March 25, 2024

Chairwomen Julie Daniels
Senate Rules Committee
Oklahoma Legislature
2300 N Lincoln Blvd, Oklahoma City, OK 73105

RE: OPPOSE H.J.R. 1034 UNLESS AMENDED

Dear Sen Daniels and the Honorable Members of the Senate Rules Committee,

Joint Resolution 1034 proposes submitting to the people of Oklahoma a ballot initiative to amend Article II, Section 26 of the Oklahoma Constitution, titled "Bearing arms - Carrying Weapons."

On behalf of the many Oklahoma members and supporters of Gun Owners of America (GOA), we stand opposed to H.J.R. 1034 unless and until amended. The necessary amendments are attached.

We appreciate the intent of the sponsors to strengthen protections within the Oklahoma Constitution, but there are too many concerns as currently drafted that would actually undermine rather than support one's right to bear arms.

As introduced, the new subsections A and C must be amended to align H.J.R. 1034 with the original intent of the Second Amendment to the United States Constitution and with the first principles that the Second Amendment was drafted to protect. Additionally, the new subsection B should be stuck in its entirety from the resolution. Subsection B is unconstitutional as written as explained in our materials provided.

You will find additional information attached providing more context detailing our concerns. Please feel free to use this information in your deliberations. We are also available to answer any questions with contact information below.

Respectfully,

Iain Graeme, M.Hist., USMC (RET)
Rocky Mountain & Great Plains Region Director
Gun Owners of America
Email: Iain.graeme@gunowners.org
Ph: (307) 996-8526

Joshua S. Barnhill, JD.
State and Local Legislative Counsel
Gun Owners of America
Email: josh.barnhill@gunowners.org
Ph: (337) 258-8808

IN DEFENSE OF OUR RIGHTS:

A BRIEF EXAMINATION OF THE RIGHT TO BEAR ARMS AS RELATED TO THE OKLAHOMA CONSTITUTION & H.J.R. 1034

Provided to the Oklahoma Senate
March 2024

Presented by:
Gun Owners of America

TABLE OF CONTENTS

Executive Summary

"*The liberties of our Country, the freedom of our civil constitution are worth defending at all hazards: And it is our duty to defend them against all attacks. We have receiv'd them as a fair Inheritance from our worthy Ancestors: They purchas'd them for us with toil and danger and expence of treasure and blood; and transmitted them to us with care and diligence. It will bring an everlasting mark of infamy on the present generation, enlightened as it is, if we should suffer them to be wrested from us by violence without a struggle; or be cheated out of them by the artifices of false and designing men. Of the latter we are in most danger at present: Let us therefore be aware of it. Let us contemplate our forefathers and posterity; and resolve to maintain the rights bequeath'd to us from the former, for the sake of the latter. - Instead of sitting down satisfied with the efforts we have already made, which is the wish of our enemies, the necessity of the times, more than ever, calls for our utmost circumspection, deliberation, fortitude, and perseverance. Let us remember that "if we suffer tamely a lawless attack upon our liberty, we encourage it, and involve others in our doom." It is a very serious consideration, which should deeply impress our minds, that millions yet unborn may be the miserable sharers of the event.*"

Samuel Adams, *Essay in the Boston Gazette,* October 14, 1771

The Supreme Court, in *Heller*, *McDonald*, and *Bruen*, affirmed the right to keep and bear arms to be a "fundamental" and "individual" right of "the people," holding that the Second and Fourteenth Amendments are preexisting rights that protect the right to possess and carry arms in defense of life, as well as it's corollaries. In fact, the Court in *Heller* and again in *Bruen* found that the Second Amendment "*elevates above all other interests the right of law-abiding, responsible citizens to use arms' for self-defense.*"[1] In light of the gravity that the Framers and the Supreme Court placed upon the rights enumerated within the Second Amendment, a legislative body should have great restraint, maintain an aura of precision, and proceed with dignified intentionality when attempting to redress a flawed constitutional enumeration of a fundamental individual right within a State constitution.

While GOA applauds the efforts of authors of H.J.R 1034 and the legislature to restore the language of Article II, Section 26 of the Oklahoma Constitution with that of the original intent of the Framers in forming the tenets of the Federal Compact, the proposed language of H.J. R. 1034 is highly problematic. Within the suggested alterations to both Subsections A and C there is language that must be revised in order to realign the amendment with the nation's First Principles. Furthermore, with the addition of Subsection B Article II, Section 26, one denotes clear deviations that places the new language in direct conflict with the Federal compact, as well as significant Supreme Court precedents.

[1] *District of Columbia v. Heller,* 554 U.S. 570 (2008), 635.

Sections I through IV of this testimony delve deeper into the finer points and essential elements that comprise the core tenets of the Second Amendment. Given the current level of confusion concerning the original intent of the right, it is prudent to review those foundations so that the Framer's intent is in the forefront of one's mind when contemplating alterations to Article II Section 26. Sections V through VII contain important historical information that explains the background and character of the formation of the Oklahoma Constitution, as well as some of the relevant Oklahoma Court precedents that have placed significant infringements upon the right. Section VII discusses the 1907 language of Section 26 and its relation to the Federal amendment. The final section, VIII, explains why Subsection A contains First Principles miscalculations. In light of the content contained within sections I through VII, one has to reflect upon the reasons why the Framers chose to compose the right to keep and bear arms in the manner that they did within the Bill of Rights. Finally, the judicial conflict within Subsection B is contained within part VIII and will be addressed once one gains a clearer understanding of the original intent of the right as laid forth in the Federal Compact. In so doing, this legislative body will be armed with the requisite knowledge to correct on First Principles grounds the misconceptions of the generation of legislators who codified within the 1907 Oklahoma Constitution ideas that are in direct conflict with those contained within our founding legal documents.

In recognition of the time constraints, those already steep within the tenets, text, history, and tradition of the God-given right, below are GOA's recommendations for alterations to subsections A & C, as well as a brief note on why subsection B ought to be struck from the proposed amendment to Article II Section 26. In composing the language to correct the proposed amendment, GOA has consulted with leading constitutional scholars, as well as provided a wealth of footnote so that this legislative body can be confident that these recommendations are in accordance with the Framers, as well as with the original intent of the Second Amendment.

RECOMMENDED AMENDMENTS FOR HJ.R. 1034

RECOMMENDED AMENDMENT #1

Amend H.J.R. 1034 Engrossed, pg 2, lines 3-11:

H.J.R. 1034 Engrossed Language: Article II, Section 26, Subsection A

> The fundamental right of each individual citizen to keep and to bear arms in defense of his or her person or property, or including handguns, rifles, shotguns, knives, nonlethal defensive weapons, and other arms in common use, as well as ammunition and the components of arms and ammunition, for self-defense, lawful hunting and recreation, in aid of the civil power, when thereunto lawfully summoned, or for any other legitimate purpose, shall not be infringed.

Gun Owners of America Proposed Language: Article II, Section 26, Subsection A

> All people, by nature, free and equal, and have certain inherent and inalienable rights, individual citizens have the right to keep and bear arms, ammunition, accouterments, parts, and accessories typical to the maintenance of the normal function and most effective use of the arms as intended, for the defense of life, liberty, and property, hunting and recreational use, and in aid of the civil power when thereunto lawfully summoned, which shall not be infringed. As, in times of peace, armies are dangerous to liberty and shall be in strict subordination to the civil power, therefore a well-regulated militia, composed of the body of the people, trained in their privately held arms, is the proper, natural, and safe defense of a free state.

RECOMMENDED AMENDMENTS FOR HJ.R. 1034

RECOMMENDED AMENDMENT #2

Amend H.J.R. 1034 Engrossed, pg 2, lines 12-16:

H.J.R. 1034 Engrossed Language: Article II, Section 26, Subsection B

> This section shall not prevent the Legislature from regulating the carrying of weapons enforcing or adopting narrowly tailored time, place, and manner regulations, or authorizing political subdivisions to adopt and enforce such regulations, to serve a compelling state interest.

Gun Owners of America Strike Through Proposal: Article II, Section 26, Subsection B

> Strike the entirety of Subsection B. This section as written is in conflict with the Second Amendment of the United States Constitution as interpreted by the United States Supreme Court in *Bruen*. The proposed language attempts to impose a strict scrutiny style test to protect the right. While that may seem appropriate at first, the Court has explained that that kind of test is insufficient to best protect one's right to bear arms and adopted a standard that provides even greater protection than the language proposed here, making this language insufficient. Kindly see Section VIII. Analysis of H.J.R. 1034 & GOA Proposed Changes, especially subsection B, for a more detailed explanation of why Subsection B ought to be stuck from the proposed amendment.

RECOMMENDED AMENDMENTS FOR HJ.R. 1034

RECOMMENDED AMENDMENT #3

Amend H.J.R. 1034 Engrossed, pg 2, lines 17-20:

H.J.R. 1034 Engrossed Language: Article II, Section 26, Subsection C

> No law shall impose registration or special taxation upon the keeping of arms including the acquisition, ownership, possession, or transfer of arms, ammunition, or the components of arms or ammunition.

Gun Owners of America Proposed Language**:** Article II, Section 26, Subsection C

> But this provision shall not prevent the passage of laws concerning the use of arms in a manner that is deemed lawless as established by analogue laws that are in accordance with this nation's First Principles at the time of the Founding. Therefore, no corruption of the Rule of Law shall be permitted that creates licensure and registration schemes; imposes restrictions on ancillary rights; or the implementation of special taxation on the individual's ability to purchase, own, or possess arms and associated accoutrements. Nor shall any unprincipled law permit the confiscation of or violate an individual's access to arms, except for those who have forfeited the right by the commission of a violent crime.

I. A Timeless and Unified Framework of Liberty Written by the Common Man

"I have said that the Declaration of Independence is the RINGBOLT to the chain of your nation's destiny; so, indeed, I regard it. The principles contained in that instrument are saving principles. Stand by those principles, be true to them on all occasions, in all places, against all foes, and at whatever cost…"

Frederick Douglass, "What To the Slave Is the Fourth of July?," July 5, 1852

The Framers penned our founding legal documents in common parlance so that the average citizen could plainly determine the original meaning of the text within the Constitution. With profound foresight, the Framers defiantly codified our God-given rights in anticipation of the morass of legalese that strangles and corrupts the Rule of Law in our age. A quick plain text reading of the Second Amendment to the Bill of Rights finds that it is not as descriptive as the proposed language for HJR 1034. This is not due to an oversight by the Founders. On the contrary, the Framers intend our founding legal documents to enshrine timeless truths into a unifying framework so that future generations would have learned documents with which to maintain the constitutional republic. Recognizing this truth, President Abraham Lincoln had occasion to reflect upon the principles of the American Founding. Using a biblical metaphor from Proverbs 25:11, he stated that the Declaration of Independence was an "apple of gold" because it contained the Founding principles of the new country. The Constitution, on the other hand, was a "picture of silver," or a frame around the apple that created the structures of constitutional republican government.

In Lincoln's mind—and that of the Founders—the two documents were permanently linked in constructing a just government where the safeguarding of the inherent rights of the citizenry was to be the singular and proper purpose of the government. Accordingly, there was no need to add further explanation to the rights enumerated within the Second Amendment because the Declaration of Independence along with the preambles to the Constitution and Bill of Rights, had already expressly solidified those rights firmly within the Natural Law tradition. The Second Amendment, therefore, as a supplement to the Constitution, relies upon the Declaration of Independence for its significance, function, and intent. Likewise, both the Constitution and the Bill of Rights contain timeless and self-evident truths because they adhere to the "Laws of Nature and of Nature's God," as acknowledged within the Declaration. This is a significant point because positive law theory compels the individual to seek truth within case precedents or analogous laws issued by Platonic lawgivers. That of course is the realm of humanity, which is inherently fallible. Conversely, the Framers sought the fundamental purpose and principles of the laws within truth derived from divine revelation, in conjunction with the application of right reason. In this manner, one can observe that the Declaration articulates the origin and nature of

rights, as well as their relation to self-government. Working in tandem with the Declaration, the Constitution provides a framework for the application of self-government, as well as, through the proclamations within the Bill of Rights, expressly enumerates a portion of timeless and unalienable rights of the individual.

By combining the three documents into a single "expression of the American mind,"[2] one observes that we have life, and all ancillary rights, as a gift from our Creator. The protection of these gifts is sole purpose of what a just government is instituted do, not to decide whether to provide rights or to revoke ones are no longer socially expedient. Our rights, therefore, are not only self-evidently true but are endowments to all humanity equally. As such, we are born equally entitled to our lives and to be rightfully free of the violence of others. That observation is true, regardless of whether the lawlessness is initiated by an individual or through the coercion of an unjust government. The Founders of our nation sometimes referred to this "right to life" as "the law of self-preservation." They considered it to be the first law of nature, and the antecedent of all civil laws and institutions. It is a right that applies to all individuals whether in a state of nature or within civil society, where "in cases of great and urgent necessity, and where no other remedy is at hand, is perfectly understood and universally assented to; a right which the law of nature giveth, and no law of society hath taken away."[3]

Furthermore, our Founders understood that a just government is one that secures the unalienable rights and liberties of its citizenry. That is a fundamental truth of proper governance because, as a perceptive James Wilson argued, one can employ facts, logic, and right reason to conclude, that "Government . . . should be formed to secure and to enlarge the exercise of the natural rights of its members; and every government which has not this in view, as its principal object, is not a government of the legitimate kind."[4] Wilson is articulating the notion that the timeless truths that form the foundations of a nation's fundamental laws, must be grounded in the Natural Law or God's Will. If a government realizes this essential undertaking, then there will be "precision and certainty"[5] in the application of the core laws of society, which serves as a bulwark against arbitrary usurpations of power by the government.

---

[2] Thomas Jefferson, "'From Thomas Jefferson to Henry Lee, 8 May 1825,'" National Archives & Records Administration: Founders Online, https://founders.archives.gov/documents/Jefferson/98-01-02-5212.

[3] C. Bradley Thompson, *America's Revolutionary Mind: A Moral History of the American Revolution and the Declaration That Defined It*. (New York: Encounter Books, 2022), 187.

[4] James Wilson, Kermit Hall, and Mark David Hall, *Collected Works of James Wilson*, Vol. II, (Indianapolis, IN: Liberty Fund, 2007), 592.

[5] James Wilson, Kermit Hall, and Mark David Hall, *Collected Works of James Wilson*, Vol. I, (Indianapolis, IN: Liberty Fund, 2007), 239.

Reflecting upon the tenets of the Federal enumeration, in conjunction with the context from the Declaration and Constitution, in comparison with H.J.R 1034, we observe that the Second Amendment's succinctness is merely meant to highlight the *two* of core reason for the right of the "We the People" to keep and bear arms:

Declaration of Independence (1776):

> We hold these *truths to be self-evident*, that *all men are created equal*, that they are *endowed by their Creator with certain unalienable Rights*, that *among these are Life*, *Liberty and the pursuit of Happiness*.–That *to secure these rights, Governments are instituted among Men*, deriving their just powers from the consent of the governed, –That whenever any Form of *Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it***,** and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness… But when a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, *it is their right, it is their duty, to throw off such Government*, and to provide new Guards for their future security.[6]

Herein we observe the divine origin of rights, along with a recognition of the core trinity of rights from which all other human liberty flows. Additionally, we find the fundamental purpose of a just government, as well as the duty of the citizenry to throw off the chains of a government when it has violated its proper purpose. This language about the duty of the citizenry to ensure that the government does not "reduce them under absolute Despotism" is directly linked to the militia clause of the Second Amendment. What body is necessary to prevent such an inevitable occurrence? The militia, comprised of the majority of male citizens privately trained, properly equipped, and accustomed to the use of arms.

Preamble to the Constitution (1787):

> *We the People* of the United States, in Order to form a more perfect Union, *establish Justice*, insure domestic Tranquillity, *provide for the common defence*, promote the general Welfare, and *secure the Blessings of Liberty to ourselves and our Posterity*, do ordain and establish this Constitution for the United States of America.[7]

---

[6] Declaration of Independence. Paragraph 2.
[7] U.S. Const. pmbl.

