

# The Breakfast Club Constitutional Minute

## Is “Militia” a Four-Letter Word?

Note: This extended essay was initially published in separate installments.

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## Part 1 — The Early History of Militias in Virginia<sup>1</sup>

You would think by the reaction of some people today when you mention the word “militia,” that they immediately take you to be some sort of conspiracy nut who contemplates overthrowing the U.S. Government. Public officials avert their eyes and speak in hushed tones, parents pull their children close, shop keepers shutter their windows. The conversation takes on a cloistered atmosphere. Expect to be told: “let’s go outside and talk.”

It needn’t and shouldn’t be this way.

So, let’s all take a deep breath, or perhaps several, calm down, and rationally, like adults, discuss the real meaning of “the M word that shall not be uttered” and the reaction it should engender today.

There have been militias in America since the first settlers set foot on dry land in 1607 (or earlier if you count the “Lost Colony”). Militias, whether they were called that or not, were the common citizens of the community who had been given training on the use of weaponry (of all types) and assigned the task of keeping the community safe from natives or animals, i.e., anything intent on harming (or eating) the settlers.

We all know militias were not an invention of America’s first settlers, their history goes back through all of English history and as far back as ancient Greece and Rome; several books cover this history very well. However, this history is not very relevant to the connotation the word militia carries today, so I’m going to instead focus on the history of militias in Virginia.

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<sup>1</sup> Originally published on 13 February 2024.

The first elected legislature in Virginia—called the General Assembly—enacted a series of laws over the three days it met in 1619, one of which said:

All persons whatsoever, upon Sabbath days, shall frequent divine service and sermons both forenoon and afternoon and all such as bear arms shall bring their pieces, swords, powder and shot. And every one that shall transgress this law shall forfeit three shillings a time to the use of the church, all lawful and necessary impediments excepted. But if a servant in this case shall willfully neglect his master's command he shall suffer bodily punishment.

When was the last time you took part in a “Bring Your Gun to Church Day?” Ask your pastor if he would allow that.

In 1624, when the “Jamestowne” colony was barely 17 years old, and five years after the first laws went into effect, the following two ordinances were passed (with original spelling):

25. That men go not to worke in the ground without their arms (and a centinell upon them).

27. That the commander of every plantation take care that there be sufficient of powder and amunition within the plantation under his command and their pieces fixt and their arms compleate.

This in no way could be considered a proper military force, the English simply had better things to do with their army in other parts of the world; the settlers would have to fend for themselves. Neither was this simply a gaggle (I think that's the right word) of armed citizens. Instead, I believe this can rightfully be called the first recorded instance of what could be called a militia here in Virginia. There was order and command. I'm quite sure each free citizen had to demonstrate, on a regular basis, that his arms were “compleate” and in good working order.

In 1661, Governor William Berkeley answered an enquiry from the “Council on Foreign Plantations” back in England by stating: “All our freemen are bound to be trained every month in their particular counties.”<sup>2</sup> (Emphasis added). Each county was assigned a lieutenant who operated as the county's chief militia officer.

Fifteen years later, Virginia settler Nathanael Bacon, after having Governor Berkeley ignore his repeated requests to drive all Indians out of the colony, gathered up a thousand of his closest armed friends and marched on the capital (where guns and ammunition were stored), then still at Jamestown. He succeeded in burning the small city to the ground (the Governor having fled). After Berkeley successfully mustered the militia, they were victorious over Bacon's forces, although it reportedly took several years to completely mop up all resistance.<sup>3</sup>

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<sup>2</sup> <https://slaverylawpower.org/enquires-governor-virginia-1671/>

<sup>3</sup> [https://en.wikipedia.org/wiki/Bacon%27s\\_Rebellion](https://en.wikipedia.org/wiki/Bacon%27s_Rebellion)

The 1776, Virginia Constitution, our first, says this in Section 13 of the Declaration of Rights:

That a well-regulated militia, composed of the body of the people, trained to arms, is the proper, natural, and safe defence of a free State; that standing armies, in time of peace, should be avoided, as dangerous to liberty; and that in all cases the military should be under strict subordination to, and governed by, the civil power.

During the Revolution, the Virginia Militia distinguished itself in numerous campaigns and battles (perhaps because the Commander of the Continental Army was a fellow Virginian). The Fifth Virginia Regiment was with Washington at Yorktown and their exact campsite location is pointed out by knowledgeable guides.

After the Revolutionary War concluded in 1783 with the Treaty of Paris, Thomas Jefferson drafted a complete re-write of the 1776 Virginia Constitution;<sup>4</sup> Interestingly, he proposed militia duty be one of several ways of qualifying to vote:

All free male citizens, of full age, and sane mind, who for one year before shall have been resident in the county, or shall through the whole of that time have possessed therein real property of the value of — — ; or shall for the same time have been enrolled in the militia, and no others, *shall have a right to vote for delegates for the said county.* (Emphasis added)

Jefferson proposed both a regular military force as well as a militia under the command of the Governor:

The whole military of the State, whether regular or of militia, shall be subject to [the Governor's] directions; but he shall leave the execution of those directions to the general officers appointed by the legislature.

That's where we'll leave things for Part 1. In Part 2, I'll discuss the various ways militia has been mentioned in Virginia's several constitutions and what our present Constitution has to say on the topic. See you then.

Suggested reading:

[Virginia Militia in the Revolutionary War](#)

[A Well-Regulated Militia: The Founding Fathers and the Origins of Gun Control in America](#), by Saul Cornell

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<sup>4</sup> <https://founders.archives.gov/documents/Jefferson/01-06-02-0255-0004>

## Part 2 — Militia in the Virginia Constitutions<sup>5</sup>

In Part 1, I covered the early history of militias in Virginia; in this section we will review how our various Virginia constitutions over the years have mentioned militias (or not), and what the Code of Virginia has to say.

Virginia's original 1776 Constitution had but a single reference to militias, in Section 13 of the Declaration of Rights:

*SEC. 13. That a well-regulated militia, composed of the body of the people, trained to arms, is the proper, natural, and safe defence of a free State; that standing armies, in time of peace, should be avoided, as dangerous to liberty...*

These words helped form the basis for the 2nd Amendment (because Madison used the VA Declaration as the starting point for the Bill of Rights). Section 13 continues by saying: *"and in all cases the military should be under strict subordination to, and governed by, the civil power."*

But something's still missing. There's no reference to arms. That was not added until the 1971 Constitution (the current one). Section 13 today reads:

*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, therefore, the right of the people to keep and bear arms shall not be infringed; that standing armies, in time of peace, should be avoided as dangerous to liberty; and that in all cases the military should be under strict subordination to, and governed by, the civil power.*

Notice the militia was equated with the "military" and that "in all cases" the military should be under strict control by "the civil power," in this case, the Governor.<sup>6</sup>

By 1776, it was a foregone conclusion there would be a Continental Army, composed of enlistees from all the states. But Congress expected each state to also maintain a militia and contribute militia units to augment the Continental Army. As we will see later, some Virginia militia units that took part in the Revolutionary War do not seem to have been *"under strict subordination to, and governed by, the civil power."*

The 1830 Constitution of Virginia<sup>7</sup> was enacted to address complaints of unequal and thus unfair representation between the densely populated Tidewater area and the sparsely populated (but fast growing) western counties. The 1830 Constitution made no mention of militia beyond the words of Article 13 of the Declaration of Rights.

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<sup>5</sup> Originally published on 27 February 2024.

<sup>6</sup> Later in the 1776 Constitution we read: "The Governor may embody the militia, with the advice of the Privy Council; and when embodied, shall alone have the direction of the militia, under the laws of the country."

<sup>7</sup> Coming out of the 1829 Constitutional Convention.

