. 15 and 16, with U.S. Const. art. I, § 8, cls. 12 through 14 and art. I, § 10, cl. 3, and with the dual status of the President as “Commander in Chief” under art. II, § 2, cl. 1.

<sup>20</sup> See Edwin Vieira, Jr., *Thirteen Words* (Ashland, Ohio: Bookmasters, Inc., 2013).

<sup>21</sup> Contrast U.S. Const. amend. II with art. I, § 10, cl. 3; art. I, § 8, cls. 12 through 14; art. II, § 2, cl. 1 (dual status of the President as “Commander in Chief”); and amend. V.

<sup>22</sup> See *Black’s Law Dictionary* (St. Paul, Minnesota: Thomas Reuters, Tenth Edition, 2014), at 1346.

<sup>23</sup> See the German noun “*Freistaat*” (“republic”) and the adjective “*freistaatlich*” (“republican”).

<sup>24</sup> U.S. Const. art. IV, § 4.

<sup>25</sup> *Chisholm v. Georgia*, 2 U.S. (2 Dallas) 419, 457 (1793) (opinion of Wilson, J.).

own] just powers”—and *nothing but* “just powers”—“from the consent of the governed”; with those “just powers” being delegated primarily for the purpose of “secur[ing]” men’s “unalienable Rights”.<sup>26</sup> “A well regulated Militia”, then, is “necessary to the security of [a Republic]” and is an integral, indispensable part of “a Republican Form of Government”. Indeed, it is the most important institution in which WETHEPEOPLE themselves participate.<sup>27</sup>

The Constitution mandates that “the United States shall guarantee to every State in this Union a Republican Form of Government”.<sup>28</sup> Therefore, the United States must guarantee the existence of “[a] well regulated Militia” in “every State”. Moreover, “every State” must always maintain “a Republican Form of Government” (or else the United States will be compelled to intervene in order to restore that “Form of Government”).<sup>29</sup> Therefore, “every State” must always maintain “[a] well regulated Militia”, according to the constitutional definition of such a “Militia”.<sup>30</sup>

c. Unfortunately, all too many Americans are at a loss today to understand why “[a] well regulated Militia” is “necessary to the security of a free State”, or even to comprehend what “[a] well regulated Militia”, “a free State”, and “a Republican Form of Government” are. But even if the Founding Fathers in the late 1700s might never have contemplated that such a situation could ever arise, its existence cannot support the conclusion that the Constitution should not be enforced as to the Militia in these times. For,

in determining whether a provision of the Constitution applies to a new [situation], it is of little significance that it is one with which the framers were not familiar. For in setting up an enduring framework of government they undertook to carry out for the indefinite future and in all the vicissitudes of the changing affairs of men, those fundamental purposes which the instrument itself discloses. Hence we read its words, not as \* \* \* subject to continuing revision with the changing course of events, but as the revelation of the great purposes which were intended to be achieved as a continuing instrument of government.<sup>31</sup>

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<sup>26</sup> See Declaration of Independence.

<sup>27</sup> See generally Edwin Vieira, Jr., *Three Rights* (Ashland, Ohio: Bookmasters, Inc., 2013).

<sup>28</sup> U.S. Const. art. IV, § 4.

<sup>29</sup> This, no doubt, is why the Constitution empowers Congress “[t]o provide for organizing, arming, and disciplining, the Militia”, even though “the Militia of the several States” are *the States’* institutions. Compare U.S. Const. art. I, § 8, cl. 15 with art. II, § 2, cl. 1.

<sup>30</sup> See Edwin Vieira, Jr., *Constitutional “Homeland Security”, Volume Two, The Sword and Sovereignty: The Constitutional Principles of “the Militia of the Several States”* (Front Royal, Virginia: CD-ROM Edition, 2012).

<sup>31</sup> *United States v. Classic*, 313 U.S. 299, 316 (1941).

So, notwithstanding the ignorance of many Americans on this score, all Americans must conclusively presume that the Founders understood perfectly well why “[a] well regulated Militia” is “necessary to the security of a free State” and to the maintenance of “a Republican Form of Government”—and therefore contemporary Americans, *including especially the President of the United States*, must interpret and apply the constitutional provisions dealing with the Militia “in such a manner as, consistently with the words, shall fully and completely effectuate the whole objects of [them]”.<sup>32</sup>

**B.** The plain and perilous problem today is that, notwithstanding (indeed, in blatant defiance of) the Constitution, *nowhere within “the several States” does a constitutionally proper “well regulated Militia” exist.* Since the turn of the Twentieth Century, most Americans eligible for the Militia have been, and still remain, consigned by statute to the so-called “unorganized militia”:

(a) The militia of the United States consists of all able-bodied males at least 17 years of age and \* \* \* under 45 years of age who are, or who have made a declaration of intention to become, citizens of the United States and of female citizens of the United States who are members of the National Guard.

