

Documents on the First Congress Debate on Arms and Militia.

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From the Madison Resolution, June 8, 1789.

Resolved, that the following amendments ought to be proposed by Congress to the legislatures of the states, to become, if ratified by three fourths thereof, part of the constitution of the United States... The right of the people to keep and bear arms shall not be infringed; a well armed, and well regulated militia being the best security of a free country; but no person religiously scrupulous of bearing arms, shall be compelled to render military service in person...

AMENDMENTS PROPOSED BY STATES

Massachusetts Convention — Did not propose a keeping and bearing amendment, nor a militia nor a standing army amendment.

South Carolina — Proposed no keeping and bearing, or militia or standing army amendment.

New Hampshire — TENTH, That no standing Army shall be Kept up in time of Peace unless with the consent of three fourths of the Members of each branch of Congress, nor shall Soldiers in Time of Peace be Quartered upon private Houses without the consent of the Owners... TWELFTH Congress shall never disarm any Citizen unless such as are or have been in Actual Rebellion.

Virginia — SEVENTEENTH, That the people have a right to keep and bear arms; that a well regulated Militia composed of the body of the people trained to arms is the proper, natural and safe defence of a free State. That standing armies in time of peace are dangerous to liberty, and therefore ought to be avoided, as far as the circumstances and protection of the Community will admit; and that in all cases the military should be under strict subordination to and governed by the Civil power. EIGHTEENTH, That no Soldier in time of peace ought to be quartered in any house without the consent of the owner, and in time of war in such manner only as the laws direct. NINETEENTH, That any person religiously scrupulous of bearing arms ought to be exempted upon payment of an equivalent to employ another to bear arms in his stead... (Amendments proposed to the body of the Constitution)... NINTH, that no standing army or regular troops shall be raised or kept up in time of peace, without the consent of two thirds of the members present in both houses. TENTH, That no soldier shall be inlisted for any longer term than four years, except in time of war, and then for no longer term than the continuance of the war. ELEVENTH, That each State respectively shall have the power to provide for organizing, arming and disciplining it's own Militia, whensoever Congress shall omit or

neglect to provide for the same. That the Militia shall not be subject to Martial Law, except when in actual service in time of war, invasion, or rebellion; and when not in the actual service of the United States, shall be subject only to such fines, penalties and punishments as shall be directed or inflicted by the laws of its own State.

New York — That the People have a right to keep and bear Arms; that a well regulated Militia, including the body of the People capable of bearing Arms, is the proper, natural and safe defence of a free State; that the Militia should not be subject to Martial Law, except in time of War Rebellion or Insurrection. That standing Armies in time of Peace are dangerous to Liberty, and ought not to be kept up, except in Cases of necessity; and that at all times, the Military should be under strict Subordination to the Civil Power. That in time of Peace no Soldier ought to be quartered in any House without the consent of the Owner, and in time of War only by the civil Magistrate in such manner as the Laws may direct...that the Militia of any State shall not be compelled to serve without the limits of the State for a longer term than six weeks, without the Consent of the Legislature thereof.

HOUSE COMMITTEE REPORT, July 28, 1789.

...[6] "A well regulated militia¹, composed of the body of the people, being the best security of a free State, the right of the people to keep and bear arms shall not be infringed, but no person religiously scrupulous shall be compelled to bear arms."²

HOUSE RESOLUTION AND ARTICLES OF AMENDMENT; August 24, 1789.

ARTICLE THE FIFTH. A well regulated militia, composed of the body of the People, being the best security of a free State, the right of the People to keep and bear arms, shall not be infringed, but no one religiously scrupulous of bearing arms shall be compelled to render military service in person.³

On September 4, the Senate agreed to amend Article 5 to read as follows: A well regulated militia, being the best security of a free state, the right of the people to keep and bear arms, shall not be infringed.

On September 9, the Senate replaced "the best" with "necessary to the." On the same day, the Senate disagreed to a motion to insert "for the common defence" after "bear arms." This article and the following ones were then renumbered as articles 4 through 8.

ARTICLE THE SIXTH. No soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war, but in a manner prescribed by law.