The 1851 Constitution was once again created to address representation issues. It made clear that the Governor:

*...shall be commander-in-chief of the land and naval forces of the State; have power to embody the militia to repel invasion, suppress insurrection, and enforce the execution of the laws;...*

I've not had time for much research into what the "naval forces" of Virginia might have consisted of in 1851; that would be an interesting study. But notice it was implied that the "Land and naval forces" were different than the militia. We know that ten years later, Virginia would follow South Carolina in seceding from the Union. As they did so, the state "bequeathed" a number of ships to the Confederate Navy, which formed the famous James River Squadron.<sup>8</sup> As an aside: Confederate forces quickly captured the Norfolk navy yard and built there the first ironclad ship in America, the "Virginia," atop the hull of the captured Union ship, Merrimack.<sup>9</sup>

The 1851 Constitution also added a new Section 19 entitled "Militia," which said simply:

*"The manner of appointing militia officers shall be prescribed by law."*

After the Civil War and Reconstruction, the 1870 Constitution expanded the Section on Militia (now called Section 9) to say:

*MILITIA.*

*Sec. 1. The militia of this state shall consist of all able-bodied male Persons between the ages of eighteen and forty-five years, except such persons as hereafter maybe exempted by the laws of the United States or of this state; but those who belong to religious societies whose tenets forbid them to carry arms, shall not be compelled to do so, but shall pay an equivalent for personal service; and the militia shall be organized, armed and equipped, and trained as the general assembly may provide by law.*

*Sec. 2. The legislature shall provide by law for the encouragement of volunteer corps of the several arms of the service, which shall be classed as, the active militia; and all other militia shall be classified as the reserve militia, and shall not be required to muster in time of peace.*

The 1902 Constitution, enacted by Democrats for one purpose only: to find a way to disenfranchise Virginia's black population without violating the 15<sup>th</sup> Amendment<sup>10</sup>, removed any reference to a militia beyond what is found in the Declaration of Rights.

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<sup>8</sup> [https://en.wikipedia.org/wiki/James\\_River\\_Squadron](https://en.wikipedia.org/wiki/James_River_Squadron).

<sup>9</sup> <https://www.battlefields.org/learn/articles/navies-civil-war>.

<sup>10</sup> Six years after *Plessy v Ferguson* made "separate but equal" a constitutional principle.

The 1971 Constitution we operate from today contains no militia section because, in 1930, the Virginia Militia became enshrined in the Virginia Code at Title 44.

So, what do we find in the Virginia Code today? A lot.

The first thing we encounter is that there are three components to the Virginia Militia: the Virginia National Guard, with separate Army and Air Guard branches, the Virginia Defense Force (more on that later), and the *unorganized militia*.

I'm quite sure that 99.999% of Virginians between the ages of 16 and 55 do not know they are members of the Virginia Militia, but they are. As we read in Title 44.1:

**§ 44-1. Composition of militia**

*The militia of the Commonwealth of Virginia shall consist of all able-bodied residents of the Commonwealth who are citizens of the United States and all other able-bodied persons resident in the Commonwealth who have declared their intention to become citizens of the United States, who are at least 16 years of age and, except as hereinafter provided, not more than 55 years of age. The militia shall be divided into three classes: the National Guard, which includes the Army National Guard and the Air National Guard; the Virginia Defense Force; and the unorganized militia.*

Virginia's use of the term "unorganized militia" was undoubtedly inspired by a similar force created at the national level by the U.S. Militia Act of 1903<sup>11</sup> passed by Congress on February 2, 1903. It reads:

**§246. Militia: composition and classes 10 USC §246**

*(a) The militia of the United States consists of all able-bodied males at least 17 years of age and, except as provided in section 313 of title 32, 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.*

Thus, we see that all Virginians between the ages of 17 and 45 are members of two separate militias, the Virginia Unorganized Militia and the National Unorganized Militia, whether they desire to be or not. Is "militia" still a "four-letter" word? I would hope not, but some people will require further persuading.

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<sup>11</sup> Also called "The Dick Act" after its chief proponent, Ohio Representative Charles W. F. Dick (1858 – 1945).

Let's read further in the VA Code. At § 44-4, Composition of unorganized militia, we read:

*The unorganized militia shall consist of all able-bodied persons as set out in § 44-1, except such as may be included in §§ 44-2 and 44-54.6 and except such as may be exempted as hereinafter provided. (Emphasis added)*

Yes, should the unorganized militia be called up, certain personnel are exempted from duty. In the very next section we read:

**44-5. Exemptions from militia duty.**

*In addition to those exempted by the laws of the United States, the following persons shall be exempt from military duty under a state call:*

- 1. The officers, judicial and executive, of the governments of the United States and the Commonwealth of Virginia;*
- 2. The members of the General Assembly of the Commonwealth of Virginia and of the Congress of the United States;*
- 3. Persons in the active military or naval services of the United States;*
- 4. Persons employed by the United States in the transmission of the mail;*
- 5. The judges and clerks of courts of record;*
- 6. The mayor and councilmen of incorporated cities and towns;*
- 7. Members of the governing bodies of counties;*
- 8. Sheriffs, United States district attorneys, attorneys for the Commonwealth and city attorneys; (Emphasis added)*
- 9. Marine pilots;*
- 10. All persons who because of religious belief shall claim exemption from military service, if the conscientious holding of such belief by such person shall be established under such regulations as the President of the United States shall prescribe, shall be exempted from militia service in any capacity that the President shall declare to be combatant; and*
- 11. Such other persons as may be designated by the Governor in the best interests of the public and of the Commonwealth.*

Note that "Sheriffs" are exempt from a call-up; are "Deputy Sheriffs" also exempt, or only the Sheriff? This is a point that needs clarification. If there is a true state-wide emergency that exceeds the combined response capability of the Virginia National Guard and Virginia Defense Force and requires calling up the Unorganized Militia, we probably don't want to leave our localities bereft of police protection by sending our Deputy Sheriffs elsewhere; I can't imagine anything good coming from that. But if there is widespread looting, rioting, and general disorder, where does the Sheriff get "reinforcements?" There simply aren't enough Deputies.

Who is going to clear all the streets of fallen trees and branches? Who is going to render first aid to all the injured? Who is going to help distribute emergency food and water?<sup>12</sup> Who is going to protect the hundreds of individual neighborhoods in York County from disorder? The CERT program covers some of this, but how many York County Citizens have taken CERT training (or remember anything they learned?)

Even if the manpower for all these tasks is available, where and when are these people going to receive the specialized training they will need? How will they keep their training current? Will they have periodic access to the equipment they need to be trained upon?

I'll leave those questions unanswered for the moment. Next week we'll look at the first of Virginia's three militias, the Virginia National Guard.

For further reading.

[One Second After, by William R. Forstchen, 2009.](#) I've read and highly recommend this book; it could happen; are you prepared!

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<sup>12</sup> Obviously, the Red Cross would be involved in this. Is there a limit to their resources?



## Part 3 — Leg 1 of the Militia Triad: The National Guard<sup>13</sup>

The origin of the National Guard in the United States can be a bit confusing. The Virginia National Guard says it traces its heritage to 1607 and the settlement of Jamestown.<sup>14</sup> The History Channel claims the American National Guard began in 1636 Massachusetts,<sup>15</sup> but in the same article the Channel also claims that the name “National Guard” was first coined in the National Defense Act of 1916, when in fact the establishment of a “National Guard” was part of the 1903 Militia Act.<sup>16</sup> So much for the History Channel.

As I recounted in Part 1 of this series, laws passed here in Virginia in 1619 and 1624 required that every citizen bring their musket with them to church and carry these arms when working in the fields—the beginnings of a militia. One source states that laws for the “better regulation” of the militia in Virginia date back to the early 1730s, but they were always limited in duration and required regular renewal. I cannot find documentation for this claim, but in the 1755 “Act for better regulating and training the Militia,”<sup>17</sup> the General Assembly sought to better train the colony’s militia at the start of the French and Indian War (1754–1763).

In July, 1754, a detachment of Virginia militia under the command of 22-year-old LtCol George Washington, had taken part in the very first skirmish of the French and Indian War. Although Washington was acclaimed a hero upon his return, he had been forced to later surrender his militiamen at Fort Mifflin in Pennsylvania when French troops surrounded his fortifications. Better organization and training were clearly needed.

On September 21, 1774, Fairfax County, in response to the growing crisis with Britain, formed the first independent company of volunteer militia, led by Colonel George Mason. Researcher Michael Cecere recounts that other Virginia counties soon followed suit.<sup>18</sup>

The third of the five Virginia Conventions (July 17, 1775) passed a resolution forming the first two regiments of official Virginia militia authorized by the (then) colony.

Eight months after the Battles of Lexington and Concord in April 1775, the Fourth Virginia Convention passed an ordinance augmenting the two regiments already raised and adding six more regiments of ten companies each. The Fifth Convention in May-June 1776 expanded the militia further.

During the Revolutionary War, some state militia units remained to “protect the home-front,” while Congress ordered others to augment the Continental Army under General Washington.

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<sup>13</sup> Originally published on 5 March 2024.

<sup>14</sup> <https://va.ng.mil/News/Article/2391662/about-the-virginia-national-guard/>.

<sup>15</sup> <https://www.history.com/news/us-national-guard>.

<sup>16</sup> Also called the “Dick Act.” Named for its principal author, Congressman Charles W. F. Dick of Ohio.

