

[NOT YET SCHEDULED FOR ORAL ARGUMENT]

No. 25-5418

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

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DISTRICT OF COLUMBIA,

*Plaintiff-Appellee,*

v.

DONALD J. TRUMP, in his official capacity  
as President of the United States, *et al.*,

*Defendants-Appellants.*

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*On Appeal from the United States District Court  
for the District of Columbia*

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**BRIEF OF CONSTITUTIONAL ACCOUNTABILITY CENTER  
AS *AMICUS CURIAE* IN SUPPORT OF APPELLEE AND AFFIRMANCE**

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**STATEMENT REGARDING  
CONSENT TO FILE AND SEPARATE BRIEFING**

Pursuant to D.C. Circuit Rule 29(b), undersigned counsel for *amicus curiae* represents that counsel for all parties have consented to the filing of this brief.<sup>1</sup>

Pursuant to D.C. Circuit Rule 29(d), undersigned counsel for *amicus* certifies that a separate brief is necessary. *Amicus* is a think tank and public interest law firm dedicated to fulfilling the progressive promise of the Constitution's text and history. CAC works in our courts, through our government, and with legal scholars to improve understanding of the Constitution and to protect the rights, freedoms, and structural safeguards that our nation's charter guarantees. In furtherance of those goals, CAC frequently files *amicus* briefs in the federal courts addressing questions of constitutional and statutory interpretation, including recent briefs concerning National Guard deployments filed in the Supreme Court and in the Seventh and Ninth Circuits. CAC accordingly has an interest in this case and is well situated to aid the Court in resolving the appeal.

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<sup>1</sup> No counsel for a party authored this brief in whole or in part, and no person other than *amicus curiae* or its counsel made a monetary contribution to its preparation or submission.

## **CORPORATE DISCLOSURE STATEMENT**

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, *amicus curiae* states that no party to this brief is a publicly held corporation, issues stock, or has a parent corporation.

**CERTIFICATE AS TO PARTIES,  
RULINGS, AND RELATED CASES**

**I. PARTIES AND *AMICI CURIAE***

Except for any *amici* who had not yet entered an appearance in this case as of the filing of Appellants’ opening brief, all parties, intervenors, and *amici* appearing in this Court are listed in Appellants’ opening brief.

**II. RULINGS UNDER REVIEW**

Reference to the ruling under review appears in Appellants’ opening brief.

**III. RELATED CASES**

Reference to any related cases pending before this Court appears in Appellants’ opening brief.

Dated: May 26, 2026

/s/ Brianne J. Gorod  
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## **GLOSSARY**

CAC	Constitutional Accountability Center
EMAC	Emergency Management Assistance Compact
MOU	Memorandum of Understanding
OLC	Office of Legal Counsel

## **INTEREST OF *AMICUS CURIAE***

Constitutional Accountability Center is a think tank and public interest law firm that works to protect the rights, freedoms, and structural safeguards that our nation's charter guarantees. Accordingly, CAC has an interest in this case.

## **STATUTORY PROVISIONS**

Pertinent historical statutes appear in an addendum to this brief.

## **INTRODUCTION AND SUMMARY OF ARGUMENT**

If the Trump administration wants to end lawlessness in the District of Columbia, it should start with its own actions. No statute sanctions its use of the D.C. National Guard as a roving crime-reduction squad. Nor does any statute allow it to bring in military units from other jurisdictions to police the District's residents, evading the constraints Congress has long imposed on using military power for domestic law enforcement. Because there is no legal basis for this unprecedented deployment of armed soldiers into the neighborhoods of Washington, D.C., this Court should affirm.

1. Nothing in the D.C. Code allows presidents to unilaterally deploy the D.C. Guard for law enforcement. Congress drafted the legislation creating the D.C. Guard by selectively borrowing from contemporary state militia laws. Consistent with those laws, the President's status as the Guard's commander-in-chief is a tactical designation only, not a license to choose the purposes for which

the Guard may be deployed. Moreover, Congress followed the states that restrained their commander-in-chief's authority to execute the laws with the militia. While some states broadly allowed governors to use the militia for this purpose, others more narrowly confined that authority. Some governors could not deploy the militia for law execution absent a riot, tumult, or similar exigency. Other states conditioned gubernatorial action on a request for aid from mayors or other local officials. In some instances, local officials could cause the militia to be deployed even in circumstances where the governor could not.

Drawing on these examples, Congress authorized presidents to activate the D.C. Guard only under the conditions specified in D.C. Code § 49-103. That choice was understandable. Presidents already had the power under other statutes to use the entire nation's militia—as well as its army and navy—to ensure the execution of the law in the District during a crisis. In Section 49-103, Congress expanded the situations allowing presidents to employ military force, accounting for smaller and more local disturbances. But Congress reasonably conditioned this additional authority on the participation of other officials with local jurisdiction.

Neither that provision, nor anything else in the D.C. Code, supports President Trump's deployment of the National Guard to lower the crime rate. The President's reliance on the words "other duties" in D.C. Code § 49-102 is irreconcilable with the surrounding text and basic rules of statutory interpretation,

which demonstrate that this term refers only to training and ceremonial duties. Finally, an examination of Sections 49-404 and 49-405, which the stay panel cited, only confirms that the exclusive mechanism for presidential activation of the Guard is a request for aid under Section 49-103.

2. Title 32 does not authorize this operation either. According to President Trump, 32 U.S.C. § 502(f)(2) allows him to use unfederalized National Guard forces for any purpose not expressly prohibited by law. But the little-noticed enactment of this provision two decades ago did not radically transform the President's relationship with the nation's militia. As the district court explained, and the stay panel did not dispute, Section 502(f)(2) simply enables state Guards to obtain federal funding and benefits for operations independently authorized by other laws. It does not delegate to the President the power to establish new purposes for which state troops may be deployed in their unfederalized status.

Section 502(f)(2), therefore, does not authorize either the D.C. Guard's deployment or the importation of state troops to support it. The D.C. Guard deployment lacks independent legal authorization for the reasons described above. And that conclusion also dooms the legality of the state-troop deployments. These state forces have been brought in by the D.C. Guard exclusively to support its own operation. Because that operation is illegal, so is the participation of other Guard units in it. Moreover, the Trump administration (and the participating states) have

not shown that any state’s deployment is authorized by their own state laws—which means that one of Section 502’s prerequisites is not satisfied.

Even if Section 502(f)(2) could be construed as permitting operations not elsewhere authorized by law, it cannot possibly allow presidents to use military forces for domestic law enforcement, “unconstrained by the significant procedural limitations in other ... statutes,” *Learning Res., Inc. v. Trump*, 146 S. Ct. 628, 640 (2026), whenever a governor supplies troops. That would allow easy circumvention of laws that have long constrained the domestic use of the armed forces and the militia. Instead of federalizing the National Guard, invoking the Insurrection Act, or employing similar statutes on the terms Congress has set, presidents could simply rely on ideologically aligned governors to deploy military force domestically at will. Congress did not sanction that result by adding the “operations or missions” clause to the tail end of a statute devoted to “drills and field exercises.”

In a crisis, President Trump has ample legal authority to maintain order, defend federal property, and execute the law in the District of Columbia. But he must stay within the bounds of that authority. *See Trump v. Illinois*, 146 S. Ct. 432, 434 (2025). The absence of any legal basis for his current actions reflects Congress’s choice to deny presidents unlimited discretion over the domestic use of the military.

**I. The D.C. Code Does Not Allow President Trump to Use the National Guard for Crime Reduction.**

In 1889, Congress reorganized the District of Columbia’s militia and established its National Guard. *See* Act of Mar. 1, 1889, ch. 328, 25 Stat. 772 (hereinafter “D.C. Militia Act”). Now codified in the D.C. Code, that legislation remains largely unchanged. While it makes the President the commander-in-chief of the District’s militia, it does not give him unfettered discretion to call the militia into service. Rather, like the state laws that Congress emulated in passing it, it allows him to deploy the militia only under specific conditions.

Nothing in this legislation allows the President to deploy the National Guard for general crime reduction. In an emergency threatening the District’s safety or the execution of federal law, presidents already had ample legal authority to respond using the nation’s militia and its regular armed forces. The D.C. Militia Act expanded presidential authority to maintain order in the District in response to lesser calamities. But it conditioned that authority on riot-like conditions and the participation of officials with local jurisdiction. Nowhere did Congress authorize using the National Guard as a perpetual, supplemental police force.

**A. Congress patterned the D.C. Guard on state laws that expressly defined and carefully limited the commander-in-chief’s powers.**

In the late nineteenth century, a wave of state laws attempted to revive the nation’s militia, deemphasizing the ailing system of the “enrolled” militia—which

included all male citizens of fighting age—in reliance on smaller volunteer forces, typically called the “active” or “organized” militia and designated as the National Guard. See William H. Riker, *Soldiers of the States: The Role of the National Guard in American Democracy* 41-42 (1957). Congress patterned the D.C. Militia Act on these laws. See H.R. Rep. No. 50-809, at 1-2 (1888). The Act focuses on equipping and training these volunteer forces, with primary emphasis on annually required inspections and encampments. D.C. Militia Act §§ 10, 40-44, 25 Stat. at 774, 778. In crafting this bill, Congress borrowed selectively from contemporary state models while adapting them to the federal District.

State constitutions invariably made their governor the commander-in-chief of the militia. See Frederic J. Stimson, *American Statute Law* § 297 (1886). Because the District had no governor—being managed instead by a commission—Congress assigned this role to the President. See D.C. Militia Act, § 6, 25 Stat. at 773. But commander-in-chief status was a tactical designation only. It placed governors atop the chain of command but did not authorize them to decide the purposes for which the militia could be deployed. Instead, states expressly enumerated those purposes in their constitutions, their laws, or both.

Different states allowed their commanders-in-chief to deploy the militia for different reasons—in some cases, requiring a request for aid from local officials. Those legislative choices were conclusive. As Thomas Cooley observed, “where

the governor is made commander-in-chief of the military forces of the State, it is obvious that his authority must be exercised under such proper rules as the legislature may prescribe, because the military forces are themselves under the control of the legislature.” *Treatise on Constitutional Limitations* 140 (1878).

Some states opted for broad delegations, allowing their governors to use the militia “to execute the laws,” as well as to “suppress insurrection and repel invasion.” Minn. Const. art. V, § 4 (1857). Even in these states, lawmakers could specify the circumstances in which the militia could be deployed to execute the laws. *See Worth v. Craven Cnty. Comm’rs*, 118 N.C. 112, 112 (1896) (“This constitutional power may be regulated by legislation, by providing what shall amount to sufficient evidence of the existence of the causes mentioned in the constitution.”). And other states restricted the commander-in-chief’s power even further.<sup>2</sup>

Notably, some states withheld the authority to use the militia for law execution outside of riot-like conditions. In Pennsylvania, for instance, the constitution designated the governor as commander-in-chief without enumerating additional powers. *See Pa. Const. art. IV, § 7* (1873); *id.* art. XI, § 1. By statute,

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<sup>2</sup> The state constitutions cited herein can be found in *The Federal and State Constitutions, Colonial Charters, and Other Organic Laws of the States, Territories, and Colonies* (Francis Newton Thorpe ed., 1909), available at <https://catalog.hathitrust.org/Record/001140815>.

the governor could activate the militia only “[w]hen an invasion of or insurrection in the State is made or threatened, or a tumult, riot, or mob shall exist.” *Digest of the Military Laws of Pennsylvania* § 72 (1882). New York employed the same model. Its constitution simply designated the governor as commander-in-chief and allowed him to appoint military officers. *See* N.Y. Const. art. IV, § 4 (1846); *id.* art. XI. By statute, governors could deploy the militia only “in case of insurrection, invasion or breaches of the peace, or imminent danger thereof.” *Military Code of the State of New York* § 77 (1889).

State law sometimes conditioned the authority to deploy the militia on requests for assistance from local officials. In Wisconsin, where the constitution did not specify permissible uses of the militia, *see* Wis. Const. art. V, § 4 (1848), state law allowed governors to activate the militia under extreme conditions: “war, insurrection, rebellion, riot or invasion, or ... resistance to the execution of the laws.” *Annotated Statutes of Wisconsin*, ch. 84, § 641 (1889). Absent one of those conditions, governors could deploy the militia only “upon application of any marshal of the United States, or of any mayor of a city, or of a sheriff.” *Id.* So when a governor in 1886 confronted labor unrest that did not yet meet the statute’s factual predicates, he understood that he could not deploy the militia without a request from one of those officials. *See* Jerry Cooper, *The Wisconsin National Guard in the Milwaukee Riots of 1886*, *Wis. Mag. Hist.* 31, 39 (1971) (in response

to disruptive railroad strikes, the governor “could do little, for he needed an official request from either [the] Mayor ... or [the] Sheriff ... before he could order out the Guard”).

Still other states empowered local officials to order militia support themselves in response to local disturbances. In Massachusetts, whenever there was a “tumult, riot, mob, or a body of men acting together by force ... to break and resist the laws,” a sheriff, mayor, or town selectmen could order local militia commanders “to aid the civil authority in suppressing such violence, and supporting the laws.” *Public Statutes of the Commonwealth of Mass.*, ch. 14, § 101 (1882); *see id.* §§ 102-103 (obligating commander to obey). Alternatively, these officials could apprise the governor of the facts, who could then issue an order. *Id.* § 101. Ohio law was similar, allowing sheriffs, mayors, and judges to issue mandatory orders to local militia officers “to act in aid of the civil authority” in response to tumults, riots, or violent resistance to the laws. *See Revised Statutes of the State of Ohio*, ch. 5, §§ 3096-3097 (1891).

Local officials in some states could order the militia to be deployed even when the governor could not. In New York, where gubernatorial authority to activate the militia was limited to “insurrection, invasion or breaches of the peace,” *Military Code of the State of New York* § 77 (1889), mayors and sheriffs could demand obligatory assistance from local militia commanders in a wider array of

circumstances: “any breach of the peace, *tumult, riot, or resistance to process of this state*,” *id.* § 79 (emphasis added). In Kansas, mayors and sheriffs—but not the governor—were also statutorily authorized to demand the militia’s aid in response to “tumult, riot, or resistance to process in this state.” *Laws of Kansas*, ch. 64, §§ 27, 29-31 (1889).

