

S T O D D A R D F O R C O N G R E S S

— Utah's 3rd Congressional District —

On the Rights and Duties of the Second Amendment

*A Grammatical and Structural Reading of the
Second Amendment*

*“A well regulated Militia, being necessary
to the security of a free State, the right of
the people to keep and bear Arms, shall
not be infringed.”*

— U.S. Const. amend. II

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I. The Question of Construction

The Second Amendment to the Constitution of the United States is, by some distance, the most contested twenty-seven words in the American Constitutional inheritance. The contest has been waged for more than a century in courtrooms, in legislatures, in scholarly journals, and in the public political discourse, and the contest is now largely understood as a quarrel between two camps: those who read the amendment as acknowledging an individual right to keep and bear arms, and those who read it as a collective right tethered to militia service. The quarrel is not, however, principally one of evidence. The evidence is largely settled; the historical record is voluminous and consistent. The quarrel is one of construction — of how the sentence is to be parsed, and of what follows from that parsing.

The argument advanced here is that the dominant framings on both sides have misread the grammar, and that a correct reading yields a position more defensible than either, and at the same time recovers the substantive concerns that animate the militia-centered tradition without inheriting its structural vulnerabilities. The paper proceeds in three movements:

1. The first establishes, on grammatical grounds, the relation between the amendment's two clauses and the primacy of the right.
2. The second examines the leading militia-centered reading — that of Dr. Edwin Vieira, Jr. — and demonstrates that its substantive concerns are better served by a reframing that grounds the right pre-politically while preserving the structural force of the militia clause.
3. The third applies the integrated reading to the question of State and citizen duty under the militia provisions of Article I and the Second Amendment, with attention to the present condition of institutional default.

A subsequent paper will treat the question of restoration. The present paper confines itself to diagnosis: what the amendment says, what it presupposes, and what has happened to the institutional structure it was designed to preserve.

II. The Grammar of the Amendment

The amendment comprises twenty-seven words divided into two clauses. The first thirteen words — “*A well regulated Militia, being necessary to the security of a free State*” — constitute an *absolute phrase*, a participial construction grammatically independent of the sentence’s main clause.¹ The construction consists of a substantive (*Militia*) modified by a participial phrase (*being necessary...*). It modifies the entire main clause but is not itself a subordinate clause introduced by a conjunction, nor does it govern the main clause in any conditional or restrictive sense. The main clause — the last fourteen words — is the operative declaration: “*the right of the people to keep and bear Arms, shall not be infringed.*”

The construction is the English equivalent of the Latin ablative absolute and the Greek genitive absolute — both of which were familiar to the framers as instruments for expressing attendant circumstance, cause, or rationale alongside an independent declaration. The framers, writing in a prose style heavily shaped by classical models, deployed the construction here precisely because it permits the statement of a motivating consideration without grammatically conditioning the main assertion upon it. Had they intended a conditional or restrictive guarantee, the natural English construction was readily available to them: an introductory subordinate clause beginning with “Provided that,” “Insofar as,” or “If.” They used none of these. The choice of the absolute construction is, on its face, a choice to state a reason alongside a declaration, not a reason that constitutes the declaration.

Two structural features of the sentence confirm the reading. First, the absolute phrase could be excised entirely and the remaining sentence would stand grammatically and semantically complete: “The right of the people to keep and bear Arms shall not be infringed.” Conversely, the militia clause cannot stand alone as a sentence — it lacks a finite verb governing an independent assertion. Whatever can be removed without destroying the sentence is, by definition, not the sentence’s

¹The Latin construction is the *ablativus absolūtus*; the Greek equivalent is the genitive absolute. Both deploy a substantive plus a participle, grammatically detached from the main clause, to express attendant circumstance, cause, time, or condition. The English nominative absolute preserves the syntactic logic in inflectionally simpler form. See J. B. Greenough et al., *Allen and Greenough’s New Latin Grammar for Schools and Colleges* (Boston: Ginn & Co., 1903), §§ 419–420; Herbert Weir Smyth, *Greek Grammar*, rev. Gordon M. Messing (Cambridge, MA: Harvard University Press, 1956), §§ 2070–2075.

principal load-bearing element. Second, the subject of the main clause (“the right of the people”) is distinct from the subject of the absolute (“a well regulated Militia”). This grammatical separation is precisely what defines the construction as absolute rather than as a dependent modifier of the main clause’s subject. The right is acknowledged as belonging to the people, not to the militia; the militia clause supplies rationale, not subject.

The right is therefore grammatically primary. It is the subject of the only main clause in the sentence and bears the operative verb phrase *shall not be infringed*. The militia clause is syntactically subordinate in the sense relevant to legal interpretation — it supplies the *causa inscribendi*, the reason this particular acknowledgment is being inscribed in this particular instrument, but it does not supply the *causa essendi* of the right itself. The right’s existence and ground are anterior to the Constitution; the amendment acknowledges what is, and forbids its infringement. This is the architecture of the Bill of Rights generally, made explicit by the Ninth Amendment: rights are recognized, not granted, and the enumeration of some does not deny or disparage others.²



III. What the Militia Clause Asserts

The amendment makes exactly one assertion about the militia, contained within the absolute phrase: that a well regulated Militia is necessary to the security of a free State. The assertion is dense, and three of its elements warrant separate examination.