<sup>17</sup> <https://encyclopediavirginia.org/primary-documents/an-act-for-better-regulating-and-training-the-militia-august-1755/>.

<sup>18</sup> <https://allthingsliberty.com/2014/09/the-rise-of-virginia-independent-militia/>.

Fifteen Virginia regiments were sent (detached) to support Washington and [this website](#) documents the campaigns in which they each participated.<sup>19</sup>

At Yorktown, the Virginia militia provided 40% of Washington's 13,817 American troops, which also included one battalion of the Virginia Line.

After the Revolutionary War, in 1789, the newly ratified Constitution gave Congress the power:

To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress.<sup>20</sup>

Following the [Battle of the Wabash](#) in 1791, when nearly 1,000 Americans died fighting a confederacy of American Indian tribes, Congress passed the first of two Militia Acts directing the organization of state militias and empowered the president to take command of these militias for a period of two years "whenever the United States shall be invaded, or be in imminent danger of invasion from any foreign nation or Indian tribe." The Second Militia Act of 1792 permitted the conscription into the militia of every "free able-bodied white male citizen" between the ages of 18 and 45.

The Whiskey Rebellion, in which Virginia militia troops joined those of four other states to form a 12,000+ man army under the command of Alexander Hamilton, began in 1791 and reached its apex in 1794. The final mobilization occurred before the 1792 militia acts expired but several more months passed before the rebels surrendered.

A new militia act was obviously needed, and Congress responded by passing the Militia Act of 1795, which was nearly identical to the expired 1792 Acts, except that the president's authority to call out the militias was made permanent.

In the Spanish–American War (April 21 – December 10, 1898), Virginia provided regiments of militia including, for the first time, a regiment formed entirely of African Americans.

The 1903 Militia Act created the state National Guards. This required what was previously called the "Virginia Volunteers" to be renamed the Virginia National Guard.

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<sup>19</sup> <https://revolutionarywar.us/continental-army/virginia>.

<sup>20</sup> The militia is mentioned in Article 1, Article 2, and the 2<sup>nd</sup> and 5<sup>th</sup> Amendments.

After the Mexican Border Campaign in January 1917, 100,000 National Guardsmen, including 4,000 Virginians, patrolled and protected the U.S. southern border against further raids by Mexican bandits (if we only had that today!).

On October 8, 1918, the U.S. Army's 29th Division, containing activated Guardsmen from Delaware, Maryland, New Jersey, and Virginia, was one of the assault elements in the Meuse Argonne Offensive in France.

Sgt. Earle D. Gregory of Clayville, Virginia, attended Fork Union Military Academy before joining Company E, 2nd Regiment, Virginia National Guard. He deployed to France with the 116th Infantry, 29th Division, and was awarded the Medal of Honor for a single-handed assault on a German machine gun position which had his unit pinned down.



On June 6th, 1944 (D-Day), eight hundred members of the Virginia Guard's 116th Infantry Regiment were killed, wounded, or went missing during the amphibious assault at Omaha Beach. Virginia's 111th Regiment lost a total of thirty-two members in the same assault.

Technical Sgt. Frank D. Peregro of Esmont, Virginia, was part of the 116th's assault. Two days after the landing, Peregro's unit came under heavy machine gun fire. Peregro singlehandedly fought his way up a hill to the machine gun emplacement where he single-handedly killed eight Germans and forced the surrender of thirty more. Peregro was killed in action just six days later but was posthumously awarded the Medal of Honor for his efforts on June 8<sup>th</sup>.

In 1947, the 149<sup>th</sup> Fighter Squadron was activated and formed the Virginia Air National Guard. They now fly the F-22 Raptor at Langley AFB, alongside pilots of the 1<sup>st</sup> Fighter Wing. Over the years, the unit has flown the [P/F-47D Thunderbolt](#), [B-26 Invader](#), [F-84F Thunderstreak](#), [F-105D Thunderchief](#) (best jet ever!), [A-7D Corsair II](#), and [F-16 Fighting Falcon](#).

No Virginia Guard units fought in the Korean War or in Vietnam, but some units were activated during the Berlin Wall crisis in 1961.

During Operations Desert Shield/Storm (1990–1991) several detachments of the Virginia Air National Guard served in the theater. After the war, Virginia Guardsmen were deployed to the Sinai Desert, Bosnia, and Kosovo to support different UN peacekeeping missions.

On March 3, 2001, eighteen members of the Air Guard's 203rd Engineering Squadron ("Red Horse") were returning home after completing a two-week military construction project at an USAF base in Florida. They were killed alongside three aviators from the Florida Army National Guard when the C-23 Sherpa they were flying in crashed in a cotton field near Unadilla, GA. This

was the worst loss of life in the Virginia National Guard since World War II. A summary of the (avoidable) mishap can be found [here](#).

In September 2003, as the situation in Iraq once again deteriorated, three hundred Air Guard personnel from the 192nd Fighter Wing, deployed several of their F-16s to Qatar where they flew combat cover missions over southern Iraq.

Today, the Virginia National Guard's strength consists of approximately 7,200 soldiers, 1,200 airmen, three hundred Virginia Defense Force members (more on the VDF next week) and four hundred federal and state civilians.<sup>21</sup> The [Virginia Department of Military Affairs](#) provides leadership and oversight to the two components of the Virginia National Guard. If you are interested, the [Virginia National Guard's website](#) can keep you up to date on current activities of the many diverse elements of this component of the Virginia militia.

Of note: The VNG's 91st Cyber Brigade became the Army National Guard's first and only cyber brigade when it was activated on Sept. 1, 2017. The brigade consists of five battalions, five cyber security companies, five cyber warfare companies, and eleven cyber protection teams arrayed across more than thirty states. The primary mission of the brigade is to provide training and readiness oversight over these units, as well as operational command and control when needed.

Speaking of capabilities, the VNG brings these skills to Virginia residents:

**Warfighting:** Light infantry and cavalry, towed field artillery, rotary wing aviation, combat engineer, sustainment, and cyber operations. F-22 fighter jet air dominance, civil engineering, weather forecasting and intelligence, surveillance, and reconnaissance.

**Domestic Response:** High mobility transportation, rotary wing rescue, cyber network defense, urban search and rescue, HAZMAT detection and decontamination. Civil engineering, imagery analysis, incident awareness and assessment, weather forecasting, medical triage.

For further reading. [\*As You Were: To War and Back with the Black Hawk Battalion of the Virginia National Guard\*](#), by Christian Davenport.

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<sup>21</sup> <https://va.ng.mil/News/Article/2391662/about-the-virginia-national-guard/>.

## Part 4 — Leg 2 of the Militia Triad: The Virginia Defense Force<sup>22</sup>

1898 was a watershed year in more than one way. In his 1924 book, *Recent Changes in American Constitutional Theory*, political scientist, John Burgess dates the beginning of adverse constitutional changes in the United States (“this once free land”) to 1898, because: “I hold that the Spanish War of that year was the turning point in our political and constitutional history. Down to that date, the movement of that history had been an almost unbroken march in the direction of a more and more perfect individual liberty and immunity against the powers of government, and a more and more complete and efficient organization and operation of the sovereignty back of both government and defining and guaranteeing individual liberty. From that date to the present the movement has been in the contrary direction, until now there remains hardly an individual immunity against governmental power which may not be set aside by government, at its own will and discretion., with or without reason, as government itself may determine. In a single proposition, the government of the United States is now, in principle, autocratic. Whether and when it may become such in practice now depends entirely upon the discretion of the governmental authorities”<sup>23</sup>

The [Spanish-American War](#) of 1898 (actually from April 21 – December 10, 1898) was also a turning point of sorts. By coming to the aid of Cubans desiring their independence, the prospect of war with Spain revealed the folly of letting the U.S. Army fall into disrepair. In 1890, the U.S. Army had only 39,000 soldiers; compare this with France which boasted an army of 542,000 the same year. The post-Civil War drawdown was not limited to the active force; states had allowed their militias to similarly decline. “By the 1890’s the Virginia militia in general had fallen into a state of decay and neglect.”<sup>24</sup>

When war with Spain became inevitable, President William McKinley, at the behest of the War Department, asked each of the states, territories, and the District of Columbia to contribute to the raising of a 200,000-man Volunteer Army to augment the U.S. Regular Army. Why was this necessary? The Constitution authorized the federal government to employ the militia to “repel invasion, to suppress insurrection, and to execute the laws of the United States.” As then interpreted, and absent law to the contrary, it did not authorize the militia to be used for general military purposes, particularly assisting with a war for independence in a foreign country (that would change with the National Defense Act of 1916).