(b) The classes of the militia are—  
 (1) the organized militia, which consists of the National Guard and the Naval Militia; and  
 (2) the unorganized militia, which consists of the members of the militia who are not members of the National Guard or the Naval Militia.<sup>33</sup>

It should be self-evident from the Constitution that no such thing as “the militia of the United States” can possibly exist.<sup>34</sup> It also should be obvious from the relevant statutory

<sup>32</sup> *Prigg v. Pennsylvania*, 41 U.S. (16 Peters) 539, 612 (1842). Even an individual completely ignorant of why a piece of machinery functions as it does can benefit from employing it for its intended purpose by following the manufacturer’s instructions for its use. Whereas no benefit whatsoever can be obtained from that machinery, even by an individual perfectly aware of the theory on which it operates, if it is not employed according to those instructions, let alone not put to use at all.

<sup>33</sup> 10 U.S.C. § 246. The States’ statutory codes follow this aberrant pattern, too. See generally Edwin Vieira, Jr., *Constitutional “Homeland Security”, Volume One, The Nation In Arms: A Call for Americans To Revitalize “the Militia of the several States”* (Ashland, Ohio: Bookmasters, Inc., 2007), Chapter Three.

<sup>34</sup> E.g., the Constitution identifies the Militia as “the Militia of the several States” at all times. U.S. Const. art. II, § 2, cl. 1 (emphasis supplied). Distinguishably, it specifies that the Militia “may be employed in the Service of the United States”, and may come under the President’s command “when in the actual Service of the United States”, for three explicitly defined purposes only—a contingency entirely incompatible with their always being institutions of the United

history, as well as from the Constitution, that the National Guard and the Naval Militia are not constitutional Militia (or even any sort of “militia”) at all, but instead are the “Troops, or Ships of War” which the States may “keep \* \* \* in time of Peace” “with[ ] the Consent of Congress”.<sup>35</sup> For the National Guard and the Naval Militia are not based upon near-universal, compulsory enrollment, but are composed of volunteers—their employments are not limited to the three purposes the Constitution specifies<sup>36</sup>—and they can be brought under the command of and incorporated within the regular Armed Forces, in violation of the Constitution’s explicit reservation of control of the Militia to “Officers” appointed by the States (other than the President of the United States).<sup>37</sup>

In addition, by definition “*unorganized militia*” are not constitutional Militia, either, whether “of the United States” or “of the several States”. In principle, in American experience the term “unorganized militia” is an oxymoron, or self-contradiction.<sup>38</sup> And in constitutional practice, the Militia must be organized, armed, disciplined, trained, and (when “employed in the Service of the United States”) governed by Congress for the three purposes the Constitution specifies,<sup>39</sup> and for all other purposes must be organized, armed, disciplined, trained, and governed by the States. (Nonetheless, as explained below, a President who fully understands the Constitution can employ “the unorganized militia” to begin revitalization of the Militia according to proper constitutional principles.)

States. See U.S. Const. art. I, § 8, cls. 15 and 16, and art. II, § 2, cl. 1.

<sup>35</sup> Compare, e.g., U.S. Const. art. I, § 10, cl. 3 with An Act To promote the efficiency of the militia, and for other purposes, Act of 21 January 1903, CHAP. 196, 32 Stat. 775; An Act To further amend the Act entitled “An Act to promote the efficiency of the Militia, and for other purposes,” approved January twenty-first, nineteen hundred and three, Act of 27 May 1908, CHAP. 204, 35 Stat. 399; An Act To provide for raising the volunteer forces of the United States in time of actual or threatened war, Act of 25 April 1914, CHAP. 71, 38 Stat. 347; and An Act For making further and more effectual provision for the national defense, and for other purposes, Act of 3 June 1916, CHAP. 134, 39 Stat. 166.

<sup>36</sup> See U.S. Const. art. I, § 8, cl. 15.