**B. Section 49-103 is the only mechanism for presidential deployment of the D.C. Guard.**

Selectively borrowing from state models, Congress designed a system for the District in which presidential activation of the D.C. Guard is contingent on the conditions specified in D.C. Code § 49-103.

That approach made sense. The President already had the authority to use all of the nation’s militia forces—not to mention its army and navy—to ensure the execution of the law in the District. Under legislation tracing to the Founding, the President could call forth any part of the militia, or the federal armed forces, “as he may deem necessary to enforce the faithful execution of the laws of the United States ... within any State or Territory” where federal law was being “forcibly opposed, or the execution thereof forcibly obstructed.” Act of July 29, 1861, ch. 25, § 1, 12 Stat. 281, 281. In case of any “rebellion against the authority of the Government of the United States” in any state or territory, the President could direct the same forces “to suppress such rebellion.” *Id.*

To be sure, presidents did not have a blank check under this legislation. But they had ample power to uphold the law and protect the District in a crisis. Deploying military force was permitted upon a presidential finding that, “by reason of unlawful obstructions, combinations, or assemblages of persons, or rebellion against the authority of the Government,” it was “impracticable, in the judgment of the President of the United States, to enforce, by the ordinary course of judicial proceedings, the laws of the United States.” 12 Stat. at 281; *cf. Illinois*, 146 S. Ct. at 434 (construing modern version of this requirement).

Illustrating the potency of this authority, President Lyndon Johnson utilized it when the District experienced riots following Martin Luther King Jr.’s assassination. Ordering the Secretary of Defense to respond, the President called upon both his D.C. Code authority and his power to federalize the National Guard. *See* Exec. Order No. 11403 (Apr. 5, 1968). Ultimately, the D.C. Code authority “went unused as the Secretary exercised the order’s primary delegation to federalize the [D.C. Guard].” Lawrence Kapp et al., Cong. Rsch. Serv., No. R46886, *Use of Militia, National Guard, or Federal Armed Forces within the District of Columbia Prior to 2020*, at 13 (Aug. 25, 2021).

By enacting what is now D.C. Code § 49-103, Congress expanded presidential authority to maintain order in the District—though still within limits. Presidents could now act whenever there was “a tumult, riot, mob, or a body of

men acting together by force with attempt to commit a felony or to offer violence to persons or property, or by force and violence to break and resist the laws.” D.C. Militia Act, § 45, 25 Stat. at 778. So too when those conditions were “threatened.” *Id.*

Congress reasonably conditioned this additional authority on the involvement of officials with local jurisdiction over the District. If the prescribed conditions arose, the District’s Commissioners or its U.S. Marshal could “call on the commander-in-chief to aid them in suppressing such violence and enforcing the laws.” *Id.* The President was obligated to respond, though he could decide how many troops were “necessary to suppress the same.” *Id.*

Contrary to the stay opinion, therefore, the District’s interpretation of Section 49-103 does not “imbue two presidential subordinates with more power to protect the seat of the federal government than the President.” Slip Op. 18. Congress expanded the President’s already immense power to defend the District with military force by enabling him to use the D.C. Guard for local disturbances less serious than a wholesale assault on governmental authority. But Congress did not allow presidents to exercise that additional power solely on their own initiative, instead requiring participation from officials attuned to local conditions.

The stay panel considered it irrational for Congress to condition presidential action on a request from at-will subordinates. “After all, the President could order

either of his two subordinates to make such a request.” Slip Op. 18. That comment ignores established legislative practices and political realities.

Congress has long assigned specific decisions to officers other than the President, enabling presidents to control those decisions only through their supervisory authority over these officers, rather than by making them directly. *See Kendall v. United States ex rel. Stokes*, 37 U.S. 524, 610-13 (1838); 1 Op. Att’y Gen. 624, 625-29 (1823). Indeed, Congress routinely structures executive decision-making so that the President’s ability to act hinges on decisions by subordinates. *E.g.*, 19 U.S.C. § 1862(c)(1)(A) (authorizing President to restrict imports only after Commerce Secretary determines they threaten national security).

This is not a mere formality. Even if presidents “may consider the decision after its rendition as a reason for removing the officer,” *Myers v. United States*, 272 U.S. 52, 135 (1926), those officers are obligated and presumed to obey statutory limits when performing their duties, *Martin v. Mott*, 25 U.S. 19, 33 (1827). Should they resist unlawful demands, a President can incur serious administrative and political costs by trying to replace such officials with compliant ones who will do his bidding. “President Nixon’s efforts to remove Archibald Cox as special prosecutor,” for instance, “made apparent the political costs of firing an officer that refuses to heed the President’s policies.” Kevin Stack, *The President’s Statutory Powers to Administer the Laws*, 106 Colum. L. Rev. 263, 295 (2006); *see also*

Peter Strauss, *Overseer, or “The Decider”?* *The President in Administrative Law*, 75 Geo. Wash. L. Rev. 696, 706 (2007) (describing “political furor” after President Jackson successively removed two Treasury Secretaries to secure a decision withdrawing Treasury funds from the Bank of the United States).

The stay panel also reasoned that Section 49-103’s use of permissive phrasing does not suggest that such requests are mandatory. But the formulation used in Section 49-103 mimics the phrasing in contemporary state laws that gave independent authority to local officials, including authority governors lacked. *E.g.*, *Military Code of the State of New York* § 79 (1889) (“In case of any breach of the peace, tumult, riot, or resistance to process of this state, it shall be lawful for any sheriff of any county, or the mayor of any city, to call for aid upon the commandant of the national guard.”).

For its part, the Trump administration argues that Section 49-103 cannot be the exclusive authority to activate the Guard because it does not account for a task supposedly “traditionally” performed by such forces: responding to natural disasters. In 1889, however, *no* state constitution authorized the militia to respond to natural disasters, *see* Stimson, *supra*, § 298, and it appears that state statutes did not do so either. Over time, states have amended their laws to authorize this function. *Compare* Mont. Const. art. VII, § 6 (1889) (permitting militia “to aid in the execution of the laws, to suppress insurrection or to repel invasion”), *with*

Mont. Const. art. VI, § 13 (1972) (same, but adding “or protect life and property in natural disasters”). While Congress has not updated the D.C. Code, it has provided for natural disasters elsewhere. *E.g.*, 10 U.S.C. § 12310(c)(1)(D); *id.* § 12301.

**C. No other D.C. Code provision supports President Trump’s deployment.**

The Administration chiefly relies on the words “other duties” in Section 49-102 to argue that President Trump can employ the D.C. Guard for any purpose at any time. *Cf. Learning Res.*, 146 S. Ct. at 637 (“Based on two words ... the President asserts the independent power to impose tariffs on imports from any country, of any product, at any rate, for any amount of time.”). “Those words cannot bear such weight.” *Id.*

In Section 49-102, the term “other duties” is part of “a list of specific items separated by commas and followed by a general or collective term.” *Ali v. Fed. Bureau of Prisons*, 552 U.S. 214, 225 (2008). And when statutes use “a catchall phrase at the end of an enumeration of specifics, as in *dogs, cats, horses, cattle, and other animals*,” it “implies the addition of *similar* after the word *other*,” as in “other similar animals.” Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 199-200 (2012). Or here, “other similar duties.”

Ignoring that basic tenet, the Administration portrays “other duties” as completely unlike the preceding words: “drills, inspections, parades, escort.” D.C. Code § 49-102. Although those terms all refer to training and ceremonial

functions, *see* Appellee Br. 26-27, the Administration cites the subsequent catchall term as grounds to indefinitely maintain a supplemental police force, with power to “assist law enforcement,” identify perceived crimes, look out for “suspects,” and detain people, Decl. of Lawrence Doane ¶¶ 6, 7, 12, JA516-18. If that is right, troops could presumably be ordered to do much more: search homes, conduct interrogations, make formal arrests—the list goes on. Regardless of whether the Administration has currently ordered the Guard to perform those functions, it has not disavowed that power. Just the opposite. *See* JA548 (stating that Guard duties may “require personnel to be armed” and “sworn in as law enforcement agents”).

Additional factors confirm that “other duties” lacks the broad meaning claimed. Section 49-102 empowers the Guard’s Commanding General to prescribe these duties—meaning that this official, by himself, could order the Guard to perpetually fight crime across Washington, D.C. And he would not be alone. The commanding officer of *any* regiment, battalion, or company may “assemble his command ... for drill, instruction, *or other business, as he may deem expedient.*” D.C. Code § 49-102 (emphasis added). The italicized phrase is just as capacious as “other duties, as he may deem proper” in the previous sentence. No textual basis exists for treating them differently. And the only limit imposed on these commanding officers is that “no parade shall be performed ... without the

permission of the Commanding General,” *id.*, underscoring the exclusive focus on training and ceremonial functions.

Yet more surrounding text yields the same inference. The relevant sentence reads in full: “The Commanding General *shall prescribe such stated drills and parades as he may deem necessary for the instruction of the National Guard*, and may order out any portion of the National Guard for *such* drills, inspections, parades, escort, or other duties, as he may deem proper.” *Id.* (emphasis added). The word “such” links the statute’s “other duties” directly to “drills and parades” used for “instruction.”

Bereft of textual arguments, the Administration invokes the Office of Legal Counsel’s views, but the memos cited have virtually no analysis. The 1963 memo notes Section 49-102’s “broad” language and then pronounces—with no further discussion—that because the President supervises the Guard’s officers, “it would certainly not seem inappropriate” for the President to direct the use of the Guard to support police crowd-control activities. Memorandum from Norbert A. Schlei, Assistant Attorney General, OLC, at 3 (July 30, 1963).

Barely a week later, OLC warned against relying on that interpretation, acknowledging the likelihood that it “would not be sustained by the courts.” Memorandum from Norbert A. Schlei, Assistant Attorney General, OLC, at 3 (Aug. 9, 1963). As OLC explained, “‘other duties’ ... might be construed by the

courts *in pari materia* with the other terms used in that section which relate primarily to drill- and training-type activities as distinguished from the aid-to-civil-authorities-type activities expressly covered by [D.C. Code § 49-103].” *Id.*

As for the 1989 OLC memo, its reasoning is no more extensive, and it offers nothing but the 1963 discussion as support. *See* 13 Op. O.L.C. 91, 93 (1989).

The stay panel, quite notably, did not rely on Section 49-102. But its hodgepodge of citations fares no better. The President’s commander-in-chief status and supervisory role do not allow him to choose the purposes for which the D.C. Guard may be activated. *See supra* Part I.A. And Sections 49-404 and 49-405 only confirm that the sole mechanism for presidential deployments is a request under Section 49-103.

Section 49-404 states that, unless federalized, “[t]he enrolled militia shall not be subject to any duty except when called ... to aid the civil authorities in the execution of the laws or suppression of riots.” *Id.* § 49-404. This reference to aiding the civil authorities refers exclusively to Section 49-103. That is clear from its echo of Section 49-103’s terms and, even more unmistakably, from its precise reference to the “enrolled militia.” The National Guard is the District’s “organized” militia, distinct from the “enrolled” militia that includes every able-bodied adult male under age 45. *See* D.C. Code §§ 49-101, 49-406. And importantly, aid to the civil authorities under Section 49-103 is not limited to the

National Guard: the President may call out any portion of the enrolled “militia” he deems necessary. *Id.* § 49-103. Section 49-404’s reference to aiding the civil authorities, therefore, indisputably refers *only* to that provision, which is the only provision in the D.C. Code for deploying the larger “militia” and the only provision addressing the execution of the laws and suppression of riots.

Likewise, Section 49-405’s passing reference to the President’s calling-out power also relates exclusively to requests for aid under Section 49-103. Section 49-405 mentions situations in which “it shall be necessary to call out any portion of *the enrolled militia.*” *Id.* § 49-405 (emphasis added). By discussing the service of “the enrolled militia”—which, again, may be assigned duties *only* under Section 49-103—this passage clearly refers to Section 49-103 alone.

The same is true of Section 49-901, which sets compensation rates when Guard members are “ordered to duty in case of riot, tumult, breach of the peace, or whenever called in aid of the civil authorities.” *Id.* § 49-901. Here, too, the textual echo of Section 49-103 is obvious. And conspicuously, no similar provision addresses the compensation of Guard members deployed under Section 49-102 or any other section—yet another confirmation that no such deployments are permitted.

## **II. Title 32 Does Not Allow President Trump to Use the National Guard for Crime Reduction.**

### **A. Section 502(f)(2) allows state National Guards to receive federal pay and benefits only for activities independently authorized by other laws.**

The primary function of 32 U.S.C. § 502 (“Required drills and field exercises”) has always been to provide federal funding for the training of National Guard units while they remain under state control. *See* Christopher R. Brown, *Been There, Doing That in a Title 32 Status: The National Guard Now Authorized to Perform Its 400-Year-Old Domestic Mission in Title 32 Status*, 2008 Army Lawyer 23, 29-30 (2008). Congress eventually authorized funding for the performance of “other duty in addition to” such training. 32 U.S.C. § 502(f)(1). And from the late 1980s to the early 2000s, Congress made several types of non-training duties eligible for such funding. *See* Brown, *supra*, at 30-32. But “cumbersome” bureaucratic hurdles made it difficult to take advantage of these provisions, as when New York failed to obtain funding for its Guard to provide security at critical mass transit facilities in 2005. *Id.* at 31. So in a 2006 amendment that garnered virtually no discussion, Congress streamlined things by clarifying that the eligible “training or other duty” could include “support of operations or missions undertaken by [a] unit at the request of the President or Secretary of Defense.” 32 U.S.C. § 502(f)(2)(A).

The Trump administration now argues that this little-noticed provision, tucked at the end of a measure concerning funding and training, quietly revolutionized the chief executive’s relationship to the nation’s military forces—allowing President Trump to use unfederalized National Guard troops for *anything*, “unless a federal statute or the Constitution specifically prohibits a particular use.” Appellant Br. 26. This claim does not withstand scrutiny. And “the fact that no [other] President has ever found such power in [this statute] is strong evidence that it does not exist.” *Learning Res.*, 146 S. Ct. at 643.