Justice Joseph Story recounted in his celebrated *Commentaries on the Constitution of the United States* (1833), that the preamble's "true office is to expound the nature, and extent, and application of the powers actually conferred by the Constitution." Yet, if Madison's suggestion would have been adopted by Congress the Constitution would have a two-part Preamble that included core First Principles from Thomas Jefferson's Declaration of Independence before the current preamble.[8] Despite this missed opportunity to officially link the two documents, with the preamble of the Constitution, the Framers acknowledged that the people maintain sovereignty over the government through their elected representatives and that the proper purpose of that government is to maintain equal application of justice within the new Union. If that noble aim is achieved, it ensures the peaceful observance of the laws, and thus the nation would have "domestic Tranquillity." Having just endured a brutal war, the Framers were under no misconception about the need for a military force to defend the fledgling nation. Yet, they were keenly aware of the dangers of standing armies,[9] which is why they wisely chose to subordinate the military to civilian authority and why they placed a check on that threat with the Second Amendment. More importantly, we have already established, the preservation of the blessing of liberty for each citizen and their progeny is the sole task of a just government.[10]

Preamble to the Bill of Rights (1791):

> The Conventions of a number of the States, having at the time of their adopting the Constitution, *expressed a desire*, *in order to prevent misconstruction or abuse of its powers*, *that further declaratory and restrictive clauses should be added*: And as extending the ground of public confidence in the Government, will best ensure the beneficent ends of its institution…[11]

The preamble to the Bill of Rights merely reinforces the idea that the sole purpose of a just government is to secure the blessing of liberty. Thus, the enumeration of a portion of the God-given rights of the individual was meant to counteract attempts by future governments to abuse

---

[8] "First. That there be prefixed to the Constitution a declaration, that all power is originally vested in, and consequently derived from, the people. That Government is instituted and ought to be exercised for the benefit of the people; which consists in the enjoyment of life and liberty, with the right of acquiring and using property, and generally of pursuing and obtaining happiness and safety. That the people have an indubitable, unalienable, and indefeasible right to reform or change their Government, whenever it be found adverse or inadequate to the purposes of its institution." Quoted in Randy E. Barnett and Josh Blackman, *Constitutional Law: Cases in Context* (New York, NY: Wolters Kluwer, 2021), 52.

[9] For a detailed collection of primary sources concerning the prudence of not maintaining large standing amies in times of peace, see: David Womersley, ed., Writings on Standing Armies (Carmel, IN: Liberty Fund, 2020).

[10] David F. Forte and Matthew Spalding, "Preamble," in *The Heritage Guide to the Constitution*, ed. Edwin Meese, Second, vol. Fully Revised (Washington D.C.: Regnery Publishing, 2014), 51–55.

[11] U.S. Const. amend. I–X. pmbl.

the powers granted to it by the people. Moreover, the prophetic Founders within what would become known as the Anti-Federalist camp, foresaw that the document would serve as a powerful corrective that later generations of Americans would wield against both Federal and State governments in the continual struggle for liberty against members of those legislative bodies, who capriciously denied the liberties to certain segments of the population based upon ignorant assertions about the supposed flaws within their ethnicity.

U.S. Constitution. Amend. II

> 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*.[12]

Given the above-mentioned review, one can observe why the language of the Second Amendment is plain and to the point. The Framers had already established the divine origin of rights and listed the right to life as the primary right gifted to us by our Creator. They also noted in the second paragraph of the Declaration, as well as in the preamble of the Constitution and Bill of Rights, that if the government fails in its singular obligation to defend the liberties of the citizenry, then it was the duty of the people to "alter or abolish it." The means of making sure that "We the People" had the tools at our disposal to effectuate a change in government once it had become tyrannical is the civic institution of the militia, which is comprised of the people privately trained, properly equipped, and intimately familiar with the use of arms.

[12] U.S. Const. amend. II. Adopting Goerge Mason's language from The Virgina Declaration of Rights, James Madison's original language: "The right of the people to keep and bear...arms shall not be infringed. A well regulated militia, composed of the body of the people, trained to arms, is the best and most natural defense of a free country...." (James Madison, I Annals of Congress 434 [June 8, 1789]).

II. The Original Intent of the Militia[13]

"…if the citizens neglect their Duty and place unprincipled men in office, the government will soon be corrupted; laws will be made, not for the public good so much as for selfish or local purposes; corrupt or incompetent men will be appointed to execute the Laws; the public revenues will be squandered on unworthy men; and the rights of the citizen will be violated or disregarded."

Noah Webster, *History of the United States*, 1832

"A well regulated Militia, being necessary to the security of a free State.."

Our forebears understood that free men and women have the natural right to preserve life with commonly held arms, which included firearms utilized by the military.[14] Consequently, no temporal human institution could arbitrarily seek to control or deprive individuals of such a fundamental right. Yet, the freemen who bore arms in devout resistance to tyranny during the War for American Independence did not adhere to our current notions of liberty, where individual sovereignty and personal entitlement reign supreme. Instead, they had inherited a tradition of ordered freedom, which placed a significant emphasis on God's Word, the Rule of Law, self-government, free association, public duty, as well as the essential civic virtue of personal responsibility. Their approach to liberty resulted in a set of principles that were both individual *and* communal. Meaning that, while the founding generation's conception of liberty clearly recognized the individual nature of rights, they also placed great prominence on the integrity of the community. In other words, individual rights were employed by the citizens in a judicious manner that enabled the larger community to flourish. This concept of duty to safeguard one's community is vital to one's perception of the reasons why hundreds of thousands of men serve in

---

[13] Blackstone's phrase "intentions at the time when the law was made" has been shortened to the current notion of original intent; see: Sir William Blackstone, *Commentaries on the Laws of England in Four Books. Notes selected from the editions of Archibold, Christian, Coleridge, Chitty, Stewart, Kerr, and others, Barron Field's Analysis, and Additional Notes, and a Life of the Author* by George Sharswood. In Two Volumes. (Philadelphia: J.B. Lippincott Co., 1893). Vol. 1, 59.

[14] The Framers codified this truth within our nation's first laws; see: An Act more effectually to provide for the National Defense by establishing a Uniform Militia throughout the United States, Act of 8 May 1792, CHAP. XXXIII, § 1, 1 Stat. 271. https://www.hillsdale.edu/wp-content/uploads/2022/08/LECC-Second-Militia-Act-of-1792.pdf. For a comprehensive analysis of the historical role and primary source discussion on the militia within this nation's constitutional framework; see: Edwin Vieira , "The Sword and Sovereignty: The Constitutional Principles of 'The Militia of The Several States'" (Front Royal, Virginia: Edwin Vieira, Jr., 2012). In part one, Dr. Vieria offers the reader analysis of the precise manner in which one ought to interpret the proper meaning of the provisions and First Principles contained within the Constitution. Part two, Vieria offers commentary as to the application of the rules of constitutional interpretation to the questions surrounding "the right of the people to keep and bear Arms," and its relation to "the Militia of the several States." Within the third portion, Vieria discusses of the proper exercise of the timeless republican principle of the militia, as well as inherent rights and the duty of all male citizens to be proficient in the use of armed. The final chapter of the work contains Vieria's personal elucidations upon the consequences of not restoring the militia to its constitutionally enumerated status as the primary civil institution that is "necessary for the security of a Free state."

State militias during the war with scant reimbursement from their continually insolvent governments and endured countless privations, as well as the dangers of combat with the most well-equipped military of the era.

Prior to the Great War (1914-18), with the notable exception being the War Between the States, the desperate and hardy peoples who populated what would become the future United States adhered to the cautionary wisdom regarding standing armies about what Elbridge Gerry called the "bane of liberty."[15] The principle of "[T]he Militia of the several States" has a long and noble history that preexisted the Constitution, which highlights the natural human inclination to form localized communal institutions of defense to counteract the inherently fallen nature of humanity. Throughout the entirety of pre-Republic era, each of the Colonies and then the sovereign nation states operating under the Articles of confederation exercised exclusive jurisdiction over their own militias, as well as created armies for defensive and offensive military operations.[16]

By forthrightly examining the militia system within colonial Virginia, one observes that the militia served an important social role within colonial society apart from a purely defensive function. The majority of colonial militia statutes held that the common militia had to perform other civic duties within their communities, such as Christian charity or working on communal construction projects. Even elite volunteer militias, such as the snowshoe men of the United Colonies of New England, were not exempt from the building of local bridges as the proposed 1757 Massachusetts legislation for the creation of the Picket Guards demonstrates.[17] This tradition of community service continued into the nineteenth century with the formation of state-sanctioned volunteer militias. Briton Busch details this linkage by recounting that militias "helped their communities celebrate festivals, holidays, and funerals with marches, balls, and banquets, helping out in emergencies and often building an esprit de corps which established a basis for effective wartime service and even elite reputations."[18] Busch and other's research has touched upon the importance of examining the socio-political elements that are inherent to the militia as a civil institution, which is an oft-neglected topic of study.

---

[15] Elbridge Gerry, "House of Representatives, Amendments to the Constitution," Founders' Constitution - The University of Chicago, https://press-pubs.uchicago.edu/founders/documents/amendIIs6.html.

[16] See; Fred Anderson. *A People's Army: Massachusetts Soldiers and Society in the Seven Years War*. (Chapel Hill, NC: University of North Carolina Press, 1996), and Ramsay MacMullen, *Soldier and Civilian in the Later Roman Empire.* (Cambridge, MA: Harvard University Press, 1963).

[17] John R. Galvin, *The Minute Men: The First Fight: Myths and Realities of the American Revolution*. (Washington, D.C.: Pergamon-Brassey's International Defence Publishers, 1989), 30-31.

[18] Briton Cooper Busch, *Bunker Hill to Bastogne: Elite Forces and American Society* (Washington, DC: Potomac Books, 2006), 53.

Intricately linked with these communal obligations, was the central political role that the militia performed. Principally, the militia served as a check on the power of government at the local level. While this political function was partially an unintended consequence of the tempestuous conditions within the New World, a succession of Royal governors would be taught the lesson that a general diffusion of arms meant that they only ruled by the consent of the governed. In 1635, Governor John Harvey was compelled to learn the hard way when his unpopular tenure was put to an end by the Virginia militia, who wished the arrogant government appointee to "know wee have armes."[19] This tempestuous atmosphere was the political situation within the colonies on the eve of The Seven Years War. Indeed, The Old Dominion's governor during that period, Robert Dinwiddie, eventually decided to create a select militia that would become the Virginia Provincial Regiment as a direct result of those political realities and as a consequence of the social pressures inherent within a society where those that were enfranchised maintained a considerable ability to demonstrate their dissatisfaction with the government because they were well-armed. This reality in turn prompted the great men within the House of Burgesses to be more discretionary with their policies in order to maintain the largess that their political office afforded.[20] It seems the specter of Nathaniel Bacon's anarchic rebellion still stalked the dark corners of the minds of Virginia's gentry. Thus, the militia was an essential check on abuse of government,[21] which highlights its integral social aspects, as well as its political importance at the local level.

In light of that well known colonial history and after much scholarly inquest, the Framers incorporating the lessons from their recent war with Great Britain. The Framers understood only all too well that decentralized State militias would serve as a vital check upon the power of the federal military. By combining these various principles and using the Founders' own words, one could re-write the militia clause to read:

> "It is against sound policy for a free people to keep up large military establishments"[22] and given that standing armies "hath ever been considered dangerous to the liberties of a

---

[19] Kemp to Commissioners May 17, 1635, Colonial Office Series. 1/8, f. 167. National Archives, London. https://www.nationalarchives.gov.uk/

[20] Titus. *The Old Dominion at War*, 16, 28-39, and Shea, *The Virginia Militia in the Seventeenth Century*, 54-56.

[21] Lawrence Delbert Cress's work, *Citizens in Arms,* is the seminal study of the impact of English Radical Whig ideas concerning the central role of the militia within a constitutional republic and the hazards inherent to a standing army, also see: Leon Friedman. "Conscription and the Constitution: The Original Understanding." *Michigan Law Review* 67, no. 8 (1969), and David Yassky. "The Second Amendment: Structure, History, and Constitutional Change." *Michigan Law Review* 99, no. 3 (2000): 588-668.

[22] Joseph Story, "Commentaries on the Constitution 3:§§ 1890--91," Founders' Constitution - The University of Chicago, 2024, https://press-pubs.uchicago.edu/founders/documents/amendIIs10.html.

Country,"[23] militias, comprised of "the whole people,"[24] are the "proper, natural, and safe defence"[25] of our constitutional republic.

Nevertheless, by 1903 those lessons were placed upon the altar of expediency with the passage of the Dick Act, which placed the State militias under the control of the Federal government. In a blatant violation of the Constitution, Congress also claimed the authority to subdivide the Militia into two components and to only require that "the organized militia" be armed. This was the first time in American history that the Federal government did not require the majority of males to be armed for the common defense. Naturally, this constitutionally specious federal scheme did not attempt to preclude the State governments from providing funds to arm their own citizens. Yet, despite the unconstitutional alterations placed upon the militia system since the passage of the Dick Act, the militia still exists today, though in a form that would be unrecognizable to Patrick Henry or George Mason. Under 10 U.S. Code § 246, the citizenry has been divided into two subgroups. The first group is a "select" or "organized" militia that is composed of the Federally administered National Guard. The Second group is the "unorganized" militia, that is comprised of all able-bodied males between the ages of 17 and 45. Accordingly, despite some significant changes, the unorganized militia is still comprised of the body of the people, who are supposed to be privately trained to use firearms.

Though such a system of select militias was proposed by Alexander Hamilton in *Federalist* No. 29,[26] the Framers rejected that system in favor of a broad militia comprised of the majority of male citizens. Hence, the importance the Framers placed upon the Second Amendment's militia provision as a central facilitator of federalism by placing the control of the militia within the sphere of the States, which served as a bulwark against Federal military usurpations.[27] It was for prudent reasons concerning checks and balances on Federal power that the Framers wrote the prefatory, or the militia clause, which stated ***one*** of the reasons why the operative clause, or the individual right clause, existed. The operative clause facilitates the realization of the prefatory clause. Meaning that the existence of the militia presupposes the existence of a people privately

---

[23] George Washington, "Washington's Sentiments on a Peace Establishment, 1 May 1783," National Archives: Founders Online, n.d., https://founders.archives.gov/documents/Washington/99-01-02-11202.

[24] George Mason, "Debate in Virginia Ratifying Convention: Article 1, Section 8, Clause 12," Founders' Constitution - The University of Chicago, https://press-pubs.uchicago.edu/founders/documents/a1_8_12s27.html.

[25] St. George Tucker, "Article 1, Section 8, Clause 12: St. George Tucker, Blackstone's Commentaries 1: App. 272--75," Founders' Constitution - The University of Chicago, https://press-pubs.uchicago.edu/founders/documents/a1_8_12s28.html.

[26] Alexander Hamilton, "The Federalist Papers : No. 29," The Avalon Project, https://avalon.law.yale.edu/18th_century/Fed29.Asp.

[27] For a more detailed discussion on the Second Amendment & the Militia, see: Edwin Vieira , "The Sword and Sovereignty," & David Yassky, "The Second Amendment: Structure, History, and Constitutional Change," 99 Mich. L. Rev. 588 (2000), http://digitalcommons.pace.edu/lawfaculty/928/.

trained in the use of arms. The phrase 'well regulated' is simply referring to what Samuel Johnson's 1773 legal dictionary defines as an "established essences" or as Noah Webster's 1828 American dictionary defines 'regulate' to mean an "established mode; … as to regulate our moral conduct by the laws of God and of society." Thus, indicating the essence of the militia is that it should be disciplined, properly equipped, and skilled in the use of arms.[28]

From this short discussion, it is evident that our Founders intended that all males, apart from those "religiously scrupulous,"[29] were to serve in the militia in order to ensure that there was a vast body of citizens accustomed to the use of arms who could be called upon during times of invasion, treasonous rebellions, and to oppose a tyrannical government bent on usurping its constitutional chains. Indeed, as the prefatory clause of the Second Amendment reasons, the primary purpose of the militia is to have a large body of trained male citizens to serve as the means to secure the liberties of the citizenry within these United States.