ADDITIONAL ARTICLES OF AMENDMENT; September 8, 1789

That no standing army or regular troops shall be raised or kept up in time of peace, without the consent of two thirds of the members present in both houses. That no soldier shall be enlisted for any longer term than four years, except in time of war, and then for

no longer term than the continuance of the war. That each State respectively shall have the power to provide for organizing, arming, and disciplining its own militia, whensoever Congress shall omit or neglect to provide for the same. That the militia shall not be subject to martial law, except when in actual service in time or war, invasion or rebellion; and when not in the actual service of the United States, shall be subject only to such fines, penalties, and punishments as shall be directed or inflicted by the laws of its own State.

SENATE AMENDMENTS, September 9, 1789

[8] To erase the word "fifth" — & insert — fourth — & to erase from the fifth article the words, "composed of the body of the people — the word "best" — & the words "but no one religiously scrupulous of bearing arms shall be compelled to render military service in person" — & insert after the word "being" in the first line — necessary to.

ARTICLES OF AMENDMENT, as Agreed to by the Senate, September 14, 1789

ARTICLE THE FOURTH. 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.

DEBATE ON THE MILITIA AND RIGHT TO KEEP AND BEAR IN THE HOUSE (Senate debates were secret).

The Congressional Register, 17 August 1789

The house went into a committee of the whole, on the subject of amendments. The 3d clause of the 4th proposition in the report was taken into consideration, being as follows; "A well regulated militia, composed of the body of the people, being the best security of a free state; the right of the people to keep and bear arms shall not be infringed, but no person, religiously scrupulous, shall be compelled to bear arms.

Mr. Gerry — This declaration of rights, I take it, is intended to secure the people against the mal-administration of the government; if we could suppose that in all cases the rights of the people would be attended to, the occasion for guards of this kind would be removed. Now, I am apprehensive, sir, that this clause would give an opportunity to the people in power to destroy the constitution itself. They can declare who are those religiously scrupulous, and prevent them from bearing arms. What, sir, is the use of a militia? It is to prevent the establishment of a standing army, the bane of liberty. Now it must be evident, that under this provision, together with their other powers, congress could take such measures with respect to a militia, as make a standing army necessary. Whenever government mean to invade the rights and liberties of the people, they always attempt to destroy the militia, in order to raise an army upon their ruins. This was actually done by Great Britain at the commencement of the late revolution. They used every means in their power to prevent the establishment of an effective militia to the eastward. The assembly of Massachusetts, seeing the rapid progress that administration were

making, to divest them of their inherent privileges, endeavored to counteract them by the organization of the militia, but they were always defeated by the influence of the crown.

Mr. Seney — Wished to know what question there was before the committee, in order to ascertain the point upon which the gentleman was speaking?

Mr. Gerry — Replied, that he meant to make a motion, as he disapproved of the words as they stood. He then proceeded, No attempts that they made, were successful, until they engaged in the struggle which emancipated them at once from their thralldom. Now, if we give a discretionary power to exclude those from militia duty who have religious scruples, we may as well make no provision on this head; for this reason he wished the words to be altered so as to be confined to persons belonging to a religious sect, scrupulous of bearing arms.

Mr. Jackson — Did not expect that all the people of the United States would turn Quakers or Moravians, consequently one part would have to defend the other, in case of invasion; now this, in his opinion, was unjust, unless the consitution secured an equivalent, for this reason he moved to amend the clause, by inserting at the end of it "upon paying an equivalent to be established by law."

Mr. Smith, (of S.C.) — Enquired what were the words used by the conventions respecting this amendment; if the gentleman would conform to what was proposed by Virginia and Carolina, he would second him: He thought they were to be excused provided they found a substitute.

Mr. Jackson — Was willing to accommodate; he thought the expression was, "No one, religiously scrupulous of bearing arms, shall be compelled to render military service in person, upon paying an equivalent."

Mr. Sherman — Conceived it difficult to modify the clause and make it better. It is well-known that those who are religiously scrupulous of bearing arms, are equally scrupulous of getting substitutes or paying an equivalent; many of them would rather die than do either one or the other — but he did not see an absolute necessity for a clause of this kind. We do not live under an arbitrary government, said he, and the states respectively will have the government of the militia, unless when called into actual service; beside, it would not do to alter it so as to exclude the whole of any sect, because there are men amongst the quakers who will turn out, notwithstanding the religious principles of this society, and defend the cause of their country. Certainly it will be improper to prevent the exercise of such favorable dispositions, at least while it is the practice of nations to determine their contests by the slaughter of their citizens and subjects.