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<sup>22</sup> Originally published on 12 March 2024.

<sup>23</sup> John Burgess, *Recent Changes in American Constitutional Theory* (New York,: Columbia University Press, 1923), 1.

<sup>24</sup> Willard B. Gatewood, Jr., “Virginia’s Negro Regiment in the Spanish-American War. The Sixth Virginia Volunteers.” *The Virginia Magazine of History and Biography*, Vol. 80, No. 2 (Apr., 1972), pp. 193-209 (17 pages). Accessed at: <https://www.jstor.org/stable/4247720>.

The states, having only their militias to draw from, did what they could. They responded to the call, but often sent ill-trained and ill-equipped soldiers.

To the “U.S. Volunteer Army,” Virginia contributed the 2nd, 3rd, and 4th Virginia Volunteer Infantry, consisting of a total of 4174 soldiers and 157 officers. In addition, the 6th Virginia Volunteer Infantry (“Colored Troops”),<sup>25</sup> consisting of 825 men and 37 officers, joined black units of other states to form the 7<sup>th</sup> Infantry Regiment. In most of these volunteer units, officers were the militia officers the men had previously elected.

None of the Virginia Regiments saw combat and only the 4<sup>th</sup> Infantry was even deployed to Cuba, too late to see action. While none of Virginia’s 5000 soldiers and 194 officers were lost in action, sixty-two were reported to have died of disease and 30 soldiers reportedly deserted.<sup>26</sup>

Five years after this war, Congress passed the 1903 Militia Act requiring states to organize their traditional militias into a “National Guard.” If they wanted to retain a militia for exclusive state use, they had to call it something else. Thus, the “Virginia State Volunteers” would soon be created. This “state-exclusive” militia, similar to what is found in 19 other states (and Puerto Rico), cannot be called up for federal service, but it can serve alongside federal forces voluntarily.

The states with active State Defense Forces include:

[Alaska](#)

[California](#)

[Florida](#)

[Georgia](#)

[Indiana](#)

[Louisiana](#)

[Maryland](#)

[Michigan](#)

[Mississippi](#)

[New Mexico](#)

[New York](#)

[Ohio](#)

[Oregon](#)

[South Carolina](#)

[Tennessee](#)

[Texas](#)

[Vermont](#)

[Virginia](#)

[Washington](#)

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<sup>25</sup> The first of two battalions of “colored” infantry had been established in 1876, only 12 years after the Civil War, the second was commissioned in 1891. For more on these units and their fight to be included in the national callup, see: <https://www.jstor.org/stable/4247720>.

<sup>26</sup> <https://history.army.mil/documents/spanam/ws-stat.pdf>.

Twenty-six other states have statutory state defense forces that are currently inactive. Only five states have never established a state defense force. Although these state defense forces are primarily focused on ground forces, [Alaska](#), [New York](#), [Ohio](#), [South Carolina](#) and [Texas](#) all maintain Naval Militias as part of their State Defense Force.

Over the years the Virginia Defense Force has gone through several name changes:

When the Virginia National Guard finally became federalized in 1917, the Virginia Assembly created the **Virginia State Volunteers**. Their name was soon shortened to the **Virginia Volunteers** and during WWI, members guarded bridges, waterways, fuel storage areas, and certain public buildings.

After Virginia National Guard units returned home from World War I, the **Virginia Volunteers** were deactivated in 1921 (WWI was the “war to end all wars,” right?). A total of 1,300 Virginians served in the Virginia Volunteers from 1917 to 1921.

Following defeat of the French army by the Nazis in 1940, Virginia Governor James Price ordered the establishment of the **Virginia Protective Force**. Wearing blue-grey wool uniforms made in the state’s penitentiaries, and armed with surplus WWI Enfield rifles, the Virginia Protective Force assumed the in-state mission of the Virginia National Guard after it was called to federal service in Europe. As I recounted last week, Virginia National Guard units found themselves among the first to storm Omaha beach on D-Day.

In 1944, the Virginia General Assembly changed the name of the Virginia Protective Force to the **Virginia State Guard**, and it was once again deactivated when the Virginia National Guard returned from Europe in June 1947. A total of 16,885 Virginians served in the Virginia Protective Force and Virginia State Guard from 1941 to 1947.

In 1981, The General Assembly amended the Code of Virginia re-activate the Virginia State Guard. Organizational meetings took place over the next three years.

The [Total Force](#) policies of the Department of Defense prompted changes to federal law in the mid-1980s, allowing states to establish military forces designated to assume the missions of their state National Guards in the event they were called to federal service (even though most states had already done so).

The Virginia State Guard Headquarters was formally established on April 18, 1984, which is considered the founding date of the today’s **Virginia Defense Force (VDF)**. The VDF is governed by Section 44-54.4 of the Code of Virginia.

While currently claiming only 270 members, state law allows the VDF to grow to as many as 7,800 soldiers.

In 2019, the VDF went through a major reorganization which saw the inactivation of three regiments and the combining of the remaining operations into one regiment. Today the Virginia Defense Force consists of:

**First Regiment**, comprised of the 11th Signal Battalion, 21<sup>st</sup> Liaison Battalion, and the 31<sup>st</sup> Cyber Battalion. The 1st Regiment provides trained and ready civil support security and interoperable communications capabilities to support the Virginia National Guard during emergency support operations.

The Second, Third, and Fourth Regiments are inactive.

**Support Operations Group (SOG)**. The SOG was established March 1, 2020, and has three primary responsibilities:

1. Support the VDF by recruiting personnel for domestic operations, cyber security, chaplain, medical and legal specialties.
2. Train the VDF Force to support Virginia Department of Military Affairs (DMA) Domestic Operations Missions.
3. Directly support DMA via professional specialties and training resources.

VDF advertises these operational capabilities: Access Control & Security, Communications, Community Support, Cyber Defense, Incident Management Assistance, Logistics, Operations Center Augmentation, and Public Information.

Requirements to join the VDF include:

- Be a Legal Resident of the United States and the Commonwealth of Virginia
- Have a valid Social Security number
- Age 16 to 65 (Minors require written consent of parent or legal guardian)
- Have the necessary physical ability to perform in any assigned billet
- Have no felony convictions
- Be of good moral character
- Meet the [height and weight requirements](#).

Members with prior military service enter the VDF at their last active duty rank. Members receive pay only while on duty authorized by the Governor. Pay rates are based on the U.S. Department of Defense's military pay scale and member's rank. Members are not paid for monthly drills or annual field training exercises.

### **Recent VDF Operations (from the VDF website and other sources)**

In early 2020, a number of state defense forces were activated to combat the COVID-19 pandemic in various ways.<sup>27</sup>

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<sup>27</sup> [https://en.wikipedia.org/wiki/State\\_defense\\_force#](https://en.wikipedia.org/wiki/State_defense_force#).



In July 2023, when Governor Youngkin mobilized VNG members to assist the Texas Military Department and Operation Lone Star border security operation, members of the VDF provided administrative and logistical support to help with the mobilization.

In September 2023, the VNG staged approximately 35 Soldiers with tactical trucks capable of high water transportation at VNG facilities in the Hampton Roads area in order to support the response to Tropical Storm Ophelia. The VDF provided administrative and public information support to this operation.

In November 2023, the VDF provided logistics distribution, administrative and public information support when the VNG deployed ground and aerial support to the Department of Forestry to help fight wildfires at multiple locations across the state.

**For further reading.** The VDF has [a well-constructed website](#) loaded with information (where much of this information came from), including regulations and instructions covering many of their operations. An excellent Wikipedia page on VDF can be found [here](#). A Wikipedia page covering the state defense force concept is [here](#).

## Part 5 — Leg 3 of the Militia Triad: The Unorganized Militia<sup>28</sup>

The Unorganized Militia is where things start getting a bit, well, squirrely. People tend to be suspicious of the not well-defined, and the Unorganized militia fits that bill. Understanding the Unorganized Militia requires knowing something about America's founding, which today's Americans simply do not. But Article 8 of Chapter 1 of Title 44 nevertheless contains some useful information about this little-known militia. Some examples (emphasis added):

- “Whenever any part of the unorganized militia is ordered out, it shall be **governed by the same rules and regulations and be subject to the same penalties as the National Guard.**” (§ 44-85. Regulations and penalties).
- “When the militia of this Commonwealth, or a part thereof, is called forth under the Constitution and laws of the United States, the Governor shall order out for service the National Guard, or such part thereof as may be necessary; and **he may likewise order out such a part of the unorganized militia as he may deem necessary.**” (§ 44-86. When ordered out for service).
- “The Governor ... may order out [the Unorganized Militia] either by calling for volunteers **or by draft.**” (§ 44-87. Manner of ordering out for service).
- “Whenever the Governor orders out the unorganized militia or any part thereof, it shall be **incorporated into the Virginia Defense Force** until relieved from service. (§ 44-88. Incorporation into the Virginia Defense Force).”
- “Every member of the militia ordered out for duty, or who shall volunteer or be drafted, who does not appear at the time and place ordered, shall be liable to such **punishment as a court-martial may direct.** (§ 44-90. Punishment for failure to appear).”