[28] The constitutional connection between "disciplining" and "training" appears most clearly in the provision within U.S. Const. art. I, §8, cl. 16: "reserving to the States respectively the Authority of training the Militia according to the discipline prescribed by Congress;" Also see, Timothy Pickering, Jr., *An Easy Plan of Discipline for a Militia* (Salem, Massachusetts: Samuel and Ebenezer Hall, 1775).

[29] James Madison, "Annals of Congress, House of Representatives, 1st Congress, 1st Session, June 8, 1789," A century of lawmaking for a new nation: U.S. congressional documents and debates, 1774 - 1875, 2024, https://memory.loc.gov/cgi-bin/ampage?collId=llac&fileName=001%2Fllac001.db&recNum=227.

III. An Individual Right

"Who are the militia? Are they not ourselves. Congress have no power to disarm the militia. Their swords, and every other terrible implement of the soldier, are the birth-right of an American...(T)he unlimited power of the sword is not in the hands of either the federal or state governments, but, where I trust in God it will ever remain, in the hands of the people."

Tench Coxe, *Essay in The Freeman's Journal*, February, 20th, 1778

"the right of the people"

Returning, once again, to the nation's founding legal documents, one can, with a plain text reading, clearly see that rights are individual in nature as well as timeless gifts from our Creator. The language itself is indisputable, the word 'the' within the phrase "the right of the people" signals, that the right pre-exists the formation of the government. As John Adams rightly observed, the people, "have rights antecedent to [that is, granted before] all earthly governments—rights that cannot be repealed or restrained by human laws, rights derived from the Great Legislator of the Universe."[30] This assertion not only is a self-evident truth but was a commonly held principle for centuries. Hence the reason why the Framers elected to codify within the Declaration an affirmation of the right to life as being a part of the trinity of God-given rights from which all human liberty flows. This almost universally accepted truth meant that no man turned to the government for his rights. Indeed, such an idea that governments could bestow rights was deemed highly illogical. Thus, the male citizens for the first one hundred years of this nation's history understood that the right to keep and bear arms was not a duty owed to the government, and not just for self-preservation. Rather they bore arms as a duty in defense of faith, family, and home.

Furthermore, the Federal enumeration of the right to keep and bear arms is found within the Bill of Rights, which is a document that lists some of the rights retained by "We the People" in order to "prevent misconstruction or abuse of its [the Federal government's] powers." The Bill of Rights is not a list of government rights because governments do not have rights, such governing bodies have expressly limited powers. If the Framers were so inclined to make the "power" of firearms ownership a prerogative of state-level government, they would have said so as the Tenth Amendment clearly illustrates. To further bolster this truth, one can turn to the State Constitutions to find that forty-five of the fifty States refer to the right as being one that belongs

[30] John Adams, "'III. "A Dissertation on the Canon and the Feudal Law," No. 1 ...,'" National Archives and Records Administration: Founders Online, https://founders.archives.gov/documents/Adams/06-01-02-0052-0004.

to the individual citizen. Regardless of these facts, let's examine the Bill of Rights to close out this misguided line of argumentation.

In the text of the Bill of Rights, we find the phrase "right of the people" two times within the First Amendment and Fourth Amendment, as well as similar language in the Ninth Amendment. Within these examples, the language is unambiguously employed to describe individual rights, not collective rights or rights that can only be exercised through participation in some corporate body such as a militia. Nowhere else in the Constitution does a right attributed to the people refer to anything other than an individual right. Furthermore, in all instances of the phrase "the people" it is employed in a manner to reference a class of people who are members of the citizenry of this nation. Meaning that when one says "the people" it is not referring to a sub-category of the people such as people in the National Guard but rather it refers to the whole body politic. In the text of the Constitution there are three provisions that strictly use "the people"; once in the preamble, once in Article 1 Section 2, and once in the Tenth Amendment. In these instances, the phrasing "of the people" is not used in the context of individual rights but collective powers that belong to "We the people." In each of these instances "the people" refers to the exercise or reservation of powers.

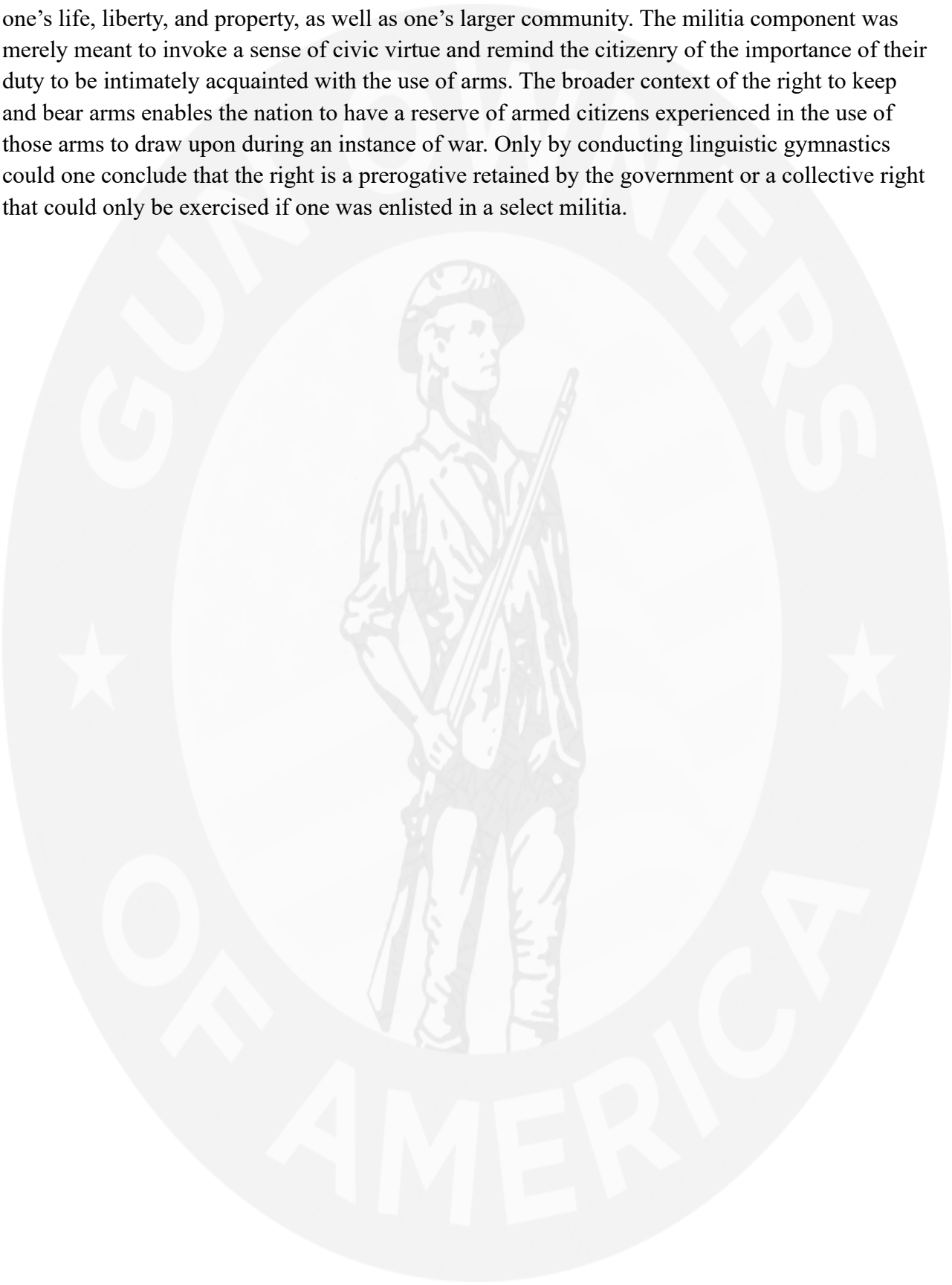
The text, history, and tradition of the Second Amendment makes a self-evident assertion that it protects an individual right of the citizenry to keep and bear arms for self-defense including defense against a tyrannical government. Anticipating the current ignorant obfuscations of the disarmament faction, prominent late 19th century American jurist, Thomas Cooley, succinctly defeated their fallacious claims by articulating the obvious.

> The purpose of this guaranty might be defeated altogether by the action or neglect to act of the government it was meant to hold in check. The meaning of the provision undoubtedly is, that the people, from whom the militia must be taken, shall have the right to keep and bear arms; and they need no permission or regulation of law for the purpose.[31]

This originalist view has robust historical roots that stretch back to the complex cultural traditions that comprise the Common Law. Indeed, Jonathan Elliot's transcription of ratification debates along with leading constitutional commentators of the Early Republic, such as St. George Tucker, Tench Coxe, William Rawle, Joseph Story, and more are all in agreement. The plain text of the Second Amendment secures an individual right to own arms for the defense of

[31] Thomas McIntyre Cooley, "The General Principles of Constitutional Law in the United States of America: 1824-1898," Internet Archive, https://archive.org/details/cu31924019959083/page/n315/mode/2up.

one's life, liberty, and property, as well as one's larger community. The militia component was merely meant to invoke a sense of civic virtue and remind the citizenry of the importance of their duty to be intimately acquainted with the use of arms. The broader context of the right to keep and bear arms enables the nation to have a reserve of armed citizens experienced in the use of those arms to draw upon during an instance of war. Only by conducting linguistic gymnastics could one conclude that the right is a prerogative retained by the government or a collective right that could only be exercised if one was enlisted in a select militia.



IV. Defining One's Terms

"*The beginning of education is the examination of terms."*

Arrianus, *The Discourses of Epictetus*, 108 A.D.

"to keep and bear arms"

Despite claims to the contrary, the phrase "to keep and bear arms" also points toward an individual right of the people to possess and carry arms. Corpus linguistics studies of words conducted during the Founding and Early Republic periods have shown that there were a lot of documents that contained the words 'bear arms' in a military context. Leftist ideologues who attempt to claim that 'bear arms' is merely a reference to the supposed right of the government, i.e. the National Guard, or the well-regulated model, point to such studies as some sort of definitive proof of their assertions. However, when one applies logic in conjunction with right reason, one would find it elementary to observe that a search of government documents during times of war would naturally contain a martial context.[32] Accordingly, if one based their analysis solely on taking a word out of context within a given phrase then one could come to an almost incalculable number of conclusions and combinations of meanings.

Again, as previously demonstrated, the Framers wrote our founding legal documents in common parlance so that there would be few misapprehensions about the fundamental nature of the nation's First Principles. Given that reality, it is prudent to quickly review the leading dictionaries of the Founding and Early Republic periods to understand what the Framers meant by the phrase "to keep and bear arms:"

"to keep" means individual ownership of arms:

> Samuel Johnson's 1773 dictionary defines 'keep' as "to retain, not to lose."[33]
>
> Noah Webster's 1828 American dictionary defines 'keep' as "[t]o hold; to retain in one's power of possession."[34]

---

[32] For more in-depth analysis of the common meaning of 'bear arm,' see: Clayton E Cramer and Joseph Olson, "What Did 'Bear Arms' Mean in the Second Amendment?," Supreme Court.gov - Opinions, https://www.supremecourt.gov/opinions/URLs_Cited/OT2007/07-290/07-290.pdf.

[33] Samuel Johnson, "Keep. n.s. [from the verb.]" Johnson's Dictionary Online, https://johnsonsdictionaryonline.com/views/search.php?term=keep

[34] Noah Webster, "Webster's Dictionary 1828 - Keep," Websters Dictionary 1828, https://webstersdictionary1828.com/Dictionary/Keep

"bear" means to carry on one's person:

> Samuel Johnson's 1773 dictionary defines 'bear' as "to carry."[35]
>
> Noah Webster's 1828 American dictionary defines 'bear' as "[t]o carry; to convey; to support and remove from place to place. … [t]o possess and use as power; to exercise."[36]

"arms" means items capable of offensive or defensive action:

> Timothy Cunningham's 1764-5 legal dictionary defines 'arms' as "anything that a man wears for his defence or takes into his hands, or useth in wrath to cast at or strike another."[37]
>
> Samuel Johnson's 1773 dictionary defines 'arms' as "[w]eapons of offence, or armour of defence."[38]
>
> Noah Webster's 1828 American dictionary defines 'arms' as "[w]eapons of offense, or armor for defense and protection of the body … [i]n law, arms are any thing which a man takes in his hand in anger, to strike or assault another."[39]

Taking these definitions and combining them together, one could just as easily rewrite the operative clause to say:

> the right of the people to retain in their possession and convey on their person weapons of offense, and armor for defense, shall not be violated.

In summation, reverberating with the humble insights of George Manson, James Madison in drafting the Second Amendment, masterfully intermingled the republican notion of civic duty with timeless self-evident truths concerning the divine origin and purpose of the Right to Life into a single amendment. The right to keep and bear arms exists not to merely to enumerate the

---

[35] Samuel Johnson, "To BEAR. v.a." Johnson's Dictionary Online, https://johnsonsdictionaryonline.com/views/search.php?term=bear

[36] Noah Webster, "Webster's Dictionary 1828 – Bear," Websters Dictionary 1828, https://webstersdictionary1828.com/Dictionary/bear

[37] Timothy Cunningham, "A New and Complete Law Dictionary, Arms" Internet Archive, January 1, 1764, https://archive.org/details/newcompletelawdi01cunn/page/n179/mode/2up?q=%22in+wrath%22

[38] Samuel Johnson, "Arms. n.s," Johnson's Dictionary Online, https://johnsonsdictionaryonline.com/views/search.php?term=arms

[39] Noah Webster, "Webster's Dictionary 1828 – Arms," Websters Dictionary 1828, https://webstersdictionary1828.com/Dictionary/arms

right of the citizenry to own arms and associated accouterments. Madison was pointing to a deeper purpose, the right to preserve life and that right is individual in nature due to the timeless truth that all rights are granted to humanity by our Creator. Nevertheless, within the militia clause, there is an implication of an inherent civic duty, where all males had the moral obligation to be privately trained in the use of arms in order to serve as a rampart against tyranny. This living fortification, comprised of the body of the people, would be the best grantor of their liberties but only if, as John Adams cautioned, they had the requisite moral courage.[40] Thus, all governmental attempts to curtail the private ownership of and the ability to exercise the use of arms violate the text, history, and tradition of this provision as SCOTUS has affirmed in *Heller*, *McDonald*, *Caetano*, and *Bruen*.

[40] John Adams "From John Adams to Massachusetts Militia, 11 October 1798," National Archives: Founders Online, https://founders.archives.gov/documents/Adams/99-02-02-3102.

V. Context from the Oklahoma Constitutional Convention

"The laws that forbid the carrying of arms are laws of such a nature. They disarm only those who are neither inclined nor determined to commit crimes.... Such laws make things worse for the assaulted and better for the assailants; they serve rather to encourage than to prevent homicides, for an unarmed man may be attacked with greater confidence than an armed man."

Thomas Jefferson, quoting Cesare Beccaria, *Legal Commonplace Book*, 1774-1776

With that crash course on the origin and intent of the Second Amendment in mind, one observes that the 1907 language of Article II, Section 26 of the Oklahoma Constitution inadequately reflects the nation's First Principles, as well as the text, history, and tradition surrounding the God-given right to preserve life, liberty, and property with commonly held arms. Additionally, we observe that while the proposed language of H.J.R. 1034 attempts to provide a corrective it unintentionally undermines the timeless nature of the right by arbitrarily limiting the definition of arms, as well as utilizing haphazard language. The aforementioned problems with Subsection A could easily be corrected with Founders' language, Subsection B, however, is where the most egregious infringements could occur because activist judges have a demonstrated propensity to abuse laws that are not written with precision and often take advantage of any opening provided by a legislature. More importantly, the recent *Bruen* holding expressly states that this approach is unconstitutional. The proscribed correctives for Subsections A and B will be the topic of discussion in the subsequent pages.