Mr. Vining — Hoped the clause would be suffered to remain as it stood, because he saw no use in it if it as amended so as to compel a man to find a substitute, which, with respect to the government, was the same as if the person himself turned out to fight.

Mr. Stone — Enquired what the words "Religiously scrupulous" had reference to, was it of bearing arms? If it was, it ought so to be expressed.

Mr. Benson — Moved to have the words "But no person religiously scrupulous shall be compelled to bear arms" struck out. He would always leave it to the benevolence of the legislature — for, modify it, said he, as you please, it will be impossible to express it in such a manner as to clear it from ambiguity. No man can claim this indulgence of right. It may be a religious persuasion, but it is no natural right, and therefore ought to be left to the discretion of the government. If this stands part of the constitution, it will be a question before the judiciary, on every regulation you make with respect to the organization of the militia, whether it comports with this declaration or not? It is extremely injudicious to intermix matters of doubt with fundamentals. I have no reason to believe but the legislature will always possess humanity enough to indulge this class of citizens in a matter they are so desirous of, but they ought to be left to their discretion.

The motion for striking out the whole clause being seconded, was put, and decided in the negative, 22 members voting for it, and 24 against it.

Mr. Gerry — Objected to the first part of the clause, on account of the uncertainty with which it is expressed: a well-regulated militia being the best security of a free state, admitted an idea that a standing army was a secondary one. It ought to read "a well regulated militia, trained to arms," in which case it would become the duty of the government to provide this security, and furnish a greater certainty of its being done.

Mr. Gerry's motion not being seconded, the question was put on the clause as reported, which being adopted.

Mr. Burke — Proposed to add to the clause just agreed to, an amendment to the following effect: "A standing army of regular troops in time of peace, is dangerous to public liberty, and such shall not be raised or kept up in tim of peace but from necessity, and for the security of the people, nor then without the consent of two-thirds of the members present of both houses, and in all cases the military shall be subordinate to the civil authority." This being seconded.

Mr. Vining — Asked whether this was to be considered as an addition to the last clause, or an amendment by itself? If the former, he would remind the gentleman the clause was decided; if the latter, it was improper to introduce new matter, as the house had referred the report specially to the committee of the whole.

Mr. Burke — Feared that what with being trammelled in rules, and the apparent disposition of the committee, he should not be able to get them to consider any amendment; he submitted to such proceeding because he could not help himself.

Mr. Hartley — Thought the amendment in order, and was ready to give his opinion of it. He hoped the people of America would always be satisfied with having a majority to

govern. He never wished to see two-thirds or three-fourths required, because it might put it in the power of a small minority to govern the whole union.

The question on Mr. Burke's motion was put, and lost by a majority of 13.

AUGUST 20, 1789

Mr. SCOTT objected to the clause in the sixth amendment, "No person religiously scrupulous shall be compelled to bear arms." He said, if this becomes part of the constitution, we can neither call upon such persons for services nor an equivalent; it is attended with still further difficulties, for you can never depend upon your militia. This will lead to the violation of another article in the constitution, which secures to the people the right of keeping arms, as in this case you must have recourse to a standing army. I conceive it is a matter of legislative right altogether. I know there are many sects religiously scrupulous in this respect: I am not for abridging them of any indulgence by law; my design is to guard against those who are of no religion. It is said that religion is on the decline; if this is the case, it is an argument in my favour; for when the time comes that there is no religion, persons will more generally have recourse to these pretexts to get excused.

Mr. BOUDINOT said that the provision in the clause or something like it appeared to be necessary. What dependence can be placed in men who are conscientious in this respect? Or what justice can there be in compelling them to bear arms, when, if they are honest men, they would rather die than use them. He then adverted to several instances of oppression in the case which occurred during the [revolutionary] war. In forming a militia we ought to calculate for an effectual defense, and not compel characters of this description to bear arms. I wish that in establishing this government we may be careful to let every person know that we will not interfere with any person's particular religious profession. If we strike out this clause, we shall lead such persons to conclude that we mean to compel them to bear arms.