Integration of the Unorganized militia into the VDF has obviously been contemplated, even if some of the details are missing. But let's back up and ask: where did the idea of an unorganized militia originate?

“The power of the sword, say the minority..., is in the hands of Congress. My friends and countrymen, it is not so, for the powers of the sword are in the hands of the yeomanry of America from sixteen to sixty.<sup>29</sup> The militia of these free commonwealths, entitled and accustomed to their arms, when compared with any possible army, must be tremendous and irresistible. Who are the militia? Are they not ourselves? Is it feared, then, that we shall turn our arms each man against his own bosom. Congress has no power to disarm the militia. Their swords and every terrible implement of the soldier are the birthright of

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<sup>28</sup> Originally published on 19 March 2024.

<sup>29</sup> The common age range for militia service was 16 to 60, although each state set their own range.

Americans.” Representative Tench Coxe, The Pennsylvania Gazette, Feb. 20, 1788.

“I ask, sir, what is the militia? It is the whole people except for a few public officials.” George Mason, at the Virginia Ratifying Convention, 1788.

“A militia when properly formed are in fact the people themselves ... and include... all men capable of bearing arms. ... The mind that aims at a select militia, must be influenced by a truly anti-republican principle.” Richard Henry Lee, Additional Letters From The Federal Farmer, 169 (1788).

“The Militia is composed of free Citizens. There is therefore no Danger of their making use of their Power to the destruction of their own Rights, or suffering others to invade them.” Samuel Adams, Letter to Eldbridge Gerry, Oct. 29, 1775.

In a nutshell, the Unorganized Militia was always considered to be the whole of the citizenry. Various states organized a portion of their militia in ways they saw fit, creating standing, statutory militia units, while the remainder of the militia remained “unorganized.” The 1903 Militia Act<sup>30</sup> finally acknowledged that dichotomy at the national level. It said:

(a) The militia of the United States consists of all able-bodied males at least 17 years of age and, except as provided in [section 313 of title 32](#), 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.

Now, there were at least two distinct militias: an organized one comprising the members of the National Guard in each state, and an unorganized one consisting of all other able-bodied males, 17-45 years of age. But it should be apparent by now that the Unorganized militia isn't a true militia at all but merely a “labor pool” from which to draw or conscript augmentees when needed.

But here we encounter a problem: The U.S. Constitution only uses the word “militia” in three places: in Article 1, Section 8: (calling forth the Militia); Article 2, Section 2: (making the President the Commander in Chief of ... the Militia of the several States);

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<sup>30</sup> Also called the “Efficiency in Militia Act of 1903” or the “Dick Act” (after Congressman Charles W. F. Dick of Ohio who introduced it:).

the Second Amendment (which we're all familiar with); and the 5<sup>th</sup> Amendment (cases arising in ... the Militia) In only one of these uses do we find an adjective applied to the word "militia" and that is: "well-regulated."

How can you have a well-regulated militia that is also unorganized? The National Guard portion of the militia can obviously be well-regulated, so can the volunteers of the Virginia Defense Force, but how can the "whole of the people" who remain unaffiliated with the first two components of the militia remain "unorganized" and yet "well-regulated?" It is oxymoronic, as [this article](#) points out.

There is nothing in the Code of Virginia addressing the training of the Unorganized Militia in advance of a call-up; this is troubling. Would you not want your citizens to have at least a modicum of training that would make them effective, at something, anything, should they be called up and become organized under the Virginia Defense Force?

The South Carolina legislature is trying to solve this partially through [S440](#), which reads:

The General Assembly finds that this act ensures that the South Carolina unorganized militia is "a well-regulated militia" pursuant to Section 20, Article I of the South Carolina Constitution and the Second Amendment to the United States Constitution and further ensures that the unorganized militia is imbued with the rights and privileges guaranteed to the militia and its members in the South Carolina Constitution and the United States Constitution....

Every member of the unorganized militia, at his own expense, has the right to furnish himself with, and maintain at all times in his own possession, or subject to his control:

- (a) any firearm that could be legally acquired or possessed by a resident of South Carolina as of December 31, 2022; and
- (b) any firearm protected by the Second Amendment to the United States Constitution including, but not limited to, any firearm [with] some reasonable relationship to the preservation or efficiency of a well-regulated militia, that is any part of ordinary military equipment, or that could contribute to the common defense;

Nothing like this could ever pass in the present Virginia Assembly, we've become too "purple" a state, too gun-phobic, and the blue portions of the state would become apoplectic should something like this even be introduced in the Virginia Assembly ("What are you trying to do, encourage insurrection?")

But this Act is flawed, I believe fatally so, in that it focuses exclusively on firearms ownership and, by implication, firearms competency. Is skill with firearms the only skill an Unorganized militia member needs? Of course not.

Last week I recounted that the VDF advertised these operational capabilities on their website:

- Access Control & Security (i.e., guarding facilities, checking access badges, etc.)
- Communications (i.e., the use of modern radio equipment)
- Community Support (? Could be almost anything)
- Cyber Defense (Many citizens have “day jobs” in this area. Some probably have more experience than VDF personnel)
- Incident Management Assistance (Normally there are checklists for this, can you follow them?)
- Logistics (Can you hand out water bottles? Drive a truck? Pull a dolly?)
- Operations Center Augmentation (Military Command Post experience would qualify)
- Public Information. (Public speaking experience, military public affairs experience)

See anything on the list you feel qualified to perform?

There are more specific skills and experiences related to each of these. Someone with prior military service will have experience in several of these skills, but what of “civilians” who lack prior military experience?

If the Commonwealth of Virginia was serious about having a true functional Unorganized Militia, they would initiate a comprehensive training program to give its citizens, on a voluntary basis, of course, training on the sort of skills the VDF would welcome in its callups.

Some independent militias have taken this training shortfall to heart and are either fulfilling the training themselves or pointing people to training provided by other organizations, like CERT and First Aid. But there is another problem. Some of these training events have the look and feel of “paramilitary training.”

[Senate Bill 3589](#), “Preventing Private Paramilitary Activity Act of 2024,” was introduced in Congress in January of this year by Sen. Edward Markey, D-Massachusetts. The bill’s stated intent is to curb or prevent the formation and activities of armed extremist groups.

Unfortunately, this represents a national solution to a state problem. Virginia, and I imagine every other state concerned about this, already prohibits “paramilitary activity” (see Virginia [Title 18.2-433.2](#) for the details). But that’s not good enough for some Democrats; they simply don’t trust states to “do the right thing” and are more than willing to impose a “one size fits all” solution. There is already [pushback](#) to the bill because it could be interpreted to outlaw many harmless activities. It will likely die in committee, but it reveals the current thinking among representatives of the Left.

## Part 6 — The Issue of Independent Militias<sup>31</sup>

Section 13 of the 1776 Virginia Declaration of Rights states: “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; that standing armies, in time of peace, should be avoided as dangerous to liberty; and **that in all cases the military should be under strict subordination to, and governed by, the civil power.**” (Emphasis added)

The founders recognized that, while the militia comprised the whole of the people, to be effective, the militia needed leadership, organization, training and supply; it needed to be “both “well-regulated” and “**governed by the civil power.**” Independent militias, by definition, are not. And that’s a problem, that’s part of what makes “militia” a four-letter word, at least to some. But notice the wording in the Declaration of Rights: the military “should be” subordinate to the civil power, not “must be,” or “can only legally be.” That’s an important distinction. In one sense a militia is the same as any other gathering of citizens, it is covered by the Right of Assembly/Right of Association in the First Amendment.

Some writers trace the birth of independent, “private” militias in the modern age to [Waco](#) and [Ruby Ridge](#). However, independent militias are not a recent phenomenon; there have always been independent militias in America, particularly in Virginia.