To initiate this discussion, it is prudent to keep the exploration of the Federal enumeration in mind because one can apply the same framework to analyze and compare the language of the Federal Compact alongside the original Oklahoma Article II, Section 26, as well as the language of the proposed revisions to the amendment:

Oklahoma Constitution Preamble:

> Invoking *the guidance of Almighty God*, in order to *secure* and perpetuate the *blessing of liberty*; to *secure just* and *rightful government*; to promote our mutual welfare and *happiness*, we, the people of the State of Oklahoma, do ordain and establish this Constitution.

At first glance, one can discern a noticeable difference in the language, though it does affirm that the primary duty of a just and rightful government is to secure the blessing of liberty. Yet, by observing the language of the preamble along with the irregular language of the majority of the

sections contained within Article II, one can witness a palpable degradation of the nation's First Principles at the hands of the progressive impulse that swept through the nation in the wake of the War Between the States. During those tumultuous years, America as a polity was seeking to grapple with and attempt to mitigate the negative externalities that occurred as a result of the war but also with the consequences of industrialization and increased urbanization. Influenced by the acolytes of Georg Hegel, universities began teaching the idea that the American experiment was at the beginning of an unprecedented era in human history and the only way to address these calamities was to unleash government from the bounds of the Constitution.[41] The evidence for this unfortunate shift in the American mind can be witnessed in the commencement speech given during proceedings of the Constitutional Convention of the Proposed State of Oklahoma by the convention chair, J.F. King. In the uninspiring speech, King laments the fact that the nation's First Principles, as codified within our Founding documents, have provided "so little provision for their application to the affairs of the people that little assistance can be derived from them in the way of administrative government..."[42] Parroting other leading progressives such as William Jennings Bryan, King contends that the traditional American view of government as limited to expressed powers had to change in order to address what he viewed as unprecedented challenges that the Founder's vision could no longer address. King's three-page progressive diatribe against the timeless principles of just government is quite illuminating because it provides the necessary context as to why there are so many troublesome textual deviations within Oklahoma's constitution.

Much like their modern counterparts, progressives of that era claimed that their administrative "reforms" were meant to advance democracy, that is unless you were socially undesirable. What one finds most informative when reading through the Oklahoma Constitutional Convention is that there is a real dearth of principled deliberations as witnessed in Jonathan Elliot's transcription of Federal ratification debates. The delegates have an apparent lack of understanding of the central purpose of a just government. Indeed, the president of the constitutional convention, William H. Murray makes that abundantly evident in a rather lengthy tirade, where he asserts:

> it is an entirely false notion that the negro can rise to the equal of a white man in the professions or become an equal citizen to grapple with public questions… I appreciate

---

[41] For a more nuanced discussion on the consequence of the First Progressive Era, see: Thomas C. Leonard, *Illiberal Reformers: Race, Eugenics, and American Economics in the Progressive Era* (Princeton, NJ: Princeton University Press, 2016); Ronald J. Pestritto, *America Transformed: The Rise and Legacy of American Progressivism* (New York, NY: Encounter Books, 2021); and Murray Rothbard and Andrew P. Napolitano, *The Progressive Era*, ed. Patrick Newman (Auburn, AL: Ludwig von Mises Institute, 2017).

[42] J. F. King, Commencement Speech, "Proceedings of the Constitutional Convention of the Proposed State of Oklahoma [Microform]: Held at Guthrie, Oklahoma, November 20, 1906 to November 16, 1907: Oklahoma. Constitutional Convention (1906-1907)," 7-12, Internet Archive, https://archive.org/details/proceedingsofcon00oklarich/page/8/mode/2up.

> the old-time ex-slave, the old darky — and they are the salt of their race… At the same time let us provide in the Constitution that he shall have equal rights before the Courts of the country, that he shall have whatever is due him, but teach him that he must lean upon himself, rise by his own exertions, hew out his own destiny as an integral but separate element of the society of the State of Oklahoma. (Applause.)[43]

Without missing a beat, Murray then transitions into a speech in support of the socialist democratic reforms. Given the abrupt switch in the content of the speech, he seems to have been given the task of promoting the progressive reforms of the ballot initiative and referendum, which he somehow believes would prevent bribery of the legislature. Yet, Murray was against the socialist reform of the recall because "it would have a tendency to weaken the courage of our officials rather than encouraging them to do their duty."[44] One could go on at length exploring the inherent complexities and inconsistencies of such a politician as William H. Murray, however, for our purpose here we must allow for the future governor's words to speak for themselves. Nevertheless, both King and Murray provide us with the requisite historical context to paint a clear picture of the predominate ideology that held sway during the convention, which grants us insights into the rationale behind the language of Article II, Section 26.

This short foray into the constitutional proceeding has laid bare the fact that the Oklahoma Constitution *is not* cut from the same cloth as the Federal compact. Indeed, the Oklahoma History Society agrees with this assessment. In their woefully brief article on the convention, the society flawlessly glosses over the troubling portions that contain ethnic degradations, and instead focuses on applauding the socialist reforms brought forth by the members of the convention.[45] After delighting the reader with the important part played by William Jennings Bryan in influencing the drafters "to produce the best constitution ever written," staff historian, Danny Adkison, writes that the newly birthed compact was only "innovative in the sense that so

---

[43] William H. Murray, Commencement Speech, "Proceedings of the Constitutional Convention of the Proposed State of Oklahoma [Microform]: Held at Guthrie, Oklahoma, November 20, 1906 to November 16, 1907: Oklahoma. Constitutional Convention (1906-1907)," 21, Internet Archive, https://archive.org/details/proceedingsofcon00oklarich/page/20/mode/2up

[44] William H. Murray, Commencement Speech, "Proceedings of the Constitutional Convention of the Proposed State of Oklahoma [Microform]: Held at Guthrie, Oklahoma, November 20, 1906 to November 16, 1907: Oklahoma. Constitutional Convention (1906-1907)," 23, Internet Archive, https://archive.org/details/proceedingsofcon00oklarich/page/22/mode/2up

[45] Widely touted as leftist populist reforms the ballot initiative, referendum, and the recall etc... all have their origins within the trans-Atlantic socialist movement, see: Patrick Newman, "Taking Government Out of Politics: Murray Rothbard on Political and Local Reform during the Progressive Era," Mises Institute - Quarterly Journal of Austrian Economics, https://mises.org/quarterly-journal-austrian-economics/taking-government-out-politics-murray-rothbard-political-and-local-reform-during-progressive-era, and Richard J. Ellis, "Reimagining Democracy: The Socialist Origins of the Initiative and Referendum in the United States.," The Journal of the Gilded Age and Progressive Era 22, no. 2 (April 2023): 143–62, https://doi.org/10.1017/s1537781422000585.

many progressive provisions were included."[46] Reflecting upon the consequences of the First Progressive Era, Princeton University professor, Thomas Leonard, states that the progressive reformers were "frank elitists who applauded the Progressive Era's drop in voter participation and openly advocated voter quality over quantity. Fewer voters among the lower classes was not a cost, it was a benefit of reform."[47] Clearly, First Principle questions concerning prudent limitations on the power government or the inalienable nature of individual rights hardly entered into the equation for progressives when deliberating upon what socialist inspired provisions would most complement their ideal constitution.

[46] Danny Adkison, "Oklahoma Constitution," Oklahoma Historical Society | The Encyclopedia of Oklahoma History and Culture, https://www.okhistory.org/publications/enc/entry.php?entry=OK036.

[47] Leonard, *Illiberal Reformers*, 52.

VI. The Necessity for Precision Given Judicial Activism

"*Without liberty, law loses its nature and its name, and becomes oppression. Without law, liberty also loses its nature and its name, and becomes licentiousness."*[48]

James Wilson, "Of the Study of the Law in the United States," 1790-91

In addition to the progressive issues embedded within the foundation of the Oklahoma Constitution, the Oklahoma courts have twice upheld and expanded upon the statutory infringements upon the right to keep and bear arms within the state. The Court, in supporting their curtailment of the right, not only cited highly questionable court cases from the post War Between the States Period but they also purposefully misrepresented the holdings in some of the cases to justify their blatant nonconformity case precedent surrounding the right. Moreover, if one conducts a First Principles appraisal of these rulings, one finds that they display a blatant lack of even basic knowledge of the Framer's debate concerning the fact that the right is individual in nature because they are gifts from our Creator. Furthermore, these courts fail to comprehend the fact that militia was comprised of the body of the people privately trained in the use of privately held military arms. While it is true that State governments have some expressly limited legal power to provide for some measure of uniformity and at times provide the militia with arms, the fact remains, however that they have no moral right to ban certain arms that fall outside military arms, nor can they prohibit activities that are ancillary to militia training, such as hunting.[49]

---

[48] James Wilson, et. al. *Collected Works of James Wilson*, Vol. I, 435.

[49] At this juncture there is a significant amount of literature documenting the original intent of the amendment along with the requisite historical commentary based upon a forthright assessment of the primary sources, which provide us with the proper understanding of various elements contained within the Right to preserve life, liberty, and property with privately held arms, as well as the inherent duty contained within the militia. For a detailed collection of primary sources on the Second Amendment, see: David E. Young, *The Founders' View of the Right To Bear Arms: A Definitive History of the Second Amendment* (Ontonagon, MI: Golden Oak Books, 2007); and David E. Young, *The Origin of the Second Amendment: A Documentary History of the Bill of Rights in Commentaries on Liberty, Free Government and an Armed Populace, 1787-1792* (Ontonagon, MI: Golden Oak Books, 2001). For general historical commentary on the amendment, see: Clayton E. Cramer, *Armed America: The Remarkable Story of How and Why Guns Became as American as Apple P*ie (Nashville, TN: Nelson Current, 2006); Clayton E. Cramer and Clayton E. Cramer, *Lock, Stock, and Barrel: The Origins of American Gun Culture* (Westport, CT: Praeger, 2018); Stephen P. Halbrook, *The Founders' Second Amendment: Origins of the Right to Bear Arms* (Chicago, IL: Ivan Dee, 2008); Stephen P. Halbrook, *That Every Man Be Armed: The Evolution of a Constitutional Right*, Revised and Updated (Albuquerque, NM: University of New Mexico Press, 2013); Stephen P. Halbrook, *The Right to Bear Arms: A Constitutional Right of the People or a Privilege of the Ruling Class?* (New York: Post Hill Press, 2021); Joyce Lee Malcolm, *To Keep and Bear Arms: The Origins of an Anglo-American Right* (Cambridge, MA: Harvard University Press, 1996); and Edwin Vieira , "The Sword and Sovereignty."

It seems that there is nothing new under the sun, because we are still dealing with court holdings that blatantly contradict the historical record, as well as definitely recognized primary sources that undoubtedly convey, in common parlance, the intent of the right that is congruent with the nation's First Principles as prudently enumerated within our founding legal document; the Declaration of Independence. Lamentably, these judges clearly have not read the plethora of commentary concerning the right by Framers, the Debate on the Constitution by James Madson, The Federalist and Anti-Federalist Debates, or Early Republic jurists such as St. George Tucker, Joseph Story, or Thomas M. Cooley. If they had read these widely available texts, they would have had a challenging time arriving at similar unprincipled conclusions as the courts within these Gilded Age cases. The fact that the judges remain silent on these primary source documents speaks volumes about their motivations, and signals to those immersed within the history of the right that these judges were operating outside the bounds of the Rule of Law. Such miscarriages of justice stem from Congress and State legislatures abdicating their authority by punting constitutional questions to the judiciary. Generations of legislators have mistakenly assumed that power to resolve constitutional questions rest within the sole jurisdiction of courts. As constitutional scholar Michael Paulsen argues, our current predicament is not what was envisioned by the Framers and is a complete inverse of the formal structure of the government. Paulsen's work demonstrates that, in most instances, a court's ruling on a given constitutional question is based upon whatever criteria judges think most appropriate, which most often is their political ideology. The consequences of the legislative branch's failure to properly address constitutional questions has led to the dual fallacies of judicial supremacy and interpretive license.[50]

Historian Clayton Cramer adds further evidence to the divergence of the courts by uncovering the deception within Oklahoma Supreme Court holding in *Ex Parte Thomas* (1908). It seems that the court failed to properly understand and apply the positive law precedents of *Andrews v. State* (1871), *Page v. State* (1871), and *State v. Wilburn* (1872). Indeed, these supposedly learned men of the law clearly state that the right only protects the citizens ability to have military arms but then turn around to claim that arms such as pistols were not military weapons because they were not part of "civilized warfare," as if such a notion existed, and that pistols only were weapons that the lower rungs of society used pursuit of their petty quests of "private assassination and secret revenge."[51] To further illustrate the fallacious reasoning of these justices,

---

[50] See Joseph Gales and William Winston Seaton, *The Debates and Proceedings in the Congress of the United States* (Washington: Gales & Seaton, 1834), 500. See also James Madison, "Unaddressed Letter of 1834," in Letters and Other Writings of James Madison, Volume 4 (Philadelphia: Lippincott & Co., 1865), 349. For discussion of these statements, Michael Stokes Paulsen, "The Most Dangerous Branch: Executive Power to Say What the Law Is," Georgetown Law Journal 83 (1994), 217, 234, 236, 308-311, and Raoul Berger, *Government by Judiciary: The Transformation of the Fourteenth Amendment* (Indianapolis, IN: Liberty Fund, 2015).

[51] *Ex Parte Thomas*, 1908 OK CR 23, 97; 221 217, 219; and *Pierce v State* 1929 OK CR 91 275, 279.

they claimed that the aforesaid cases did not affirm the right to keep and bear pistols. In actuality, however, the majority of these cases recognized the right to open carry of military pistols. Furthermore, *Wilson v. State of Arkansas* (1878), *Haile v. State* (1882), and *Hill v. State* (1874) all upheld the traditional notion that the right protects an individual's ability to convey military pistols though not in some public places. Of the eight cases that the Court cited that claimed to give justification for their ban on carry, four clearly affirm that right to carry arms openly, and the holding in *Nunn v. State* (1846) erroneously held, without legal credence, that a State government could ban concealed carrying of arms only if the State allowed open carry. Lastly Cramer recounts that of the fifty-six State and Federal holdings up to the 1908 *Ex Parte Thomas* case, thirty-seven acknowledged the right of the individual to open carry arms. Only twelve cases claimed the right did not allow for an individual right to carry arms openly. Cramer's work demonstrates that the Oklahoma Supreme Court was operating outside of the text, history and tradition of the right. Indeed, Cramer notes that: [52]

> Clearly, the Court decided what it wanted to find but preferred a longlist of citations (even though wrong or contradictory, over a short list that supported their position correctly… the decision may be considered a derivative decision, and on difficult to take seriously, in light of their selective and incorrect use of precedents…

Given the fallaciousness of the Oklahoma Supreme Court holdings in *Ex Parte Thomas*, as well as an equally questionable conclusion in the Oklahoma Criminal Appeals case *Pierce v. State* (1929), one returns to the idea that, in order to form a proper foundation of just laws, legislators are required to engage in precision when composing the text of a given law and must also have a firm grasp of this nation's First Principles. If that combination is achieved, one avoids uncertainty in the application of the law and, as we have witnessed since the First Progressive Era, hinders the ability of judges to allow their leftist ideologies from infecting the Rule of Law. Despite these devious case precedents, the recent SCOTUS decisions, culminating in the *Bruen* case, have reset the clock by restoring the positive law record to its original meaning of right as enumerated within the Constitution.

[52] Clayton E. Cramer, *For the Defense of Themselves and the State: The Original Intent and Judicial Interpretation of the Right to Keep and Bear Arms* (Westport, CT: Praeger, 1994), 148-149.