First, the qualifier *well regulated*. In late-eighteenth-century usage, this construction does not denote the imposition of administrative regulation in the

²U.S. Const. amend. IX: “The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.” The architecture is acknowledgment, not origination. See John Locke, *Two Treatises of Government*, ed. Peter Laslett, student ed. (Cambridge: Cambridge University Press, 1988), II. §§ 4–15, 123–131 (natural rights antecedent to civil society); William Blackstone, *Commentaries on the Laws of England*, 4 vols. (Oxford: Clarendon Press, 1765–1769), 1:139–144 (auxiliary right of having arms suitable to condition and degree, as ancillary to the absolute rights of personal security, personal liberty, and private property).

modern sense. It denotes a condition of proper functioning, discipline, and order — the sense preserved in the period phrase “*a well-regulated clock*,” which is a clock in good working order, not a clock subjected to government oversight.³ A well-regulated militia is one trained, equipped, organized, and capable of performing its function. The qualifier specifies the institutional standard the militia is to meet; it does not specify the agent responsible for meeting it.

Second, the term *Militia* as the framers used it. The framers’ militia was the body of the people themselves under arms — what the colonial militia statutes uniformly called the *general militia*, comprising essentially all able-bodied free men within a broad age range.⁴ It was not a selected force, not a volunteer force, not a professional cadre. It was, definitionally, the citizenry in its capacity to bear arms in common defense. The framers distinguished this institution sharply from what they called a *select militia* (a chosen and trained subset of the population) and from a *standing army* (a permanent professional force), both of which they distrusted as concentrations of armed power separated from the body politic.

Third, the phrase *the security of a free State*. The indefinite article and the qualifier do Constitutional work. The militia secures not *the State* in the bare sense of the governmental apparatus, but *a free State* — a polity in the condition of freedom. The framers, drawing on the English Whig tradition and on classical republican sources, understood the militia’s purpose to extend beyond external defense and internal suppression of disorder to include the structural counterbalance against domestic tyranny.⁵ A militia composed of the armed citizenry was the institutional alternative

³*District of Columbia v. Heller*, 554 U.S. 570, 597 (2008) (Scalia, J.): “Finally, the adjective ‘well-regulated’ implies nothing more than the imposition of proper discipline and training.” The Court’s reading tracks the eighteenth-century functional sense of *in good working order*, citing Samuel Johnson, *A Dictionary of the English Language* (London: W. Strahan, 1755), s.v. “Regulate.”

⁴George Mason, Address to the Virginia Ratifying Convention (June 14, 1788), in Jonathan Elliot, ed., *The Debates in the Several State Conventions on the Adoption of the Federal Constitution*, 2d ed., 5 vols. (Philadelphia: J. B. Lippincott, 1836–1845), 3:425–426: “I ask, sir, what is the militia? It is the whole people, except a few public officers.” Compare “Federal Farmer,” Letter XVIII (Jan. 25, 1788), in Herbert J. Storing, ed., *The Complete Anti-Federalist*, 7 vols. (Chicago: University of Chicago Press, 1981), 2.8.97 (vol. 2, pp. 341–342): “A militia, when properly formed, are in fact the people themselves ... and include all men capable of bearing arms.”

⁵James Madison, *Federalist* No. 46 (Jan. 29, 1788), in Jacob E. Cooke, ed., *The Federalist* (Middletown, CT: Wesleyan University Press, 1961), 321: “To these would be opposed a militia amounting to near half a

to government by standing army; it was, in Madison's calculation, the load-bearing mechanism by which free polity remained free.

The modal force of the assertion is also worth marking. The phrase is "*being necessary*," not "*being useful*," not "*being one means among many*." The framers claim a relation of necessity between the well-regulated militia and the condition of free statehood. Whether one accepts this claim on its merits is a separate question; the text inscribes it as a Constitutional assertion, and a reading that takes the text seriously must take the modal force seriously as well.

IV. The Relation Between the Two Clauses

The grammatical analysis establishes that the right is primary and the militia clause supplies rationale. But this conclusion, standing alone, is insufficient. It tells us what the sentence asserts; it does not yet tell us what relation holds between the two assertions. Two readings of that relation must be considered and rejected before the correct reading can be stated.

The first incorrect reading treats the militia clause as *decorative* — as historical throat-clearing without operative significance. This reading is favored by some elements of the contemporary individual-rights tradition, which prefers to argue the right as if the first thirteen words were not there. The reading is grammatically permissible but interpretively impoverished. The framers did not include thirteen words of decoration in a document where every word was contested and debated. The militia clause does work; the question is what work.

The second incorrect reading treats the militia clause as *constitutive* — as the legal source from which the right derives and on which it depends. This is the reading pressed by the collective-rights tradition and, in a more sophisticated form, by Dr. Edwin Vieira, Jr., whose booklet *Thirteen Words* argues that the militia clause is Constitutionally operative and that the right is to be understood within and through

million of citizens with arms in their hands, officered by men chosen from among themselves, fighting for their common liberties, and united and conducted by governments possessing their affections and confidence." Madison here names the militia as the structural counterweight to any federal standing force.

the institution of the militia.⁶ Vieira's substantive concern — that the militia clause not be reduced to vestigial ornament — is correct and important. But his framing makes the right institutionally derivative, and this creates three serious vulnerabilities.

First, the framing concedes the grammar to its opponents and must then argue uphill against the absolute construction, the unconditioned main clause, and the natural-rights architecture of the Bill of Rights generally. Second, the framing hands the disarmament project a lever: if the right is institutionally derivative, then where the institution has lapsed — and the Constitutional militia has indeed largely lapsed — the right becomes correspondingly attenuated. The right is rendered hostage to an institutional revival its opponents control the levers of preventing. Third, the framing isolates the right from its natural coalition within the broader natural-rights tradition, defending it on institutional-historical grounds available only to those already persuaded of the framers' specific militia theory.