Section 502 itself does not authorize National Guard members to perform any specific type of “duty.” 32 U.S.C. § 502(f)(1). And it does not delegate to presidents the power to create such authorizations. Instead, it relies on state law, which provides the root source of authority for these duties. *See, e.g.*, 32 U.S.C. § 112(h)(1) (allowing Section 502 funding of counter-drug activities that are “authorized by the law of the State”). In other words, Section 502 simply allows certain duties to be carried out in Title 32 status—permitting federal funding and benefits, *see id.* § 112(a)—when those activities are deemed to serve national interests, either by the President, under Section 502(f)(2), or by Congress, in statutes addressing specific activities, *e.g.*, 10 U.S.C. § 12310(c) (activities responding to various types of emergencies).

“Section 902 [of Title 32], for example, does not provide that the Secretary of Defense can call up the state National Guard units for ‘homeland defense activities’ directly ordered by the Secretary.” JA854. Instead, it allows the Secretary to “provide funds to a Governor to employ National Guard units or members to conduct homeland defense activities.” 32 U.S.C. § 902. “The power to deploy the National Guard comes from the governor’s authorities under state law; the Secretary can then decide which activities are necessary and appropriate to fund for homeland defense purposes under Title 32.” JA854. As the stay panel acknowledged, “to accept [a] mission [under Title 32], the state governor must exercise authorities *that already exist* under state law.” Slip Op. 19-20 (citation omitted).

Properly interpreted in this way, Section 502(f)(2) does not authorize either the D.C. Guard’s deployment or the importation of state troops. The D.C. Guard’s deployment is unsupported by D.C. law for the reasons explained above. *See supra* Section I. And the importation of state troops is unlawful for at least two reasons. First, these deployments have been structured only as supporting the D.C. Guard’s own operation. Because that operation is illegal, so is the participation of other Guard units in that operation. Second, the Administration has not shown that any state Guard’s deployment is actually authorized by that state’s laws. Because

one of Section 502's prerequisites is not satisfied, President Trump cannot rely on that statute to invite state troops to police the District.

To start, the legality of the state deployments hinges on the legality of the operation they are supporting. The out-of-district troops are not performing a freestanding mission requested by President Trump under Section 502. Rather, they have been tasked exclusively with supporting the D.C. Guard's mission. *See* Decl. of Donald Snider ¶ 12, JA530 (the D.C. Guard "is the lead National Guard unit that is augmented by National Guard units from several states"); Doane Decl. ¶ 9, JA517 (the D.C. Guard's Commanding General exercises "coordinating and tasking authority" over the state forces). The states' Guard units have been incorporated into this operation only through agreements with the D.C. Guard. *See* JA547-78 (MOU between D.C. Guard and "supporting" states). Those agreements expressly provide that the D.C. Guard leadership plays "the lead role" in "tasking units from a supporting State," and that the D.C. Guard retains "tactical control" over "operational direction." *Id.* § 3.2, JA547-48.

"If the [D.C. Guard] does not have the authority to conduct general crime deterrence in the District itself, it also cannot invite out-of-state National Guard units to do so." JA855. Because the D.C. Guard's deployment is unlawful, it is not a valid "operation or mission" for which President Trump may request the support of state troops under Section 502(f)(2).

Separately, the Administration must show that state law supports the deployment of state troops to police the District, because that is a precondition of utilizing Section 502. As the stay panel acknowledged, Title 32 requires a state-law basis for any presidentially requested operations or missions. The Administration has identified no such basis. And neither have the states whose troops are patrolling the District. *See* Amicus Br. of South Carolina et al. (discussing federal law instead). Because a statutory precondition of Section 502 has not been met, that statute cannot authorize President Trump’s operation.

The stay panel also discussed the Emergency Management Assistance Compact (“EMAC”), but that discussion is a red herring. Although congressionally approved compacts like the EMAC may establish legal authority to deploy state National Guards, the District does not need to show that the EMAC is the only means by which state Guard members could be sent into D.C. *Contra* Slip Op. 20. The fact that the EMAC’s terms are unsatisfied simply means that it, too, fails to authorize the President’s actions, so “no authority exists for the out-of-state National Guard units to operate in the District.” JA857.

**B. Section 502(f)(2) cannot plausibly be read as allowing presidents to use the military for domestic law enforcement whenever a governor lends troops.**

The stay panel did not even acknowledge one of the most critical flaws in the Administration’s position. Federal law has long prevented the military from

being turned on the domestic populace unless absolutely necessary. The Administration's boundless reading of Section 502(f)(2) would allow presidents to easily sidestep that safeguard.

Military participation in law enforcement is generally forbidden—a rule so important that its willful violation can lead to imprisonment. *See* 18 U.S.C. § 1385. Congress must “expressly” authorize any departure from that rule. *Id.* Only in “exceptional” circumstances, therefore, may the military execute the laws. *Illinois*, 146 S. Ct. at 434.

Whenever Congress has authorized such exceptions, “it has done so in explicit terms, and subject to strict limits.” *Learning Res.*, 146 S. Ct. at 639. For instance, the President may federalize the militia to suppress an insurrection against a state government, but only if that state requests assistance. 10 U.S.C. § 251. The President may also federalize the militia to enforce federal law, but only upon finding that enforcement by ordinary judicial proceedings is impractical. *Id.* § 252. Similarly, the President may use military forces to suppress rebellions within a state, but only if residents are being denied their constitutional rights or if unlawful combinations are impeding the course of justice. *Id.* § 253. The President also may federalize the National Guard to enforce federal law, but only upon finding that he is unable to do so with the regular armed forces, and only if

some other law permits him to use the regular armed forces for that purpose. *Id.* § 12406(3); *see Illinois*, 146 S. Ct. at 434 (enforcing this limit).

In addition to requiring specific triggering events, Congress also routinely restricts the scope of military involvement in law enforcement. For instance, although the military may support law enforcement efforts against drug smuggling and transnational crime, 10 U.S.C. § 284(a), the nature of this support is limited, *see id.* § 284(a)(1)(B), (b). And importantly, members of the armed forces—whenever they are allowed to assist civilian law enforcement—are forbidden from directly participating in any “search, seizure, arrest, or other similar activity,” unless authorized by law. *Id.* § 275; *see also id.* § 283(c) (limiting such participation even during situations involving bombings of public places and government facilities).

“Th[e] pattern is plain: When Congress grants the power to [employ the military for law enforcement], it does so clearly and with careful constraints.” *Learning Res.*, 146 S. Ct. at 644.

The Administration’s position would make these vital restrictions “utterly ineffectual.” *Abramski v. United States*, 573 U.S. 169, 181 (2014). Indeed, it already has. Armed National Guard troops are physically detaining District residents, *see Doane Decl.* ¶ 7, JA517, even though the active duty military and federalized National Guard members are barred from performing any “seizure,

arrest, or other similar activity,” 10 U.S.C. § 275. In the Administration’s view, presidents aided by sympathetic governors can use Section 502(f)(2) to dodge this restriction and every other limit on military participation in domestic law enforcement. Instead of federalizing the Guard, invoking the Insurrection Act, or employing similarly restricted laws, presidents could simply rely on allied governors to deploy military force at will, sending troops anywhere, for any purpose, unless expressly prohibited by law. *See* Appellant Br. 26. So could the Secretary of Defense. *See* 32 U.S.C. § 502(f)(2)(A). *But see Learning Res.*, 146 S. Ct. at 640 (rejecting interpretation giving President “unbounded” power in light of a “backdrop of clear and limited delegations”).

Making this reading even less plausible is the dangerous accountability gap that would follow. By the Administration’s own telling, the troops it has invited to patrol the District are under the “command and control” of their own states. Doane Decl. ¶ 9, JA517. Neither the D.C. Guard, nor the District’s local government, nor the President himself has any “disciplinary or administrative authority over these forces.” *Id.* In other words, the President (or Defense Secretary) may send any willing governor’s troops into another jurisdiction to police the local population while those troops remain completely beyond the disciplinary authority of the federal government and the jurisdiction in which they are operating—and also unrestrained by the Posse Comitatus Act and similar restrictions.

That the President must rely on the acquiescence of a like-minded governor hardly makes this interpretation more credible. If anything, things only become more fraught when a President solicits troops from allied politicians and sends them to police jurisdictions that he views as less loyal to him. Strikingly, only Republican governors have lent their troops for President Trump's operation, much like six years ago when the President first exploited Section 502(f)(2) in a similar manner. *See* Paul Sonne et al., *Pentagon Disarms National Guard Activated in D.C., Sends Active-Duty Forces Home*, Wash. Post (June 5, 2020). Politicians have thus sent soldiers into another American jurisdiction to conduct armed patrols, under their own exclusively disciplinary control, while openly disparaging that jurisdiction's elected officials. *See* Amicus Br. of South Carolina et al., at 21. The notion that Congress sanctioned this disturbing result by adding the "operations or missions" clause to the tail end of Section 502 defies belief.

## CONCLUSION

For the foregoing reasons, this Court should affirm.

Respectfully submitted,

Dated: May 26, 2026

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## CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the type-volume limitation of Fed. R. App. P. 29(a)(5) because it contains 6,497 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

I further certify that this brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6), because it has been prepared in a proportionally spaced typeface using Microsoft Word 14-point Times New Roman font.

Executed this 26th day of May, 2026.

/s/ Brianne J. Gorod  
Brianne J. Gorod

## **CERTIFICATE OF SERVICE**

I hereby certify that on this 26th day of May, 2026, I electronically filed the foregoing document using the Court's CM/ECF system, causing a notice of filing to be served upon all counsel of record.

Dated: May 26, 2026

/s/ Brianne J. Gorod  
Brianne J. Gorod

# **ADDENDUM**

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March 1, 1859.

**CHAP. 327.**—An act to establish the Lincoln Land District in the Territory of New Mexico.

Public lands.  
Lincoln land district,  
N. Mex., established.  
Boundaries.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That all that portion of the Territory of New Mexico embraced in the following described boundaries to wit, beginning at a point on the line running north and south between the State of Texas and the Territory of New Mexico, where such line would be intersected by the township line between townships numbers one and two north of the base line, and running thence west to the south-west corner of San Miguel County along the line between the Counties of Lincoln and San Miguel, said south-west corner being on said line in range number nineteen west of the New Mexico principal meridian, thence north to the south-east corner of Valencia County, a distance of about four miles, thence west on the south line of Valencia County parallel with the line between townships numbered one and two through township number two north to the east line of range number eight east of the New Mexico principal meridian, thence south along said range line between ranges numbered eight and nine east of said principal meridian to the second standard parallel south on the line between townships numbered ten and eleven south of the base line, thence east along said parallel to the line between ranges numbered ten and eleven south of the base line, thence south along said range line to the township line between townships numbered twelve and thirteen south, thence east along said last named line to the meridian of longitude number twenty-eight degrees thirty minutes west from Washington, thence south along said meridian line to the line of the State of Texas, thence east along said line to the south-east corner of the Territory of New Mexico and thence north along the boundary line between the State of Texas and the Territory of New Mexico to the point of beginning, shall be constituted a separate land district to be known as the Lincoln Land District, and the office of said district shall be located at the town of Roswell in said Territory.

Office at Roswell.

Register and receiver  
to be appointed.

**SEC. 2.** That the President of the United States shall nominate and by and with the advice and consent of the Senate appoint a register and receiver of the public moneys of the United States for said district, who shall reside in the place where said land office is located and shall have the same powers, perform the same duties and receive the same emoluments as are or may be prescribed by laws and regulations in relation to other land officers in the Territories of the United States.

Approved, March 1, 1889.

March 1, 1889.

**CHAP. 328.**—An act to provide for the organization of the militia of the District of Columbia.

District of Columbia.  
Militia organized.

Persons to be en-  
rolled.

Exemptions.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That every able-bodied male citizen resident within the District of Columbia, of the age of eighteen years and under the age of forty-five years, excepting persons exempted by section two, and idiots, lunatics, common drunkards, vagabonds, paupers, and persons convicted of any infamous crime, shall be enrolled in the militia. Persons so convicted after enrollment shall forthwith be disenrolled; and in all cases of doubt respecting the age of a person enrolled, the burden of proof shall be upon him.

**SEC. 2.** That in addition to the persons exempted from enrollment in the militia by the general laws of the United States, the following persons shall also be exempted from enrollment in the militia of the

District of Columbia, namely: Officers of the government of the District of Columbia; judges and officers of the courts of the District of Columbia; officers who have held commissions in the Regular or Volunteer Army or Navy of the United States; officers who have served for a period of five years in the militia of the District of Columbia or of any State of the United States; ministers of the gospel; practicing physicians; conductors and engine-drivers of railroad trains; members of the paid police and fire department.

SEC. 3. That the Commissioners of the District of Columbia shall provide for the enrollment of the militia, and for this purpose may require the assessors of taxes, at the same time they are engaged in taking the assessment of valuation of real and personal property, to make a list of persons liable to enrollment; and such record shall be deemed a sufficient notification to all persons whose name are thus recorded that they have been enrolled in the militia. Immediately after the completion of each enrollment they shall furnish the commanding-general of the militia with a copy of the same.

Assessors to enroll.

SEC. 4. That the enrolled militia shall not be subject to any duty except when called into the service of the United States, or to aid the civil authorities in the execution of the laws or suppression of riots.

Duty.

SEC. 5. That whenever it shall be necessary to call out any portion of the enrolled militia the commander-in-chief shall order out, by draft or otherwise, or accept as volunteers as many as required. Every member of the enrolled militia who volunteers, or who is ordered out or drafted under the provisions of this act, who does not appear at the time and place designated, may be arrested by order of the commanding general and be tried and punished by a court-martial. The portion of the enrolled militia ordered out or accepted shall be mustered into service for such period as may be required, and the commanding general may assign them to existing organizations of the active militia, or may organize them as the exigencies of the occasion may require.

Ordering into service.

SEC. 6. That the President of the United States shall be the commander-in-chief of the militia of the District of Columbia.

Commander-in-chief.

SEC. 7. That there shall be appointed and commissioned by the President of the United States a commanding general of the militia of the District of Columbia, with the rank of brigadier-general, who shall hold office until his successor is appointed and qualified, but may be removed at any time by the President.

Commanding general.

