



Written by [Joe Wolverton, II, J.D.](#) on March 8, 2023

Idaho Senate Passes Bill to Repeal Ban on Private Militias

The Idaho Senate approved [a bill](#) that would repeal a state law banning private militias and paramilitary organizations.

The [current law](#) that would be supplanted by the measure under consideration forbids “a body of men,” other than the National Guard, to “associate themselves together as a military company or organization, or parade in public with firearms in any city or town” in Idaho.

State Senator Dan Foreman (R-Moscow) is the lead sponsor of the bill and he reportedly introduced the measure so as to prevent the right to keep and bear arms from being infringed by the state law.

“We will unfortunately always have those among us who will break the law and seek to cause unrest,” Foreman said, as reported in the *Idaho Statesman*. “However, the response to that should be one of due process. Our response should not be based in fear that leads to the abridgment of constitutional rights.”

Voting on the bill almost broke along party lines, with only two Republicans voting against the measure.

While Senator Foreman’s bill does not go far enough in protection of the Second Amendment — it forbids towns from “harboring” militias — he is to be congratulated for his efforts to prevent the continuing erosion of the right to keep and bear arms, as well as the central role that citizen militias have played in winning and maintaining the liberty of the United States.

It is odd that people seem to focus on the part of the Second Amendment protecting the right to keep and bear arms, but overlook the part of the amendment that explain why that right is to be protected: to ensure the security of a free state. And how will keeping and bearing arms work to protect the freedom of the state? Through “a well regulated militia.”

Why do so many overlook that key concept upon which the entire Second Amendment stands?

James Madison, the man history has dubbed the Father of the Constitution, knew about the necessity of a citizen militia to maintaining liberty, and in *The Federalist*, No. 46 he warned what might happen should Americans allow the federal government to disband the militias in the several states.

The last item in Madison’s list of things that states would never stand for is the disarming of state militias. As Madison saw it, should the unthinkable happen and the federal government overrun the high fences placed by the states around its enumerated powers, every foxhole in the war to maintain the freedom of the people and the sovereignty of the states would be filled with members of the state



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militias.

During the Virginia ratifying convention, James Madison described a standing army as the “greatest mischief that can happen.” His colleague and fellow delegate to the Constitutional Convention of 1787, George Mason, put a finer point on it:

But when once a standing army is established in any country, the people lose their liberty. When, against a regular and disciplined army, yeomanry are the only defence, — yeomanry, unskilful and unarmed, — what chance is there for preserving freedom? Give me leave to recur to the page of history, to warn you of your present danger. Recollect the history of most nations of the world. What havoc, desolation, and destruction, have been perpetrated by standing armies!

In *The Federalist*, No. 29, Alexander Hamilton echoes not only Mason’s warning against a standing army, but his solution to the threat, as well:

If circumstances should at any time oblige the government to form an army of any magnitude that army can never be formidable to the liberties of the people while there is a large body of citizens, little, if at all, inferior to them in discipline and the use of arms, who stand ready to defend their own rights and those of their fellow-citizens. This appears to me the only substitute that can be devised for a standing army, and the best possible security against it, if it should exist.

Forgotten Founding Father William Rawle clearly described the critical role played by the militia and the Second Amendment’s intended interpretation:

In the second article, it is declared, that a well regulated militia is necessary to the security of a free state; a proposition from which few will dissent. Although in actual war, the services of regular troops are confessedly more valuable; yet, while peace prevails, and in the commencement of a war before a regular force can be raised, the militia form the palladium of the country. They are ready to repel invasion, to suppress insurrection, and preserve the good order and peace of government. That they should be well regulated, is judiciously added. A disorderly militia is disgraceful to itself, and dangerous not to the enemy, but to its own country. The duty of the state government is, to adopt such regulations as will tend to make good soldiers with the least interruptions of the ordinary and useful occupations of civil life. In this all the Union has a strong and visible interest.

The connection between this professional, civilian standing army and the attack on the right of the people to keep and bear arms has been recognized by contemporary liberty-minded scholars, as well.

In his essay, “The Right to Keep and Bear Arms Under the Second and Fourteenth Amendments: The Framers’ Intent and Supreme Court Jurisprudence,” Stephen Halbrook writes:

Noah Webster, the influential federalist whose name still appears on dictionaries, stated:

“Before a standing army can rule, the people must be disarmed; as they are in almost every kingdom in Europe. The supreme power in America cannot enforce unjust laws by the



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sword; because the whole body of the people are armed.”

In a similar treatise, Joyce Malcolm, a historian specializing in 17th-century English constitutional history, makes the same point:

Where does this leave the American Second Amendment, with its reference to a well-regulated militia necessary to the security of a free state, and its insistence that the right of the people to keep and bear arms shall not be infringed? I would argue that the Second Amendment mirrors English belief in the individual’s right to be armed, the importance of that right to the preservation of liberty, and the preference for a militia over a standing army.

Most states have forgotten the historical role of state militias in the defense of freedom. They have failed to maintain an armed and disciplined militia capable of maintaining (or regaining) independence from tyrants.

The Founders (and all men who valued liberty) knew that the advantage of a citizen-militia over a professional standing army was that in militias, men fight for their families, their faith, and their freedom over their little plot of earth. The men of a militia are surrounded every day by that which is dearest and most divine to them, and they consider their defense of those things not to be an act of war, but an act of love.

The plan to marginalize militias has been startlingly successful. There remain only 13 state defense forces (not including units of the National Guard and Reserve which are under the command of the U.S. president and are effectively just reserves of the federal armed forces). The problem, however, is that even these state-run militias are not militias in the sense that Madison and the Founders were familiar with. They are nothing close to a citizen army that could be counted on to repel federal invasions.

Perhaps the measure working its way through the Idaho state legislature will set in motion a movement toward restoring the well-regulated militia that our Founders recognized as being necessary to securing the liberty of the states.



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