The correct reading runs in the opposite direction from Vieira's, and preserves his substantive concern on stronger ground. The militia clause states the occasioning purpose of the inscription; the main clause performs the securing act. The right is acknowledged here, in this instrument, because acknowledging it secures the institutional precondition the militia clause names as necessary. A well-regulated militia presupposes an armed populace; the institution cannot exist in its Constitutionally contemplated form without the antecedent condition. If the right to keep and bear arms were infringed, the militia could not exist in the framers' sense — it would collapse into either a disarmed populace (no militia at all) or a state-selected armed force (a standing army by another name). The right is therefore logically prior to the militia as its enabling condition, even while the militia clause is rhetorically prior in the amendment as the occasioning rationale.

The structure thus reads, in compressed Latinate form: *given that X is necessary, the precondition of X shall not be infringed* (where X is the militia and its precondition is

⁶Edwin Vieira, Jr., *Thirteen Words* (Ashland, OH: Bookmasters, 2013). Vieira's broader corpus on the militia question includes *The Sword and Sovereignty: The Constitutional Principles of 'the Militia of the Several States'* (CD-ROM ed., 2012) and *Three Rights* (Ashland, OH: Bookmasters, 2013). The critique advanced here is directed at Vieira's framing, not his substantive concern, which is largely sound and substantially shared.

[the right to keep and bear arms](#)). The right is grounded pre-politically — in natural right, common law, and the inherent prerogative of a free people — and is therefore unconditioned in its existence. Its acknowledgment in *this* amendment is occasioned by the framers' judgment that the well-regulated militia is necessary to free polity. The right and the militia are *coupled in purpose*, not *fused in derivation*. A polity that wishes to honor the amendment's full Constitutional logic — not merely its minimum textual command — will both refrain from infringing the right *and* attend to the institutional conditions of a well-regulated militia. The first is mandatory under the operative clause; the second is the Constitutionally commended purpose toward which the first is, among other things, ordered.



V. The Constitutional Architecture of the Militia

The militia clause of the Second Amendment does not stand alone. It is embedded within a broader Constitutional architecture that everywhere presupposes the existence of the militia as an institution. Article I, § 8, cls. 15–16 partition authority over *the Militia* — note the definite article — between Congress and the several States.⁷ Congress may call forth the militia for three enumerated purposes (to execute the laws of the Union, suppress insurrections, and repel invasions), and may organize, arm, and discipline it, and govern such part as is in actual service of the United States. The appointment of officers and the training of the militia according to the discipline prescribed by Congress is reserved to the States.

This partition is structurally significant. The federal role is regulatory and occasional; the institutional locus is the State. The Constitution does not authorize the militia into being; it presupposes the institution and partitions authority over it. The framers, writing within a tradition in which the militia was a centuries-old colonial and English institution, did not understand themselves to be creating a

⁷U.S. Const. Art. I, § 8, cls. 15–16. Note the consistent use of the definite article: “the Militia” — denoting an institution presupposed, not authorized into being by these clauses. The Constitution everywhere assumes the militia already exists; the clauses partition authority over it. See also U.S. Const. amend. II (“A well regulated Militia” as an established referent) and U.S. Const. amend. V (recognizing “cases arising ... in the Militia, when in actual service in time of War or public danger”).

militia. They understood themselves to be incorporating an existing institution into a federal structure that preserved its essential locus in the several States and its essential composition as the body of the people.

Three features of this architecture are worth marking, each of which conditions the analysis that follows.

First, the institution is *presupposed, not granted*. This means that a State cannot lawfully treat the militia as an optional institution to be maintained or abandoned at its discretion. The Constitution everywhere assumes the militia exists; clauses that presuppose an institution's existence cannot be honored by allowing that institution to lapse.

Second, the institution is *Constitutionally distributed*. Authority is partitioned between federal and State levels, with the substance of officer appointment and training reserved to the States. This distribution was deliberate, contested in ratification, and accepted as the price of acceptance for those who feared federal monopolization of armed force. A federal arrangement that absorbs the militia function into the central government — by federalizing its funding, equipment, training, and deployment — does not merely modify the institution; it dissolves the Constitutional partition on which the institution's structural function depends.

Third, the institution is *load-bearing within the broader Constitutional design*. The framers' architecture for armed force in the polity proceeded in three layers, in descending order of Constitutional preference. The militia — the body of the people, locally controlled, multi-purpose — was the first and most preferred layer. The navy — accepted as necessary and structurally less dangerous to domestic liberty because confined to maritime operations — was the second. The army — accepted only reluctantly, with Constitutional restrictions including biennial appropriation, civilian command, and structural disfavor in the text — was the third and least preferred. The militia was the foundational layer that kept the second and third in their proper subordinate place.⁸

⁸See again *Federalist* No. 46, cited *supra* in fn. 5. The three-layer architecture — militia, navy, army — reflects a deliberate ordering of preference rooted in the framers' assessment of each layer's structural relation to free polity.

VI. The Constitutive Loss

If the framers' modal assertion is taken seriously — that a well-regulated Militia is necessary, not optional or useful, to the security of a free State — then the lapse of the institution constitutes a Constitutional loss of a particular gravity. The loss operates at three layers, each deeper than the last.

The first layer is the loss of a balancing institution. The framers' political architecture treated the armed body of the people as a structural counterweight to two specific threats: standing armies and centralized executive power. The militia was not symbolic ballast but a load-bearing element in the separation-of-powers structure, parallel in function to the bicameral legislature or the judiciary, operating at a different layer (institutional rather than procedural). Its lapse is not a quaint historical curiosity but a hole in the Constitutional structure where a load-bearing member used to be. The structure now stands on its remaining members alone, and the stresses originally distributed across the militia are now borne entirely by professional military, federal police, and executive enforcement apparatus — which is precisely the concentration the militia was designed to prevent.