SEC. 8. That the staff of the militia of the District of Columbia shall be appointed and commissioned by the President, and hold office until their successors are appointed and qualified, but may be removed at any time by the President. It shall consist of one adjutant-general, with the rank of lieutenant-colonel; one inspector-general, one quartermaster-general, one commissary-general, one chief of ordnance, one chief engineer, one surgeon-general, one judge-advocate-general, and one inspector-general of rifle practice, each with the rank of major; and four aids-de-camp, each with the rank of captain. The commanding general may appoint a non-commissioned staff of the militia, to consist of one sergeant-major, one quartermaster-sergeant, one commissary-sergeant, one ordnance sergeant, two staff sergeants, one hospital-steward, one color-sergeant, and one sergeant-bugler.

Staff officers.

Non-commissioned staff.

SEC. 9. That the President may assign an officer of the Army to act as adjutant-general of the militia of the District of Columbia, who, while so assigned, shall be commissioned as such and be subject to the orders of the commanding general and the provisions of this act: *Provided, however,* That the officer so assigned shall receive no other pay or emolument than that to which his rank in the Army entitles him when on detached service.

Detail for adjutant general.

Proviso.

Pay.

## Active militia

## THE ACTIVE MILITIA: ITS ORGANIZATION.

- Organization of National Guard.** SEC. 10. That the active militia shall be composed of volunteers, and shall be designated the National Guard of the District of Columbia; and in case the militia of the District of Columbia are called into the service of the United States, or required for the suppression of riots, or to aid civil officers in the execution of the laws, shall be the first to be ordered into service.
- Strength on peace basis.** SEC. 11. That in time of peace the National Guard shall consist of not more than twenty-eight companies of infantry, which shall be arranged by the commanding general into such regiments, battalions, and unattached companies as he may deem expedient; one battery of light artillery; one signal corps; one ambulance corps; one engineer corps; one band of music, and one corps of field musicians.
- Regiments of infantry.** SEC. 12. That regiments of infantry shall consist of three battalions; and to each regiment there shall be one colonel and one lieutenant-colonel, and a staff to consist of one surgeon, one adjutant, one quartermaster, one inspector of rifle practice, and one chaplain, each with the rank of captain; and a non-commissioned staff, consisting of one sergeant-major, one quartermaster-sergeant, one commissary-sergeant, and one hospital-steward.
- Infantry battalions.** SEC. 13. That battalions of infantry shall consist of four companies; and to each battalion there shall be one major; and a staff consisting of one surgeon, one adjutant, one quartermaster, and one inspector of rifle practice, each with the rank of first lieutenant; and a non-commissioned staff, consisting one sergeant-major, one quartermaster-sergeant, and one hospital-steward.
- Infantry companies.** SEC. 14. That to each company of infantry there shall be one captain, one first lieutenant, one second lieutenant, one first sergeant, four sergeants, one corporal to each ten privates, and not more than eighty-seven privates; and the minimum number of enlisted men shall be forty.
- Artillery battery.** SEC. 15. That the battery of light artillery shall have not less than four nor more than six guns. To four guns there shall be one captain, two first lieutenants, one second lieutenant, one first sergeant, one quartermaster-sergeant, five sergeants, eight corporals, two buglers, and not more than eighty-two privates; and the minimum number of enlisted men shall be fifty-seven. To more than four guns there shall be, for each additional gun, one sergeant, two corporals, and not more than twenty nor less than ten privates; for two additional guns there shall be one additional second lieutenant.
- Signal, ambulance, and engineer corps.** SEC. 16. That to each signal corps, ambulance corps, and engineer corps, there shall be one first lieutenant, two sergeants, two corporals, and not more than thirty-two nor less than fourteen privates.
- Band.** SEC. 17. That the band of music shall consist of one chief musician, two sergeants, two corporals, and thirty-two privates; and the corps of field music of one principal musician, two sergeants, two corporals, and thirty-two privates. The chief musician, principal musician, and other non-commissioned officers of the band and field music shall be appointed by the commanding general.
- Disbanding of companies below minimum strength.** SEC. 18. That when any company of the National Guard shall, for a period of not less than ninety days, contain less than the minimum number of enlisted men prescribed by this act, or upon a duly ordered inspection, shall be found to have fallen below a proper standard of efficiency, the commanding general may either disband such company or consolidate it with any other company of the National Guard, and grant an honorable discharge to the supernumerary officers and non-commissioned officers produced by such consolidation. Officers and enlisted men discharged by reason of such disbanding or consolidation and at any time thereafter re-entering the service shall have allowed to them, as part of their term of service, the time already served.

ELECTION, APPOINTMENT, AND DISCHARGE OF COMMISSIONED OFFICERS.

Commissioned officers.

SEC. 19. That all officers shall be commissioned by the President of the United States. In time of peace, or when not in the service of the United States, they shall previously be elected or nominated as herein provided. No person commissioned as an officer shall assume such rank, or enter upon the duties of the office to which he may be commissioned, until he has accepted such commission and taken such oath or affirmation as may be prescribed.

Commission.

SEC. 20. That the staff officers of a regiment or battallion shall be nominated by the permanent commander thereof.

Oath.

Staff officers.

SEC. 21. That field officers of regiments or battallions shall be nominated by the commanding general. Captains and lieutenants of companies shall be elected by the written votes of the enlisted men of the respective companies.

Field officers.

Company officers.

SEC. 22. That elections of officers shall be ordered and held under such regulations as may be prescribed by the commanding general.

Elections.

SEC. 23. That every person accepting an election or nomination as an officer shall appear before an examining board, to be appointed by the commanding general, which board shall examine said officer as to his military and other qualifications. If any officer shall fail to appear before the board of examination within thirty days after being notified, or shall fail to pass a satisfactory examination, the fact shall be certified by the board to the commanding general, who shall thereupon declare the election or nomination of such officer null and void. If, in the opinion of the board such officer is competent, and otherwise qualified, they shall certify the fact to the commanding general, who shall thereupon recommend him to the President for commission.

Examinations.

SEC. 24. That a commissioned officer may be honorably discharged—

Discharges.

Upon tender of resignation;

Upon disbandment of the organization to which he belongs;

Upon report of a board of examination, or for failure to appear before such board when ordered.

He may be dismissed upon the sentence of a court-martial; conviction in a court of justice of an infamous offense.

THE APPOINTMENT AND REDUCTION OF NON-COMMISSIONED OFFICERS.

Non-commissioned officers.

SEC 25. That non-commissioned staff officers shall be appointed by the permanent commander of the organization to which they belong; and permanent commanders of battallions shall appoint the non-commissioned officers of companies, upon the written nomination of the respective captains; but they may withhold such appointment if, in their judgment, there be proper cause; non-commissioned officers of unattached companies shall be appointed by there respective captains. The permanent commander of any battallion or unattached company may reduce to the ranks any company non-commissioned officers of his command.

Appointment.

ENLISTMENT AND DISCHARGE OF SOLDIERS.

Enlistment.

SEC. 26. Enlistment in the National Guard shall be for the term of three years: *Provided, however,* That any soldier who may have received an honorable discharge, by reason of the expiration of his term of service, may, within thirty days thereafter, re-inlist for a term of one, two, or three years, to date from the expiration of his previous term. All terms of service, except in case of re-inlistment, shall commence at noon on the day of enlistment, and expire at noon on the day of discharge.

Term.

Proviso.

Re-enlistment.

Oath, etc.

SEC. 27. Every person enlisting in the National Guard shall sign an enlistment paper which shall contain an oath of allegiance to the United States. The requisites and regulations for enlistment and the form of enlistment paper and oath for enlisting men, shall be prescribed by the commanding general.

Discharges:  
Honorable.

SEC. 28. That no enlisted man shall be honorably discharged before the expiration of his term of service, except by order of the commanding general, and for the following reasons:

Upon his own application, approved by the commanding officer of his company, and by superior commanders;

Upon removal from the District;

Upon disability, established by certificate of medical officer;

To accept promotion by commission;

Whenever, in the opinion of the commanding general, the interest of the service demand such discharge.

Dishonorable.

SEC. 29. That enlisted men shall be dishonorably discharged by order of the commanding general:

To carry out the sentence of a court-martial;

Upon conviction of felony in a civil court;

Upon expulsion from his company, in accordance with its by-laws or regulations;

Upon discovery of re-enlistment after previous dishonorable discharge.

Certificate of discharge.

SEC. 30. That every soldier discharged from the service of the District shall be furnished with a certificate of such discharge, which shall state clearly the reasons therefor. Dishonorable discharges will have the word "dishonorable" written or printed diagonally across their faces, in large characters, with red ink, and the re-enlistment clause will be erased by a line.

Arms, etc.

## ARMS UNIFORMS, AND EQUIPMENTS.

SEC. 31. That the Uniforms, arms, and equipments of the National Guard shall be the same as prescribed and furnished to the army of the United States. Every organization of the National Guard shall be provided with such ordnance and ordnance stores, clothing, camp and garrison equipage, quartermaster's stores, medical supplies, and other military stores, as may be necessary for the proper training and instruction of the force and for the proper performance of the duties required under this act. Such property shall be issued from the stores and supplies appropriated for the use of the Army, upon the approval and by the direction of the Secretary of War, to the commanding general, upon his requisitions for the same. The property so issued shall remain and continue to be the property of the United States, and shall be accounted for by the commanding general at such times, in manner, and on such forms, as the Secretary of War may require.

To be issued by Secretary of War.

Regulations for issue, care, etc.

SEC. 32. That the commanding general may transfer all public property, received by him for the use of the National Guard under the provision of this act, to the several departmental officers of the general staff, and may make and prescribe regulations for its issue by them, and for its care and preservation by the officers or soldiers to whom issued.

Returns, etc.

SEC. 33. That every officer receiving public property for military use shall be accountable for the articles so received by him, and shall make returns of such property at such times, in such manner, and on such forms as may be prescribed. He shall be liable to trial by court-martial for neglect of duty, and also make good to the United States the value of all such property defaced, injured, destroyed or lost, by any neglect or default on his part, to be recovered in an action of tort, or by any other action at law, to be instituted by the judge-advocate-general of the militia at the order of the commanding gen-

eral. All money received on account of loss or damages shall be paid in the Treasury of the United States, and shall be accounted for by the commanding general in his returns to the Secretary of War.

SEC. 34. That any officer or soldier who shall sell, dispose of pawn or pledge, willfully destroy or injure, or retain after proper demand made, any public property issued under the provisions of this act, shall be deemed guilty of a misdemeanor, and shall be punished by imprisonment for not exceeding two months, or by a fine not exceeding one hundred dollars, or by both; and it is hereby made the duty of the judge of the police court of the District of Columbia, upon information filed or complaint, made under oath, to issue process for the arrest of the offender, and to cause him to be brought before the police court to be dealt with according to the provisions of this section.

Punishment for selling, etc., public property.

SEC. 35. That until an officer, or his legal representative shall have received notice that the property accounts of such officer have been examined and found correct, the liability of such officer, or of his estate, for public property for which he is or may have been responsible shall be in no way affected by resignation, discharge, change in official position, or death. Upon the death or desertion of an officer responsible for public property his immediate commander shall at once cause the property for which such officer was responsible to be collected, and a correct inventory made by actual count and examination; which inventory shall be forwarded to the commanding general, in order that any deficiency may be made good from the estate of the deceased or deserting officer; compensation for such deficiency may be recovered in the manner provided in section thirty-four.

Liability of officers.

SEC. 36. That property issued or provided under the provisions of this act which becomes unfit for use, and is condemned as unserviceable shall be reported by the commanding general to the Secretary of War, and shall be disposed of as may be directed by him.

Unserviceable property.

SEC. 37. That any organization of the active militia may, with the approval of the commanding general, and at its own expense, adopt any other uniform than that issued to it; but such uniform shall not be worn when such organization is on duty under the orders of the commanding general except by his permission.

Distinctive uniforms.

SEC. 38. That organizations of the National Guard shall have the right to own and keep personal property, which shall belong to and be under the control of the active members thereof; and the commanding officer of any organization may recover for its use any debts or effects belonging to it, or damages for injury to such property; action for such recovery to be brought, in the name of such commanding officer, before any justice of the peace, with the right of appeal to the supreme court of the District of Columbia, or before the supreme court of the District of Columbia; and no suit or complaint pending in his name shall be abated by his ceasing to be commanding officer of the organization; but, upon the motion of the commander succeeding him, such commander shall be admitted to prosecute the suit or complaint in like manner and with like effect as if it had been originally commenced by him.

Right to own personal property.

Actions for injuries to.

SEC. 39. That the quartermaster-general of the militia shall provide, by rental or otherwise, such armories for the National Guard as may be allowed and directed by the commanding general. He shall also provide each organization with such lockers, closets, gun-racks, and cases or desks, as may be necessary for the care, preservation, and safe-keeping of the arms, equipments, uniforms, records, and other military property in their possession. He shall also provide suitable rooms for the offices of the commanding general and staff, for the keeping of books, the transaction of business, and the instruction of officers, and also suitable places for the storage and safe-keeping of public property.

Armories to be provided.

## Duties.

## MILITARY DUTIES.

Drills, etc., to be a military duty.

SEC. 40. That any drill, parade, encampment, or duty that is required, ordered, or authorized to be performed under the provisions of this act, shall be deemed to be a military duty, and while on such duty every officer and enlisted man of the National Guard shall be subject to the lawful orders of his superior officers, and for any military offense may be put and kept under arrest or under guard for a time not extending beyond the term of service for which he is then ordered.

Prescribing drills, etc.

SEC. 41. That the commanding general shall prescribe such stated drills and parades as he may deem necessary for the instruction of the National Guard, and may order out any portion of the National Guard for such drills, inspections, parades, escort, or other duties, as he may deem proper. The commanding officer of any regiment, battalion, or company may also assemble his command, or any part thereof, in the evening for drill, instruction, or other business, as he may deem expedient; but no parade shall be performed by any regiment, battalion, company, or part thereof, without the permission of the commanding general.

Annual inspection.

SEC. 42. That an annual inspection and muster of each organization of the National Guard, and an inspection of their armories and of public property in their possession, shall be made at such times and places as the commanding general may order and direct.

Camp duty.

SEC. 43. That the National Guard shall perform not less than six consecutive days of camp duty in each year, at such time as may be ordered by the commanding general; and the quartermaster-general of the militia, subject to the approval of the commanding general, shall provide, by rental or otherwise, a suitable camp ground for the annual encampment of the militia, make the necessary provisions thereon for the encampment, and provide necessary transportation to and from the same for baggage and supplies.