On June 1, 1774, Virginia Royal Governor Dunmore officially dissolved the Assembly leaving the colony with no official government, save himself. A little over three months later, George Mason, a well-respected lawyer in Fairfax County took decisive action. On September 21, 1774, seven months before the skirmishes at Lexington and Concord, he formed the *Fairfax Independent Company of Voluntiers* (sic), under the command of, well, Colonel George Mason. The County government liked the idea so much it adopted this resolution:

*In this Time of extreme Danger, with the Indian Enemy in our Country, and threat’ned with the Destruction of our Civil-rights, & Liberty, and all that is dear to British Subjects & Freemen; we the Subscribers, taking into our serious consideration the present alarming Situation of all the British Colonies upon this Continent as well as our own, being sensible of the Expediency of putting the Militia of this Colony upon a more respectable Footing, & hoping to excite others by our Example, have voluntarily freely & cordially entered into the following Association.... That we will form ourselves into a Company, not exceeding one hundred Men, by the Name of ....<sup>32</sup>*

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<sup>31</sup> Originally published on 26 March 2024.

<sup>32</sup> Rutland, ed., “Fairfax County Militia Association 21 September, 1774,” *The Papers of George Mason*, Vol. 1, (University of North Carolina Press, 1970), 210-211, quoted in “The Rise of Virginia’s Independent Militia,” by Michael Cecere, accessed at: <https://allthingsliberty.com/2014/09/the-rise-of-virginia-independent-militia/>.

“Those who joined agreed to outfit themselves (at their own expense) in a, “*regular Uniform of Blue, turn’d up with Buff...Buff Waist Coat & Breeches, & white Stockings.*” They also pledged to equip themselves with a good “fire-lock” (musket) and all of the necessary military accouterments of a soldier. Company officers would be chosen annually from among the ranks, and the volunteers pledged to meet regularly, “*for the Purpose of learning & practicing the military Exercise & Discipline.*” The expectation was that the Fairfax Independent Militia Company would present a good example for their fellow Virginians to emulate.<sup>33</sup>

The *Fairfax Independent Company of Voluntiers* (sic) was not about to go off “half-cocked”<sup>34</sup> and fight the British all by themselves. As Mason later explained, his intent was:

*to rouse the attention of the public, to introduce the use of arms and discipline, to infuse a martial spirit of emulation, and to provide a fund of officers; that in case of absolute necessity, the people might be the better enabled to act in defence of their invaded liberty.*



In other words, what Mason had in mind was a “training militia,” a unit able to prepare officers and soldiers to form and lead other militia units as the American colonies prepared for the inevitable conflict ahead.

As word spread of Fairfax’s action, other independent militia units began forming in Virginia (at least six)<sup>35</sup> and in other colonies. Thus, we see that independent militias formed when the reigning government (Parliament and King George III in this case) began posing a threat to the colonist’s freedom and liberty. Of course, this could never happen again, right?

During the Revolutionary War, Virginia provided units of men to the Continental Army (“The Virginia Line”). Militia units sometimes served alongside Line units while other militia units, most under state control, some independent, stayed to protect the state. All other able-bodied free males sixteen and fifty years of age were liable to be called for militia duty at any time.<sup>36</sup> Virginia’s units didn’t fare very well in the war.

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<sup>33</sup> Ibid.

<sup>34</sup> Colonial era flintlock firearms had two cocking positions, half cocked (safed) and full cocked (ready to fire).

<sup>35</sup> Cecere.

<sup>36</sup> See “An act for regulating and disciplining the Militia” (May 5, 1777), accessed at: <https://encyclopediavirginia.org/primary-documents/an-act-for-regulating-and-disciplining-the-militia-may-5-1777/>.

“Almost all Virginians serving in the Continental Army were captured in the disastrous surrender by General Benjamin Lincoln of over 5,000 men in the Continental Army and militia at Charleston, South Carolina in 1780. Another commentator noted: *...if you were a Virginian Continental in the service in 1780 you were more than likely captured at Charleston, and if you missed that you probably died at Waxhaws with Buford or at Camden with Porterfield.*”<sup>37</sup>

Despite these disastrous events, the Virginia Line and Virginia Militia were both present with Washington at Yorktown. But there is another side of the VA militia that we must also discuss, their involvement as “Slave Patrollers.”

I knew nothing about “Slave Patrols” until the subject was brought up at the last YCSD School Board meeting. The speaker stated that “slave patrols [were] the original militias in Virginia,” that this was about “white men with guns persecuting enslaved people” and that “that's what people who want to bring back militias in your county are talking about.”<sup>38</sup>

I knew instinctively that some of this had to be incorrect, but I had never encountered a connection between militias and slave patrols before, so, I set out to do a little research and stumbled upon an excellent 2001 book by Sally E. Hadden, entitled: [\*Slave Patrols, Law and Violence in Virginia and the Carolinas\*](#).

As I read Haddon’s book it became obvious that the speaker had not, that his information had come from elsewhere. A full third of the book's 340 pages are devoted to the endnotes/citations; it seems as well-researched as anything I’ve read. Here are the facts about slave patrols as Haddon relates them:

“The first elements of colonial patrolling did not arise from conditions peculiar to the American South, but found a transplanted home there after their germination in the Caribbean.” In other words, slave patrolling was not the original idea of Americans or their militias.<sup>39</sup>

“Unlike South Carolina, Virginia’s militia still did not play a role in recapturing fugitive bondsmen<sup>40</sup> at this time (Note: Haddon is referring to 1670-1691).”<sup>41</sup>

“[Virginia] lawmakers initially relied upon independent slave catchers and constables to capture fugitives, but their efforts were not always enough.”<sup>42</sup>

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<sup>37</sup> <http://virginiaplaces.org/military/revwarfought.html>

<sup>38</sup> [https://www.youtube.com/results?search\\_query=york+county+school+board+26+feb](https://www.youtube.com/results?search_query=york+county+school+board+26+feb) , at 03:25:18.

<sup>39</sup> Sally E. Hadden, *Slave Patrols, Law and Violence in Virginia and the Carolinas*, (Cambridge, MA: Harvard University Press, 2001), p. 8.

<sup>40</sup> A more common and polite name for slaves.

<sup>41</sup> *Ibid.*, p. 29.

<sup>42</sup> *Ibid.*, p. 26.



“Royal governors expected the militia to take a more active part in slave control, but militia members refused. In 1712, [Virginia] Lieutenant Governor Spotswood wrote that ‘[t]he Militia of this Colony is perfectly useless,’ and ‘[T]he People are so stupidly averse’ to improving the militia that slave rebellions seemed inevitable.”<sup>43</sup> (Emphasis added)

“Ultimately, in 1727, the burgesses created a law to use the militia against slaves, instituting Virginia’s first formal slave patrol.” (Emphasis added) Note: the organized militia had to be ordered by law to participate in patrolling, the unorganized militia was not initially involved. But eventually, more patrols were needed than the organized militia could support. (Emphasis added)

“[M]ilitia commanders could call out as many white men as they believed were needed to patrol...Patrollers called for duty would not be paid unless they stayed on patrol more than two days. Theoretically, these patrol groups could only be called out on the holidays enumerated in the preamble [of the law] and not at other times during the year.”<sup>44</sup>

The Patrollers' duty was to disperse large gatherings of slaves, which often happened on religious holidays when Baptists held what today we would call “crusades,” which many slaves sought to attend. The militia was ordered to patrol “twice or thrice in a Week to prevent all Night meetings.” Note: Congress’s 1850 Fugitive Slave Act was still more than a hundred years in the future.

“The 1727 law creating patrols was expanded in 1738<sup>45</sup>....[P]atrollers could take up slaves ‘strolling about’ between plantations without passes and take them to a justice of the peace...”<sup>46</sup>

“Finally, in 1754, Virginia authorized county courts to pay patrollers ten pounds of tobacco for each twenty-four-hour period that they were on duty, and each patrol captain was obligated to submit written reports of the patrol’s activities to the court. With the passage of the 1754 law, the contours of Virginia’s patrol system were now complete, remaining largely unchanged until the Civil War.”<sup>47</sup>

“When the Virginia General Assembly met in February 1866, its members repealed all ‘acts and parts of acts relating to slaves and slavery.’ Including chapter 98 of the Code of 1860, authorizing the continued use of slave patrols.”<sup>48</sup> Thus ended legal slave patrols in Virginia.

Once Union forces had withdrawn completely, Southern states were slow to reconstruct their state militias, this vacuum led to the emergence of the Ku Klux Klan and a reign of terror against

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<sup>43</sup> Ibid.

<sup>44</sup> Ibid., p. 30.

<sup>45</sup> Ibid., p. 31

<sup>46</sup> Ibid.