The second layer is the loss of a civic disposition. The well-regulated militia was not merely an institution but a habituation — a continuous civic practice through which the body of the people maintained the competence, the organization, and the psychological readiness to act collectively in defense of free polity. The framers inherited from the classical republican tradition the understanding that free citizenship is constituted in part by the capacity and the disposition to bear arms in common defense.⁹ A populace that has lost the militia has not merely lost an institution; it has lost a form of citizenship. The citizen has been partially reduced to the subject — protected by professionals, dependent on the state for security, and

⁹Aristotle, *Politics*, trans. C. D. C. Reeve (Indianapolis: Hackett, 1998), III.1, 1275a22–b21: the citizen as one who participates in office and judgment, the activity of citizenship being constitutive of the civic identity. The militia tradition translates this principle into the domain of armed common defense: free citizenship is in part the disposition and capacity to bear arms in defense of free polity. To strip the citizen of this disposition is to reduce the *polītēs* toward the *idiōtēs* — the merely private person — and ultimately toward the subject. Compare J. G. A. Pocock, *The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition* (Princeton: Princeton University Press, 1975), chs. 6–7, on the classical republican lineage of the armed-citizen ideal received by the American founders.

structurally incapable of the collective self-defense that distinguishes a free people from a managed population.

The third layer is the loss of a check on usurpation. This is the layer most directly relevant to the framers' explicit worries. Madison in Federalist 46 calculated that a federal standing army would be checked by a militia of arms-bearing citizens officered by men chosen from among themselves. Strip out the militia, and what remains in the framers' calculus is the standing force — uncountered, or countered only by individual and uncoordinated resistance, which the framers regarded as no real check at all. The right to keep and bear arms persists; the institutional capacity it was meant to enable does not. A populace individually armed but institutionally fragmented is not what the framers contemplated as the security of a free State. It is something thinner — defensible against private predation, but not structurally equipped for the function the militia clause names.

VII. The Duty of the Citizen

The State's duty, set out in the section that follows, is intelligible only against an underlying citizen-duty that the State's duty exists to enable. The framers' Constitutional architecture for the militia is bilateral, not unilateral: a State obligation to maintain the institution presupposes a citizen obligation to constitute it, since an institution composed of nothing other than the participation of individuals cannot exist without the participation of individuals. The two duties are correlative; neither is intelligible alone. The present section establishes the citizen-duty side of the architecture, on three converging lines of evidence.

The first and most weighty line is the direct testimony of the First Congress. Within months of the Second Amendment's ratification on December 15, 1791, the Second Congress — many of whose members had served in the First and had participated in the drafting or ratification of the Bill of Rights — enacted the Uniform Militia Act, signed by President Washington on May 8, 1792.¹⁰ The Act required that

¹⁰Act of May 8, 1792, ch. 33, 1 Stat. 271 (commonly the *Uniform Militia Act* or *Second Militia Act of 1792*), repealed by the Militia Act of 1903 (Dick Act), Pub. L. No. 57-33, 32 Stat. 775. The May 8 enactment is to be distinguished from the *Calling Forth Act* of May 2, 1792, ch. 28, 1 Stat. 264, a related but separate statute empowering the President to call forth the militia in cases of invasion, insurrection, or

*every free able-bodied white male citizen of the respective states, resident therein, between the ages of eighteen and forty-five (subject to narrow exceptions), be enrolled in the militia of his State. It further required that every citizen so enrolled provide himself, at his own expense, with a musket or rifle, bayonet, ammunition, knapsack, and specified equipment, and that he appear so armed, accoutred and provided when called out to exercise or to service.*¹¹ The duty was statutorily mandatory, not optional; tied to citizenship status conjoined with age and bodily capacity, not contingent on volunteering; and exempted only narrow categories of federal and State officials and certain transport workers whose duties were judged incompatible.

The temporal and personal proximity of this enactment to the ratification of the amendment forecloses any reading on which the framers understood the right to keep and bear arms as severable from a corresponding citizen-duty. A polity that, within five months of Constitutionally acknowledging the right of the people to keep and bear arms, statutorily mandated universal enrollment and self-provision of arms by every able-bodied male citizen of military age, cannot coherently be read to have understood the right as a purely private prerogative discharged or not discharged at the citizen's discretion. The 1792 enactment is the framers' own gloss on the Constitutional architecture they had just inscribed, and it is unambiguous on the point.

The second line is structural-logical, derived from the amendment's own grammar. The absolute phrase asserts the modal necessity of a well-regulated

obstruction to the laws of the Union. The May 8 Act is the universal-enrollment and self-provision statute and is the operative reference for the framers' implementation of the militia provisions.

¹¹Militia Act of May 8, 1792, ch. 33, § 1, 1 Stat. 271, 271–72: "That each and every free able-bodied white male citizen of the respective states, resident therein, who is or shall be of the age of eighteen years, and under the age of forty-five years (except as is herein after excepted) shall severally and respectively be enrolled in the militia by the captain or commanding officer of the company, within whose bounds such citizen shall reside ... That every citizen so enrolled and notified, shall, within six months thereafter, provide himself with a good musket or firelock, a sufficient bayonet and belt, two spare flints, and a knapsack, a pouch with a box therein to contain not less than twenty-four cartridges, suited to the bore of his musket or firelock ... and shall appear, so armed, accoutred and provided, when called out to exercise, or into service." Section 2 enumerates the narrow categories of federal officers and certain transport personnel exempted from militia duty notwithstanding their age and capacity.

militia to the security of a free State. As established in Section III, the framers' militia was, definitionally, the body of the people in arms. If the militia is necessary, and the militia is the body of the people in arms, then the body of the people must be in arms — not in the trivial sense of statutory eligibility, but in the operative sense of actual disposition, possession, and capacity. The duty to constitute an institution falls on those who, together, constitute it. To affirm the necessity of the militia while denying any individual duty toward it is to assert that the institution is necessary and that no one is responsible for it — a position internally incoherent. The argument is conditional on accepting the framers' modal claim, but for anyone who reads the amendment as a serious Constitutional assertion rather than as decorative throat-clearing, the conditional binds.¹²