<sup>37</sup> Compare U.S. Const. art. I, § 8, cl. 16 with art. II, § 2, cl. 1. The confusion is evident in the unconstitutionally hermaphroditic character Congress has assigned to the National Guard. According to Congress, “‘Army National Guard’ means that part of the organized militia of the several States \* \* \* that \* \* \* has its officers appointed[ ] under the sixteenth clause of section 8, article I, of the Constitution”, and “means the reserve component of the Army all of whose members of the Army National Guard”. 32 U.S.C. § 101(4)(B) and (5). But according to the Constitution, the Army and the Militia are separate, distinct, and mutually independent establishments. See U.S. Const. art. I, § 8, cls. 12, 14, 15, and 16, and art. II, § 2, cl. 1. So the Militia can *never* serve as “reserve component[s] of the Army”. Distinguishably, if Congress and the States mutually consent, the “Troops” which the States may “keep \* \* \* in time of Peace” may serve in such a reserve capacity.

<sup>38</sup> See Edwin Vieira, Jr., *Constitutional “Homeland Security”, Volume Two, The Sword and Sovereignty: The Constitutional Principles of “the Militia of the Several States”* (Front Royal, Virginia: CD-ROM Edition, 2012), especially Chapter Thirty-four.

<sup>39</sup> See U.S. Const. art. I, § 8, cls. 15 and 16.

C. The times demand that the President not only be able, but that he be willing, to employ the Militia in order to fulfill his constitutional duty to “take Care that the Laws be faithfully executed”.<sup>40</sup>

1. It is hardly unpatriotic or impolitic, let alone unrealistic, to recognize that the governmental apparatus at every level of this country’s federal system is overrun with rogue public officials to whom “the Laws”, whether of the United States or of the several States, mean next to nothing. So, in a Trump Administration, fulfillment of the President’s duty to “take Care that the Laws be faithfully executed” will be his continual, compelling, and most challenging commission. In the performance of this constitutional duty, the President has a ready reserve of both necessary and sufficient constitutional forces at his disposal—forces which are neither composed of nor dependent upon rogue public officials. For the President is “Commander in Chief \* \* \* of the Militia of the several States, when called into the actual Service of the United States”;<sup>41</sup> and part of “the Service of the United States” as to which the Constitution explicitly assigns unique authority and responsibility to the Militia is “to execute the Laws of the Union”.<sup>42</sup> To this end, Congress has already “provide[d] for calling forth the Militia” under the President’s command against combinations too powerful to be suppressed by other means, everywhere within the United States:<sup>43</sup>

Whenever the President considers that unlawful obstructions, combinations, or assemblages, or rebellion against the authority of the United States, make it impracticable to enforce the laws of the United States in any State by the ordinary course of judicial proceedings, he may call into Federal service such of the militia of any State \* \* \* as he considers necessary to enforce those laws or to suppress the rebellion.<sup>44</sup>

The 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

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<sup>40</sup> U.S. Const. art. II, § 3.

<sup>41</sup> U.S. Const. art. II, § 2, cl. 1.

<sup>42</sup> U.S. Const. art. I, § 8, cl. 15.

<sup>43</sup> See U.S. Const. art. I, § 8, cl. 15 and art. II, § 2, cl. 1.

<sup>44</sup> 10 U.S.C. § 252.

United States within the State, that any part of 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 laws of the United States or impedes the course of justice under those laws.

In a situation covered by clause (1), the State shall be considered to have denied the equal protection of the laws secured by the Constitution.<sup>45</sup>

2. The immediate question is: “Under the present dire straits in which this country finds itself, what are the most pressing tasks a *constitutional* President should undertake pursuant to this authority?” This study cannot address every problem to the solution of which “calling forth the Militia” would be useful. (Indeed, many of the matters addressed in Mr. Trump’s excellent survey of the ground would require other approaches.<sup>46</sup>) But the following stand out—

a. Having the Militia available would be necessary to protect President Trump from some new and equally deadly “Dealey Plaza Event”.<sup>47</sup>

The governmental agencies usually assigned to guard the President’s person in one fashion or another (the Secret Service, the FBI, the CIA, various intelligence-units of the Armed Forces, State and Local police, *et cetera*) proved themselves feckless with respect to the successful assassinations of President Kennedy and Senator Robert Kennedy, and almost useless with respect to the attempted assassinations of Presidents Reagan and Ford. President Trump’s enemies will have at least as much, if not far more, reason to eliminate him as or than their predecessors did for any of the latter four victims. So President Trump would be imprudent in the extreme to disbelieve that those events were conspiracies in which some rogue officials participated and the details of which others covered up; to assume that such an *Attentat* would never be staged with him as its target; or to expect that those agencies

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<sup>45</sup> 10 U.S.C. § 253.