<sup>47</sup> Ibid.

<sup>48</sup> Ibid., p. 198.

freedmen so violent and merciless that some freedmen created all-black volunteer militias in response.<sup>49</sup>

Let's examine the three statements made at the last Board meeting:

"[S]lave patrols [were] the original militias in Virginia." Militias in Virginia preceded slave patrols by more than a hundred years. Most people forget that slavery was not even legalized in Virginia until 1662, fifty-five years into the troubled life of the colony, and from there the institution grew very slowly, at least in Virginia. There were indeed slave patrols in Virginia, as there were in all other slave states, and, eventually, militia members (as distinct from militia units) participated. As I indicated in the first essay in this series, the first militia in Virginia can be said to have originated in 1619, when the first elected legislature mandated that everyone show up to church with their musket, and/or 1624, when a law was passed requiring firearms always be carried when working the fields. The founders recognized that a militia was comprised of the whole of the people.<sup>50</sup> The first record of a militia member participating in a slave patrol in Virginia is 1727, more than a hundred years after the first militia was formed.

"[W]hite men with guns persecuting enslaved people." Slave patrols operated only under laws passed by the legislature. They were required by law to, first, break up groups of slaves to prevent organized rebellions; second, check whether slaves away from their plantations carried legitimate passes signed by their owners; many slaves were trusted enough to be given passes to visit friends and relatives on other plantations, to run errands, or to attend church services; and third, to return slaves found without passes to their owners, sometimes after punishment by a Justice of the Peace was inflicted.

"That's what people who want to bring back militias in your county are talking about." Slavery is gone, slave patrols are gone, and no one I know wants either back.

To summarize the issue of Slave Patrols:

Slave Patrols were not some rogue activity of a rag-tag-mob, they were mandated by the colonial governments, not the militia. The Virginia militia was reluctant to be involved but the law gave them no choice, and eventually, the legislature had to authorize payment for patrol activity to make it attractive. When the militia participated, it was always under the authority of law. If militia commanders needed men who were not already part of the organized militia, such men could be drafted from the citizenry at large. If members of the unorganized militia had undertaken unauthorized, and therefore illegal patrols, they would not be paid.

Chattel slavery is a blot on our nation's history. But slavery had existed for millenia and continues today in some parts of the world. England extinguished slavery without bloodshed,

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<sup>49</sup> Ibid., p. 204.

<sup>50</sup> "The militia? It is the whole people except for a few public officials;" "A militia when properly formed are in fact the people themselves."

we were not so fortunate. Sex slavery is rampant in this country and not enough is being done about it; the current unrestrained illegal immigration is only making it worse.

With that, I'm going to pause and let you all view a documentary called [The Missouri 51<sup>st</sup> Militia](#). The 50-minute video is available on YouTube in three parts totaling only 25 minutes, or on Amazon Prime Video complete, but with ads. If you've already seen it you may keep reading. Although the producers display bias, they do make an attempt to let the militia members explain themselves.

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What comes across to me in the film is a bunch of patriotic, Christian conservative Americans who are concerned about an increasingly authoritarian national government taking steps to limit their inalienable rights and freedoms. They recognize that their activities could seem threatening to others, especially law enforcement, and for that reason are careful to be transparent, and to insist on discipline within their membership, expelling those who do not meet standards.

This twenty-three-year-old film claims there were nearly a million independent militia members in the United States in 1995. Other estimates put the number considerably lower.<sup>51</sup> But I note that neither the Missouri Highway Patrol officer nor the FBI Agent interviewed was concerned about "law-abiding" militias, Today's FBI appears to take a different view, even going to the point of entrapping Michigan militia members into joining what has now been revealed to be an [FBI-originated plot to kidnap their governor](#), and [targeting Trump supporters](#) as "violent extremists."

But independent militias today do indeed need to walk a fine line. Here in Virginia, if they "Teach[] or demonstrate[] to any other person the use, application, or making of any firearm, explosive or incendiary device, or technique capable of causing injury or death to persons, [while] **knowing or having reason to know or intending that such training will be employed for use in, or in furtherance of, a civil disorder,**" (Emphasis added) members will be charged with violating [Title 18.2-433.2](#) of the Virginia Code (*Paramilitary activity prohibited; penalty*) and subject to a Class 5 felony conviction. But notice that the paramilitary activity itself is not illegal, only when it is conducted "knowing[ly] ... "in furtherance of a civil disorder." Then there is a problem.

The [Campbell County \(VA\) Militia](#) has managed to walk that line. They were able to instill enough confidence in themselves that their county Board of Supervisors voted 6-1 to formally recognize the group, and last month their members were [welcomed onto the floor of the Virginia Assembly](#), receiving a strong applause. Why were they applauded, these "militia" members? Certainly, some delegates were just being polite, but others no doubt wished to

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<sup>51</sup> [https://en.wikipedia.org/wiki/American\\_militia\\_movement](https://en.wikipedia.org/wiki/American_militia_movement)

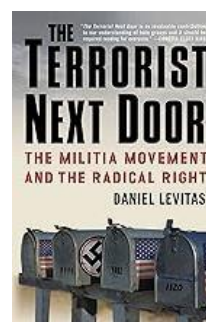
thank these citizens for their contribution to their community. The group recently celebrated its four-year anniversary and from all appearances is well respected in their part of Virginia. The group's vision statement reads:

"To train and empower individuals to a state of readiness and self reliance in order to be a force ready to help in any time of need, and to stand up for the rights and freedoms of everyone that calls Campbell County home. We seek to inspire patriots in Virginia and across the nation to form their own constitutional militias."<sup>52</sup>

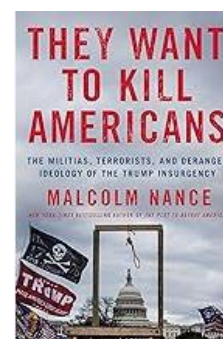
But as we have seen locally, the word militia evokes strong negative feelings among some people who have not studied the history of militias. What works in Campbell County may not work everywhere in Virginia.

It is precisely that fear of "paramilitary" activity that encourages authors to write books like:

[The Terrorist Next Door: The Militia Movement and the Radical Right](#) by Daniel Levitas, (2004) *"The Terrorist Next Door reveals the men behind far right groups like the Posse Comitatus<sup>53</sup> and the ideas that inspired their attempts to bring about a racist revolution in the United States."*



[They Want to Kill Americans: The Militias, Terrorists, and Deranged Ideology of the Trump Insurgency](#) by Malcolm W. Nance, 2022. *"They Want to Kill Americans is the first detailed look into the heart of the active Trump-led insurgency, setting the stage for a second nation-wide rebellion on American soil. This is a chilling and deeply researched early warning to the nation from a counterterrorism intelligence professional: America is primed for a possible explosive wave of terrorist attacks and armed confrontations that aim to bring about a Donald Trump led dictatorship."*



I've not read either book, the blurbs tell you all you need to know about them. Perusing their Tables of Contents on Amazon, one finds no mention of the many Left-Wing militias that have formed over the last few years. The Left doesn't like to talk of its own as militias, preferring the more benign "[Militant Groups](#)," or the utterly ridiculous: "[Antifa is an idea](#)." See [here](#) and [here](#) for examples.

Yes, some militias today clearly don't have "community service" as their primary goal. But as long as those on the political Left push for more and more government intrusion into our lives, i.e., more authoritarianism; as long as they continue to push more gun control, as long as they seem intent on trampling long-cherished rights, as long as they seem intent on "fundamentally transforming" our republic into their socialist utopia where "[you will own nothing and be](#)

<sup>52</sup> <https://campbellmilitia.com/>.

<sup>53</sup> Various translated as "power of the county" or "being accompanied."

[happy](#),” there will be citizens who believe banding together and preparing for a future societal breakdown is the only way to protect themselves, their families and, yes, their communities.

And there will always be “militia members” who give the constitutional militia movement a bad name.

“Constitutional Militias” are, well, constitutional. They are supported primarily by our Right of Association and Right of Assembly, and as long as they remain in public view and transparent, informing law enforcement of their activities, focusing primarily on emergency response training and on acquiring skills that will make them effective in an Unorganized Militia callup, rational citizens should find nothing to concern them.

The primary problem, as I’ve been saying for a long time, is a lack of understanding of our country’s history and the critical and beneficial role militias have played throughout that history (slave patrols excepted). Our public school system is not going to help correct that ignorance because “The History of Militias” does not appear in the SOLs. Those in militias and those contemplating forming a militia should realize how some citizens view them and work diligently to project a disarming and yet accurate view of their purpose and goals.