Use of Washington Barracks.

SEC. 44. The National Guard shall have the use of the drill grounds and rifle-range at the Washington Barracks, subject to the approval of the Secretary of War, and the commanding general of the militia shall provide such additional targets and accessories as may be necessary for the use of the militia.

Suppression of riots, etc.

SEC. 45. That when there is in the District of Columbia a tumult, riot, mob, or a body of men acting together by force with attempt to commit a felony or to offer violence to persons or property, or by force and violence to break and resist the laws, or when such tumult, riot, or mob is threatened, it shall be lawful for the commissioners of the District of Columbia, or for the United States marshal for the District of Columbia, to call on the commander-in-chief to aid them in suppressing such violence and enforcing the laws; the commander-in-chief shall thereupon order out so much and such portion of the militia as he may deem necessary to suppress the same, and no member thereof who shall be thus ordered out by proper authority for any such duty shall be liable to civil or criminal prosecution for any act done in the discharge of his military duty.

Excuses from duty.

SEC. 46. That no officer or soldier of the National Guard, when ordered on duty to aid the civil authorities, or when ordered into the services of the United States in obedience to the call or order of the President, shall be excused from such duty except upon the certificate of the surgeon of his command of physical disability, such certificate to be presented to the commanding general in case of an officer, or to his company commander in case of a soldier. If such officer or soldier fail to furnish such excuse he shall be tried and punished by a court-martial. For absence from any other military duty required or ordered under the provisions of this act the penalty shall be such as may be prescribed by the commanding general, or

the by-laws of the organization to which the officer or soldier belongs.

SEC. 47. That the United States forces or troops, or any portion of the militia, parading, or performing any duty according to law, shall have the right of way in any street or highway through which they may pass: *Provided*, That the carriage of the United States mails, the legitimate functions of the police, and the progress and operations of fire-engines and fire departments shall not be interfered with thereby.

Parade, etc., to have right of way.

*Proviso.*  
Mail, fire department, etc.

SEC. 48. That every commanding officer, when on duty, may ascertain and fix necessary bounds and limits to his parade or encampment. Whoever intrudes within the limits of the parade or encampment after being forbidden, or whoever shall interrupt, molest, or obstruct any officer or soldier while on duty, may be put and kept under guard until the parade, encampment, or duty be concluded: and the commanding officer may turn over such person to any police officer, and said police officer is required to detain him in custody for examination or trial before the police court, and the judge thereof may punish such offense by a fine not exceeding twenty-five dollars.

Rules for parades and encampments.

SEC. 49. That all officers and employees of the United States and of the District of Columbia who are members of the National Guard shall be entitled to leave of absence from their respective duties, without loss of pay or time, on all days of any parade or encampment ordered or authorized under the provisions of this act.

Governmental employees.

MILITARY COURTS.

Military courts.

SEC. 50. Courts of inquiry, to consist of not more than three officers, may be ordered by the commanding general, for the purpose of investigating the conduct of any officer, either at his own request or on a complaint or charge of conduct unbecoming an officer. Such court of inquiry shall report the evidence adduced, a statement of facts, and an opinion thereon, when required, to the commanding general, who may, in his discretion, thereupon order a court-martial for the trial of the officer whose conduct has been inquired into.

Courts of inquiry.

SEC. 51. That general courts-martial for the trial of commissioned officers or enlisted men shall be ordered by the commanding general at such times as the interests of the service may require, and shall consist of not less than five nor more than thirteen officers, and a judge-advocate, none of whom shall be of less rank than the accused, when it can be avoided.

Courts-martial.

SEC. 52. That for the trial of enlisted men for all minor offenses the commanding officer of each battalion and unattached company shall, at such times as may be necessary, appoint courts-martial. Such battalion and company courts-martial shall consist, for a battalion, of one officer, whose rank is not below that of captain; and for a company, of a lieutenant. Such courts shall have power, subject to the approval of the officer ordering the court, to sentence to be reprimanded by said officer in battalion or company orders; or, in case of a company non-commissioned officers, to be reduced to the ranks, or to pay such fines as may be imposed and allowed by the regulations or by-laws of the organization to which the accused belongs; and such court may, with the approval of the commanding general, sentence to be reprimanded in general orders or to be dishonorably discharged.

Trials of enlisted men.

SEC. 53. That the president of a general court-martial or court of inquiry, and the officer constituting a battalion or company court-martial, shall have power to administer the usual oath to witnesses, and may issue summonses for all witnesses whose attendance at such court may, in his opinion, be necessary, and any officer or soldier failing to serve such summons, and any witness failing to appear and testify when so summoned, shall be liable to trial by court-martial.

Proceedings in trials.

To conform to Army trials.

SEC. 54. That in all courts-martial and courts of inquiry the arraignment of the accused, the proceedings, trial, and record shall in all respects conform as nearly as practicable to the regulations for the same in the Army of the United States.

EXPENSES AND ALLOWANCES.

General expenses.

SEC. 55. That there shall be allowed for the general expenses of the militia such sums as may be necessary for the rental and furnishing of offices for headquarters, stationery, postage, printing and issuing orders, advertising orders, providing necessary blanks for the use of the militia, the cost of storing, caring for, and issuing all public property, and such other contingent expenses, not herein specially provided for, as may be estimated and appropriated for; the accounts for which shall be certified to by the officer receiving the service or property charged for, approved by the commanding general, and paid in the manner provided in section sixty.

Payment to band, etc.

SEC. 56. That during the annual encampment, and on every duty or parade ordered by the commanding general, there shall be allowed and paid for each day of service: To each member of the regularly enlisted band, four dollars; to each member of the regularly enlisted corps of field music, two dollars; to the chief musician, eight dollars, and to the principal musician, six dollars. In event there is no enlisted band or field music, or not a sufficient number of either, the commanding general may authorize the employment of such as he may deem necessary for the occasion. The payments for bands of music and drum corps shall be made in the manner provided in section sixty.

Subsistence while on duty.

SEC. 57. That during the annual encampment, or when ordered on duty to aid the civil authorities, the National Guard shall be furnished with subsistence stores, of the kind, quality, and amount allowed and prescribed by the Army. Such stores shall be issued from the stores and supplies appropriated for the use of the Army, upon the approval and by the direction of the Secretary of War, to the commanding general upon his requisitions for the same.

Estimates.

SEC. 58. That the commanding general shall annually transmit to the Commissioners of the District of Columbia an estimate of the amount of money required for the next ensuing fiscal year to pay the expenses authorized by this act, and the said Commissioners shall include the same in their annual estimates of appropriations for the District; and all money appropriated to pay the expenses authorized by this act shall be disbursed by the Commissioners of the District of Columbia, upon vouchers duly certified and approved by the commanding general, and accounted for by them in the same manner as all other moneys appropriated for the expenses of the District.

Disbursements.

GENERAL PROVISIONS.

Regulations.

SEC. 59. That companies, battalions, or regiments may adopt constitutional articles of agreement or by-laws, subject to the approval of the commander-in-chief, for the government of matters relating to the civic affairs of their respective organizations, the regulation of fines for non-performance of duty, and the determination of causes upon which excuses from fines may be based: *Provided, however,* That such articles or rules shall not be repugnant to law or the regulations for the government of the militia: *And provided further,* That the articles or rules adopted by any company or battalion shall not be repugnant to the articles or rules adopted for the general government of the regiment or battalion to which it belongs. Certified copies of such articles or rules, with like copies of all alterations, as finally approved by the commanding general, shall be deposited in the office of the adjutant-general.

*Proviso.*  
Not to be repugnant to law, etc.

Company and battalion rules.

SEC. 60. The departmental and military duties of the officers provided for in this act shall be correlative with those discharged by similarly designated officers in the Army of the United States.

Duties of officers.

SEC. 61. That the system of discipline and field-exercise ordered to be observed by the Army of the United States, or such other system as may hereafter be directed for the militia by-laws of the United States, shall be observed by the National Guard.

Discipline.

SEC. 62. That the commanding general, subject to the approval of the commander-in-chief, is authorized to make and publish regulations for the government of the militia in all matters not specifically provided for by law, conforming the same to the practice and regulations of the Army so far as they may be applicable.

Commanding general to make regulations.

SEC. 63. That the act "more effectually to provide for the organization of the militia of the District of Columbia," approved March third, eighteen hundred and three, is hereby repealed.

Repeal.  
Vol. 2, p. 215.  
R. S. D. C., ch. 37, p. 138.

Approved, March 1, 1889.

CHAP. 329.—An act authorizing the Secretary of the Treasury to sell block of land one hundred and eight in the city of Houston, Texas.

March 1, 1889.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Treasury is hereby authorized to sell, either at private or public sale, the interest held by the United States in and to block one hundred and eight, situated in the city of Houston, Texas, on the south side of Buffalo Bayou, and to make a quit-claim deed to the purchaser thereof.

Houston, Tex.  
Sale of block of land in, authorized.

Approved, March 1, 1889.

CHAP. 330.—An act to reappropriate to pay for alley condemned in square numbered four hundred and ninety-three.

March 1, 1889.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That of the surplus that has been covered into the Treasury of the sum appropriated by the act approved June thirtieth, eighteen hundred and eighty, entitled, "An act making appropriations for the District of Columbia for the year ending June thirtieth, eighteen hundred and eighty-one", for amount due property owners for ground condemned and used for alleys, there be, and the same is hereby, reappropriated so much as will be sufficient to pay, with interest at the rate of six per centum per annum from August sixth, eighteen hundred and seventy, to the date of the approval of this act, the persons entitled to the amount awarded by the jury of condemnation for the land taken for an alley through square numbered four hundred and ninety-three, in the city of Washington, in the District of Columbia.

District of Columbia.  
Appropriation for paying owners of land condemned for alley purposes, square 493.  
Vol. 21, p. 162.

Approved, March 1, 1889.

CHAP. 331.—An act to encourage the enlistment of boys as apprentices in the United States Navy.

March 1, 1889.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That in order to encourage the enlistment of boys as apprentices in the United States Navy, the Secretary of the Navy is hereby authorized to furnish as a bounty to each of said apprentices after his enlistment, and when first received on board of a training-ship, an outfit of clothing not to exceed in value the sum of forty-five dollars.

Naval apprentices.  
Bounty outfit to, on enlistment.

Approved, March 1, 1889.

and to be made in the years eighteen hundred and sixty-one and eighteen hundred and sixty-two, in the regular army, including the force authorized by this act, shall be for the period of three years, and those to be made after January one, eighteen hundred and sixty-three, shall be for the term of five years, as at present authorized, and that the men enlisted in the regular forces, after the first day of July, eighteen hundred and sixty-one, shall be entitled to the same bounties, in every respect, as those allowed or to be allowed to the men of the volunteer forces.

SEC. 6. *And be it further enacted*, That the increase of the military establishment created or authorized by this act is declared to be for service during the existing insurrection and rebellion; and within one year after the constitutional authority of the Government of the United States shall be re-established, and organized resistance to such authority shall no longer exist, the military establishment may be reduced to a number not exceeding twenty-five thousand men, unless otherwise ordered by Congress.

Increase of military establishment to last during rebellion; when to be reduced to 25,000 men.

SEC. 7. *And be it further enacted*, That the President of the United States shall cause regiments, battalions, and companies to be disbanded, and officers, non-commissioned officers, musicians, and privates to be discharged, so as to reduce the military establishment as is provided by the preceding section: *Provided*, That all of the officers of the regular army who have been or may be detached or assigned to duty for service in any other regiment or corps shall resume their positions in the regular army, and shall be entitled to the same rank, promotion, and emoluments as if they had continued to serve in their own regiments or corps.

Provision for disbandment.

Officers of regular army in other corps to retain rank, &c.

SEC. 8. *And be it further enacted*, That the enlistments for the regiments authorized by this act shall be in charge of the officers detailed for that purpose who are appointed to said regiments from civil life; and that in the mean time the officers appointed to the same from the regular army shall be detailed by the commanding general to such service in the volunteer regiments now in the field as will, in his judgment, give them the greatest military instruction and efficiency; and that the commanding general may, in his discretion, employ said officers with any part of the regular forces now in the field until the regiments authorized by this act shall have been fully recruited, and detail any of the officers now in the regular army to service with the volunteer regiments now in the field, or which may hereafter be called out, with such rank as may be offered them in said volunteer regiments, for the purpose of imparting to them military instruction and efficiency.

Enlistments to be in charge of officers appointed from civil life.

Other officers to be on duty in the field.

APPROVED, July 29, 1861.

CHAP. XXV. — *An Act to provide for the Suppression of Rebellion against and Resistance to the Laws of the United States, and to amend the Act entitled "An Act to provide for calling forth the Militia to execute the Laws of the Union," &c., passed February twenty-eight, seventeen hundred and ninety-five.*

July 29, 1861.

1795, ch. 36.  
Vol. i. p. 424.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That whenever, by reason of unlawful obstructions, combinations, or assemblages of persons, or rebellion against the authority of the Government of the United States, it shall become impracticable, in the judgment of the President of the United States, to enforce, by the ordinary course of judicial proceedings, the laws of the United States within any State or Territory of the United States, it shall be lawful for the President of the United States to call forth the militia of any or all the States of the Union, and to employ such parts of the land and naval forces of the United States as he may deem necessary to enforce the faithful execution of the laws of the United States, or to suppress such rebellion in whatever State or Territory thereof the laws of the United States may be forcibly opposed, or the execution thereof forcibly obstructed.

The President may call forth the militia and employ them when, &c.

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President to command insurgents to disperse.

SEC. 2. *And be it further enacted*, That whenever, in the judgment of the President, it may be necessary to use the military force hereby directed to be employed and called forth by him, the President shall forthwith, by proclamation, command such insurgents to disperse and retire peaceably to their respective abodes, within a limited time.

Militia to be subject to rules of war, and to continue in service.

SEC. 3. *And be it further enacted*, That the militia so called into the service of the United States shall be subject to the same rules and articles of war as the troops of the United States, and be continued in the service of the United States until discharged by proclamation of the President: *Provided*, That such continuance in service shall not extend beyond sixty days after the commencement of the next regular session of Congress, unless Congress shall expressly provide by law therefor: *And provided further*, That the militia so called into the service of the United States shall, during their time of service, be entitled to the same pay, rations, and allowances for clothing as are or may be established by law for the army of the United States.