<sup>46</sup> See Donald J. Trump, *Crippled America: How To Make America Great Again* (New York, New York: Threshold Editions, 2015).

<sup>47</sup> Unfortunately, without the coöperation of the present resident of the White House, the Militia cannot be deployed to protect Mr. Trump as a mere candidate for the Presidency.

tasked with his protection would not once again prove as inept as they did in the past. He would be no less remiss even if he accepted the simplistic explanation that those events involved only “lone gunmen”. The proper measure of vigilance and caution would require that members of the Militia *recruited on the basis of their complete loyalty to the President* be deployed as liaison to and observers of the aforesaid agencies in order to ensure that their protective functions were scrupulously carried out, and any necessary supplementary measures put into effect.

b. Having the Militia on hand in a Trump Administration would be necessary to maintain adequate surveillance over and control of the Pentagon as well as of various civilian “intelligence agencies”. America’s “military-industrial” and “national-security” complexes are effectively out of control. They promote, foment, and engage in reckless military adventures abroad and violate the Constitution (especially the Fourth Amendment) with impunity at home. They must be compelled to conform to “the Laws of the Union”, lest they become *ersatz* “laws” unto themselves, and thereby assume the powers of a veritable “shadow government” concerned primarily with advancing the interests of a “standing army”.<sup>48</sup> As their past behavior and present excesses evidence, the “military-industrial” and “national-security” complexes will never conform to the “Laws of the Union” on their own initiatives.<sup>49</sup> And the civilian agencies upon which reliance has traditionally been placed for general “law enforcement” have demonstrated their inability, unwillingness, or incompetence to deal with this danger (if not their complicity in promoting it).

The constitutional authority and responsibility of the Militia “to execute the Laws of the Union” embrace *all* of “the Laws”, and therefore reach *all* of the individuals and institutions to which those “Laws” pertain.<sup>50</sup> Inasmuch as the Constitution provides for no exceptions to this authority and responsibility, no exceptions can be allowed.<sup>51</sup> Therefore,

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<sup>48</sup> Worth recollection is that the Declaration of Independence denounced King George III because “[h]e has affected to render the Military independent of and superior to the Civil power”. See also Edwin Vieira, Jr., *Constitutional “Homeland Security”, Volume Three, By Tyranny Out of Necessity: The Bastardy of “Martial Law”* (Ashland, Ohio: Bookmasters, Inc., Revised & Expanded Second Edition, 2014, 2016).

<sup>49</sup> President Dwight D. Eisenhower explicitly warned Americans about this danger. And, apparently, President John F. Kennedy took Eisenhower’s admonition to heart—but, according to some researchers, with fatal consequences to himself. See, e.g., James W. Douglass, *JFK and the Unspeakable: Why He Died and Why It Matters* (New York, New York: Touchstone, 2008).

<sup>50</sup> U.S. Const. art. I, § 8, cl. 15.

<sup>51</sup> See, e.g., *Rhode Island v. Massachusetts*, 37 U.S. (12 Peters) 657, 722 (1838); *Fletcher v. Peck*, 10 U.S. (6 Cranch) 87, 137 (1810); *Martin v. Hunter’s Lessee*, 14 U.S. (1 Wheaton) 304, 338-339 (1816); *Richfield Oil Co. v. State Board of Equalization*, 329 U.S. 69, 76-78 (1946).

that the Militia may “execute the Laws” applicable to civilian governmental agencies and personnel cannot be doubted. Besides being the subjects of various general “Laws” applicable as well to civilians, the Armed Forces operate according to special “Rules for the Government and regulation of the land and naval Forces”.<sup>52</sup> These “Rules”, too, are “Laws of the Union”, and as such fall within the authority and responsibility of the Militia “to execute”, at least to the extent of ensuring that the Armed Forces fully comply with them. The Militia can be trusted to perform this task because they are not part of the “standing army”,<sup>53</sup> and because (other than the President himself) their “Officers” are appointed by the States.<sup>54</sup>

c. In a Trump Administration intent upon fulfillment of the President’s duty to “take Care that the Laws be faithfully executed”,<sup>55</sup> the Militia would be necessary to ferret out and bring before the bar of justice the very worst of all lawbreakers—namely, rogue public officials who misuse their positions in order to violate “the Laws of the Union” and of the several States in their own interests and in the interests of the dangerous private factions they serve.<sup>56</sup> No one can be “too big to jail”, simply because he has insinuated himself into some public office, no matter how high it may be. Indeed, quite the opposite. Inasmuch as all public officials are, first and foremost, “bound by Oath or Affirmation, to support th[e] Constitution”,<sup>57</sup> their wrongdoing should be punished with especial speed and severity.

