

## Constitutional Charter of the Guard

The Army National Guard's charter is the Constitution of the United States. Article I, Section 8 of the U.S. Constitution contains a series of "militia clauses," vesting distinct authority and responsibilities in the federal government and the state governments. These clauses and follow-on legislation have sculpted the Guard as you see it today. Here are summaries that will help you understand how the Guard came to be what it is today.

### **Article I, Section 8; Clause 15**

tells what the grounds are for calling up the Guard.

Clause 15 provides that the Congress has three constitutional grounds for calling up the militia -- "to execute the laws of the Union, suppress insurrection and repel invasions." All three standards appear to be applicable only to the Territory of the United States.

### **Article I, Section 8; Clause 16**

Congress may "organize, arm and discipline" the militia; the States may "establish... appoint the officers of... and train the militia." Also, limits Congress' power during peacetime.

Clause 16 gives Congress the power "to provide for organizing, arming and disciplining the militia, and for governing such part of them as may be employed in the service of the United States." That same clause specifically reserves to the States the authority to establish a state-based militia, to appoint the officers and to train the militia according to the discipline prescribed by the Congress. As written, the clause seeks to limit federal power over State militias during peacetime.

### **The Armies Clause**

"Congress may declare war, raise and support armies..."

The "armies clause" in Article I, Section 8, conferred on Congress the power to provide for the common defense of the United States, declare war, raise and support armies, and make rules for the "government and regulation of the land and naval forces." The Congress also was granted authority to make all laws "necessary and proper" for carrying out such powers. Under this provision, congressional power over the National Guard appears to be far-reaching.

### **Article I, Section 10**

"No state may keep troops... without the consent of Congress."

Article I, Section 10 provides that no state, without the consent of the Congress, shall keep troops or ships of war in time of peace, or engage in war unless actually invaded. Be sure to see the Second Amendment for more about this.

### **The Second Amendment**

"... a well-regulated militia [is] necessary to the security of a free State," and "...the right of the people to keep and bear arms shall not be infringed."

The Second Amendment qualified Article I, Section 10 by ensuring that the federal government could not disarm the state militias. One part of the Bill of Rights, insisted on by the anti-federalists, states, "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."

### **Article IV, Section 4**

guarantees every State in the Union a republican form of government.

Article IV, Section 4 provides that the federal government " shall guarantee to every State in this Union a republican form of government," and shall protect each of the States against invasion. At State request, the federal government was to protect the States "against domestic violence." Through these provisions, the potential for both cooperative Federalism and for tension between the "militia" and the "army" clauses was built into the constitution.

### **Article II, Section 2**

makes the president Commander-in-Chief of all forces, including the militia when federalized.

Article II, Section 2 places all forces, including the militia when in federal service, under the control of the executive branch by making the president Commander-in-Chief.

### **Article I, Section 8**

gives Congress the ultimate control through its sole power to collect taxes to pay the military, to declare war and employ the militia for security.

Article I, Section 8 gave the ultimate control to the Congress, by granting it the sole power to collect taxes to pay for the military, to declare war and to employ the militia for common purposes of internal security. Existing State militias could be maintained, although troops could be called into national service. But the founding fathers moderated that authority by leaving the individual States with the explicit responsibility for appointing officers and for supervising peacetime training of the citizen-soldiers.

### **The Militia Act of 1792**

clarified the role of the militia; required all able men to serve, be armed, and be equipped at their own expense; also, standardized unit structure.

The Militia Act of 1792 subsequently expanded federal policy and clarified the role of the militia. It required all able bodied men aged 18 to 45 to serve, to be armed, to be equipped at their own expense and to participate in annual musters. The 1792 act established the idea of organizing these militia forces into standard divisions, brigades, regiments, battalions and companies, as directed by the State legislatures.

#### **The militia concept put to the test in the War of 1812**

For the 111 years that the Militia Act of 1792 remained in effect, it defined the position of the militia in relation to the federal government. The War of 1812 tested this unique America defense establishment. To fight the War of 1812, the republic formed a small regular military and trained it to protect the frontiers and coastlines. Although it performed poorly in the offensive against Canada, the small force of regulars backed by a well-armed militia, accomplished its defensive mission well. Generals like Andrew Jackson proved, just as they had in the Revolution, that regulars and militia could be effective when employed as a team.

#### **Posse Comitatus**

Congress' suspension of southern states' right to organize a militia resulted in Posse Comitatus, a limiting of the president's use of military forces in peacetime.

In 1867, the Congress suspended the southern states' right to organize their militias until a state was firmly under the control of an acceptable government. The U.S. Army was used to enforce martial law in the South during Reconstruction. Expansion of the military's role in domestic life, however, did not occur without debate or response. Reaction to the use of the Army in suppressing labor unrest in the North and guarding polls in the South during the 1876 election led to congressional enactment of the Posse Comitatus Act in 1878. Designed to limit the president's use of military forces in peacetime, this statute provided that: "...it shall not be lawful to employ any part of the Army of the United States... for the purpose of executing the laws, except on such cases and under such circumstances as such employment of said force may be expressly authorized by the Constitution or by any act of Congress..."

#### **The States revise the military codes - 1881 to 1892**

Concern over the militia's new domestic role also led the States to reexamine their need for a well-equipped and trained militia, and between 1881 and 1892, every state revised the military code to provide for an organized force. Most changed the name of their militias to the National Guard, following New York's example.

#### **The Dick Act, 1903**

affirmed the National Guard as the primary organized reserve force.

Between 1903 and the 1920's, legislation was enacted that strengthened the Army National Guard as a component of the national defense force. The Dick Act of 1903 replaced the 1792 Militia Act and affirmed the National Guard as the Army's primary organized reserve.

#### **The National Defense Act, 1916**

guaranteed the State militias as the primary reserve force; gave the President the authority to mobilize the Guard during war or national emergency; made use of the term "National Guard" mandatory; authorized drill pay for the first time.

The National Defense Act of 1916 further expanded the Guard's role and guaranteed the State militias' status as the Army's primary reserve force. Furthermore, the law mandated use of the term "National Guard" for that force. Moreover, the President was given authority, in case of war or national emergency, to mobilize the National Guard for the duration of the emergency. The number of yearly drills increased from 24 to 48 and annual training from five to 15 days. Drill pay was authorized for the first time.

#### **The National Defense Act Amendments, 1920**

put the National Guard on the general staff; reorganized the divisions.

The National Defense Act Amendments of 1920 established that the chief of the Militia Bureau (later the National Guard Bureau) would be a National Guard officer, that National Guard officers would be assigned to the general staff and that the divisions, as used by the Guard in World War I, would be reorganized.

#### **The National Guard Mobilization Act, 1933**

made the National Guard a component of the Army.

The National Guard Mobilization Act of 1933 made the National Guard of the United States a component of the Army at all times, which could be ordered into active federal service by the President whenever Congress declared a national emergency.

#### **The Total Force Policy, 1973**

Requires all active and reserve military organizations be treated as a single integrated force; reinforced the original intent of the founding fathers (a small standing army complemented by citizen-soldiers.)

Following the experience of fighting an unpopular war in Vietnam, the 1973 Total Force Policy was designed to involve a large portion of the American public by mobilizing the National Guard from its thousands of locations throughout the United States when needed. The Total Force Policy required that all active and reserve military organizations of the United States be treated as a single integrated force. A related benefit of this approach is to permit elected officials to have a better sense of public support or opposition to any major military operation. This policy echoes the original intentions of the founding fathers for a small standing army complemented by citizen-soldiers.