The third line is the classical-republican substrate from which the framers received the institution. The militia tradition the framers inherited — through the English Whig writers, through Machiavelli, through Cicero and the Roman republican sources, and through Aristotle — coupled the right to bear arms in common defense with the duty to do so, and treated the coupling as constitutive of free citizenship.¹³ The *polītēs* of the classical city, the *cīvis* of the Roman Republic, the freeman of the English militia tradition: these were not figures with the option of armed citizenship but figures defined in part by the disposition and capacity to bear arms in defense of free polity. The modern severance of right from duty — the figure of the citizen as one who enjoys the Constitutional acknowledgment of the right while owing nothing institutional in return — is the anomaly within this tradition, not the founders' position. The founders' position was the inherited position, and the inherited position coupled right and duty.¹⁴

¹²The structural-logical argument supplies internal coherence on the framers' own modal premise; it does not by itself defend the modal premise. The defense of the premise is supplied separately by the historical record assembled in Sections III and V and by the classical-republican lineage referenced in the following line and in fn. 6.

¹³See Aristotle, *Politics* III.1, 1275a22–b21, cited supra in fn. 6, and the discussion of *polītēs* and *idiōtēs* there. On the lineage of the armed-citizen ideal from the classical sources through Machiavelli and the English Whigs to the American founders, see J. G. A. Pocock, *The Machiavellian Moment* (Princeton: Princeton University Press, 1975), chs. 6–7. The militia tradition is the institutional translation of the classical principle into the domain of armed common defense.

Four qualifications are necessary before the implications are stated, lest the principle be misread.

First, the duty is *conditional*, not absolute. It is bounded by capacity (able-bodied), by age (eighteen to forty-five in the 1792 Act, plausibly adjustable by current statute), and by narrow exceptions for those whose civil offices are judged incompatible. The conditional structure is built into the framing tradition itself, not a modern addition.

Second, the duty is owed *to free polity, not to any government in office*. The militia is the structural counterweight to government overreach as much as it is the instrument of government's lawful purposes — the framers were emphatic on this point, and Madison's calculation in *Federalist* 46 turns on it.¹⁵ This citizen-duty must be sharply distinguished from federal conscription. The militia duty here described is owed to one's own State as the Constitutional locus of the institution, runs to a lawfully-constituted body of one's neighbors officered from among themselves, and is structurally a check upon the federal standing force — whereas conscription absorbs the citizen into the federal armed force itself, inverting the Constitutional relation the militia was designed to maintain. The duty is not unconditional obedience to whichever administration holds power at a given moment; it is readiness for the Constitutional purposes of free polity, which include resistance to usurpation as much as defense against external threat. The distinction is not paramilitary; it is Constitutional. The militia under the framers' architecture is a State institution, lawfully constituted, officered by State authority, and answerable to State and federal command within the Constitutional partition. The duty here

¹⁴Within the ZEL corpus this coupled figure — the citizen in whom the right and the duty are two faces of one constitutive form — is named the Covenant-Citizen (Lat. *civis foederātus*; Gk. *diathēkopolītēs*): the member of the Polis whose constitutive bond is covenantal rather than contractual. The citizen-under-arms whose duty this section establishes is that genus under the aspect of arms — its martial species — which is why the right and the duty of common defense are not severable but are the covenantal obligations of the Polis-member specified to common defense. See *Dē Diathēkopolītē: On the Covenant-Citizen* (Zōon Ēthikon Press, May 2026).

¹⁵Madison, *Federalist* No. 46, Cooke ed. at 321, quoted supra in fn. 5. The militia as structural counterweight to standing armed force is the load-bearing premise of the framers' three-layer architecture set out in Section V.

described is the duty to be available for *that institution*, not a license for private armed action outside it.

Third, Hamilton's recognition in *Federalist* 29 — that training the entire body of the people to a professional standard would be impracticable, and that “*Little more can reasonably be aimed at, with respect to the people at large, than to have them properly armed and equipped*” — concedes the limit of what universal training can achieve without thereby releasing the foundational duty.¹⁶ The Hamiltonian concession bears on the *training* component, not on the *enrollment*, *equipage*, or *availability* components. The duty to be armed, equipped, and enrolled in the body of the militia stands; the practical ceiling on uniform training merely defines the realistic content of *well regulated* as applied to the general body.

Fourth, the duty has been *suspended in practical effect but not extinguished in principle*. The State's century-long default, set out in the next section, has closed the institutional pathway for ordinary discharge: a citizen today who wished to discharge militia duty in the Constitutionally-contemplated form would find the framework largely dismantled. This circumstance does not release the underlying duty; it aggravates the State's default by making the citizen's discharge structurally impossible without prior State reconstruction. The duty waits on the institution it was designed to constitute.

Within those qualifications, the duty resolves into four substantive components. By implication of the 1792 enactment, the Constitutional architecture, and the classical-republican substrate, every eligible citizen bears: first, the duty of *possession* — to keep arms suitable to militia service, maintained at his own cost; second, the duty of *proficiency* — to acquire and maintain familiarity with those arms sufficient to render him effective in their Constitutional use; third, the duty of

¹⁶Alexander Hamilton, *Federalist* No. 29 (Jan. 9, 1788), in Jacob E. Cooke, ed., *The Federalist* (Middletown, CT: Wesleyan University Press, 1961), at 184: “Little more can reasonably be aimed at, with respect to the people at large, than to have them properly armed and equipped; and in order to see that this be not neglected, it will be necessary to assemble them once or twice in the course of a year.” Hamilton's concession that uniform high training is impracticable for the general body and his proposal of a select organized component is not a defeat of the universal-enrollment principle but a refinement of the realistic content of *well regulated* as applied at scale. The duties of enrollment, equipage, and availability remain on the general body; the duty of proficiency is bounded by the Hamiltonian limit.

availability — to remain enrolled, mustered, and answerable to call-out when the State (or, in Constitutional crisis, the body of the people through their States) acts to constitute the militia for its proper purposes; and fourth, the duty of *civic engagement* — to support, through legitimate political and legislative means, the institutional maintenance and, where required, the institutional restoration of the framework within which the prior three duties can ordinarily be discharged.