Numerous governmental “alphabet agencies” are notorious for their officials’ and employees’ routinely imperious and abusive conduct towards average Americans—conduct which in individual cases results in grotesque (albeit unpunished) violations of the victims’ civil rights,<sup>58</sup> and which in gross supports the indictment that these agencies are “enterprises” being administered through “patterns of racketeering activity” (but again, without punishment).<sup>59</sup> The Militia would be eminently suitable to investigate and suppress these

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<sup>52</sup> U.S. Const. art. I § 8, cl. 14.

<sup>53</sup> Compare and contrast U.S. Const. art. I, § 8, cls. 15 and 16 with art. I, § 8, cls. 12 through 14 and § 10, cl. 3, and art. II, § 2, cl. 1.

<sup>54</sup> Compare U.S. Const. art. I, § 8, cl. 16 with art. II, § 2, cl. 1.

<sup>55</sup> U.S. Const. art. II, § 3.

<sup>56</sup> According to James Madison, renowned as “the Father of the Constitution”, a “faction” comprises “a number of citizens, whether amounting to a majority or minority of the whole, who are united and actuated by some common impulse of passion, or of interest, *adverse to the rights of other citizens, or to the permanent and aggregate interests of the community*”. *The Federalist* No. 10 (emphasis supplied).

<sup>57</sup> U.S. Const. art. VI, cl. 3.

<sup>58</sup> See, e.g., 18 U.S.C. §§ 241 and 242.

<sup>59</sup> See 18 U.S.C. § 1961 *et seq.*

rogue officials’ misbehavior, for two reasons. First, the members of the Militia assigned to that duty would have no personal interests in condoning or covering up such wrongdoing. Second, because the pool from which members of the Militia would be drawn would be almost coextensive with this country’s entire adult population, it would be easy to enlist individuals with significant expertise in the areas in which the agencies under scrutiny operate.

d. Deployment of the Militia also would enable a Trump Administration to bring to justice those wrongdoers in the private sector—particularly in the fields of banking, high finance, and other shady speculative ventures—whose economic power and political influence have rendered them *both* “too big to fail” *and* “too big to jail” under all previous Administrations, notwithstanding the egregious damage their misbehavior has inflicted, and continues to inflict, upon America’s economy. That Americans now find themselves confronted by a gaggle of enterprises and individuals—which and who as the consequence of their immunities from the laws of economics as well as the laws of the land can hold the entire country hostage to their financial depredations, seemingly forever—demonstrates either the utter imbecility and impotence of “government” in this country, or that “government” operates simply as a front for the extortionate demands of avaricious factions and other special interests, or both. A major purpose of the Government of the United States is to “promote the general Welfare”,<sup>60</sup> not feed the insatiable avarice of a minuscule percentage of the population at the expense of everyone else. When that Government’s normal procedures for “excute[ing] the Laws of the Union” no longer serve that purpose,<sup>61</sup> the extraordinary procedure of “calling forth the Militia” must be followed.

e. The ability to rely on the Militia would enable a Trump Administration to investigate such cases as the 9/11 event, rather than to acquiesce in the thick coats of official whitewash which have heretofore been applied to them. For the salient example, no careful observer believes that an adequate official explanation of 9/11 has yet been provided.<sup>62</sup> And such an explanation will *never* be forthcoming, until all available records are made public, and unless investigators, not only with plenary authority, but more importantly with no personal interests in adhering to the official, but self-evidently false, “conspiracy theory” of 9/11 are assigned to the case. As proven by the failure, neglect, or refusal of every public official, at

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<sup>60</sup> U.S. Const. preamble.

<sup>61</sup> See U.S. Const. art. I, § 8, cl. 15, *implemented through*, e.g., 10 U.S.C. §§ 252 and 253.