Limit of service.

Pay, &c.

Penalty for disobedience of orders of President.

SEC. 4. *And be it further enacted*, That every officer, non-commissioned officer, or private of the militia, who shall fail to obey the orders of the President of the United States in any of the cases before recited, shall forfeit a sum not exceeding one year's pay, and not less than one month's pay, to be determined and adjudged by a court-martial; and such officer shall be liable to be cashiered by a sentence of court-martial, and be incapacitated from holding a commission in the militia for a term not exceeding twelve months, at the discretion of the court; and such non-commissioned officer and private shall be liable to imprisonment, by a like sentence, on failure of payment of the fines adjudged against them, for one calendar month for every twenty-five dollars of such fine.

Courts-martial, how composed.

SEC. 5. *And be it further enacted*, That courts-martial for the trial of militia shall be composed of militia officers only.

Fines, how collected and paid.

SEC. 6. *And be it further enacted*, That all fines to be assessed as aforesaid shall be certified by the presiding officer of the court-martial, and shall be collected and paid over according to the provisions and in the manner prescribed by the seventh and eighth sections of the act of February twenty-eight, seventeen hundred and ninety-five, to which this is an amendment.

1795, ch. 36, §§ 7, 8. Vol. i. p. 424.

Marshals to have in their districts the authority of sheriffs.

SEC. 7. *And be it further enacted*, That the marshals of the several districts of the United States, and their deputies, shall have the same powers in executing the laws of the United States as sheriffs and their deputies in the several States, have by law, in executing the laws of the respective States.

Act 1795, ch. 36, §§ 2, 3, 4, &c. repealed.

SEC. 8. *And be it further enacted*, That sections two, three, and four of the act entitled "An Act to provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions, and to repeal the act now in force for those purposes," approved February twenty-eight, seventeen hundred and ninety-five, and so much of the residue of said act and of all other acts as conflict with this act are hereby repealed.

Vol. i. p. 424.

APPROVED, July 29, 1861.

July 31, 1861.

CHAP. XXVII.—*An Act authorizing the Appointment of an Assistant Secretary of the Navy, and fixing the Salary of the same, and for other Purposes.*

Assistant Secretary of Navy authorized.

Salary and duties.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the President shall appoint, in the department of the Secretary of the Navy, by and with the advice and consent of the Senate, a competent person, who shall be called the Assistant Secretary of the Navy, whose salary shall be four thousand dollars, payable in the same manner as the salary of the Secretary of the Navy, who shall perform all such duties in the office of the Secretary of the Navy, belonging to that department, as shall be prescribed by the Secretary of

## TITLE VIII.

### OF THE WISCONSIN NATIONAL GUARD.

#### CHAP. 84. Of the Wisconsin National Guard.

### CHAPTER XXXIV.

#### OF THE WISCONSIN NATIONAL GUARD.

**Governor's staff.** SECTION 610. The military staff of the governor shall consist of one adjutant general, one quartermaster general, one surgeon general, with the rank of brigadier general; four aids de camp, with the rank of colonel, and such other officers as he may from time to time require for active service. The adjutant general and the quartermaster general may each appoint one aid de camp, with the rank of captain.

Provides for the governor's staff. From sec. 1, ch. 242, 1863, as amended by sec. 1, ch. 407, 1864.

**Adjutant general — His duties — Report of.** SECTION 611. [*As amended by ch. 208, 1879.*] The adjutant general shall be chief of staff and inspector general. He shall have an office at Madison and keep it open during the usual business hours every day. He shall have the custody of all military records, returns, reports, correspondence, muster rolls and other documents relating to the volunteers of this state, heretofore in the service of the United States, and of the Wisconsin national guard heretofore or hereafter organized, except such as are required to be filed with the quartermaster general. He shall be the medium of military correspondence with the governor, and perform all other duties appertaining to his office or prescribed by law. He shall annually [biennially], on or before the thirtieth day of September, make a report to the governor, to be laid before the legislature, of all the transactions and expenditures of his department since the last annual [biennial] report, and setting forth the number, strength and condition of the organized Wisconsin national guard, and such matters of general interest as may seem important to communicate. He shall also make and transmit to the president, the annual return required by the laws of the United States, and at the same time submit to the governor a duly certified copy thereof.

From secs. 2 and 8, ch. 242, 1863. It is also declared that the adjutant general shall have the custody of the military records of the volunteers heretofore in the service of the United States, as well as of this state, as that officer has in fact, in order that his certificate to copies may be brought within the general provision in the law of evidence, authorizing the legal custodian of records to furnish copies as evidence.

**Duties of adjutant general as pension agent.** SECTION 611a. [*Ch. 382, 1889.*] 1. It is hereby made the duty of the adjutant general to assist all persons residing in the state of Wisconsin having claims against the United States for pensions, bounty or back pay, where such claims have arisen out of, or by reason of service in the war of the rebellion. To this end the said adjutant general shall co-operate with the agents or attorneys of said claimants, advise as to the legality of claims, furnish to claimants only all necessary certificates and certified abstracts from and copies of records and documents in his office and in all practicable ways seek to secure speedy and just action upon all claims

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troop and battery shall have attached thereto one assistant surgeon with the rank of first lieutenant. The non-commissioned staff of a regiment or battalion shall consist of one sergeant major, one quartermaster sergeant, one commissary sergeant, one hospital steward and one chief musician and one drum major, to be appointed by the commanding officer. The governor may order the regiments, battalions or separate companies into encampments, for military instruction, not to exceed six days in any year, and may fix the place for such encampment. Regiments, battalions or companies, when so ordered into encampment, shall be furnished by the state with transportation, tents and camp equipage, and such other reasonable and necessary provision for the proper care and preservation of the health of the men so ordered into camp as may be ordered by the governor, and an allowance for subsistence and other expenses not herein provided for, equal to one and one-half dollars per day, for each day's actual service in such encampment, or en route to and from the same, by each enlisted man; and the pay of an officer of equal rank in the United States army, for each commissioned officer, while on duty at such encampment, or on other service under orders of the governor, to be paid out of the state treasury, on such vouchers and proofs as the governor may require, and on his approval. The amount due on account of any company, to be paid to its commanding officer, and the amount due on account of the field, staff and non-commissioned staff, or other officers and men, if any, on duty in such encampment, under orders, to be paid to the person to whom the same shall be due. The allowances herein provided for may be withheld by order of the governor, and applied to the payment of any damages to grounds, buildings or property, which may be caused by the fault or neglect of any officer or enlisted man in camp, or en route to or from the same.

**Examination of subordinate officer.** SECTION 640a. [*Sec. 3, ch. 298, 1885.*] The governor may, whenever requested so to do by the commanding officer of any regiment, battalion or company, or whenever he deems that the interests of the service will be promoted thereby, order any subordinate officer of any regiment, battalion or company, or any officer or person nominated or recommended for promotion in such regiment, battalion or company, to be examined by any competent officer or board of officers, designated in orders for that purpose, as to his qualifications for the office to which he may be recommended or commissioned, and may take such action on the report of such examining officer or board of officers as he may deem to be for the best interests of the service.

**Custody of property.** SECTION 640b. [*Sec. 4, ch. 298, 1885.*] The captain or other commanding officer for the time being is the legal custodian of the money, property and effects of any company, troop or battery of the Wisconsin national guard, whether such property is owned by said company, or its members collectively, or has been issued to it or any of its officers, for its use by state or United States authority, and may sue for and recover possession of the same, whenever wrongfully withheld from his custody, or the custody of the company, in an action before any competent court or magistrate.

#### ACTIVE SERVICE.

**How called into.** SECTION 641. [*As amended by ch. 208, 1879.*] In case of war, insurrection, rebellion, riot or invasion, or of resistance to the execution of the laws of the state, or of the United States, or upon application of any marshal of the United States, or of any mayor of a city, or of a sheriff, the governor may call into active service all or any portion of the organized Wisconsin national guard. If the governor be absent or cannot be immediately communicated with, any such civil officer may, if he deems the occasion so urgent, make such application to the commanding officer of any company,

battalion or regiment, who may, if the danger be great and imminent, call out his command to the aid of such officer, subject to the governor's action thereon. The governor's order shall specify the Wisconsin national guard called into service, the time and place of rendezvous, and the officer to whom they shall report. It shall be delivered to the commanding officer, and by him immediately communicated to each and every subordinate officer, and every company commander receiving the same shall immediately notify the same to each member of the company or battery, by notice written or printed, or partly both, served personally, or left at the last and usual place of residence of such member, with some person of suitable age and discretion, to whom the contents shall be explained. If any company commander or commissioned officer, receiving any such order, shall fail to give such notice as required thereby or by law, or shall fail to appear at the time and place so ordered, prepared for duty, he shall forfeit not less than one hundred nor over five hundred dollars, and be liable to dishonorable dismissal, at the pleasure of the governor; and if any non-commissioned officer, musician or private, after being duly notified, shall refuse or neglect to appear at the time and place of rendezvous properly prepared for duty, he shall be deemed a deserter, and forfeit not less than fifty nor over three hundred dollars. But physical incapacity to perform military service, dangerous sickness in the family of any such officer, musician or private, or absence at the time such notice was served, when such absence was not intended to avoid such notice or service, and he shall join for duty upon his return, if his company be still in service, shall excuse such default.

Sec. 27, ch. 242, 1863, as amended by sec. 13, ch. 407, 1864, and sec. 38, ch. 242, 1863, as amended by sec. 15, ch. 407, 1864, combined and compressed. The section as written seems to provide for every substantial provision of those whose place it takes, limiting it to volunteer companies.

**Who may have direction of troops.** SECTION 642. Whenever any company or battery, battalion or regiment shall be called into active service, they shall serve under their accustomed officers; but the governor may place such troops under the temporary direction of the mayor of any city, or of any sheriff, or of any marshal of the United States, or other officer designated by the governor in this state.

Sec. 47, ch. 242, 1863, verbally amended.

**Pay of troops and officers.** SECTION 643. When called into active service and retained for thirty days or less, such troops shall be subsisted by the state, and non-commissioned officers and privates shall be paid one dollar per day each. If engaged longer than thirty days, they shall receive the pay and rations established by law for the army of the United States. Officers shall receive the pay of their rank in the army of the United States, except general officers and those on the governor's staff. All disbursements for such pay and subsistence shall be made by some officer appointed by the governor, and his account therefor, examined and allowed by the governor, shall be paid out of the state treasury.

Sec. 48, ch. 242, 1863, and sec. 17, ch. 407, 1864, amended so that volunteers shall not be reduced to the small pay of United States soldiers, short of thirty days' service.

#### PERMANENT CAMP AND RIFLE RANGE.

**Authority to buy.** SECTION 643a. [Ch. 124, 1889.] 1. The governor is hereby authorized to purchase for the state not to exceed six hundred acres of land, at or near Camp Douglas in Juneau county, as a permanent camp ground and rifle range for the Wisconsin National Guard, and to cause the same to be improved and fitted up in a convenient manner for those purposes; provided, that the sum to be paid for the land shall not exceed six hundred dollars, and that the total amount expended for all purposes shall not exceed five thousand dollars.

A DIGEST  
OF  
THE  
MILITARY LAWS  
OF THE  
STATE OF  
PENNSYLVANIA.

PENNSYLVANIA.

CODIFIED BY AUTHORITY.

HARRISBURG:  
LANE S. HART, STATE PRINTER.  
1882.

him or keep him out of such limits may be arrested and confined under guard during the time of parade, or a shorter time, at the discretion of the commanding officer. This does not include any Philadelphia parade limits construed street or public highway within the city of Philadelphia.

**IX. Of Power of Commander-in-Chief to Call out National Guard to Suppress Invasion, Insurrection, Riot, &c.**

72. When an invasion or insurrection in the State is made or threatened, or a tumult, riot, or mob shall exist, the Commander-in-Chief shall call upon the militia to repel or suppress the same, and may order out divisions, brigades, regiments, battalions, or companies, or may order to be detached parts or companies thereof, or any number of men to be drafted therefrom, and may cause officers to be detailed, sufficient with those attached to the troops, to organize the forces.

**X. Courts-Martial—Jurisdiction and Sentence, —Courts of Inquiry, and Military Boards.**

73. Section twelve of the act of April twenty-first, eighteen hundred and fifty-eight, relating to courts of inquiry and courts-martial, be and the same is hereby reenacted, except that the number of officers constituting such courts, and except regimental and battalion courts-martial shall be as provided for in the army of the United States, and the courts-martial for

**(3761) Repeal. § 4.** All laws, so far as they are inconsistent with this act, are hereby repealed. [Laws 1861, ch. 77, § 4, Sept. 2.]

**Take effect. § 5.** This act shall take effect and be in force from and after its publication. [Laws 1861, ch. 77, § 5, Sept. 2.]

Approved May 7, 1861.

See STATE INSTITUTIONS FOR STATE BOARD OF HEALTH.

#### CHAPTER 64.—MILITIA.

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| <p>§ 1. Persons subject to militia duty.<br/>         2. Who exempt.<br/>         3. Officers of, vacancies, etc.; districts.<br/>         4. Enlistment for five years.<br/>         5. National guard in time of peace.<br/>         6. Present organization of.<br/>         7. Military board.<br/>         8. The same; audit claims; make rules.<br/>         9. Meetings quarterly; quorum.<br/>         10. Officers to provide uniforms.<br/>         11. Board to procure uniforms.<br/>         12. Penalty for selling or disposing of uniform.<br/>         13. When company organized.<br/>         14. Company meeting.<br/>         15. Annual muster.<br/>         16. When entitled to pay.<br/>         17. No officer to receive compensation, except.<br/>         18. In case of war, volunteers.<br/>         19. Pension.<br/>         20. Courts martial.<br/>         21. The same; proceedings.<br/>         22. Process.</p> | <p>§ 23. Discipline.<br/>         24. When fines are not paid.<br/>         25. Dues collected, how.<br/>         26. Prosecutions for violating act.<br/>         27. Commander in chief.<br/>         28. Commanding officers.<br/>         29. In case of breach of the peace.<br/>         30. Subject to orders of sheriff.<br/>         31. Penalty for disobeying orders.<br/>         32. Uniform exempt from execution.<br/>         33. Commissions.<br/>         34. Funds to carry out provisions of act; tax.<br/>         35. Auditor to draw warrant.<br/>         36. Act printed in pamphlet form.<br/>         37. Repeal.<br/>         38. Bonds issued to defray expenses<br/>         39. Tax to be levied.<br/>         40. Sale of bonds; proviso.<br/>         41. Board allow claims.<br/>         42. Claims to be certified.<br/>         43. Take effect.</p> |
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AN ACT to provide for the organization, government and compensation of the militia of the state of Kansas, and for the public defense.