The fourth component requires emphasis. Where the State has defaulted on its duty to maintain the militia institution, the citizen's duty of availability cannot be ordinarily discharged; the institutional pathway is closed. What remains open to the citizen, and what the duty of civic engagement positively requires, is the lawful political work of reopening it: legislative advocacy, electoral participation, public argument, candidacy. The duty of civic engagement is, in the present institutional condition, the operative duty that the others depend upon for the recovery of their ordinary discharge. The citizen who keeps arms and trains with them but does nothing toward institutional restoration has discharged two of the four components and abandoned the one on which their Constitutional use depends.

The structural consequence of the bilateral architecture, taken together with the qualifications, is this: a polity whose citizens do not discharge the militia duties — within the bounds of conditionality, with the duty owed to free polity rather than to government in office, allowing for the Hamiltonian limit on uniform training, and through the lawful institutional channels the State must maintain or restore — is, on the framers' own account, *structurally insecure as a free State*. The default is collective, not merely personal. It compounds the State default analyzed in the next section: the institution lapses both because the States have not maintained the framework and because the citizens have not pressed their duty within and toward that framework. *Officium Logou Holou* binds equally on both sides of the architecture.¹⁷



¹⁷See *ZEL Theoremata Roster* v4 (May 2026), T XXI (*Cūstōdia*) on the institutional-maintenance duty and T XXIV (*Inaliēnābilitātis*) on the constitutive coupling of right and duty within the framework of free citizenship. The bilateral default — State failure of *Cūstōdia* compounded by citizen failure of the institutionally-correlative duties — is the architecturally precise diagnosis the next two sections develop in the Constitutional register.

VIII. The Duty of the Several States

The losses just described, and the citizen-duty just established, frame the second face of the default. The States' duty under the militia provisions is not freestanding — it exists in significant part *to enable the citizen-duties just described*. The State is not the sole bearer of militia obligation but the institutional framework within which the citizen's duty can be ordinarily discharged. The losses are not the consequence of impersonal historical drift. They are the consequence of sustained default by entities under Constitutional duty to prevent the drift. The entities in question are the several States, and the default is now in its second century. The argument here is that the language of non-exercise — that the States have not exercised their militia powers — is interpretively too soft. The States have violated their Constitutional duties. The shift from non-exercise to violation is not rhetorical escalation; it is the precise legal characterization of what has occurred.

Three sources establish the duty. First, the federal Constitutional architecture presupposes the militia's existence, as set out in Section V; an institution whose existence is Constitutionally presupposed cannot be allowed to lapse by the entities charged with its maintenance, any more than a State could allow its judiciary or legislature to lapse on the theory that the institution was optional. Second, the Second Amendment's absolute phrase asserts modal necessity: a well-regulated Militia is necessary to the security of a free State. A State that has sworn an oath to support the federal Constitution cannot consistently allow the institution the Constitution declares necessary to free polity to fall into ruin. The oath binds to the document's structural commitments, not merely to its prohibitions.

Third, and most directly, the State constitutions themselves impose affirmative militia duties. Virtually every State constitution from the founding era forward contains militia provisions inscribing State-level Constitutional obligations independent of any federal obligation imported by incorporation.¹⁸ These are

¹⁸Virginia Declaration of Rights § 13 (June 12, 1776), in Francis Newton Thorpe, ed., *The Federal and State Constitutions, Colonial Charters, and Other Organic Laws of the States, Territories, and Colonies Now or Heretofore Forming the United States of America*, 7 vols. (Washington, DC: Government Printing Office, 1909), 7:3812, 3814: "That a well regulated militia, composed of the body of the people, trained to arms, is the proper, natural, and safe defense of a free state." Compare Pennsylvania Constitution

constitutive commitments. A State that has neither maintained, trained, nor armed its militia as a State function has defaulted on its own Constitutional self-definition, quite apart from any federal duty.

The duty is structural rather than performative. Some duties are discharged by performing specific acts; others are discharged by maintaining an institution in working order over time. Militia duty is of the second kind. It is not satisfied by occasional muster, ceremonial recognition, or statutory acknowledgment of the unorganized militia's nominal existence in code. It requires continuous institutional cultivation: training, organization, equipment, officer development, integration with civic life, readiness to function for the purposes the Constitution names. This continuous cultivation has been comprehensively abandoned. Most States no longer train their general militia at all. Many have no functioning militia structure independent of the federalized National Guard. The statutory shell remains; the institutional substance has been hollowed out.

IX. The Anatomy of the Default

The default is not a single act but a compounded structure of failures across four orders, each of which constitutes a distinct violation of duty and each of which has aggravated the others over time.

The first-order default is the failure to maintain the general militia as a trained, organized, armed body of the people. This is the basic abandonment of the institution. It has proceeded by neglect — the cessation of training, the absence of muster, the dissolution of the institutional infrastructure — rather than by formal repeal. The Constitutional militia has not been abolished; it has been allowed to atrophy.