<sup>62</sup> See, e.g., the partial demolition of the 9/11 Commission’s report, in John Farmer, *The Ground Truth: The Untold Story of America Under Attack on 9/11* (New York, New York: Riverhead Books, 2010).

every level of the federal system, to conduct an adequate inquiry into this matter, *only* the Militia would have, not only the constitutional authority and responsibility, but also the integrity, incorruptibility, and competence to perform such an investigation, letting all of the chips fall where they may. And, through their authority “to execute the Laws” against secretive and recalcitrant public officials, the Militia would enjoy ample power to bring the facts to light.<sup>63</sup>

True enough, such an investigation could prove to be a time-consuming and difficult undertaking. But, through the Militia, a Trump Administration could readily assemble an extensive team composed of the outstanding credible critics of the official “conspiracy theory” of 9/11, who could participate as investigators, expert analysts, and consultants—including, for instance, physical scientists; architects and engineers; police, fire, and other emergency-management people; experts in controlled demolitions of high-rise structural-steel buildings; forensic examiners of airplane crashes, and of incidents involving explosives and arson; and attorneys with expertise in criminal law who could delve deeply into the original, strangely suspicious mishandling of the crime scene at 9/11’s “Ground Zero”. Once invested with actual governmental authority as members of the Militia, and put to work “execut[ing] the Laws of the Union” in that capacity, these individuals could not be dismissed and defamed by the airheads and bimbos of the big “mainstream media” as merely disgruntled private “conspiracy theorists”.

f. Mr. Trump has correctly recognized the imminent danger to this country from the present on-going invasion by illegal aliens.<sup>64</sup> That deployment of the Militia would obviously provide the most effective possible response to this threat needs no detailed explanation here.<sup>65</sup>

g. As the result of suffering enterprises and individuals in the financial sector of its economy to become “too big to fail” and “too big to jail” over the last several decades, this country has now been driven into the tight corner where it must come to grips with serial economic crises and attendant social dislocations and political unrest, but without adequate preparation. (i) If the Militia were not called forth to deal with these problems, a Trump

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<sup>63</sup> See 18 U.S.C. §§ 1001, 1505, 1512, 1513, 1515, and 2071.

<sup>64</sup> See Donald J. Trump, *Crippled America: How To Make America Great Again* (New York, New York: Threshold Editions, 2015), Chapter 3.

<sup>65</sup> See, e.g., Edwin Vieira, Jr., “How the President Can Secure the Borders” (18 August 2015), and “A Trumped-Up Controversy” (20 February 2016), *archived at* <[www.newswithviews.com](http://www.newswithviews.com)>.

Administration would be beset with intense political pressure to impose some variant of “martial law” as the only way to deal with a nationwide calamity arising out of hyperinflation, depression, or the one followed by the other. To accede to such pressure would constitute the gravest constitutional blunder any Administration has ever made<sup>66</sup>—and one that could easily prove irreparable. (ii) Even if the possibility of “martial law” could be discounted, “well regulated Militia” in each State would be the *only* institutions with sufficient manpower to deal effectively with a truly nationwide crisis, whatever its source and effects.

**h.** This country cannot secure financial stability, in either the private or the public sector, without reinstating an honest, constitutional, and economically sound currency. Although a good first step on the right path, auditing the Federal Reserve System is not enough. For, besides being unconstitutional root and branch, the Federal Reserve System is an engine of “central economic planning” which has proven itself unworkable in both theory and practice.<sup>67</sup> So a Trump Administration must plan, not simply to remedy the System’s irremediable faults, but instead to eliminate it entirely.<sup>68</sup> This would require the introduction of alternative currencies, composed of silver and gold, to compete with Federal Reserve Notes in the free market.

The constitutionally most suitable means for the adoption of such alternative currencies would be to implement the right, power, and duty of the States to “make \* \* \* gold and silver Coin a Tender in Payment of Debts” within their jurisdictions.<sup>69</sup> By creating a State depository for gold and silver, Texas has already taken the first step towards this goal. For completion of this process, the Militia could play an indispensable role.<sup>70</sup>

**i.** Mr. Trump has already recognized that America’s educational systems are woefully

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<sup>66</sup> See Edwin Vieira, Jr., *Constitutional “Homeland Security”, Volume Three, By Tyranny Out of Necessity: The Bastardy of “Martial Law”* (Ashland, Ohio: Bookmasters, Inc., Revised & Expanded Second Edition, 2014, 2016).