Mr. VINING and Mr. JACKSON spake upon the question. The words 'in person' were added after the word 'arms', and the amendment was adopted.

LETTERS AND DOCUMENTS REFERING TO KEEPING AND BEARING

Fisher Ames to George R. Minor. 12 June, 1789

The civil departments will employ us next, and the judiciary the Senate. They will finish their stint, as the boys say, before the House has done. Their number is less, and they have matured the business in committee. Yet Mr. Madison has inserted, in his amendments, the increase of representatives, each State having two at least. The rights of conscience, of bearing arms, of changing the government, are declared to be inherent in the people. Freedom of the press too. There is a prodigious great dose for a medicine. But it will stimulate the stomach as little as hasty-pudding. It is rather food than physic. An immense mass of sweet and other herbs and roots for a diet drink.

Samuel Nasson to George Thatcher. 9 July 1787

I find that Amendments are once again on the Carpet. I hope that such may take place as will be for the Best Interest of the whole. A Bill of rights well secured that we the people may know how far we may Proceed in Every Department then there will be no Dispute Between people and rulers in that may be secured the right to keep and bear arms for Common and Extraordinary Occasions such as to secure ourselves against the wild Beast and also to amuse us by fowling and for our Defense against a Common Enemy you know to learn the Use of arms is all that can Save us from a foreign foe that may attempt to subdue us for if we keep up the Use of arms and become well acquainted with them we Shall allway be able to look them in the face that arise up against us for it is impossible to Support a Standing army large Enough to Guard our Lengthy Sea Coast and now Spare me on the subject of Standing armies in a time of Peace they allway was first or last the downfall of all free Governments it was by their help Caesar made proud Rome Own a Tyrant and a Traytor for a Master.

Only think how fatal they were to the peace of this Country in 1770 what Confusion they Brought on the fatal 5 of March [the Boston Massacre] I think the remembrance of that Night is enough to make us Carefull how we Introduce them in a free republican Government — I therefore hope they will be Discouraged for I think the man that Enters as a Soldier in a time of peace only for a living is only a fit tool to enslave his fellows.

For this purpose was a Standing Army first introduced in the World another that I hope will be Established in the bill is tryals by Juryes in all Causes Excepting where the parties agree to be without I never wish to be in the power of any Sett of Men let them be Never so good but hope to be left in the hands of my Country and if any Enemy means to bribe he must have money enough to settle it with the Country.

ROGER SHERMAN'S PROPOSED COMMITTEE REPORT. 21-28 July 1789

...5 The Militia shall be under the government of the laws of the respective States, when not in the actual Service of the united States, but Such rules as may be prescribed by Congress for their uniform organisation & discipline shall be observed in officering and training them. but military Service Shall not be required of persons religiously Scrupulous of bearing arms.

6 No Soldier Shall be quartered in any private house, in time of Peace, nor at any time, but by authority of law.

Richard Henry Lee to Charles Lee, 28 August 1789

The enclosed paper will shew you the amendments passed the H. of R. to the Constitution — They are short of some essentials, as Election interference & Standing Army &c. I was surprised to find in the Senate that it was proposed we should postpone the consideration of Amendments until Experience had shewn the necessity of any — As if experience was

more necessary to prove the propriety of those great principles of Civil liberty which the wisdom of Ages has found to be necessary barriers against the encroachments of power in the hands of frail Men! My Colleague was sick & absent. The laboring oar was with me. A Majority of 2 thirds however agreed to take the Amendments under consideration next Monday — I hope that if we cannot gain the whole loaf, we shall at least have some bread.

Theodorick Bland Randolph to St. George Tucker, 9 September 1789

The house of Representatives have been for some time past engaged on the subject of amendments to the constitution, though in my opinion they have not made one single material one. The senate are at present engaged on that subject; Mr. Richd. H. Lee told me that he proposed to strike out the standing army in time of peace but could not carry it. He also sais that it has been proposed, and warmly favoured that, liberty of Speach and of the press may be stricken out, as they only tend to promote licenciousness. If this takes place god knows what will follow.