The second-order default is the acceptance of federalized substitution as Constitutional cover for the abandonment. Beginning with the Militia Act of 1903 and consolidated through the National Defense Act of 1916 and subsequent

of 1776, Declaration of Rights, art. XIII, in Thorpe, *Federal and State Constitutions*, 5:3083: "That the people have a right to bear arms for the defence of themselves and the state." These provisions, drafted before and independently of the federal Second Amendment, inscribe affirmative State Constitutional duties.

legislation, the States have positively participated in the institutional architecture that displaced the Constitutional militia.¹⁹ They accepted federal funding, federal equipment standards, federal training requirements, and federal deployment authority in exchange for surrendering the Constitutional independence the militia clauses were designed to preserve. The National Guard, which has come to occupy the linguistic position of *the militia* in popular and even legal discourse, is structurally a different institution by the framers' criteria: it is a selected and volunteer force rather than the general body of the people; it is federally integrated rather than State-controlled; it cannot perform the structural counterweight function because it is itself a component of the federal military command structure. This second-order default is in some respects worse than the first, because it is not merely neglect but active complicity in the displacement.

The third-order default is the affirmative suppression of the militia function in some jurisdictions. A number of States have enacted statutes restricting the conditions under which citizens may organize, train, or operate as militia, sometimes prohibiting unauthorized militia activity outright. This is not merely failure to discharge the duty; it is action against the Constitutional purpose, treating institutional revival the Constitution would commend as a public-order threat to be criminalized. A State that prohibits its citizens from training as militia while simultaneously failing to train them itself has compounded the violation: it has both neglected its own duty and obstructed others from supplying the institutional deficit.

The fourth-order default is the progressive disarmament of the population from which the militia would be constituted. State-level statutes restricting the keeping and bearing of arms by the body of the people, to the extent they extend beyond the narrow category of individuals demonstrably incompatible with civic arms-bearing, operate against the constitutional substrate of the militia. The framers' militia

¹⁹Militia Act of 1903 (Dick Act), Pub. L. No. 57-33, 32 Stat. 775 (Jan. 21, 1903); National Defense Act of 1916, Pub. L. No. 64-85, 39 Stat. 166 (June 3, 1916). The subsequent legislative architecture progressively federalized the National Guard as a reserve component of the federal armed forces. See *Perpich v. Department of Defense*, 496 U.S. 334 (1990) (affirming federal authority to deploy National Guard units overseas without state consent), which marks the legal consummation of the displacement.

presupposed an armed and trained populace; statutes that progressively disarm the populace work in the opposite direction from the State's militia duty, even when they do not mention the militia. A State cannot simultaneously be discharging its duty to maintain the body of the people in arms and enacting policies designed to ensure that body is not in arms.

The federal code itself ratifies the situation while preserving the conceptual structure. 10 U.S.C. § 246 continues to define the militia as comprising both the organized militia (the National Guard) and the unorganized militia — the body of the people not enrolled in the Guard.²⁰ The statute acknowledges, in other words, that the general militia still exists in principle. It has merely been left institutionally dormant: untrained, unorganized, unequipped. The States have not abolished the Constitutional militia; they have left it as a legal ghost while pointing to the federalized substitute as Constitutional cover. The combination — preserved nomenclature, abandoned substance — is precisely what permits the default to persist beneath the surface of legal continuity.



X. Diagnosis

The integrated reading of the Second Amendment thus produces a diagnosis at three levels. At the level of the text, the right is acknowledged as primary, grounded pre-politically, and inscribed in this amendment because the framers judged that securing this right was a necessary condition for the institutional form — a well-regulated militia — they held necessary to the security of a free State. At the level of the Constitutional architecture, the militia is presupposed as an existing institution, distributed between federal and State authority, and load-bearing within the broader design for the distribution of armed force in free polity. At the level of

²⁰10 U.S.C. § 246(a)-(b): "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. ... 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." The statute preserves the conceptual structure while ratifying the institutional default.

present institutional reality, the Constitutional militia has been allowed to lapse by the States under affirmative Constitutional duty to maintain it, the citizens have not pressed within or toward the framework the institutional discharge it was designed to receive, and the lapse has been compensated by a federalized substitute that fails the framers' definitional, structural, and functional criteria and inverts the Constitutional priority among the three layers of armed force.²¹

The pattern of the default warrants its own characterization. It is an instance of what may be called *nominal continuity masking structural rupture*: the form-words of the Constitutional inheritance — *militia, well regulated, of the several States* — persist in statute and ceremony, while the institutional reality they once denoted has been replaced by its functional opposite.²² *The default is bilateral in the same sense the architecture is bilateral: the States have abandoned their duty to maintain the framework, and the citizens — themselves often unaware of the duty they bear — have not pressed within or toward that framework the institutional discharge it was designed to receive.* The statutes maintain the linguistic surface; the Constitutional substance has been hollowed out. This is not merely a failure mode of Second Amendment jurisprudence; it is a recurring failure mode of written constitutional orders under sustained drift, and recognizing it as such is a precondition for any serious project of Constitutional recovery.

The honest accounting is therefore unaccommodating. The States, in cooperation with federal statute and under sustained acquiescence by the federal courts, substituted an institution for the Constitutional militia that fails the framers' criteria on every relevant dimension. The substitution was not Constitutional restoration but Constitutional displacement. The original militia — the well-

²¹On the typology, see *ZEL Theoremata Roster* v4 (May 2026), T XXI (*Cūstōdia*): the structural duty of a polity to maintain the institutional embodiments of the conditions of its own free existence. Rights without institutional cultivation become *Officium Lōgou Holou* abdications — acknowledgments emptied of practical force through the abandonment of the structures that secured their exercise.