<sup>67</sup> See generally Edwin Vieira, Jr., *Pieces of Eight: The Monetary Powers and Disabilities of the United States Constitution* (Chicago, Illinois: R R Donnelley & Sons, Inc., GoldMoney Foundation Special Edition [2011] of the Second Revised Edition, 2002).

<sup>68</sup> See, e.g., Edwin Vieira, Jr., “A Cross of Gold” (10 May 2011), *archived at* <[www.newswithviews.com](http://www.newswithviews.com)>.

<sup>69</sup> See U.S. Const. art. I, § 10, cl. 1, *implementation of which explained in* Edwin Vieira, Jr., *An Introductory Primer on the Constitutional Authority of the States To Adopt an Alternative Currency* (2011), *at* <[http://www.nvcca.net/docs/Econ/Alternative\\_Currency\\_Defense\\_2\\_\(Vieira\).pdf](http://www.nvcca.net/docs/Econ/Alternative_Currency_Defense_2_(Vieira).pdf)>

<sup>70</sup> See Edwin Vieira, Jr., *Constitutional “Homeland Security”, Volume Two, The Sword and Sovereignty: The Constitutional Principles of “the Militia of the Several States”* (Front Royal, Virginia: CD-ROM Edition, 2012), Chapter 42, § E.5.

inadequate.<sup>71</sup> Nowhere does this incompetence—if not actual premeditated malicious sabotage—stand out more starkly than with respect to young Americans’ woeful ignorance of this country’s organic laws, the Declaration of Independence and the Constitution. When the Militia are revitalized, courses in the principles and practices of the latter institutions could (and should) be made mandatory in every secondary and high school, in order to prepare the students for their eventual Militia service. Central to these courses would be the rôle the Militia play in implementing the Declaration and the Constitution, the explanation of which would necessarily entail thoroughgoing instruction of the students in the *true* meaning and application of the entirety of those documents. Among other benefits, this would end the present-day misuse of the schools by administrators and teachers’ unions as centers for brainwashing impressionable youth in favor of “gun control” and related *anti-American* doctrines.<sup>72</sup>

## II. HOW REVITALIZATION OF THE MILITIA OF THE SEVERAL STATES COULD BE ACCOMPLISHED UNDER PRESENT CONDITIONS.

As explained above, a Trump Administration would need to deploy the Militia in order “to execute the Laws of the Union” against combinations too powerful to be suppressed by other means. Under his present statutory authority, the President “may call into Federal service *such of the militia of any State \* \* \* as he considers necessary to enforce those laws*”.<sup>73</sup> This would empower a Trump Administration to call forth detachments from “the unorganized militia” in such numbers and with such skills, equipment, and training as the President might specify and arrange to supply.<sup>74</sup> These initial deployments would then form the foundations for full revitalization of the Militia as time went on.

Although the General Government and the States could probably be induced to provide sufficient funding for these deployments in their early stages, a Trump Administration would likely have to contend with resistance and obstruction from an uncooperative Congress and some States’ legislatures when additional money was required. For an unreconstructed political Establishment would be loathe to assist the Militia in “execut[ing]

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<sup>71</sup> See Donald J. Trump, *Crippled America: How To Make America Great Again* (New York, New York: Threshold Editions, 2015), Chapter 5.

<sup>72</sup> See *id.*, Chapter 11. In fulfillment of *their* Militia service, school administrators and instructors would be required to provide and teach these courses, *completely and correctly*, according to a constitutionally proper syllabus.

<sup>73</sup> 10 U.S.C. § 252 (emphasis supplied).

<sup>74</sup> See, e.g., 10 U.S.C. §§ 272, 273, 274, 280, 281, and 2576.

the Laws of the Union” against that very Establishment’s own members and clients.

As “Commander in Chief \* \* \* of the Militia of the several States”,<sup>75</sup> however, the President could solicit voluntary contributions from all those enrolled in “the unorganized militia” who were not called forth. As this set would embrace *tens of millions* of Americans, even meager individual contributions should provide more than sufficient revenue to support those relatively few members of the Militia on active duty. Surely, those Americans who had voted for Mr. Trump, as well as many others who came to realize after his election that deployment of the Militia “to execute the Laws” was in their personal as well as their country’s interests, would contribute without demur. And if lists of contributors were published in each Locality, shirkers would be shamed into doing their part as well. Later on, as revitalization of the Militia proved its worth, those who were not called forth could be assessed a modest, but compulsory fee as the price for their exemptions from active service.<sup>76</sup>

### III. WHY ORDINARY AMERICANS WOULD SUPPORT REVITALIZATION OF THE MILITIA.

To promote revitalization of the Militia as an issue in the Trump Campaign would be merely quixotic if patriotic Americans could not be expected to rally behind the Militia, either with their own personal participation or with financial contributions to defray the costs of others’ efforts. To be sure, many average Americans may not support revitalization now; but that is only because no one in or aspiring to high public office has raised it as an issue. Once the value of revitalization has been explained to them, Americans from all walks of life will understand and champion it.