VII. The Need for the Current Language to be Amended

In stark opposition to the socialist ideals advanced by successive waves of progressives, the founding generation's prudent approach to ordered liberty firmly cemented the right to preserve life, liberty, and property with commonly held arms within the Common and Natural Law traditions. In spite of their noble efforts to transmit these core tenets of just governance, one discovers a cornucopia of unprincipled state level edicts that are heinous historical examples of government tyranny against portions of the citizenry who perceived to be undesirable, such as Americans with a darker skin complexions, inferior social status, or people from uncouth ethnicities. Given that these unconstitutional decrees were undoubtedly intended by their authors to infringe upon the God-given liberties of the abovementioned groups, it is anathema to the discerning citizen to witness current State governments unabashedly employing these shameful examples from our history as a justification for current violations of the right to keep and bear arms.[53] Considering what we have witnessed from Oklahoma's constitutional convention and state level court holdings, the delegates inclusion within Article II Section 26 an infringing clause claiming the right to regulate the carry of arms is an example of the tendency of progressive ideologues within government to employ unprincipled state court precedence to further curtail the rights of the citizenry, all the while expanding the power for government far beyond the prudent limits placed upon it by the Framers. Hence, the necessity for this legislative body to put forth revisions to Section 26 that contain precise language that is firmly grounded within the First Principles and the original intent of the Second Amendment.

Without the revelations concerning the Framers original intent and self-evident truths purposefully built into our nation's founding legal documents, one can discern why such enumerations are prudent in a nation that increasingly unmoored from the founding consensus on the nature of rights and the fundamental purpose of government. Thus, now that we have a basic understanding about the unprincipled nature of the Oklahoma court's application of Article II, Section 26, as well as the historical context surrounding the drafting of the State constitution, we must now turn to analyzing the language of the amendment and offering correctives that realign it with the First Principles of this great nation.

---

[53] For more a detailed discussion on the Second Amendment and its relation to the aforementioned history, see: Clayton E. Cramer, "The Racist Roots of Gun Control," Kansas Journal of Law and Public Policy, no. Winter (1993); David B. Kopel & Clayton E. Cramer, "State Court Standards of Review for the Right to Keep and Bear Arms," Santa Clara Law Review 50 (2010): 1113–1220, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1542544; and Stephen P. Halbrook, "The Second Amendment Was Adopted to Protect Liberty, Not Slavery: A Reply to Professors Bogus and Anderson," George Town University Law: Public Policy Journal, https://www.law.georgetown.edu/public-policy-journal/wp-content/uploads/sites/23/2022/09/GT-GLPP220045.pdf.

Original 1907 Oklahoma Constitution Text: Article II, Section 26

> The *right of a citizen* to *keep and bear arms* in defense of his *home, person, or property*, or in aid of the civil power, when thereunto legally summoned, *shall never be prohibited*; but nothing herein contained shall prevent the Legislature from *regulating the carrying of weapons*.

A plain text reading of the language reveals that the right still belongs to the individual citizen, which adds a prudent clarification to the right recognizing that it is individual in nature. With that said, the Oklahoma preamble contains no reference to the divine nature of rights, which is concerning given that if rights do not come from our Creator they can only originate from the beneficences of the government. Meaning that when it becomes politically expedient, say during a crisis, a government may alter the terms of the civil contract at the behest of a simple majority. When considering the wellspring of human liberty, it is vital for us to hold in our minds the central notion that government does not create liberty because they are gifts graciously bestowed upon us by "Nature's God." The role of government as the eternal enemy of liberty was well understood by great minds of our Western political tradition, as well as by the Founding Fathers. A short-term corrective, therefore, to this issue of the origins of rights is to simply to place language within amendment that mirrors the Declaration's rational justification statement.[54] The States of Kentucky[55] and Nebraska[56] already have incorporated such language within their amendments in fidelity to the timeless tenets that form the foundations of the Rule of Law. Given the omission of these truths from Article II, Section 26, prudence demands that this legislative body enumerate affirming language into proposed amendment because it will place addition protections upon the right, which will serve as a legal bulwark that will go a long way towards "securing the blessings of liberty to ourselves and our Posterity."[57]

The next portion that contains unsettled language is where Section 26 specifically names the places and things that the individual can defend with arms. This is troublesome because it removes the timeless and expansive nature of the original language employed within the Declaration. Recall that the Federal founding documents work as a cohesive framework, which implies that the right to preserve life with arms also includes the individual's prerogative to also defend liberty and property. While not expressly enumerated within the trinity of rights

---

[54] Declaration of Independence. Paragraph 2. "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights…"

[55] Kentucky. Const. Art. I, § 1: "All men are, by nature, free and equal, and have certain inherent and inalienable rights, among which may be reckoned…"

[56] Nebraska Const. Art. I, § 1: "All persons are by nature free and independent, and have certain inherent and inalienable rights; among these are life, liberty, the pursuit of happiness…"

[57] U.S. Const. preamble.

enumerated by the nation's founding legal document, the Declaration, property is a core principle within the American political tradition. For the first one hundred years of this nation's history, happiness was considered the *summum bonum* of life lived in accordance with the "laws of nature and nature's God." Our Founders maintained that an individual's purpose was to seek truth, in order to realize the virtues associated with the application of right reason, which enables one to act upon what is good and beautiful in this life. Consequently, happiness must be actively pursued through one's labor, sustained effort of rational thought, strength of character, and moral action. The culmination of these essential tenets empowered one to truly flourish and to, in the words of Thomas Jefferson, to "pursue their own great happiness."

Appropriately, the expression "pursuit of happiness" encompasses the Lockian concept of property because at the core of private property rights is the ownership of one's own body, which is naturally linked with the right to life. Self-ownership is the wellspring of liberty and outflowing that from that fundamental liberty is private property, and property leads to the principle of consent.[58] As an extension of these rights and an actualization of the pursuit of happiness, individuals, therefore, have the right to keep, use, transfer, trade, and dispose of one's own property, including firearms. And the courts have recognized this critical relationship between the Second Amendment and the exercise of that right on private property. Hence, the necessity to revert this phrase within the amendment to the language found within the Declaration,[59] which will re-establish the immutability and all-encompassing nature of the right.

The next issue we observe is the use of the phrase "shall never be prohibited," as opposed to "shall not be infringed."

> Samuel Johnson's 1773 legal dictionary defines 'prohibit' as "[t]o forbid; to interdict by authority."[60]
>
> Noah Webster's 1828 American dictionary, which defines 'prohibit' as "[t]o forbid; to interdict by authority; applicable to persons or things, but implying authority or right. God prohibited Adam to eat of the fruit of a certain tree. The moral law prohibits what is wrong and commands what is right."[61]

---

[58] For a concise discussion on the Framer's conception of property rights, see: Thompson, *America's Revolutionary Mind*, 195-220.

[59] Declaration of Independence. Paragraph 2. "Life, Liberty and the pursuit of Happiness…"

[60] Samuel Johnson, "To PROHI'BIT. v.a. [prohibeo, Lat. prohiber, Fr.]" Johnson's Dictionary Online, https://johnsonsdictionaryonline.com/views/search.php?term=Prohibit.

[61] Noah Webster, "Webster's Dictionary 1828 - Prohibit," Websters Dictionary 1828, https://webstersdictionary1828.com/Dictionary/Prohibit.

From reading these definitions, one observes that there is a richer contextual explanation in the work of the far-sighted Noah Webster. One must conclude that Webster wrote his original 1828 definitions with an eye to a time such as ours where words have lost their original meaning or have been twisted to mean something completely different. Nevertheless, as a comparison, we should also examine the definitions of the word 'infringe.'

> Samuel Johnson's 1773 dictionary defines 'infringe' as "[t]o violate; to break laws or contracts"[62] and 'infringement' as a "breach; violation."[63]
>
> Noah Webster's 1828 American dictionary defines 'infringe' as "[t]o break; to violate; to transgress; to neglect to fulfill or obey; as, to infringe a law"[64] and 'infringement' as an "[a]ct of violating; breach; violation; … "as the infringement of a treaty, compact or other agreement; the infringement of a law or constitution."[65]

Clearly, Webster and Johson are linking the word 'infringe' within a legal context, which implies that the word is more suited to denote when the right to keep and bear arms has been violated by the government. The reasons behind the 1907 Oklahoma Constitution drafters' decision to employ the word 'prohibited' as opposed to 'infringe' is curious, especially considering that in the next sentence, the legislature proceeds to claim the prerogative to prohibit the carrying of concealed arms. Taking into consideration the discussion on how the Oklahoma courts have despoiled the right with dubious holdings, it is prudent to remove the phrase "shall never be prohibited" and replace it with the Federal amendment with the more robust phrase "shall not be infringed."

The final issue with 1907 Section 26 is that it codified within the Oklahoma Constitution ideas that were clear deviations from the original intent of the Federal amendment. The convention delegates granted the legislature the power to regulate the carry of arms, which in turn granted leftist courts the opportunity to create a situation that, for all practical purposes, meant the right to keep and bear arms was non-existent within the state as the Pierce v. State (1929) demonstrates. As the section on the Oklahoma courts makes clear, in the years leading up to the War Between the States, State governments began to restrict arms for certain subcategories of the population who were deemed undesirable by ruling elites. Returning to the work of historian

---

[62] Samuel Johnson, "To INFRI'NGE. v.a. [infringo, Latin.]," Johnson's Dictionary Online, https://johnsonsdictionaryonline.com/views/search.php?term=infrigne

[63] Samuel Johnson, "Infri'ngement. n.s. [from infringe.]," Johnson's Dictionary Online, https://johnsonsdictionaryonline.com/views/search.php?term=infringement

[64] Noah Webster, "Webster's Dictionary 1828 - Infringe," Websters Dictionary 1828, https://webstersdictionary1828.com/Dictionary/infringe

[65] Noah Webster, "Webster's Dictionary 1828 - Infringement," Websters Dictionary 1828, https://webstersdictionary1828.com/Dictionary/Infringement

Clayton Creamer, his research reveals that the authoritarian impulse to curtail individual conduct deemed objectionable by the elites of those eras is not far removed from similar controllers in our own age. Within, *Concealed Weaopns Laws of the Early Republic,* Carmer effectively demonstrates from primary sources that portions of the ruling elite within Southern society of the Antebellum Period thought that their communities were brimming with brash men seeking to satisfy the slightest affronts to their honor through use of the gentlemen's duel.[66] The duel, a social feature of male interactions found within the vast majority of global societies, were a means for men to settled disagreements through feats of martial strength.[67] These men conformed their conduct to a strict written code of honor that carefully defined language of challenges, seconds, and satisfaction. In so doing these men demonstrated to their community's that they were men of honor and were not mere drunken brawlers. While native tribes engaged in various forms of the practice, the Americans of European heritage inherited dueling from the cultures that settled within particular regions within the Colonies. Historian David Hackett Fischer's authoritative work, *Albion's Seed,* traces the pathways of immigration within the colonies. Fischer highlights the fact that each European subculture brought with them the social norms of place of origin. In the case of the Southern Colonies, they inherited the English tradition of aristocracy, as well as the fighting spirit of those peoples who inhabited Europe's borderlands, which were zone of continual conflict. Naturally, this combination of cultural elements predisposed States with Southern culture to certain social mores that were absent in other regions.[68] Thus, the juries of the period continually failed to convict individuals engaged in dueling despite the efforts of elites to curtail what they deemed a socially undesirable. In seeking to rid the States of this supposed social scourge, legislatures turned to the power of the state to ensure compliance. Lamentably, when individuals elect to commit crimes, it is often the law-abiding who pay for that lawlessness with the loss of a portion of their liberty.

When the government criminalizes conduct that was not, in ages past, unlawful, it has the logical consequence of creating more criminality. In place of once lawful and publicly acceptable duels, these individuals now were forced into the shadows where murder through assassination with concealed arms became the preferred method for resolving personal feuds. Instead of channeling this nature tendency of males into a strictly controlled narrative of socially acceptable violence that was governed by agreed upon code of conduct, these impulsive controllers opted for the destruction of that system in favor of wanton violence as those determined to exact revenge

---

[66] For a history of dueling in Southern society, see; Jack Kenny Williams, *Dueling in the Old South: Vignettes of Social History* (College Station, TX: Texas A&M University Press, 1980).

[67] To observe the roots of dueling from the Eurasian continent, see; Kiernan, Victor, and David Blackbourn. *The Duel in European History: Honour and the Reign of Aristocracy*. Second. London, UK: Zed Books Ltd, 2016, and the classic Japanese work, Musashi Miyamoto and Victor Harris, *The Book of Five Rings* (Woodstock, NY: Overlook Press, 1982).

[68] David Hackett Fischer, *Albion's Seed: Four British Folkways in America* (Oxford, UK: Oxford University Press, 1989).

sought out other avenues in their quest for satisfaction. In response to the upsurge in assassination killings after arbitrarily decreeing dueling to be proscribed conduct, legislatures turned to more regulation, which led to increased criminalization. It seems the autocratic inclination to "just do something" to "save just one life" is a common human sentiment that would be despots of all ages cunningly appeal.

The Southern States, in an effort to create a chilling effect upon the public's social acceptance of the carrying concealed weapons for self-defense, passed laws, amended constitutions, allowed zealous social crusaders to act as prosecutors without obtaining a juridical degree, commanded judges and juries to apply maximum penalties, offered bounties to the public to turn in those who would dare to carry weapons in defiance the proclamations of the lawgivers.[69] Nevertheless, as the American society's notion of morality shifted in the wake of the destruction wrought by war, dueling fell out of favor amongst what remined of the shattered male population. War on the scale of the War Between the States, has the tendency to bring about sweeping social change. Though the nature of that change can either be positive or negative.

What did not change was the law, the unconstitutional edicts regulating the conveying of arms by the citizen remained and expanded far beyond the Southern States. The *Ex parte Thomas* (1908) case reveals the truth of this observation in that the court's justification for the infringement upon the God-given right to bear arms remained the same, even though the practice of dueling had died out by the 1870s. With the demise of dueling, these infringing public safety regulations and amendments should have been repealed. Instead of restoring rights unjustly stripped from the citizenry by the government, the controllers only found more excuses to justify existing violations and pointed to other social ills to warrant new edicts. That cycle continued until the constitutional carry movement of the mid-1990s gained widespread public support in rural States.

[69] Clayton E. Cramer, *Concealed Weapon Laws of the Early Republic: Dueling, Southern Violence, and Moral Reform* (Westport, CT: Praeger, 2010).

VIII. Analysis of H.J.R. 1034 & GOA Recommended Changes

A. *Proposed Changes to Subsection A*

Proposed HJR 1034 Language: Article II, Section 26, Subsection A

> The *fundamental* right of *each individual citizen* to keep and to bear arms in defense of his or her *person* <u>*or*</u> *property*, or *including handguns, rifles, shotguns, knives, nonlethal defensive weapons, and other arms* in *common use*, as well *as ammunition and the components of arms and ammunition*, for self-defense, lawful hunting and recreation, in aid of the civil power, when thereunto lawfully summoned, or for any other legitimate purpose, shall not be infringed.

When comparing the language of the 1907 amendment with that of the proposal, we find that portions of the language are markedly improved. GOA commends the authors for their willingness to take on this challenge and producing language that in some areas greatly strengthens the right to keep and bear arms in Oklahoma when compared to the original. With that said, the task before this legislative body is of great importance, which will have unforeseen externalities for those living in this current epoch of great political upheaval, as well as for future generations. In recognition of the responsibility that naturally accompanies such weighty endeavors, those engaged in this task must do their due diligence to ensure that the "blessing of liberty" is further secured by their actions.

To being, one observes that the proposed amendment adds the word 'fundamental.' This is a decent word, however, as previously established, it does not adequately convey the proper origin of our rights. Considering that the Oklahoma preamble only vaguely references the Creator in an appeal for guidance, there is the necessity to place language from the Declaration like that found in the Kentucky or Nebraska constitutions into the amendment. In this era of great confusion concerning the core tenets that form the proper foundations of the law, enumerating self-evident truths into the constitution is vital because it is imperative to remind those in positions of political power that rights are grant by our Creator. Government can only grant privileges that can be stripped away from the citizen at the capricious whims of a simple majority.

Pressing forward, the addition of the 'individual citizen' phrase is prudent given the timeless truth that rights are individual in nature and that such language is in accordance with the Federal amendment. As previously demonstrated, fallacious claims about the right to bear and arms as somehow only connected with service within a select militia display a willful ignorance of this

nation's First Principles, as well as the text, history, and tradition of the right. Recall that the word 'the' denotes that right pre-existed the formation of human governments and the right is a natural corollary of the right to life.