#### ARTICLE I.

*Be it enacted by the legislature of the state of Kansas:*

**(3762) Subject to. § 1.** All persons subject to military duty under the constitution of this state, and not exempt therefrom by the provisions of this act, and such other male persons as shall voluntarily enroll themselves, shall be divided into two classes, to wit: One consisting of those who enlist in the active militia of the state under the provisions of this act, which shall be known as the Kansas national guard; the other to consist of all those subject to military duty, but not included in the above active or enlisted militia—the latter class to be known as the Kansas reserve militia. [Laws 1885, ch. 142, § 1, May 1.]

**(3763) Exemptions. § 2.** The following persons are exempt from military duty: First, All persons in the army, or navy, or volunteer force of the United States, and those who have been honorably discharged therefrom; all persons who shall have served in the Kansas national guard for the term of five years, and have been honorably discharged; all the judges and clerks of the several courts of the state, and the state and county treasurers. Second, Idiots, lunatics, paupers, habitual drunkards, and persons convicted of infamous crimes. Third, All persons who shall, on or before the first day of May of each year, make and file with the county clerk of their county an affidavit that they are members of any religious society or organization by whose creed or discipline the bearing of arms is forbidden: *Provided*, That the aforesaid exempted persons, included in the first subdivision of this section, shall be liable to military duty in case of war, insurrection or invasion, or imminent danger thereof. [Laws 1885, ch. 142, § 2, as amended by Laws 1886, ch. 126, § 1, Feb. 13.]

required has passed; and while in such service they shall be the subject to the same discipline and penalties, and receive the same pay, as the regular national guard. [Laws 1885, ch. 142, § 18, May 1.]

**(3780) Pension.** § 19. If any soldier is wounded or otherwise disabled, or is killed, or dies of wounds received while doing military duty according to law, in case of invasion, insurrection or disturbance of the peace, he, his widow or children, shall receive from the state such just and reasonable relief as the legislature shall deem proper. [Laws 1885, ch. 142, § 19, May 1.]

#### ARTICLE VIII.

**(3781) Courts martial.** § 20. The governor may order courts martial for the trial of officers and enlisted men of the national guard, on proper charges and specifications, the proceedings of which shall be as provided by the state military board, conforming to the regulations, articles of war, and practice for the government of the army of the United States, as near as may be; and the governor, in ordering a court martial, shall detail a judge advocate for the same. [Laws 1885, ch. 142, § 20, May 1.]

**(3782) Same.** § 21. Regimental and battalion courts martial may be convened by order of commandants of regiments or battalions, approved by the governor, under such regulations as the military board may prescribe. The proceedings, findings and sentences of all courts martial shall, unless otherwise ordered by the governor, be reviewed by the judge advocate general, and approved or disapproved by him. [Laws 1885, ch. 142, § 21, May 1.]

**(3783) Process.** § 22. The president of a court martial may issue subpoenas, enforce the attendance of a witness, and punish a refusal to be sworn, or to answer, as provided in civil actions. [Laws 1885, ch. 142, § 22, May 1.]

**(3784) Discipline.** § 23. Commandants of companies or batteries may appoint courts of discipline, under rules and regulations prescribed by the state military board, for the trial of members of their respective companies or batteries for violations of the militia law, the general code of regulations, or the authorized by-laws of their companies or batteries. [Laws 1885, ch. 142, § 23, May 1.]

**(3785) Fines.** § 24. When fines assessed by courts martial or courts of discipline are not paid within ten days after the sentence is approved by the reviewing officer and returned to the commandant, a list thereof and of the delinquents shall be placed in the hands of justices of the peace within the townships in which the delinquents respectively reside, who shall thereupon render judgment against such delinquents, separately, together with the costs of suit, without issuing process, and shall issue execution thereon, without stay, directed to any constable of the proper township, who shall collect the same, without exemption. [Laws 1885, ch. 142, § 24, May 1.]

**(3786) Dues.** § 25. Dues levied by the by-laws of any organization may be collected by civil suit, without right of stay or exemption; and all suits for the collection of fines or dues shall be brought in the name of the state of Kansas, for the use of the company or battery; but in no case shall the state pay any costs of such suit. [Laws 1885, ch. 142, § 25, May 1.]

**(3787) Prosecutions.** § 26. In all criminal prosecutions for violations of the provisions of this act, fines and penalties collected by justices of the peace, as hereinbefore provided, shall be paid into the treasury of the proper county, and applied to the support of the common schools. [Laws 1885, ch. 142, § 26, May 1.]

#### ARTICLE IX.

**(3788) Commander in chief.** § 27. The commander in chief shall have power, in case of invasion, insurrection, or breaches of the peace, or imminent

danger thereof, to order into the service of the state any of the companies, batteries, battalions, regiments or brigades of the Kansas national guard or of the militia force of the state that he may deem proper, and under the command of such officers as he shall designate; and in such case, the forces so called into service shall receive the same pay and rations as troops in the service of the United States. [Laws 1885, ch. 142, § 27, May 1.]

**(3789) Commanding officer.** § 28. In case of invasion, insurrection, or imminent danger thereof, within the vicinity of any regiment, battalion or company, it shall be the duty of the commanding officer of such regiment, battalion or company to order out for the defense of the state the Kansas national guard under his command, or any part thereof, and immediately report what he has done, and the circumstances attending the same, to his immediate commanding officer and to the commander in chief. [Laws 1885, ch. 142, § 28, May 1.]

**(3790) Breach of peace.** § 29. In case of any breach of the peace, tumult, riot, or resistance to process in this state, or imminent danger thereof, it shall be lawful for the sheriff of any county, or the mayor of any city, to call for aid upon the commanding officer of any regiment, battalion or company; and it shall be the duty of the said commanding officer upon whom such call is made, to order out in aid of the civil authorities the military force, or any part thereof, under his command, reporting immediately what he has done, and all the circumstances attending the same, to his immediate commanding officer, and also to the commander in chief. [Laws 1885, ch. 142, § 29, May 1.]

**(3791) Subject to order of sheriff.** § 30. Such commanding officer shall be subject, as provided by law, to the sheriff or public officer who shall require his aid; and for refusing or neglecting to obey the lawful order of such sheriff, or public officer, requiring such service, or for interfering or in any way hindering or preventing the men of his command from performing such duty, or in any manner, by neglect or delay, preventing the due execution of the law, every such commanding officer, and every commissioned officer under his command, so offending, shall be liable to a fine of one hundred dollars and imprisonment in the county jail for a period of not exceeding six months. [Laws 1885, ch. 142, § 30, May 1.]

**(3792) Penalty.** § 31. Any non-commissioned officer, musician or private who shall neglect or refuse to obey the orders of his commanding officer, in case of invasion, insurrection, riot, tumult, breach of the peace, or resistance to process hereinbefore provided for, shall be liable to a fine of not less than twenty nor more than one hundred dollars, and imprisonment in the county jail for a period not exceeding three months. [Laws 1885, ch. 142, § 31, May 1.]

ARTICLE X.

**(3793) Uniform exempt.** § 32. The uniforms, arms and equipments required by law or regulations of every officer and soldier of the Kansas national guard, shall be exempt from all suits, distresses, executions, or sales for debt, or for the payment of taxes. [Laws 1885, ch. 142, § 32, May 1.]

**(3794) Commissions.** § 33. That all military commissions of both the militia and volunteer service, the issue of which is authorized by the constitution and laws of this state, shall be signed by the governor, sealed with the great seal of the state, and attested and recorded by the adjutant general. [Laws 1885, ch. 142, § 33, May 1.]

**(3795) Funds; tax.** § 34. For the purpose of providing the necessary funds to carry out the provisions of this act, it shall be the duty of the state board of equalization, at the time of apportioning the state taxes for the year one thousand eight hundred and eighty-five, and each year thereafter, to apportion among the several counties of this state, in proportion to the whole amount

## CHAPTER X.

### OF THE MILITIA, AND THE PUBLIC DEFENCE.

- TITLE I.—OF THE PERSONS SUBJECT TO MILITARY DUTY.  
 TITLE II.—OF THE ELECTION AND APPOINTMENT OF MILITIA OFFICERS,  
 AND THE TENURE OF THEIR OFFICES.  
 TITLE III.—OF THE ENROLMENT OF PERSONS SUBJECT TO MILITARY DUTY. (225-336)  
 TITLE IV.—OF THE ORGANIZATION, UNIFORM AND DISCIPLINE OF THE  
 MILITIA.  
 TITLE V.—OF THE SEVERAL PARADES AND RENDEZVOUS OF THE MILITIA.  
 TITLE VI.—OF COURTS OF ENQUIRY, AND COURTS-MARTIAL.  
 TITLE VII.—OF PENALTIES, FINES, FEES AND EXPENDITURES.  
 TITLE VIII.—OF THE DUTIES OF CERTAIN STAFF OFFICERS, AND OF VARIOUS  
 MATTERS CONNECTED WITH THEIR RESPECTIVE DEPART-  
 MENTS.  
 TITLE IX.—MISCELLANEOUS PROVISIONS OF A GENERAL NATURE.  
 TITLE X.—SPECIAL PROVISIONS.

[This chapter is omitted. It has never been repealed by name, but several subsequent acts have been passed, making different provision for the subjects of this chapter, and repealing all laws "inconsistent with" them. See L. 1854, ch. 398; 1855, ch. 261 and ch. 536; 1858, ch. 129 and ch. 343; 1862, ch. 477; 1870, ch. 80, § 268; 1883, ch. 299, § 148.]

#### [Supplement to Chapter X.

- TITLE 10<sup>a</sup>.—The Military Code of the state, and other provisions relating to the national guard.  
 TITLE 10<sup>b</sup>.—Of the bureau of records of the war of the rebellion, and the state repository for relics and memorials of that war.]

#### TITLE 10<sup>a</sup>.

*The Military Code of the State, and other provisions relating to the National Guard.*

**L. 1883, Chap. 299**—An act to provide for the enrolment of the militia, for the organization of the national guard of the state of New York, and for the public defence; and entitled the Military Code.

- ARTICLE I.—PERSONS SUBJECT TO MILITARY DUTY.  
 ARTICLE II.—ENROLMENT OF PERSONS LIABLE TO MILITARY DUTY.  
 ARTICLE III.—ORGANIZATION OF THE NATIONAL GUARD OF THE STATE  
 OF NEW YORK.  
 ARTICLE IV.—STAFF DEPARTMENTS AND DUTIES.  
 ARTICLE V.—ELECTION AND APPOINTMENT OF COMMISSIONED AND  
 NON-COMMISSIONED OFFICERS.  
 ARTICLE VI.—ENLISTMENT AND TRANSFER.  
 ARTICLE VII.—DISCHARGES OF COMMISSIONED OFFICERS AND ENLISTED  
 MEN.

**Penalties for violation of preceding section.** § 76. Whoever offends against any of the provisions of the preceding section, or belongs to, or parades with, any such unauthorized body of men with fire-arms, or fails to respond or do duty when called upon by the commander-in-chief in case of necessity or emergency and after enlisting, or refusing to enlist, as provided in the preceding section, shall be punished by a fine not exceeding the sum of ten dollars, or by imprisonment in the county jail for a term not exceeding six months, or both.

## ARTICLE XI.

## INVASION, INSURRECTION AND BREACHES OF THE PEACE.

**Power of commander-in-chief in case of invasion, etc., to order into service.** § 77. The commander-in-chief shall have power, in case of insurrection, invasion or breaches of the peace, or imminent danger thereof, to order into the active service of the state any or all of the troops, batteries, companies, battalions, regiments, brigades or divisions of the national guard, or of other militia or military organizations of the state, that he may deem proper, and all members thereof who shall be ordered out by proper authority for any such duty shall not be liable to civil prosecution for any act or acts done by them in the discharge of their military duty on such occasions, and in such case the forces so called into service shall receive the same pay as is provided in section ninety-two of this act.

**National guard, how ordered out in case of insurrection, etc.** § 78. In case of insurrection or invasion, or imminent danger thereof, within the limits of any command, it shall be the duty of the senior commanding officer of such command to order out, for the defense of the state, the national guard, or any part thereof, under his command, and immediately report what he has done, and the circumstances of the case, to the commander-in-chief. [*Thus amended by L. 1886, ch. 412.*]

**Sheriffs or mayors may call on commanders in case of breach of peace, etc.; how men warned.** § 79. In case of any breach of the peace, tumult, riot, or resistance to process of this state, or imminent danger thereof, it shall be lawful for any sheriff of any county, or the mayor of any city, to call for aid upon the commandant of the national guard stationed therein or adjacent thereto; and it shall be the duty of such commanding officer upon whom the call is made to order out, in aid of the civil authorities, the military force or any part thereof, under his command, and he shall immediately report what he has done and all the circumstances of the case to the commander-in-chief, and in such case it shall not be necessary for commanders of troops, batteries or companies to issue written orders or notices for calling out their men, but verbal orders and notices shall be sufficient.

**Volunteers or drafted men, when enrolled militia called out.** § 80. Whenever it shall be necessary to call out any portion of the enrolled militia other than the national guard, for active duty, the commander-in-chief shall direct his order to the mayor of any city or to the supervisor of any town, who, upon receipt of the same, shall forthwith, and shall then and there proceed to draft as many of the enrolled militia in their city or town, or accept as many volunteers as are required by the commander-in-chief, and shall forthwith forward to the commander-in-chief a list of the persons so drafted or accepted as volunteers.