John Randolph to St. George Tucker, 11 September 1789

A majority of the Senate for not allowing the militia arms & if two thirds had agreed it would have been an amendment to the Constitution. They are afraid that the Citizens will stop their full Career to Tyranny & Oppression.

Richard Henry Lee to Patrick Henry, 14 September 1789

[I have] since waited to see the issue of the proposed amendts. to the Constitution, that I might give you the most [exact] account of that business. As they came from the H. of R. they were very far short of the wishes of our Convention, but as they are returned by the Senate they are certainly much weakened. You may be assured that nothing on my part was left undone to prevent this, and every possible effort was used to give success to all the Amendments proposed by our Country — We might as well have attempted to move Mount Atlas upon our shoulders — In fact, the idea of subsequent Amendments was delusion altogether, and so intended by the greater part of those who arrogated to themselves the name of Federalists. I am grieved to see that too many look at the Rights of the people as a Miser examines a Security to find a flaw in it! The great points of free election, Jury trial in criminal cases much loosened, the unlimited right of Taxation, and Standing Armies in peace, remain as they were. Some valuable Rights are indeed declared, but the powers that remain are very sufficient to render them nugatory at pleasure.

The most essential danger from the present System arises, [in my] opinion, from its tendency to a Consolidated government, instead of a Union of Confederated States — The history of the world and reason concurs in proving that so extensive a Territory [as the] U. States comprehend never was, or can be governed in freed[om] under the former idea — Under the latter is it abundantly m[ore] practicable, because extended representation, know[lege of] character, and confidence in consequence, [are wanting to

sway the] opinion of Rulers, without which, fear the offspr[ing of Tyranny] can alone answer. Hence Standing Armies, and des[potism] follows. I take this reasoning to be unrefutable, a[nd] therefore it becomes the friends of liberty to guard [with] perfect vigilance every right that belongs to the Sta[tes] and to protest against every invasion of them — taking care always to procure as many protesting States as possible — This kind of vigilance will create caution and probably establish such a mode of conduct as will create a system of precedent that will prevent a Consolidating effect from taking place by slow, but sure degrees. And also not to cease in renewing their efforts for so amending the federal Constitution as to prevent a Consolidation by securing the due Authority of the States. At present perhaps a sufficient number of Legislatures cannot be got to agree in demanding a Convention — But I shall be much mistaken if a great sufficiency will not e'er long concur in this measure. The preamble to the Amndmnts is realy curious — A careless reader would be apt to suppose that the amendments desired by the States had been graciously granted. But when the thing done is compared with that desired, nothing can be more unlike...

By comparing the Senate amendments with [those] from below by carefully attending to the m[atter] the former will appear will calculated to enfeeble [and] produce ambiguity — for instance — Rights res[erved] to the States or the People — The people here is evidently designed fo[r the] People of the United States, not of the Individual States [page torn] the former is the Constitutional idea of the people — We the people &c. It was affirmed the Rights reserved by the States bills of rights did not belong to the States — I observed that then they belonged to the people of the States, but that this mode of expressing was evidently calculated to give the Residuum to the people of the U. States, which was the Constitutional language, and to deny it to the people of the Indiv. State — At least that it left room for cavil & false construction — They would not insert after people thereof — altho it was moved.

Also on August 17, 1789, Benson made a motion to strike out "but no person religiously scrupulous shall be compelled to bear arms." The COWH turned down the motion by a vote of 24 - 22.

Also on August 17, 1789, Burke proposed to insert "A standing army of regular troops in time of peace, is dangerous to public liberty, and shall not be raised or kept up in time of peace but from necessity, and for the security of the people, nor then withut the consent of two-thirds of the members present of both houses, and in all cases the military shall be subordinate to the civil authority." This was voted down by a majority of 13.

On August 20, the House agreed to insert "in person," so that the clause read, "but no person religiously scrupulous shall be compelled to bear arms in person."

On August 24, 1789, a House Resolution and Articles of Amendments were passed and sent to the Senate. The Amendment then read: "Article the Fifth. A well regulated militia, composed of the body of the People, being the best security of a free State, the right of the People to keep and bear arms, shall not be infringed, but no one religiously scrupulous of bearing arms, shall be compelled to render military service in person."