The section naming the places where the right can be exercised is also troublesome given the restricting language employed. Firstly, one must address the use of the conjunction 'or' in place of 'and,' which denotes multiple alternatives. Meaning that a court could easily say that Oklahoma citizens would have the option to defend life or property but not both. Conversely, the use of the word 'and' implies, in this case, that citizens have the right defend life and property at the same time. Next one must address the notion that, if the goal, as stated by the authors, is to not allow activist judges or leftist controlled urban areas room to enact infringements upon the right, then it is curious as to why such constraining language was employed. The language in this section H.J.R. 1034 also commits a similar omission as the 1907 amendment. Again, one observes that the language places limitations on the timeless and expansive nature of the original language employed within the Declaration. Within this nation we have a lengthy legal tradition of recognizing the God-given right to defend life, liberty, and property with arms. Given that truth, why would one imprudently codify into the Supreme Law of Oklahoma language that limits that right to just to one's "person or property?" As previously established, does not our founding legal document acknowledge the God-given "right of the people to alter or to abolish it, and to institute new government" when that government fails in its central task, which is to secure the liberties of the citizenry? Furthermore, do citizens not have the duty to be proficient in the use of arms to secure their liberties from threats of invasion, treasonous rebellion, and usurpations by the government? The answer to these inquiries is an unequivocal yes. Therefore, it is highly prudent to replace the current language with "life, liberty, and property" because the expansive nature of the phrase incorporates a wider swath of human action than the proposed language.

Turning to the section that lists specific arms that the individual could employ in the exercising of the right is highly imprudent. Listing arms creates more opportunities for activist judges to claim that the arms listed are the only ones the citizens are allowed to possess. The Framers understood that technology would change as humanity moved forward through time. Thus, the God-given right extends, prima facie, to all items that constitute arms, even those that were not in existence at the time of the founding. Recall the discussion on what the Framers considered to be arms:

> Noah Webster's 1828 American dictionary defines 'arms' as "[w]eapons of offense, or armor for defense and protection of the body … [i]n law, arms are any thing which a man takes in his hand in anger, to strike or assault another."[70]

From this definition, authored by a prominent Founding Father, one clearly denotes that the items covered by arms are not matter of weapons type but intent. This distinction is important because this definition speaks to the timeless nature of the word arms. By listing the arms of our current time, the authors of H.J.R. 1034 are inadvertently freezing in time the weapons and accouterments that can be possessed by the citizens of Oklahoma. This irresponsible language must be stuck from the amendment because it removes the timeless nature of the word 'arms.' Meaning that the language of the amendment does not account for future innovations in arms technology, nor does it account for other arms not included on the list. A comparable analogy would be to say that the right to free speech only applies to iron gall ink, ink wells, goose quills, parchment paper, printed documents, the movable type printing press, and the spoken word. Such a notion that the right to free speech does not protect modern or future moods of communication is clearly absurd. Accordingly, it is anathema to the principles that lay at the heart of the God-given right to keep and bear arms to place such arbitrary limitations by naming types of weapons, as opposed to simply allowing for the timelessness of word 'arms.'

We next turn to the phrase "common use" and discuss why it should not be included in Subsection A. In the landmark case of *District of Columbia v. Heller* the Supreme Court performed an in-depth analysis of the Second Amendment by interpreting the plain meaning of the text as informed by history and tradition at the time of its ratification. In its discussion, the Court "recognized…[an] important limitation on the right to keep and carry arms[,]… that the sorts of weapons protected were those 'in common use at the time.' *Miller* 307 U.S., at 179, 59 S.Ct. 816." The Court went on to explain that the protection of arms in common use is "supported by the historical tradition of prohibiting the carrying of 'dangerous and unusual weapons'" by individuals with the intent to terrorize the public. See 4 Blackstone 85 and 149148–149 (1769)[71] and *State v. Langford*, 10 N.C. 381, 383-384 (December 1, 1824).[72] Thus,

---

[70] Noah Webster, "Webster's Dictionary 1828 – Arms," Websters Dictionary 1828, https://webstersdictionary1828.com/Dictionary/arms

[71] "The offense of riding or going armed, with dangerous or unusual weapons, is a crime against the public peace, by terrifying the good people of the land[.]" and "Any justice of the peace may, *ex officio* [officially], bind all those to keep the peace, who in his peace, who in his presence make an affray;…or go about with unusual weapons or attendance, to the terror of the people[.]

[72] "Although no bare words in the judgment of law carry in them so much terror as to amount to an affray, yet it seems certain there may be an affray when there is no actual violence: as when a man arms himself with

based on this historical tradition, *Heller* articulated a "conjunctive test" that "a weapon may not be banned unless it is both dangerous and unusual."[73] The problem with including "common use" in the text of H.J.R. 1034, is that, unlike *Heller*, there is no historical tradition to aid the courts in interpreting the plain meaning of the phrase. When interpreting the text of a document, such as a constitution, courts "are guided by the principle that '[it] was written to be understood by the voters; its words and phrases were used in their normal and ordinary as distinguished from technical meaning.'"[74] In trying to understand what the framers and voters understood the Second Amendment to mean, the Supreme Court in *Heller* looked to Blackstone and other commentators and court rulings before, during, and slightly after the ratification period. From these sources, the Court found that "dangerous and uncommon" arms used in a manner to terrorize the people were not protected by the Second Amendment. Thus, the phrase "common use" by itself will not have the same meaning as "common use" found under Second Amendment jurisprudence which includes supporting language to indicate that a "dangerous and unusual" arm cannot be banned unless there is intent to terrorize the public. By specifically including "common use" in H.J.R. 1034 without any historical tradition courts will likely find the plain language to protect only those arms which "are [not] highly unusual in society at large." Meaning there will not be a "dangerous" component in the "dangerous and unusual" test. Thus, if an arm is unusual, such a new technology, regardless of whether it is "dangerous" or not, it will not be in "common use" and if it's not an arm specifically enumerated under Subsection A of H.J.R. 1034, it will not be protected under the Oklahoma Constitution.

An examination of the proposed language along with selected alternatives:

Understanding now the significant issues with the 1907 language of Article II, Section 26 and with the language proposed by H.J.R. 1034, the following provides some alternative versions of the amendment that more closely appeal to the divine wellspring of our rights, maintain faith to the original intent of the Federal amendment, and which contain clearer expressions about the timelessness of the right.

dangerous and unusual weapons, in such a manner as will naturally cause a terror to the people; which is said always to have been an offence at common law, and is strictly prohibited by statute."

[73] *Caetano v. Massachusetts*, 577 U.S. 411, 417 (2016).

[74] *Heller*, 554 U.S. 570, 576 (2008).

A Composition of Subsection A that is in Fidelity to the Original Intent of the Amendment:

> In recognition of the self-evident truth[75] that our lives are gifts from our Creator,[76] the legislature declares that the right of individual citizens[77] to keep and bear arms,[78] in defense of their life, liberty, property,[79] or in aid of the civil power,[80] when thereto legally summoned,[81] shall not be infringed.[82] And as armies comprised of governmental hireling, loyal only to their paymaster, are dangerous to liberty,[83] a well-regulated militia,[84]

---

[75] By employing divine revelation in conjunction facts, logic, and Aristotelian right reason the Framers understood that one could discern fundamental truths about "the Laws of Nature and Nature's God."

[76] Divine origins language: Declaration of Independence, found in the Kentucky and Nebraska Constitutions.

[77] Language that recognizes the induvial nature of the right: Declaration of Independence and Bill of Rights: Amendment II. In addition to the Federal enumeration, thirty-two State constitutions recognize that the right is individual in nature with the use of the words 'people,' 'citizen,' or 'person.'

[78] Maintaining the use of the word 'arms' with its timeless definition ensures that the right incorporates future technological advances.

[79] The right to life is also referred to by the Framers as the "law of self-preservation," which is the most essential and fundamental natural or God-given right an individual possesses. Hence, the first law of nature is that of self-defense. To drive home the connection between the Declaration and the Constitution, James Madison desired to place a reiteration of Declaration's divine revelation language within the preamble of the Constitution, so that the linkage between the two founding legal documents was unequivocal. Sadly, the Senate failed to observe the necessity of that proposal because it was too repetitive, and the linkage was already elementary.

[80] The U.S. Constitution permits Congress to authorize the use of the militia "to execute the Laws of the Union, suppress Insurrections and repel Invasions" (Article I, Section 8, Clause 15). More importantly this phrase guarantees the States ability to protect its citizens against invasion or usurpation of their "republican form of government" by the Federal government. Moreover, this is a recognition of the duty of male citizens to be proficient in arms to defend the nation and their communities from threats to their liberties.

[81] Summing the militia in a time of crises must be done by a legitime authority. This does not necessarily imply an established government authority. As John Locke argues within *The Second Treatise on Government* and the Protestant Doctrine of Lesser Magistrates reveals, once a state of nature is entered into by the government's abandonment of its duty to secure liberty, the people may create new governing bodies that will secure their rights. The command of the militia must always be subordinated to civil control.

[82] Given the definitions of the words 'infringed' it carries a more pronounced sense of gravitas if violated by the government as opposed to the words 'prohibited' or 'abridged' that are employed by a few State constitutions.

[83] Prudent fears about the threat to liberty posed by standing army helped to properly motivate the passage of the Bill of Rights, which contains provision specifically aimed at curtailing the Federal governments abuse of the military. In light of the obvious corruption from the unaccountable military industrial complex, the Framers within the Anti-Federalist camp where farsighted with concern about the threat posed to liberty from large standing armies. Thus, it is extremely prudent to include such language as a further legal hedge against "abuses and usurpations" by the government.

[84] Well-regulated merely implies the essence of the militia that those within in it should be properly armed with the privately held weapons and proficient in their use. This does allow for the States to make general guidelines that promote the readiness of the unorganized militia with laws that encourage arms ownership and voluntary training through with the funding of public ranges, shooting sports, and hunting. As the underlying tenet of the right, as well as the extensively documented history and tradition demonstrates, the phrase 'well-regulated' does is not a grant to the government a carte blanche authority to enact any restations upon the individual right to keep and bear military grade arms.

composed of the body of a virtuous citizenry,[85] privately trained in the use of arms,[86] is the true palladium[87] of the liberties enumerated[88] within a constitutional republic.[89] The militia, therefore, is the only proper, natural, and moral defense of a free state[90] against invasions, treasonous insurrections, and arbitrary usurpations of power by officials of the government.[91]

A Composition of Subsection A formulated from the Language of the State Constitutions:

All persons are, by nature, free and equal, and have certain inherent and inalienable rights.[92] A person's[93] right to keep and bear arms, ammunition, and accessories typical to the normal function of arms,[94] for the defense of self, family, home,[95] and for hunting and

---

[85] The vital importance of virtue within the body politic was a common theme constantly hammered home by the Famers. This idea is exemplified by John Adams's 1798, "Letter to the Massachusetts Militia," wherein he argued "[o]ur Constitution was made only for a moral and religious People. It is wholly inadequate to the government of any other."

[86] Again, the inclusion of such language recognizes the individual nature of the right, as well as the duty of male citizens to be trained at arms.

[87] St. George. Tucker, *Blackstone's Commentaries: With Notes of Reference to the Constitution and Laws of the Federal Government of the United States and of the Commonwealth of Virginia*. 5 vols. (Philadelphia, 1803. Reprint. South Hackensack, N.J.: Rothman Reprints, 1969), Vol. 1, 300.

[88] The Bill of Right only lists a small fraction of our God-given rights. The document does not grant citizens' rights because governments can only grant privileges. Rights our inherent to our humanity.

[89] These united States are comprised of constitutional republics and are not democracies. The Framers were resoundingly clear that democracies were nothing more than rule by the capricious and arbitrary whims of the mob. John Adams's writing in 1814 to John Taylor puts it best: Remember Democracy never lasts long. It soon wastes exhausts and murders itself. There never was a Democracy Yet, that did not commit suicide."

[90] The founding generation knew firsthand the bitter face of oppression and tyranny committed by the hands of their brethren. Consequently, only a virtuous people could justly govern themselves and by extension were the best guarantors of their liberty. The Founders fundamentally understood that the ability of the individual to govern themselves justly was only possible if a substantial portion of the population maintained a high level of civic virtue.

[91] A reiteration of the duty of the male citizen to secure "the blessing of liberty" from all enemies foreign and domestic.

[92] Divine origins language: Declaration of Independence, Kentucky, Nebraska

[93] With the use of the individualized words "person," "citizen," or "individual" there is a recognition of an individual right, intending that the individual may bear arms private defense apart from the common defense of the state: Alabama, Arizona, Arkansas, Colorado, Connecticut, Delaware, Illinois, Indiana, Kansas, Louisiana, Maine, Michigan, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Mexico, North Dakota, Oklahoma, Pennsylvania, South Dakota, Tennessee, Texas, Vermont, Washington, and Wyoming / Use of the word "people:" Bill of Rights: Amendment II, Alaska, Florida, Georgia, Hawaii, Idaho, Kansas (1859), Louisiana (1879), Massachusetts, Missouri (1820), New Mexico (1912), North Carolina, Ohio, Oregon, Rhode Island, South Carolina, Utah, Virginia, and Wisconsin.

[94] "Ammunition and accessories" language: Missouri and Idaho

[95] Contains some combination of the language denoting place: Alabama, Arizona, Connecticut, Delaware, Kansas, Michigan, Mississippi, Nebraska, South Dakota, Utah, West Virginia, and Wyoming.

recreational use,[96] shall not be infringed.[97] As, in time of peace, armies are dangerous to liberty, they ought not to be maintained[98] and the military shall be in strict subordination to the civil power.[99] Therefore, a well-regulated militia,[100] composed of the body of the people, trained to arms, is the proper, natural, and safe defense of a free state.[101]

A Composition of Subsection A that Combines the Approaches:

> All people are, by nature, free and equal, and have certain inherent and inalienable rights, individual citizens have the right to keep and bear arms, ammunition, accouterments, parts, and accessories typical to the maintenance of the normal function and most effective use of the arms as intended, for the defense of life, liberty, and property, hunting and recreational use, and in aid of the civil power when thereunto lawfully summoned, which shall not be infringed. As, in times of peace, armies are dangerous to liberty and shall be in strict subordination to the civil power, therefore a well-regulated militia, composed of the body of the people, trained in their privately held arms, is the proper, natural, and safe defense of a free state.

B. *Concerns regarding Subsection B*

Proposed Language currently in HJR 1034: Article II, Section 26, Paragraph B

> This section shall not prevent the Legislature from regulating the carrying of weapons enforcing or adopting narrowly tailored time, place, and manner regulations, or authorizing political subdivisions to adopt and enforce such regulations, to serve a compelling state interest.

---

[96] "Hunting and recreational" language: Delaware, Kansas, Nevada, New Mexico, West Virginia, and Wisconsin.

[97] As noted above infringe is a robust word primed for use within the law given its connotation of an extreme violation. The word "infringe" is found in: Bill of Rights: Amendment II, Alaska, Florida, Georgia, Hawaii, Illinois, Louisiana, North Carolina, North Dakota, Rhode Island, South Carolina, Utah, and Virginia.

[98] Cautionary language about "standing armies:" Kansas, Massachusetts, North Carolina, Pennsylvania, Ohio South Carolina, and Vermont.

[99] "Subordination to the civil power" language: U.S. Constitution, Article II, Section 2, Indiana, Kansas, Massachusetts, North Carolina, Ohio, Oregon, South Carolina, Vermont, and Virginia.

[100] "Well-regulated militia" language: Bill of Rights: Amendment II, Alaska, Hawaii, North Carolina, South Carolina, and Virginia.

[101] "Free state" language: Bill of Rights: Amendment II, Alaska, Georgia, Hawaii, Louisiana (1879), North Carolina, South Carolina, and Virginia.