A. Most Americans *do* want “to make America great again”. America can *never* be “great” in the constitutional sense, however, unless and until Americans once more live in “a free State”—which requires that “[a] well regulated Militia” exist in every State.<sup>77</sup> Americans will pay attention and respond in an affirmative and enthusiastic fashion when the Trump Campaign reminds them of this.

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<sup>75</sup> U.S. Const. art. II, § 2, cl. 1.

<sup>76</sup> See Edwin Vieira, Jr., *Constitutional “Homeland Security”, Volume Two, The Sword and Sovereignty: The Constitutional Principles of “the Militia of the Several States”* (Front Royal, Virginia: CD-ROM Edition, 2012), Chapter 36, § G.

<sup>77</sup> See U.S. Const. amend. II.

**B.** After all, common Americans can appreciate how revitalization of the Militia will provide them with credible hope for meaningful change, because they will then have under their *very own* control their *very own* institutions of government ready, willing, and especially able to enforce their *very own* constitutional and other civil rights *with their very own constitutional authority*. Those (or any) rights are worthless without a sure and certain remedy for their enforcement. “A right without a remedy is as if it were not. For every beneficial purpose it may be said not to exist.”<sup>78</sup> No such sure and certain remedy now exists, though—for the simply reason that no effective remedy against violation of those rights can be applied *by the American people themselves*. Rather, at every level of the federal system, rogue public officials who have usurped a monopoly on the execution (or, worse yet, lack of execution) of the laws daily disregard or even ride roughshod over common Americans’ rights, with scant fear of legal resistance, retaliation, or any other remedial action against them. Revitalization of the Militia will rectify this sorry situation—to the general applause of the population.

Revitalization of the Militia will finally afford ordinary Americans a direct and decisively powerful say in the day-to-day running of what, under the Declaration of Independence and the Constitution, are supposed to be their very own governments at every level of the federal system. The Militia will return adequate surveillance, supervision, transparency, and especially accountability to the public service: *no one* will be “too big to jail” when common Americans themselves actually “execute the Laws of the Union” as the Constitution explicitly authorizes them to do.<sup>79</sup>

**C.** Finally, no one can deny either the political or the practical wisdom and value of bringing ordinary Americans into the provision of “homeland security” through the Militia. The more control over, and especially participation in, “homeland security” evolves away from bureaucracies ensconced in the District of Columbia to become centered instead in the several States and their myriad Localities, the better. Common-sense preparedness must minimize Americans’ dependence upon a distant, aloof, exorbitantly expensive, largely incompetent, and increasingly irresponsible central government, and instead must maximize their self-reliance where *they* live and work, which in the final analysis are the places *they* need, want, *and are entitled* to defend to the best of their own abilities.

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<sup>78</sup> United States *ex rel.* Von Hoffman v. City of Quincy, 71 U.S. (4 Wallace) 535, 554 (1867). *Accord*, Poindexter v. Greenhow, 114 U.S. 270, 303 (1885); Marbury v. Madison, 5 U.S. (1 Cranch) 137, 162-163 (1803).

<sup>79</sup> See U.S. Const. art. I, § 8, cl. 15.

“Homeland security” localized through the Militia will prove to be more effective than any other arrangement, because Local people—being far more aware of both Local dangers and Local resources, *and far more concerned with successfully applying those resources to deal with those dangers in their own best interests*, than any bureaucrats in the District of Columbia can possibly be—can prepare and put into operation the most effective plans for responses to any conceivable emergencies. Through the Militia, these plans will involve the entirety of Local communities, drawing not just on sheer numbers of citizens but also on those citizens’ diverse knowledge, training, skills, and experiences, with unique applicability to Local conditions. Therefore, responses to emergencies can be implemented in the most expeditious and effective fashions possible, because the necessary people will already be on the scene, prepared to act in the manners peculiarly suited to the special situations confronting them.

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