²²The construction *nominal continuity masking structural rupture* denotes the institutional pattern by which form-words persist in statute and ceremony after the *rēs* they once denoted has been replaced by its functional opposite. The pattern is not confined to militia doctrine; it is a general failure mode of written constitutional orders under sustained drift, and a recurring object of analysis within the *ZEL Līmen Architectonicum* framework. The formulation here is offered as a working construction subject to integration with the established ZEL terminology of Constitutional decay.

regulated body of the people — has been left in institutional ruin for over a century, while the structural function it was designed to perform has been absorbed by exactly the kind of federalized professional armed force the framers designed the militia to counterbalance. The framers would not recognize the present arrangement as fulfilling the Second Amendment's institutional commitments. They would recognize it as the realization of their explicit fears. Nor would they recognize a citizenry uninformed of the duty the architecture lays upon it, or untaught that the right and the duty were, in the inherited tradition, two faces of one constitutive form.

The diagnosis is grave; whether it is terminal is a separate question. A duty defaulted is not a duty extinguished. The right acknowledged in the main clause remains pre-political and unconditioned; the institutional form commended by the absolute phrase remains Constitutionally commended; the State obligations under federal presupposition, federal modal assertion, and State Constitutional inscription remain in force; and the citizen duties under the 1792 architecture and the inherited tradition remain owed, awaiting the institutional pathway through which they can be discharged. What has been lost is not the Constitutional warrant for the institution but the institutional cultivation through which the warrant becomes operative. The seed-corn has not been eaten; the cultivation has been abandoned. Whether cultivation can be restored, and on what terms, is the question to which the second paper of this pair is addressed.



Prō Homine Flōrente.

Works Cited

Constitutional and Statutory Sources

U.S. Constitution, art. I, § 8, cls. 15–16; amend. II; amend. V; amend. IX.

Militia Act of May 8, 1792 (Uniform Militia Act), ch. 33, 1 Stat. 271 (repealed 1903).

Calling Forth Act of May 2, 1792, ch. 28, 1 Stat. 264.

Militia Act of 1903 (Dick Act), Pub. L. No. 57-33, 32 Stat. 775 (Jan. 21, 1903).

National Defense Act of 1916, Pub. L. No. 64-85, 39 Stat. 166 (June 3, 1916).

10 U.S.C. § 246 (definition of the militia of the United States).

Virginia Declaration of Rights (June 12, 1776), in Francis Newton Thorpe, ed., *The Federal and State Constitutions, Colonial Charters, and Other Organic Laws of the States, Territories, and Colonies Now or Heretofore Forming the United States of America*, 7 vols. (Washington, DC: Government Printing Office, 1909), vol. 7, pp. 3812–3814.

Pennsylvania Constitution of 1776, Declaration of Rights, in Thorpe, *Federal and State Constitutions*, vol. 5, pp. 3081–3092.

Judicial Decisions

District of Columbia v. Heller, 554 U.S. 570 (2008).

Perpich v. Department of Defense, 496 U.S. 334 (1990).

Founding-Era Sources

Cooke, Jacob E., ed. *The Federalist*. Middletown, CT: Wesleyan University Press, 1961. [Citations to *Federalist* No. 29 (Hamilton) and No. 46 (Madison).]

Elliot, Jonathan, ed. *The Debates in the Several State Conventions on the Adoption of the Federal Constitution*. 2d ed. 5 vols. Philadelphia: J. B. Lippincott, 1836–1845. [Citations to vol. 3 (Virginia Ratifying Convention, June 14, 1788, remarks of George Mason).]

Storing, Herbert J., ed. *The Complete Anti-Federalist*. 7 vols. Chicago: University of Chicago Press, 1981. [Citations to vol. 2, Letters from the Federal Farmer, Letter XVIII (Jan. 25, 1788), Storing 2.8.97.]

Johnson, Samuel. *A Dictionary of the English Language*. London: W. Strahan, 1755. [Cited in *Heller*, s.v. "Regulate."]

Classical and Early Modern Sources

Aristotle. *Politics*. Translated by C. D. C. Reeve. Indianapolis: Hackett Publishing, 1998. [Bekker citations to III.1, 1275a22–b21.]

Blackstone, William. *Commentaries on the Laws of England*. 4 vols. Oxford: Clarendon Press, 1765–1769. [Citations to vol. 1, pp. 139–144.]

Locke, John. *Two Treatises of Government*. Edited by Peter Laslett. Student edition. Cambridge: Cambridge University Press, 1988. [Citations to Second Treatise, §§ 4–15, 123–131.]

Reference and Scholarly Sources

Greenough, J. B., G. L. Kittredge, A. A. Howard, and Benjamin L. D'Ooge. *Allen and Greenough's New Latin Grammar for Schools and Colleges*. Boston: Ginn & Co., 1903. [Citations to §§ 419–420 on the ablative absolute.]

Pocock, J. G. A. *The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition*. Princeton: Princeton University Press, 1975.

Smyth, Herbert Weir. *Greek Grammar*. Revised by Gordon M. Messing. Cambridge, MA: Harvard University Press, 1956. [Citations to §§ 2070–2075 on the genitive absolute.]

Contemporary Sources

Vieira, Edwin, Jr. *Thirteen Words*. Ashland, OH: Bookmasters, 2013.

Vieira, Edwin, Jr. *The Sword and Sovereignty: The Constitutional Principles of 'the Militia of the Several States'*. CD-ROM edition. 2012.

Vieira, Edwin, Jr. *Three Rights*. Ashland, OH: Bookmasters, 2013.

Internal References (ZEL Corpus)

ZEL Theoremata Roster v4 (May 2026), Theorem XXI (*Cūstōdia*) and Theorem XXIV (*Inaliēnābilitātis*).

Līmen Architectonicum v7 (May 2026).

Stoddard-FreiSänger, Michael R. R. *Dē Diathēkopolītē: On the Covenant-Citizen*. Zōon Ēthikon Press, terminological entry, May 2026. [Names the Covenant-Citizen (*cīvis foederātus / diathēkopolītēs*), the genus of which the citizen-under-arms duty established in §VII is the martial species.]