Under Subsection A, H.J.R. 1034 recognizes the "right of each individual citizen to keep and bear arms" to be "fundamental" and as such, "shall not be infringed." These alterations are a decent start to the resolution however, after first enumerating and then establishing constitutional safeguards to protect this individual and fundamental right of the people, Subsection B goes on to create an exception to this protection by granting authority to the Legislature and political subdivisions of the state to adopt and enforce "narrowly tailored…regulations" regarding the conduct protected under Subsection A, so long as those regulations "serve a compelling state interest." In other words, the State of Oklahoma would be given the constitutional authority to pass and enforce legislation infringing upon the right of the people to keep and bear arms so long as such legislation passes what is known as the strict scrutiny means-end test. Subsection B in its entirety is unacceptable and GOA cannot support legislation that will constitutionally protect the ability of the state to infringe upon the right of the people to keep and bear arms. Additionally, and what will be the focus of this discussion, the United States Supreme Court has expressly held that means-end tests in the context of the Second Amendment to the United States Constitution (meaning the enumeration of the individual right of the people to keep and bear arms) are unconstitutional.

The United States Supreme Court expressly rejects the language found in Subsection B

In the landmark cases of *District of Columbia v. Heller*[102] and *McDonald v. Chicago*[103] the United States Supreme Court held that the Second and Fourteenth Amendments to the United States Constitution protect an individual right to keep and bear arms for self-defense. Specifically, the *Heller* Court held that "on the basis of both text and history, … the Second Amendment conferred an individual right to keep and bear arms[,]"[104] while the Court in McDonald held that "the Due Process Clause of the Fourteenth Amendment incorporates the Second Amendment right recognized in *Heller*…applying it equally to the Federal Government and the States."[105] However, since *Heller* and *McDonald*, the United States Courts of Appeals have gone beyond the text and history test articulated by the Supreme Court in *Heller*, developing a "two-step" framework for examining Second Amendment challenges that combine the *Heller* text and history test with means-end scrutiny.

Under the text and history prong of the two-step test, the court looks to whether the challenged law regulates activity that falls outside the scope of the right to keep and bear arms as originally understood when the Second Amendment was ratified. If the government can prove that the regulated conduct falls beyond the Second Amendment's original scope the regulation will be

[102] 128 S.Ct. 2783 (2008).
[103] 561 U.S. 742 (2010).
[104] *Heller*, at 2799.
[105] *McDonald*, at 791.

found to be constitutional. But if the historical evidence is unclear or demonstrates that the activity regulated by the challenged law does fall under the protection of the Second Amendment, the court will then proceed to the second step of the test, the means-end prong.

Using the means-end prong, the court analyzes whether the challenged law burdens the "core"[106] of the Second Amendment right and the severity of the burden. If it is found that a core Second Amendment right is burdened, the court would then apply "strict scrutiny" and ask whether the Government can prove that the law is narrowly tailored to achieve a compelling governmental interest.[107] If the court finds that the right is not a core Second Amendment right, it will apply "intermediate scrutiny" and consider whether the Government can show that the regulation is substantially related to an important governmental interest.

In response to the development of this two-part test by the Courts of Appeals, the Supreme Court in *New York State Rifle and Pistol Association v. Bruen*[108] affirmed the text and history test established in Heller, rejecting the two-part test as having one step too many:

> Today, we decline to adopt that two-part approach. In keeping with Heller, we hold that when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. To justify its regulation, the government may not simply posit that the regulation promotes an important interest. Rather, the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation. Only if a firearm regulation is consistent with this Nation's historical tradition may a court conclude that the individual's conduct falls outside the Second Amendment's "unqualified command."[109]
>
> ****
>
> Despite the popularity of this two-step approach, it is one step too many. Step one of the predominant framework is broadly consistent with Heller, which demands a test rooted in the Second Amendment's text, as informed by history. But *Heller* and *McDonald* do not

---

[106] Within the *Bruen* holding, Justice Clarence Thomas, writing form the majority, spoke of the "core" of the Second Amendment, which was defined first as defense in the home but later recognized the right to carry arms in public for self-defense. 597 U.S. 9 (2022).

[107] The effects of this two-step test can be seen in the Louisiana Constitution which amended its Right to Keep and Bear Arms provision in 2012 to state that "The right of each citizen to keep and bear arms is fundamental and shall not be infringed. Any restriction on this right shall be subject to strict scrutiny." This amendment was made in response to the Louisiana Supreme Court's affirmation of a lower court's decision stating that the right to arms could be 'restrict[ed]…for legitimate state purposes, such as public health and safety." *State v. Blanchard,* 776 So.2d 1165 (La. 2001).

[108] 597 U.S. 1 (2022).

[109] *Id,* at 17.

> support applying means-end scrutiny in the Second Amendment context. Instead, the government must affirmatively prove that its firearms regulation is part of the historical tradition that delimits the outer bounds of the right to keep and bear arms.[110]
>
> ****
>
> Moreover, *Heller* and *McDonald* expressly rejected the application of any "judge-empowering 'interest-balancing inquiry' that 'asks whether the statute burdens a protected interest in a way or to an extent that is out of proportion to the statute's salutary effects upon other important governmental interests.'" *Heller*, 554 U. S., at 634 (quoting id., at 689–690 (BREYER, J., dissenting)); see also *McDonald*, 561 U. S., at 790–791 (plurality opinion) (the Second Amendment does not permit—let alone require—"judges to assess the costs and benefits of firearms restrictions" under means-end scrutiny). We declined to engage in means-end scrutiny because "[t]he very enumeration of the right takes out of the hands of government—even the Third Branch of Government—the power to decide on a case-by-case basis whether the right is really worth insisting upon." Heller, 554 U. S., at 634...In sum, the Courts of Appeals' second step is inconsistent with Heller's historical approach and its rejection of means-end scrutiny.[111]
>
> ****
>
> The Second Amendment "is the very product of an interest balancing by the people" and it "surely elevates above all other interests the right of law-abiding, responsible citizens to use arms" for self-defense. *Heller*, 554 U. S., at 635. It is this balance—struck by the traditions of the American people—that demands our unqualified deference.[112]

The above review of the *Bruen* holding clearly demonstrates that the Supreme Court is unequivocal in its rejection of means-end scrutiny when it comes to an individual's right to keep and bear arms. Furthermore, the Court in *Bruen* expressly held that the only way to justify the regulation of conduct which is covered by the Second Amendment is by the government demonstrating that the regulation is consistent with this Nation's historical tradition of firearm regulation, not by strict scrutiny. Thus, to adopt, enforce, or uphold legislation regulating the right of the people to keep and bear arms under a means-end scrutiny test, whether by the Federal Government or by a State, would be an act that violates the Fedal Compact. Unfortunately, it appears that the Oklahoma Legislature is attempting to commit such an act, as well as inadvertently undermining the *Bruen* decision, by providing constitutional protections for the rejected two-step test through the inclusion of strict scrutiny language in H.J.R. 1034.

---

[110] *Id,* at 19.
[111] *Id,* at 22.
[112] *Id,* at 26.

In closing, the right of the people to keep and bear arms is an individual, fundamental, and inalienable right of the people enumerated by the Second Amendment to the United States Constitution. That vital amendment is also applied to the States through the Fourteenth Amendment to the United States Constitution. In recognition of that fact, within its jurisprudence, the United States Supreme Court has expressly held that the only way to justify the regulation of conduct that is presumptively protected by the Second Amendment is by the government demonstrating that the regulation is consistent with this Nation's historical tradition of firearm regulation. Meaning that only conduct that falls outside the scope of the Second Amendment as understood when it was ratified can be regulated by the government. Any conduct that does not fall outside its scope would be covered by the Second Amendment and the regulation of such conduct would violate the Federal Compact. In its holdings, the Supreme Court expressly rejected as unconstitutional the type of means-ends test language which is included in Subsection B of H.J.R. 1034. This is because instead of inquiring if a statute burdens a protected right, which would be unconstitutional, the means-end test inquires if a statute burdens a protected right and then determines whether that burden is acceptable.

C. *Proposed Changes to Subsection C*

Proposed Language currently in HJR 1034: Article II, Section 26, Subsection C

> No law shall impose registration or special taxation upon the keeping of arms including the acquisition, ownership, possession, or transfer of arms, ammunition, or the components of arms or ammunition.

Suggested Governmental Constraint Language:

> But this provision shall not prevent the passage of laws concerning the use of arms in a manner that is deemed lawless as established by analogue laws that are in accordance with this nation's First Principles at the time of the Founding. Therefore, no corruption of the Rule of Law shall be permitted that creates licensure and registration schemes; imposes restrictions on ancillary rights; or the implementation of special taxation on the individual's ability to purchase, own, or possess arms, ammunition, and associated accoutrements. Nor shall any unprincipled law permit the confiscation of or violate an individual's access to arms, except for those who have forfeited the right by the commission of a violent crime.

With the history covered within this testimony and recent devolvement's from State that have succumbed to authoritarianism within the forefront of one's mind, it is clear that the Courts and

State legislatures have continually failed in their sacred duty to protect the right of "We the people" to keep and bear arms. Indeed, the recent assault on the ancillary rights is most disturbing and it is now prudent for this legislative body to enumerate within the Article II Section 26 additional protections that must attempt to mitigate this additional threat to liberty. Consequently, GOA agrees with the authors that there needs to be language codifying the protection against the plethora of infringements constantly being brought forth by the Platonic priest class, who is ever seeking ways abuse the law in order to coerce the citizen to comply with their twisted wills. Our recommendations to Subsection C, is written in common parlance, and employs the *Bruen* analogies test, as well as an appeal to the spirit of the laws. The final portion of subsection C expressly states that the government cannot infringe upon the right unless an individual has surrendered the right through acts of violent criminality.

IX. Conclusion

To conclude this brief exploration of the various elements of the right to keep and bear arms and its relation to the language of H.J.R. 1034, one must always return the conversation back to its ultimate origins, by recognizing that our lives are a gift from our Creator. And as part of this gift, humanity has been endowed with certain rights, including the right to life. The right to life means that individuals have the right to take the necessary actions for the sustainment, development, and well-being of their own life. These inherently interwoven principles also naturally imply that our rights serve as a legal barrier, protecting individuals from the infringements of others. This timeless truth is such regardless of whether a segment of society or an out-of-control legislature, due of political exigency, now consider constitutionally protected conduct to no longer be a fundamental human right.

As obvious gifts from the Creator, these individual rights are therefore inalienable — a term that means "not capable of being taken away or denied" as well as "not transferable to any other." A just government cannot strip away the right to keep and bear arms simply because it thinks it is too dangerous for a given subsection of the population or that it does not comport with the unprincipled tenets of the foreign ideology that dominates their un-American edicts. The proper role of government, therefore, is to secure the God-given and unalienable rights of the people, which unequivocally includes the right to possess and convey arms in order to sustain life, as well as other for ancillary purposes.

In a truly free society, individuals will, at times, conduct themselves in an unfortunate manner. This is true because liberty is an eternally perilous condition that compels us to trust one another, and the pursuit of it requires us to respect the natural rights of our fellow citizens. Such a task is often-times exceedingly trying, especially when tragedies occur, or a pressing social issue creates an authoritarian impulse to "just do something." In the face of such heartbreaking realities of this fallen world, there is the natural urge to curtail liberty in exchange for a measure of security. But those cravings must be tempered through lengthy and principled discourse, so that this body is not making decisions without ensuring that ideas are properly scrutinized.

Because of the uncertainty and angst concerning the precarious nature of our lives, the temptation to "just do something" about whatever the given issue at hand is the continuous moral struggle when seeking to fulfil the duties of a representative of the people in a judicious manner. Indeed, the drive to seek governmental solutions to social issues that are inherently connected to our humanity often leads us to not properly flesh out ideas in a knee jerk reaction to resolve pressing social problems. Of course, this hasty approach to government fails to account for the

maxim that “ideas have consequences.” Within the sphere of government, the failure to properly debate and contemplate ideas inevitably leads to unplanned negative externalities.

Naturally, these unintended consequences are injurious to individual citizens, who are forced to conform with the stipulations imposed upon them by the aforementioned indigent outcomes. As this principled discourse demonstrates, this piece of legislation has very real consequences for the citizen. Given that the singular duty of a just government is to safeguard the liberties of the citizenry and to provide justice, we must maintain fidelity to the noble aim of ensuring the furtherance of prudent government. It is also imperative to protect the individual and institutions of civil society by encouraging the virtue of self-government, which will enable a free society to flourish. One of the central ways elected officials can encourage and empower citizens is to allow them the opportunity to exercise personal responsibility by not placing onerous restrictions on their ability to take ownership of their actions. Speaking into this natural tension between liberty and security, Jefferson emphasized that only “timid men prefer the calm of despotism to the tempestuous sea of liberty.” Meaning, liberty is fundamentally dangerous because of the fallen nature of humanity. Rather than to live in a polity that strips the individual of all that makes us human in the vain pursuit of security, we should wholeheartedly desire to live in a society where the mutual trust and respect for our God-given rights openly combats dangers of our inherent fallibility.

Accordingly, GOA, in agreement with the Supreme Court, expressly rejects the mean-end test or any test that attempts to justify an infringement of the right of the people to keep and bear arms. The Second Amendment to the United States Constitution reflects the Framers assertions that the right to keep and bear arms could not be violated by the government because that individual right was necessary for the preservation of life, as well as to secure the liberties of the citizenry within a free state. As such, GOA, being the only no compromise Second Amendment advocacy group, cannot led our support to H.J.R. 1034 if the highly problematic language within subsections A and C is not brought in alignment with this nation’s First Principles, and subsection B must be struck from the amendment in its entirety.

Thus, on behalf of our members and supporters throughout the state of Oklahoma, Gun Owners of America, in fidelity to the First Principles of our Great Nation, asks the honorable members of this committee strike Subsection B and forthrightly seek precise language to correct the deficiencies within Subsections A and C so that they align the proposed revisions to Article II Section 26 with the original intent of the right as laid forth in the Federal Compact.

BIBLIOGRAPHY

Adams, John. "'III. "A Dissertation on the Canon and the Feudal Law," No. 1 ...'" National Archives and Records Administration: Founders Online. https://founders.archives.gov/documents/Adams/06-01-02-0052-0004.

Adkison, Danny. "Oklahoma Constitution." Oklahoma Historical Society | The Encyclopedia of Oklahoma History and Culture. https://www.okhistory.org/publications/enc/entry.php?entry=OK036.

Barnett, Randy E., and Josh Blackman. *Constitutional law: Cases in Context*. New York, NY: Wolters Kluwer, 2021.

Berger, Raoul. *Government by Judiciary: The Transformation of the Fourteenth Amendment*. Indianapolis, IN: Liberty Fund, 2015.

Blackstone, William. "Blackstone's Commentaries on the Laws of England: The Rights of Persons." Avalon Project - Blackstone's commentaries on the Laws of England: The Rights of Persons. https://avalon.law.yale.edu/18th_century/blackstone_bk1ch17.asp.

Buchanan, John. *The Road to Guilford Courthouse: The American Revolution in the Carolinas.* Hoboken, NJ: John Wiley & Sons, 1999.

"The Convention Manual of Procedure, Forms and Rules for the Regulation of Business in the Sixth New York State Constitutional Convention, 1894." Internet Archive, January 1, 1894. https://archive.org/details/conventionmanual22newy/page/n5/mode/2up.

Cooley, Thomas McIntyre. "The General Principles of Constitutional Law in the United States of America: 1824-1898." Internet Archive, January 1, 1880. https://archive.org/details/cu31924019959083/page/n315/mode/2up.

Cornwallis, Charles. *Correspondence of Charles, First Marquis Cornwallis*. Edited by Charles Derek Ross. London, UK: John Murray, 1859.

Cramer, Clayton E., and Clayton E. Cramer. *Lock, Stock, and Barrel: The Origins of American Gun Culture* . Westport, CT: Praeger, 2018.

Cramer, Clayton E. *Concealed Weapon Laws of the Early Republic: Dueling, Southern Violence, and Moral Reform*. Westport, CT: Praeger, 2010.

Cramer, Clayton E, and Joseph Olson. “What Did ‘Bear Arms’ Mean in the Second Amendment?” Supreme Court.gov - Opinions. https://www.supremecourt.gov/opinions/URLs_Cited/OT2007/07-290/07-290.pdf.