On September 4, 1789, the Senate disapproved a motion to insert at the end, "that standing armies, in time of peace, being dangerous to Liberty, should be avoided as far as the circumstances and protection of the community will admit; and that in all cases the military should be under strict subordination to, and governed by the civil Power. That no standing army or regular troops shall be raised in time of peace, without the consent of two thirds of the Members present in both Houses, and that no soldier shall be enlisted for any longer term than the continuance of the war."

Also on September 4, 1789, the Senate agreed to amend Article 5 to read: "A well regulated militia, being the best security of a free state, the right of the people to keep and bear arms, shall not be infringed."

On September 8, 1789, the Senate Legislative Journal shows the following entry as an additional article of amendment: "That each State respectively shall have the power to provide for organizing, arming, and disciplining its own militia, whensoever Congress shall omit or neglect to provide for the same. That the militia shall not be subject to martial law, except when in the actual service in time of war, invasion or rebellion; and when not in the actual service of the United States, shall be subject only to such fines, penalties, and punishments as shall be directed or inflicted by the laws of its own State."

On September 9, 1789 the Senate replaced "the best" with "necessary to the." Thus, the proposed amendment read: "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."

On September 14, 1789, the Senate agreed to twelve Articles of Amendment. The preamble reads: "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 insure the beneficent end of its Institution — " A joint resolution of the Senate and House of Representatives was drafted to forward the twelve amendments to the States for consideration. The House disagreed. The Fourth Amendment read: "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."

On September 24, 1789 a Conference Committee Report was issued whereby differences were reconciled. The Fourth Amendment remained unchanged. The House issued a resolution requesting the President forward the Articles of Amendments to the States, plus Rhode Island and North Carolina.

1. **On August 17**, a motion by Gerry to insert "trained to arms" at this point failed for want of a second.

2. **On August 17**, Jackson made a motion in the Committee of the Whole House to insert "upon paying an equivalent to be established by law," at this point. On the suggestion of Smith (S.C.), Jackson proposed to change this phrase to, "No one, religiously scrupulous of bearing arms, shall be compelled to render military service in person, upon paying an equivalent." This was apparently superseded by Benson's motion to strike out "but no person" through "bear arms," which the COWH disagreed to, 24-22. On the same day, a motion by Burke to insert the following at this point was disagreed to, by a majority of 13: "A standing army of regular troops in time of peace, is dangerous to public liberty, and such shall not be raised or kept up in time of peace but from necessity, and for the security of the people, nor then without the consent of two-thirds of the members present of both houses, and in all cases the military shall be subordinate to the civil authority." The House, on August 20, agreed to a motion to insert "in person" at this point.

3. **On September 4**, by a recorded vote of 9-6, the Senate disagreed to a motion to insert the following at this point: that standing armies, in time of peace, being dangerous to Liberty, should be avoided as far as the circumstances and protection of the community admit; and that in all cases the military should be under strict subordination to, and governed by the civil Power. That no standing army or regular troops shall be raised in time of peace, without the consent of two thirds of the Members present in both Houses, and that no soldier shall be enlisted for any longer term than the continuance of the war.

4. Eleven articles were proposed in this committee report, with the advisory that they be sent to the legislatures of the several states to be adopted by them as amendments of the Constitution of the United States. The 'natural rights' mentioned in this report include; "rights of conscience in matters of religion; of acquiring property, and of pursuing happiness & safety; of Speaking, writing and publishing their Sentiments which decency and freedom; of peaceably Assembling to consult their common good, and of applying to the Government by petition or remonstrance for redress of grievances. Of these rights therefore they Shall not be deprived by the government of the united States." No mention of keeping and bearing is made in the document. According to the footnote in 'Creating the Bill of Rights', "This document is apparently Sherman's proposal to the House select committee, showing how Madison's amendments could be revised and placed at the end of the Constitution."

5. The paper is in bad condition, the words in brackets are from historian Charles Campbell's pre-Civil War transcript in the Hugh Blair Grigsby Papers, Virginia Historical Society. There are only two mentions of a standing army, but his view of the real strength of the rights in amendment is interesting.