**Punishment for failure to appear.** § 81. Every member of the enrolled militia ordered out, or who volunteers or is drafted, under the provisions of this act, who does not appear at the time and place designated by the mayor or supervisor, or who has not some able-bodied and proper substitute at such time and place, within twenty-four hours from such time, or who does not produce a sworn certificate, from a physician in good standing, of physical disability to so appear, shall be taken to be a deserter, and dealt with as prescribed in the articles of war of the United States.

**Militia ordered out to be mustered and organized; officers to be appointed.** § 82. The portion of the enrolled militia so accepted shall be immediately mustered into the

## TITLE IV.

### CHAPTER 14.

#### OF THE MILITIA.

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| <p style="text-align: center;"><b>PERSONS SUBJECT TO MILITARY DUTY.</b></p> <p><b>SECTION</b></p> <ol style="list-style-type: none"> <li>1. Persons to be enrolled in militia.</li> <li>2. Exemptions from enrolment.</li> <li>3. Quakers and Shakers exempted from enrolment.</li> <li>4. Penalties for giving false certificate.</li> <li>5. Members of fire department may be exempted from duty.</li> <li>6. Enrolled militia subject to no active duty except in case of war, etc.</li> </ol> <p style="text-align: center;"><b>THE ENROLMENT OF PERSONS SUBJECT TO MILITARY DUTY.</b></p> <ol style="list-style-type: none"> <li>7. Assessors to make list of persons liable to enrolment.</li> <li>8. Keepers of taverns and masters of dwelling-houses to give names to assessors.</li> </ol> <p style="text-align: center;"><b>THE CALLING OUT AND ORGANIZING THE ENROLLED MILITIA FOR ACTIVE DUTY.</b></p> <ol style="list-style-type: none"> <li>9. Calling out enrolled militia for active duty.</li> <li>10. Penalty for not appearing when drafted. Militia accepted to be mustered into service for three years. Election of officers.</li> </ol> <p style="text-align: center;"><b>THE STAFF OF THE COMMANDER-IN-CHIEF, AND THEIR DUTIES.</b></p> <ol style="list-style-type: none"> <li>11. Staff of commander-in-chief.</li> <li>12. Adjutant-general to distribute all orders from commander-in-chief; to make annual report; to inspect armories once a year, etc.</li> <li>13. Adjutant-general's salary, and clerks and assistant clerks, etc., in quartermaster's department.</li> <li>14. Quartermaster-general to give bond with sureties; to have care of camp-ground and arsenals. May allow for repairs of uniforms and equipments. Target practice.</li> <li>15. Penalty for purchasing, etc., tools, etc., branded.</li> <li>16. Inspector-general to inspect militia at encampments and at armories. Inspections with reference to disbandment to be made on orders of commander-in-chief. Inspector-general, etc., to act under governor, and assistant inspectors under their generals.</li> <li>17. Surgeon-general, salary and duties.</li> <li>18. Judge-advocate-general.</li> <li>19. Annual reports.</li> <li>20. Officers not to be pecuniarily interested in purchase or sale of articles.</li> </ol> <p style="text-align: center;"><b>THE VOLUNTEER MILITIA; ITS ORGANIZATION AND DISBANDMENT.</b></p> <ol style="list-style-type: none"> <li>21. Active militia to be composed of volunteers.</li> </ol> | <p style="text-align: center;"><b>SECTION</b></p> <ol style="list-style-type: none"> <li>22. Infantry, cavalry, light artillery, and cadets.</li> <li>23. to be arranged into brigades and regiments, etc.</li> <li>24. Organization of new companies.</li> <li>25. Brigadier-general and staff.</li> <li>26. Field and staff officers of regiment.</li> <li>27. Major and staff officers of battalion.</li> <li>28. Company officers. Infantry. Cavalry. Battery of light artillery.</li> <li>29. Cadets.</li> <li>30. Regimental and battalion bands.</li> <li>31. What officers and soldiers entitled to be mounted.</li> <li>32. Disbandment.</li> </ol> <p style="text-align: center;"><b>THE ELECTION AND APPOINTMENT OF COMMISSIONED OFFICERS.</b></p> <ol style="list-style-type: none"> <li>33. Eligibility to election or appointment to office.</li> <li>34. Commissioned officers to take rank according to date of commissions.</li> <li>35. Appointment of staff officers.</li> <li>36. Election of line officers.</li> <li>37. Elections of brigadier-generals.</li> <li>38. Election of company officers not to be ordered until minimum number of men is enlisted, etc.</li> <li>39. Vacancies in company officers to be filled before election of field officers.</li> <li>40. Elections to be held at convenient places.</li> <li>41. Notice of elections.</li> <li>42. Officers ordering elections may preside, or detail officer of suitable rank.</li> <li>43. Presiding officer to keep record, and make return to the adjutant-general.</li> <li>44. Certified roster or roll to be furnished to presiding officer.</li> <li>45. Majority of electors to be present and voting.</li> <li>46. Adjournment of elections.</li> <li>47. Failing to elect, facts to be reported to adjutant-general.</li> <li>48. Election by a majority vote.</li> <li>49. Acceptance or declination to be made within six days of election.</li> <li>50. Upon refusal to accept at the meeting, another election may be had.</li> <li>51. Acceptance of new office shall vacate the office previously held.</li> <li>52. Upon neglect to fill vacancy, commander-in-chief may appoint.</li> <li>53. Company without officers, refusing to elect, to be disbanded.</li> <li>54. Officers to appear before examining board. Officer failing to appear or to pass examination to be discharged.</li> </ol> |
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## TOURS OF DUTY, INSPECTIONS, AND DRILLS.

Volunteer militia to be called upon in case of invasion or insurrection. 1878, 265, § 96. § Mass. 549.

Troops may be ordered out in case of riot or tumult. 1878, 265, § 97. § Gray, 121.

SECT. 100. When an invasion of or insurrection in the state is made or threatened, the commander-in-chief shall call upon the volunteer militia to repel or suppress the same. If such invasion or insurrection or imminent danger thereof, in any part of the state, is so sudden that the commander-in-chief cannot be informed and his orders received and executed in season to resist or suppress the same, a brigade commander in such part of the state may order out his brigade, or any part thereof, as the commander-in-chief might do.

SECT. 101. When there is in any city or town a tumult, riot, mob, or a body of men acting together by force, with attempt to commit a felony, or to offer violence to person or property, or by force and violence to break and resist the laws of the commonwealth, or when such tumult, riot, or mob is threatened, and the fact is made to appear to the commander-in-chief, the sheriff of the county, the mayor of the city, or the selectmen of the town, the commander-in-chief may issue his order, or such sheriff, mayor, or selectmen may issue a precept, directed to any commander of a brigade, regiment, battalion, corps of cadets, or company, directing him to order his command, or a part thereof, to appear at a time and place therein specified, to aid the civil authority in suppressing such violence, and supporting the laws; which precept shall be in substance as follows:—

Form of precept.

## COMMONWEALTH OF MASSACHUSETTS.

—, ss.

L. S.

To *(insert the officer's title)* A. B., commanding *(insert his command)*.

Whereas it has been made to appear to *(the sheriff, mayor, or the selectmen, as the case may be)* of the *(county, city, or town)* of that *(here state one or more of the causes above mentioned)* in our of , and that military force is necessary to aid the civil authority in suppressing the same: Now, therefore, we command you that you cause *(your command, or such part thereof as may be desired)*, armed and equipped with ammunition, and with proper officers, to parade at , on , then and there to obey such orders as may be given, according to law. Hereof fail not at your peril, and have you there this precept, with your doings returned thereon.

This precept shall be signed and properly attested as the act of such sheriff, mayor, or selectmen, and shall be under seal, and may be varied to suit the circumstances of the case; and a copy of the same shall be immediately forwarded to the commander-in-chief.

Officer forthwith to order troops to parade. 1878, 265, § 98.

SECT. 102. The officer to whom the order of the commander-in-chief, or brigade commander, or such precept, is directed, shall forthwith order the troops therein called for to parade at the time and place appointed; and shall immediately notify the commander-in-chief of such order directly in the most expeditious manner, and by letter through the usual military channels.

Penalty on officer for neglect. 1878, 265, § 99.

SECT. 103. If an officer ordered as in the preceding section refuses or neglects to obey such order or precept, or if any officer or soldier neglects or refuses to obey an order issued in pursuance thereof, he shall be punished as a court-martial may adjudge.

Troops to appear armed and equipped. 1878, 265, § 100.

SECT. 104. Such troops shall appear at the time and place appointed, armed, equipped, and with ammunition, and shall obey and execute such orders as they may then and there receive according to law.

Officer may be detailed to command, if company is without officers. 1878, 265, § 101.

SECT. 105. If a company without officers is ordered to march, or if a detachment is ordered therefrom, the commander of the regiment or battalion shall detail an officer to command, who shall have the same authority to order them to appear, to command them in the field, or to make a draft or detachment therefrom, as the captain of such company would have, and shall be under the same responsibility.

or vote drawn in question by the contest, is not changed by the final order or certificate of the court or judge, to be made as aforesaid, the costs and expenses of the contest, which shall be taxed by the clerk, shall be adjudged against the contestant; but if the result be changed by said final order or certificate, the costs and expenses shall be paid out of the treasury of the county, out of any money not otherwise appropriated; and there shall be allowed the commissioner for his services, to be taxed as costs, the sum of two dollars per day, for such time as he has been employed, and to all witnesses employed to reduce the testimony to writing, two dollars per day, **S. & C. 1391.**

**SEC. 3022.** Any citizen of the county may appear as contestee in such case, and the commissioner shall cause subpoenas to be issued for such witnesses as are requested by a party to the contest. **S. & C. 1391.** [54 v. 1, § 8.]

Contestees; witnesses.

## TITLE XV. MILITIA.

- CHAPTER 1. ENROLLMENT.  
 CHAPTER 2. ORGANIZATION.  
 CHAPTER 3. DISCIPLINE AND GOVERNMENT.  
 CHAPTER 4. UNIFORM, ARMS, DRILL, AND PAY.  
 CHAPTER 5. MISCELLANEOUS PROVISIONS.

### CHAPTER 1.

#### ENROLLMENT.

SECTION	SECTION
Who shall be enrolled.	3029. Persons enrolled, but exempt except in case of war, etc.
Duties of assessors as to enrollment; duties, etc., of county auditors.	3030. Penalty for giving false certificate of disability.
Who shall give information to assessors; penalty for refusal.	3031. Penalty for altering or transferring certificate of disability, etc.
Refusal or willful neglect of assessors.	3032. Existing enrollment to remain in force.
Compensation of assessors.	
Exemption, absolute.	

**SEC. 3023.** All male citizens of this state who are eighteen and under forty-five years of age, except persons exempt by law, shall be enrolled in the militia, and perform military duty, in the manner herein prescribed. [63 v. 70, § 1.] **Who shall be enrolled. S. & S. 449.**

**SEC. 3024.** Township, ward, and precinct assessors shall, in the year eighteen hundred and eighty-one, and every fifth year thereafter, **Duties of assessors as to enrollment.**

**3023.** The commutation for fines and penalties provided for in section 4 of the act of March 864 (61 v. 110), for persons enrolled in the militia, but who did not join a volunteer military organization, was held to be constitutional. *Houston v. Wright*, 15 O. S. 318.

n, if he is able-bodied, is not less than eighteen years of age, and consents voluntarily to subject himself to the discipline and penalties applicable to the organized militia, shall be accepted as a substitute for the principal. [63 v. 70, § 55.]

S. &amp; S. 400.

SEC. 3095. A drafted person who does not present to the county auditor a certificate of exemption or non-liability, and who refuses, without a good and sufficient excuse, fails to report in person at the time and place named in the notice required by section *three thousand and ninety-three*, shall be deemed guilty of desertion, and punished as other deserters.

When drafted man is a deserter.

## RIOTS.

SEC. 3096. Whenever, in any county, there is a tumult, riot, mob, or any body of men acting together with intent to commit a felony, or to do or offer violence to person or property, or by force and violence to break or resist the laws of the state, or there is reasonable apprehension thereof, the commander-in-chief, the sheriff of the county, the mayor of any municipal corporation therein, or a judge of any court of the state of the United States, may issue his call to the commanding officer of any regiment, battalion, company, troop, or battery, to order his command, in any part thereof, describing the same, to be and appear, at a time and place therein specified, to act in aid of the civil authority. [63 v. 70, § 43.]

When militia required to aid civil authority.

SEC. 3097. The officer to whom the call is directed shall forthwith order the troops therein mentioned to parade at the time and place appointed; and if he neglect or refuse to obey, or if any officer refuse to neglect to obey any order issued in pursuance of such call, he shall be cashiered, and be further punished by fine, and imprisonment not exceeding six months, as a court-martial may adjudge; and an enlisted man who neglects or refuses to appear at the place of parade, or to obey any order issued in such case; or a person who advises or endeavors to persuade an officer or soldier to refuse or neglect to appear at such place, or to obey such order, shall be imprisoned not exceeding six months, or fined not exceeding one thousand dollars, or both. [63 v. 70, § 44.]

Must obey call of the civil authority.

SEC. 3098. Whenever the commanding officer of a company, troop, or battery orders out his command for such duty, he may order enlisted men to notify the men enrolled in such organization to appear at the time and place appointed, who shall give notice of such time and place of meeting, to each man personally, or by leaving at his usual place of abode a written or printed order, signed by the enlisted man serving in the same, which notice shall be a sufficient warning. [74 v. 238, § 45.]

How the men must be notified to appear.

SEC. 3099. Every enlisted man who refuses or neglects to serve without notice, when duly ordered so to do, and every officer or enlisted man who, having been served with notice as provided in the preceding section, refuses or neglects to obey the same promptly, shall pay not less than ten nor more than one hundred dollars, as may be adjudged by a court-martial. [63 v. 70, § 46.]

Penalties for disobedience of orders.

S. &amp; S. 458.

## REPORTS.

SEC. 3100. The adjutant-general shall furnish to commandants of regiments, battalions, troops, batteries, and unattached companies, blank forms of rolls, bonds, and the different returns required to be made to him; he shall, from time to time, explain the principles upon which returns should be made, and may make such general regulations concerning the organization and government of the militia as will best promote the discipline and order thereof, and supply such practical details as are required to make the organization systematic and com-

Adjutant-general to supply blank forms of reports, etc.