**Community Service Organizations (CSO).** Americans have a deep heritage of community service, springing mostly from our Judeo-Christian worldview, which draws from Biblical examples such as the Good Samaritan and others. Lions Clubs, Rotary, Exchange Clubs, Boys and Girls Clubs, etc., all provide Americans with ways to serve their community.

I see no reason why a group of citizens cannot form itself into a CSO with the goal of encouraging citizens to prepare for emergencies of every sort, an organization that encourages citizens to attend already existing emergency training (CERT, First Aid) and/or developing and making available other training directly related to emergencies, such as search & rescue procedures, emergency food storage techniques, water purification, self-sustaining gardening, healthy living and health freedom, yes, even firearms competency. An organization need not call itself a militia to meet these goals, but there should be no public angst if it chooses to do so.

In summary, let’s work together to turn “militia” back into a seven-letter word. This means having conversations with people who may not have a comprehensive view of what the word has meant over our nation’s history. This means being well enough informed to be able to conduct those conversations.

Perhaps the best way to start one of those conversations is to wait until the word militia comes up and ask: “What do you mean by militia?”

For further reading:

[\*The Citizen Militias of The United States: Their Antecedents, Development, and Present Condition\*](#), by Gerald Van Slyke, 2023

## Part 7 — Will Congress Soon Ban Militias?

In this series, I covered every aspect of the word “militia” I can think of: the historical, the constitutional, the legislative/statutory and the private/independent aspect of militias. Has it all been for naught? Have I wasted my time (and yours)? Is Congress getting ready to ban militias in the United States forever and make America safe for ~~democracy~~-tyranny? Let’s learn.

Enter the Private Paramilitary Activity Act of 2024 ([H.R. 6981](#) and [S. 3589](#)), sponsored by our favorite Representative Jamie Raskin (D-MD) in the House, and Senator Edward Markey (D-MA) in the Senate. These absolutely word-for-word identical bills were introduced on January 11, 2024 and January 16, 2024, respectively. Both were promptly referred to each Committee on the Judiciary.

In the Senate, the legislation is almost assured a floor vote; and even passing if the Democrats maintain partisan loyalty; in the House, as long as Republicans maintain a majority, it is likely to die in committee. But if the Senate version passes a floor vote, it will have to come to the House regardless of what has happened to the House version. If the shenanigans being played by RINOs in the House result in a Democrat Majority anytime during this session of Congress, I see an outside chance it could pass, and of course Biden would sign it. What will the legislation do? (Warning: lawyer language approaching)

First, “while acting as part of or on behalf of a private paramilitary organization and armed with a firearm, explosive or incendiary device, or other dangerous weapon” it will become illegal to do anything paramilitary. Seriously. Actually, the prohibited activities include:

“(1) publically patrol, drill, or engage in techniques capable of causing bodily injury or death; (I suppose drills in the privacy of a large gym, out of the public’s view, would be ok).

“(2) interfere with, interrupt, or attempt to interfere with or interrupt government operations or a government proceeding;

“(3) interfere with or intimidate another person in that person’s exercise of any right under the Constitution of the United States;

“(4) assume the functions of a law enforcement officer, peace officer, or public official, whether or not acting under color of law, and thereby assert authority or purport to assert authority over another person without the consent of that person; or

“(5) train to engage in any activity described in paragraphs (1) through (4).

Paragraphs 2 and 3 above are obviously aimed at militias interfering with the elections in any way. The government expressed a similar fear in the leadup to the 2020 election but no interference was ever reported to have occurred.

If you are wondering what is considered a “dangerous weapon,” you are referred to Section 930(g) of Title 18, which states:

“The term ‘dangerous weapon’ means a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2½ inches in length.”

IOW, anything which, in the right hands, could kill or seriously injure a person becomes a “deadly weapon.” So substituting sticks for AR-15s when a militia wants to do a maneuver drill in the woods is not going to fly. I suppose the militiamen could all take out their Swiss Army knives/nail files/scissors and drill with those instead, but even pool noodles in the wrong hands can be deadly.

“Firearms” are also prohibited weapons for paramilitary activity. And a “firearm” includes:

“The term “[firearm](#)” means (A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any [firearm muffler](#) or [firearm silencer](#); or (D) any [destructive device](#). Such term does not include an [antique firearm](#).” (Section 921(a) of Title 18)

You couldn’t even drill carrying wooden rifle stocks without the firing mechanisms or barrels. Historical reenactors are specifically excluded from the restrictions in another part of the bill as well.

“The term ‘private paramilitary organization’ means any group of 3 or more persons associating under a command structure for the purpose of functioning in public or training to function in public as a combat, combat support, law enforcement, or security services unit.”

Whoops, if you and your wife want to go play commando in the woods some weekend, you’re OK, but don’t let the kids join you or you risk becoming a “private paramilitary organization.”

“Combat support” as previously mentioned could be taken to mean medical support, logistics support, communications support, or just about anything that might support a military unit, even Chaplain support.

The five activities mentioned above become a problem when they involve:

“(A) travel across a State line or national border; or

“(B) the use of the channels, facilities, or instrumentalities of interstate or foreign commerce;

“(2) involves a firearm, explosive or incendiary device, or dangerous weapon that has traveled in interstate or foreign commerce;

“(3) involves the use of ammunition or a large capacity ammunition feeding device that has traveled in interstate or foreign commerce;

“(4) obstructs, delays, or affects interstate or foreign commerce; or

“(5) occurs wholly within any commonwealth, territory, or possession of the United States.”

All these references to interstate commerce might seem out of place, but they have been included by the authors to show us how they intend to sell this bill to the Supreme Court: under the U.S. Constitution’s Commerce Clause. I see a potential loophole here though: if a militia wanted to train with weapons and ammunition that have never taken part in interstate commerce, i.e., that were manufactured wholly within a state, they might be able to legally do it (I’m not a lawyer and this is not legal advice, just saying).

None of this infringes upon the “keeping and bearing” of arms under the 2<sup>nd</sup> Amendment, but there is definitely an infringement of the militia reference in the prefatory clause of the 2<sup>nd</sup> Amendment. This won’t prevent the *establishment* of independent militias, per se, these organizations simply won’t be able to do anything that looks “paramilitary.” These bills should not affect the activities of Community Service Organizations.

In the PENALTY section of the bill, there is a cascading series of fines and imprisonments for repeated infractions of these provisions. Any infraction that results in someone’s death can be assigned life imprisonment.

Even more egregious than what you’ve just read is the FORFEITURE section. Violate this law and the government can confiscate anything and everything you own: your house, car, firearms (naturally), bank accounts, everything:

“Any person who violates subsection (a) shall forfeit to the United States **any property, personal or real**, involved in, used, or intended to be used, in any manner or part, to commit, or to **facilitate the commission of, the violation**, or that constitutes or is derived from proceeds traceable to the violation.” (Emphasis added)

Did owning a home facilitate your ability to violate these provisions? Did the leaders of your group ever meet in your living room to plan things? A court will probably have to decide, but you know how the government will argue.

Another question comes to mind: is a paintball gun a “deadly weapon:” can it produce “serious bodily harm?” [One study](#) from 1997–2001 found that “an estimated 11,998 persons [older than 7 years old] with paintball game related injuries were treated in emergency departments.” Those of you who watched the [Missouri 51<sup>st</sup> Militia](#) video linked in Part 6 noted that this group



often engaged in paintball games to hone their tactical planning and communication skills.  
Would Raskin's bill lead to the death of Paintball?

From one perspective, these two bills might seem totally unnecessary; all 50 states have prohibitions of paramilitary activity on their lawbooks; I covered Virginia's last week. But the state laws, at least Virginia's, include a *mens rea* component (literally "guilty mind"). [Virginia only prohibits paramilitary activity](#) [while] **knowing or having reason to know or intending that such training will be employed for use in, or in furtherance of, a civil disorder**. In Virginia, you can participate in all the paramilitary activity you want, as long as the activity is not intended to produce civil disorder. I imagine other state's laws are similar. But that's too "weak-kneed" for Mr. Raskin and company. There is no requirement to assess nefarious intent in the new bills. Your intent, even if solely to help the community, is immaterial, the activity is prohibited, period. The U.S. Constitution's Supremacy Clause will case this new legislation (if it passes) to preempt any state laws.

If this bill bothers you (and it should), you know who to complain to.

For further reading (still):

[The Citizen Militias of The United States: Their Antecedents, Development, and Present Condition](#), by Gerald Van Slyke, 2023. I think it is the most complete treatment of the subject I've encountered.

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