Cramer, Clayton E. *Armed America: The Remarkable Story of How and Why Guns Became as American as Apple Pie*. Nashville, TN: Nelson Current, 2006.

Cramer, Clayton E. *For the Defense of Themselves and the State: The Original Intent and Judicial Interpretation of the Right to Keep and Bear Arms*. Westport, CT: Praeger, 1994.

Cramer, Clayton E. “The Racist Roots of Gun Control.” *Kansas Journal of Law and Public Policy*, no. Winter (1993).

Cunningham, Timothy. “A New and Complete Law Dictionary.” Internet Archive, January 1, 1764. https://archive.org/details/newcompletelawdi01cunn/page/n179/mode/2up?q=%22in+wrath%22.

Ellis, Richard J. “Reimagining Democracy: The Socialist Origins of the Initiative and Referendum in the United States.” *The Journal of the Gilded Age and Progressive Era* 22, no. 2 (April 2023): 143–62. https://doi.org/10.1017/s1537781422000585.

Forte, David F., Matthew Spalding, and Edwin Meese, eds. “Preamble.” Essay. In *The Heritage Guide to the Constitution* Fully Revised, Seconded., Fully Revised:51–55. Washington D.C.: Regnery Publishing, 2014.

Gales, Joseph, and William Winston Seaton. *The Debates and Proceedings in the Congress of the United States* . Washington: Gales and Seaton, 1834.

Gerry, Elbridge. “House of Representatives, Amendments to the Constitution.” Founders’ Constitution - The University of Chicago. https://press-pubs.uchicago.edu/founders/documents/amendIIs6.html.

Halbrook, Stephen P. *That Every Man Be Armed: The Evolution of a Constitutional Right*. Revised and Updated. Albuquerque, NM: University of New Mexico Press, 2013.

Halbrook, Stephen P. *The Founders’ Second Amendment: Origins of the Right to Bear Arms*. Chicago, IL: Ivan Dee, 2008.

Halbrook, Stephen P. *The Right to Bear Arms: A Constitutional Right of the People or a Privilege of the Ruling Class?*. New York: Post Hill Press, 2021.

Halbrook, Stephen P. “The Second Amendment Was Adopted to Protect Liberty, Not Slavery: A Reply to Professors Bogus and Anderson.” George Town University Law: Public Policy Journal. https://www.law.georgetown.edu/public-policy-journal/wp-content/uploads/sites/23/2022/09/GT-GLPP220045.pdf.

Hamilton, Alexander. “The Federalist Papers : No. 29.” The Avalon Project. https://avalon.law.yale.edu/18th_century/Fed29.Asp.

Jefferson, Thomas. “Declaration of Independence: A Transcription.” National Archives and Records Administration. https://www.archives.gov/founding-docs/declaration-transcript.

Jefferson, Thomas. “‘From Thomas Jefferson to Henry Lee, 8 May 1825.’” National Archives and Records Administration: Founders Online. https://founders.archives.gov/documents/Jefferson/98-01-02-5212.

Johnson, Samuel. Johnson’s Dictionary Online. https://johnsonsdictionaryonline.com/views/search.php?term=sensibility.

Kiernan, Victor, and David Blackbourn. *The Duel in European History: Honour and the Reign of Aristocracy*. Seconded. London, UK: Zed Books Ltd, 2016.

Kilmer, Donald E., David B. Kopel, Nicholas J. Johnson, George A. Mocsary, and E. Gregory Wallace. *Firearms Law and the Second Amendment: Regulation, Rights, and Policy*. Boston, MA: Aspen Publishing, 2021.

King, J F. “Proceedings of the Constitutional Convention of the Proposed State of Oklahoma [Microform]: Held at Guthrie, Oklahoma, November 20, 1906 to November 16, 1907: Oklahoma. Constitutional Convention (1906-1907).” Internet Archive, January 1, 1970. https://archive.org/details/proceedingsofcon00oklarich/page/8/mode/2up.

Kopel, David B., and Clayton E. Cramer. “State Court Standards of Review for the Right to Keep and Bear Arms.” *Santa Clara Law Review* 50 (2010): 1113–1220. https://doi.org/https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1542544.

Leonard, Thomas C. *Illiberal Reformers: Race, Eugenics, and American Economics in the Progressive Era*. Princeton, NJ: Princeton University Press, 2016.

MacMullen, Ramsay. *Soldier and Civilian in the Later Roman Empire*. Cambridge, MA: Harvard University Press, 1963.

Madison, James. “Annals of Congress, House of Representatives, 1st Congress, 1st Session, June 8, 1789.” A century of lawmaking for a new nation: U.S. congressional documents and

debates, 1774 - 1875. https://memory.loc.gov/cgi-bin/ampage?collId=llac&fileName=001%2Fllac001.db&recNum=227.

Malcolm, Joyce Lee. *To Keep and Bear Arms: The Origins of an Anglo-American Right*. Cambridge, MA: Harvard University Press, 1996.

Mason, George. "'Debate in Virginia Ratifying Convention: Article 1, Section 8, Clause 12.'" Founders' Constitution - The University of Chicago. https://press-pubs.uchicago.edu/founders/documents/a1_8_12s27.html.

Musashi Miyamoto and Victor Harris, *The Book of Five Rings* (Woodstock, NY: Overlook Press, 1982).

Newman, Patrick. "Taking Government Out of Politics: Murray Rothbard on Political and Local Reform during the Progressive Era." Mises Institute - Quarterly Journal of Austrian Economics, December 22, 2020. https://mises.org/quarterly-journal-austrian-economics/taking-government-out-politics-murray-rothbard-political-and-local-reform-during-progressive-era.

Pestritto, Ronald J. *America Transformed: The Rise and Legacy of American Progressivism*. New York, NY: Encounter Books, 2021.

Robertson, John K. "Decoding the Connecticut Militia 1739-1783." Journal of the American Revolution, August 28, 2016. https://allthingsliberty.com/2016/07/connecticut-militia-1739-1783/.

Rothbard, Murray, and Andrew P. Napolitano. *The Progressive Era*. Edited by Patrick Newman. Auburn, AL: Ludwig von Mises Institute, 2017.

Ruben, Eric. "Law of the Gun: Unrepresentative Cases and Distorted Doctrine." Iowa Law Review - The University of Iowa. https://ilr.law.uiowa.edu/print/volume-107-issue-1/law-of-the-gun-unrepresentative-cases-and-distorted-doctrine.

Story, Joseph. "Commentaries on the Constitution 3:§§ 1890--91." Founders' Constitution - The University of Chicago. https://press-pubs.uchicago.edu/founders/documents/amendIIs10.html.

Thompson, C. Bradley. *America's Revolutionary Mind: A Moral History of the American Revolution and the Declaration That Defined It*. New York, NY: Encounter Books, 2019.

Tucker, St. George. “Article 1, Section 8, Clause 12: St. George Tucker, Blackstone’s Commentaries 1: App. 272--75.” Founders’ Constitution - The University of Chicago. https://press-pubs.uchicago.edu/founders/documents/a1_8_12s28.html.

Tucker, St. George. *Blackstone's Commentaries: With Notes of Reference to the Constitution and Laws of the Federal Government of the United States and of the Commonwealth of Virginia*. 5 vols. Philadelphia, 1803. Reprint. South Hackensack, N.J.: Rothman Reprints, 1969.

Vieira , Edwin. “The Sword and Sovereignty: The Constitutional Principles of ‘The Militia of The Several States.’” Front Royal, Virginia: Edwin Vieira, Jr., 2012.

Washington, George. “Washington’s Sentiments on a Peace Establishment, 1 May 1783.” National Archives: Founders Online, n.d. https://founders.archives.gov/documents/Washington/99-01-02-11202.

Webster, Noah. “Webster’s Dictionary 1828 - Prohibit.” Websters Dictionary 1828. https://webstersdictionary1828.com/Dictionary/Prohibit.

West, Thomas G. *The Political Theory of the American Founding: Natural Rights, Public Policy, and the Moral Conditions of Freedom*. Cambridge, United Kingdom: Cambridge University Press, 2018.

Williams, Jack Kenny. *Dueling in the Old South: Vignettes of Social History*. College Station, TX: Texas A&M University Press, 1980.

Wilson, James, Kermit Hall, and Mark David Hall. *Collected works of James Wilson*. Indianapolis, IN: Liberty Fund, 2007.

Womersley, David, ed. *Writings on Standing Armies* . Carmel, IN: Liberty Fund, 2020.

Yassky, David S. “The Second Amendment: Structure, History, and Constitutional Change.” Digital Commons. https://digitalcommons.pace.edu/lawfaculty/928/.

Young , David E. “The American Revolutionary Era Origin of the Second Amendment’s Clauses.” *The Journal on Firearms and Public Policy* 23 (2011). https://doi.org/http://www.secondamendmentinfo.com/Journal/index.html.

Young, David E. *The Founders’ View of the Right To Bear Arms: A Definitive History of the Second Amendment*. Ontonagon, MI: Golden Oak Books, 2007.

Young, David E. *The Origin of the Second Amendment: A Documentary History of the Bill of Rights in Commentaries on Liberty, Free Government and an Armed Populace, 1787-1792*. Ontonagon, MI: Golden Oak Books, 2001.

APPENDIX A

Historical Interpretations of the Milita

Given the modern connotations surrounding the concept of a militia and professional military historians' less than objective criticism of the long-deceased institution, one is often left with the perception that the militia was not an integral part of colonial life. Though a bit dated, the bulk of the secondary source information is fairly numerous due to the extensive scholarship of the period, which is due to the fascination with the topic by scholars seeking to prove or debunk the significance of the role of the militia as an institution of civil society. Despite the amount of scholarly work on the militia, the majority of the works fall into three vehemently opposed camps. Namely, the derogatory progressive tradition that advances the views primarily held by Washington and the personalities that would eventually form the Federalist Party. These centralizing nationalists disparaged the militia in favor of a standing army so that the War for American Independence could be fought in a continental fashion.[113] Sadly, this group of historians fails to consider that such a strategy would have played to the strengths of the British Army and negated the "genius" of the American preference for irregular tactics to which the militia was naturally suited.[114]

On the opposite side of the debate, are those historians that charge, full tilt, into the idea that the militia was the core of the American war effort and was engaged in most of the day-to-day fighting. This camp takes into consideration the militia rolls and the documentary evidence that demonstrates the operational tempo that militia played a significant role in soundly defeating British regulars, Hessian hirelings, and the King's Friends with scant assistance of the regulars.[115] Indeed, such was the extent of the active deployments of the militia during the War for American Independence that historians John Ferling and John Robertson rightly demonstrated that the myth of the three percent[116] is officially laid to rest. By scouring the

---

[113] See; Lawrence Delbert Cress. *Citizens in Arms: The Army and Militia in American Society to the War of 1812*. (Chapel Hill, NC: University of North Carolina Press, 1982), Charles Royster. *A Revolutionary People At War: The Continental Army and American Character, 1775-1783*. (Chapel Hill, NC: University of North Carolina Press, 1980), Jim Dan Hill and George Fielding Eliot. *The Minute Man in Peace and War: A History of the National Guard*. (Harrisburg, PA: Stackpole, 1964), Don Higginbotham. "The Early American Way of War: Reconnaissance and Appraisal." *The William and Mary Quarterly* 44, no. 2 (April 1987): 230-73. doi:10.2307/1939664, and John Todd White. "Standing Armies in Time of War: Republican Theory and Military Practice during the American Revolution." PhD diss., George Washington University, 1978.

[114] John E. Ferling, *Almost a Miracle: The American Victory in the War of Independence*. (New York, NY: Oxford University Press, 2007), 570-575, and Shy. *A People Numerous and Armed*, 151, 154-155.

[115] See; Daniel J. Boorstin. *The Americans: The Colonial Experience*. (New York, NY: Random House, 1958), and Darrett Bruce Rutman. *A Militant New World, 1607-1640: America's First Generation, Its Martial Spirit, Its Tradition of Arms, Its Militia Organisation, Its Wars*. (New York, NY: Arno Press, 1959).

[116] The closed "three percent" myth was the brought forth with the claim that based upon the enlistment rolls roughly 80,000 colonists served in the Continental Army during the war. Taking those numbers in combination

enlistment and personal testimony within pension records, historians have found that somewhere around fifteen to twenty-five percent of the population served in a military capacity, with the majority serving within the State militias. The numbers are evidence-based extrapolations, but they point to a conservative estimate of about two hundred thousand men served in the militia in various capacities. While those numbers are significant, they do not include the thousands of non-combatants who endured an almost daily onslaught of British cruelties in order feed, clothe, transport supplies, and gather intelligence in support to the war effort.[117] Perhaps the best description and recognition of the effectiveness of the militia comes from British general, Earl Cornwallis. One must recall that both Morgan and Greene, leading armies primarily composed of militia led Cornwallis on daring chase across the Carolinas. This race to the Dan River eventually led to Cornwallis being surrounded and surrendered at York Town. As the noose was closing on Cornwallis, in a 1781 report to his commander, Sir Henry Clinton, amusingly commented about the conduct of the militias: "I will not say much in praise of the Militia of the Southern Colonies, but the list of British officers and Soldiers killed or wounded by them since last June, proves but too fatally that they are not wholly contemptible."[118]

The next group of more recent presentists historians merely consider the militia as an extension of America's peculiar institution.[119] This assertion, of course, fails to consider that the militia was an institution that pre-existed slavery within the colonies. The roots of the English concept of militia have been effectively demonstrated that its origins are firmly cemented within the Saxon Fyrd and has its statutory lineage within the Middle Ages,[120] as well as a consequence of the political struggles that resulted in the Glorious Revolution.[121] These ideologically driven revisionist historians also fail to consider that the concept of the militia is an idea the is an integral part of our Western heritage. Contending for a voice amongst the tumult are a few balanced histories that paint a more accurate portrait of the militia that will be utilized to even out the discrepancies of the other three groups.[122] Naturally, the truth of the matter always rests

---

with 1780 population of the Colonies, which was estimated to be near 2,780,369, that gives one about a 2.96 percent. Meaning that nearly 3 percent of the country serving in the Continental Army.

[117] John K Robertson, "Decoding the Connecticut Militia 1739-1783," *Journal of the American Revolution*, https://allthingsliberty.com/2016/07/connecticut-militia-1739-1783/.

[118] Charles Cornwallis, Correspondence of Charles, First Marquis Cornwallis, ed. Charles Derek Ross (London, UK: John Murray, 1859), 103.

[119] See; Sally E. Hadden. *Slave Patrols: Law and Violence in Virginia and the Carolinas*. (Cambridge, MA: Harvard University Press, 2001).

[120] See; William Blackstone. *Commentaries on the Common Law of England*. Vol. 1. 4 vols. (Chicago, IL: University of Chicago, 1979), 152, Shea, *The Virginia Militia in the Seventeenth Century*, 1-4, and Robert Hardy. *Longbow: A Social and Military History*. (London, UK: Lyons Press, 1993), 128-129.

[121] See; Rachel Foxley. *The Levellers: Radical Political Thought in the English Revolution*. (Manchester, UK: Manchester University Press, 2014), 120, and Marcus Cunliffe. *Soldiers and Civilians: Martial Spirit in America, 1775-1865*. (New York, NY: Little, Brown and Company, 1968), 32.

[122] See; Fred Anderson. *A People's Army: Massachusetts Soldiers and Society in the Seven Years War*. (Chapel Hill, NC: University of North Carolina Press, 1996), Cunliffe. *Soldiers and Civilians*, John Morgan

somewhere in between the opposing sides. The key to unravelling the tangled web of history is to remain objective and ardently seek to separate Truth from the myth; as best one can.

Dederer. *War in America to 1775: Before Yankee Doodle*. (New York, NY: New York University Press, 1990), John K. Mahon. *History of the Militia and the National Guard*. (New York, NY: Macmillan, 1983), James Titus. *The Old Dominion at War: Society, Politics and Warfare in Late Colonial Virginia*. (Columbia, SC: University of South Carolina Press, 1991), and William L. Shea. *The Virginia Militia in the Seventeenth Century*. (Baton Rouge, LA: Louisiana State University Press, 1983).